

India Exclusion Report 2016

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A young man from Lat, a village in Raigad district of Chhattisgarh, climbs on to a truck laden with coal as it exits a South Eastern Coalfields Limited (SECL) mine. SECL took over 800 acres of fertile farmland and forests the village depended on for firewood and other minor forest produce without offering alternate livelihoods or enough jobs at the mine. While continuing a months-long agitation against unfair treatment meted out to them at the gates of the company, the men began to clamber on to the coal-trucks to level it before it sets out to transport the coal. The men would be able to extract Rs 200-300 from each truck driver for the labour.

Photo Credit: Nikhil Roshan

India Exclusion Report 2016

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Acknowledgements

We are grateful that we are able to present the third edition of the India Exclusion Report, 2016. This enterprise began as a small collaborative experiment in attempting to add to fact-based knowledge by carefully interrogating the role of the State in securing equitable access to public goods to all peoples, and to combat exclusion, injustice, exploitation, poverty, vulnerability and deprivation. We have gained strength as more and more scholars and activists, and institutions, from India and around the world, have joined hands to both contribute to and collectively own this enterprise. We have also tried to share the findings of the reports to influence and inform public debate and opinion, through teaching materials in universities, opinion pieces, video reports, and even a graphic format for young people. Work is already under way for the fourth and fifth reports.

The multi-disciplinary report aims to bring together scholars, human rights activists, development practitioners, community-based movements, and policy makers to examine outcomes of laws, policies, budgets, government schemes and programmes on the lives of the people of India, especially those forced to survive in the outer margins, those oppressed and excluded by caste, gender, class, religious identity and disability.

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Harsh Mander
Director
Centre For Equity Studies

Public Goods, Exclusion and 25 Years of Economic Reforms

A Blotted Balance Sheet

Harsh Mander¹

I

India's global rankings made the headlines at least twice in 2016, and both times the news was dampening. The first report revealed that India's place in the Global Hunger Index compiled by IFPRI fell from 83 in 2000 to 97 in 2016 (*Business Standard*, 2016), with India scoring even worse than its much poorer neighbours Bangladesh and Nepal. The second disclosed that India's rank in the World Bank's Ease of Doing Business Report rose by only one position, from 131 the previous year to 130 (*The Hindu*, 2016), among 190 countries.

The tardy improvement in India's Ease of Doing Business global rating led to immediate official statements of concern in the corridors of power. Commerce and Industry Minister Nirmala Sitharaman said she was 'disappointed', and Prime Minister Modi directed secretaries of the union government and chief secretaries of state governments to analyse expeditiously the reasons for sluggish progress, and identify areas for improvement both in central government departments and the states.

India's dismal performance in fighting hunger, however, attracted no similar comment or the articulation of concern at senior levels of the union government. The volubility of the government on one and the silence on the other is in itself an eloquent commentary on the priorities of the

government, a reflection of who it feels primarily responsible to.

What does a low ranking in the Global Hunger Index (GHI) indicate? It means first that too high a proportion of India's people (around 15 per cent) are under-nourished (*The Times of India*, 2016). It means that too many children under the age of five (15 per cent) are wasting, reflected in low weights for their heights. And too many are stunted (a shameful 39 per cent), meaning that their bodies are adjusting to chronic low nutrition by becoming shorter for their ages. And finally, it means that too many children (4.8 per cent) die before reaching the age of five years, because of the fatal cocktail of too little nutritious food and highly unhealthy environments.

It is important to remember that what for the scholar is 'under-nutrition' is for people who live with this condition the anguish of being unable to feed oneself or one's loved ones, of reduced physical and mental capacities, and of succumbing to infections or circumstances that they would have been able to fight if they were well-nourished. Stunting and wasting means that the bodies and minds of millions of our children are being starved into feebleness. Under-five mortality means the agony of millions of mothers and fathers who are helpless as they lose their children only because of their dirt-poverty.

Compared to other countries, India's government is simply doing too little to prevent this enormous

and entirely preventable suffering of millions of impoverished citizens. And the silence of the government about these continued failings can only mean that it is not stirred or shamed by this report card, that there is still little urgency to alter the destinies of India's poorest majorities—rural, slum-based, informal workers, women, tribal, Dalit, minority, disabled groups, aged people, single women, and above all children from all these groups.

It is not as though there has been no improvement in India in each of these parameters in recent years. In 2013, India's position was rated as 'alarming'; today it is slightly better at 'serious'. In 2016, India's GHI score was 28.5, an improvement over 36 in 2008. Since 2000, India has reduced its GHI score by a quarter. But 20 countries, including much poorer countries like Rwanda, Cambodia, and Myanmar, have all reduced their GHI scores by over 50 per cent since 2000.

So, the problem is not that India is doing nothing to end hunger. But its improvements are much slower than even countries which are often much poorer, not self-sufficient in food production, without functional democracies, and sometimes strife-torn. India's GHI score places it fifth from the bottom in Asia: only Afghanistan, Timor-Leste, Pakistan, and North Korea trail behind India. This surely is not illustrious company for an India that prides itself as the world's fastest growing economy. The report estimates that if India continues to reduce hunger at the same pace, it will still be in the 'moderate' to 'serious' hunger zone in 2030.

India's failures to reduce and end hunger, poor health and early deaths, resulting in immense suffering of millions of its people, is even more unconscionable because all of this is preventable. India has the food production, the levels of growth, the economic resources and the state capacities that it requires if it resolves to make hunger history. Countries which have overtaken India often lack many of these advantages. India's failures

are not inevitable. They are the direct result of its public policy priorities and choices: its market fundamentalism and its refusal to invest adequately in the nutrition, education, social protection and health of its people.

India's continued trouncing in its battle against hunger stems first from its very low investments in agriculture, as a result of which India's food producers constitute its largest ranks of the hungry and malnourished. For a sector that gives work to around 55 per cent of the population, the government invests less than 4 per cent of public resources. Even within this small investment, the overwhelmingly large mass of the rain-fed small peasant are most neglected. India's failure to ensure decent work to nearly nine of its 10 workers trapped in informal work also explains India's losing hunger battle. India's high growth is mostly jobless growth, which erodes completely the rationale for privileging business interests over those of impoverished populations. The historical inequities of gender, caste, tribe and religious minorities further aggravate those created by inequalities of wealth.

Upstream sources of India's disgraceful hunger record include also its investment of just a little over 1 per cent of GDP in public health, lower than most countries of the world, and its chronic miscarriages in securing sanitation and clean water to all its populations. Downstream we see continuing chronic under-resourcing and corrupt implementation of important food and nutrition programmes such as the ICDS and school meals, the public distribution system, pensions for older persons, single women and the disabled, and maternity benefits.

To address some of these, India passed the National Food Security Act 2013, which sought to guarantee half the calorie needs of two-thirds of the population, as well as universalize maternity benefits, young child and mother feeding, and school meals. But even when such Acts are passed, they are

rarely acted upon with diligence and commitment. The union government and many states remain reluctant and neglectful in operationalizing these entitlements.

All of these point to not just morally reprehensible failures of the state, but to a much deeper social and cultural malaise. That the lives, deprivations and suffering of the poor do not matter. In this way, the Global Hunger Index is an indictment not just of our governments, but also of middle-class India itself, holding up a mirror to how little it cares.

* * *

This is the third in the annual series of India Exclusion Reports, in which the Centre for Equity Studies has tried to bring together a wide range of policy thinkers and actors, scholars, social advocates for more just and inclusive laws and policies and people of disadvantage themselves, together to examine carefully the record of the Indian State to ensure greater inclusion and access to the large mass of deprived and oppressed peoples. This is a modest effort, yet we are gratified to find that there are a growing number of readers of these reports who agree with the value of an enterprise like this that tries to create an informed report card about whether governments in India are ensuring equitable access of vulnerable communities to a range of public goods, but also to look closely at the most vulnerable communities as well. Considering that this year also marked the end of 25 years of neo-liberal growth which promised to erase poverty faster than was possible in the past, this report assumes for us a larger significance.

The time had come, we are convinced, to think of a stable long-term institutional arrangement for the series of India Exclusion Reports. This is an experiment drawing many diverse actors and thinkers from many different silos but all concerned with a more just and humane society and State to write and reflect together. In that spirit, we believe that the structure that holds

this enterprise of conceptualizing, researching, writing and disseminating the India Exclusion Reports should also be highly collaborative and plural, well outside the control of any one person or institution.

We are therefore proud that a number of leading international and national centres have joined the Centre for Equity Studies formally in this enterprise. These include Brown University, the International Institute of Social Studies in the Hague, and the Institute of Development Studies in Sussex; as well as leading national organizations including NALSAR University of Law, Hyderabad, which is one of India's best national law schools with an equity focus, the Indian Institute of Human Settlements, Bangalore which specializes in urban studies, a premier social science research institution, and the Centre for Budget and Governance Accountability. This partnership is based on a shared approach in terms of our understanding of issues of exclusion, social justice and the role of the state. Our attempt is to ensure that the Exclusion Reports are strongly evidence-based, empirical and carefully peer-reviewed, to which all our collaborators and now joint owners contribute in many ways. But while all of these have independent programmes and views on many issues, all the many contributors and collaborators of these reports are bound together by shared normative and political convictions related to ideas of the just state, the just society, equity and solidarity.

In this overview chapter, we will try to summarize some of the highlights of the findings of this report. But before we do this, we felt since a quarter-century has passed since economic reforms were heralded in India, it would be fitting for the purposes of this report to reflect on what 25 years of economic reforms has meant for the massive underclass of India's disadvantaged people.

* * *

It was 25 years before this current report was being compiled, on 24 July 1991, when the then Finance Minister Dr Manmohan Singh rose in Parliament to present a budget speech which was to alter the destinies of India and its people in fundamental ways. He spoke in his characteristically gentle, low-key and self-effacing manner disguising a steely resolve. His words were memorable even if debatable. Quoting Victor Hugo, he said, ‘No power on earth can stop an idea whose time has come.’ He declared that ‘the emergence of India as a major economic power in the world happens to be one such idea. Let the whole world hear it loud and clear. India is now wide awake. We shall prevail. We shall overcome.’

The legacy of that moment remains highly contested. A quarter-century later, India is indeed a major economic power, altered in fundamental ways from the country that Dr Singh helped steer in new directions. With a GDP of 2 trillion dollars, it has edged itself among the 10 largest economies of the world. But in what ways have economic reforms, launched with this historic budget speech, contributed to changing the lives of India’s dispossessed millions? Has it, as was promised, hastened the end of poverty and want, ensured greater access to public goods to hitherto excluded populations, spurred jobs and incomes, and reduced state corruption? As we look back on the past 25 years, it is important to draw up a careful balance sheet especially from the vantage point of the oppressed people of India, of what the promises were and what was actually accomplished after India changed course so fundamentally 25 years ago.

The ‘structural reforms’ that Dr Singh announced, and which every successive government elected to the union government with varying urgency and priority has since advanced, made way for global private enterprise to enter and increasingly occupy the commanding heights of the Indian economy. Until then these were dominated by the State. The

reform package opened the economy to global competition; it stressed on fiscal consolidation and discipline for macro-economic stability; it liberalized trade and capital markets; it dismantled the justly notorious licence-permit raj that stymied local enterprise by rent-seeking; and it facilitated and expanded competitive private provisioning of public goods like health, education, public transport and infrastructure.

There were three main promises of economic reforms. The first was that these would unfetter the economy and spur economic growth and development. The second was that growth would crank up manifold the creation of wealth and jobs, and through this would erase poverty, hunger and want. And the third was that reforms would significantly reduce corruption and rent-seeking by ending licencing and bureaucratic regulation of private enterprise.

Let us take each of the promises, and assess with the hindsight of a quarter-century what indeed was accomplished and what were the intended and unintended consequences of these reforms.

There is no doubt that reforms did hasten economic growth to rates that were double, and even at times three times the pace of growth that the country had settled into until then in four decades since India’s freedom. Twenty-five years later India is the fastest growing economy in the world. It has also created unprecedented levels of wealth (however unequally distributed), so that today India is home to the third largest population of dollar billionaires in the world (Hurun Report, 2015). The ranks of middle-class Indians have grown, as they have transitioned from lives of customary austerity to substantial improvements in their material well-being, from habitual thrift to unrestrained and unapologetic hyper-consumption. This massive enlargement of wealth has also meant that governments in India at all levels—union, state and local—have far greater

resources in absolute terms available to them for public investment and spending than they did in the past. India's budgetary spending on social sectors in 1990–91 was approximately 6 per cent of its GDP which rose to 8 per cent in 2014–15 (Indian Public Finance Statistics 2014–15). (Although because of official reluctance to expand India's direct tax base significantly, public spending as a share of gross domestic product remains one of the lowest in India among comparable countries).

This is however where we feel that the 'good news' of economic reforms ends. Reforms did stimulate high economic growth and yield greater wealth creation. But this wealth was very unequally distributed, raising sharply levels of economic inequality in a country that was already historically profoundly unequal. Advocates of free markets, opposed to building a welfare state, have long argued that accelerated market-led economic growth in India has lifted millions out of want in ways that direct state support could never have done. They suggest that poverty is vanishing in India, and those who still advocate large-scale public action in support of the poor are caught in a time-warp, failing to recognize that the lives of India's poor have altered dramatically in the quarter-century of neo-liberal reforms.

In India, from two resident billionaires with an income of 3.2 billion in the mid-1990s, their numbers grew to 46 with the combined wealth of 176 billion in 2012, and their share in GDP rose from 1 to 10 per cent. A recent report by Oxfam titled 'Even It Up' observes that income concentration at the top fell in the first three decades after Independence, but since then for the top 0.01 per cent real wages grew annually at 11 per cent. By contrast, the rise in real household expenditure for the rest of the population rose by only 1.5 per cent. In agriculture, growth in real wages was 5 per cent in the 1980s, but fell to 2 per cent in the 1990s, and virtually zero in the 2000s. If judged by the median developing country poverty line of 2 dollars a day on purchasing power parity, more than 80 per cent

rural and just below 70 per cent urban inhabitants in India continue to be impoverished.

As Oxfam Director Byanyima observes:

A child born to a rich family, even in the poorest countries, will go to the best school and will receive the highest quality care if they are sick. At the same time, poor families will see their children taken away from them, struck down by easily preventable diseases because they do not have the money to pay for treatment (Even It Up, Oxfam, 2014, p. 2).

The unfairness of this unequal world is indeed enhanced because the majority of richest persons are born into their wealth. Children and grandchildren of the rich will largely replace their parents and grandparents in the steep economic ladder, as much as children and grandchildren of the poor will remain impoverished, regardless of their potential and hard work.

In India, the burdens of unequal birth weigh heavily on those born into disadvantaged castes, gender, religion and tribes. In the countryside, poverty rates are 14 per cent higher for Adivasis and 9 per cent for Dalits, compared to non-scheduled groups. In urban areas likewise, the poverty of Dalits and Muslims is 14 per cent higher than the others (*The Hindu*, 2015).

A report of the OECD countries in 2011 titled 'Divided We Stand: Why Inequality Keeps Rising' observed that inequality in earnings has doubled in India over the past two decades, making it one of the worst performers among emerging economies. The report noted that the top 10 per cent of wage-earners make 12 times more than the bottom 10 per cent, compared to six times 20 years ago. India's experience contrasts with that of Brazil, Indonesia and, on some indicators, Argentina, which recorded significant progress in reducing inequality during the same period, unlike China, India, the Russian Federation and South Africa which have all become less equal over time.

I worry not just about the rapid pace of growing inequality. Even more worrying is the indifference, the absence of outrage, among people of privilege about the monumental levels of preventable suffering that surrounds them. As I argue in my recent book *Looking Away: Inequality, Prejudice and Indifference in New India*, historical ideas of caste and class that justify inequality have been topped up in neo-liberal times with the belief that greed is good (Mander, 2015). This has resulted in a particularly uncaring middleclass, and the exile of the poor from their conscience and their consciousness. The Oxfam report calculates that if even a tax of 1.5 per cent was imposed on the wealth of all the world's billionaires, it could get every child into school and deliver health services in all the poorest countries of the world, saving an estimated 23 million lives (2014, 9). It estimates that if India just stops inequality from rising, it could end extreme poverty for 90 million people by 2019. If it reduces inequality by 36 per cent, it could eliminate extreme poverty.

Akhil Gupta is troubled by similar questions, when he calculates that the number of 'excess deaths'—the number of people missing from the population due to malnutrition and morbidity—is over 2 million deaths annually. 'Nevertheless, the system of checks and balances composed of the free press, and the democratic, multi-party, competitive political system that, as Amartya Sen (1999, 180-182) claims, has been so effective in sounding the alarm of impending famine, drought, or natural disaster, has failed to mobilize state and private resources to prevent a disaster of these proportions'. (Gupta, 2012, p. 5) It is the normalization of what 'should be considered exceptional, a tragedy and disgrace, but is not: the invisible forms of violence that result in the deaths of millions of poor, especially women, girls, lower-caste people, and indigenous people' that results in the persistence of such a magnitude of preventable deaths with no effective outrage. He speaks of former Finance

Minister Chidambaram saying in an interview to the BBC that he is confident that poverty will end by 2040, in effect advocating as a positive achievement a plan to eradicate poverty that essentially sacrifices an entire generation.

Advocates of neo-liberalism still valorize these reforms by suggesting that it matters little that inequalities rise because of the success of these reforms to eliminate poverty, at a pace and scale that was impossible in the pre-reform period. Jayati Ghosh however contradicts this claim, demonstrating that pre-reform periods had slower growth-rates but still eliminated poverty at a higher rate than in the reform period. For rural India, poverty was reduced by -1.24 per cent in the period 1973-74 to 1987-88 and -0.64 in the period 1987-88 to 2014-15; and for urban areas, -0.79 per cent in the period 1973-74 to 1987-88 and -0.74 in the period 1987-88 to 2014-15 (Ghosh, 2011, p. 134). Even the World Bank, otherwise a strong advocate for reforms, admits this. It observes that the aggregate headcount poverty ratio in India declined from 59.8 per cent in 1981 to 51.3 per cent in 1990 and 41.6 per cent in 2005. So, according to the World Bank, the rate of poverty reduction *slowed* from 0.94 per cent points per annum during 1981-90 to only 0.65 per cent points per annum during 1990-2005 (*The Times of India*, 2008). This busts the myth that liberalization and the incumbent growth has hastened the rate of reduction of poverty. Yes, poverty has reduced in these 20 years, but this in itself cannot be a matter of approbation because poverty can be expected to fall between any two points in time, but the real question to ask is whether neoliberalism has pushed the process of reduction in poverty or has it done to the contrary.

Levels of absolute poverty have no doubt declined, as have malnourishment and hunger. But the question to ponder is whether these have declined fast enough. Even neighbouring Bangladesh with half India's per capita income has been able to eliminate want and malnourishment

far more successfully than India, as underlined again in the recent 2016 Global Hunger Report.

There are further problems with the extremely minimalist definitions of poverty adopted by the Indian government. Therefore, when neo-liberal advocates promise to 'wipe out poverty' by 2040, all that they are promising even at this slow pace is an end to starvation-level poverty. Ghosh calculates that if we use an even slightly higher cut-off of \$1.25 per day at the revised 2005 PPP\$, the number of absolutely poor people in India in 2005 were 456 million, i.e., significantly more than the Indian government's own estimate of 301 million in 2005–6. In 2005 India had the second highest poverty ratio (54.8 per cent) among all the Asian countries studied, next only to Nepal (55.8 per cent) and higher than Bangladesh (42.9 per cent), Cambodia (36.9 per cent), Bhutan (31.8 per cent), the Philippines (29.5 per cent), Pakistan (24.9 per cent), Indonesia (24.1 per cent), Vietnam (16 per cent) and Sri Lanka (9.9 per cent). If we use the global yardstick of 2 dollars a day, the numbers of poor people in India would even today be around 80 per cent of the population (Himanshu, 2008, 38–43).

The burdens of poverty and want are even higher in the countryside. The picture of rural Indian life today that emerges from what is probably the world's largest study ever of household deprivation, the preliminary results of the Socio-Economic Caste Census (SECC), is sobering and sombre. It describes a massive hinterland still imprisoned in persisting endemic impoverishment, want, illiteracy and indeed hopelessness. With hand-held laptops, official enumerators were commissioned to ask members of all households in the country a few basic questions, including what they owned, how they earned a living, how much they earned, and how far they had studied. Their findings tell us first that in three in four rural households no one earns more than INR 5000 a month. More than nine out of 10 rural households have no one earning over INR 10,000 a month.

Prime Minister Modi in his midsummer 2014 election campaigns often spoke of the aspiring youth, restless and impatient to join India's growth story. The SECC results again offer a dismal reality check. Only 3 per cent of rural households have even a single member with a graduate or postgraduate degree. On the other hand, more than a third of rural India is still illiterate. A quarter of these households have no literate adult above 25 years. Less than one in five households have one or more family members with primary education, whereas only 13.5 per cent have anyone who made it to middle school. This means that more than half of rural Indians still have no or only minimal skills of reading and writing. If they can share in India's growth story, as we will observe, it can only be in adding to its already mammoth reserve army of cheap and footloose labour.

The SECC mandated officials to survey every single household in the country, which contributes to its importance and credibility. It is a census, not an estimate. All large official surveys however tend to neglect invisible populations, such as forest dwellers, nomadic communities, footloose distress migrants, bonded workers, and people stigmatized by their vocations, sexuality or ailments. These populations are invisible to state officials because of their extreme vulnerability and powerlessness, and as a survival strategy they often also hide from the State. Moreover, although rules required that the survey results be ratified in open community meetings, this was rarely done. Far from overstating the situation, therefore, it is likely that in fact the SECC significantly underestimated levels of poverty and deprivation.

Jayati Ghosh, comparing India's and China's experience in fighting poverty in periods of high economic growth, argues that China does better than India because of pre-reform egalitarian measures such as land reforms and universal elementary education, and because of high public spending during reforms especially on infrastructure. India

by contrast has almost starved agriculture with negligible public investments although it still employs 50 to 60 per cent of the workforce, and it also continues to neglect basic education, and indeed health care. Unlike China, which followed the classical trajectory of agriculture to manufacturing, India has shifted to the services sector, still leaving millions in low-end, low-productivity employment in the countryside. India's human poverty is even more dismal than income poverty, as reflected in India's falling position in the Global Hunger Index to which we referred earlier (Ghosh, 2011, 113).

The lesson that Finance Minister Arun Jaitley drew from the incontrovertible SECC findings about the dismal situation of rural Indians, still trapped in age-old poverty, was predictably to call for a further hastening of India's economic growth. This would mean administering more of the familiar medicine of market fundamentalism: reducing public spending further on education, health and agriculture, combined with further weakening labour protections and safeguards against land acquisition. Instead we are convinced that we must heed the resounding message of the SECC, as also of the unending epidemic of farmers' suicides and the continuing distress exodus from India's countryside: that India does not shine for its teeming villages. This challenge requires an entirely different set of prescriptions: much greater public spending on rural infrastructure, watershed development and small-farm agriculture, farmers' income protections, MNREGA, education and health, and reviving land reforms. Without these, rural India, still home to a vast majority of Indians is fast becoming a wasteland of distress and despair.

* * *

The promise of reforms which have been most spectacularly belied in India is that reforms and galloping growth would unleash millions of jobs. If they actually did so, it is claimed by reform votaries that then this would not just lift people out of

poverty; it would also make increasingly irrelevant state withdrawal from supplying basic public goods like health and education, because people would be able to buy these competitively in the market. However, the reality of what was accomplished in the years of the high noon of economic growth in India was certainly the accelerated but unequal expansion of wealth, as observed, but not the expansion of decent work for India's poor.

On the contrary, we have seen the reverse: the shrinking of decent work in the sunshine years of highest growth. As Coen Kompier establishes in the India Exclusion Report 2013–14 undertaken by the Centre for Equity Studies, 'very few jobs have been added, mostly of low quality, whereas employment opportunities in public enterprises, the formal private sector, and agriculture *actually declined*' (my emphasis). In the decade 1999–2000 to 2009–10, while GDP growth accelerated to 7.52 per cent per annum, employment growth during this period was just 1.5 per cent, below the long-term employment growth of 2 per cent per annum, over the four decades since 1972–73. Only 2.7 million jobs were added in the period from 2004–10, compared to over 60 million during the previous five-year period. (Kompier *et al.*, 2014, p. 111)

Far from the promise of more jobs and more opportunities, the reality has been of more uncertainty, lesser job creation and far less security. Even the government has had to reluctantly admit that 'the economy has indeed experienced high rates of growth in the post reforms period [;] the optimism on employment creation, however, has not been realized to the fullest extent' (Report on Employment & Unemployment Survey 2009–10).

It is significant that employment in the organized sector actually fell after 1997, while that in the unorganized sector rose. The 2009 report of the official National Commission for Enterprises in the Unorganized Sector finds that the vast majority of jobs created in recent years have been in the

informal sector, in the absence of a legal framework for labour protection and social security. Out of every 100 workers, the report revealed, around 90 per cent work in the informal economy producing half of India's economic output. This implies that out of a current total workforce of around 475 million, around 400 million workers, considerably larger than the total population of the USA, are employed with little job security or any formal entitlements to call upon the protection of the labour law regime. (Live Mint, 2014)

And for the tiny number of jobs that are being created, written job contracts with formal agreements and associated legal responsibilities (at least on paper) are already an endangered or near extinct mode of employing workers. About 93 per cent of the casual workers do not have any written job contract while the figure for the same among contract workers is 68.4 per cent. Even among the supposedly more formal wage/salaried employees, about 66 per cent of employees are reported to be working without a written job contract. As per government estimations, labour relations in such instances are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees.² Beyond the realms of the formal/legal, it is the omnipresent extra-legal modes of mobilization and disciplining (harnessing caste, kinship or community relations) that has received further fillip with the larger trend towards informalization and casualization of the workforce.

The worst-hit once again, unsurprisingly, are rural workers. The SECC survey referred to earlier also reveals that 56 per cent rural households own no land. Around half the rural households report that they depend primarily on manual labour to survive. Economist Prabhat Patnaik observes:

Our share of cultivators has actually fallen since 1951. A whole set of people who might have been independent peasants...have been pushed into the ranks of agricultural labour....They have no

rights, no security of income, they are subject to the worst kind of drudgery because it is all manual work: they cannot be organised. It's just a miserable state of existence (*Hindustan Times*, 2015).

Since the stagnant rural economy offers meagre opportunities for employment, a large segment of these households are footloose circular distress migrants, evocatively described by labour anthropologist Jan Breman as 'hunters and gatherers of work' (Breman, 1994) In order to stay alive, they will go to any corner of the country, to do any work, with any remuneration, on any terms. An estimated 12.24 million people are seeking work for 2–6 months as per NSSO data. Of these, 77 per cent are resident in rural areas and more than two-thirds of them migrate in desperate search of any kind of work to urban areas. Some estimates show that about 35–40 million labourers, almost half the number of casual labourers outside agriculture, could be seasonal migrants.

These are the migrant workers toiling in the prosperous rice, wheat, sugarcane and cotton farms of Punjab, Haryana, Western UP and Maharashtra, construction workers building high-rise structures in cities across the country, semi-bonded workers in brick kilns which pockmark the country, workers building roads in conflict-prone frontier states, and so on. Often boys barely in their teens set out for distant lands to earn some money to keep their families alive. But now increasingly families migrate along with men, interrupting children's schooling, forcing women to bear and raise children on dusty city streets and shanties, and leaving behind old people in the village to starve, beg or die.

These findings are also incidentally another reminder of the potential contributions of what has been described as the world's largest social protection programme, the MNREGA. When he dismissed this in Parliament as a living monument to earlier governments' failures, Prime Minister Modi

demonstrated little sensitivity to the struggles of distress migration that millions of rural households still have to endure, which could be prevented by the State's effective guarantee of safe and dignified wage work in the vicinity of their homes, enabling them to escape their annual uprooting to distant lands.

Prime Minister Modi's most powerful election promise in 2014 for millions of young voters was to create 10 million jobs. With 65 per cent of the country below 35 years, this promise undoubtedly drew millions of young people who legitimately dream of a better life to cast their futures with his leadership. A million new young people join the workforce every month. This does not account for those who seek work in the cities because of the near-death of the rural economy.

Yet more than half-way through his tenure, there are almost no jobs available. Job creation has fallen to levels even below those that the preceding UPA governments plunged to. Official data reveals that employment creation in 2015 plummeted to a mind-numbing low of 135,000 jobs (Figure 1).

The picture is even more complex, because jobs are being extinguished even as others are being created, and net figures hide this. More and more people are being pushed into either lowest-end self-employment or the most unprotected and casualized wage employment. The countryside is of course the worst affected. But the situation is almost as hopeless for the distress migrant to the city. As Colin Todhunter observes in a biting indictment, 'much mainstream thinking implies that shifting people from agriculture to what are a number of already overburdened, filthy, polluted mega-cities to work in factories, clean the floors of a shopping mall or work as a security guard improves the human condition' (Todhunter, 2013).

* * *

The third big promise of economic reforms—that the dismantling of the proverbial licence-permit raj would help greatly reduce corruption and rent-seeking—has also been belied spectacularly.³ Far from reducing corruption, official malfeasance has risen incrementally. In the 1980s, the Bofors scandal alleging a kickback of around INR 80 crore

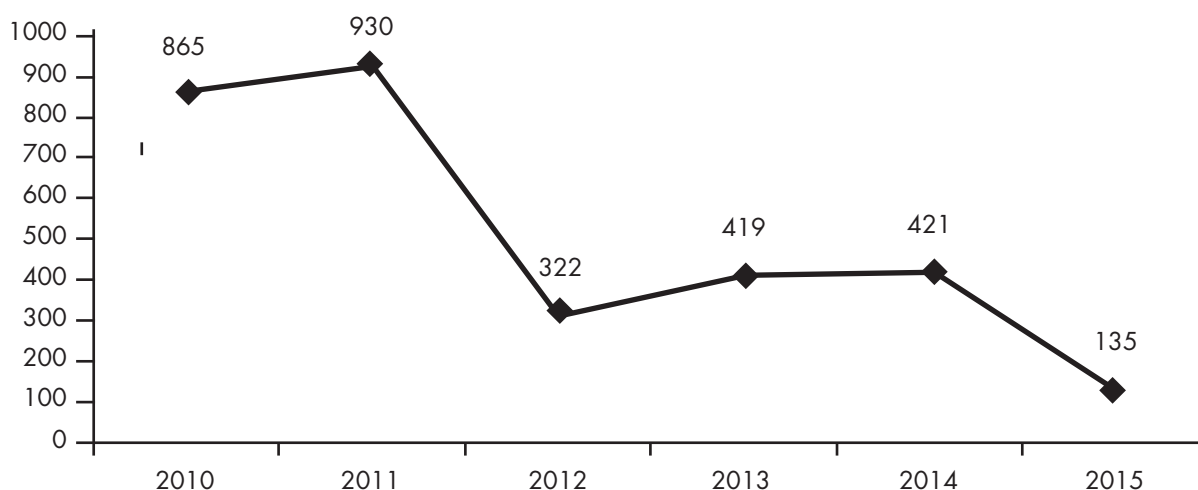


Figure 1: Yearly Changes in Estimated Employment Based on Survey Results (In thousands), from January to December

Source: Compiled from the Quarterly Report on Changes in Employment in Selected Sectors; Government of India Ministry of Labour & Employment Labour Bureau.

for the purchase of Swedish weapons had fatally shaken the union government of the time led by Rajiv Gandhi. Today we routinely observe crony capitalism involving losses to the public exchequer sometimes of amounts that have so many zeroes that it is confusing to even count! The culture of public life has changed dramatically. For the first half-century after Independence, accepted norms for probity in public life required that public officials kept a careful public distance from private business. Today they are so closely bound together at the hip that it is routine for people in high office to benefit from and share the opulent lifestyles of the super-rich, and they pass this off as contributions to nation-building. One particularly tragic outcome of this contemporary era of crony capitalism is the highly accelerated dispossession, actively facilitated by state authorities, of India's most impoverished tribal communities, by big industry hungry for the coal and mineral reserves over which their forested habitations lie.

Another outcome of the new age of crony capitalism is very high public subsidies for big business, reflected for instance in the over INR five lakh crore of revenues foregone to industry in every budget, and this at the expense of adequate public funding of health care, education, water, sanitation and social protection, and the farming sector. This has led development economist Jean Dreze to describe India as a world champion of social under-spending! (*The Hindu*, 2014) In particular, out-of-pocket expenditure on health care is at twice the level of public spending, a disgraceful record unmatched by most countries. Our public schools are shamefully under-resourced with trained and motivated teachers and basic infrastructure, and only seven per cent people are still able to complete their college graduation. Nine in 10 persons are in informal employment, and they are deprived of any or adequate pensions in their old age.

We can only glance over some of the mindboggling amount of debts that various top

companies owe to the different public banks of the country: Anil Ambani (Reliance Group)(1,25,000 crore), Anil Aggarwal (The Vedanta Group) (1,03,000 crore), Goutam Adani (Adani Group) (96,031 crore), Shashi Ruia & Ravi Ruia (Essar Group) (1,01,000 crore), Sajjan Jindal (JSW Group) (58,171 crore), GVK Reddy (GVK Group) (33,933 crore), Manoj Gour (Jaypee Group) (75,163 crore), Venugopal Dhoot (Videocon Group) (45,405 crore). These are just a few examples of the corporate loan that remains unpaid in various nationalized banks, thereby starving these banks of the total cash deposit.⁴ The SBI which is the biggest nationalized Bank has written off in the year 2016 alone loans worth INR 7,016 crore owed by more than 60 of its top 100 'wilful defaulters.' Among them is the absconding Vijay Mallya, whose outstandings with the bank are in the range of 1,201 crore (*The Indian Express*, 2016). This same SBI in the very recent past has also showered other such 'wilful defaulter' business tycoons with huge loans, flouting RBI guidelines. Niranjani Hiranandani who was declared a defaulter by RBI in 2014, was sanctioned two loans amounting to INR 5,550 crore by SBI and AXIS Bank in 2015 and 2016 (*DNA*, 2016). Recently, the SBI has given a loan of INR 1 billion to Mr Gautam Adani to secure his mining deal in Australia (*The Indian Express*, 2014). So these corporate tycoons are running their businesses, literally on public money in order to fill the coffers of the corporate via the bank. The cosy relationship of several of these 'captains' of big industry with India's top political leaders is the best-kept open secret of India's public life.

According to a recent estimate by the Global Financial Integrity programme of the Centre for International Policy, the money that had illicitly flown out of India to accounts abroad over its post-Independence history stretching from 1948 through 2008 was around \$213 billion, the present value of which equals 36 per cent of India's GDP in 2008. But what is even more telling is that out of

\$462 billion siphoned out of India during the last 61 years, 68 per cent is attributable to the post-reform period of just 18 years (*The Hindu*, 2010).

While corrupt practices have always existed, in these neo-liberal times the definition has gotten far more blurred. This is precisely because deregulation and the predominance of financial capitalism ensures that what would earlier be characterized as corrupt practices, has now not only been normalized and 'legalized', but also encouraged. Unlike earlier, cosyng up with big capital no longer raises eyebrows or elicits frowns in public discourse. Rather the neo-liberal morality has ensured that governments vie with each other in being cosier with corporations than the other. This runs in the name of 'development' or 'investment friendly' or 'pro-business'. In a world where profit-making and the accumulation of wealth is celebrated and rewarded, where it is the 'bottom line' that finally matters, unless circumstances lead to the detection of fraud or a violation of the law, an increase in the wealth of a private sector player is normally seen as a virtue and reflection of 'entrepreneurship' and 'innovation'.

Analysts have also observed that one cannot identify corruption today by looking for illegal activity alone. Many of the practices that happen in rich and poor countries are legal or in a grey area where it's difficult to tell the criminal from the lawful. It is possible to argue that finance capital is by definition corrupt. Investment banks typically do not disclose their fees to investors in advance (they call their charges 'consideration') by deducting self-decided amounts as they go along. Free charging professionals like lawyers, and in many countries doctors and dentists, make up their own huge fees. Isn't this corrupt? But there's nothing illegal about it (Phil Hearse, 2016).

What this entails is that unlike earlier, it is far more difficult to establish culpability or determine accountability today when it comes to corruption.

Prabhat Patnaik points out that unlike the scams of the yester-decades, corruption today has become far more sophisticated as a process which also requires certain financial networks and knowledge of leverage as the 2G, 4G or the Coalgate scams show, which are products of elite capture of public policy-making in a neoliberal age. He suggests that neo-liberalism has created new and alternate ethical and political regimes. The entire discussion of the spreading capitalist values, the passion for money-making, the intrusion of commoditization into every sphere of life, all of which are integrally linked to our current economic trajectory, has receded into the background, and in its place all kinds of facile quick-fix solutions are being sought to be rammed down the throat of the nation by a range of godmen, economic gurus, and the bulk of the political class that opportunistically acquiesces to a policy regime and practice that acts to the detriment of democracy and the poor (Prabhat Patnaik, 2011).

Prabhat Patnaik goes on to suggest that corruption plays a very important and specific role in the institutionalisation of a neo-liberal regime. It is not just something that a neo-liberal regime increases the scope for, because of its pervasive transfer of assets at throwaway prices to big capitalists; nor is it merely the outcome of the large-scale avarice that such a regime unleashes in general. These factors of course are conducive to a massive increase in the scale of 'corruption', such as what we observe in India today. But over and above these, there is a structural reason for the increase in 'corruption', especially among bourgeois politicians, under such a regime; and that is to enlist their political support for this regime. 'Corruption' is politically necessary for neo-liberalism (Prabhat Patnaik, 2012).

* * *

Many believe that the retreat of the Indian state away from the principle of primary public

responsibility for health, education and social protection of its disadvantaged populations, and from redistributive taxation since the 1990s, was part of the package of economic reforms driven by the 'Washington Consensus' of the World Bank and the International Monetary Fund (IMF). But even these institutions have begun to acknowledge that they may have been drastically wrong. In 2014, the president of the World Bank, Jim Yong Kim, admitted that the assumption that people in poor countries should pay for healthcare was wrong; 'There's now just overwhelming evidence that those user fees actually worsened health outcomes. So did the bank get it wrong before? Yeah. I think the bank was ideological' (Lawson 2014). In any honest assessment of economic reforms in India, it is imperative that we admit that the movement away from public provisioned health and education has been a mistake that has resulted in enormous avoidable human suffering and loss for millions of our people. But there is little evidence of such soul-searching.

In a similar self-critical tone, Christine Lagarde, managing director of the IMF has said, 'In far too many countries the benefits of growth are being enjoyed by far too few people. This is not a recipe for stability and sustainability.' She went on:

Let me be frank: in the past, economists have underestimated the importance of inequality. They have focused on economic growth, on the size of the pie rather than its distribution. Today, we are more keenly aware of the damage done by inequality. Put simply, a severely skewed income distribution harms the pace and sustainability of growth over the longer term. It leads to an economy of exclusion, and a wasteland of discarded potential (Scroll, 2016).

She compares rising inequality in the US and India.

In the US, inequality is back to where it was before the Great Depression, and the richest 1 per cent

captured 95 per cent of all income gains since 2009, while the bottom 90 per cent got poorer. In India, the net worth of the billionaire community increased twelvefold in 15 years, enough to eliminate absolute poverty in this country twice over (Scroll, 2016).

She argues that distribution of wealth matters, and contrary to prevailing economic orthodoxy until now, redistribution policies are not counterproductive for growth, 'because if you increase the income share of the poorest, it has a multiplying effect on growth...but this does not happen if you do so with the richest' (Ibid.).

A fair and sober assessment of the impact of 25 years of economic reforms in India therefore requires on the one hand an acknowledgment of its contribution to unleash the potential of the economy for growth and the creation of wealth. But at the same time, it is both callous and disingenuous to ignore the evidence that growth by itself is no guarantee of a better life for people of social and economic disadvantage, which surely should be both its primary objective and the paramount yardstick for evaluation of its success.

What is staring us in the face is the crisis of neo-liberal capitalism and its greatest betrayal: its spectacular failure to create decent work. We were told that if a policy regime is created in which big business invests more and makes massive profits, and the State withdraws from provisioning public goods like education, health-care, water, sanitation and housing, impoverished and deprived people would still be better off because they would have more well-paid jobs. They would then not have to depend on a corrupt, inefficient and slothful State, and instead would be able to buy the best and most competitive public goods from the market. However, the core of this argument has collapsed because huge private profits are being made, the public sector in health and education has shrunk and caved in, but job-creation is almost at a

standstill. Without decent work and earnings, all that neo-liberalism is doing for the poor is to widen the gaps between them and better-off people, while excluding them even more decisively from public goods that are essential for a human life of dignity.

Twenty-five years ago, when Dr Manmohan Singh spoke to the nation of an idea of which he was convinced the time had come, he called for freeing ourselves from one set of orthodoxies. But his prescriptions have had mixed results, many of its promises are unrealized, and millions still live wretched lives of avoidable suffering with oppression and want. In the long dark shadows of the glitter of economic reforms lie the unequal distribution of wealth, crony capitalism, low public investments in health, education, social protection and infrastructure, and the continuing neglect of small-farm agriculture. These continue to shackle millions into hunger, want, low-end uncertain employment, distress footloose migration, damaged health and denial of education that destroy the full potential of many millions of young people, still trapped in doctoral scholar Rohith Vemula's haunting description of 'fatal accident' of their births.

The radical prescriptions of 1991 have become the powerful new orthodoxies of today, canons which have conquered not just India but most of the world.

There is an implicit and sometimes explicit assertion in some circles that anyone who questions the push towards urbanisation, privatisation and neo-liberalism in general, which Chidambaram's model of development rests on, 'lacks perspective' or is stuck in an outdated mindset that romantics (*sic*) 'tradition' and resents 'progress' and the private sector (Todhunter, 2013).

But new voices in many parts of the world, such as of Bernie Sanders in the United States, are speaking out against these orthodoxies. Today in

India we need to summon even greater courage than we did 25 years ago to liberate ourselves from these new dogmas. Only then will we muster the political and moral will to change course once again, to recognize that all people deserve decent work, health care, education and social protection; that markets cannot assure them these; and that wealth is not development unless it is shared.

But to change course, more than courage we need compassion.

II

Examining Public Goods and Equity: Overview of IXR 2016

As with earlier Exclusion Reports in this series, we take a particular understanding of the idea of 'public goods', which we define as 'goods, services, attainments, capabilities, functionings and freedoms—individual and collective—that are essential for a human being to live with human dignity' (Mander, 2015). These reports specifically focus on the exclusions from public goods and the role of the State. This is not because we do not recognize that groups of people may be denied access to various public goods, because of social and market exclusions, such as gender and caste in the first case, and simply not having the money to buy public goods from the market in the second. But our focus is on the role of the State, because we believe it is the duty of the State in a democracy to ensure equitable and universal access of all persons to all public goods. We are mindful that in practice the state may not just prevent or correct social and market exclusions, but may perpetuate exclusions, or may itself exclude, or as Barbara Harriss White points out in the context of destitute people, it may even actively expel populations through the design and implementation of its laws and policies (White, 2005, 881–91).

Each Exclusion Report is designed to examine

in depth four public goods from the perspective of exclusion. We select the first of these four public goods from what may be broadly designated the social sector. The public good that is examined for this report is pensions for older people. The second public good must be from the general area of infrastructure. This report chose to look at digital access as a public good. This selection was made before the tsunami of demonetization was imagined by us, or unleashed literally overnight by the central government in November 2016. But these events, months before the report went to the press, gives this chapter an unexpected urgency and topicality. The third public good in each Exclusion Report is selected from the cluster of land, labour and natural resources. This report chooses to look at agricultural land as a public good. And the fourth public good must be from the broad area of legal justice. This report looks at legal justice as a public good for those in conflict with the law.

Why are these public goods?

The first part of each of these chapters argues why these are public goods. The pensions chapter defines the public good as the unconditional and regular transfer of cash from the state to older individuals in recognition of the entitlement of living with dignity for those in advanced stages of life. It argues that such a pension system should cover all who face the possibility of spending their advanced years without any kind of regular income, without the condition of any contribution from their side. It builds its argument for pensions to be recognised as a public good by relying on Amartya Sen's (1992) universal idea of capabilities which rests on the freedom to achieve well-being of oneself. It argues that considering the constraints of the economic system and the physical impacts of advancing age, income security can be a fundamental way to ensure the 'capabilities' required for a dignified life for oneself.

The chapter underlines that contrary to common ageist stereotypes, older people often make valuable contributions, economically, socially, culturally and to the care economy. These contributions should be recognized, respected, and where work is for wages, justly and lawfully remunerated. But at the same time, it recognizes that in later stages of life, some decline in physical and intellectual capacities may occur, and given a choice, some older persons may prefer to rest or reduce their work. Older persons will also have increased economic needs because of health-care expense, reduced mobility and sometimes the needs for home-based care. Pensions therefore should be recognized as a core and inalienable right of older persons, to make a genuinely free choice about whether or not they wish to work, and if they do not, to ensure they have sufficient funds to lead a healthy life with dignity and autonomy.

The chapter examines both moral and economic arguments for pensions as a public good. It refers to an oft-repeated moral claim that the well-being of the older generation is a responsibility of the younger generations. Central to this argument are ideas of debt, gratitude and care between the generations. Another argument views pensions as rightful wages that the employees defer during the period of their employment. The chapter also views pensions through the lens of equality, and suggests that pensions be framed as a recognition of the contribution people make all through their lives which is reflected in the aggregate income generated by the country. This formulation is mindful of the nature of work engagement, that of unregulated or unpaid labour within and outside the home, as experienced by women, casual workers, migrants and older adults in economies dominated by informal work.

At the time that the chapter was conceptualized and written, the case for the digital medium to be recognized as a public good was less obvious than that for many of the other public goods that the series of Exclusion Reports have examined so

far, such as education, health care, housing and decent work. But after the year-end ultra-shock therapy of demonetization and the consequent coercion to enter the cashless world of economic transactions, far fewer people would argue against universal and equitable access to the digital medium being a public good. However, the chapter underlines that the digital medium acts as a possible vehicle to other public goods; it is not the end in itself but acts as the means to desired ends. It argues accordingly that the digital medium facilitates access to many other valued public goods, such as information, knowledge and ideas; communication, participation, association; and the non-tangible freedom of anonymity. As a powerful example of the last, it describes highly stigmatized persons living with HIV who have been abandoned by their families, but find self-expression and worth and become gainfully employed, all without being judged, with the anonymity of the internet. A unique feature of ICTs, the authors point out, is the power that it gives the common person, without any prejudice of caste, gender, creed, age or physical nature. It speaks of students who are unable to maximize the benefits of higher education due to lack of access to the internet, daily wagers who lose their day earnings just to get their identity card printed, and the ways this facilitates both transparency and access for a range of rights such as to pension, daily wage, food, basic health facilities and education.

The chapter on agricultural land addresses the systematic starvation of public resources for agriculture in neo-liberal India, nurtured by the idea that the massive transfer of people out of agriculture is both a marker and a mandatory ingredient of 'development', results in growing exclusions from agriculture. In a society where access to land has been historically shaped by caste-based exclusions and disappropriation under the colonial experience, the present neo-liberal model only exacerbates such exclusions. Those expelled from agriculture end up

in the informal labour pool, where they continue to face a range of harsh exclusions. Unsurprisingly the informal labour reservoirs in India are mostly comprised of those who are most socially and historically marginalized—the indigenous peoples or Adivasis, Dalits, landless people, migrant workers, refugees and so on. Women also constitute an important segment of this pool. The authors interrogate this continued process of exclusion by the state of agriculture as well as the tenability and desirability of creating ever-growing armies of desperate wage labour reserves. They argue that the resolution of the deepening outcomes of exclusion and deprivation, and the resolution of the agrarian crisis in India in favour of the populations who have faced multiple denials, requires a return to the recognition of the centrality of the land question in rural India, and of equitable access to land as an essential public good.

The fourth chapter makes a powerful case for legal justice contextualising the predicament of jailed 'under-trial' prisoners. It argues for the following elements to be necessary for any accused person in a just penal system: the presumption of innocence, rights upon arrest and bail, right to counsel, and fair trial guarantees including protection from undue delays. It calls for finding the just balance between the need for public order, and the need for individual liberty (A. Chandra and M. Satish, 2016). It quotes powerfully a lament of the Supreme Court 36 years ago that

[i]t is high time that...the Government [and] the judiciary begin to realise that in the dark cells of our prisons there are large numbers of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice—a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system.⁵

The chapter underlines the irony that the words quoted above could have been written today.

It articulates that ‘justice’ was a commodity or public good that the hapless under trial prisoner was being deprived of. The authors underline that inadequate access to this public good implies not just a difficulty in accessing other positive externalities and public goods such as education, health, livelihood and legal aid, but also severely impedes human dignity, and gives rise to stigma within communities and beyond.

Who is Excluded from these Public Goods?

The headline of this and indeed every Exclusion Report so far has been that the evidence is consistent that for virtually every public good that we examine, it is always the same sets of peoples who are excluded. These are the historically oppressed groups of women, Dalits, Adivasis, Muslims, persons with disabilities and casual informal workers and the poor. This report only confirms further these findings, and illuminates the multiple ways in which even the democratic state in the Indian republic has failed these oppressed peoples and not assured them equitable access to the public goods essential for them to lead lives of dignity.

The Exclusion Report presents estimates that in India at present a little over one-third⁶ of older persons (above 60 years) receive some form of pensions. It points out that less than 15 per cent of the labour force has formal and consistent employee-employer arrangements that entitle them to any kind of social security, old age pensions in particular (NSS 68th round 2012). In light of this fact, it argues, the Indian State’s reliance on a narrowly-targeted, means-tested scheme on the one hand and an individual contribution-based scheme on the other to ensure dignified living for the old, is unjust, excluding and incompatible with the prevailing socio-economic reality of widespread poverty and a mostly unorganized and unprotected workforce.

The report goes on to observe that the State-funded National Old Age Pension is restricted to

persons from those households which are officially deemed to be Below Poverty Line (or BPL). Pensions are an individual and not household entitlement, therefore household BPL measures do not account for intra-family poverty, especially of women and most of all single women. It quotes many studies (including official studies) that have established that BPL lists are non-transparent and unreliable, and tend to exclude more poor people than they include, as well as Dalits, Adivasis, women, migrant and casual workers.

The exclusions are even more profound for the Atal Pension Yojna which is a contributory scheme requiring regular payments for a minimum of 20 years to a maximum of 40 years. Subscription to this scheme would entail multiple capabilities — access, control over excess income, and regularity of income that enable an individual to make timely payments on quarterly, half yearly or yearly basis. At the present average salary rate for a vast majority of people, payment for a financial product can only be managed by reducing necessary (and already highly insufficient) costs on essentials such as food, housing and transportation. Combined with low wages and poverty, the challenge of informality of labour relations makes mandatory, regular payments for privately procured social security schemes even more difficult. The conceptualization of this scheme as a public good is in itself profoundly flawed. More than half the rural households are engaged in manual casual labour as their primary employment. A hallmark feature of employment in the unorganized sector is that of irregularity of jobs as well as income. And women are excluded the most from decently paid wage work, as well as the agency to decide how to use money in the formal economy as required by contributory schemes. Very far from the union government’s ultimately disingenuous claims that the Atal Pension Yojna aims at reaching all those who form part of the ‘unpensioned society’, the scheme is in fact largely blind to the pension needs as well as limitations that

women who constitute nearly half the population and most informal workers face.

The report defines ‘digital exclusion’ as denial or inequality with regard to personal access to ICTs; the skills to use the devices of one’s own without having any assistance; and the ability to leverage the benefits of ICTs. It identifies poverty as a major barrier to internet access, meaning that the income poor are the first large group who are digitally excluded. One study (Ericsson Consumer Lab, 2015) estimates that even with the low and competitive prices of devices and data plans compared with the rest of the world, internet access in India remains beyond the reach of close to 1.063 billion people as the lower income group does not have discretionary money⁷ to spend on cyber cafes or to get internet connectivity on their own to access digital information. This is a sobering estimate, because it suggests that a large majority of Indian people are digitally excluded. The second barrier to people’s access to and use of the internet is geographic location, with people residing in more prosperous and urbanized regions having higher internet penetration rates than poorer regions. The third set of people excluded from the digital medium are people lacking or low in educational and digital literacy. People in many disadvantaged groups are often precluded from making use of ICTs because of low levels of computing and technology skills and more importantly, literacy skills. The report also highlights the gender digital divide as one of the most significant inequalities amplified by the digital revolution⁸ as also the exclusion of PWDs and older people in accessing services or the challenges they face in accessing them.

Coming to the third public good of agricultural land, the report quotes official as well as scholarly research to demonstrate that the pattern of land distribution in India closely reflects the existing socio-economic hierarchy. While large landowners invariably belong to the upper castes, cultivators belong to the middle castes, and agricultural

workers are largely Dalits and Tribals (Ministry of Rural Development, 2013). The report also confirms that the other most commonly exercised exclusion, apart from social group, is on the basis of sex. As a result of the failure of the rural economy to provide opportunities for decent work, male members of households are migrating away from agriculture which eventually burdens the women in the family with all/most of the agricultural labour; yet neither do they have any role in the decision making related to agricultural work nor do they have any right to the land. They are expected to work as labourers in the fields of their own families (Kodoth, 2004, 1911–1920). The report also observes that the Muslim community in India has lagged behind the most among all other socio-religious communities in land rights. It further presents hard-to-find data to demonstrate the enormous exclusion of people with disabilities in agriculture and land holdings.

The report collates and marshals strong evidence suggesting the systematic bias of the criminal justice system against SCs, STs, Muslims, people denied formal education, and the poor. The National Crime Records Bureau 2015, indicates that almost two-thirds, i.e., 65.56 per cent of all undertrials prisoners (UTPs) are from SC, ST or OBC communities and 30.24 per cent are from (religious) minority communities.⁹ Muslims constitute 20.94 per cent of UTPs, thereby over-represented by almost seven percentage points.¹⁰ 28.55 per cent of UTPs are illiterate,¹¹ suggesting indirectly a high association with poverty. These figures indicate that a large proportion of UTPs consists of individuals who face different kinds of socio-economic and political disadvantages which may affect their ability to seek legal justice once in conflict with the law.

The report shows that it is most commonly the poor—daily wage earners and migrants, women, youth, Adivasis, Dalits, Muslims, the elderly, children, transgendered people, and the mentally ill who are excluded from access to legal justice. In a CES study (with the National Human Rights

Commission) of UTP jails in Uttar Pradesh, poverty and illiteracy were found to have a strong bearing on perceptions of criminality among the police personnel. Personnel in every district consistently displayed discriminatory attitudes towards Muslims, attributing their participation in crime to inherent 'criminal traits' such as 'aggression'. The UP Police Manual, like police manuals of other states, continues to contain instructions for profiling of former Criminal Tribes. The report also details results of the CES study to demonstrate that the likelihood of getting out on bail is reduced, sometimes significantly, for members of these demographic categories. It also found that young people from these deprived groups are more likely to secure release through plea bargaining (thereby being convicted) than by getting access to bail. This enables their entry into police records as 'history-sheeters', trapping them for the rest of their lives in the criminal justice system.

Processes of Exclusion

All the chapters find, as in earlier reports, that these exclusions occur because of equity-related flaws in the design, or else in the implementation, of relevant law and policy.

The report evaluates whether pensions are inclusive and just, employing four criteria—coverage, adequacy, age of initiation and transparency and ease of disbursement of pension. No constitutional or legal obligation exists for the government to ensure pensions for older people. The National Social Assistance Programme (NSAP), the key programme through which pensions are disbursed, is a government initiative and not a statutory scheme governed by any legislation. This is different from several public goods, like school education, food, rural employment and forest rights, which are now legal rights, even if qualified and conditional. It is striking that some laws make the responsibility for care of older people vest

within the unit of the family alone even when the household is poor, while there is no legal obligation on the State to provide an alternative. Central contributions to pensions were fixed in 1995 at INR 75 (at that time equivalent to about 1.5\$US) *for a month*. In 2005 it was revised to INR 200 (less than three US\$) and since then it has not been revised. The outlays on pensions account for close to 0.05 per cent of GDP. Design flaws are even more glaring with the Atal Pension Yojna. Although officially touted as a social protection scheme, and marketed under the National Pension Scheme by the State, it is by design just another financial product developed for maximizing private profit rather than the public good. The underlying premise is that by implication it makes individuals responsible for protecting themselves against old age poverty and unfair conditions of work, and simultaneously absolves the State from its responsibility to address old age income insurance.

For digital inclusion, the report notes that India refused to be a signatory to a non-binding resolution titled 'The promotion, protection and enjoyment of human rights on the internet' at the 32nd session of the United Nations Human Rights Council. The government's reluctance to signing a non-binding resolution to incorporate a rights-based approach to ensuring this access spoke volumes.

The dismal results of the Common Service Centre which was conceptualized as 'front end service delivery outlets enabling smooth and transparent governance at the village level' notes both under-funding and biases in implementation as shown in the report. Only 10 states were able to establish these on time. The bottlenecks on the ground were the poor IT infrastructure; lack of adequate institutional frameworks and governance mechanisms; failures of state government to allot land; particularly in the northeastern states as well as states like Jharkhand and Chhattisgarh the uneven and rough geographical terrain acted as a barrier; poor connectivity; reliance on village-level

entrepreneurs with the right skill sets who may not be available because of factors like low literacy; and lack of cooperation from government officials, especially at lower levels. These problems riddle other initiatives as well, such as the high-profile Digital India programme of the union government led by Narendra Modi, which aimed to provide broadband connectivity through optical fibre to 2,50,000 Gram Panchayats in an effort to provide last mile connectivity as critical infrastructure. There have been delays in the roll-out. More significantly, 100,200 panchayats were targeted under Phase 1 which was scheduled to be completed in March 2014. As of April 2016, only 48,199 panchayats were covered. But only 6727 panchayats have internet access, only 13 per cent of the connected panchayats or 6 per cent of the total scheduled for Phase 1. This is an important reality-check that must be heeded by policy-makers who dream of a cashless India despite failures of the government to ensure connectivity to the mass of the rural populace. The key mediators of the traditional exclusionary process described earlier created what the writers call 'double-trouble' for the groups disadvantaged by gender, caste, religious identity, class and disability, whose digital exclusion leads to financial exclusion, which in the new thrust to a cashless economy are further disadvantaged in their livelihoods and access to a range of public goods.

The continued exclusion of vulnerable populations from land is explained in the report as largely the consequence of the failure of land reforms in the absence of political commitment. The percentage of land redistributed was limited and the small amounts of land which were redistributed remained mostly promises on paper with no real efforts towards implementation. Cultivable wastelands are often actually cultivated by large, upper-caste landowners, and the proposed allotments to scheduled caste and scheduled tribe landless households also often remain on paper, as these allottees are forcefully evicted or at times

not even allowed to take possession. Though the national guidelines are that 50 per cent of the land to be distributed through land reform measures should be to scheduled caste and scheduled tribe beneficiaries, the distribution pattern in many states reveals a bias in favour of non-scheduled groups. And the very idea of women as owners of agricultural land or indeed of women as farmers was outside the imagination, let alone the implementation, of land reforms.

Tenancy laws have also mostly failed tenants in general, but more specifically they have failed these historically disadvantaged groups. Tenancy in India is mostly hidden and informal. Only 9 per cent of farmers are recorded to be tenants as per the NSSO data. In reality, this figure could be three times or more. The landless and the marginal farmers constitute the bulk of those leasing in land. The Scheduled Castes have a slightly larger share in tenancy, but the average land holding of these leased in lands is hardly 0.28 hectares. Around 53 per cent of SC households lease in land on the most adverse terms on the basis of share in produce, which is a result of their feeble bargaining power.

The report points to many aspects of the opaque and formalistic structures and institutions within the criminal justice system function, that result in a situation in which people of socio-economic-cultural-political disadvantage find it much harder to access justice. It describes the unjust practice of plea bargaining in the name of judicial reform.

It also elaborates many aspects of institutional bias. For instance, many policepersons interviewed in the CES study admitted to charging individuals falsely under The Arms Act (1959), the NDPS Act (1985), the Public Gambling Act (1867), the UP Prevention of Cow Slaughter Act (1955) and the UP Excise Act (1910), all for the larger 'good' to 'control' crime across the five districts of UP. In other words, men they regard to be criminal or inclined to crime are charged falsely with the possession of unlawful

materials—unlicensed arms, narcotics, beef, cows, bulls or bullocks, and quantities of liquor above 1.5 litre—because the paperwork takes less time than an actual investigation (CES report, p. 42). Mental illness is found to be a reason for why families pay the police to incarcerate family members. There are also widely-held prejudiced beliefs about disadvantaged communities, most of all about Muslims.

It records the reluctance of the police to grant bail for bailable offences based on past history or ‘criminal appearance’, and the judiciary under-utilizes provisions for release on personal bond. There are blatant violations of rights relating to arrest, including the lack of intimation of grounds of arrest and the right to bail in the case of bailable offences. And of course, almost as a rule the denial of quality legal aid—grossly inadequate and poor quality legal aid services (delays in appointment, absence at prison, absence from courts, lack of adherence to guidelines—coupled with extractive private lawyers. The report also finds that policepersons, lawyers, jail staff, even judges, are often poorly informed about even the classification of offences as bailable or non-bailable, and court rulings and law amendments that advance the rights of the accused. Large physical distances of jails from the main town/city, coupled with poor public transport connectivity creates a further disincentive for lawyers to meet their clients at the jail, and makes it difficult for family or friends to visit the inmate.

Consequences of Exclusions

As with earlier reports, another significant finding of this report is that the exclusion of peoples from any of the public goods examined in this chapter result in their exclusion from several other public goods too in a domino effect.

In India, the average life expectancy at the age of 60 years is an additional 18 years. This means that at the official age of retirement an individual needs to

plan to provide for themselves for an additional 18 years, taking into account age-induced incapacities if any and reduced income. Rapid decline into abject poverty, consumption contraction, decline in health and quality of life are the most widespread consequences of exclusion from pensions in advanced age. Not having access to good nutrition or health services impacts their ability to participate in ‘gainful employment’. On the other hand, a weak pension system offers a majority of workers no real option whether they wish to work or not. Studies also show that homes in which the old did not receive pensions recorded higher incidences of the second generation being involved in child labour. There are also macro-impacts; amplification of poverty and inequality in society, contraction of the economy are generally the expected impacts when the majority of the people in a country age without old age social security.

People on the wrong side of the digital divide lack access to information that ICTs allow others to reach with the push of a button. This limits opportunities for self-growth, empowerment, self-confidence, self-determination and deepening people’s citizenship. ICTs can provide useful aids in education, including for distance education, access to expensive and otherwise inaccessible educational materials, and computer-based tutorials and simulation software for the sciences. The report mentions exclusion from potential information for education, health, employment and recreation for older people, persons with disability and others. In addition, the people who can operate computers and have access to the internet stand a better chance than those who are digitally excluded, though literate and otherwise competent, to get even a secretarial job let alone an administrative one. Women with no internet are not able to access the vast plethora of health-related services, especially related to the sensitive issues that women are not comfortable in discussing with others. The exclusion from banking transactions

becomes even more damaging in the recent context of the union government's sudden galloping drive to a cashless economy. The chapter also speaks of the imperfectly realized benefits of placing MG NREGA details online and digital wage payments. But on the other hand, placing more and more information about government programmes on the internet certainly has expanded transparency, and this enables citizens to hold public officials more accountable.

The consequences of exclusion from land ownership and agriculture in India has condemned millions into endemic and chronic poverty, seriously limiting possibilities of upward mobility for future generations belonging to such poor households. When data on exclusions in agriculture is superimposed with the data of informal workers in India, it becomes clear that exclusion from land and agriculture eventually forces peasants to seek out the life of a wage earner working either on others' lands or taking up non-agrarian pursuits, often in distant lands with no security or permanence. Twenty-five years of economic reforms has created a chronic crisis in agriculture, visible in the unending epidemic of farmer suicides. As per the National Crime Records Bureau, in the 20 years between 1995 and 2014, more than 3 lakh farmers committed suicide. Working on the land of others in the context of a crisis-ridden agrarian situation means mortgaging a future to underpaid seasonal wage work; contract bondage, unpaid work without any form of social security, or unprotected tenancy. These distressed rural migrants form a large chunk of 'informal sector' workers. The rural origin pockets in urban areas result in a number of slum settlements characterized by inadequate water and sanitation facilities, insufficient housing and increased food insecurity.

The absence of land and irrigation are the major factors pushing poor households to find jobs through short-term migration. The rate of temporary migration is highest among STs and

SCs, the landless and marginal farmers. The latter form three-quarters of distress migrants in the country. Pauperization embedded in this process of semi-proletarianization produces disastrous consequences for the families involved: hunger, undernourishment, starvation and its impact on the health and longevity of families, school drop-outs and child labour.

Unjust, repeated and prolonged incarceration lead to losses of social attainments, capabilities, and development during the time the undertrials spend in prison. Very often, these cause ruptures, and sometimes permanent breaks in employment, livelihood, education and shelter, for the family left outside as much for the individual after he or she is released. There is also a stigma in community, for spouses, parents, siblings, also for children of undertrials. The authors underline that the denial of the right to bail and legal justice very often results in perpetuating cycles of poverty and widening inequalities (between both individuals *and for entire communities*). It also reinforces marginalization based on religion, caste, ethnic identity or class in the way the system treats individuals; often in terms of dignity, a reinforcement of the oppression that exists outside the prison on the basis of caste, community, class, and religion. Particularly grave are the consequences if the sole earner is in prison, or in the case of a single parent being in prison, often women, creating the need to leave children in the care of acquaintances, sometimes in unsafe environs. It also may result in a worsening of conditions of mental illness and health more broadly.

There is also the vicious cycle of adverse legal outcomes. A person on bail is in a better position to prepare or present his or her case compared to one in custody. Accepting guilt in plea bargaining is found to create permanent unequal outcomes in the future. It is much harder to gain formal employment outside prison. It colours others'

perceptions, including institutions and individuals within the criminal justice system. You are seen to have a criminal record that is likely to haunt you. If you're charged in multiple cases, even if the first charge was completely unjust, you are still seen as a potential and repeat offender. Entire communities may be criminalized in this way.

III

Exclusion in Budgets & Planning

In a timely and reflective chapter, Subrat Das, Amar Chanchal and Jawed Alam Khan try to examine what implications the greater financial devolution to the states has had, and is likely to have, on social sector spending in the states. The considerable increase in the magnitude of untied resources transferred to states from 32 to 42 per cent every year is accompanied by significant reductions in the union government's financial assistance to states and budget outlays for many central schemes. The net increase in state resources has been modest in many states—some states have even shown a decline—but there is a higher magnitude of untied funds with the states. The authors find that for social sector programmes connected with child nutrition, school meals, drinking water and public health, there is reduced support from the union government to the states. The onus shifts therefore to the states to compensate for this reduction in terms of a higher state share.

In a close examination of the budgets of 10 states, they find a lower priority in state budget allocation for education in Assam, Bihar, Madhya Pradesh, Jharkhand, Maharashtra and Odisha in 2016–17. Allocations for health have fared a little better, except in Jharkhand and Maharashtra. Allocations for social welfare suffered in all states except Assam, Jharkhand and Madhya Pradesh; this includes allocation for women and child development, persons with disabilities and welfare

of Scheduled Castes, Scheduled Tribes, and Minorities. They caution further that the squeeze in social sector spending translates itself often in reduced investment in human resources for these sectors—numbers, job security and training—but this neglects the fact these sectors primarily depend on trained and motivated staffing.

They conclude that the ability of the poorer states to expand their fiscal space with own revenue collection is limited. Moreover, demands from sectors such as energy and other infrastructure sectors, general administration, and law and order could result in even more intense competition for social sector resources. They believe that the only way to achieve the twin goals of greater autonomy to the states and stepping up expenditure in the social sectors would be through an increase in the tax-GDP ratio in the country, which remains lower and more regressive than for most comparable countries.

IV

Profiles of Vulnerable Communities

As with other reports, the last part of the report is based on detailed ethnographies of a range of especially vulnerable and oppressed peoples. These are important to understand the actual lived experience and the processes of vulnerabilization of people who suffer multiple forms of denials and exclusions from a range of public goods. Unlike the first part of the report, the point of vantage is not the public good but sets of people who live in especially difficult circumstances. The highly marginalized and exploited people studied for this Exclusion Report are manual scavengers, urban poor people of Delhi, urban street children, and rural women, and girls with disability.

The authors of the chapter on manual scavengers affirm most importantly that any amount of effort by the government to make scavenging safer and

healthier cannot ensure a dignified life for people engaged in dehumanizing work such as cleaning human filth. Their social indignity is linked inextricably to caste, and in addition in most cases the gender into which they are born. The only way forward to improve the condition of the lives of this community would be to create a life away from this work. This barbaric system, they say, whereby a community is tasked with cleaning human excreta, has endured for centuries even in democratic India because it proves to be a cheap and convenient sanitation solution. The system dates back several thousands of years, put in place and maintained there by a Brahminical-Manuwadi oppressive social structure that persists even today. This casteist practice whereby the burden of cleaning human excreta rests on Dalits has over the years been legitimized institutionally and is today propped up by the political classes and the government as society can't be bothered to find a way of managing their own shit.

The dirtiest form of manual scavenging involves the cleaning of untreated human excreta in dry latrines by hand. This is mostly done by women. Dry latrines are usually inside the home and the owners prefer women to enter their homes to clean. The safai karmachari community is equally patriarchal and creates conditions whereby it is women who have to take up jobs that pay the least and are most looked down on. The report quotes Saroj, manual scavenger from Haryana:

Would you be alright sitting in a gutter? After relieving yourself you clean your hands with soap because they are dirty, right?! We have to carry that very same excreta. Our health is bound to be bad because our work is with filth. We menstruate more during our periods, suffer from miscarriages more, our children are often born with some deformity or disability, asthma, and other allergies causing skin lesions and itching are common side effects. We chew tobacco to counter the smells and this leads to a higher incidence of Tuberculosis. This is only to name a few....

It has often been anecdotally observed that it is very rare for a safai karmachari to reach the age whereby he or she is eligible for old age pensions. The level of education in the safai karmachari community is very low. Children of the community are often addressed and insulted by various caste names in schools both by teachers and children from other castes who are socialized in caste norms to not come into contact with scavenger children. At the primary level, they may attend schools in the mohallas exclusively for children of the community and identified as such, for instance a Valmiki school or a Vatal school. The level of education here is extremely poor. When they come out of primary school and attend schools in which children from other communities study as well, they are forced to carry their scavenger identity with them (even if they do not engage in the work themselves) and are sometimes forced to clean the toilets of the schools they study in. Shamed and humiliated, they often lose heart and drop out early.

The chapter describes the powerful resistance of the safai karmachari community against the practice of manual scavenging, through direct action like symbolically burning baskets and demolishing dry toilets and public pledges to give up this profession; documentation of thousands of cases of manual scavengers to prove that the government's reports that the practice has ended are proved false; and a long and powerful litigation in the Supreme Court. It also traces the efforts for a stronger legal regime to end manual scavenging. In recent years, the movement has added a strong focus on the problems of sewer workers. These are also men from the same safai karmachari community, who are forced to enter sewers, directly immersing themselves in human excreta and risking their lives.

The chapter on the urban poor people in Delhi attempts to depict the extreme heterogeneity of this population, using the framework offered by the Hashim Committee constituted by the Planning Commission. This suggested an analytical

framework for the understanding of urban poverty against a threefold axis reflecting three main categories of vulnerabilities that this population faces: residential, occupational and social.

In the residentially vulnerable frame, the chapter looks carefully at the situation of homeless persons, slum residents and those who live in slum resettlement colonies. It speaks of high homeless deaths, the extremely uncertain and low-end work, and the paradoxically high costs of surviving on the streets because even the most mundane needs have to be bought or hired in the market, from food, toilet and bathing, to even hiring a blanket for winter nights on pavements. It also reflects on the chronic character of homelessness: a man who has been 40 years without a home, says: 'When I came I used to sleep on the footpath for years. You can get some work in Delhi on the roads, and get some food too. But you will not find a place to sleep.'

The section on slum residents focuses on sprawling settlements of habitations that are unfit for human survival built on public land and officially treated merely as illegal 'encroachments' that have to be 'cleared'. This official approach neglects the fact that slums are a result of the failures of public policy to create affordable houses, self-owned or rental, for the massive informal working and migrant populations, and this predicament is aggravated further by frequent demolitions without humanely planned resettlement. It describes in particular, the plight of one such settlement which reports more than five demolitions in 35 years, although there are people with official records that date back 35 years. The most recent was one year before the field study, and the CES researchers found that people were still forced to live under plastic sheets and torn clothes and old saris crafted into makeshift homes, with a few temporary mobile dry toilets and a tanker of water that comes twice a day where the residents collect and store water for daily use. The section also looks at resettlement colonies, in which demolished slum residents are settled,

many kilometres away from the city, often on plots with no public services. It finds that most people resettled here were so far from the city that they lost their livelihood, or school admissions were also interrupted and life almost started afresh. Second, women found it very difficult to get jobs in the area. Few women worked as domestic help in nearby households, but most women did not have a secure source of income any more. The authors also point to festering open drains, the increasing epidemic at the time of research of chikungunya and dengue in almost every household, and enhanced concerns regarding women's safety.

Among Delhi's occupationally vulnerable populations, the chapter profiles street vendors, forced to pay bribes despite progressive changes in the law that have still not touched their lives. The government, the vendors said, made it difficult for those who were trying to earn an honest living. Bribes pushed them further into debt, and the market was particularly hostile to women. A second group that is described is waste-pickers or rag-pickers, whose work includes collecting waste, sorting and segregating it and trading in it. Waste-pickers are classified into four groups: those who carry sacks and collect anything of resale value from open drains, municipal bins, dumping grounds, etc.; who pick, sort and carry in sacks on bicycles items like glass, bottles, and plastics; those who ply tricycles and collect almost 50kg of waste each day and travel long distances to sell them; and those who work for waste dealers collecting and sorting waste for them. Because of the exposure to toxin, waste and working since a young age without protective gear, waste-pickers suffer from cuts, respiratory diseases, tuberculosis and infections. The children of rag pickers often are in the same occupation and denied education. The third group is construction workers. They are recruited on casual and often daily basis either directly by a builder or construction company, but mostly by intermediaries who take a commission on the payment being made. Their

employment is characterized by prolonged work hours with inadequate rest periods, hazardous working conditions, unstable employment and earnings and shifting of workplaces and poor healthcare access. They are typically migrant labour with poor rights, no organization and therefore little say about work conditions. The women are often not paid minimum wages and their children deprived of elementary facilities like health, water, sanitary facilities, education and ration cards.

The chapter goes on to describe the special problems of socially vulnerable groups among the urban poor—persons with disability (PWDs), single women and Muslims. It describes, for instance, Viklang Basti (literally Colony of the Disabled) near the Jawaharlal Nehru Stadium, with 450 households and 1000 people, in which most adults are disabled living a life by alms-seeking, and only around 10 per cent of households have ration cards. It also touches upon Muslims living in under-served ghettos, with difficulties in hiring homes in mixed settlements, and discrimination in schooling and employment.

The third vulnerable group profiled in this Exclusion Report is street children, India being home to the world's largest population of street children. The authors describe how this population of some of the country's most vulnerable children, although physically so visible, are rendered invisible to society and the State, and excluded from access to public goods, such as safety and protection, food and nutrition, health, public space and education. It highlights their deprivations and denials, the violence and exploitation they face, and their daily struggles merely to survive. Because of extreme poverty, substance abuse or irresponsible parentage, the children are left largely to their own devices.

The report highlights that the prevailing polarities in the public discourse are ones of restoration or detention. While the former presumes that the child can only be helped by placing them back in the family, the latter presumes that the best

reaction would be to detain or lock him or her up in everybody's best interest. Both perceptions operate either on the assumption that it is not really the state's responsibility or that there are no real solutions and the best one can do is a temporary Band-Aid approach of 'managing them (read taming them) here and now'. The report on the contrary foregrounds the non-custodial, residential, long-term care approach wherein there is a rich mix of educational, life-skills, recreational and health activities catering to the needs of every individual child in a violence-free environment. The last vulnerable group described in this report is rural women and girls with disability, based on a primary study by CES in villages in Odisha, Karnataka and Jharkhand. The study was unique because rural women and girls with disability participated in the study as researchers. The study confirmed that women and girls living with disabilities in India's rural areas face distinct and extreme forms of exclusion. Not only do they face the kinds of exclusion endemic to members of poverty-stricken rural households—access to food, water and safe housing, social security and health care, basic services and mechanisms of justice delivery—but they also have to deal with aggravated issues of access to these because of the lack of enabling infrastructure, and limitations imposed by their specific disabilities. In the words of a teacher, 'Poverty is the curse for these children.' At the same time, the gendered social exclusions that these girls and women face go far deeper. These are built into the very structure of a society where a physical 'defect' or 'abnormality' is assumed to invalidate a woman's potential to be educated, or married, while marriage remains—within hetero-normative and patriarchal frameworks—the sole route to a stable and permanent source of emotional support. The labour of sustaining a household is disproportionately the women's responsibility, and a failure to perform it is an invalidation of one's viability as a woman. Along with the shame and material consequences of this failure, disabled women also face a frequent, almost

chronic lack of dignity, companionship and sense of individual fulfilment.

What defines their unique situations then, as seen in the research, are two specific and interlocking problems: limitations to their mobility and ability to perform some kind of physical labour, and the lack of educational, professional and social opportunities accessible to these women. Limited mobility—whether enacted directly, in terms of the pain and weakness they feel, or indirectly, through their or their families' fear for their well-being and safety—renders them frequently unable to access work or education outside the home, while simultaneously, in some cases, limiting their attempts to be self-sufficient in housework and self-care. The lack of opportunities prevents them from finding dignity in alternative occupations and reduces them to their circumstantial incapacities.

The role of the family is paradoxical in their lives. It is their main, often only source of support, it may neglect or over-protect, it rarely consults with and often hides and feels shame, and the protective isolation extended by the family only adds a cocoon of silence to the pervasive sexual exploitation of those with disabilities. Marriage is considered the ubiquitous form of social security for rural women by most of our respondents across the three states. Whether or not she was able to earn their own livelihood, perform housework or self-care, and irrespective of her desire to marry, it was a life arrangement to which nearly all aspired, or wished they could aspire, and felt of lesser worth if their situation made marriage seem an unrealistic aspiration. Difficulties in cooking, cleaning, childbearing and child care, washing and fetching water, besides agricultural work if the family owns land, and manual labour if it does not, for married respondents led to guilt and lowered self-worth.

The authors note that for poor rural women in these locations, domestic work—which includes the two distinct tasks of household work and care

work—is always the 'first shift'. Care of children and the sick also take up time, and cannot be shared unless a daughter reaches adolescence. If physically fit for it, cultivation of any land owned by the family is the next priority, and only after that comes paid work. Women any way face huge barriers to equitable access to work that is fairly remunerated, safe and dignified, but for women with disabilities, these difficulties are often incrementally higher. Discrimination about capacity for work and gendered wage rates compound the difficulties many women with orthopaedic and vision disabilities face in going out to work every day. Even with more education, opportunities for employment other than manual labour are practically nil in most villages, with the exception of a few cases of employment as teachers or in NGOs.

Enrolment is denied by schools to those with severe disabilities on grounds of untrained staff, lack of appropriate infrastructure, and in some cases, even a perception of the child as 'incapable of learning'. In many cases, the decision to not send these girls to school is taken at home, by parents who prioritize their non-disabled or male children. At the same time, parents who themselves have had limited or no education are uncertain about their children's fitness for school, and about the utility of education for them in a situation of such limited work opportunities. Children who are able to attend school, mostly children with less restricting disabilities or with access to assistive devices, rarely complained about the experience. Most children reported, hearteningly, that they were treated well by teachers and students, some friends even stopping by their houses before school to help them carry their schoolbags.

Afterword

It is often pertinently asked, who is the intended audience for this series of India Exclusion Reports? The audience that we seek to reach out

to for the reports is diverse. It is of course first for policy makers, scholars and civil society activists for a just public policy. We hope that strong evidence-based analytical reports year after year on the outcomes of governance for India's most oppressed peoples, the vast and comprehensive denials, and the unjust, adverse inclusions, that they face from a wide range of public goods, and the lives of entirely preventable denial and suffering that they continue to endure, will hold up a mirror to the people who engage with public policy and law. We hope that it will persuade them that these outcomes exist, however much they tend to be made invisible in everyday life, and that these outcomes are not inevitable or normal but are the direct outcomes of public policy and law.

But these are not the only, and if we may suggest even the paramount, audiences that we seek for

these Exclusion Reports. We wish to inform and influence, and hopefully even educate, not just the State, but also larger public opinion. Therefore, the India Exclusion Reports are also intended for teaching in universities, and we are trying to prepare teaching notes to help teachers and students to use these Exclusion Reports for pedagogic purposes. We try to share our research output in other Indian languages, mainly Hindi so far, with the communities we base our study upon to learn from them and in return equip them with our methods and analysis. We are also doing versions for young people in graphic novel form which we hope to publish online, and in the future even hope for a version of each Exclusion Report for children as well. Because as I argue in *Looking Away: Inequality, Prejudice and Indifference in New India*, a just and caring State can only be located ultimately in a just and caring society.

Endnotes

1. My gratitude for strong research support and advice from my colleagues Anirban Bhattacharya and Vivek Mishra.
2. As per the FOURTH ANNUAL EMPLOYMENT & UNEMPLOYMENT SURVEY REPORT (2013–14) at the all-India level, 49.5 per cent persons are estimated to be self-employed under the Usual Principal Status Approach followed by 30.9 per cent as casual labour. Only 16.5 per cent were wage/salary earners and the rest 3.0 per cent covered contract workers. See <http://labourbureau.nic.in/Report%20%20Vol%201%20final.pdf>
3. In this section in particular, the contributions of Anirban Bhattacharya and Vivek Mishra have been particularly significant.
4. According to a report by Credit Suisse published in October 2015, the total amount of money owed to the State-owned banks alone was calculated to be INR 3.04 lakh crore. See <http://www.india.com/news/india/reliance-adani-vedanta-group-top-10-companies-with-the-largest-debt-1220822/>
5. For full copy, see judgement on Hussainara Khatoon (I) v. Union of India, (1980) 1 SCC 81, 83.
6. An estimate of over one-third is an approximate derived based on the following figures. About 23 per cent of the old are covered under the IGNOAPS. Eight per cent are covered by private sector employers. The rest are covered by public sector employers. The first figure is based on the total beneficiaries of IGNOAPS presented in Annexure 1 (2,41,67,176 people) and considering the total population of those above the age of 60 years as 10.39 crores. For the second figure see 'When India Ages; whither all Pensions' published by CRISIL Insight in January 2015. Accessed at <https://www.polymerupdate.com/general/special-features/articles/crisil/crisil-27022015-144416.pdf>. For estimates, also see *India Labour and Employment Report 2014: Workers In The Era of Globalisation*; Institute of Human Development, published by Academic Foundation, New Delhi in 2014.
7. Discretionary income is the amount of an individual's income that is left for spending, investing or saving after paying taxes and paying

- for personal necessities, such as food, shelter and clothing. Discretionary income includes money spent on luxury items, vacations, and nonessential goods and services.
8. The Digital Revolution refers to the advancement of technology from analog electronic and mechanical devices to the digital technology available today. The era started during the 1980s and is ongoing. The Digital Revolution also marks the beginning of the Information Era.
 9. Calculated from Govt. of India (2015) NCRB Prison Statistics in India: ‘Table 5.2 – Demographic Profile of Undertrial Prisoners at the end of 2015 (Continued)’p. 103. Religion-wise population: 69.77 (Hindu); 20.94 (Muslim); 3.87 (Sikh); 3.67 (Christian); 1.76 (Others) Caste-wise population: 21.67 (Scheduled Caste); 12.41 (Scheduled Tribe); 31.48 (Other Backward Classes); 34.43 (General).
 10. Muslims constituted 14.23 per cent of the national population based on Census of India 2011 figures. <http://www.census2011.co.in/religion.php>
 11. Ibid.

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SECTION I



Woman handling her pension related documents and receipts, etc.
Photo Credit: Jayshankar Menon, Rough Cut Productions, Delhi.

Public Pension Provisioning for Old Persons in India

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This chapter examines the provisioning of pensions for old persons in India, focusing mainly on people disadvantaged by gender, caste, religion and class. Pensions, here, refers to regular cash transfers made to individuals in recognition of advancement of their age. The chapter relies on information obtained from public data sources, secondary studies as well as primary field insights from a study¹ conducted by the Centre for Equity Studies (CES) in 2016 in Rajasthan and Gujarat, dealing with various aspects of provisioning of old age pensions (henceforth referred to as CES study on pensions). The chapter briefly traverses the history of pensions globally and in India, unpacking the moral-politico and economic underpinnings across predominant pension systems.

For the purpose of analysis, this chapter classifies pensions in India into three broad categories based on the responsibility of contribution as the following—fully publicly funded, non-contributory pensions entitlements, co-contributory pensions relying partially on beneficiary's contribution while the remaining contribution is made by employer or State or both generally, and pensions that wholly rely on contributions of the beneficiary. It seeks to answer specific questions regarding exclusion from pensions such as—who are the people not protected by pensions and by what processes is exclusion meted out in big and small ways and what are the

consequences of being excluded from pension provisioning. Listing best practices of public pension provisioning and a list of recommendations concerning public pensions in India form the latter sections of the chapter. The terms social pension and public pension have been interchangeably used throughout the chapter to refer to non-contributory pensions provided by the state.

1. Pensions in India

In India at present it is estimated that a little over one-third² of older persons (above 60 years) receive some form of pensions which fall under one or the other of the three categories mentioned above. Majority of these pensions are non-contributory public-funded pensions, provided through the Indira Gandhi National Old Age Pension Scheme (IGNOAPS) of the Government of India via auxiliary pension schemes of the State governments. The then titled National Old Age Pension Scheme (NOAPS) was initiated as late as 1995 as a conditional and means-tested old age pension scheme, under the National Social Assistance Programme (NSAP) of the central government. At the outset, it entitled each beneficiary to a minimum of INR 75 per month (little less than 1.5 US\$). Before the introduction of the NSAP, pension coverage was extremely low in India. The NOAPS was revised in 2007—the age of initiation

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was revised to 60 years from 65 years and destitution as a conditionality was withdrawn, thereby making all those 60 years and above and falling Below Poverty Line (BPL) eligible for pensions. Following this, the scheme was renamed Indira Gandhi National Old Age Pension Scheme (IGNOAPS).

At present the IGNOAPS is narrowly targeted at all those older individuals falling under the BPL category and is supposed to serve two functions—old age income support as well as poverty alleviation. It ensures a sum of at least INR 200 for those 60 years and above which is equivalent to 2.2 percent of per capita GDP and INR 500 per month for those above the age of 80 years and is restricted to those identified as living Below Poverty Line. The fiscal responsibility for provisioning these amounts to all eligible beneficiaries, at present, remains entirely with the central government. These amounts are contributions made by the central government, and state governments are encouraged to (at minimum) match these amounts. Most state governments varyingly augment these contributions (For details see Annexure 1). The contributions made by the central government under NSAP cost less than 0.05 per cent of the national GDP. The pension architecture as it stands today is a result of multiple reforms that it underwent in the decades of the 1990s and 2000s. The key changes that mark shifts in the history of pensions in India in the period between 1990 to 2016 are—

1. Establishment of a central government-run, means-tested social protection floor in the form of non-contributory pension for those in advanced stages of life—National Old Age Pension Scheme (NOAPS) under the umbrella programme, National Social Assistance Programme (NSAP), in 1995. Apart from pensions for older individuals the programme, at that time, consisted of two other schemes—Maternity Benefit and Family Benefit in case of accidental death of the earning member of the household.

At the time of introduction, the scheme was restricted to those persons from officially designated Below Poverty Line households who were able to establish their destitution.

2. A mandatory shift (2004 onwards) from defined-benefit type of pensions to defined-contribution pensions offered in public sector organizations to those having formal employment. This shift from defined-benefit to defined-contribution, however, exempts personnel from the armed services (which follow the pay-as-you-go system and receive substantial contributions made by the State). By extension of the same policy change, there is a shift from a consolidated pension fund to individual pension accounts for each employee. The major difference, worth noting, is the shift from defined-benefit to defined-contribution plan which does not guarantee an annuity amount at retirement. In the latter, the risks involved in fund investment and management are borne by the individual beneficiary. In contrast, a defined-benefit plan assures an annuity or lump sum amount based on the tenure of employment and age, rather than return on investments.
3. Introduction of the Pension Bill in 2004 (eventually passed in 2013) and the establishment of the Pension Fund Regulatory and Development Authority (henceforth PFRDA) as a statutory body in the capacity of the key regulatory body for the pension sector in India.

Despite being far more limited in their coverage as compared to what it is now, according to the then Finance Ministry, pensions had accrued to be a high fiscal burden as evident from the budget speech of the Union Finance Minister, Mr. Yashwant Sinha in 2001. To quote him, ‘...the Central Government pension liability has reached unsustainable proportions: as a percentage of GDP, it has risen from about 0.5 per cent in 1993–94 to 1 per cent in

2000–2001. As such it is envisaged that those who enter central government services after October 1, 2001 would receive pension through a new pension programme based on defined contributions. In order to review the existing pension system and to provide a roadmap for the next steps to be taken by the Government, I propose to constitute a High-Level Expert Group, which would give its recommendations within three months.³³ This proposition culminated into the aforementioned Pension Reforms Bill, introduced in the parliament for the first time in 2004. It was passed a decade later in 2013 by the Congress-led United Progressive Alliance (UPA) government.

India was not an exception in this shift towards pension restructuring. This shift was concurrent with pension restructuring in other countries of the Global South. An influential report of the World Bank published in 1994 titled ‘Averting the Old Age Crisis: Policies to Protect the Old and Promote Growth’ spurred pension reforms and restructuring across several countries of the Global South. The three main reports—Project OASIS Committee Report, 29 December 1999, ‘Pensions Reforms in the Unorganized Sector’, a report prepared by the Insurance Regulatory and Development Authority, October 2001, and report of the High-Level Expert Group on New Pensions System, Government of India, February 2002 (Bhattacharya Committee Report)—were commissioned to suggest the nature of pension restructuring in India. The outcome was the adoption of the multi-pillar structure, which resembled, with some differences, the pension structure suggested by the World Bank report on pensions referred to earlier in the chapter. The three main pillars⁴ as proposed by the World Bank were—

1. Mandatory, publicly-managed pillar financed via state revenue for social pension.
2. Mandatory, privately-managed, fully-funded pillar for old age savings.
3. A voluntary pillar for those who seek more protection in their old age. The report did not limit itself to suggesting this integrated public-private

model of pension provisioning but was categorical against the one pillar system which functioned primarily on the system of redistribution of taxes.

Following the pension reforms, pensions were classified on the basis of responsibility of contributions, similar to the classification presented in Table 1.

In January 2016, the National Pension Scheme (NPS), the flagship scheme run by the PFRDA covered 11 million ‘subscribers’, out of which nearly 5 million were estimated to be government employees for whom it is mandatory to enrol in the scheme. The others subscribers are distributed between those enrolled through their employment and individual subscribers. A later addition to this architecture are the sector-specific, social security funds set up by some states under the Unorganised Workers’ Social Security Act 2008 which is managed by the Ministry of Labour and Employment. Individual State-level schemes, similar to the ones suggested by Unorganised Workers’ Security Act of 2008, preceded the Act itself; the Act provided a national-level legislation to further expand similar schemes in other states and sectors. At present India’s highly inadequate but relatively complex pension architecture is spread across four distinct ministries, categorized on the basis of responsibility of contribution as represented in Table 1.

At the time of writing (October 2016), with the exception of personnel of the armed forces who are entitled to non-contributory pensions based on a pay-as-you-go system, all other employees of the government are covered under the defined contribution scheme available under the National Pension System. Since 2004, all pension schemes have been regulated by PFRDA under the aegis of the Finance Ministry. All but pensions for NOAPS managed by the Ministry of Rural Development at the national level and pensions under the Unorganised Workers’ Social Security Act managed by the Ministry of Labour and Employment.

Table 1: Pension Schemes in India		
Non-Contributory	Co-Contributory (contributions may be from individuals, with employers and/or governments)	Individual contribution
National Old Age Pension Scheme provided under the National Social Assistance Programme (NSAP)	Pension schemes for employees of Central Government, Central Autonomous Bodies, State Government and State Autonomous Bodies under National Pension Scheme (NPS)	National Pension Scheme for Individuals such as 'NPS-lite' scheme. It came into effect in 2010 and was targeted at poor and lower classes. The minimum amount per contribution was 100/- INR and subscribers were 'encouraged' to deposit 1000/- INR per year. The deposit was facilitated through an aggregator such as a micro-finance firm or an NGO.
State-level non-contributory Pension Schemes	Employee Pension Scheme (EPS), 1995. ⁵ Shared between the employee, employer and the state.	Pension schemes offered by private financial institutions for individuals.
Pensions for personnel of the Armed Forces	National Pension Schemes for 'corporate' sector employees if employee is also a part contributor. (It is not mandatory for employers to contribute.)	NPS Swavlamban 2009/Atal Pension Yojna 2014 for those enrolled after 2015 with no contribution from the State whatsoever.
	Unorganised Workers Social Security Funds.	

2. Scope of the Chapter

For the purpose of this chapter we shall focus on two particular pension schemes—the Indira Gandhi National Old Age Pension Scheme (IGNOAPS) and the Atal Pension Yojna (APY). Each represents distinct pillars within this system. The IGNOAPS unquestionably is represented under the publicly financed first pillar. However, the APY quite ironically falls under pillar three, despite being aimed at workers of the unorganized sector, since it solely relies on beneficiary contribution. While on the PFRDA portal the Atal Pension Yojna is categorized as a co-contributory scheme, the contribution by the state is capped at a maximum limit of INR 5000 in total and is limited to the first five years of the scheme, although it requires the individual to be enrolled in the scheme for a

minimum of 20 years, to a maximum of 42 years, to reap the full benefits of the scheme. Importantly, the co-contribution is limited to those who have enrolled in the scheme prior to March 2016. Contribution by State under this scheme is denied to income tax payers or recipients of any other pension. Therefore, at the time of writing of this chapter the scheme can be classified under pillar three (since the period of availing state contribution has long passed) of the pension structure.

At the launch of social security schemes like Bima and Jansuraksha Yojna in May 2014, in Maharashtra, the current Finance Minister, Mr. Arun Jaitley referred to the Atal Pension Yojna as a modest but significant step in moving from an 'unpensioned' to a 'pensioned' society. In the budget speech on 28 February 2015, Finance Minister

Arun Jaitley referred to the Atal Pension Yojna as an initiative of the government to ensure ‘universal’ social security for the poor and underprivileged. This portrayal of the APY as a scheme introduced to address the pension needs of a majority of people warrants a closer examination in a chapter that seeks to study pensions for the old in India.

Both schemes that we have chosen for an in-depth analysis have a nationwide applicability and are targeted towards unprotected labour and the poor more generally. While the NOAPS has been providing pensions since 1995 right up to the time of writing of this chapter, it is important to bear in mind that the earliest pensions can be realized for subscribers of the Atal Pension Yojna would be in about eighteen years from now—which impacts its analysis in this chapter. The chapter will draw on a vast range of information from design flaws to flaws in implementation of the NOAPS. The examination of Atal Pension Yojna will be restricted to that of design analysis of the scheme due to the above mentioned limitation. Given the aim of the chapter it would be ideal to cover state-level public pension schemes as well as social security schemes under the Unorganized Sector Workers’ Social Security Act 2008. However, the wide variations that exist at the state level, with regard to coverage, pension amounts, disbursement practices and responsibility of contribution, make it impossible to accommodate them in this chapter. While we do allude to policies of state governments when needed, the aim of this chapter is limited to providing a comprehensive overview of old age pensions across the two selected schemes. Both these schemes are aimed at the poor and workers in the unorganized sector at the national level. The principles of coverage, adequacy, and age of initiation, transparency and ease in disbursement are used to comprehensively understand and assess the existing old age pension system and to develop relevant recommendations.

3. Pensions for Older Persons as a Public Good

The public good for this chapter is defined in light of the definition of public goods adopted by this series of Exclusion Reports (this being the third report in the series)—‘...goods, services, attainments, capabilities, functionings and freedoms—individual and collective—that are essential for a human being to live with human dignity’(Mander, 2015, p. 1).The public good for this chapter is specifically defined as—unconditional and regular transfer of cash from the State to older individuals in recognition of the entitlement of living with dignity for those in advanced stages of life. We use the word ‘unconditional’ in the definition because the transfer of money is independent of any individual contribution. But the definition does not rule out a means-tested system such as the one adopted by the Government of India for NOAPS, which is narrowly targeted towards those officially designated as poor. Instead of a narrowly targeted means-tested system, we believe, pensions should be extended to all except those who meet the following criteria of pensions from any other source, or payment of income tax and individual incomes above a certain limit. This will eliminate a minority who may not be in need of the pension. Such a pension system extends the coverage to all else who face the possibility of spending their advanced years without any kind of regular income.

Sen’s (1992) universal idea of capabilities rests on two distinct claims—one that freedom to achieve well-being of oneself is a fundamental importance and second that one’s ability to exercise that freedom needs to be understood in terms of capabilities or actual opportunities one has access to that works towards one’s well-being. Nussbaum (2001) formulates a list of ‘central human capabilities’ based on Sen’s capabilities approach in the context of women but at the same time makes a case for their universal appeal. She identifies a list of ‘central human capabilities’ essential to human life, helping

distinguish it from what would effectively be an animal existence, investing it with value and dignity. Her list includes: (i) life (i.e., not dying prematurely) (ii) bodily health (iii) bodily integrity, including mobility (iv) senses, imagination and thought (v) emotions (vi) practical reason (vii) affiliation, including 'the social bases of self-respect and non-humiliation'. Nussbaum's unpacking of Sen's idea of capabilities helps in terms of understanding their scope. Within this understanding, lowering of even one of the central capabilities below a threshold challenges an individual's well-being. We claim that considering the constraints of the economic system and the physical impacts of advancing of age, income security can be a fundamental way to ensure 'capabilities' required to ensure a dignified life for oneself.

Like many public goods for which the series of India Exclusion Reports makes a case, pensions enable access to participation of individuals in various spheres of life, in a way that also ensures their access to other public goods important for a life with dignity. Old age poses challenges which are a combination of exogenous factors such as lack of employment opportunities and social respect or opportunities, and those that may have to do with physiological consequences of the increase in chronological age of an individual. Old age, employment and income share a contested relationship. On the one hand is a stereotypical view of ageing, generally adopted in policy literature, which categorizes older people as not engaged in gainful employment and hence as 'dependants' mainly in an economic sense of dependence. This type of literature takes structured dependencies in the form of mandatory retirement age as a given, and are unmindful of not just social but also economic contributions that individuals continue to make despite advancement in age, which may have economic gains through work such as, helping in farm work and care work. The nature of informal employment is such that it does not

have a retirement age. This view therefore over-generalizes the aspect of physical degeneration that accompanies advancement of age.

A different set of challenges are faced by older people in countries like India where structured dependencies caused by mandatory retirement apply only to a tiny minority of population engaged formally in the organized sector. Nearly 40 per cent of those aged above 60 years continue to be engaged in work. About 50 per cent of them are engaged in agriculture and allied activities (Reddy, 2016). What is observed though is an age-based decline in workforce for older persons within the 60 to 75 years categories. While more than 70 per cent of older people between the age group of 60 years to 64 years continue to work, close to 35 per cent of those in the age group of 70 years to 74 years are also documented to be actively engaged in work (Reddy, 2016). Penny Vera Sanso, (2006) while arguing against the idea that ageing evenly impacts functioning, points out that old age is, to a great extent, a socially structured condition determined by differential needs that individuals have with advancement in age.

At the same time, it is difficult to entirely challenge the idea that there is a decline in physical capabilities with advancement in age. We believe it is important to recognize, value, protect and support choice-based work by older people. At the same time, there should not be an economic compulsion to work when older people experience reduction in their physical and intellectual capacities. In India, it is difficult to identify with certainty the proportion of choice-based work engagement of older people from forced labour situations in which they work, not because they wish to but because they have no other means to stay alive. Interestingly, the CES study on old age pension posed the question to respondents above the age of 55 years in Rajasthan and Gujarat that if they were to receive adequate pension amounts that covered living costs, would they, a) still continue to work like before, b) continue to work but do lesser work, or c) not work

at all. About 25 per cent of individuals in Rajasthan and 30 per cent in Gujarat straightaway averred that they would stop working if they received adequate pensions. 23 per cent in Rajasthan and 16 per cent in Gujarat said that they would work but lessen their work. About 28 per cent in Rajasthan and 25 per cent in Gujarat said that even if they were to receive an adequate pension, they would continue to work like before. Many old people may continue to work out of their will, others may work due to economic constraints older persons often face (the opposite of structured dependence) and in this sense, we regard this to be a situation of forced labour. Unconditional, State-assured and adequate old age security for older persons would help resolve the dichotomy by offering real choices to work or not work for older people.

We believe that older people often make valuable contributions, economically, socially, culturally and to the care economy, and this should be recognized, respected. Where work is for wages, they must be justly and lawfully remunerated. But at the same time, we recognize that in later stages of life, some decline in physical and intellectual capacities may occur and given a choice, some older persons may prefer to rest or reduce their work. Older persons will also have increased economic needs because of expense on health-care, reduced mobility and sometimes the need of home-based care. Pensions therefore should be recognized as a right of older persons, to make a genuinely free choice about whether or not they wish to work, and if they do not, to ensure that they have sufficient funds to lead a healthy life with dignity and autonomy.

4. Publicness of the Good

4.1 Moral Arguments and Economic Systems

It is sobering to note that the history of pensions is just over a century old. Over this century-long history of modern pensions, rich literature

and documented experiences are available from across the world about the many rationales behind providing pensions, the nature of different pension systems and the underlying moral-politico arguments which frame the respective systems.

One oft-repeated rationale for pensions for older persons has been that pensions are a response to age-induced incapacities such as reduced capacity to earn livelihood either due to reduced physical capacity or compulsorily imposed structured dependency (such as mandatory retirement or unavailability of work despite the willingness of an older individual to participate). Another is to allow for consumption-smoothing for the old or, in other words, ensuring disposable income that allows for a consumption level required to live a healthy life and lastly and most importantly, as a state mechanism for redistribution of wealth and curtailing inter-generational inequalities. None of these reasons are mutually exclusive of each other and most often, policies address more than a single concern.

Across modern pension systems, the State, the employer(s) and the individual beneficiaries are key actors. The non-contributory pensions are generally the responsibility of the State whereas the work-linked pensions (often resting on mandatory contribution by the individual in part) are managed by the state but the responsibility of contribution is generally shared between two or all three of the actors—the State, the employer(s) and the employee. The moral-politico arguments referred to by different pension systems often cohere with the economic arrangement and manner of funding across pension systems. In this section, we list the three main moral arguments and their corresponding economic systems we found in the literature available to us.

1. An often-repeated moral claim has been that the well-being of the older generation is a responsibility of the younger generation. Central to this argument are ideas of debt,

gratitude and care between generations. A mutually beneficial intergenerational exchange is depicted where the young inherit a world which ensures opportunities for their well-being, at the cost of the previous generation (which sacrificed a portion of its own consumption to invest in the infrastructure and early life education, health and nutrition of the succeeding generation). Old age pensions are a debt of the younger generation to the older one, and should be reciprocated in the form of costs incurred for the care of the old and for continued income for them. Societies which have structured their pensions around this moral claim also list intergenerational cohesion as one of the gainful outcomes of this system. Countries adhering to the pay-as-you-go system of pension funding frame the claims to continued income in old age in arguments similar to the one presented above. The pay-as-you-go system draws on the present resources acquired by taxation and other revenue generation systems of the State to pay pensions for the older generation. Often the revenue generated from social security tax of the population presently employed, is used to fund the overall pension needs. Although robust in its moral claim, this system is susceptible to shifts in the demographic structure of the country, especially if structured dependencies predominate and the proportion of the old exceeds that of the young.

2. In 1913, in the *American Economic Review*, Albert de Roode equated the demand of workers for pensions as, in principle, only a demand for higher wages. He argued against the predominant perception that pensions were paid by the company (employer), but instead posited the contribution of the employer as actually that of the employees

in letting go of their present increase in wages. Viewing pensions as rightful wages that the employees defer during the period of their employment lies at the heart of this argument. Pension systems which consider pensions as deferred wages often rely either on funding, systematically accumulated through employer or employee contributions over the years and sometimes augmented by the State to provide for pensions. However, the claim of deferred wages here is more moral—which means that often these systems rely either entirely or at least in part on revenue generated via taxing, or other State revenues generated in the present, in addition to the original contributions made by the employer to provide for the pension needs.

3. While the previous two are powerful moral arguments and work well in the context of industrialized countries, their strong association to formal employment and structured dependencies as a given for all individuals runs contrary to the reality in countries like India. A macro employment profile of India comprises very low formal sector employment and widespread employment in the unorganized sector, mainly as agrarian labour, own-account work on small and marginal farms, labour in small businesses and artisan establishments well into their advanced years. The moral claims of the previous two, which rest on replacing the income earned during one's life course at retirement, does not work here since theoretically, there is no actual loss of income due to absence of formal structured dependencies. Besides, in a developing economy largely governed by subsistence farming, casual work or petty production systems accurately understanding the monetary value of each

individual's contribution is a very complex task. This is even harder for unpaid care work responsibilities that are largely borne by women. It is no wonder then that a third way of understanding the role and claim of older age pensions emerges mainly from industrializing countries which have managed to have well-functioning public pension systems. The argument here is woven around the political claim of equality. Pension systems such as the one in Bolivia rests on the principle that all citizens have an equal right over the economic value produced nationally to help themselves ensure a life of dignity. These kinds of systems often rest on a dedicated pension fund which is generated either by levying a special expenditure tax or cess or dedicating earnings from a particular sector to the pension funds. It is possible for a country to have more than one method of funding its pension requirements.

We take the liberty of suggesting a modification to this moral argument of equality in the demand for pensions. Although we too view pensions through the lens of equality and acknowledge the equal claim people have over value produced by a nation, we suggest that pensions be framed as a recognition of the contribution that people make all through their lives. This, in turn, is reflected in the aggregate income generated by the country. This formulation, we claim, is mindful of the nature of work engagement—that of unregulated or unpaid labour within and outside the homes experienced by women, children and older adults for instance in economies similar to ours.

4.2 Role of the State

The role of the State in ensuring pensions is diverse and sometimes a contested one, ranging from being a provider of pensions to a facilitator or merely that of a regulator. The State often plays more than one

role—like in the case of India where the State is that of a provisioner of pensions for personnel of the armed services and for those provided pensions under the IGNOAPS, but is a regulator for schemes under the NPS. At present the pension sector in India is in very small measure State-supported, but the overall pension sector is to a fair degree regulated by the State (although the trend is towards deregulation of the sector). At the level of the central government, the State is responsible for mainly three kinds of pension—matching the employee contribution for those employed by the central government, bearing the cost of non-contributory pensions extended to army personnel and bearing the cost of central government contributions to pensions provided under the IGNOAPS. Apart from these, the Employee Pension Scheme, 1995 carries a negligible state contribution and so does the Atal Pension Yojna for those who enrol in the first two years.

Other than the schemes mentioned above, the State acts mainly in the capacity of a regulator for the pension sector, with Pension Fund Regulatory and Development Authority (PFRDA) being its main regulatory body. Recent reports of PFRDA have appealed for less intervention by the State. The limit for foreign direct investment in the pension sector was raised from 26 per cent to 49 per cent in the union budget announced in February 2016. This is in line with the move to relax investment regulations for pension funds, which suggests that the state wishes to move further in the direction of being just a facilitator rather than a provider or even a regulator. The relaxation of regulation elevates risks on returns to investments and fund management for individuals and the sector on the whole.

The consistently low popularity of individual contribution-based schemes under the NPS is partially a testimony to the infeasibility of the proposition that securing one's old age can solely be an individual's responsibility. This is especially

true for the large majority of Indians who are engaged in informal and care economies. The interests of private entities working within the pension sector are often in conflict with the aim of extending equitable and adequate pensions to all without social security who need to be adequately protected. In such a scenario, non-contributory public pensions continue to be the most effective way of ensuring a basic income in the later years of a person's life, thereby ensuring a life of dignity for all. This, we argue, should not be subject to State discretion, or even less benevolence, but be viewed as the moral and legal right of all older persons.

While we do believe that the State should play an active role as provider of pensions for the vast majority of those who do not have access to social security, this cannot be achieved without active regulation of the pension sector by the State. Pension plans work on the inter-temporal management of capital. To manage capital and to ensure an increase in value over time in a sector, which may be exposed to risks based on exogenous factors, poses a formidable challenge especially for public pensions. In the multi-pillar system of pensions (referred in the section above), the latter two are privately managed. The first pillar—that which is State-funded with an aim to provide income security to all who do not have it—is State-managed with an objective of providing a safety net. While the third pillar absorbs surplus fiscal funds from individuals who desire additional social security, the first pillar is, in essence, devoid of this surplus capital. The nature of capital varies greatly across these pillars as does the ability to take risks. The surplus capital generally invested in schemes available under pillar three, which is privately managed, is able to heighten the overall risk involved as well as dull the returns on low risk investments, given its own highly volatile nature. It is important that the overall risks that a crucial sector such as pensions is exposed to, be kept to a minimum.

5. Who is Excluded from Pensions

Before we identify which sections of the population are systematically excluded from the IGNOAPS and the Atal Pension Yojna, we reiterate that in India less than 15 per cent of the labour force has formal and consistent employee-employer arrangements that entitle them to any kind of social security and, in particular, old age pensions (NSS, 68th round, 2012). In light of this fact, the Indian State's reliance on a narrowly targeted, means-tested scheme on the one hand and an individual contribution-based scheme on the other, to ensure a dignified living for the old, is incoherent with the prevailing socio-economic reality of widespread poverty and an unorganized workforce.

This dissonance is evident from the comparatively low figures of beneficiaries listed under the IGNOAPS and total enrolments in the Atal Pension Yojna. While the population of those above 60 years in India is 103 million, the number of beneficiaries reported under IGNOAPS was 22,981,127 in 2014–15. The total number of subscribers for the Atal Pension Yojna is officially reported to be only about three million subscribers, as on June 2016, according to a press release by PFRDA.⁶ This is after nearly two years of the scheme being in existence, during which some State contributions were also offered to the 'early-bird' subscribers. The inadequate pension coverage is more starkly evident when compared against the population estimates provided by the United Nations Population Division. By 2050 the population of those above 60 years is projected to increase three-fold as compared to what it is now and will be about 300 million, constituting 19 per cent of the total population (United Nations and Help Age, 2011). These statistics in themselves are a wake-up call indicating how the pension needs of the vast majority require an extensive overhaul of the current social security systems in place.

To identify further excluded groups within the narrowly targeted pool of beneficiaries is a

complex task, since social security schemes like the IGNOAPS exclude more people than they include. The IGNOAPS is restricted to families designated by the State to be of Below Poverty Line. In doing so, the central government makes the following assumptions:

- Those living Below the Poverty Line (BPL) are the only ones in need of State-provided old age social security.
- The BPL identification process adopted by individual states is perfectly inclusive of the lowest socio-economic quintile.
- The household status in the case of APL (Above Poverty Line) households is also reflective of the economic status of each individual within the house thereby negating intra-household disparity.

We will argue that each of these assumptions is flawed, leading to the systematic exclusion of a range of vulnerable groups and persons.

5.1 Systematic Exclusion of the Poorest and Most Vulnerable

Innumerable studies have established that the criteria adopted by individual States to identify respective BPL populations are non-transparent and unverifiable (Sundaram, 2003; Alkire and Seth, 2008; Dreze and Khera, 2010). The Eleventh Five Year Plan report (2007–2012 4.5.36, p. 135)⁷ itself admits huge inclusion and exclusion errors in BPL identification. Errors related to exclusion and inclusion are regularly associated with BPL identification. Even studies conducted by the Planning Commission have established that when one is poor, there is a greater chance of exclusion. These errors have been systematic over the years, generally excluding the poorest and most vulnerable (Ram, Mohanty, Ram 2009; Saxena, 2015). Ram, Mohanty and Ram find massive inclusion errors where many households which should be in the

category of Above Poverty Line (APL) are listed as BPL ones.

Swaminathan (2008) bases her analysis on ownership of BPL cards across social categories. BPL cards are distinct from BPL lists. The BPL list is used to determine eligibility for pensions under the IGNOAPS. Hence, we draw on Swaminathan's analysis here with a caveat that this is not an exact but an indicative extent of exclusion faced by the vulnerable groups. Swaminathan finds that nearly 70 per cent of households, who depend on agrarian labour as their main occupation, do not own BPL cards. This is true for all states except four—Tripura, Kerala, Jammu and Kashmir and Andhra Pradesh. At an all-India level, she finds nearly 60 per cent of Dalit households have been excluded from BPL benefits. Next, she examines the exclusion of Scheduled Tribes from the BPL classification. Limiting her analysis to states with more than a 10 per cent Scheduled Tribe population, the article claims that 90 per cent of households in Assam, 79 per cent in Arunachal Pradesh and 69 per cent in Chhattisgarh did not have BPL cards. In fact, a consistent critique of the scoring method used for BPL identification led to the setting up of a committee⁸ headed by NC Saxena. This Committee eventually developed an identification method based on automatic inclusion and exclusion parameters which is now used for conducting the Socio-Economic Caste Census (SECC).

BPL identification and BPL ration cards are issued on the basis of residence. This by design is acrimonious to the interests of communities that are residentially vulnerable such as homeless persons, nomadic tribes as well as urban migrants without residential proof. Anecdotes suggest that seasonal migrants who spend a few lean months in cities working as casual labourers often get missed by BPL renewal and pension renewal exercises. The situation of seasonal migrants is marked by compounded adversities posed by ill-designed policies; since the place of origin and place of destination being identified by state authorities

for social benefits works against the practice of migration.

5.1.1 Poor, Above Poverty Line

The poverty line in India is set at the bare minimum of being able to earn enough to suffice basic daily calorific consumption. It was intended as a measurement of abject poverty and not as a criterion for identifying beneficiaries for social protection schemes. The criteria for marking of the poverty line as well as poverty identification are minimalist, crude and not accommodative of the dynamic nature of poverty. BPL identification censuses categorize people into dichotomies of poor and non-poor. This categorization remains relatively static until the next round of surveys is carried out. This process is unmindful of income variability and the chronic uncertainties that workers in the unorganized sector face.

Economic wellbeing at low income levels is much more vulnerable to exogenous factors, over which the poor have no control, such as loss due to natural calamities, violence and illnesses (Krishna, 2013). In essence, poverty lines are too rigid in comparison to the everyday volatility of people's economic situation in a society with low levels of labour protection and social security on the whole. We identify the poor who are not identified as living Below Poverty Line as a specific group excluded due to the design of the public pension schemes.

5.1.2 Women

Studies over the years have established that there exists gender-based intra-household asymmetry in aspects of nutrition intake, health and schooling choices in the domestic space. While the state government identifies households that fall below the poverty line, pensions are an individual entitlement. The assumption that household status is reflective of all members who form the household is one that is unmindful of intra-household

disparity. Klasen and Lahoti (2016) find poverty rates of women to be 14 per cent points higher, when considered individually, as compared to men in a multi-dimensional poverty index. But when only households are considered, i.e., women's status is aligned to that of the household to assess poverty, the difference in poverty drops to 2 percentage points between men and women.

Similar findings have been made earlier by Vijaya, Lahoti and Swaminathan (2014) regarding gender blindness of household indices while measuring economic well-being. Balrajan, Selvaraj and Subramanian (2011) identify massive differences based on gender for immunization, hospitalization and overall health outcome. Referring back to the capabilities approach presented in the earlier section, this means that women's central capabilities are curtailed in multiple ways—from health to quality of education—which carry a real potential to impede their ability to ensure a life of dignity and freedom for themselves in advanced years. The household status therefore is often not reflective of status of women within the household—neither from the means perspective with respect to owning assets nor from the perspective of ends-appropriating well-being measures for themselves. Schemes that are aimed at individuals but use household indicators result in fallacies that exclude those who are vulnerable within the unit of the household.

5.2 Exclusion from Atal Pension Yojna

The Atal Pension Yojna is a contributory scheme requiring regular payments for a minimum of 20 years to a maximum of 40 years. This entails multiple capabilities—access, control over excess income and regularity of income that enable an individual to make timely payments on a quarterly, half-yearly or yearly basis. Mapping exclusion from the Atal Pension Yojna is therefore a difficult task because it is not fashioned as a public good but rather like a financial product in the market for income security

in later stages of life. The exclusion—that of those who cannot afford the scheme—is rather overt. But it becomes imperative to state these obvious exclusions because of the claim of the Government that APY is a scheme for resolving the issue of old age income insecurity for those engaged in the unorganized sector and hitherto not covered by pensions.

5.2.1 Poor

The 2011 Socio-Economic Caste Census (SECC) found that individuals in more than 75 per cent of households in rural India earn less than 5000 INR per month. As per the 2014 report of the Labour Bureau of India, the average Indian wage rate in 2014 was INR 272 per day. The government had earlier in 2016 announced revised minimum wage rates to INR 9100, INR 11,362 and INR 13,598 per month respectively for 26 days of work, based on their location on the rural-urban continuum. Contrasting this figure is the average 'living' wage for India calculated by the Asian floor wage for covering the basic living costs for three consumption units considering the following expenses—food, housing, transportation and contingent costs, which amounts to a household wage floor of nearly INR 18,000 per month. The central trade unions have been demanding a similar amount as monthly wages for locations situated in rural areas and higher wages for locations situated in urban areas over the past year.

Investing in a financial product and securing old age income would necessarily be a priority after allocating sufficient resources for expenditure on activities and consumption needs that are considered to calculate a living wage. This means that, at present, for a vast majority, payment for a financial product can only be managed by reducing necessary costs on essentials such as food, housing and transportation.

5.2.2 Unorganized Labour

Combined with low wages and poverty, the challenge of informality of labour relations makes mandatory and regular payments for privately-procured social security schemes more difficult than it appears. According to the 2011 SECC, nearly half of all rural households engage in manual casual labour as their primary employment. A hallmark feature of employment in the unorganized sector is that of irregularity of jobs as well as income. Additionally, there exists an asymmetry in representation of social categories in the unorganized sector. The India Labour and Employment Report 2014, based on the analysis of the 68th round on employment of the National Sample Survey (NSS), claims that there is a high representation of Muslims in the occupation category of own account workers; generally of the 'low paying' and 'petty' class. Dalits and Adivasis are highly underrepresented in the formal sector. Their engagement is high in manual casual labour. It is not presumptuous then to think that the APY scheme carries the potential to systematically exclude some social categories over others based on their dominant trends of labour engagement.

5.2.3. Women and Economically Sependents

Economic independence requires control over personal and household financial resources to appropriate a part or all of it for investing in one's future well-being. The lack of economic independence experienced by women may hamper their ability to secure income support for themselves in the future. According to the data available from the World Bank data portal, 'Female Labour Force Participation' rates in India are low in comparison to global averages. While the global average for 2014 was 50 per cent, participation of women in working age groups in India for the same period was 27 per cent.⁹ Based on the analysis of the NSS data of the India Labour and Employment Report (2014 highlights, p. 4¹⁰) we can claim that

‘Women in general are disadvantaged in the labour market. In addition to their low share in overall employment, a greater proportion of them are engaged in low-productivity, low-income, insecure jobs in farms, and in the unorganized and informal sectors as compared to men.’ This means that even the women who are reportedly engaged in ‘gainful employment’ mainly work to subsidize farm labour or labour for family enterprises, without necessarily receiving actual economic remuneration. Care work within the household is disproportionately shared by women in high measure and is largely unpaid. The Atal Pension Yojna aimed at all those who form a part of the ‘unpensioned society’ is largely blind to the pension needs as well as limitations faced by the targeted group that comprises nearly half of the total ‘unpensioned’ population.

6. Processes of Exclusion

In order to evaluate whether pension provisioning is inclusive and just, we employ four criteria—coverage, adequacy, age of initiation, and transparency and ease of disbursement of pensions. Coverage refers to the number of people and the proportion of population of older persons that a pension system is able to bring under its ambit. Considering that pensions are provided in lieu of recognition of age-induced incapacities, which in turn adversely impact continuance of assured, regular incomes, pensions should ideally be able to perform the function of addressing these incapacities for all those facing them. For a pension system to be able to realize its stated aims of providing the old with a life of dignity and ensuring continued participation in all spheres of life, the criterion of adequacy—the amount disbursed, is very crucial.

Life expectancy varies across regions and groups. For example, in 2005 the overall life expectancy was about 65 years but the average life expectancy among those belonging to the Scheduled Tribes

(ST) was 60 years. This number fell to a little less than 57 years among those who belong to Scheduled Tribes who are also disadvantaged by class as detailed in Mohanty and Ram (2010). A pension system which initiates pensions too late in the lifecycle of an individual as compared to the average life expectancy of the society by design not only excludes more people but denies the chance of life to those who, with pension support, could access essentials such as better nutrition and health services and could live a longer, better quality life. Transparency and ease of disbursement determine the actual access people have to pensions. The impact of relevant information not being communicated to potential and actual beneficiaries, of the callous attitude of government agencies, of bureaucratic and tiresome procedures as well as of delays and corruption in disbursement of pensions have been elaborated upon in the corresponding section.

Employing the above mentioned yardsticks, in this section, we outline ways in which exclusion from pensions for older persons is meted out in macro and quotidian ways. Additionally, wherever applicable we explain how each of these particular processes subvert one or more of the four principles—coverage, adequacy, age of initiation and transparency and ease of disbursement of pension—that we believe are determinants of a decent pension system. The first part lays out processes of exclusion from the National Old Age Pension Scheme; and the second one examines processes of exclusion underway with the Atal Pension Yojna. The processes listed here are by no measure an exhaustive list. There may exist many more processes of exclusion and, hence, this list is only an indicative one.

6.1 Absence of Legal Obligation

The National Social Assistance Programme (NSAP) which is the key programme through which pensions are disbursed is a government

initiative and not a statutory scheme governed by any legislation. This renders it a very different status from several public goods like school education, food, rural employment and forest rights, which are now legal rights, even if qualified and conditional. The Government's commitment to the NSAP is at the programme level, which means that the State is free to reduce or end this provisioning at any time. No constitutional or legal obligation exists for the Government to ensure pensions for older people. A range of constitutional and statutory provisions exist which mostly only indirectly or peripherally relate to older persons such as Article 41 and 47 of the Constitution and the Senior Citizens Act 2007. Article 41, under the Directive Principles of the Constitution states that, 'The State shall, within the limits of its economic capacity and development, make effective provision for securing right to work, to education and to public assistance, in case of unemployment, old age, illness and disability and in other cases of deserved want.' The IGNOAPS works precisely towards this principle. A conditionality based on fiscal availability when considering support for the old is embedded in the Directive Principle itself, making it a weak constitutional mechanism to rely on. It leaves the door wide open for the State at any time to claim that it lacks the fiscal capability to support a pension scheme, and to thereby withdraw from it or keep it minimalist, without violating any Constitutional Directive.

Under some personal laws, applicable along communitarian lines, there are clauses of maintenance which carry legal obligation for mainly sons of the older persons to either care for their parents and, if they are unable to do so, pay a monthly maintenance amount towards the care of the parents. While the family in India is considered to be the primary caretaker of children and the old, in most cases when the household is poor, its capacities to fulfil a care-giving role can well be very limited. These personal laws and social norms can only be mobilized reasonably in cases where

the male offspring have the financial capability to take care of the parents. The responsibility remains within the unit of the family alone even when the household is poor, while there is no legal obligation on the State to provide an alternative.

The Maintenance and Welfare of Parents and Senior Citizens Act was enacted in 2007. This Act squarely puts the responsibility of maintenance on children but extends the responsibility to legal heirs other than children for provision of maintenance. It connects the inheritance of property within family and care of older individuals within the family in its first section. This Act is relevant to only owners of property of value, a minority in this country. Clauses of maintenance under personal laws and the Senior Citizens Act of 2007 are all applicable in cases where there is a conscious neglect of older persons, despite there being economic resources, by effect eliminating a majority of cases where poverty in old age is a consequence of the entire household being poor.

6.2 Budgets: Low capital outlay of IGNOAPS

Corresponding to the caveat embedded in Article 41, 'within the limit of its (state) economic capacity and development' is the abysmally low public pension disbursement amounts and capital outlays for the National Social Assistance Programme. The pensions for those entitled under the IGNOAPS fares poorly on the criteria of adequacy. When introduced in the year 1995 (then NOAPS), the disbursement amount ensured by the Central Government was about INR 75 per month, (at that time equivalent to about 1.5\$US) for a month. In 2007, it was revised to INR 200 (less than three US\$) and since then it has not been revised. The present amount of INR 200 is not enough by any measure to perform the functions of income relief or capacity enhancing of the old. The latest annual capital outlay for the National Social Assistance

Programme is a little over 9500 Crore Rupees, out of which old age pensions accounts for less than 8000 Crore Rupees. The capital outlays accounts for close to 0.05 per cent of GDP. In 2001–02 NSAP (Central Government contribution) cost about 0.03 per cent of GDP; in 2006–2007 it formed 0.06 per cent; and 2010–2011 about 0.07 per cent respectively (Srivastava, 2013). Estimates suggest that the central government spends about INR 124 per capita on the elderly on an average (Varmal, 2013).

Gupta (2013), while calculating the Consumer Price Index for industrial workers and Consumer Price Index for agricultural labour in real terms, observed that the value of the monthly pension amount allocated under the IGNOAPS by the Central Government, when deflated by Consumer Price Index (CPI) is the same as it was in 1995. In 2017 the value of pension has further depreciated to INR 49 when deflated by CPI. The low capital outlays have had an impact on the coverage of pensions as well. Consequently, the public scheme for pension continues to cover only a minority of the older population. The IGNOAPS covers a little less than 24 per cent of the population of those in advanced age. The low capital outlays systematically weaken the programme, thereby, adversely impacting coverage as well as adequate functioning of the scheme.

6.3 Design of the schemes: Means-tested Public Pensions as in NOAPS

According to the International Labour Organisation (2014), 36 countries in the world provide universal social pensions and 53 countries offer means-tested pensions. The NSAP including IGNOAPS is a means-tested scheme which means the beneficiaries have to meet pre-set criteria of economic deprivation, in this case to be identified by individual state governments to be living Below the Poverty Line (BPL) according to norms set by the

Planning Commission. Pegging pensions for older individuals to the poverty estimate is problematic, as has been observed with other social protection schemes of a targeted nature. Narrowly targeting a scheme excludes more needy people than it includes. Often those who are excluded are missed out due to blunt and inappropriate techniques of identifying beneficiaries in complex societies. Even the Eleventh Five Year Plan Report (2007–2012, 4.5.36, p. 135) acknowledges huge inclusion and exclusion errors.

Jos, Murgai, Bhattacharya and Mehta (2015) juxtaposed findings across Haryana—a state with a fairly wide pension coverage vis-a-vis Uttar Pradesh—a state with narrow coverage. We here draw attention to two specific observations in Table 2. First, errors of exclusion far exceed errors of inclusion across both the states. Second, Haryana, a state with wider coverage, has far fewer errors of inclusion.

	Inclusion Errors (units)		Exclusion Errors (units)	
	Rural	Urban	Rural	Urban
Haryana	26.6	32.4	27.6	47.9
UP	28.3	42.2	58.8	50.8

Table reproduced from Jos, Murgai, Bhattacharya and Mehta (2015).

Empirical studies have consistently indicated that the exclusion errors mainly work against the poorest such as homeless populations and Particularly Vulnerable Tribal Groups (PVTG). Given the social and economic complexity of our societies and difficulties of identification and categorization of people into dichotomies like poor and non-poor, targeted schemes don't just have a limited coverage but often manage to miss the target in the process.

Moreover, even amongst those who are legitimately excluded on the basis of applicable

criteria, there are individuals in need of State support in their advanced years to live self-reliant lives of dignity. Many like Deaton and Dreze (2014) observe that the poverty line, which basically assesses an individual's ability to earn enough so as to provide oneself with basic calorific consumption (without due attention provided to the quality or diversity of calories consumed) is hardly a measure of sufficiency and is rather a measure of bare survival. Social protection schemes are drawn up with an aim of providing a dignified living and hence should not be limited to poorly targeted groups such as those who fall below the Poverty Line, which is a very low and untidy threshold for estimating poverty. The issue of coverage—how many people does a safety net like the IGNOAPS, which is instituted to protect poor workers in the unorganized sector, cover is a matter that needs to be addressed with systematic study of the situation.

6.4 Exclusions via implementation

Everyday instances of exclusion from public pensions, disbursed under the IGNOAPS, are found across reports and anecdotally. The Eighth Report of the Commissioners of Supreme Court¹¹ identifies a systematic under-utilization of the funds allocated under NSAP. The Commissioners observe

Unused balances were as high as 29 percent in 2004–2005 and 22 percent in 2005–2006. Last year (2007), however, showed lowest levels of utilization with almost half the funds allocated left unused. This surprisingly, despite the fact that the old age pension was increased from INR 75 per month to INR 200 per month.

Application for pensions, renewal of pensions and pension disbursements are marked by practices that can be categorized as poor implementation of the scheme leading to exclusion, if not wholly then partially; for instance inordinate delays, commonly reported across these stages, impacts access to other essential goods/services.

The Public Evaluation of Entitlement Programmes (PEEP) survey conducted in 2013 across 10 states in India observed that the application process across states was highly and unnecessarily 'bureaucratic'. Additionally, the onus of application for pensions, which generally involves approaching more than two government offices, rests entirely on the beneficiary. In the CES study on pensions it was observed that only about 40 per cent of people began receiving their pensions within the mandated period of three months following their application. In the state of Gujarat only 25 per cent of people began receiving pensions within the mandated period of 3 months. 22 per cent claimed to have begun receiving pensions 6 months after application, 25 per cent began receiving pensions 12 months following application and for 6 per cent it took more than a year to become beneficiaries of the pension scheme.

Bureaucratic negligence can also result in exclusions. In the summer of 2016 the Rajasthan government precipitously cancelled 0.7 million pensions and stopped¹² pensions of 0.3 million beneficiaries citing multiple reasons such as death of the beneficiary, migration of beneficiary (when not the case) or duplication of beneficiary account.

A public campaign led by Mazdoor Kisan Shakti Sangathan (MKSS) and organizations involved with the Right to Information campaign, physically verified the government's claims that revealed the callous ways in which the renewal process was carried out. A large majority of the cancelled and stopped pensions were of older people who had been declared dead even though they were alive. These pension accounts were reopened following the resulting public uproar, but in most cases without arrears. In a similar instance in Andhra Pradesh, in February 2016, it took a stern interim order from the High Court in response to a writ petition filed about discontinuation of pensions, for the government to restore public pensions for the older people that were wrongly cancelled

by declaring the beneficiaries dead. These are not exceptional situations. Delays in the yearly verification processes are a regular occurrence. The PEEP survey¹³ conducted in 2013 observed delays across all 10 states in India. Counterintuitively, while corruption in the disbursement process is reported across studies, its spread and magnitude are very limited. In this regard IGNOAPS is considered a successful scheme where the benefits do actually reach the intended people (Dutta, Howes & Murgai, 2010, PEEP Survey, 2013).

6.5 Processes of Exclusions from the Atal Pension Yojna

It is important to reiterate here that as opposed to being a social protection scheme, Atal Pension Yojna and its predecessor Swavlamban Yojna are by design just another financial product developed and marketed under the NPS by the State. But what differentiates it from the other schemes is that its stated aim is to address the issue of pensions among poor workers of the unorganized sector. It is for its stated intention of greater public good that we shall apply a similar lens to it, as that used to examine IGNOAPS, and will evaluate it across two of the four criteria of adequacy and coverage to better understand the processes of exclusion that are at work.

6.5.1 Coverage

The Atal Pension Scheme at present has only about three million subscribers. This includes subscribers who have migrated from the Swavlamban Yojna, a scheme initiated by the previous Congress-led United Progressive Alliance (UPA) government. As per a press release of the PFRDA dated 18 November, 2014¹⁴ more than 3.5 million accounts had been initiated under the Swavlamban scheme. The scheme was discontinued by the present government and subscribers were provided with a choice of either migrating to Atal Pension Yojna or withdrawing their contributions with the financial

returns accrued on them. The retention rate of the scheme as reported by the PFRDA is between 70 per cent and 75 per cent (Yadav, 2015).

To increase the popularity of the scheme, a minimal public contribution amounting to a maximum of INR 5000 was offered to subscribers for those who enrolled in the scheme in the first two years of its initiation. The target that Atal Pension Yojna had set out for itself was 20 million subscribers. Based on media reports, the Atal Pension Scheme has fallen way short of achieving its own target as well as in assuring income security to a substantial number of those who at present are engaged in employment which is unprotected and does not offer any kind of security in old age.

Its limited popularity among workers in the unorganized sector is reinforced by the lack of sensitivity and awareness by the state when promoting the Atal Pension Yojna. A public interest advertisement promoting the scheme helps us understand the inherent bias against poor workers embedded in the scheme. Following a brief description, we unpack the power-relations evident in its semantics. The opening scene of the public interest TVC¹⁵ portrays an older gentleman labouring at a construction site, lifting a heavy load and precariously balancing it on his head while simultaneously being shamed by the contractor for being too old to work. The gentleman—whom we shall henceforth address as the contractor—is upset because he thinks the older worker will decrease the pace of the work owing to his age-induced incapacities. Amitabh Bachchan, a leading Indian actor appears at this moment, as the spokesperson for the Atal Pension Yojna and reminds the contractor that he must ensure that his own future is different from that of the older gentleman labouring at the site, and that he can do this by enrolling for the Atal Pension Yojna.

Unpacking the semantics and messaging of this TVC helps understand concretely, the contradic-

tions inherent to self-contributory pension schemes. The older gentleman, who is representative of the majority of informal workers in unorganized sectors such as construction (in this case), is in a condition of forced labour and is merely used as a trope to pitch the scheme to those who are capable of providing for themselves. By suggesting that securing oneself against a situation of forced labour in old age is the individual's own responsibility, by implication, makes individuals responsible for old age, poverty and unfair conditions of work. It also simultaneously absolves the state from its responsibility to address old age income insurance. The publicly sponsored advertisement is a grave misreading and misrepresentation of the situation of labour in India as well as that of poverty and old age. The worrisome aspect is that it, at present, seems to reflect the dominant attitude of the State towards pension provisioning for the old.

6.5.2 Adequacy

The Atal Pension Yojna fares poorly on the criterion of adequacy. The annuities promised under the Atal Pension Yojna are too low and don't seem sufficient

when adjusted against inflation rates. The table below presents, our own estimates of what the annuities under the Atal Pension Yojna would amount to by the time they are realized by the beneficiary, across 10 scenarios, as per the investment plans presently available under this scheme. Even in the best case scenario for which the monthly pension amount is INR 1393 which amounts to far less than 50 per cent of the present minimum wage, one would have to pay a monthly contribution of INR 1454 per month for about 20 years.

For those who cannot afford higher annuities the situation is even bleaker. An annuity of INR 1000 in 42 years would amount to INR 68 per month—amounting to less than one-third of the meagre amount assured by IGNOAPS at present. In other words to assure for oneself an income in a span of 42 years, which at present rates is far lower than the monthly pension amount under the IGNOAPS today, requires one to enrol in a government-supported scheme and pay an assured amount every month. The scheme offers a modest rate of return of 7.5 to 7.9 per cent which is close to the interest rates offered by banks on recurring deposits.

		Years of Contribution (in INR)	Monthly Contributions (in INR)	Monthly Pension to the subscribers and his spouse (in INR)	Indica Return of Corpus to the nominee of the subscribers (in INR.)	Present Value of Monthly Income (in INR)	Present Value of Corpus Money. (in INR)
Scenario A: Monthly Pension Rs.1000	Case 1: Age 18	42	42	1000	170,000	68	11,605
	Case 2: Age 40	20	291	1000	170,000	279	47,348
Scenario B: Monthly Pension Rs.2000	Case 1: Age 18	42	84	2000	340,000	137	23,210
	Case 2: Age 40	20	582	2000	340,000	557	94,697

		Years of Contribution (in INR)	Monthly Contributions (in INR)	Monthly Pension to the subscribers and his spouse (in INR)	Indica Return of Corpus to the nominee of the subscribers (in INR.)	Present Value of Monthly Income (in INR)	Present Value of Corpus Money. (in INR)
Scenario C: Monthly Pension Rs.3000	Case 1: Age 18	42	126	3000	510,000	205	34,815
	Case 2: Age 40	20	873	3000	510,000	836	142,045
Scenario D: Monthly Pension Rs.4000	Case 1: Age 18	42	168	4000	680,000	273	46,420
	Case 2: Age 40	20	1164	4000	680,000	1114	189,393
Scenario E: Monthly Pension Rs.5000	Case 1: Age 18	42	210	5000	850,000	341	58,025
	Case 2: Age 40	20	1454	5000	850,000	1393	236,742

Values calculated assuming 6.6 per cent CPI inflation. Average inflation from 2001 to 2016.

The present value of Monthly income and Corpus money has been calculated using the formula; $PV = FV * (1 / (1 + R)^N$. Where PV=Present Value, FV=Final Value, R=rate of inflation and N=number of years.

7. Consequences of Exclusion from Old Age Pensions

The increase in life expectancy over the years has guided a level of inter-temporal planning, which was not required hitherto to the same degree by individuals. Even in India the average life expectancy of 60 years has gone up by an additional 18 years. This means that at the official age of retirement an individual needs to plan to provide for himself/herself for an additional 18 years, taking into account age-induced incapacities, if any, and reduced income. Insufficient provisioning for pensions has both macro and micro impacts.

Social pensions in India, apart from being programmes for old age support, are also poverty alleviation programmes and hence perform related functions of avoiding rapid decline into abject

poverty as well as relieving individuals from abject poverty. Hence, the consequences are not just limited for the elderly but insufficient pensions can have an impact on overall poverty levels. An amplification of inequality in society, a contraction of the economy and an increased expenditure on public health are generally the expected outcomes in a society where a majority of people age without old age social security.

The consequences for potential beneficiaries excluded from pensions unsurprisingly mirror the very aims of pension support. A rapid decline into abject poverty, consumption contraction, a decline in health and quality of life are the most widespread consequences of exclusion from pensions in advanced age. Since a majority of older people continue to work into their old age, not having access to good nutrition or health services impacts

their ability to participate in 'gainful employment'. At the same time, a weak pension system offers no real option with regard to work engagement. Exclusion from pensions can induce cyclical poverty which an individual might find difficult to break out of.

India overall ranks at the far end—71st out of 87 countries—of the Global Age Watch Index¹⁷ (an index measuring old age well being). While India performs fairly well on the social integration and safety aspects of the Age Watch Index, access to healthcare among older persons is one of the poorest compared to other countries. Garroway (2013) finds some spillover impacts of pensions for the old. Homes in which the old do not receive pensions record higher incidence of the second generation being involved in child labour as compared to homes in which older persons do receive pensions.

8. Best Practices

In this section we list some existing practices with regard to public pension. Also, we draw on a relevant international case which represents best practices based on the criteria of universality, adequacy, age of initiation and transparency that we identified earlier. Pensions across states in India are not uniform. Instead of identifying one state in India which performs well on every indicator, we present Table 4 below which, next to each criterion, lists states that perform relatively more inclusively and better as compared to other states and as prescribed by the IGNOAPS guidelines.

1. **Universality:** All states which entitle all those above the age of 60 to non-contributory public pensions with or without applying top decile exclusion criteria such as receipt of pensions from other sources and/or income tax payee.
2. **Age of initiation:** Pensions for the old are generally adjusted as per the life expectancy for that country or region. Most

industrialized countries pay for nearly 15 years of pension for older adults. In India, the average life expectancy is about 66 years and wide variations exist in life expectancy based on class, caste and location. The NOAPS considers a person eligible for pensions at the age of 60 years. However, many consider this very late given the life expectancy in our country. We have identified states that consider people eligible for old age pension before they turn 60.

3. **Adequacy:** At present, the NOAPS entitles its beneficiaries to 200 INR per month. States based on their will and capacity, often, augment this amount. Consequently, there are high variations in the amount of pension received, ranging from INR 200 per month in states of Manipur, Nagaland and Arunachal Pradesh, to INR 2000 per month in Goa. Movements such as Pension Parishad have been demanding pension equivalent to that of 50 per cent of minimum wage. The argument is that since workers in the formal sector receive a pension equivalent to half their last salary drawn, inflation-indexed, the least that informal workers should be receiving is half the minimum wage for unskilled work that they would draw for 25 days of work. This way of calculating would result in a pension amount which is close to INR 2500 per month in many states and in states like Delhi, it would be much higher. At present, state schemes linking themselves to the IGNOAPS with top-up amounts do not reach this amount in any state. Hence, for the purpose of identifying more generous schemes from the rest, we list here all the states having pension amounts higher than INR 1000.
4. **Transparency in Disbursement:** Anecdotal evidence has suggested some leakages in the pension disbursement system. Government

responses to these have ranged from apathy to high-handed changes such as transfer of pension disbursement via post office to banks. We list the example of Orissa, since many consider it an outcome that was mutually beneficial. In rural areas in Orissa, Andhra Pradesh and Telangana, pension disbursement is carried out in a public meeting at a local government office. The presence of the public imparts it transparency and plugs leakages and exclusion that may exist in the last mile delivery of the public good in question. In situations where the beneficiary is unable to participate in the public meeting and access his/her pension, the responsibility of assessing the situation and finding reasons for the absence rests with the state authorities. We do not consider this to be an ideal way to plug leakages but would state this as an example of a proactive attempt at resolving issues, related to delivery of welfare goods, in a way that is mindful of the context.

Criteria	State
Coverage/Universality (only with top decile exclusion criteria)	Rajasthan, Haryana, Tamil Nadu
Age of initiation (Below 60 years)	Rajasthan, Haryana
Adequacy (Above INR 1000)	Delhi, Haryana, Goa, Telangana, Himachal Pradesh
Ease and Transparency in disbursement	Orissa, Andhra Pradesh, Telangana

8.1 International Best Practice

8.1.1 Renta Dignidad, Bolivia

Renta Dignidad or Dignity Pension is a public pension (in Spanish) scheme run by the Bolivian state. It has been cited as one of the most successful examples of old age pension in recent times. Renta

Dignidad is a universal, publicly funded pension scheme for all above the age of 60 years. It claims to cover nearly 90 per cent of all senior citizens in Bolivia. The annuity that each beneficiary is entitled to is about US\$340 which is equivalent to INR 23,800 per annum. Recipients of other pension schemes receive 75 per cent of the full amount.

The Bolivian government has created a distinct and dedicated funding source by nationalizing and taxing hydrocarbon mining in the country. The favourable conditions for hydrocarbon trading in the global markets have helped the Bolivian government to amass a fund large enough to generate its own dividends through effective management. The social protection floor for the elderly ensured by the Bolivian state has been guaranteed in the constitution as well. Article 67 of the present Bolivian constitution which became effective in 2009 states the following:

In addition to the rights recognized in this Constitution, every person of adult age has the right to a dignified old age that has quality and human warmth. The State shall provide an old age pension within the framework of full social security, in accordance with the law.

8.1.2 Bolivia and India—A Comparison

Socio-political and economic realities of Bolivia are not very different from that of India. The age structure of Bolivia and India is a broad based pyramid with less than 10 per cent of the population forming the top end of those aged above 60 years. In absolute terms, the Indian economy is far bigger than the Bolivian economy but both have a comparative GDP per capita. Bolivia is a low income country and part of the Global South. Besides, the share of agriculture to industry to service is comparable between both countries and in Bolivia too, like India, most of the labour force is employed in the unorganized sectors.

The final and most compelling similarity is that,

like India and many other developing countries, Bolivia adopted the World Bank-recommended multi-pillar system of pensions in the 1990s. This system is categorically against universalization of public pensions and restricts state-funded pensions to a minority not covered by employment-based pensions or pensions procured individually under schemes offered by private finance institutions under pillar three. After over a decade of owning a weak public pension system, the Bolivian government in 2007, recognizing the inadequacy of the multi-pillar system of pensions, rejected it and introduced a universal social protection floor for the older citizens.

8.1.3 Impact of Dignity Pensions

Renta Dignidad has had a far-reaching impact on poverty reduction in Bolivia. Studies suggest that it has helped the aim of consumption-smoothing to a great extent. Between 2007 (the year when Dignity pension was introduced for the first time in Bolivia) and 2009, Bolivia witnessed more than a 5 per cent reduction in absolute poverty. It has resulted in an overall rise in the per capita income and has helped elevate Bolivia from a low income to a middle income country.

Vast differences were observed between the consumption expenditure of those receiving pensions and those just below the eligibility age—between 55 years and 59 years. The beneficiaries were able to access a decent living from the income support provided by Renta Dignidad. An objective assessment of the situation on the ground, a political commitment to alleviate poverty, providing equitable services and a systematic nationalization of the economy has enabled Bolivia to implement a universal pension scheme that provides each individual US\$340 a year.

The two most positive macro outcomes of the Dignity pension have been a reduction in Bolivia's absolute poverty from six percentage points to

two percentage points and the elevation of Bolivia from a low income country to a middle income country. This has enabled the country to participate in international trade more strongly. Evaluation studies cite lesser incidence of child labour in homes receiving dignity pension as compared to the control group which does not receive pensions (Mendizabal 2014). Dignity pensions in Bolivia are a proof of the success of a people-centred approach to public policy when supplemented by political will. A policy such as this is the need of the hour for many countries of the developing world including India.

9. Recommendations

At present, in India, the total population of older persons is 103 million and they constitute 8.6 per cent of the total population. However, only about 23 million receive pensions of the non-contributory variety under the IGNOAPS. According to United Nations projections, the population of the old in India is set to rise three times by 2050. The overwhelming majority of people, nearly 87 per cent of the present labour force, are engaged in unprotected employment which provides no income security in old age. The proportion is even higher for women and the rural populace. In such a scenario public pensions, meant to provide income security to all who do not have an assured income in their advanced age, is both the need of the hour as well as the need of the future. Despite this, the issue of pensions for older citizens does not receive due attention in public debates.

We strongly believe that policies for older persons should aim at providing rights-based, comprehensive care for older citizens, of which regular and adequate cash transfers in the form of pensions are a very important element. Apart from regular pensions, the State must provide universal, costless and age-sensitive public health services and mass-scale nutrition augmentation programmes which are subsidized and sensitive to

the needs of the older individuals of the society. Through this shift we argue in favour of a people-centred policy for those in advanced stages of their life. We make a case for an adequate, universal or at least near-universal pension system, which reaches all those in the advanced stages of their lives without assured income, which is delivered to the beneficiary regularly (monthly basis) via a mode of disbursement most convenient to the beneficiary.

In the rest of this final section of the chapter we make a case for adequate, universal pensions by suggesting multiple policy interventions. These suggestions are based on the analysis presented in this chapter. We also draw upon the SECC report as well as demands that have emerged from peoples' movements focussed on this issue, to substantiate our claim as and when necessary.

9.1 Universalization of Age-based Pensions

One of the most contested debates in policy literature is whether to universalize social benefits or target them. In light of the larger reality of India where ageing for most people is not accompanied by income security, as elucidated in earlier sections of this chapter, the foremost recommendation we propose with regard to pensions for the old is for the State to move towards a near universal coverage. Pensions must be provided to all whose age is greater than the age criteria defined in the policy but who have no pensions linked to formal sector employment. As evident from the preceding discussion, India presently follows a means-tested system. We strongly argue against such a narrowly targeted system. Instead ideally, as stated above, it should be a universal programme. If universality is an ideal that is difficult to achieve, then at the very least we would echo the recommendation made by the expert group to MoRD¹⁸ in November 2016 to extend pensions to all those who do not meet the

conditions of automatic exclusion criteria¹⁹ in the Socio-Economic Caste Census.

The main reasons behind this proposal is to ensure a rights based dignity to all old people by minimizing the errors of exclusion and inclusion that are common to targeted schemes, and in a true sense achieve the aim of Article 41 under the Directive Principles. Incidentally in the CES study when people were asked whether pensions should be for all old people or only for the poorest, 81 per cent of people interviewed in Rajasthan and 83 per cent in Gujarat felt that old age pensions should be for all without any conditionality. If pension restructuring in India is to live up to its original intent then expansion of pension coverage to all those without income security is a necessary precondition. In a multi-pillar system, the first pillar is the strongest one, designed to cover all who face the possibility of ageing without income security.

9.2 Adequate Entitlements

We claim that the central government contribution of INR 200 and INR 500 per month per person, which is too low, has remained stagnant for over a decade and needs to be revised. This amount is less than INR 1200 per month which is where the poverty line is drawn. In other words the present pension entitlements do not provide for even what an individual requires for basic calorific consumption required to remain alive at present rates.

The amount entitled under IGNOAPS, at present, is not based on any systematic method of accounting for the cost of living a life of dignity. We propose that the State calculate the per month pension entitlements based on either of the two methods that is provided—transfer 50 per cent of per capita GDP to each beneficiary or 50 per cent of the official minimum wage. These are the two most widely used methods to decide public pension amounts globally. A social protection scheme that does not account for cost incurred for even basic

consumption levels and provides much below that level falls short of being the safety net it is conceived to be. In the CES study, the mean pension amount reported by beneficiaries as their ideal pension amount in Rajasthan was INR 1875 per month and in Gujarat it was INR 2373 per month. There is nearly a three to four fold difference between what people expect as old age support and what is provided at present in both these states.

9.3 Early Initiation of Age-based Pensions

At present the IGNOAPS considers individuals above the age of 59 years as eligible to be beneficiaries of the scheme. The criteria for age is most likely borrowed from the formal sector idea of mandatory retirement, which generally is at the age of 60 years. The age at which public pensions are initiated are inextricably linked to the average longevity of life. In India the average life expectancy is 64 years. However, life expectancy varies across class and caste. It is observed through the data that the poor and the vulnerable usually live shorter lives as compared to the rich and privileged; for instance, the average life expectancy of those who are poor and belong to the scheduled caste category is less than 60 years and life expectancy of those who are poor and belong to the scheduled tribes category was less than 57 years, whereas the average life expectancy in 2005 was 65 years (Mohanty & Ram, 2010).

Hence, while deciding the age of initiation of pensions, one should give careful consideration to these factors. In the case of India this means an earlier initiation of pensions than the present age, since the average life expectancy is too low to begin pensions at the age of 60 years. It is encouraging to know that some individual states like Rajasthan and Haryana have already entitled beneficiaries in their states to pensions, before they reach the age of 60 years. In Rajasthan, pensions are initiated at the age of 55 years for women and 58 years for men. In Gujarat, old age pensions are initiated at the age

of 60 years. Interestingly, in the CES study while over one-fourth of the respondents in Rajasthan felt that the age at which pensions were initiated in their state was acceptable, less than one-fifth of the respondents in Gujarat echoed the same opinion. An overwhelming majority of respondents across both states were in favour of earlier initiation of pensions.

9.4 Ease of Application and Ease in Disbursement of Pension

9.4.1 Ease of Application

We propose that beneficiaries of old age public pensions should be proactively identified. Preferably when eligible persons enter the age bracket, they should be automatically included. If there is an application procedure, this should not involve travel outside the place of residence, because older people face financial and physical constraints when it comes to mobility outside where they live.

Most studies have noted that the application procedure for initiating pensions is tiresome, unnecessarily bureaucratic and directs all the responsibility for initiating pensions towards the beneficiary herself/himself. The CES study finds that in Gujarat, on an average, each beneficiary has to visit two and sometimes three offices and less than 40 per cent of people who had applied for pensions across both the states had their pensions initiated within the official stipulated time of three months from the date of application. Jos, Murgai, Bhattacharya and Mehta (2015), in their comparative study across three states—Delhi, Haryana and Uttar Pradesh, identify easing entry into pensions by methods such as proactive identification of beneficiaries.

9.4.2 Plugging Delays in Pension Payments

Pensions which are supposed to be cash transfers, paid duly every month, are reported to be routinely delayed. In the CES study over one-third of

respondents were yet to receive pensions for the previous month at the time of the study. The most cited reason for delays in Gujarat was that pensions are generally delayed by 2–3 months on an average. In Rajasthan, while most people cited this as a reason, other prominent reasons included not having an Aadhaar card or a bank account.

We propose that pensions should be disbursed en masse on a stipulated date of the month at the place of residence of the older person, a practice adopted by the states of Telangana, Andhra Pradesh and Odisha. This streamlines the process of pension disbursement as well as ensures transparency. Additionally the beneficiaries can plan their expense well in advance and don't have to limit their expense on essentials due to the insecurity they face each month due to delays.

The National Social Assistance Programme, of which the IGNOAPS is a single component, provides cash transfers similar to itself also in the form of pensions for widows and people with disability between the ages of 40 and 59 years. The scheme is named Indira Gandhi National Widow Pension Scheme and Indira Gandhi Disability Pension Scheme respectively. At the age of 60 years, the Indira Gandhi Old Age Pension Scheme replaces either in an individual's life. Advancing of age by itself is a challenge that needs active government intervention. The challenges of widowhood or disability are not encompassed within advancement in age but are distinct axes of disadvantage in themselves.

However, by providing one of the three types of pensions at a time, the state assumes that disadvantages do not intersect but rather replace each other. This weakens individuals who may face more than one of these challenges in addition to being old; for example a 60-year-old disabled person while facing adverse impacts of ageing and disability is compensated for only one of them. In a 2015 study²⁰ conducted by the Centre for Equity

Studies, in which over 200 cases of women with disabilities in rural India were documented, it was found out that most women used their disability pension for accessing medical treatment often related to their specific disability. Hence, specific disabilities need supplementary costs in order to manage them.

9.5 Systematic Data Collection

A people-centric policy cannot be arrived at without the support of systematically collected data. In a situation like ours, marked by limited fiscal capacity of the State and the need for large investments in the social sector, the need for data-backed policy intervention cannot be over-emphasized. It is important to collect systematic individual-level consumption data via public surveys to understand intra-household parity and linkages between old age and poverty. At present, it is difficult to differentiate between deprivations due to poverty in general and age-induced poverty. This is especially important if the public pension systems are means-tested. Besides, there is little comprehensively collected systematic data available about all aspects of well being of the elderly. Systematically collected data, we believe, will help in understanding specific needs of the old and inform relevant policy design.

9.6 Introduce Legal Obligation of State towards Old Age Income Support

While the constitutional provisions under Articles 41, 42 and 47 address old age, labour and nutrition needs respectively and Article 21 specifies the Right to Life, none create a binding obligation upon the State to provide cash transfers in form of pensions. A law that legally binds the state to ensure participation of the elderly in the economy and secure for themselves a life of dignity, via publicly provided pensions of value that is systematically derived, would strengthen the case for age-based pensions immensely.

9.7 Pension Fund Planning

Most countries that have adequate public pensions are accompanied by a systematic system of funding the pensions. There is a need for a dedicated State managed pension fund with a long term vision that takes cognizance of demographic changes as well as social security entitlements of the labour force at large. All countries with a well performing public pension programme, whether they follow the multi-pillar strategy of the World Bank or a universal pension floor for all, have a dedicated pension fund which is used to provide for the present and plan for future needs. Since providing adequate pensions needs inter-temporal planning, making funds available and planning their management ahead of time is an effective way to address the issue of funding for pensions.

9.8 Increasing the Pensions Provided by the Private-sector Employer

The viability of providing public pensions rests heavily on a strong second pillar which in turn rests on mandatory pensions provided via employment. Policy interventions which incentivize employers to provide pensions to employees as well as penalize the defaulters would help ensure expansion of pensions provided under the second pillar. Recent reports of the PFRDA have repeatedly stressed the need to share responsibility of pension provision with the employer. At present, only about 8 per cent of jobs in the private sector provide old age income security of any kind. This places the burden of ensuring income security for all senior citizens, on public pensions alone.

9.9 Refraining from 'Financialization' of Pensions

By financialization of pensions, we mean precisely two things—linking pensions to global capital, i.e., increasing the proportion of foreign direct investment allowed in pensions, as well as relaxing

regulations related to investment of pension funds. Both processes together allow for a larger amount of funds to be invested in riskier options such as equity funds and hedge funds. This recommendation, unlike others, is not restricted to non-contributory public pensions but is about reflecting on the entire sector of pensions as a whole. In 2016, the permissible limit for Foreign Direct Investment in the pension sector was raised from 26 per cent to 49 per cent (maximum permissible limit for FDI in India at present). The report of the Committee to Review Investment Guidelines for the National Pension Scheme, 2016²¹ recommends more autonomy to fund managers, returns on pension investment pegged to the risk 'appetite' of the investor and finally devolvement of investment rules which, at present, control the magnitude of investment in high risk equity and hedge funds.

Critiques of the inherent risk factors related to heightened financialization are echoed across the ideological spectrum. Prasad, Rajan and Subramaniam (2007), prior to the 2008 economic recession across the globe, warned that an analysis of international capital flows and the associated risks demands greater caution and control. Financialization of pensions introduces complexities and elevates risks for non-contribution based public pensions as well. While it is difficult to overhaul the system and do away with financialization, most experts like Rajan believe that certain crucial arenas can be regulated more than others. Financialization of pensions has been consistently and systematically opposed by CPI(Marxist) and the All India Trinamool Congress Party (AITMC).

Inadequate regulation of investment of pension fund corpuses does not just enhance risk levels of a particular pension scheme and its subscribers, but elevates the risk of the entire sector as well as diminishes returns on pension funds invested conservatively in safer options such as government bonds. Pensions are too important to be left to the

volatility of financial markets. If left to the volatility of markets pension plans would be faced with two outcomes of low risk, low defined benefit returns or risking public pensions for investment options involving higher risk. Both of these scenarios

make it nearly impossible to provide for adequate public pensions for all senior citizens. Unless these structural issues are addressed, the viability of pensions will be a challenge difficult to meet.

Endnotes

1. The study on old age pensions was conducted by the Centre for Equity Studies in Gujarat and Rajasthan from July 2016 to November 2016. The study interviewed 1500 respondents across select rural and urban locations. The study was conducted in partnership with ANANDI, Devgarh Baria Mahila Mandal, Malia Mahila Mandal in Gujarat and Astha in Udaipur, Unnati in Barmer, Mazdoor Kisan Shakti Sangathan and School for Democracy in Bhim, Rajasthan and Pension Parishad in Delhi. Jayati Ghose, Ravi Srivastav, Praveen Jha, NC Saxena, Nikhil Dey and Harsh Mander comprised the advisory group. Throughout the chapter this study has been referred to as the CES study on pensions for old, 2016.
2. An estimate of over one-third is an approximate derived based on the following figures. About 23 per cent of the old are covered under the IGNOAPS. 8 per cent are covered by private-sector employers. The rest are covered by public-sector employers. The first figure is based on total beneficiaries of IGNOAPS as presented in Annexure 1 (24,167,176 people) and considering the total population of those above the age of 60 years as 10.39 crores. For the second figure see 'When India Ages; whither all Pensions' published by CRISIL Insight in January 2015. Accessed at <https://www.polymerupdate.com/general/special-features/articles/crisil/crisil-27022015-144416.pdf>. For estimates also see India Labour and Employment Report 2014, *Workers In The Era of Globalisation*; Institute of Human Development, published by Academic Foundation, New Delhi in 2014.
3. The full budget speech can be accessed at <http://indiabudget.nic.in/bspeech/bs200001.pdf>
4. A subsequent report titled *Old Age Income Support in the 21st Century: An International Perspective on Pension Systems and Reform* published in 2005 suggested an evolved version of the multi-pillar design. The report states that the bank's policy framework flexibly applies a five-pillar model defining the range of design elements to determine the pension system modalities and reform options that should be considered. Country-specific conditions require a tailored and tactically sequenced implementation of the model that will substantially define the range of feasible options. The five pillars subsequently suggested are—0 pillar Non-contributory pensions, 1—Mandatory first pillar based on pay as you go system, 2—Mandatory second pillar which is like an individual account based on defined contribution. 3—A voluntary third pillar similar to the second one which 'compensates for rigidities in the design of other systems but includes similar risks as second pillars', 4—A non-financial pillar which includes access to informal support (such as family support), other formal social programmes (such as health care and/or housing). The Annapoorna Scheme under the NSAP that offers nutrition support to elderly is an example of non-financial support. However, it needs to be noted that Annapoorna is offered to all those who are eligible for pensions but do not receive it due to implementation issues.
5. The Employee Pension Scheme, 1995 was introduced under the Employee Provident Fund Act of 1952. The corpus is composed of 12 per cent drawn from employee salary, 8.3 per cent through employer contribution and 1.16 per cent of the salary is contributed by the state. The state contribution of 1.16 per cent is capped at a salary limit of 6500/-INR.
6. Pension Fund Regulatory and Development Authority Press Release, Atal Pension Yojana (APY) workshop for State Apex Cooperative Banks and District Central Cooperative Banks. Accessed at <http://www.pfrda.org.in/WriteReadData/Links/Press%20Releaseca9229c-e573-4d01-992e-20379da85e0c.pdf> in October 2016.
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7. The full report of the planning commission can be accessed at <http://planningcommission.nic.in/>

- plans/planrel/fiveyr/11th/11_v1/11th_vol1.pdf
8. The report titled Report of the Expert Group to advise the Ministry of Rural Development on methodology for conducting Below Poverty Line Census for 11th Five Year Plan submitted to the Ministry of Rural Development in August 2009 can be accessed at <http://rural.nic.in/sites/downloads/circular/ReportofExpertGroupChaired-Dr.N.C.Saxena.pdf>
 9. Data accessed at the World Bank data portal <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS> in October 2016.
 10. Highlights of the India Labour and Development Report (2014) Accessed at <http://www.ihdindia.org/ILERpdf/Highlights%20of%20the%20Report.pdf> in November 2016. Full reference of the report included in the reference list below.
 11. Eighth Report of the Commissioners of the Supreme Court. A Special Report on the Most Vulnerable Social Groups and their Access to Food Commissioners of the Supreme Court In the case: PUCL v. UOI & Ors. Writ Petition (Civil) No. 196 of 2001 September 2008 accessed at http://www.scccommissioners.org/Reports/Reports/SCC8_0908.pdf
 12. Cancelling of pension accounts is generally undertaken on a permanent basis; in case of death of beneficiary or other such irreversible reasons. Stopped pension accounts are those that are temporarily withheld till such time that verification is carried out.
 13. Details regarding the survey can be found at <http://web.iitd.ac.in/~reetika/projects.html>.
 14. [vi] Press release of the PFRDA titled Conference on Swavalamban-Expanding Horizons dated 18. 11. 2014. Accessed at <http://pfrda.org.in/WriteReadData/Links/PFRDA%20Press%20Release%2018112014%20PIB4869bff5-52e9-432b-8194-667351ca4cbd.pdf> in November 2016.
 15. The TVC starring Amitabh Bachan promoting Atal Pension Yojna titled Construction can be accessed at <https://www.youtube.com/watch?v=I0v0CN-B7-k>
 16. Calculations done by Vivek Mishra. Inflation rate is average calculated considering figures reported for CPI inflation from 2001 to 2016. IRR calculated using the IRR function in MS Excel.
 17. Link to Global Age Watch Index conducted by Helpage International: <http://www.helpage.org/global-agewatch/population-ageing-data/global-rankings-table/>
 18. The Department of Rural Development had set up an expert group under the chairmanship of Sumit Bose on 1 January 2016 to study the objective criteria for allocation of resources to States and identification and prioritization of beneficiaries under various programmes using Socio-Economic and Caste Census (SECC) 2011. The report was submitted in November 2016.
 19. Automatic Exclusion is the first stage in a multi-stage poverty identification method. It involves identifying the non-poor and excluding individuals or households based on pre-set criteria, in contrast to the Below Poverty Line identification methods wherein automatic exclusion identifies the non-poor. This method was suggested by the Saxena Committee to Ministry of Rural Development for conducting BPL census for 11th Five year plan in August 2009. This method of identification is reported to minimize exclusion-related errors in targeted exercises.
 20. The study titled Girls and Women with Disability in Rural India was undertaken in 2015 by the Centre for Equity Studies. The study was conducted in Latehar, Jharkhand, Koraput, Orissa and in Karnatak. About 225 case studies of girls and women with disabilities were collected as a part of this project. A chapter based on its findings is included in the last section of this report.
 21. Report of The Committee to Review Investment Guidelines For National Pension System (NPS) Schemes in Private Sector; Pension Fund Regulatory And Development Authority, Vasant Kunj, New Delhi, 2015 accessed at <http://pfrda.org.in/myauth/admin/showimg.cshhtml?ID=682>.

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Annexure 1
Indicative List of Pensions and Beneficiaries across States and Union Territories

States	Pension amount per person per month for old—between 55 years/60 years and 75 years/80 years	Pension amount for oldest old—those above 75 years/80 years	Beneficiaries (Rural)	Beneficiaries (Urban)
Andaman and Nicobar Islands	2000	500	545	1
Andhra Pradesh	1000	1000	898259	124596
Arunachal Pradesh	200	500	7793	0
Assam	400	700	710844	57688
Bihar	600	500	3763333	287551
Chhattisgarh	300	500	510941	97824
Dadra and Nagarhaveli	1000	1000	605	131
Daman and Diu	1000	500	1162	259
Delhi*	1200	500	0	429706
Goa	2000	2000	1653	52
Gujarat	400	500	304191	155359
Haryana	1400	1700	159195	35752
Himachal Pradesh	1200	500	85125	2207
Jammu and Kashmir	400	700	118143	15715
Jharkhand	400	700	889355	38075
Karnataka	500	750	748404	143904
Kerala	450	500	519079	12737
Lakshwadweep	1000	1000	191	0
Madhya Pradesh	275	500	1371425	244881
Maharashtra	600	600	945110	151351
Manipur	200	500	53068	15123
Meghalaya	250	550	43544	3154
Mizoram	250	550	16425	7749
Nagaland	200	500	46282	1458
Orissa	300	700	1325939	95089
Pondicherry	2000	2500	20093	18084
Punjab	450	500	89369	15686
Rajasthan	500	750	818430	93294
Tamil Nadu	1000	1000	1356879	364086

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States	Pension amount per person per month for old—between 55 years/60 years and 75 years/80 years	Pension amount for oldest old—those above 75 years/80 years	Beneficiaries (Rural)	Beneficiaries (Urban)
Telangana	1200	1500	505118	94214
Tripura	500	700	129574	10855
Uttar Pradesh	300	500	3929453	274779
Uttarakhand	800	800	241539	12796
West Bengal	400	500	1431806	291054
TOTAL			21067960	3099216

* Delhi offers additional amounts for people belonging to the following social groups Schedules Caste, Scheduled Tribes and Minorities.



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Glimpse of an E-Mitra facility during the Jawabdehi Yatra in 2016.

Photo Credit: Jayshankar Menon, Rough Cut Productions, Delhi

Exclusion from Digital Infrastructure and Access

*Osama Manzar, Rajat Kumar, Eshita Mukherjee and Raina Aggarwal**

1. Introduction

Information and Communication Technologies (ICTs) have many different definitions, The World Bank defines it as ‘The set of activities which facilitate by electronic means the processing, transmission and display of information’ (Rodriguez & Wilson, 2000). Economic and Social Commission for Asia and the Pacific (ESCAP) defines ICTs as ‘...refer[ring] to technologies people use to share, distribute, gather information and to communicate, through computers and computer networks’ (ESCAP, 2001). In this chapter we shall follow the one standardized by the United Nations, ‘ICTs are basically information-handling tools—a varied set of goods, applications and services that are used to produce, store, process, distribute and exchange information’ (United Nations ICT Taskforce, 2003). They include the ‘old’ ICTs—radio, television and telephone, and the ‘new’ ICTs—computers, satellite and wireless technology and the Internet. These ICT tools are invaluable to the modern information society. Their impact on the quality of life with regard to access to information and avenues to better oneself especially in developing countries is unprecedented.

1.2 Tracing the Journey of Digital Exclusion

The term ‘Digital Divide’ was prevalent in studies and policies during the 1990s and early 2000s. As access to and content in the ICTs have evolved over the years, so has the definition of the digital divide. Now it is regarded: as a) lack of infrastructure; b) lack of access; c) lack of information, and d) inability to leverage information.

There are considerable differences in the definition of the digital exclusion by various researchers. For some, the term refers to the gap between people who have access to the internet and those who don’t (Mehra, 2002); the extent of physical access to ICTs and the Internet (Loader & Keeble, 2004).

Azari and Pick (2005 & 2009) consider it the ‘uneven distribution of the benefits of ICTs’ which can be studied at both the specialized level (broadband or mobile Internet access) and basic ICT access level (availability of basic ICT devices such as phone, TV and radio).

In the mid-2000s, research on the digital divide moved beyond physical access and paid closer attention to concepts that are concerned with issues around culture, empowerment, and social mobility; and differentiated uses of the Internet (Hargittai,

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2002; de Haan, 2004; Newhagen & Bucy, 2004; van Dijk, 2006).

Against a general conception of ‘digital inclusion’ as access to computers and internet for all, regardless of physical, cognitive or financial ability, Crandall and Fisher (2009) broaden the definition to include technological literacy and the ability to access relevant online content and services. They also see it as the process of democratizing access to ICTs, in order to allow the inclusion of the marginalized in the information society.

Hache and Cullen (2009) further state that digital inclusion should be seen as a wagon to social inclusion that ensures individuals and disadvantaged groups have access to ICTs and the skills to use them and are therefore able to participate in and benefit from an increasingly electronically mediated knowledge economy and information society.

Due to the comprehensive nature of Hache and Cullen’s postulation, we will consider their definition of digital inclusion as the theoretical underpinning of this chapter.

1.3 Digital Medium as a Public Good

Dhani Poonia—a small hamlet in the Churu district of Rajasthan, India, has only one upper primary school, no hospital or *eMitraKendra*.¹ While almost every popular Internet network is available in this village, connectivity and quality of the connection is low. This forces villagers to travel to the nearby towns of Rajgarh or Taranagar, at a transportation cost of INR 50, every time they want to access the Internet facility at one of these places. Those offering digital services in these two towns charge INR 5 per printout, and INR 20 per hour for internet usage. A student who needs help to fill a form or apply online for admission has to pay a minimum of INR 70 (INR 50 for travel and INR 20 for using the internet service) (Manzar, 2016a).

For a worker availing benefits from the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)² and earning about INR 150 a day, the total cost of getting a photocopy of an Aadhaar card³ comes to INR 225 (opportunity cost of losing his day job INR 150, plus travel cost INR 50, plus Internet cost INR 20, and cost of printout INR 5).

Thus, students are unable to maximize the benefits of higher education due to lack of access to Internet. Daily wagers lose their day’s earnings just to get their identity card printed. For them, access to digital media is not a luxury but a necessity. It is important for us to highlight that the digital medium has value not in and by itself but rather acts as a medium that facilitates access to other basic public goods and services, especially in developing countries.

In India, access to public entitlement is hard to get, especially for people living in rural areas; here the poor and illiterate get misguided easily and access to basic necessities like pension, daily wage, food, basic health facilities and education is a challenge. ‘Public good’ here is defined as goods, services, attainments, capabilities, functioning and freedoms—individual and collective—that is essential for a human being to live with dignity (Mander, 2015).

The following example will elaborate the above point. MGNREGA creates a justifiable ‘right to work’ by promising up to 100 days of wage employment per year to all rural households whose adult members volunteer to do unskilled manual work. However, a recent study ‘Right to Work’ (Dutta et al., 2014) has pointed out that there is very little public awareness about what needs to be done to obtain work along with an array of other issues surrounding the MGNREGA programme. Thus, despite the law guaranteeing work and livelihood, people are left unemployed due to lack of proper channels of information. The digital medium can serve to enable access to genuine, cost-effective and

timely information thereby increasing feasibility and efficiency.

1.4 Opportunities Provided by the Digital Medium and Why It Matters?

According to van Dijk (2006), the ‘digital divide’ is the gap between those who do and do not have access to computers and the internet, i.e., have no access to the digital medium. However, what matters is not really the lack of tools like computer and the internet, but the lack of tangible and non-tangible opportunities that it provides. It also allows communication and exchange of ideas while retaining anonymity and foregoing the need for physical travel.

As Table 1 explains, tangible opportunities that the digital medium provides could be access to information, new ideas and skills.

A few examples of digital media enabling access to not just goods and services but also in many cases, access to their basic rights will serve to demonstrate the advantages of digital inclusion and elucidate the point further.

Mobile Vaani is a mobile-based application initiated in 2012 by Gram Vaani Community Media in Jharkhand and has now spread to Bihar and Madhya Pradesh (MP) as well. The application uses an interactive voice response (IVR) system, thus enabling people to create and share content. The IVR system makes it accessible over basic phones with no internet access, as the entire communication happens over a phone call. People

leave a missed call and when the server calls them back they have an option to either leave a message and/or hear a message (Rustagi, 2013). The social sector—non-governmental organizations, and development organizations—use Mobile Vaani to disseminate information about their programmes. Local business owners (small shop owners), coaching centres and self-help groups use it to advertise their services and products.

CGNetSwara, a Bhopal-based project, is a voice portal for citizen journalists to report or listen to news bytes about Chhattisgarh, using their mobile phones in Hindi and Gondi (a language spoken in the central Gondwana region of India, which comprises the central tribal region stretching from the Adivasi areas of Gujarat to West Bengal).

On 8 January 2011, a citizen journalist posted an interview with Pitbasu Bhoi from Ambikapur, who was not paid his wages even after working 100 days under MGNREGA. A week later, another citizen journalist ran into Bhoi and discovered that his son had died due to the non-payment of wages. After two leading national dailies, *Times of India* and *The Hindu*, picked up the story from Swara and followed up, Bhoi was paid his wage on 20 January, 2011 (Shah, 2012).

D B Corp, owner of the largest circulating newspaper in Chhattisgarh, acquired a coal mine in Dharamjaigarh in Chhattisgarh. Despite the rigged public hearing, local media ignored the story. However, following two reports on CGNetSwara about the public hearing, three national newspapers carried elaborate stories, leading to the cancellation

Table 1: Tangible and Non-tangible Opportunities Provided by ICT Devices

Tangible	Social: Communication, Participation, Association	Educational: Information, Ideas, Knowledge/Skill	Material: Resources, Source of Economic Capital Formation
Non-Tangible	Freedom of Anonymity		

Source: Van Dijk, J.A.G.M., 2006

of the allotment of the coal mine. (Srivastava et al., forthcoming)

Swara became a success due to the ease of telecommunication, user friendliness and round the clock availability of the application. Another major factor that aided the success of Swara was its ability to enable communication in the regional language.

Digital interventions like Mobile Vaani and CGNetSwara help break the traditional socio-economic barriers of communication as they provide both non-tangible benefits like information, knowledge and ideas while also enabling the marginalized communities to generate livelihood opportunities and enhance the existing ones.

Thus, the digital medium acts as a vehicle. It is not the end but acts as the means to an end.

2. Mediators of Digital Exclusion

According to Curtis Kularski, ‘...the digital divide is composed of a skill gap and a gap of physical access to Information Technology (IT) and the two gaps often contribute to each other in circular causation. Without access to technology, it is difficult to develop technical skill and it is obsolete to have access to technology without first having the skill to utilize it’ (2012, p.1).

ICTs have become an irreplaceable tool in society. Today, the Internet has become an integral part of many lives and it is difficult to imagine having to function without internet access. The number of people ‘going online’ to conduct everyday activities, such as business and banking, education, seeking employment, civic engagement and forming and maintaining social relationships, is increasing every day. The World Development Report noted that almost 1.063 billion Indians were offline even though India ranks among the top five nations in terms of the total number of Internet users, along with China, the US, Japan and Brazil. The report further

stated that while India has come close to the US in numbers in terms of Internet penetration it remains far behind at 18 per cent as against 87 per cent in the US. India still needs to connect these ‘offline people’ to the Internet for pushing growth, creating jobs and accessing public services (World Bank, 2016).

This section explores various factors which contribute to digital exclusion like poverty, geography, illiteracy, disability, gender and age, and throws light on the intersection of these independent variables. These variables influence the existence of various groups on a ‘continuum of exclusion’, due to the inherent intersection that is endemic to exclusion. However, there are members of these groups that may experience complete exclusion.

For the chapter, we have defined ‘complete digital exclusion’ as a social and economic inequality with regard to personal access to ICTs; the skills to use the devices of and on their own without having any assistance; and ability to leverage the benefits of ICTs. In this particular definition, we have excluded the concept of the sharing of ICT devices and Internet with the family and community members. The World Bank (2012) also highlighted the difference between mobile users and subscribers, stating that ‘if a mobile phone exists in a household, then all members could theoretically use it, thereby extending access.’ This definitional extension of access can be used to inflate metrics when assessing digital inclusion, therefore, the authors have chosen to disregard it.

2.1 Poverty

Poverty poses a major barrier to Internet access. As per the 68th round of the National Sample Survey Organization (NSSO), conducted in 2011, the percentage of persons below the Poverty Line in India has been estimated as 25.7 per cent in rural areas, 13.7 per cent in urban areas and 21.9 per cent for the country as a whole (Abhay, 2014).

The high cost of ICT devices and data plans, low incomes and affordability are the major challenges for much of the offline population. In India, the ability to purchase or rent the ICT tool for access to digital information is less among the masses. The Ericsson Consumer Lab Report (2015) stated that in India, for the consumers who do not use mobile broadband, affordability was the prime obstacle to the adoption of ICT services as 88 per cent of Indian consumers on 2G felt that mobile broadband is too expensive. Many Indians struggle to meet their basic needs and are unable to afford internet services. The report also stated that even with the low and competitive prices of devices and data plans compared with the rest of the world, internet access in India remains beyond the reach of close to 1.063 billion people as the lower income group does not have discretionary money⁴ to spend on cyber cafes or to get Internet connectivity on their own to access digital information.

The most formidable hurdle in digital inclusion is the inability of Indians to afford data plans. The State of Connectivity Report, 2015, by internet.org stated that four of five Indians could afford internet if data costs fell by 66 per cent, but Indian telecom operators already claim to run data services at an 11 per cent loss, making cost-cutting difficult. The statistics show that a data plan, currently priced at INR 100 should not cost more than INR 34, if India has to make internet affordable for 80 per cent of its population. Poverty and socio-economic constraints digitally exclude the people belonging to lower rungs of the economic ladder as they cannot afford new communication technologies and the expenses incurred in upgrading the equipment, software, and training support.

To facilitate digital inclusion among low-income groups, the total cost of ownership including devices, data plans, taxes, and related expenses (such as charging solutions) would need to be at a level that these low-income consumers can afford.

2.2 Geography

Chen and Wellman (2004) found that geographic location is one of the major factors affecting people's access to and use of the internet, with more prosperous regions having higher internet penetration rates than poorer regions.

Lack of sufficient network coverage and insufficient infrastructure are the major obstacles to internet adoption, particularly in rural areas. The Internet and Mobile Association of India (IAMAI) Internet in India Report (2015) found that India had over 317 million users accessing the Internet at least once a month. Of this, urban India accounted for 209 million users out of an overall urban population of 414 million people, while rural India accounted for 108 million users out of an overall population of 922 million people. This is approximately around 25 per cent of the country's population. One of the foremost reasons for rural areas lagging behind urban areas with regard to access to ICTs is that spectrum allocations in the lower-frequency coverage bands, under 1GHz, are inadequate in providing an economically viable network. Besides, existing operators don't generate enough revenue in rural areas and therefore, do not invest in building infrastructure. The Census of India identified 6,40,932 rural settlements and 7933 urban settlements (2011) within the country. Rural settlements are eighty times more numerous than urban settlements. Yet, according to a report by Deloitte (2015), the distribution of towers is skewed towards urban areas, with 61 per cent of towers as opposed to 39 per cent of towers in rural areas.

There are also other reasons like the lack of infrastructure coupled with harsh terrain and often-vast distances between communities, and the low income of rural communities. In addition to this, access to electricity is another hurdle in rural areas, with only 55 per cent of rural households having access to electricity (Census of India, 2011).

The above mentioned barriers are exacerbated by the lack of awareness about benefits of ICTs, in spite of access to ICTs being available. The IAMAI survey (2015) also found that 76 per cent of Indian respondents cited lack of awareness about the internet as the reason they weren't online. Beyond basic awareness, a significant number of individuals have been exposed to the internet but choose not to go online because they don't see the value in its potential uses.

Internet users in rural and urban areas have varying usage and preferences because of differences in devices, network capabilities and underlying consumer behaviour and the patterns can be expected to evolve over time as they gain more experience by browsing more sites. According to the IAMAI(2015), urban users use the Internet for online communication the most (71 per cent), followed by social networking (67 per cent), entertainment (59 per cent) and online shopping and online ticketing (at 23 per cent and 24 per cent respectively). Rural users' primary use of the Internet is for entertainment (44 per cent), social networking (33 per cent), and communication (37 per cent). Online ticketing and online shopping account for 14 per cent and 5 per cent respectively.

With the aim of providing stable and affordable connectivity in rural areas; both the government and some major corporations are attempting to resolve this issue with network sharing, National Optical Fibre Network (NOFN) project and other initiatives. With the NOFN project initiated in 2011, the government has aimed to provide broadband connectivity of a minimum of 100 Mbps to over 2,50,000 *Gram Panchayats*⁵ (local self-government organizations in India of the Panchayati Raj⁶ system at the village or small-town level) with non-discriminatory access to the network for all categories of service providers. This government initiative estimated that the rural internet users would increase from 60 million in June 2014 to 280 million in the year 2018 (Rao, 2015).

In the north-east, most of the people are digitally excluded as these states have been getting internet connectivity through Mumbai and Chennai International Internet Gateway, but the problems of weak signals and drop of linkages were faced because of long distance. To tackle the connectivity issues, an agreement had been signed between Bangladesh Submarine Cable Company Limited (BSCCL) and Bharat Sanchar Nigam Limited (BSNL) in June 2015 to provide unimpeded and high speed internet with large bandwidth. Besides, India's third International Internet Gateway (IIG) after Mumbai and Chennai is being installed at Agartala through Cox Bazar Cable Landing Station of Bangladesh for the north-eastern regions of India—Assam, Meghalaya, Mizoram, Tripura, Manipur, Nagaland and Arunachal Pradesh (Indo-Asian News Service, 2016).

Google has also taken the initiative to bring affordable internet access to rural India with project 'Loon', the infrastructure for which would be big balloons floating at a height of 20 kilometres above the Earth's surface for the transmission of internet services. They have also partnered with telecom companies to share the cellular spectrum enabling people to access internet from their phones and LTE (Long-Term Evolution, commonly marketed as 4G LTE) enabled devices. Though this project is under development, it is expected that its implementation will result in greater access to internet services and reduce digital exclusion (Press Trust of India, 2015).

Thus, there are different initiatives and projects to provide the network backbone for connecting villages, yet grassroots connectivity remains a challenge because of poor implementation and lack of monitoring.

Insufficient infrastructure and network coverage, combined with digital illiteracy and absence of discretionary money contribute to complete digital exclusion of most of the villages. Consider the case of the *Agariya* community, which is a De-notified

Box 1: Including the Agariyas

In this era of real-time communication where mobile phones in many ways define the human experience, there's still a place in our country where people communicate with each other by way of reflecting mirrors. In the Little Rann of Kutch in Gujarat, mirrors are one way to reach out to each other.

The 4,953 sq. km Little Rann, home to about 3,500 families belonging to the Agariya (salt worker) community, is known as India's 'Survey Number Zero' because no land survey has been conducted here since the British left. Several attempts have been made by activists working in the region to get government officials to come and see the living conditions here. Yet, majority of the Agrariyas continue to live a life of virtual non-identity and is [sic] mostly paid poorly by middlemen for their labour. The Agariya community is a denotified tribe scheduled [sic] that has been farming salt for centuries.

This peculiar lifestyle means that their children hardly ever get a chance to go to school. When I visited the Little Rann, I got a chance to see about 17 schools made of rugs and sacks around the area of about 10-20 km from Patadi block headquarters of Surendra Nagar district (Manzar, 2016 b).

Scheduled Tribe⁷ that has been farming salt for centuries.

The Agariyas are being socially and digitally excluded as they don't have access to better opportunities in terms of education and employment; and don't have access to ICTs (Box 1).

2.3 Illiteracy

Literacy is a prerequisite for being able to participate fully in society—including the act of getting online. A low literacy rate is a major impediment to increasing internet penetration, while digital literacy and skills are important in allowing access to digital information. Literacy, according to the Census of India, 2011, is the ability to read and write with understanding in any language. A person who can merely read but cannot write is not classified as literate. As per the Census (2011), literacy rate in India is 74.04 per cent with a 14 per cent increase from 2001. However, there isn't enough statistical data with regard to the level of digital literacy (the ability to effectively and critically navigate, evaluate, and create information using a range of digital

devices and technologies) possessed by people.

Generally, online content and information are designed for an audience that reads at an average or advanced literacy level and has discretionary money to spend. Non-users often lack the digital skills to be able to access mobile internet and discover what is available. This can be compounded by a lack of motivation due to the perception of limited relevant content. People in many disadvantaged groups are often precluded from making use of ICTs because of low levels of computing and technology skills. This is a significant factor in completely excluding certain people from using the internet technologies (Salinas, 2003). Lack of digital literacy is combined with a lack of motivation where people don't associate the benefits of the internet and other digital devices with their personal needs, believing that 'computers are not for them.' As a result, they behave very passively towards the ICTs and become completely digitally excluded.

To close the digital divide, a National Digital Literacy Mission (NDLM) has been initiated by the government with the vision to empower at

least one person per household with digital literacy skills by 2020, and help users to harness the power of technology and develop necessary skills to start using ICTs with confidence.

Another reason for digital exclusion is the language in which content is available on the internet. India is a culturally, religiously and linguistically diverse society. At least 80 per cent of all content on the internet is in one of 10 languages: English, Chinese, Spanish, Japanese, Portuguese, German, Arabic, French, Russian, or Korean (World Bank, 2014). Language fragmentation within India compounds the challenge as it has 22 official languages in 11 scripts and hundreds of unofficial languages. Despite the large number of individuals who speak the country's major languages, none of these languages appear among the top 10 languages on the internet. Lack of relevant (localized) internet content is a hurdle for the people whose primary language is not English and prevents people from familiarizing themselves with benefits of internet-based information.

The number of Wikipedia articles in Indian languages fall woefully short of the top 10 languages on the same platform. To put the sheer scale into perspective, the number of Wikipedia articles in English stand at 5.308 million versus 1,14,399 articles in Hindi; 1,10,856 in Urdu; 89,578 articles in Tamil; and 46,815 in Malayalam (Wikipedia Foundation, 2016).

An IAMAI report (2016) on 'The Proliferation of Indian Languages on the Internet' stated that the increase in online local language content would lead to an increase of 39 per cent in the number of internet users. Further, the report highlighted that rural India will be the primary driver of this growth (75 per cent), while in urban India the growth will be 16 per cent. The report also found that the local language user base is growing at 47 per cent annually, and reached 127 million in June 2015. Thus, it may be postulated that availability of

internet content in local languages will increase the number of internet users in India.

2.4 Disability

In the evolving information-based society, providing digital access and digital services to persons living with disabilities has become an issue of major importance. The word disability indicates human limitation of one kind or another, in performing various tasks performed by other human beings in general. Disability may be of one or more kind—motor, mental or sensory, including visual and hearing. Over 26.8 million people in India are suffering from one or the other form of disability, which is equivalent to 2.1 per cent of the total population. Among the total number of disabled people in the country, 14.9 million were males and 11.8 million were females, although the number of disabled was more in rural than in urban areas (Census, 2011). Ghai (2002) noted that extant socio-cultural exclusionary processes compounded disability-related exclusion for women leading them to be doubly excluded.

The lack of access to information is a major problem for people with disabilities. Though no data is available on the ownership of ICT devices and internet usage by people with disabilities, still it can be said that due to different kinds of limitations, persons with disabilities are not able to use ICTs with ease. Disabled users face many difficulties in accessing and using ICTs—motor disabilities may restrict the use of input devices, a visually impaired user may have difficulty in seeing display devices, a hearing impaired user may have difficulty in hearing audio information, and a person with learning/cognitive disability may have problem in understanding system operations.

In order to facilitate equal and unhindered access to electronics and ICTs by PWDs, the Ministry of Electronics and Information Technology (2013) formulated the 'National Policy on Universal

Electronic Accessibility' that recognizes the need to eliminate discrimination on the basis of disabilities and to facilitate equal access to electronics and ICTs. The policy also recognizes the diversity of differently-abled persons and provides for their specific needs, covers accessibility requirements in the area of electronics and ICTs, and also recognizes the need for ensuring that accessibility standards and guidelines, and universal design concepts are adopted and adhered to. India is also plagued with a host of issues including, but not limited to, the lack of institutional funding for educational initiatives for children with disabilities (UNESCO, 2013).

ICTs along with assistive technologies have helped persons with disabilities to access digital information and overcome various obstacles faced in all types of environments. Some of the assistive technologies such as touch screen interface can be beneficial when used in combination with software like on-screen keyboards, or other assistive technology, by making computing facility accessible to people who have difficulty in using computers.

Also, a range of software is available for the visually impaired that makes using a computer an easier, more enjoyable and more productive experience. A screen reader transmits whatever text is displayed on the computer screen into a form that a visually impaired user can process (usually tactile, auditory or a combination of both). But many people cannot afford this as the hardware for screen-reading is usually very expensive, and websites without any accessibility features aren't compatible with screen readers or their new features, making it a major challenge for visually impaired users to comprehend the information. This policy shall be covered in a following section in the chapter.

Overall, the cost of assistive technologies comprising the cost of the technology as well as the cost of assistive technology assessment, training and support services, is still a significant barrier that prevents persons with disabilities from fully accessing

digital services (See Shilpi Kapoor's quote below). Even when they are free, assistive technologies or embedded accessibility features in commodity products may still remain unused if there is a lack of experts and rehabilitation professionals trained in the use of these technologies and features.

Shilpi Kapoor, Founder of Barrier Break addressed the nature of the problem saying,

Many economic factors play a vital role in access to ICT and assistive technology, the foremost being affordability and availability. With an income below average, most persons with disabilities are unable to get access to ICT and assistive technology. Access to Internet in rural or remote areas is also a problem. Many in the rural areas are not aware of funding options if any and do not know where to approach for subsidized rates. Proper training is also an important factor. Just having a technology without knowing how to use it is a waste (2016).

To overcome the barriers of inaccessible web design, Web Accessibility Initiative (WAI, n.d.) guidelines are adopted for promoting the use of ICTs for people with disabilities. These guidelines are published and broadly used for the World Wide Web Consortium (W3C) Web Accessibility Initiative. Web Content Accessibility Guidelines (WCAG) 2.0 give a range of recommendations for making web content more accessible to a wider range of people with disabilities, including blindness and low vision, deafness and hearing loss, learning disabilities, cognitive limitations, limited movement, speech disabilities, photosensitivity, among others. Web applications developed using these guidelines often make web content more accessible to users in general. These standards have been around for a decade but still much of the web remains inaccessible to the disabled population.

According to a survey conducted by the Centre for Internet and Society (CIS) in 2012, almost 25 per cent of 7800 government websites failed to

open and the remaining had accessibility barriers. The web accessibility survey report of Indian government websites, revealed that out of the 200 government websites tested, only two were found to be disabled-friendly (Minhas, 2014). There are around 7800 websites of Government of India and even the few that claim accessibility, don't meet the international standards.

Despite the growing awareness of web accessibility issues, people with disabilities are still facing barriers to digital access and digital services; they need to switch and coordinate with different information-seeking strategies such as browsing, scanning, etc. Individuals using screen readers face navigational problems due to a lack of understanding of the different ways in which users interact with and navigate web-based resources. Thus, assistive technologies provide limited information on web page layout by imposing navigational constraints. Other barriers contributing to digital exclusion of the disabled are interface design and the interpretation of speech synthesis to convey the content on the page. Screen readers are voice synthesizers that can read the text on a screen. However the internet is inaccessible to the blind and visually impaired users because the screen reader is unable to read the graphically based web page (Cullen, 2001).

Besides, cost of technology and limited awareness create an obstacle in accessing ICTs. Estimates from the 58th round of NSSO, conducted in 2002 showed that only 26.3 per cent of disabled persons were engaged in economic activities. Thus, economic instability makes it difficult for PWDs (Persons with Disability) to afford computer and other digital devices (Somavia, 2009).

It is quite obvious from the above that the degree of ICT usage is limited among persons with disabilities and the situation becomes more challenging with PWDs residing in rural areas and those belonging to low-income groups.

2.5 Gender

The barriers women and girls face in getting online both reflect and reinforce gender norms. The gender digital divide is one of the most significant inequalities amplified by the digital revolution.⁸ The IAMAI report (2015) reveals an unsettling gender gap when it comes to accessing the internet—males account for 71 per cent of internet users, while women account for just 29 per cent. The gap is slightly lower in urban India, with men accounting for 62 per cent and women 38 per cent. The gap is quite stark in rural India, where the men to women internet user ratio stands at 88:12. In the Gender Gap Index (World Economic Forum, 2016), India ranked at 87 out of 144 countries on gender-based disparities based on economic, political, education, and health-based criteria. In India, marked disparities in education, income, employment, age, location (urban or rural) and cultural norms restrict women's ownership of phones and access to the internet, thus contributing to digital exclusion.

The prevalence of traditional restrictions has also served to hamper women's access to technology. The most important concern is the bizarre restrictions on women using mobile phones in rural India. Some groups in India inhibit women's access to technology and impose bans on women using and owning mobile phones by saying that mobile phones were 'debasing the social atmosphere' by leading young women to elope (Aljazeera, 2016). In Bihar's Sunderbadi village in Kochadham block of Kishanganj district, the Panchayat imposed a penalty of INR 10,000 if an unmarried girl was found using a mobile phone (Shetty, 2012).

Social barriers prevent women from actively engaging with the digital world as most of the time they are monitored by male members of the family, in addition to the lack of support from other family members. The Women and the Web Report (Intel, 2013) revealed that one in five women in India believe that the internet is not 'appropriate'

for them. Many women are socially conditioned to believe that using the internet would not be useful for them, and if they did, their families would disapprove.

Other important factors determining women's online access are the affordability and awareness about the internet. The cost of internet access intersects with gender norms that discourage female internet use. The Women and the Web Report (2013) revealed that 40 per cent of women cited a lack of familiarity or comfort with technology as a reason for not using the internet and, particularly, women who were uncomfortable with technology lacked the exposure to internet technologies that would make them more aware and allow them to develop their computer and digital literacy skills. According to a report by the World Wide Web Foundation (2015), the two primary barriers keeping women offline were the perceived lack of know-how and high cost of internet. The report also stated that women are 1.6 times more likely than men to report lack of skills as a barrier to internet use. According to a survey conducted by Google, only one-third of the total Indian population with access to the internet were women and 49 per cent of women did not see any reason to access the internet (Indo-Asian News Service, 2015). So, lack of skills eventually affects their motivation and online behaviour.

Apart from all these factors, access to education hinders their participation in the digital space. Census of India (2011) clearly indicated that the female literacy rate (65.46 per cent) in India was lower than the male literacy rate (80 per cent); parents didn't send their daughters to schools and thus, restricted their involvement in many academic spheres. In India, 51 per cent of women can read and write compared to 75 per cent of men, and without this fundamental skill the internet and the benefits of the online world remain out of reach.

The most vulnerable group in terms of complete digital exclusion is women and the condition

becomes worse when they belong to the lower rungs of the economic ladder and reside in rural areas. India being a patriarchal society, it is difficult for women to reach for better opportunities and empower themselves not only within the household but also in their community spaces. Women are taught to be specialized in domestic work such as looking after siblings, cooking food, cleaning the house, etc., right from their childhood. The reality in census data clearly shows that the literacy rate among women is lower than men. In addition, women have always been accorded lower status than men and are dominated by male members within the family and society at large. In addition, women have low participation in the labour force in India. According to a report by the International Labour Organization (ILO), 2016, only 26.91 percent of the adult females in India participate in the workforce.

Even technologies are gendered with men's control of technology, information and knowledge limiting women's opportunity to learn, use and benefit from it. Both historical and current data show that women's access to technology lags considerably behind that of men. Melhem, Morrell & Tandon (2009) also claim that, 'Women and girls are poorly placed to benefit from the knowledge society because they have less access to scientific and technical education specifically and to education in general.' The skewed nature of women's access to ICTs in India reflects across all age groups. However, highly educated women are a notable exception, as they reportedly use the ICTs as much as men, suggesting that given educational opportunities and the means to do so, the results could have a levelling tendency with respect to the gender divide in digital inclusion.

Undeniably, cultural and societal norms, lack of education, control over finances, lack of access to ICTs, and a lack of comfort with technology make women digitally illiterate and hinder their participation in the digital space.

2.6 Age

Mark Prensky (2001) put across the concept of Digital Natives and Digital Immigrants where he said that today's generation is called N-gen (N for Net) or D-gen (D for digital) where all students are the 'native speakers' of the digital language of computer, video games and the internet, whereas Digital Immigrants refers to those who were not born into the Digital Age but have at some point of time become fascinated with the new technology. Today, these Digital Immigrants are turning to the internet for getting information or building social networks, and are in the process of learning the digital language. Digital Natives, that includes the youth, are acquainted with digital literacy and education; therefore, these people reap the maximum fruits of ICTs.

The Pew Research Centre (2015) found that there are big demographic differences with regard to internet access in the United States. It can be postulated that similar to the findings in the US, younger, more-educated and higher-income Indians are more likely to use the web than older, less-educated and lower-income Indians (relative to the median household income within India). A comScore report (2013) highlighted that men under 35 and women between 35 and 44 are heavier Internet users. According to the Ericsson Consumer Lab report (2015), mobile internet users grow substantially, with four times the number of users over the age of 50, and three times the number of middle-aged users increasing in the past two years.

According to 'Online and upcoming: The Internet's impact on India', young people (those under 35 years) are nearly twice as likely as older people to use internet-related technologies such as smartphones and Voice over Internet Protocol (VoIP), and they show a greater propensity to transact online and use electronic social networking modes that ride on India's expanding 3G/4G telecom networks in urban centres (McKinsey & Company, 2012).

Mukherjee (2011) stated that only the educated and affluent class is proficient in ICT usage in India, and dependence of the elderly limits their access and capacity to reap the benefits of ICT usage. IAMAI and IMRB (2013) also reported that 15 per cent of the senior citizens accessed the internet from cyber cafes, and 81 per cent of them are using the internet for more than five hours a week. In terms of the services accessed on the internet, 62 per cent of them used it for watching news online and 2 per cent read news on their mobile. About 26 per cent of them look for stock quotes and engage in trading, 38 per cent of senior citizens are using the internet for online banking services and 21 per cent for online shopping. Singh's (2004) study also highlighted that persons aged 15 to 24 (45 per cent) used the internet daily. Older respondents, especially in the 45 to 54 year old category (27 per cent), used the internet once a month.

The other factors that influence the elderly's internet use are socio-economic status, psychological capital (e.g., depressive symptoms, general anxiety symptoms, and general self-efficacy) and social capital (e.g., indicators of social integration/ties and social support). Other than these, usability problems (e.g., small fonts, difficulty of navigation) and associated frustration with the systems, partly due to the cognitive, perceptual, and motor skills, are some of the other reasons that contribute to digital exclusion of the elderly.

According to the Central Statistics Office, Government of India (2016), India has 103.9 million people above 60 years of age. The issues of digital inclusivity become more complex with the physical and cognitive limitations associated with ageing. The vulnerability among the older people is not only due to an increased incidence of illness and disability, but also due to their economic dependency upon their spouses, children and other younger family members. It is clear that a digital divide exists between age groups because the youth are more exposed to technology and are willing to

use it, whereas older people are resistant to change and avoid the use of technology.

3. Process of Digital Exclusion

The exclusionary processes surrounding digital tools and services have long been thought of in isolation. However, in recent years, a more comprehensive approach to exclusion and inclusion studies has been on the rise.

There are complex processes and reasons for India's lack of progress in providing equitable digital access to its citizens—they may be attributed to institutional weakness, policy detachment and the lack of context-specific solutions, among others. Exploring the myriad reasons is beyond the scope of this chapter. This section seeks to explore some specific aspects and processes of digital exclusion.

3.1 Ineffective Agencies

The modest liberalization of the economy in India that began in the 1980s aimed to transform the digital economy and digital access. IT initiatives at the national level were started in the year 1981 with the establishment of National Informatics Centres (NIC) at all the district headquarters in our country. Under the aegis of NIC, many projects like computerization of land records, Public Grievance Redress Monitoring System, Distance learning programme, computerization up to the *taluka*⁹ level, creation of State Wide Area Network (SWAN), video-conferencing, training programme for creating awareness, etc., have been undertaken.

In 1999, the Ministry of Information and Communication Technology (MCIT) was formed. The Ministry adopted ICT for promoting literacy, improving quality of education, which resulted in qualified professionals and IT-enabled jobs for Indians. It is also employing IT for good governance, for empowerment of people and their participation

in shaping policies of governments, and overseeing it.

The National IT Task Force was constituted in 2003 to provide guidelines for development with the aim to make India an IT superpower. It focused on a number of programmes and policies designed to build the capacities of Indian institutions in IT and IT enabled Services (ITeS). The IT Task Force focused exclusively on increasing institutional access to technology, without any focus on last-mile connectivity, which would provide ICT access to the individuals at the bottom of the pyramid.

India's focus until the mid-2000s was exclusively to improve this institutional access to allow for a top-down model of development that ultimately fell short of its intended goals, and individual access to digital tools remained abysmally low. This is reflected in the limited penetration of computers which stood at 1.4 per cent in 2005 (Times News Network, 2005).

Access to ICTs was mediated by their relatively high price and unavailability at grassroots levels and to a large extent, still continues to be.

3.2 Exclusion by the State

Miliband (2006) spoke about the multi-dimensionality of exclusion and highlighted certain key ideal government approaches to exclusion, saying:

- It is relative and relational—exclusion has multiple factors of causation and is determinant on a continuum of exclusion for different individuals in the spectrum.
- It is multi-dimensional—based on a denial of resources, rights, goods and services and the inability to participate in normal relationships and activities.
- It is embedded in power relations that constrain and define the capabilities and choices of individuals.

Government policies/projects may be designed with the intention of promoting greater inclusion. However, there is a considerable gap between the intention of such policies/projects and the actual implementation on ground. This is caused due to ineffective and detached policy/project design. The approach cited by Miliband is frequently overlooked.

Additionally, the multidimensional nature of ICT inclusion projects means that, while the Ministry of Electronics and Information Technology (MeitY), formerly a department under the Ministry of Communications and Information Technology (Sharma, 2016), is the nodal ministry for ICT, interventions in education, health, rural governance, etc., are anchored by different ministries.

The core policies that deal with IT across the country is the Information Technology (IT) Act, 2000 (Ministry of Law, Justice and Company Affairs (Legislative Department), 2000) and the IT (Amendment) Act, 2008 (Ministry of Law and Justice (Legislative Department), 2009). These laws only deal with the techno-legal aspects of IT in the country and define violations and penalties. They have no direct impact on digital exclusion.

When examined through the lens of human rights, it can be said that the imposition of criminal penalties on legitimate expression online is creating a chilling effect that may impact new internet users unfairly. There is evidence to show that this avenue of exploration is, unfortunately, beyond the purview of this chapter but it nonetheless highlights the nuanced challenges towards achieving holistic digital inclusion in India.

At the 32nd session of the United Nations Human Rights Council, a non-binding resolution titled ‘The promotion, protection and enjoyment of human rights on the Internet’ (United Nations General Assembly, 2016) was adopted which seeks to promote greater access to the internet and a rights-based approach to maintaining the tenets of the

Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). A set of amendments was led by China and Russia, which aimed at reducing the protections of the tenets of the UDHR and ICCPR within the resolution. India, surprisingly voted in favour of the amendments (Article 19, 2016). We note this in particular because the Digital India Plan, which is explored in detail further in this chapter, aims at providing universal internet access. At the same time, the government seems reluctant to sign a non-binding resolution to incorporate a rights-based approach to ensuring this access. This is perhaps, the most telling form of state-led digital exclusion.

3.2.1 National Policy on Universal Electronic Accessibility, 2013

The National Policy on Universal Electronic Accessibility, referenced in the earlier section, is the only policy document available on the MeitY website that deals with increasing digital inclusion. However, a review of this policy reveals gaps in the cognizance of the inter-sectionality inherent in the goal of providing universal access to persons with disabilities. As noted in the earlier section, PWDs are more likely to have reduced income and employment opportunities. This, in turn would also decrease their opportunities to access digital tools and services. The policy, while recognizing ‘the diversity of differently abled persons’, only specifies differently-abled women and children as a specific target group. It does not account for PWDs from the poorer and marginalized sections.

3.2.2 National Broadband Policy, 2004 and National Telecom Policy, 2012

The National Broadband Policy, 2004 (Ministry of Communications and Information Technology, 2004), was created with the intention of increasing the proliferation of broadband connectivity in the country, which at the time of drafting stood at

0.02 per cent. This policy only took cognizance of provisioning broadband access in rural areas, with no mention on how to increase access for women, PWDs or the elderly.

The National Telecom Policy (NTP), 2012 (Ministry of Communications and Information Technology, 2012), was adopted with the intention of addressing issues in telecom proliferation and regulation, that have arisen with the increasing penetration of telecommunication and internet in the country. The NTP recognizes the need for increasing telecom penetration in the rural and remote geographical regions of the country. It does not focus on the intersections of exclusion either.

Reassuringly, the NTP, 2012 did mention creating a 'Right to Broadband' that would focus on rural and remote areas, but no work has been done in that regard yet.

The state, in its policy formulation does not explore the myriad of extant exclusionary processes that plague the intended beneficiaries of these policies. This leads to widening traditional exclusions in addition to digital exclusion.

We posit that exclusionary processes exist on the ground during the implementation of government projects, with little or no empirical evidence available about the discrimination and exclusion involved. However, there exists anecdotal evidence (See Box 2) which echoes the discrimination found in the implementation of the public distribution system in India, particularly the Mid-Day Meal

Scheme (MDMS) and public health delivery systems. Studies have found that these programmes are fraught with issues surrounding physical access, participation and community-level access for individuals from Scheduled Castes and Tribes.

Thus, it may be postulated that since state actors/functionaries are the real on-ground implementers of government programmes and policies, the motivations of these actors may lead to the reinforcement of differential access on social, economic and cultural grounds. While they may genuinely believe in the programme, they are still susceptible to personal biases.

3.3 Poor Implementation of Programmes

3.3.1 Common Service Centres under the National e-Governance Plan

In 2005, the government launched the National e-governance Plan (NeGP, 2016) that placed a major focus on the development of technology-enabled governance services to 'improve the delivery of public services and simplify the process of accessing them.' The NeGP introduced the Common Service Centre (CSC), which was conceptualized as 'front end service delivery outlets enabling smooth and transparent governance at the village level.' They were envisioned as change agents that would 'promote rural entrepreneurship, build rural capacities and livelihoods, enable community participation and affect collective action for social change—through a bottom-up model that focuses

Box 2: Discrimination in Access to Digital Services

In a village outside Coimbatore, the Common Service Centre is run by a dominant caste man. While he may allow men from lower castes to access the CSC, he is strictly against women from lower castes accessing the CSC. His argument is that women, especially lower caste women, do not have any need of accessing digital tools and services. CSC operators are an integral part of the implementation of the digital inclusion agenda of the Government of India.

Anonymous quote received by Research Team, 2016

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on the rural citizen.' CSCs are essentially telecentres or telecottages that provide public internet access points in rural areas. While noble in aim, challenges in implementation lead to scepticism about such

telecentres. Dagron (2001) observed that, globally, only one out of a hundred telecentres is actually useful for the community.

Table 2 gives the status of the CSC rollouts

Table 2: CSC Rollout as on September 2012					
States	Total CSCs to be set up	Roll Out as on 30th Sept 2012	Roll Out as on 30th Sept 2012 (per cent of target)	CSCs Connected	CSCs Connected (per cent of rolled out centres)
Andaman & Nicobar Islands	45	10	22.2%	10	100.0%
Andhra Pradesh	4687	3105	66.2%	3110	100.2%
Arunachal Pradesh	200	200	100.0%	141	70.5%
Assam	4375	3881	88.7%	3136	80.8%
Bihar	8463	6608	78.1%	5063	76.6%
Chandigarh	13	25	192.3%	30	120.0%
Chhattisgarh	3385	2460	72.7%	1248	50.7%
Delhi	520	0	0.0%	0	0.0%
Goa	160	29	18.1%	29	100.0%
Gujarat	13,685	13,685	100.0%	13,685	100.0%
Haryana	1159	0	0.0%	0	0.0%
Himachal Pradesh	3366	2803	83.3%	2048	73.1%
Jammu & Kashmir	1109	717	64.7%	544	75.9%
Jharkhand	4562	3292	72.2%	2538	77.1%
Karnataka	5713	800	14.0%	800	100.0%
Kerala	2200	2235	101.6%	1899	85.0%
Lakshadweep	18	12	66.7%	12	100.0%
Madhya Pradesh	9232	9270	100.4%	8549	92.2%
Maharashtra	10,846	10,428	96.1%	8116	77.8%
Manipur	399	399	100.0%	127	31.8%
Meghalaya	225	225	100.0%	115	51.1%
Mizoram	136	136	100.0%	107	78.7%
Nagaland	220	0	0.0%	0	0.0%
Orissa	8558	5302	62.0%	3632	68.5%
Puducherry	66	65	98.5%	65	100.0%
Punjab	2112	1588	75.2%	1588	100.0%
Rajasthan	6626	4224	63.7%	4178	98.9%
Sikkim	45	45	100.0%	43	95.6%
Tamil Nadu	5440	2683	49.3%	2683	100.0%
Tripura	145	145	100.0%	197	135.9%
Uttar Pradesh	18,745	12,828	68.4%	10,025	78.1%
Uttarakhand	2804	2329	83.1%	1406	60.4%
West Bengal	6797	6120	90.0%	5609	91.7%
TOTAL	1,26,056	95,649	75.9%	80,733	84.4%

Source: Open Government Data (OGD) Platform India

across various states in 2012 from data.gov.in. The table shows that most of the states had not been able to meet the rollout deadline. At the start of this project it was stipulated that the project should achieve the 100 per cent rollout status within 18–24 months after signing the Service Agreement with the respective state governments.

However, when we see the information presented in Table 2, as of 2012, only 10 states have been able to achieve full rollout of CSCs across the state. The Andaman & Nicobar Islands, Delhi, Goa, Haryana, Karnataka and Nagaland have zero per cent rollout of the CSC. It is particularly distressing to see the lack of CSC connectivity in Haryana and Nagaland, which suffer from issues of literacy and geographical connectivity. On an all-India scale, only 75.9 per cent of the total allocated CSCs have been created. However, over 80 per cent of constructed CSCs are connected.

One important reason for the poor rollout of these centres was the poor IT infrastructure, lack of adequate institutional frameworks and governance mechanisms for ensuring the successful rollout of the CSC programme.

The state governments were expected to provide premises for the setting up of these centres in their Panchayat buildings or block offices. But there seemed to be a scarcity of space for the same across states (Dass and Bhattacharjee, 2011). In states like Jharkhand some of the Panchayat blocks did not have space. Tripura on the other hand had assigned premises in which the ceiling of the room was missing. Another problem, particularly in the north-eastern states as well as states like Jharkhand and Chhattisgarh, was the uneven and rough geographical terrain. Some of the villages are located in remote and inaccessible locations making it impossible to set up a centre in those areas. This was indeed unfortunate considering it is the people living in such areas who have a greater need of easy access to government services.

Dass and Bhattacharjee also identified issues in the proper implementation of the CSC project, citing lack of Government to Citizen (G2C)¹⁰ services, poor connectivity, lack of Village Level Entrepreneur (VLE) recruitment with the right skill sets (due to low literacy rates in the concerned areas) and lack of cooperation from government officials, especially at lower levels. In addition to these issues, lack of proper infrastructure and lack of connectivity is a key factor in the failure of the CSC project.

Due to the involvement of the central government, state governments and private players through a unique PPP model, a comprehensive budgetary analysis is not possible.

3.3.2 Digital India Plan

In 2014, a newly elected government, led by Prime Minister Narendra Modi, launched the Digital India (DI) Plan (Ministry of Electronics and Information Technology, Government of India, 2015) that aimed at building on the NeGP and working towards improving individual access to technology across the country. The DI Mission centred on three key aims: Digital Infrastructure as a Utility to Every Citizen, Governance and Services on Demand, and Digital Empowerment of Citizens. Its approach to achieve these aims was through nine unique pillars:

1. Broadband Highways
2. Universal Access to Mobile Connectivity
3. Public Internet Access Programme
4. e-Governance—Reforming Government through Technology
5. eKranti—Electronic delivery of services
6. Information for All
7. Electronics Manufacturing
8. IT for Jobs
9. Early Harvest Programmes

The DI Plan is, at the time of writing, exactly two years old and while new initiatives like DigiLocker, eSign and the MyGov App have been launched, the efficacy of these projects is still debatable. A review of 18 apps launched under the DI Plan, conducted in August 2016, showed that almost all of them are inaccessible or partially inaccessible to individuals using screen readers (Narasimhan, 2016).

National Optical Fibre Network/BharatNet

One of the initiatives under Pillar 1 of the DI Plan was the revamping of the National Optical Fibre Network (NOFN) into the newly envisioned BharatNet (Rathee, 2016) The NOFN has its roots in the NeGP, which aimed to provide ICT enabled delivery of Government services. Public IT platforms such as State Wide Area Networks (SWANs), State Data Centres (SDCs) and Common Service Centres (CSCs) facilitate this delivery.

It aims to provide broadband connectivity through optical fibre to 2,50,000 Gram Panchayats in an effort to provide last mile connectivity as critical infrastructure. The aim was to provide all necessary government services to citizens in an effort to allow them access to information, which would lead to their empowerment and development. It was a result of the coming together of policy and a vision

of managing a high quality network with a link to services to provide on-demand access to citizens.

The initial timeline of the NOFN was to cover 1,00,000 gram panchayats by 31 March 2014 in the first phase; to cover another 1,00,000 by March 2015 in the second phase and an additional 50,000 by September 2015 in the final phase. This timeline was extended once in 2014 to March 2015, March 2016 and December 2016 for the three phases. The second extension to the timeline came with the change of the first 1,00,000 panchayats to be covered by March 2017. While no deadlines for the other phases have been specified, the intention is to complete the coverage of 2,50,000 panchayats by December 2018. The implementing partners of the NOFN—Bharat Sanchar Nigam Limited (BSNL), RailTel Corporation of India Limited (RailTel) and Power Grid Corporation of India Limited (PGCIL) have also been called up by the Government for dragging their feet on the implementation of the project (Singh, 2016). According to the Department of Telecommunications (DoT), only 37 per cent of the total optical fibre planned has been laid (Table 3).

As of April 2016, only 48,199 panchayats of the 1,00,200 were targeted under Phase 1, indicating a 48 per cent success rate. Of the panchayats connected to the NOFN, only 6727 panchayats

Implementing Partner	Districts	Blocks	Gram Panchayats	Optical Fibre to be laid (Km)	Optical fibre laid (Km)
BSNL	410	2146	84,366	1,85,742	70,298 (37.85%)
RailTel	44	225	8676	19,331	4967 (25.69%)
PGCIL	28	356	7156	17,198	7236 (42.07%)
Total	482	2727	1,00,200	2,22,271	82,501 (37.12%)

Source: Department of Telecommunications Outcome Budget 2016–17

Table 4: State-wise Plan of Gram Panchayats (GPs) to be covered under NOFN/Bharat Net Project Phase-I as on May 2016				
S. No.	States/ UTs	No. of Gram Panchayats (GPs)- Phase I	No. of GPs where optical fibre cable (OFC) laid	No. of GPs lit (with broadband connectivity)
1	Jammu & Kashmir	624	91	0
2	Himachal Pradesh	283	28	0
3	Punjab	6128	3051	0
4	Haryana	6090	3147	160
5	Rajasthan	6967	3757	308
6	Chandigarh	12	12	12
7	Uttarakhand	1767	711	183
8	UP (West)	8040	2721	131
9	UP (East)	14,474	5910	70
10	Bihar	5202	2423	215
11	West Bengal	2713	723	0
12	Sikkim	0	0	0
13	Assam	1013	682	128
14	Jharkhand	1388	985	135
15	Odisha	3388	1633	104
16	Andaman & Nicobar	69	0	0
17	Arunachal Pradesh	256	22	0
18	Nagaland	743	154	0
19	Manipur	24	24	0
20	Meghalaya	638	52	0
21	Tripura	1021	492	75
22	Mizoram	163	0	0
23	Madhya Pradesh	10,516	5170	150
24	Chhattisgarh	2110	1550	514
25	Gujarat	5735	2203	116
26	Maharashtra	12,055	4865	201
27	Daman & Diu	0	0	0
28	Dadra & Nagar Haveli	0	0	0
29	Karnataka	5599	5008	2889
30	Andhra Pradesh	0	0	0
31	Telangana	2097	1558	106
32	Tamil Nadu	0	0	0
33	Kerala	977	1129	1129
34	Puducherry	98	98	101
35	Lakshadweep	10	0	0

Exclusion from Digital Infrastructure and Access

S. No.	States/ UTs	No. of Gram Panchayats (GPs)- Phase I	No. of GPs where optical fibre cable (OFC) laid	No. of GPs lit (with broadband connectivity)
36	Goa* (All have been connected)	NA	NA	NA
	Grand Total	1,00,200	48,199	6727
		GPs where OFC is available as a percentage of Phase 1 target	48.10%	
			Connected GPs as a percentage of GPs where OFC available	13.9%
			Connected GPs as a percentage of Phase 1 target	6.71%

Source: RajyaSabha, Analysis by DEF Research Team.

have internet access, which is only 13 per cent of the connected panchayats or 6 per cent of the total scheduled for Phase 1 (See Table 4).

The NOFN was funded by the Universal Service Obligation Fund (USOF), with an initial corpus of INR 20,000 crores. However, according to a report (Committee on the National Optical Fibre Network, 2015), the actual total budget needed to achieve the vision of the NOFN is INR 72,778 crores. This represents a budget increase of 363.9 per cent.

3.3.3. Demonetization and the Push towards Digital Financial Payments

On 8 November 2016, the Government of India withdrew the status of all INR 500 and 1000 (high-value) notes as legal tender with immediate effect, citing the intention to curb tax evasion and counterfeit money (Reserve Bank of India, 2016). Overnight, about 86 per cent of the liquidity within the Indian economy was rendered invalid. Most of the Indian economy is based entirely on cash, with an estimated 85 to 90 per cent of all transactions taking place in cash (Reuters, 2016). The impacts of this action have been criticized by various quarters—Kaushik Basu, Amartya Sen,

Stephen Forbes and Prabhat Patnaik, apart from the opposition parties in the country (Roychoudhury, 2016; PTI, 2016; Forbes, 2016; Patnaik, 2016; PTI, 2016; ANI, 2016; PTI, 2016).

The currency demonetization drive and the frequent changes of rules regarding transactions (*Economic Times*, 2016; *Indian Express*, 2016) further led to significant human costs. The agricultural sector, due to undergo the *rabi*¹¹ crop planting season was hit especially hard with the withdrawal restrictions, despite measures taken by the government to ease stress on the farmers. This was compounded given the fact that a majority of farmers are not part of the formal banking system, due, in part to the lack of adequate infrastructure and bank branch penetration, with one report citing that ‘Four banks cater to 200 villages of about 2,000 people each’ (Firstpost, 2016). The CRISIL Inclusix, 2015, found that of the 35 administrative regions studied, 10 ranked low or below average on overall financial inclusion. The key crop belt of Uttar Pradesh, Bihar and Jharkhand all fall below average (CRISIL, 2015); which would lead to significant impacts on the ability of farmers in these belts to access cash and credit, leading to further

hardship and farmer suicides (La Via Campesina, 2017). Further, many of the farmers had just sold the produce from the earlier crop season and were left with the demonetized high-value notes that were not accepted anywhere else.

Despite all the intentions of the state in pushing digital financial payments, it is our contention that this too, represents how detached from reality state policies and programmes are. There are multiple considerations that policy makers did not take into account when making a decision to abruptly invalidate 86 per cent of the liquidity in the Indian economy and pushing digital payments.

- **Mobile connections in India**—According to figures released by the Telecom Regulatory Authority of India (Telecom Regulatory Authority of India, 2017) in October 2016, the total tele-density¹² stood at 86.25 per cent. This figure is often misleading as it accounts for the total of wireline and wireless subscribers. Exploring wireless tele-density paints a different picture; with a stark urban-rural disparity with urban tele-density standing at 155.35 and rural at 51.98. The penetration of mobiles, the key enabler of digital finance, is woefully lacking in the regions which account for 67.25 per cent of India's population (World Bank, 2015).
- **Smartphone penetration**—Smartphone penetration in India has been estimated at 29.8 per cent of the total mobile users in the country (Statista, 2015). Smartphones, as opposed to feature phones have the capability to access the internet and use third-party applications to enhance their functionality and flexibility of use. Given that most of the digital payments options, including the government's own BHIM application, run only on smartphones, it automatically excludes a significant per cent of the mobile phone users, in addition to those that do not have a mobile altogether.

The central government has also taken steps to incentivize the use of cashless digital payment systems, going so far as to state that 'An incentive of INR 10 will be given to the district administration for every individual who has shifted to digital payment mode and has made at least two digital transactions for day-to-day activities' (*Business Standard*, 2016). This incentive is, in the opinion of the authors, positively delusional as it still doesn't address the underlying gap; only incentivizing an activity that cannot be achieved.

- **Extant socio-economic and cultural exclusions**—The key mediators of traditional exclusionary process, already stated earlier in the chapter, would create 'double-trouble' for the effective implementation of the programme as financial exclusion is also mediated by these extant processes, similar to the case of the access to ICTs for women with disabilities.
 - A comprehensive assessment of the challenges faced by women in accessing digital financial services conducted by Klapper and Dutt (2015) showed that inequalities exist at different stages.
 - Demand-side inequalities like lack of identification, lower financial literacy; lack of financial independence and autonomy of agency, and socio-economic sanctions create a barrier-filled environment for women to demand access to digital finance.
 - Supply-side issues like patriarchal digital finance application design and marketing and the poor mechanisms for recourse can limit financial literacy.
 - Infrastructural and policy issues relating to legal and regulatory environments, Know-Your-Customer (KYC) rules, lack of adequate network access and

taxation limit the quality and depth of interventions.

- Finally, women's access to technology is a key barrier to accessing digital finance.

4. Consequences of Digital Exclusion

Digital divide between high, medium, low and non-users means disadvantaged users always have to play catch-up in obtaining access to ICTs because of weak digital infrastructure and lower levels of digital skills. Little research has been done on the impact of digital exclusion on the above-mentioned disadvantaged or socially excluded groups. Despite the lack of information, the following section provides an understanding of the consequences of digital exclusion on education, livelihood, social participation and citizenship.

4.1 Education

Internet access serves as a gateway to empowerment by building self-confidence, self-determination and the capacity to alter the structure that governs people's citizenship. ICTs are changing ways of doing things and increasing the overall efficiency of human activity. The Internet is enabling one to have access to almost any kind of information on one's fingertips. The use of ICTs in education not only enhances the knowledge and skills but also improves the educational content of both the learner and the educator.

Kulik (2003) conducted a meta-analysis of studies to identify the impact of e-learning on student outcomes. He identified the following trends:

- Students who used computer tutorials in mathematics, natural science, and social science score significantly higher in tests in these subjects compared to students who did not use computers. Similarly, students who used simulation software in science also

scored higher. However, the use of computer-based laboratories alone did not result in higher scores.

- Primary school students who used tutorial software in reading scored significantly higher on reading scores. Very young students who used computers to write their own stories scored significantly higher on measures of reading skills
- Students who used word processor or otherwise used the computer for writing scored higher on measures of writing skill.

4.2 Livelihood

India comprises 67.25 per cent of rural population (World Bank, 2015). NREGA, initiated in 2005, aimed at securing livelihood by providing at least one hundred days of guaranteed wage employment to rural households in India. Under this programme, ICT-based interventions were added to enable the rural population to access information on their work history, demand jobs against a dated receipt, and also receive wages on a biometric registration. This would require proper establishment and operationalization of a computer-based Management Information System (MIS) interconnecting all the gram panchayats, blocks, districts, states and the Ministry of Rural Development (MoRD).

The Unique Identification Authority of India (UIDAI) and MoRD signed a Memorandum of Understanding to integrate MGNREGA processes with Aadhaar. It was expected that Aadhaar would soon facilitate a range of MGNREGA, banking, insurance and other services for rural citizens. However, in spite of much hype by the government it was reported (Mathur&Bolia, 2016) that compensation paid on time drastically declined from 50.1 per cent in 2013–14 to 26.90 per cent in 2014–15. In 2008, the central government directed that all

Box 3: Wages of Delay

In Surguja district (Chhattisgarh), the administration relies on post offices as there are hardly any rural banks. In one block, the post office had only one employee who was responsible for opening and operating thousands of NREGA accounts. All the work is done manually as there are no computers. In addition, the postmaster complained that the formalities of opening accounts remained incomplete because he did not have enough passbooks. (The supply of passbooks in the district was delayed for months.) Similar problems have been reported wherever NREGA payments are made through post offices, in states like Rajasthan and Jharkhand.

Source: Kheera (2010).

MGNREGA wages be paid through banks and post offices. However, the banks and post offices were unable to cope with the volume of payments (Kheera, 2010). Similar arguments against linking Aadhaar to the Public Distribution System (PDS) have been made in a recent article in *The Hindu* (February 2017), wherein activist Kavita Srivastava observes that linking Aadhaar to social security systems, in this case for food entitlements, is not just unconstitutional, but works systematically against the poorest who are most often at the receiving end of subpar technology infrastructure required for a biometric identification system such as Aadhaar to function.

In the wake of falling market prices of food products, weather challenges, outdated methods of farming, high cost of production and often low yields and poor income, the central government started Kisan Call Centres. Live assistance is provided to farmers in their regional language. It is a combination of ICT and Agriculture technology. It enables farmers to have direct discussions with subject matter experts who provide instant solutions. Despite advertisements on TV and print, a survey reported in *Firstpost* (2014) showed that 70 per cent of the farmers surveyed never contacted a Kisan Call Centre, and 62 per cent had no idea that they are eligible for a minimum price. Lack of awareness about ICTs was a major hurdle in making both Kisan Call Centres and MGNREGA a success.

The push to digital payments along with the effects of demonetization have also had a strong negative impact on the informal sector in the country, with workers in the construction, industrial and service industry being disproportionately impacted. Many vegetable vendors have reported losses of over 50 per cent on a daily basis (Mitul, 2016; DNA, 2016). The lack of a choice of payment channels has also led to a massive reverse-migration of people from urban areas back to villages. This reverse trend has also broken the migrant-dependent nature of certain areas of the country (Naik, Kundri, & Parulkar, 2017; Mahaprashasta, 2016).

4.3 Social Participation

Digital exclusion leads to social exclusion by restricting people's accessibility to the internet, thereby narrowing down the social network where people can express their viewpoints, share their experiences and communicate.

Internet usage has positive benefits for the older people as these people perhaps face high rates of loneliness and depression. This occurs for a variety of reasons, including dearth of social ties, relocation to different types of living and care communities, and limitations of physical and mental health (Jylha, 2004). Social network sites such as Facebook not only provide a platform to reconnect with the people from one's past but also

bridge the generational gap. With ICTs increasingly integrated into every aspect of the modern world, access to ICTs is vital for a person's participation in the society.

The relationship of disabilities and digital inclusion and empowerment has been explored in depth by UNESCO, which states that digital exclusion of PWDs leads to increased inequalities in the ability of these persons to allow their social, political and economic integration. It also leads to a reduced scope of information, knowledge and activities available to them. The New Delhi Declaration of 2015 was the first document in 20 years issued by UNESCO on the issue of disability that was endorsed by its governing bodies (UNESCO, 2015). The Declaration recognized that for persons with disabilities, the issue of universal access to information and knowledge using ICTs is an inalienable human right and precondition to live independently and participate fully and equally in society. It also reasserted the commitment to the World Summit on the Information Society (WSIS, 2005), Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind or Visually Impaired (WIPO, 2013) and other internationally ratified development goals.

5. Recommendations

The previous sections have demonstrated how access to ICTs is a public good, explored some of the exclusionary processes and laid out impacts of digital exclusion on certain groups. The success of our recommendations depends on an understanding that digital exclusion has a predominantly socio-economic basis and is reinforced by entrenched hierarchical structures in the society.

As Pippa Norris (2001) noted, absolute social inequalities will continue to exist in internet access just as they exist in other dimensions of life, '... it would be naive to expect that the internet will

magically transcend information poverty overnight.'

This section aims to propose a set of recommendations that, if properly implemented can make significant strides towards bridging the digital exclusion gap.

1. There is a need for the government to realize that due to low per capita disposable income in India not everybody can have easy access to digital media and the internet. Since access to digital media ensures access to other basic entitlements like education, health, provident fund, food, etc., public provisioning of digital media becomes extremely important. It is recommended that it be provided at a subsidized rate in order to avoid the free rider problem.¹³ This will reduce misuse of resources and allow access to those who are actually in need and cannot pay the rate generated by the market.
2. Though there are different programmes initiated by the government to bridge the gender divide, still proper implementation is required to address the issues of literacy and poverty. To digitally empower women, digital ICT programmes must address socio-cultural barriers to women's access to internet and ICT devices.
3. The government should ensure that ICTs are fully integrated in education and training at all levels to bridge the digital divide. Also, existing programmes should be integrated with digital and information literacy targeting individuals with lower literacy levels.
4. The government should provide relevant support in assistive technologies and should organize ICT training for people with disabilities. In addition, all government websites should be made compatible with the W3C Guidelines and a process should

be put in place to ensure these standards are maintained to further guarantee successful implementation, and to make portals accessible to persons with disabilities and the elderly.

5. Awareness should be created among persons with disabilities about the availability of existing and emerging assistive technologies and independent living aids, as well as schemes for the same. Such information should be made available in the public domain including in local languages.
6. There needs to be more comprehensive research about internet usage patterns, challenges faced in accessing internet and the influence of digital exclusion on PWDs and older people. Due to the fractured nature of digital inclusion activities and budgets, further research needs to be conducted to comprehensively analyse digital exclusion.
7. The government should incentivize private and non-governmental actors in bringing technology to rural as well as other geographically inaccessible and remote areas.

Conclusion

We previously established the digital medium as a public good and highlighted how digital exclusion deprives citizens' access to other public goods and widens extant social, economic and cultural stratification in society. Digital inequality leads to deprivation from access to basic necessities like—

pension, daily wage, food, safe drinking water, basic health facilities and education, which dilutes the level of agency that a citizen can effectively exercise. On the one hand, the government aims at making India a superpower, and on the other, deeply rooted exclusionary processes lead to digital exclusion that further leads to the deprivation of often basic rights and needs, affecting the overall growth and dignity of an individual.

Cultural norms play an important role in limiting women's access to internet. Weak infrastructure, ineffective implementation, bureaucratic hurdles and weak monitoring have failed to bridge the digital divide between rural and urban areas.

To improve social welfare, it is important that the government provide public goods such as digital access, as it helps to avoid the problem of under-provisioning and under-consumption of information. It is important because it helps people living below poverty line to avail equal opportunities thereby reducing inequality.

In this chapter, we highlighted certain factors that reinforce digital exclusion—income, gender, age and disability. Individuals, who embody any one of these, lie on a continuum of exclusion. When one of the other factors also comes into play, the risk of exclusion increases manifold. It is especially important that the government should try to advocate equal rights, organize vernacular ICT trainings and provide relevant support to such individuals so that they are not excluded from accessing the internet and its related benefits.

Endnotes

1. E-MitraKendras are telecentres that enable villagers to get various entitlement-related services.
2. National Rural Employment Guarantee Act (or MGNREGA) is an Indian labour law and social

security measure that aims to guarantee the 'Right to Work'. It aims to enhance livelihood security in rural areas by providing at least 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.

3. Aadhaar is a 12-digit unique identification number issued by the Indian government to every individual resident of India. The Unique Identification Authority of India (UDAI), which functions under the Planning Commission of India, is responsible for managing Aadhaar numbers and Aadhaar identification cards.
4. Discretionary income is the amount of an individual's income that is left for spending, investing or saving after paying taxes and paying for personal necessities, such as food, shelter and clothing. Discretionary income includes money spent on luxury items, vacations, and non-essential goods and services.
5. A gram panchayat is the cornerstone of the Panchayati Raj system (local self-government organization) in India. It operates at the village or small town level and has a Sarpanch (head of village) as its elected head.
6. The Panchayati Raj system is a decentralized system of governance prevalent in rural areas in India. While the Panchayati Raj system is based on the traditional panchayat system, it was formalized through the 73rd Constitutional Amendment, 1992.
7. Denotified Tribes (DNTs), also known as VimuktaJati, are the tribes that were originally listed under the Criminal Tribes Act of 1871, as 'Criminal Tribes' and 'addicted to the systematic commission of non-bailable offences.'
8. The Digital Revolution refers to the advancement of technology from analogue electronic and mechanical devices to the digital technology available today. The era started during the 1980s and is ongoing. The Digital Revolution also marks the beginning of the Information Era.
9. A taluka or tehsil is an administrative division in India that includes a town or city that serves as the administrative centre with a few villages or other towns under its jurisdiction.
10. Government to Citizen Services are a set of certain services that the government provides to the citizen. In India, G2C services in India include Aadhaar Card, Voter ID Application, MNREGA job application, PAN Card application, etc.
11. The Rabi season is from October to February.
12. Teledensity is the number of telephone connections for every hundred individuals living within an area.
13. Free rider problem occurs when those who benefit from resources, goods, or services do not pay for them, which results in an under-provision of those goods or services.

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"Morning to evening I weed out the fields", says Vannurappa, a Dudekula-Muslim in his 70s on his way back home after work, Rural Anantapur.
Photo Credit: Rahul M.

Exclusion and Expulsion in Agriculture

*Sandeep Chachra, Amanpreet Kaur and Dr P. Raghu**

1. Introduction

Agriculture and production of food has been the fundamental premise of growth of all known civilizations. In fact, agriculture presents itself as a home for the majority of human labour, even to this day. As per the Food and Agriculture Organization (FAO), in 2010, about 2.6 billion people around the world were dependent on agriculture for their livelihoods either as actively engaged workers or as dependants, while about half of the world's population lived in rural areas and of these, about three-quarters were estimated to be living in agricultural households (FAOSTAT, 2013 as cited in Alston & Pardey, 2014, p.1).

The classical economic transition school, in a visual reminiscent of colonial Europe of the 18th and 19th centuries that saw an agrarian transition, envisions our diverse world following a universal pattern of 'evolution' or transition from agrarian societies to industrial or post-industrial complexes with overwhelming majorities of human labour outside of agriculture. It insists that such a transition is both a universal path to build on and a solution to address under-development and poverty in the global south.

While it could be argued that, in its full manifestation, such a transition is both historically impossible and ecologically undesirable in a

country like India, this essay focuses on who suffers the costs of such a transition; and consequently who is excluded 'from' and 'in' agriculture.

It is often said that both Indian agriculture and the labour market exclude. The exclusion is of the most vulnerable sections dependent on agriculture.¹ Since those who are most excluded in agriculture end up in the informal labour pool, where they continue to face exclusions, unsurprisingly the informal labour reservoirs in India are comprised of those who are most marginalized—the indigenous, Dalits, landless, migrant workers, refugees and so on.² Women also constitute an important segment of this pool. However, as per the International Labour Organization (ILO), between 2004 and 2011, when the Indian economy grew at a healthy average of about 7 per cent, there was a decline in female participation in the country's labour force from over 35 per cent to 25 per cent.

At one level, it could be said that the long history of discrimination based on caste, religion and identity, resulting in multiple denials of education, resources, employment opportunities, etc., has kept a large section of people away from securing a decent and dignified livelihood and employment in the non-agricultural sector. This indeed is the case with many in the non-agricultural sector, and such causalities are rather well documented (Sharma, 2007; Thorat, 2009; Rawal, 2014; Anand, 2016). At a more fundamental level, however, the real

* Reviewers: Praveen Jha, Nikita Sud

issue in need of analysis is the continued process of exclusion in agriculture as well as the tenability and desirability of creating wage labour reserves, and the resolution of the deepening outcomes of exclusion and deprivation. This way we ought to steer the primary agrarian question in India in favour of the populations who have faced multiple denials.

2. Trajectories of Exclusion from Agriculture

Over the decades after independence, exclusion from agriculture has operated in three distinct, yet inter-related trajectories.

2.1 A History of Feudal Dispossession and Caste-based Exclusion from Land

The question of who owns agricultural land and land in general and who does not, from the past, is an important one. With rural landlessness mounting up, this question constitutes the unfulfilled promise of land redistribution in India. In fact, it was the promise of land and dignity that spurred our national liberation struggle. The land question in India is one of historic exclusion; an overhang of feudal history and caste relations coupled with a clear lack of political action over the past decades. It still constitutes an unfinished agenda of land reforms (MRD Report, 2013), but it is not just an unfinished agenda in its longer historical sense. In the last six decades too, there has been a drastic fall in the category of 'cultivators' and a corresponding increase in the category of agricultural labourers. In 1951, for instance, the percentage of cultivators was 71.9 per cent and that of agriculture workers was 28.1 per cent. The figure in 2011, however, stood at 45.1 per cent cultivators and 54.9 per cent agricultural labourers (Agriculture Statistics at a Glance, 2014, GOI, Ministry of Agriculture). This fall represents a continued process of de-peasantization without

land reforms and redistribution, often premised on the reasoning that there is not enough land for all.

2.2 The Trajectory of a Gradual yet Continual Commodification-Corporatization of Agriculture and the Starvation of Peasant Agriculture

This tendency can be broadly summarized as a dual process that operates to push people out of agriculture, through such justifications that people wish to leave agriculture and move to a better city life, on the one hand, and encourage corporate/contract farming and land leasing for capitalist agriculture, on the other. While several state governments such as Andhra Pradesh, Gujarat, Karnataka, Punjab and Tamil Nadu are actively promoting contract farming, changing laws to enable and support it, and providing interested companies with a variety of incentives, including lifting of land ceilings, subsidies and tax rebates, others like the West Bengal government are under active pressure to shift their policy towards contract farming (Ghosh, 2003).

While the role of private companies and corporates has been increasing in agriculture, the public investment is dwindling. The decline in agricultural investments started in the 1980s and is continuing till date. The share of agricultural investment to total public investment, for instance, declined from 15.3 per cent in 1980–81 to less than 8 per cent in 2009–10 (Jha & Acharya, 2011). The share of the budget for agriculture in the overall budget and Gross Domestic Product (GDP) is stagnant at 2.25 per cent and 0.30 per cent respectively for the past five years (CBGA, 2016).

Starvation of Peasant Agriculture has operated through the following conjoined processes:

- a) Stagnation in public financing for agriculture through reduction of subsidies to small holder farming, and farming in general, with

its differential impact on those who have less land.

- b) Slow down and reduction in agriculture extension services, research, coverage and increased privatization of such services.
- c) Stagnation in irrigation coverage and lack of investments in revival of traditional water harvesting mechanisms, particularly for rain-fed areas.
- d) Increase in the area under cash crops and commercial agriculture.
- e) Limited increase in minimum support prices for small farmers.
- f) Increase in dependence on world food trade demands and associated volatility

2.3 An Active Process of Dispossession of Land of those who Managed to 'Hang On', Despite Decades of Negative Pressure on Peasant Agriculture

Such a process operates through what, in the Indian context, is called 'Land Acquisition' and what, in the continent of Africa, is referred to squarely as land grabs. Some even pose and generalize this process as 'development induced displacement' (Terminski, 2013); an irony whose spuriousness never escapes those ousted from agriculture. According to Dr Walter Fernandes, the figure of persons displaced/affected by such development projects is estimated at around 60 million for the period from 1947 to 2004, involving 25 million hectares of land which includes 6 million hectares of other common property resources (CPRs) (Fernandes, 2007). This process of displacement has in fact impacted tribal populations disproportionately. The tribals constituting 8 per cent of the population have shouldered 55 per cent of the displacement till 1995 in the name of development. In so far as this scramble for land or accumulation by active

dispossession is concerned, its main thrust is to establish large scale farming and extractive enclaves for the export of food, biofuels, minerals and energy resources by means of value chains integrated into a global market and monopolies thereof, and bolstered where needed (such as in North and other parts of Africa, for instance) by militarization (CARES report on The Agrarian Question: Past, Present and Future, 2012, p. 5)

This scramble, together with the starvation of peasant agriculture and an unwillingness to redistribute land, is responsible for the expulsion of a mass of people to labour reserve pools; a large army of wage workers, in a race to the bottom, constitute the core of the agrarian question in the South.

Beyond the escalation in the proportion of dispossession—over the past two decades, the critical question is who has evacuated? With the data currently available from national statistics, empirically it may not be possible to segregate such evacuations and assign them to the specific trajectories listed above. But what is clear is that 7.7 million peasants have left farming in one decade (an average of 2035 per day) as per our National Census Data. Many others are in the processes of searching for other possibilities, while still engaged in farming for the months when rainwater is available. Even in areas where land dispossession is not extensive, virtually all peasant farmers practise more than subsistence agriculture. They contribute to the swelling number of circular, seasonal or temporary migrants; many of them being distressed migrants. Millions of farmers and labourers who are affected migrated to cities in search of work. An ActionAid India study on drought across seven states, conducted in 2016, reported extensive migration to cities.

A constellation of these factors gives a multi-occupational colour, which several refer to as semi-proletarianization³ (Moyo, Jha & Yeros, 2013), and

Box 1: Drought Refugees

Lack of work and income in drought-affected areas has forced people to migrate in huge numbers to nearby towns and cities in search of work and livelihood. 'Migration from the affected districts has increased two to three times as people suffering due to drought are leaving their habitations for survival' (Mander, 2016). Sphere India's situation report indicated that, due to lack of livelihood opportunities, 60% of the young population in Bundelkhand areas of Madhya Pradesh migrated to other cities and states (Sphere India Report on SITREP: Drought in Bundelkhand Region of UP & MP and Maharashtra, 2016, p.3). In Telangana, according to farmers' organizations, nearly 1.4 million people have migrated from the worst-affected districts of Mahabubnagar, Ranga Reddy, Medak, Nizamabad and Adilabad. A.S. Malla Reddy, the Vice President of All India Kisan Sabha, in an interview to IANS, pointed out that such rampant migration is indicative of the terrible living conditions in Telangana.

It is found that migration, which has been a common phenomenon in the regions of Marathwada, Bundelkhand and Telangana, has increased significantly. There is more than 20% population migration from affected villages in these regions to nearby cities. A significant number of children and women accompany their families to cities. One of the important observations is that the number of people who go to nearby towns for wage work and come back by late evening after work has increased significantly in the past 3 to 5 years (ActionAid India, 2016).

we see it especially expanding in the last 30 years on account of the factors mentioned above or a combination of those.

3. Who is excluded in Agriculture?

Indian economy continues to be largely agriculture-based. Table 1 shows that almost 50 per cent of the rural households in India are dependent on the income from the agriculture sector for their sustenance. Out of these, 35.3 per cent households are earning their livelihood from working in the agricultural fields as self-employed workers and only 15.47 per cent are employed as casual labourers in agriculture. The percentage of households dependent on agriculture varies on account of the degrees of access to resources related to agriculture, i.e., land ownership, landholding size, source of irrigation, credit, extension services, infrastructure, technology, risk coverage, etc. Households

belonging to socially excluded and disadvantaged groups have several challenges in accessing these resources because of the discrimination and exclusion they face on the basis of caste, religion and gender (Thorat, 2009).

Table 1 presents the outcomes of this status hiatus in terms of the eventual outcomes of income and wellbeing. Scheduled Caste households, Muslim households and female-headed households have a larger dependency on underpaid and casualized agriculture and non-agriculture wage employment. Households that are reported as self-employed in agriculture are very few among Dalits (SCs) (19.13%), Muslims (21.7%) and Women (24.1%). On the contrary, Others, Hindus and male-headed households are reported with better earnings from self-employment.

It is often said that, with resources like equitable access to productive means, self-employment is way better than casual employment in certain

Table 1: Major Sources of Income Reported by Different Households in Rural India						
Household characteristics	Self-employed		Casual labour		Salary/regular wage	Others
	Agriculture	Non-agriculture	Agriculture	Non-agriculture		
Social group						
ST	40.45	4.18	15.85	25.98	9.36	4.18
SC	19.13	6.20	26.94	33.21	8.14	6.38
OBC	38.77	10.73	13.03	22.57	8.22	6.68
Others	43.34	9.74	8.01	15.48	13.18	10.25
Religion						
Hindu	37.44	7.85	15.73	22.99	9.17	6.83
Muslim	21.71	16.27	14.99	30.20	8.71	8.10
Christian	29.20	8.72	11.01	18.21	21.62	11.24
Others	26.57	8.12	13.32	28.62	13.13	10.29
Sex of head of household						
Male	37.29	9.37	15.29	24.23	9.03	4.80
Female	24.10	4.96	16.50	21.52	12.30	20.62
All	35.31	8.71	15.47	23.83	9.52	7.17

Source: Compiled from India Human Development Survey, 2011–12.

situations and as has been explained previously, employment in agriculture depends on access to different resources related to agriculture. Land is an important agricultural resource and ownership over agricultural land is an important indicator of economic wellbeing and social condition in rural areas (Rawal, 2008). Hence, access to it is crucial for socially disadvantaged households (Rawal, 2008).

Land ownership patterns in India are very lopsided and biased against socially deprived groups (Rawal, 2014) and even after 60 years of land reforms, this continues to be the reality of the hierarchical socio-economic conditions in our country. ‘...The pattern of land distribution in India, therefore, reflects the existing socio-economic hierarchy. While large landowners invariably belong to the upper castes, the cultivators belong to the middle castes, and the agricultural workers are largely Dalits and Tribals.’ (Ministry of Rural Development, 2013). ‘It is also seen from the field that even after all these interventions the

landlessness or near-landlessness among the poor, especially the Scheduled Castes and Scheduled Tribes, is considerable and the demand for land is still being unmet. (Department of Land Resources, 2013, p.4). So, the moot question here is how this discrimination and exclusion towards socially deprived groups’ works. Here follows an analysis of how exclusion and discrimination in agriculture operate on the lines of caste, gender and religion. However, while the available literature provides a picture of the caste-based segregated data, the data and literature with respect to the gender and religious dimensions are insufficient. We sourced and analysed the National Sample Survey Organization (NSSO) data to understand the exclusion on the basis of caste, religion and gender.

Exclusion on the basis of social group is most commonly practised in India, specifically in rural India, as caste or social group is a social reality here (Hazari & Kumar, 2003). The average size of land holding, livestock and even occupation of a

particular family vary according to the caste of the family (Hazari & Kumar, 2003). On this basis, the most excluded social group is the Scheduled Caste (SC). Scheduled Caste people are on the lowest ladder of caste hierarchy (Thorat, 2009) and they face exclusion most in land and asset holdings (Thorat, 2009; Rawal, 2014). [See table concerning percentage distribution of households and land ownership by caste groups and by states in Appendix 1].

The second most commonly exercised exclusion is on the basis of gender. Indian society is a deeply patriarchal society where it is assumed that men are the breadwinners and women are the dependents (Agrawal, 1994). On the basis of this assumption, women do not have any right over their family land or any hereditary land owned by family. The family lands are typically transferred in the name of the male member of the family like, son or grandson (Agrawal, 2003). The exclusion of women can be seen to be perpetuated through the institution of marriage and the laws that govern ownership of property (Patel, 2006). As a result of occupational mobility, male members of households are migrating away from agriculture which eventually burdens the women in the family with all/most of the agricultural labour; yet neither do they have a socially sanctioned role in the decision making related to agricultural work nor have any right on the land. They are expected to be just working on and only as labourers in their own family fields (Kodoth, 2004). [See table concerning percentage distribution of households and land ownership by sex of head of household and states in Appendix 2].

Just as how social identities are crucial in determining the land holdings of the household (Hazari & Kumar, 2003), the religious identity of a household also plays an important role in defining access to different agriculture-related resources like land. As a result of exclusions on the basis of discrimination against certain religious beliefs, the

Muslim community in India has lagged behind other religious communities. There are not many studies on the land rights of the Muslim community in India. In the following paragraphs we have tried to analyse the nature and extent of exclusion faced by Muslim communities in agriculture with the help of available data sources.

There is one more group of people who face exclusion in agriculture and land holdings and that group is people with disabilities. The subject of the rights of persons with disability over land resources has not been studied. However, we have tried to understand their exclusion with the help of the data accessed from the Socio Economic and Caste Census (SECC) of India, 2011.

In the following sections the exclusion of these social groups in the area of land ownership, land holding sizes, quality of land, land leasing/tenancy and access to loans, etc., has been presented and discussed. Further a brief analysis is also provided on how land reforms failed these marginalized communities in the absence of political commitment.

3.1 Status of Land Holdings

In order to analyse the current pattern of land holdings in India, we have used the Land and Livestock Survey (70th round) conducted by the National Sample Survey Organization. NSSO classifies the ownership of land by one household into four categories: owned and possessed, otherwise possessed, leased in, and leased out. To show the disparity in the land ownerships, land categories such as owned and possessed, otherwise possessed and leased out land have all been used so as to show the total land owned by one household. In this analysis any homestead land owned by the household has not been taken into account because NSSO does not provide information on the uses of land, and homestead land has been typically considered as land not used for any productive

work (Anand, 2016). It is clear from Table 2 that land distribution in India is highly unequal and 41.86 per cent of rural households do not own any productive land (productive land including all types of land, except homestead land) and about 7.94 per cent of households do not even have their own homestead land (NSSO report, 2014).

Table 2 also presents a picture of the existing land ownership of different social groups in India. Over half of the Dalits, Muslims and women (who head households) in India have no agricultural land whatsoever. Data shows that landlessness is high among Dalits (57.3%), Muslims (52.6%) and women-headed (56.8%) households, castigating them to work as agricultural labourers to face the spectre of depressed and unequal wages. Among tribal communities, land ownership remains better protected because of laws and policies in place. Hence, the issues they face are mostly on account of dispossession, as a result of land acquisitions for various development projects. Tribals constitute

almost 40 per cent of the total number of people displaced in India due to development activities (Ministry of Tribal Affairs, 2014).

One can discern from the table a noteworthy fact that even the extent of land under the ownership of Dalits, Muslims and women is much less than that of the others. Out of the total households in the rural area, for instance, 20.2 per cent of Dalit households own only 8.95 per cent of the total productive land, while on the other side 23.2 per cent of Others' households own 32.24 per cent of the total productive land. Same is the case with Muslims and women (Table 2). Almost 52 per cent of Muslim households are landless, and 11 per cent Muslim households own only 5.37 per cent land. Households belonging to other religious minority groups own almost an equal or larger share of land than their share in total households.

Women, too, face a high degree of discrimination in rural areas. India's agrarian transition has been slow, uneven and highly gendered. There are

Table 2: Percentage Distribution of Households, all across India, on the Basis of Different Household Characteristics.			
Household Characteristics	Percentage share in total households	Percentage share in land	Percentage of landless households
Social group			
Tribes	11.90	13.06	33.80
Dalits	20.20	8.95	57.30
OBC	44.70	45.74	41.04
Others	23.20	32.24	34.16
Religion			
Hindu	84.58	88.92	40.46
Muslims	11.06	5.37	52.60
Christians	2.21	2.18	35.65
Others	2.16	3.53	47.89
Sex of head of household			
Male	86.40	92.99	39.51
Female	13.60	7.01	56.80
Total	100.00	100.00	41.86

Source: Compiled from Land and livestock survey, NSSO, 2013.

also gender inequalities in the intra-household allocation of resources, and a notable potential for production inefficiencies because of the unequal land distribution between men and women (Agrawal, 2003). According to the Census 2011, land ownership is skewed between men and women, who comprise 48 per cent of the rural population. Only 13.6 percent households have women as head of households, and they report an ownership of 7.17 per cent of the total productive land. Even where they report ownership of productive land there is the question of who actually controls the use of such productive land. While statistical data is not available, what has been observed through several micro-studies, is the tendency of male family members (brother, son, father and others) to actually control the land that officially belongs to the women in the family, particularly in the case of single women.

The composition of land distribution is very unequal and diverse if we analyse the distribution of land according to the size of the land holding.

Almost 94 per cent of the rural households are either landless or marginal or small farmers (table 3) and even among them Dalits, Muslims and women are marginalized in terms of the size of landholdings too.

Today the average rural Indian household, as per the new official data, is a marginal landowner, growing mainly cereals on a small patch of land and reliant on groundwater for irrigation. Also 84.87 per cent of the total holdings belong to marginal farmers who own less than one hectare (10,000 square metres), and just 7 per cent own more than two hectares as per the data on household land ownership from NSSO, 2014.

It is clear from Table 3 that while more than 84 per cent of Dalits and Muslims have marginal landholdings, among women this percentage is 80. Only 2.08 per cent Dalit households own more than 2 hectares of land, while 10.26 per cent households of Others have more than 2 hectares of land. As one moves towards land holdings

Table 3: Percentage Distribution of Different Households, across India, according to the Size of the Land Holding and the Class of Ownership						
Household Characteristics	Landless	Marginal	Small	Small-medium	Medium	Large
Social group						
Tribes	33.8	46.06	13.72	5.18	1.21	0.03
Dalits	57.32	35.98	4.62	1.58	0.47	0.03
OBCs	41.05	42.18	9.74	4.95	1.86	0.22
Others	34.16	44.4	11.18	6.57	3.16	0.53
Religion						
Hindu	40.47	42.29	10.08	4.95	1.96	0.24
Muslim	52.6	40.66	4.4	1.85	0.45	0.03
Christian	35.65	46.02	12.47	5.29	0.51	0.06
Others	47.89	28.92	10.62	7.7	3.66	1.21
Sex of Head of Household						
Male	39.52	42.99	10.13	5.13	1.98	0.26
Female	56.8	35.01	5.65	1.79	0.67	0.09
Total	41.87	41.91	9.52	4.68	1.8	0.23

Source: Compiled from Land and livestock survey, NSSO, 2013.

of a higher size, the percentage share of Dalit, Muslim and Female-headed households can be seen decreasing drastically in comparison to their other counterparts. Among the large land holders who have more than 10 hectares of land, 95 per cent households belong to OBC or Other category households and only 3 per cent belongs to the Scheduled Castes (Anand, 2016). Tribal people are over-represented among the landless, Scheduled Castes among marginal land-owners, and 'upper' castes among medium and large landholders.

From the above analysis, it is clear that with reference to land ownership too these households (Dalit, Muslim and Female-headed household) are the most deprived households in the rural economy, who do not have equal access to land. Their share in land ownership is meagre and the size of the land holdings, in their possession, is also very small. The 'growth' years, that saw drastic cuts in the budgetary allocation for agriculture, were also accompanied by a steady decline in the size of the average land holding. In 1992, the average rural household was a small landholder with over one hectare of land in comparison to a marginal land-holder as of 2013 with 0.59 hectares of land. Across the country, in every state, land holdings have decreased in size, bringing the size down to almost half in the last 20 years.

The extent of marginalization of Dalit families is the most striking in a majority of states. There are many states in India where the situation of Dalit households is deplorable. Even when they constitute a considerable share of total households, their share in land is negligible. For instance, in Punjab (39.8% Dalit households own 2.6% of land), Haryana (17.5% own less than 1% land), Delhi (41.6% own 7.4% land), Himachal Pradesh (28.6% own 15.6% land), Uttaranchal (21.1% own 11.5% land), Rajasthan (25% own 12.8% land), Uttar Pradesh (24.6% own 10.4% land), Bihar (16.4% own 3% land), West Bengal (31.4% own 18.2% land),

Madhya Pradesh (18.3% own 7% land), Andhra Pradesh (21.8% own 7.6% land), Karnataka (23.9% own 11.8% land), Kerala (13.5% own 2.2% land), and Tamil Nadu (27.3% own 14% land) (Appendix 1). There is not a single state where Dalit households own an equal share in total land holding and in total households. However, just the opposite is the situation with the category of households belonging to Others, as their share in total land is higher than their share in total households in almost every state. Also, the average size of land for SC households is less than the non-SC/ST households in every state (Anand, 2014), and this difference in the size of land holdings is not accidental but a fundamental construct of the caste system prevalent in Indian society (Hazari & Kumar, 2003).

The situation of women-headed households is also not much different. In Bihar, Andhra Pradesh, Goa, Tamil Nadu, Telangana, Lakshadweep and Daman & Diu, there is a huge difference between the percentage of female-headed households in the total households and their share in the total land (Appendix 2). However, on the contrary, in some North-Eastern states, Chandigarh, Chhattisgarh and Puducherry, female-headed households are in a better situation, thus masking the overall trend to make it seem more respectable (Appendix 2). Though Dalit households eventually got some control over land in the form of a share in government land, surplus land or common land, as a result of land reforms (Omvedt, 1996), it was always only the adult male or son of the family who was considered a unit for separate landholdings. Neither adult females nor married and unmarried daughters were ever considered a unit for land distribution, even during the period of land reforms, except in Kerala (Agarwal, 2003). So, ultimately, there has been no fundamental change in the situation of women not being owners of the land, even after the initiation of land reforms.

3.2 Quality of the Land of Excluded Groups

Coupled with the question of ownership is the question of the quality of land which reflects in its irrigation status. While data on quality of land of excluded communities as compared to those higher up in the caste hierarchy is not available, studies indicate that Dalits mostly possess degraded land both due to them being historically forced to settle in wastelands or low quality lands, or having been handed over degraded land as a result of the limited redistribution efforts carried out over the past seven decades (Mohanty, 2001). The quality of land under the cultivation of Dalits is also very poor with limited irrigational possibilities. 58 per cent of the land they possess has no irrigation facility. With regard to irrigation, the situation in tribal India and indeed the overall situation of all excluded groups seems better. However, this needs a deeper analysis to examine who has the best lands in India. For instance, when we analyse the situation of Dalit land ownership in the most fertile agrarian belt of India, the Gangetic belt, which has been at the centre of public investments in agriculture (irrigation, modernization, extension, research, inputs and infrastructure), we see that the condition of Dalits and indeed of Muslims and women is extremely tenuous {e.g., Punjab (39.8% Dalit households own 2.6% of land), Haryana (17.5% own less than 1% land), Bihar (16.4% own 3% land)}.

3.3 Unfinished Land Reforms and Exclusion

Land Reform efforts over the last decades have also not been in favour of Dalit communities or of women and Muslims. While data with reference to the latter two is not available, the fact that even limited land reform efforts are bypassing Dalit communities, like the redistribution of ‘ceiling surplus land’ as of 2013, bears testimony to the discrimination against Dalits in land reform measures. With reference to women, it can be said that the very idea of women as

owners of agricultural land or indeed of women as farmers is at best a nascent one, with little in terms of policies to support this advance and therefore it constitutes an important agenda and demand of women’s rights struggles across India.

Social group	Share in total beneficiaries	Share in total redistributed land
ST	38.73	37.38
SC	15.08	15.38
Others	46.19	47.24

Source: Author’s calculation based on data available on www.indiastat.com

Many studies reviewing the impact of land reforms on Scheduled castes and tribes found that the percentage of land redistributed in India is limited and the land which was to be redistributed remained mostly a promise on paper with no real efforts towards its implementation. ‘...inherent loopholes and ambiguities in the legislative measures, slow proceedings at all levels of bureaucracy, lack of updated land records, the ignorance and illiteracy of scheduled population, and the escaping attitude of the larger landowners are the major reasons that hindered fair distribution of land by allowing the bulk of land owners to avoid expropriation’ (Mohanty, 2001, p. 3862). As a result of both the lack of commitment on the part of the bureaucracy to implement land reforms and the nefarious designs of the big landlords to prevent the poor from accessing and cultivating lands, the land reforms failed. The cultivable wastelands are often actually cultivated by large, upper-caste landowners, and the proposed allotments to scheduled caste and scheduled tribe (SC/ST) landless households often remain on paper, as these allottees are forcefully evicted or at times not even allowed to take possession (Mander, 2013).

Many states had failed to redistribute land to the scheduled groups. ‘...Though the national guideline suggests that 50 per cent of the land to be distributed through land reform measures should be made available to scheduled caste and scheduled tribe beneficiaries, the distribution pattern in states like Tamil Nadu, Rajasthan, Punjab, Maharashtra and Kerala reveals a bias in favour of non-scheduled groups. A study of 13 states revealed that even after 50 years of planned initiatives and policy measures, there has not been substantial improvement in the landholding status of scheduled groups, and in some states, it has declined further’ (Mohanty, 2001, p. 3857).

3.4 Land leasing and Tenancy

What presents exclusion through another facet, is the question of tenancy and tenants. Tenancy in India is hidden and informal. Only a small percentage of land/households are reported under the leased in category. This is around 9 per cent as per the NSSO data. In reality this figure would be three times or more. ‘...there are other micro studies that point out that the NSS data does not fully capture the incidence of tenancy which varies between 15 to 35 per cent. About 90 per cent of the leased in area is informal and unrecorded. The landless and the marginal farmers constitute the bulk (91 per cent) of those leasing in land’ (MRD Report, 2013, p. 30).

Table 5 shows that this percentage is slightly more among Dalits (10%), when compared with the others. However the median land holding of the leased in land is hardly 0.28 hectares, thus shedding light on the social composition of the tenant farmers. The situation of Muslim households is also the same. The percentage of households reported as lessee households is the same for both Hindu and Muslim communities but the average area of leased in land by Muslim households is just half the area of leased in land by Hindu households. In the case

of female and male-headed households, the pattern is different; here the percentage of female-headed lessee households is less than the male-headed households but the area of leased in land is the same for both types of households (Table 5).

Table 5: Percentage of Different Households Reporting Leased in of any Land (excluding homestead land) and Median Area of Leased in land		
Household Characteristics	Percentage of households reporting leased in of any land (excluding homestead land)	Median area of leased in land (in hectare)
Social group		
ST	6.84	.47
SC	10.08	.28
OBC	8.92	.39
Others	9.26	.50
Religion		
Hindu	9.00	.40
Muslim	9.00	.20
Christian	7.16	.61
Others	10.19	1.21
Sex of head of household		
Male	9.77	.40
Female	3.99	.40
All	8.99	.40

Source: Compiled from Land and livestock survey, NSSO, 2013.

But when we look at the terms of tenancy, we see that they are not very favourable towards tenants in general with share of produce being a predominant mode of lease. This disadvantage is clear in the case of Tribals and Dalits (Table 6).

Among all social groups, around 53 per cent of Scheduled caste households leased in land on the basis of share in produce, which can be assumed to be a result of their adverse bargaining power. Around

Household Characteristics	Terms of tenancy							
	For fixed money	For fixed produce	For share of produce	For service contract	For share of product together with other terms	Under unfructuary mortgage	From relatives under no specified terms	Under other terms
Social group								
ST	16.59	23.39	39.10	0.72	1.07	0.74	14.46	3.93
SC	22.48	13.33	52.90	0.67	1.69	0.02	3.89	5.03
OBC	24.86	24.68	32.85	0.37	3.80	0.63	9.49	3.33
Others	43.78	20.07	24.20	0.16	1.07	0.02	8.52	2.17
Religion								
Hindu	27.06	20.39	37.23	0.49	2.86	0.23	7.81	3.93
Muslim	26.30	31.56	32.74	0.05	0.00	0.06	8.24	1.05
Christian	19.08	1.52	40.11	0.00	0.02	8.73	28.61	1.94
Others	77.29	4.19	1.67	0.00	0.00	0.00	16.44	0.41
Sex of head of household								
Male	28.64	21.86	36.10	0.40	2.48	0.21	6.98	3.32
Female	19.33	5.83	32.83	0.74	1.61	2.61	30.92	6.14
All	28.08	20.89	35.90	0.42	2.42	0.36	8.43	3.49

Source: Compiled from Land and livestock survey, NSSO, 2013.

64 per cent of the others households leased in land on either fixed money or fixed product contracts, which can be the result of their better socio-economic status. While female-headed households are mostly leasing in land, either on share system or from relatives under no specific terms, the male-headed households are leasing in land for fixed rent. However, as mentioned above, it is the tenants who are at the receiving end, as a majority of the tenancy is hidden and without any legal protection. Tenants are deprived of benefits and schemes like loans, crop insurance and subsidies, which are generally accessed by the land owners.

3.5 Status of Indebtedness and Loans

Credit access is one of the key factors that facilitate

agriculture. Unfortunately many farmers, especially small and marginal ones, are unable to access the credit from government institutions. In the 1990s, there was a sharp fall in the credit flow to agriculture and above all, the supply of agricultural credit sidelined the small and marginal farmers. After 1990, in terms of formal credit supply, small and marginal farmers were increasingly sidelined. The decline is persistent both in terms of the lending amount as well as number of accounts. In the 2000s, even when direct lending to agriculture increased, it was oriented more towards large agricultural business enterprises rather than marginal and small farmers. Small and marginal farmers are hardly represented in the lending class of more than 2 lakhs. The share of loan accounts held by small and marginal farmers declined in the 1990s and in

the 2000s (Ramakumar, 2007). Previous analysis informs us that most of the marginalized sections are small and marginal farmers.

Around 50 per cent of the rural households are under some kind of debt (Appendix 3). The median value of this debt is around INR 30,000. Among all social group households, the minimum percentage of indebted households is that of Tribal households (28.32 per cent) and they also have a minimum median value of outstanding debt. This is followed by the outstanding loans of Others households and Dalit Households at 46 per cent and 54 per cent respectively.

In the religion wise composition of households, less than 30 per cent of other minority community households have outstanding loans but the median value of outstanding loans is very high for these households. On the other side, 51 per cent of Hindu households and 44 per cent of Muslim households have outstanding loans which have a median value of anywhere between INR 20,000–30,000.

As mentioned above in Table 2, 86.40 per cent of the total households are male-headed households and only 13.60 per cent households have a female head. Among these 86.40 per cent male-headed households, almost 51 per cent households are indebted and among 13.60 per cent female-headed households, almost 41 per cent households are indebted (Appendix 3). There is also a difference in the average amount of outstanding loans in male- and female-headed households. Indebtedness is an indicator for access to credit and the data indicates that the female-headed households have less access to credit as compared to male-headed households. Further, when it comes to the source of this credit, female-headed households also have less access to institutional sources like banks. Although there has been an improvement in the Indian banking services, women have not gained much from these services as they have lower access to these institutional sources (Chavan, 2008).

In rural India the major source of loans is banks, followed by money lenders and relatives. But in the case of Dalits, the major source of loans is moneylenders (27.23%), while Muslims (25%) and women (24.3%) are dependent mostly on relatives for loans. It is evident that Dalits, Muslims and women are relatively deprived of institutional sources of loans from the government, thus taking away from them the possibility of availing institutional credit more generally (Table 7). Socio-economic and caste census tells us that only 3.61 per cent rural households have a Kisan credit card above the value of INR 50,000 (Appendix 4) and less than 2 per cent Dalit and Tribal households have a card worth INR 50,000. This percentage is a little higher for women-headed households. While the access to Kisan credit card is very low for all households, it is still narrower for those households that come under the deprived group.

Small and marginal farmers were affected with declining investment in agriculture. The post 1990 period is also marked as the period of withdrawal of other kinds of institutional support to agriculture. In 1995, India joined the World Trade Organization (WTO), which resulted in the fall of output price and also reduction in subsidy, subsequently resulting in higher cost of inputs. The higher cost of input was not equally compensated by increase in support price by the Indian government. The Minimum Support Price (MSP) administered by the Union Government, in fact, was not available to all farmers, specially small and marginal farmers (Ramakumar, 2013).

4. Consequences of Exclusions

The trends of exclusion from land ownership and agriculture are clearly evidenced in national and state statistics and this also reveals the social groups excluded in and from agriculture. What are the outcomes of such exclusion? In India, the lack of access to land has condemned millions

Table 7: Source of the Biggest Loans Reported by Different Households in Rural India

Household characteristics	Source of loan												
	Employer	Money lender	Friend	Relative	Bank	NGO	Community Credit Group	Govt. Program	Self-help group	Kisan credit card	PF/LIC	Suppliers/middlemen/builders	Others
Social group													
ST	2.39	19.36	15.21	25.02	23.27	1.59	1.96	0.39	6.40	2.55	4.12	0.45	1.35
SC	2.90	27.23	14.42	21.19	17.96	1.33	2.94	0.81	8.72	0.79	0.00	0.37	1.35
OBC	2.01	23.18	11.31	22.74	29.23	0.52	2.35	0.40	4.34	2.59	14.88	0.14	1.04
Others	1.07	15.12	12.13	18.50	39.84	1.02	3.16	1.12	4.24	2.39	0.19	0.23	1.02
Religion													
Hindu	1.98	22.59	12.34	21.42	28.33	0.85	2.66	0.68	5.52	2.21	10.18	0.22	1.08
Muslim	2.03	20.84	17.41	25.03	22.52	1.29	2.34	0.47	5.35	0.66	0.00	0.26	1.79
Christian	3.43	11.84	2.80	10.90	49.52	2.56	5.49	0.33	11.89	0.15	46.00	0.00	0.76
Others	5.15	16.53	7.21	19.60	36.57	0.79	1.81	0.65	5.19	3.60	0.72	1.20	0.98
Sex of the head of the household													
Male	2.00	21.88	12.64	20.35	29.60	0.96	2.65	0.72	5.43	2.21	9.46	0.25	1.20
Female	2.50	24.29	11.99	29.88	19.02	0.61	2.63	0.26	6.66	1.14	18.45	0.18	0.70
All	2.07	22.18	12.56	21.56	28.26	0.91	2.65	0.66	5.58	2.08	10.16	0.24	1.14

Source: Compiled from India Human Development Survey, 2011-12

into endemic and chronic poverty, seriously limiting possibilities of upward mobility for future generations belonging to such poor households (Ministry of Rural Development, 2013). When data on exclusions in agriculture is superimposed with the data of informal workers in India, it becomes clear that exclusion from land and agriculture eventually forces peasants to seek out the life of a wage earner working either on lands of others in the rural scenario or to take up non-agrarian pursuits. As mentioned above, crisis in agriculture pushed millions of farmers out of agriculture. Census data reveals that in the 10-year period between Census 2001 and Census 2011, there were nearly 9 million fewer cultivators in India. This corresponds to the fact that between 2002–3 and 2012–13, household ownership of land fell by 15 million ha or by 14 per cent (NSSO 2014). Rural-to-urban migration has shown a gradual increase, with its share in total migration rising from 16.5 per cent to 21.1 per cent from 1971 to 2001. These rural migrants form a large chunk of the population referred to as ‘informal sector’. The emergence of these rural origin pockets in urban areas has resulted in a number of slum settlements characterized by inadequate water and sanitation facilities, insufficient housing and increased food insecurity (Das, 2016). However, the Census data do not convey the harshness and pain of the millions trapped in footloose migrations. Migration, one may assume, may be relatively rare among agricultural households, but in fact it is highest among households with marginal landholdings that are unable to provide much income to the family. Over 75 per cent of all migrants come from marginal landowning households. That is to say, while more amongst the landless are prone to migrate, the contribution of marginal landholders to the total migrants is higher. In short, the desperate search for work is driving the poor in many directions without a clear final destination; like the migrants from Odisha who work some weeks in Raipur, a couple of months at brick kilns

in Andhra Pradesh, and then at construction sites in diverse towns in Maharashtra. Their hunger and their contractors drive them to any place that offers employment, however brief, insecure, poorly paid or undignified it is. There are rural migrations to both metros and non-metro urban areas and to towns and smaller cities and there are also rural to rural migrations. Further, there are urban to urban migrations, and even, in smaller measure, urban to rural migrations (Sainath, 2011).

Twenty five years of economic reforms impacted the agriculture sector adversely and has, over the years, resulted in many farmers committing suicide. One after the other, all the central governments aggressively pursued neo-liberal economic policies in the liberalization period which has rendered cultivation unviable for most small and marginal farmers, who are also the socially marginalized (Anand, 2016). As per the National Crime Records Bureau, in the past 20 years, more than 3 lakh farmers committed suicide (1995–2014).

Working on the land of others in the context of a crisis-ridden agrarian situation means mortgaging a future to under-paid seasonal wage work; a space which is home to various forms of oppression. Unregulated with no rights protection, it is a space for perpetuation of the overhang of feudal, caste and patriarchal relations in the form of bondage of various kinds such as contract bondage, wage underpayment, unequal wages or unpaid work without any form of social security.

Since employment is also not readily available in other sectors, and there is a virtual race to the bottom among the army of wage earners, ousted peasantry faces significant and severe competition and several disadvantages in the ‘labour markets’. On the face of it these could be ascribed to the lack of preparation for another future (education, skills, etc), or even reasoned as a continued trajectory of social discrimination (in employment opportunities, wage labour markets, housing, etc).

However, there are several community level and occupation level studies documenting human tragedies in the world of wage earners, as de-peasantized people who continue to scuttle back and forth seasonally between agriculture wage work and wage work in non-agriculture sectors, such as construction. Often this back and forth physical movement, borne out of a necessity to survive, and not fundamentally a desire to thrive, typifies the imagery of India and indeed of the global south- an imagery romanticized as one of moving people and growing country.

The absence of land and irrigation are the major factors pushing poor households to find jobs through short term migration. The rate of temporary migration is found to be 'highest in the case of scheduled tribes and other social groups and also those with very small land holdings among rural areas' (Shah & Kumar, 2011, p. 12). Further, it was also evident that '...those among the poor, who migrate for short duration, barely make a subsistence living in spite of migration'. And this 'flow of short term migration is likely to increase in the short and medium term, given the declining (land) resource base among the ever growing rural population' (Shah & Kumar, 2011, p. 24). As mentioned above, migrants in cities are living under very unhygienic and insecure conditions. Recent reports on the drought refugees highlighted the plight of migrants in cities. 'The drought migrants have no homes in the city and some have made makeshift shelters on construction sites, footpaths and park benches. The villagers have no work and no cash, and many are forced to beg' (Doshi, 2016).

Semi-proletarianization of this nature is the most common form of downward social mobility, staring at the face of over 400 million people in India who constitute the informal sector. Thousands of new entrants are being added to this pool every single day, in a process of what Breman calls 'wage hunting and gathering' (1994).

This is the most drastic consequence of exclusion from land and agriculture; a consequence which cannot only be resolved by bringing to this populace education and skills with a hope of eventual absorption in employment. With the size of the labour reserve we have in India and the rate at which people may see a push-out from agriculture, on account of reasons outlined earlier, and within the limits of the size of economy likely to take shape in the next decade, it looks a difficult proposition to absorb this 'informal' labour reserve into employment of a kind which is protected, secure, and decent, given the kind of employment being generated today and in the foreseeable future. We of course know how this transition was effected in Europe in the 18th and 19th centuries under the historical circumstances then of colonialism and of industrial expansion of a labour intensive variety. However, this would be a historic impossibility and an ecological dead end for a country like India to pursue. In India, employment generation is abysmally low even during the periods of high growth rate. The NSSO data on employment in 2011 shows how from 2004–5 and 2009–10, only 1 million jobs were added per year; in a period when the economy averaged a record 8.43 per cent growth annually. In this period, 55 million people joined the labour force (*Live Mint*, 2016).

Pauperization embedded in the process of proletarianization produces further disastrous consequences for the families involved. Hunger, undernourishment, starvation and its impact on the health and longevity of families, thus excluded, is evident in the continuity of the perpetuation of these perils in their future lives. The Global Hunger Index Report highlighted the plight of farmers facing extreme climatic uncertainties and crop losses resulting in huge debts. It further highlighted the fact that Dalits and Adivasis who are dependent on wage labour and agriculture are disproportionately affected by poverty; this pushed India's Global Hunger Index to the 97th rank. Data

on child labour and malnutrition also substantiate the fact that the exclusion of the most marginalized families from resources and agriculture would impact the education and nutritional status of the children belonging to such households. Children of these families, who are also subjected to recurrent seasonal migrations, are not only absent from schools, but in order to augment family incomes find themselves pushed into child labour, repeating a continuity of the system that rests its reproduction on their labour power. As per the 2011 Census, the number of children employed in child labour in the age group of 5–17 years in rural areas is 19.22 million, of which 8.66 million are agriculture labourers.

Extreme forms of societal alienation are visible today as an outcome of continued pauperization and expulsion. The model of development and its rejection by the majorities impacted and pauperized by it, whether we measure it in terms of the rising inequalities or in its more vocal articulation by struggles as the question of the 99 per cent, finds its outcome in popular discontentment—in rejection of the politics and political leaderships of the last thirty years and its temporary acceptance of ideas promoted by the politics of populism, protectionism and chauvinism as a means of securing space, dignity and economic opportunities. This has been the narrative of the last decades, more pronounced since the financial crisis of 2008. What is clear, however, is that such a path only leads to a further deepening of the historically entrenched axis of exclusion, thus, creating newer forms of exclusion.

5. Recommendations

The Agrarian Question constitutes the basis of our 'National Question' (Sandeep Chachra, 2010) and therefore invokes a commitment to act. How can the agrarian crisis of India see a resolution? On whose terms and conditions and on what ecological costs can this resolution be achieved? What then is the relation and balance of town and countryside? These

are the issues that require public debate and agenda setting. When a majority of the rural population still survives on agriculture, in the context of limited opportunities in other sectors, a forced transition will have a devastating impact on rural communities. The process of economic transition from agriculture to other sectors/locations took place in a few developed countries under very exceptional circumstances. They had advantages over other countries of the world in terms of land grabs in other parts of the world, access to the rest of the world through colonization, control over resources and markets, etc. Such a transition is not possible in India through expulsion or exclusion of people from agriculture. A vast majority in India is still dependent for their livelihood on agriculture and this situation is likely to continue till they are offered enough choice to shift towards other forms of occupation for a decent livelihood. On the other hand, a revival of agriculture should be prioritized through the restructuring of the rural economy with focus on progressive land reforms in favour of the poor and the marginalized with necessary input support, support prices, extension services, infrastructure and markets, promoting sustainable agriculture practices, diversifying the rural livelihood basket, necessary budget provisions, etc. Assured incomes to the farmers could make farming viable and attractive for future generations.

Land Redistribution: Land, which is the basis of survival and livelihood of millions of rural communities, needs to be redistributed. The skewed distribution of land and the subsequent question of its ownership still need attention for a radical restructuring of the rural socio-economic fabric. As pointed out by the Committee on Agrarian Reforms, 'revival of land redistribution agenda, protecting and restoration of alienated land and fair distribution of land strikes directly at the roots of an unequal social order and skewed power relations, and frees the marginalized from

the clutches of perpetual bondage, for want of a sustainable livelihood' (MRD Report, 2013, p.151). The recommendations of the committee in terms of enabling the Dalits, Tribals and women in accessing and enjoying land are quite comprehensive and warrants the attention of the State, which is not impossible if there is enough political will. Land reform measures are mostly scuttled with excuses of not having enough land to distribute. However, this defence has been challenged by various field studies and also by the Committee on Agrarian Reforms by indicating the estimates of the Lal Bahadur Shastri National Academy of Administration (LBSNAA) on the availability of about 21 million ha of land for redistribution (MRD Report, 2013, p. 24).

Despite a broad trend of failure in the implementation of land reforms across the country, there are certain states with a proven record of successful implementation of land reforms indicating that a state with political will could succeed in ensuring redistributive justice. From the three relatively successful examples of redistribution in West Bengal, Kerala and Jammu & Kashmir, the only lesson which can be drawn years later is the possibility of implementing land reforms in a democratic set up. Land reform was a major policy initiative in the country in the 1950s and early 1960s. However, after the abolition of *Zamindari* and Proprietary Rights, other measures like ceiling on land holdings, even while becoming a part of the legal framework, did not get implemented in its true spirit except in some states like, West Bengal, Kerala, Jammu & Kashmir and Andhra Pradesh. A brief summary of the successful land reforms implemented by these state governments is provided in Appendix 5.

While land redistribution still remains a primary recommendation, here below are some of the other fields that require simultaneous attention:

- a. Redistributive land reforms agenda should also encompass the newer challenges of the

market oriented liberalization agenda like amendments to the legal provisions for speedy acquisitions of lands ignoring the social and environmental concerns, exemptions to investments on industrial parks/investment zones, coastal corridors, expanding urban horizons, legalizing and liberalizing tenancy, conversion of agricultural lands for non-agriculture purposes—ultimately making land a commodity with speculative value. In this context, the redistributive land reforms agenda needs to be expanded with redistribution of lands, thus, preventing land alienation, challenging land acquisitions and regulating purchasing/contracting/leasing of agricultural land by non-agriculturists. This process of making equitable redistribution of natural resources (land, forest, commons) by ensuring social and ecological justice should become the policy priority of the state.

- b. Further, despite land distribution, many beneficiaries could not access it due to lack of support for accessing land and making it productive. Extending all provisions of credit, insurance and MSP, input support, infrastructure, markets and extension services is a prerequisite for the success of land allocations to the small holder farmers, of whom majority belong to the marginalized sections of Tribals, Dalits and Muslim minorities.
- c. Even after ensuring land rights and input support, it would not guarantee any assured income unless issues of cost of cultivation, pricing and cropping patterns and climate risks are addressed. Hence reducing cultivation costs and diversification of cropping patterns with local and non chemical inputs on the principles of ecological farming is important, which would not only serve the purpose of making farming viable but also address the rising concerns over issues of soil, water and bio-diversity. Further the complexity

of the pricing mechanism has made the demand for farmers' income assurance gain prominence. In this context, it is imperative that a Farmers Income Commission be set up to define income levels that would ensure a decent living standard for farmers. It is also equally essential to establish current household incomes of farmers and outline ways to enhance the income through both farming and non-farm related work.

- d. As the trend moves towards liberating land from market, there are attempts by the state to revise the existing protections to tenants. This would impact the disadvantaged social groups, as they are at the bottom of the income and protection frameworks. Hence there is a need to protect the interests of the tenants and sharecroppers, enabling them to access all farm related credit, subsidies, insurance, crop compensation etc. For instance, in states like Andhra Pradesh and Telangana, there are positive examples of ensuring loans and other benefits to tenants by identifying and registering them by issuing Loan Eligibility Cards. Farmers' organizations are hence demanding that this model be emulated instead of revising the tenancy laws in favour of land owners and markets.
- e. Promoting women's inheritance and control

of land could be one of the priorities, with gender disaggregation in all land related records, appropriate arrangements for effective implementation of the amendment to Hindu Succession Act, recognizing women as farmers and extending all entitlements (loans, input support, extension services), while also encouraging collectives of women for cultivation and creating infrastructure and marketing avenues.

- f. Most importantly, policy and programme frameworks should focus on having the most marginalized sections as their primary beneficiaries. Special policy framework with necessary budgetary allocations, schemes, packages and administrative machinery need to be evolved for enabling SCs, STs, Muslims, Women and other deprived groups to access and enjoy land and other natural resources.

However, it also needs to be noted that semi-proletarianization has never gone without a fight, and a wave of occupy movements or re-peasantization movements, *sui generis*, serve as a modern sovereign project of the 21st Century (CARES report on The Agrarian Question: Past, Present and Future, 2012, p.8). The commitment of the state cannot materialize in a vacuum without significant political struggles and movements with sufficient mass base.

Endnotes

- 1 According to Papola (1968), all labour markets are imperfect markets because of the different characteristics of labour and its degree is higher in underdeveloped or developing countries because of socio-economic reasons. These imperfect labour markets exclude labourers on the basis of caste, religion, sex etc and also exclude people who do not own land or any other means of production.
- 2 Percentage of informal labour is increasing in India (except from 1999–2000 to 2004–05 because of the

distress and poverty pushed employment growth) and in this particular increase the percentage of marginalized people is higher (Abraham, 2009).

- 3 A semi-proletariat is a wage labour-force that is not wholly dependent on the wage for economic subsistence. This occurs where wage-workers retain access to land, working it themselves or via members of their family. Many a time they are seasonal workers, who spend part of the year on peasant plots, while in the other part they migrate in search of work.

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Appendices

Appendix 1: Percentage Distribution of Households and Land Ownership by Caste Groups and by States.

State	Percentage share in total households	Tribes		Percentage share in total households	Dalits		Percentage share in total households	OBC		Percentage share in total households	Others	
		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)
Jammu & Kashmir	12.41	12.96	13.14	10.49	7.41	7.13	12.27	11.05	11.24	64.83	68.58	68.49
Himachal Pradesh	4.98	3.25	3.21	28.65	15.66	15.19	15.97	15.11	14.74	50.40	65.98	66.86
Punjab	0.09	0.03	0.02	39.85	3.55	2.58	18.25	15.14	15.14	41.81	81.29	82.26
Chandigarh	2.31			3.03	0.16		33.06	53.38	53.89	61.60	46.46	46.11
Uttaranchal	5.43	3.55	3.51	21.08	11.95	11.56	11.77	25.36	25.87	61.71	59.14	59.06
Haryana	0.12	0.82	0.83	17.54	1.19	0.96	35.29	16.81	16.42	47.05	81.18	81.79
Delhi	1.05	0.02		41.61	8.26	7.41	31.94	26.33	26.33	25.40	65.39	66.26
Rajasthan	15.11	10.27	10.10	25.06	12.82	12.86	48.39	52.68	52.58	11.45	24.23	24.45
Uttar Pradesh	0.68	0.52	0.51	24.65	10.73	10.44	56.76	54.75	54.71	17.90	34.01	34.34
Bihar	3.73	0.45	0.26	16.36	3.44	2.96	63.88	64.63	64.64	16.03	31.48	32.15
Sikkim	37.33	49.08	49.98	2.78	0.34	0.34	54.20	50.19	49.31	5.69	0.39	0.37
Arunachal Pradesh	78.12	93.64	93.21	0.08						21.80	6.36	6.79
Nagaland	98.93	99.40	99.46	0.45	0.28	0.29	0.37	0.29	0.21	0.25	0.03	0.04
Manipur	46.66	65.12	67.64	4.05	3.34	3.12	38.59	22.84	20.71	10.70	8.71	8.53
Mizoram	92.97	93.80	94.03				7.03	6.20	5.97			
Tripura	35.60	53.64	57.48	18.60	15.14	15.64	15.96	11.97	12.10	29.84	19.25	14.78
Meghalaya	93.51	97.33	97.30				0.03	0.05	0.05	6.46	2.62	2.65
Assam	15.50	21.12	22.59	8.45	6.30	6.44	29.09	26.47	25.40	46.96	46.11	45.57
West Bengal	7.57	7.93	7.82	31.44	19.45	18.23	12.80	14.42	14.49	48.20	58.20	59.46
Jharkhand	41.13	62.11	62.95	8.82	5.26	4.86	40.51	21.77	21.10	9.54	10.86	11.09
Orissa	26.82	29.35	29.87	19.23	11.44	11.18	37.52	40.36	40.37	16.42	18.85	18.58
Chhattisgarh	38.31	48.45	48.71	8.92	9.21	9.30	49.62	41.04	40.66	3.15	1.29	1.33
Madhya Pradesh	31.35	20.86	20.75	18.34	7.23	7.16	37.45	47.40	47.47	12.86	24.51	24.61

State	Percentage share in total households	Tribes		Percentage share in total households	Dalits		Percentage share in total households	OBC		Percentage share in total households	Others	
		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)
Gujarat	24.66	13.77	13.57	7.75	2.66	2.61	48.94	47.80	47.89	18.64	35.77	35.93
Daman & Diu	4.59	11.83	11.79	0.54	0.09		94.59	84.93	85.20	0.28	3.15	3.00
Dadra & Nagar Haveli	73.99	99.42	99.43							26.01	0.58	0.57
Maharashtra	17.37	9.03	9.01	9.19	5.20	5.16	42.92	43.56	43.58	30.52	42.21	42.25
Andhra Pradesh	6.18	9.22	9.30	21.86	7.98	7.57	39.82	44.92	45.25	32.13	37.87	37.87
Karnataka	5.76	5.54	5.59	23.90	12.18	11.78	48.79	49.91	50.08	21.55	32.37	32.55
Goa	9.74	2.29	0.31	3.42	2.09		4.67	0.34		82.18	95.28	99.69
Lakshadweep	99.91	100.00	100.00	0.09								
Kerala	1.17	0.79	0.81	13.48	4.35	2.17	61.07	45.91	43.90	24.29	48.95	53.12
Tamil Nadu	0.71	1.49	1.46	27.35	14.35	13.93	69.51	79.72	80.06	2.43	4.44	4.55
Puducherry	0.25			20.89	5.63	2.14	59.34	86.62	90.26	19.53	7.75	7.60
Andaman & Nicobar Islands	27.47	32.69	41.01	1.59	2.14		21.67	21.99	13.88	49.28	43.18	45.12
Telangana	9.39	13.72	13.83	27.04	21.06	20.99	56.49	52.96	52.90	7.08	12.26	12.28
All India	11.91	13.13	13.06	20.17	9.16	8.95	44.71	45.52	45.74	23.22	32.18	32.24

Source: Compiled from Land and livestock Survey, NSSO, 2013.

Appendix 2: Percentage Distribution of Households and Land Ownership by Sex of Head of Household and States

State	Percentage share in total households	Male		Percentage share in total households	Female	
		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)
Jammu & Kashmir	91.12	93.85	93.82	8.88	6.15	6.18
Himachal Pradesh	76.8	77.33	77.49	23.2	22.67	22.51
Punjab	86.18	93.89	94	13.82	6.11	6
Chandigarh	87.54	75.71	75.96	12.46	24.29	24.04
Uttaranchal	83.62	90.59	90.79	16.38	9.41	9.21
Haryana	89.89	96.92	97.04	10.11	3.08	2.96
Delhi	87.12	95.64	95.69	12.88	4.36	4.31
Rajasthan	87.11	91.44	91.52	12.89	8.56	8.48
Uttar Pradesh	88.61	94.24	94.34	11.39	5.76	5.66
Bihar	81.18	91.13	91.63	18.82	8.87	8.37
Sikkim	85.18	88.6	88.51	14.82	11.4	11.49
Arunachal Pradesh	93.69	93.08	93.46	6.31	6.92	6.54
Nagaland	97.4	97.32	97.14	2.6	2.68	2.86
Manipur	88.19	85.9	85.45	11.81	14.1	14.55
Mizoram	89.5	92.33	92.32	10.5	7.67	7.68
Tripura	90.84	92.55	92.35	9.16	7.45	7.65
Meghalaya	89.98	87.32	86.84	10.02	12.68	13.16
Assam	89.42	92.98	93.1	10.58	7.02	6.9
West Bengal	88.86	93.55	94.1	11.14	6.45	5.9
Jharkhand	85.16	90.11	90.04	14.84	9.89	9.96
Orissa	89.45	94.58	94.85	10.55	5.42	5.15
Chhattisgarh	93	92.7	92.63	7	7.3	7.37
Madhya Pradesh	93.94	96.7	96.71	6.06	3.3	3.29
Gujarat	91.39	95.43	95.46	8.61	4.57	4.54
Daman & Diu	88.01	95.57	99.82	11.99	4.43	0.18
Dadra & Nagar Haveli	93.67	99.13	99.16	6.33	0.87	0.84

State	Percentage share in total households	Male		Percentage share in total households	Female	
		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)		Percentage share in land ownership (included homestead land)	Percentage share in land ownership (excluded homestead land)
Maharashtra	90.07	94.98	95.02	9.93	5.02	4.98
Andhra Pradesh	81.36	92.96	93.05	18.64	7.04	6.95
Karnataka	82.37	85.67	85.63	17.63	14.33	14.37
Goa	55.17	71.3	76.21	44.83	28.7	23.79
Lakshadweep	80.05	86.81	92.48	19.95	13.19	7.52
Kerala	76.39	80.31	82.49	23.61	19.69	17.51
Tamil Nadu	80.24	91.62	91.99	19.76	8.38	8.01
Puducherry	98.3	89.24	85.78	1.7	10.76	14.22
Andaman & Nicobar Islands	79.86	73.74	79.9	20.14	26.26	20.1
Telangana	78.59	91.08	91.23	21.41	8.92	8.77
All India	86.42	92.83	92.99	13.58	7.17	7.01

Source: Compiled from Land and Livestock Survey, NSSO, 2013.

Appendix 3: Households Reporting Any Outstanding Loan in Rural India, 2011–12

Household Characteristics	Percentage of indebted household	Median value of outstanding debt (in Rs.)
Social Group		
ST	28.32	16000.00
SC	54.18	20000.00
OBC	54.25	30000.00
Others	46.02	
Religion		
Hindu	51.48	30000.00
Muslim	44.67	20000.00
Christian	35.18	70000.00
Others	24.72	
Sex of head of household		
Male	50.90	30000.00
Female	41.31	25000.00
All	49.46	30000.00

Source: Compiled from India Human Development Survey, 2011–12

Appendix 4: Percentage of Households having Kisan Credit Card with the Credit Limit of Rs. 50,000 or above in Rural India, 2011

Household Identity	Percentage of Households having Kisan Credit Card
ST	1.64
SC	1.75
Female headed	2.21
household which have one disabled person	4.08
Others	4.40
All	3.61

Source: Socio-economic and Caste Census, 2011.

Appendix 5: Some examples of Successful Implementation of Land Reforms

Andhra Pradesh is the first State in the country to distribute the largest extent of land to the landless poor in the recent years. The State Government began land distribution to the landless poor from 1955 onwards and achieved a figure of 39.25 lakh acres till 2004. From 2004–2013, Andhra Pradesh registered disbursement of a total of 7,75,451 acres to 5,49,934 beneficiaries. Other than Andhra Pradesh, West Bengal, Jammu & Kashmir and Kerala have implemented the land reforms successfully and these states are the best example for other states in this policy.

Box 2: Land reforms in West Bengal

Whilst land reform has made little progress in most of India, West Bengal has achieved notable progress in land reform. Two major land reform Acts were passed in the state in the 1950s: the Estate Acquisition Act of 1953 (EAA) and the Land Reforms Act (LRA) of 1955. EAA aimed to eliminate the interests of intermediaries (*zamindars* and *jotedars*) on all land except that which they 'self-cultivated' (using hired agricultural labourers). Abolition of intermediaries under the EAA was generally successful but was inflicted with numerous loopholes and poor implementation. The LRA was intended to cure the inadequacies of the EAA by limiting landholder's ability to transfer land and by providing greater protections for *bargadars*. However, even with this Act, very little was accomplished. One major land reform which was a breakthrough in the history of West Bengal is *Operation Barga* promulgated by the Left Front government, led by the Communist Party of India–Marxist (CPIM). Under this programme, government recorded the names of *bargadars* in order to provide them with greater tenure security. All registered tenants were provided, by enactment of an effective amendment to the land reform legislation, a permanent and heritable right to cultivate the leased-in land. Operation Barga involved registration of 1.4 million *bargadars*, of which over 30 per cent were Dalits and over 12 per cent were Adivasis. Through Operation Barga, about 1.1 million acres of land was permanently brought under the control of *bargadars* and their right to cultivate this land was secured. As per the annual findings of the World Development Report (2003), West Bengal has been able to step up the crop-production by altering the provisions pertaining to the ownership

of land and ensuring the legal security of the bargadars over the land they till. Previously, the rate of production of crops in the state was 0.4 per cent. But this rate increased to 1.9 per cent and latter to 3.1 per cent within a decade. About 1.39 million acres of land have been acquired by the government (18 per cent of total land acquired in India), of which 1.04 million acres were distributed (20 per cent of total land distributed in India). It should be noted that West Bengal accounts for only around 3.5 per cent of the total arable land in India, so this performance is well above that in any other state.

Box 3: Land reforms in Jammu & Kashmir

Jammu & Kashmir has the unique distinction of introducing the most radical land reforms in India. It was a watershed in the history of Jammu & Kashmir and a measure, the first of its kind in the sub-continent, lauded by different sections of society and people belonging to different walks of life in the country. The very first movement of peasants and landless artisans in Jammu & Kashmir, began in the 1931 under the leadership of Sheikh Abdullah and it culminates in the charter of 1944 named 'The New Kashmir' of which land reforms was an essential part. This movement got support from the exploited peasantry. Immediately after independence in 1948, Sheikh Abdullah came into power and he implemented the land reforms on the basis of resolution of 'The New Kashmir'. The basic principle of this charter was 'abolition of landlordism, land to the tiller and co-operative association of tiller to regulate production and sale of crops and agricultural goods.' There were two major phases for implementation of land reforms. First was between April 1948 to October 1948 in which all *Jagirs* and *Muafis* were abolished and tenants' rights were protected. The second phase was the Big Landed Estate Abolition Act (October 1950) in which the land was transferred to the tillers. This act puts a ceiling limit on the size of land holding (maximum land holding limit was 22.5 acres). In the first year, 40,000 acres of land was transferred to the landless. Sheikh Abdullah also outlawed absentee ownership, increased the tenant's share from 25 per cent to 75 per cent of the crop.

The land reform greatly helped the marginalized sections, especially the Schedule Castes to become land owners. According to research done by Dr. Ashish Saxena in Jammu, during 1950s–70s out of the total surplus land of 672 kanals mainly taken away from Rajputs, and Mahajans, 70.24 per cent was allotted to SC tenants. A radical intergenerational shift in the occupation pattern of the SCs in terms of landless agricultural labourers to land owning peasants (47.1 per cent) has taken place in the region. Land reforms in the early years of independence laid a decentralized governance in the state.

In 1963, a land commission was formed to find out the discrepancies in the land tenure system. And on the basis of the recommendations of this commission, a new J&K Agrarian Reform Act, 1972 was made which later was amended into J&K Agrarian Reform Act, 1976. In this act, ceiling limit of land holding was reduced from 22.5 acres to 8–12.5 acres depending on quality and type of land. On 9 February 2007, the Jammu & Kashmir assembly passed the Roshni Bill which aimed to provide ownership of 16.6 lakh kanals to farmers. The ownership of Government land which was under farmers' cultivation was given to them at 10 per cent of the rate prevailing in their respective areas.

Box 4: Land reforms in Kerala

Land reform is a must for equity in land distribution in rural India. Kerala is a state, which has a reputation as a model state for other Indian states for efficient implementation of land reforms. In March 1957, the first ministry of undivided communist party started the implementation of land reforms by an ordinance, later known as The Kerala Stay of Eviction Proceedings Act of 1957. This act was the basis for Kerala Agrarian Relations Bill (KARB) which was passed in June 1959. The communist party did not implement KARB successfully and the ministry was dismissed due to this unsuccessful implementation of KARB. The next ministry came into existence in February, 1960 and was a Congress dominated Congress- PSP coalition. This ministry came with a new act known as Kerala Land Reforms Act, 1964. This ministry also could not implement the act and was dismissed due to some internal squabbles among the partners. After the early dismissal of these two ministries and unsuccessful implementations of land reform acts under their regime, the third ministry of a CPI(M) led seven party coalition brought an ordinance known as Kerala Stay of eviction Proceedings Act of 1967. This was followed by a drastic amendment in Kerala Land Reform Act of 1964, which was passed in October 1969 and became an Act in December 1969. This amended Act was named Kerala Land Reform (Amendment) Act of 1969 and it was brought into force on 1 January, 1970. This act has three major schemes. The first scheme was about abolition of landlordism, tenancy and intermediary rights of land. This scheme was to grant the ownership of the land to the cultivating tenants. The second scheme was related to providing the land to *Kudikidappukar* tenants (Kudikidappukar was the tenant who was landless with no homestead land and was living on the land of their land owners). The third scheme was about taking possession of the surplus land and redistributing this land among landless or land poor peasants and labourers. The ceiling limit under this scheme was standard 5–15 acres according to the size of the family. According to the Kerala Land Board, on February 28, 1981 the first two schemes were implemented successfully but the third scheme was not implemented effectively. After the implementation of the first scheme average area received by every tenant household was 1.60 acres and estimated average area allotted to per Kudikidappukar household was 0.08 acres. On the basis of many case studies it can be concluded that the first scheme successfully emancipated the tenants from their socio-economic subservience to the landlord class and snapped the centuries old feudal strings or the nexus between the two major agrarian classes. The land reforms in Kerala have been criticized on the basis of very unequal and very little land area allotment to beneficiaries.



Undertrials being taken to Ghaziabad Prison.

Photo Credit: Rough Cut Production

Exclusion from Access to Legal Justice

Gitanjali Prasad and Mrinal Satish¹

‘...The economically and socially disadvantaged sections, therefore, do not in that sense “access” the legal system to seek redress. They engage with it nevertheless, negatively. They are drawn into it unwittingly in situations of conflict with the law, as complainants, suspects, “encroachers” or defendants. These situations accentuate the denial of access to justice, to basic legal services, resulting in grave violations of their liberty.’

—Justice S. Muralidhar, Delhi High Court (2005)

1. Introduction: Legal Justice as a Public Good for those in Conflict with the Law

Contemporary understandings of what legal justice in India constitutes derive from constitutional provisions, legal jurisprudence as well as international covenants. Broadly, legal justice as a public good would imply both equal access to fair grievance redress mechanisms as well as access to fair process for those in conflict with the law.² This essay, however, is in the context of the latter, which includes fair access to bail, and related substantive and procedural laws for persons charged under bailable offences in particular, but also for those charged under some specific Special and Local laws and all crimes more broadly. We are considering

the following elements to be necessary entitlements for the accused—the presumption of innocence, rights upon arrest and bail, right to counsel, and fair trial guarantees including protection from undue delays—all of which are essential to living a life of dignity, and being able to access other essential public goods.³

Article 21 of the Constitution of India guarantees to every person that he/she shall not be denied his/her right to life and personal liberty, except according to procedure established by law. The Code of Criminal Procedure (Cr. P.C.) provides the framework for denial of personal liberty if a person is suspected of committing a crime. Provisions in relation to arrest, search, remand, and sentencing stipulate the powers that the State has under criminal law. Within these provisions lies an important dilemma—where and how to draw the line between the need for public order, and the need for individual liberty (Chandra & Satish, 2016).

One of the powers that the State has is to detain, during the pendency of the trial, a person suspected of having committed the crime that he/she is being tried for. It was 36 years ago that the Supreme Court lamented

‘...[i]t is high time that...the Government [and] the judiciary begin to realise that in the dark cells of our prisons there are large numbers of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice — a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and

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despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.⁴

The court articulated that ‘justice’ was a commodity or public good that the hapless undertrial prisoner was being deprived from. This reform called for by the Supreme Court in 1980 has still not been achieved.

The failure to achieve any change led, in part, to the enactment of Section 436A of the Cr.P.C. in 2005 to ensure that undertrial prisoners, who had served out half of the maximum sentence that they would get if they were to be convicted, are released on bail. Failure to implement that provision led to the Supreme Court issuing guidelines in *Bhim Singh v. Union of India*⁵ in 2014. These measures indicate the major issue that continues to challenge the Indian criminal justice system—that of extended and unwarranted pre-trial detention. The undertrial prisoner, sometimes unnecessarily arrested,⁶ languishes in jail for months and sometimes years at end. ‘Justice’, that abstract public good is beyond their grasp. The presumption of innocence, a basic human right, and a core principle of criminal law, also suffers. At the same time, incarceration leads to the accused losing access to various other externalities and public goods such as education, health, livelihood, and legal aid.

Inadequate access to this good implies not just a difficulty in accessing other positive externalities but also severely impedes human dignity, and gives rise to stigma within communities and beyond. It is indisputable that equal access to legal justice is necessary in order to minimize differential impact on individuals and communities with respect to their bonds of livelihood, shelter, education and health (both physical and mental).

Access to legal justice is inextricably tied to

access to legal systems, which consists of the complex interweave of law enforcement agencies, prosecutors, the courts, defence lawyers, and correctional institutions. Each of these stakeholders is indispensable in ensuring that justice delivery takes place in a fair and equitable manner. While lawyers, aside from those responsible for providing free legal aid services, function most often as private players within the legal system, the onus is finally on the State as represented by the courts, to ensure that justice is delivered.

The role of the State is therefore as a direct provider of the public good—and it is imperative that necessary checks be in place at all levels of the judicial hierarchy to ensure that violations of the right to liberty and presumption of innocence do not take place, and that the legitimacy of State institutions responsible for justice delivery is strengthened. In terms of the traditional, neo-classical economic definition of a public good, legal justice is a pure public good due to its perfectly non-excludable and non-rivalrous nature, the source of which is derived from various provisions outlined in the Constitution, jurisprudence based on judgements of the Supreme Court of India, as well as international covenants.

1.1 Constitutive Elements of Legal Justice

1.1.1 Presumption of Innocence

Article 11(1) of Universal Declaration of Human Rights (UDHR) states: ‘Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.’ Further, Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), which India ratified in 1979 states: ‘Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.’⁷ The presumption of innocence is thus an important human right,

recognized by the UDHR and the ICCPR. This is critical in the context of pre-trial detention, since extended and arbitrary detention of a person pending trial can possibly violate the presumption of innocence, by punishing the person before he/she has been found to be guilty by a court of law.

The Supreme Court of India has also recognized the presumption of innocence to be a human right, although not a fundamental right.⁸ While most of the cases where the Court emphasized that presumption of innocence is a human right dealt primarily with issues of burden of proof,⁹ the principle applies as strongly to pre-trial detention and bail law. This was noted by the Supreme Court in the case of *Vaman Narain Ghiya*,¹⁰ where the Court recognized that the concept of bail emerges from the conflict between the power of the State to detain a person alleged to have committed an offence, and the presumption of innocence in favour of that person.¹¹ It also noted that the aim of pre-trial detention is not punitive.¹² A balance needs to be maintained between the power of the police to investigate a crime, and the personal liberty of the individual detained on suspicion of having committed that crime.¹³ Similarly, in *Siddharam Satlingappa Mhetre v. State of Maharashtra*,¹⁴ the Supreme Court noted that the law of bail dovetails two conflicting interests—the preventive function of criminal law that would advocate detaining a person to prevent him/her from reoffending when on bail, and the ‘absolute adherence’ to the presumption of innocence, which is a fundamental principle of criminal law.¹⁵ This understanding of bail law is also reflected in the bail jurisprudence of the Supreme Court.

1.1.2 Access to Bail

The primary object of pre-trial detention of a person is to ensure his/her presence at the trial, and further to ensure that he/she surrenders to serve out his/her sentence if convicted by the court.¹⁶ If the person’s presence at the trial can be reasonably

guaranteed without requiring his/her detention pending trial, it would not be necessary to detain the person pending, and during the trial. The provisions relating to arrest and bail are tailored to ensure that the person being tried is present at the trial, without unjustifiably curtailing his/her liberty, recognizing that he/she is presumed to be innocent until convicted by a court of law (Pillai, 2014). The Supreme Court has recognized that denial of bail amounts to curtailment of personal liberty, and hence the power that the Code provides for granting/rejecting bail should be exercised judiciously.¹⁷

The Cr.P.C. demarcates all offences into bailable and non-bailable offences. Section 436 of the Code deals with ‘bailable offences’. Section 436(1) states that if a person accused of committing a bailable offence is in the custody of a police officer, or is brought before a court, and he/she is prepared to furnish bail, such a person should be released on bail. The Court or the police officer may release the person on his/her executing a bond without sureties (‘personal bond’) for appearance before the officer or court, when required. In case the person is indigent, it is mandatory that sureties are not sought, and that the person is released on the basis of a personal bond.¹⁸ A person is considered indigent if he/she is unable to furnish bail within a week of being arrested.¹⁹

The deprivation and exclusion that results from long periods of pre-trial detention was noted by the Supreme Court in *Moti Ram v. State of Madhya Pradesh*.²⁰ It observed that ‘...the consequences of pre-trial detention are grave.’²¹ The conditions in prison are onerous, the detainees often lose their jobs, they are unable to contribute to their legal strategy, and their families are also impacted, since they bear the brunt of the person’s detention.²² The Court also held that imposing large surety amounts, and insisting on local sureties, has a disproportionate impact on the poor, especially migrants.²³ Hence, it ruled that as far as possible, the

poor should be released on their own recognizance, after imposing reasonable conditions.²⁴

Subsequently, in *Hussainara Khatoon (I) v. Home Secretary, State of Bihar*,²⁵ the Court opined that the ‘highly unsatisfactory bail system’²⁶ is the cause of extended pre-trial detention. It reiterated its earlier assertion that the bail system follows a property oriented approach, relying on monetary sums to ensure presence of accused at trial. It noted that such a system ‘...operates very harshly against the poor.’²⁷ The Court further observed that the existing bail system

...is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pre-trial release without jeopardizing the interest of justice.²⁸

More recently, in *Sanjay Chandra v. CBI*,²⁹ the Court again reiterated that pre-trial detention causes great hardship.³⁰ It further held that indefinite pre-trial detention violates Article 21 of the Constitution, since ‘...[e]very person, detained or arrested, is entitled to speedy trial.’³¹

The Court has noted that the ‘...basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like.’³² In *Gudikanti Narasimhulu v. Public Prosecutor*,³³ the Supreme Court held that the nature of the charge against the accused, the nature of evidence, the punishment which the person would be liable to if convicted, the likelihood of reoffending when out on bail, and the possibility of interfering with the investigation/trial, are factors that the court should consider while deciding the application for bail.³⁴ The Court,

however, warned that although the prior criminal record of the accused is relevant in determining whether bail should be granted or not, the court should not be ‘complacent’ in denying bail only on those grounds.³⁵

Access to bail based on current procedural requirements necessitates access to counsel for the accused, and in the case of those who are unable to source a private lawyer, access to free legal aid.

1.1.3 Right to Counsel and Legal Aid

The right to legal representation and counsel is guaranteed by Article 22 of the Constitution. Article 22(1) states: ‘No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.’ Further, Section 303 of the Cr.P.C. states that ‘Any person accused of an offence before a criminal court, or against whom proceedings are instituted, may of right be defended by a pleader of his choice.’

In *Hussainara Khatoon (IV) v. State of Bihar*,³⁶ the Court read the right to legal aid into Article 21 of the Constitution. It held that a procedure that does not provide legal services to an accused person because of his/her poverty and thus leads to the person proceeding through the trial without legal assistance, is not ‘...just, fair and reasonable.’ It ruled that the right to legal services is a part of Article 21 rights.³⁷ Subsequently, in *Khatri v. State of Bihar*,³⁸ the Supreme Court held that the right to legal aid commences from the time the person is first produced before a Magistrate.³⁹ In *Suk Das v. State of Arunachal Pradesh*,⁴⁰ the Court ruled that it is not essential for the accused to make an application for legal aid—it is the responsibility of the Magistrate to provide legal aid. If an accused is convicted in a trial in which he/she was not provided legal aid, the conviction would be set aside as being in violation of Article 21 of the Constitution.

Additionally, the right to legal representation has extended to presence during interrogation.⁴¹ Thus, legal representation from the time of arrest is a core fundamental right of the accused. Not being able to consult, and seek advice from one's lawyer is a violation of the fair trial guarantee. Extended pre-trial detention contributes to violating this right. As the Supreme Court's jurisprudence on the right to counsel indicates, the impact is especially grave in the context of the poor, to whom legal aid is illusory in nature.

Another issue that arises in this context is whether the right to legal assistance extends to effective legal assistance. This issue arose in *Navjot Sandhu*,⁴² where the Supreme Court ruled that the right to counsel '...cannot be taken thus far.'⁴³ Subsequently, in *Noor Aga v. State of Punjab*, the Court held that ineffective assistance is a '...systematic violation of [the] accused's core constitutional right.'⁴⁴ More recently, in *Ashok Debbarma v. State of Tripura*,⁴⁵ the Court ruled (in the context of capital sentencing) that ineffective assistance of counsel can be considered a mitigating factor if it is shown that prejudice was caused to the accused because of the counsel's ineffectiveness.⁴⁶

1.2 The Dilemma of Plea Bargaining

Plea bargaining is one of the methods of case disposal known by the umbrella term Alternative Dispute Resolution or ADR. It was introduced in the Cr.P.C. by an amendment in 2006,⁴⁷ with the assumption that it would allow those languishing in jail to seek early release upon conviction by voluntarily admitting to their guilt. Other advantages considered during the parliamentary debates included faster disposal of cases and dispensation of criminal justice, and a decrease in arrears.⁴⁸ It was also meant as a means to provide compensation to the victims, an aspect which did not eventually make it into the text of the amendment. The debates included a reference to recommendations of the 142nd Law Commission

Report of 1991, which suggested the use of plea bargaining in India.

According to the Cr.P.C., an application for plea bargaining may be made by an accused against whom a charge-sheet has been filed or against whom a private complaint has been filed, of which a Magistrate has taken cognizance. Plea bargaining is restricted to offences where the punishment is imprisonment for less than seven years. It is unavailable for offences which affect the socio-economic condition of the country, offences against women, and offences against children under the age of fourteen.⁴⁹ Plea bargaining is an option available only to individuals who have not been convicted for the same offence earlier.⁵⁰ When an application is filed, notices are issued by the court to the public prosecutor or the complainant, to arrive at a mutually satisfactory disposition with the accused.⁵¹ In addition to the prosecutor, the investigating officer, and the victim are also permitted to participate in the meeting/s to arrive at a mutually satisfactory disposition.⁵² If a mutually satisfactory disposition is reached, and the court is satisfied that the accused arrived at such disposition after exercising free and informed consent, he/she may proceed to dispose the case.⁵³ The court then sentences the accused in accordance with the framework provided by the law.⁵⁴ If an accused pleads guilty and is sentenced using the procedure in the Cr.P.C., he/she relinquishes his/her right to appeal. Appeal is only possible by special leave to the Supreme Court.⁵⁵

There is reason to believe, however, that this form of sentence bargaining is not necessarily a just process. A major concern with the plea bargaining system, and with ADR more broadly, is the question of whether it truly results in just outcomes, and the possible disparate impact that it has on poorer sections of society (Fiss, 1984). With the possibility of release on bail being meagre due to lack of access to counsel, the accused opt to plea bargain, often sacrificing their basic rights. The system does not

take into consideration the power differential between the State/complainant/prosecutor and the accused.⁵⁶

In 1999, Chief Justice A.S. Anand wrote a letter to Chief Justices of all High Courts, proposing Jail Lok Adalats (JLAs) as a means to secure release for prisoners through plea bargaining within the jail premises, in order to address the issue of the high undertrial population and overcrowding. While specific procedures for JLAs have not been codified, the procedures for plea bargaining under Chapter XXIA of the Cr.P.C. apply. This letter spurred the use of JLAs across jails in the country, a process which will be examined in further detail under Sections 2 and 3 of this chapter.

1.3 Dilution of the Public Good

We argue in this paper that the public good is in its very nature being diluted. Pratiksha Baxi has emphasized the critical difference between ‘access’ to justice and access to ‘justice’, wherein she states that ‘...judicial reform must be in critical engagement with how substantive and procedural law translates into everyday practices of state law, rather than expand the legitimacy of the notion of the rule-of-[good]-law.’ (Baxi, 2007)

In current times, we seek to understand the everyday usage of criminal justice provisions, with an emphasis on whether individual liberty is given its due with respect to Constitutional provisions. Aparna Chandra and Mrinal Satish have evidenced how in the pursuit of security and law and order, the Supreme Court has narrowly interpreted the right to counsel, presumption of innocence and rights at the time of arrest and bail, by disallowing vitiation of trial based on ineffective assistance of counsel, effectively imposing presumption of guilt against the accused through its doctrine of reverse onus clauses, and allowing for special provisions based on types of offences which erode rights relating to arrest and bail, respectively (2016).

Using empirical evidence, this chapter seeks to probe whether a person is more likely to experience inequitable legal outcomes if they come from a particular demographic background. We also attempt to understand the processes through which violations of the law take place in order to uphold the notion of the ‘rule-of-law’, including but not limited to the taking away of due process rights through procedures such as plea bargaining, and the simultaneous denial of legal aid and access to bail.

In order to understand who is excluded from access to legal justice in the case of both bailable and select non-bailable petty offences, we will closely examine findings of a study undertaken by the Centre for Equity Studies in collaboration with the National Human Rights Commission titled ‘Access to Justice in Uttar Pradesh: A Pilot Study in Five Districts’. The study aimed to fill a gap in existing research—to explore whether a correlation exists between demographic backgrounds of undertrial prisoners (UTPs) and unequal legal outcomes resulting from structural factors within the legal system. The study examined the nature of the offence, along with other variables. It also sought to understand the processes through which exclusion from access to legal justice may occur at the stages of arrest and in particular, during pre-trial detention.

More specifically, the study had a four-fold objective in linking demographic data (wherever available) with legal justice outcomes: first, to understand the socio-economic background of all undertrials in Uttar Pradesh and second, to examine access to justice (pertaining to processes of arrest, access to bail, and disposal of cases) for persons charged with bailable offences alone, where accessing bail from the police station or court is a matter of right. The study also sought to establish whether a correlation exists between demographic variables in a district and spending longer than seven days in jail for bailable offences. Third, to

examine ‘access to justice’ (pertaining to processes of arrest, access to bail, and disposal of cases) received by those accused under certain sections of Special and Local Laws in Uttar Pradesh, including but not limited to the UP Excise Act of 1910, the Arms Act of 1959, the Narcotics, Drugs and Psychotropic Substances (NDPS) Act of 1985, and the Uttar Pradesh Prevention of Cow Slaughter Act of 1955.⁵⁷ Lastly, to study the use of plea bargaining as a means of early release and case disposal by the judiciary for offences carrying a maximum punishment of up to seven years, and understand the role of the District Legal Aid Services Authority (DLSA) in the provisioning of legal aid. The data seeks to examine who (as a demographic group) is statistically more likely to undertake the option of plea bargaining as a means of securing early release from prison, as opposed to accessing the option of getting out on bail.⁵⁸

The sites of study included five districts (and five corresponding district jails, as well as one corresponding sub-jail).⁵⁹ The jails were selected based upon their distribution across western, central and eastern Uttar Pradesh, with variations in the district’s contiguity with state or country borders, variations in the occupancy rates and populations of UTPs in the jail, and the distances from the capital of the district. The data on bailable and select non-bailable offences was collected from each police station in the five districts, totalling 92, as well as at the respective jails and district court complexes. In-depth interviews with one officer in every police station in each of the five districts were also conducted (with diversity maintained within each district for interviewing officers across the hierarchy), as well as with 60 undertrial prisoners and numerous officers and staff at the jails, DLSAs and District Courts. This chapter has a conspicuous absence of data on women and children, who certainly face exclusion at the time of arrest as well as at other stages of the criminal justice process, but were beyond the scope of the primary work being

discussed due to the nature of offences selected for the CES study.

2. Understanding Who is Excluded: Individuals and Communities

Data from the *Prison Statistics in India 2015*, indicates that almost two-thirds, i.e., 65.56 per cent of all undertrials are from SC, ST or OBC communities and 30.24 per cent are from (religious) minority communities.⁶⁰ Muslims constitute 20.94 per cent of the undertrial population.⁶¹ In the most populous state of Uttar Pradesh, 2014 data reveals that 28.57 per cent of all undertrials were Muslim, compared to a state-wide population figure of 19.26 per cent (Census of 2011), indicating an over-representation of the community in the undertrial population by nine percentage points.⁶² 28.55 per cent of undertrial prisoners (UTPs) in India are illiterate.⁶³ The NCRB, which publishes the Report, does not provide data on the economic backgrounds of inmates—either through estimates of individual or family income or categories of occupation, due to the inconsistencies in data collection by states.

While the unequal representation of some demographic groups compared to their national averages is evident, such as Muslims being overrepresented at the national level by almost seven percentage points,⁶⁴ these proportions alone do not allow us to conclude that individuals belonging to these groups have been unjustly incarcerated, either due to institutional biases, and/or inadequate access to legal representation and other legal justice entitlements. To establish this, further evidence and lines of inquiry are required, some of which have been described below. The figures do, however, indicate that a large proportion of the undertrial population consists of individuals from communities that face different kinds of socio-economic and political disadvantage, a factor which may impact their ability to seek legal justice once in conflict with the law.

2.1 Who is Excluded from Safeguards at the Time of Arrest?

Arrest entails curtailment of personal liberty, the possibility of adverse effects on the individual's material conditions, and an unquantifiable impact on dignity. Giving this due consideration, several landmark judgements delivered by the Supreme Court, such as *Joginder Kumar v. State of UP*⁶⁵ and *D.K. Basu v. State of West Bengal*⁶⁶ have cautioned against avoidable arrest and emphasized the importance of following due process if a person is arrested (Centre for Equity Studies, 2016, p. 31).

A study conducted by the Tata Institute of Social Sciences in 2011 on Muslim over-representation in Maharashtra jails, concluded that there is an anti-Muslim bias in policing in the State (Raghavan & Nair, 2013, pp. 12–17; Raghavan & Nair, 2011). Other work pointing to profiling by the police indicates that official instructions for discriminatory policing are still part of police manuals in various states, which require the surveillance of particular individuals and communities. This has further implications for arrest, bail, and sentencing (Satish, 2011, pp. 133–160). The CES study findings reinforce these profiling practices. In 1999, Dilip D'Souza and Susan Abraham documented acts of profiling and police brutality towards De-Notified Tribes such as the Kheria Sabar in West Bengal and the Pardhi community in Maharashtra, as a continuation of institutionalized practices followed by the British (D'souza, 1999, pp. 1751–53; Abraham, 1999).

Rich qualitative evidence points to the fact that it is most commonly the poor—daily wage earners and migrants, women, youth, Adivasis, Dalits, Muslims, the elderly, children, transgenders, and the mentally ill, who are excluded from access to legal justice (Subramanian, 2016, pp. 8–17; Ramanathan, 1996, pp. 199–233; Report of Law Commission of India, 2015, pp. 149; Muralidhar, 2004; Centre for Equity Studies, 2016, p. 12). However, peculiarities of local context and demographic compositions

may present other disadvantaged individuals or groups.

Significantly, bias against specific communities or demographic groups—namely the poor, religious minorities and disadvantaged castes—was clear in many of the 92 interviews conducted across the five districts in the CES study; in particular in response to when police officers were asked who commits the most crime in an area. While responses to this question were most relied upon for deducing their perceptions towards crime and criminality, due to the open-ended nature of the questionnaire, other responses which were relevant to this topic were also considered. The researchers have clarified that while they attempted to interview police personnel from a range of demographic backgrounds, the majority of interviewees happened to be Hindu and belonged to relatively dominant castes. As socio-economic data on arrestees was not recorded across police stations, the demographic profiles of arrestees could not be examined, which was a limitation of the study. The report considers that due to some of the discretionary aspects of policing, perceptions of the police towards certain communities maximizes the possibility of persons belonging to these groups being arrested. It, in turn, will have a bearing on the treatment meted out to them as well (Centre for Equity Studies, 2016, p. 43).

Among various factors, poverty and illiteracy had a strong bearing on police perceptions of the criminality of individuals. Interviews with police officers and UTPs indicated that arrests made under the Arms Act and Excise Act are closely linked to class-based profiling. Across the sites of study, personnel across the institutional hierarchy termed those poor or illiterate as committing crime due to 'greed and family disputes', 'lack of willingness to work', or due to their 'unreasonable' nature. Thus, they adopted an entirely normative lens to assess the criminal behaviour of these communities, while discounting other possible factors for the commission of crime (ibid.). Migrant labourers in

Mau were singled out as being responsible for the production and consumption of country-made liquor, while another police officer pointed out that it is usually the owners of brick-kilns, where the labourers work, who provide the means and encourage the production of alcohol but remain largely untouched (ibid., p.44). As incidence of poverty is higher among disadvantaged caste and religious groups, it is not surprising that specific Dalit sub-castes, OBCs and Muslims were usually perceived as 'criminal' by interviewees. However, due to bias against each of these groups having a distinct history, the CES paper examined them as separate categories (ibid)

Saharanpur, and Mau, officers stated openly that specific castes—in particular Dalits, and also ‘backward classes’ in Mau—were responsible for crimes in their area (ibid., p. 47). Another SHO in the district stated that he believed all persons from the Nat community were ‘thieves’. (There were only four Nat families residing in the area at the time, employed as agricultural labourers.) (ibid., p. 46)

In order to conduct further analysis on profiling through FIRs and other police records to look into the basis of arrest and its possible correlation with caste, it is imperative that the police record the caste/community of persons being arrested, as they are required to in the Crime Register, which can then be used to determine access to bail and other outcomes. The fact that these details were unrecorded was determined by inspecting the Crime Registers in each police station. The unfilled details included ‘age’, ‘occupation’, ‘education’, ‘monthly income’ and ‘caste’ in the five districts, other than a few police stations where select details were filled such as the age or religion of the accused (ibid., p. 13). The interviews, however, no doubt indicate widespread prejudice towards disadvantaged communities amongst police personnel.⁶⁷

2.2 Who is Excluded from Access to Bail?

2.2.1 Bailable Offences

The CES study reported that for police stations where bail data for the period of study starting on 1 January 2014 was available, the percentage of those securing bail at the police station for bailable offences ranged from 97.14 per cent in Banda to 61.11 per cent in Mau.⁶⁸ In Ghaziabad District Jail, between the 15-month period of 1 January 2014 and 31 March 2015, 31 inmates charged under only bailable offences spent longer than seven days in jail (the longest period being 86 days), indicating the lack of use of release on personal bond under Section 436(1) of the Cr.P.C.⁶⁹ A regression was run to deduce whether there was a statistically significant

correlation between demographic variables and the likelihood of getting out on bail before or after seven days. None was found. However, in interpreting data it should be kept in mind that this does not mean that such a correlation does not exist at all; it was just not found for this data set. The representation of Muslims increased by about 10 percentage points in the group spending more than seven days in jails, while representation for social groups/castes did not change by a large margin. The proportion of those from a state other than UP increased by 8 percentage points in the category spending more than seven days in jail, compared to the aggregate population entering jail for bailable offences.⁷⁰ With respect to education, there was an increase of seven percentage points each for those with no education as well as those formally schooled up to Class 10 or 11.⁷¹

In Saharanpur, a total of 63 inmates spent longer than 7 days in jail for bailable offences between 1 January 2014 and 31 March 2015, the highest number being 119 under section 294 IPC⁷² (for which the maximum period of punishment is three months, which is significantly shorter than the period spent by the UTP in jail).⁷³ In 10 cases, UTPs spent more than 30 days in prison for bailable offences.⁷⁴ For this data set as well, a regression was run to deduce whether there was a statistically significant correlation between demographic variables and the likelihood of getting out on bail before or after seven days.⁷⁵ None was found. However, again, in interpreting data it should be kept in mind that this does not mean that such a correlation does not exist at all, it was just not found for this data set. There was a higher representation by nine percentage points of Muslims who spent more than seven days in jail, compared to the aggregate population of UTPs entering jail for bailable offences.⁷⁶ There was also an increase of about 12 percentage points for those from out of the state in the category of those spending more than seven days in jail, higher than that in Ghaziabad. This may indicate potential

difficulties for those from out of the state in accessing bail through production of required sureties.⁷⁷ No major variations in percentages were found for education or occupational groups. Within the study period of 1 January 2014 to 31 March 2015, a total of 3, 7 and 6 UTPs from Deoband Sub-Jail, Kheri District Jail and Mau District Jail spent longer than seven days in jail for (only) bailable offences.

2.2.2 Non-Bailable Offences

The CES study collated data on select non-bailable offences pertaining to ‘preventive’ offences under Special and Local Laws used widely in each of the districts, to understand access to bail and case disposal in greater detail. The table below provides information on the demographic characteristics of undertrials charged under specific Act/Section

combinations in different districts from 1 January 2014 to 31 May 2015.

Dalits and OBCs represented a large portion of the UTPs entering jail for these offences, and relative to district populations, Muslim UTPs were also present in disproportionately larger numbers for all categories barring one in Mau district. The mean age was particularly low for those charged under s. 4 r/w s. 25 of the Arms Act (which entails illegal/unlicensed possession of a knife, beyond the size permitted by government notification). There was a high incidence of low education across almost all categories and particularly high proportions of highly informal work for available data across the Section/Act combinations (Centre for Equity Studies, 2016, p.88).

Enormous variations were found for the

Table 2.2.2: Select Demographic Variables for those in Ghaziabad, Saharanpur, Kheri and Mau District Jails under Different Section/Act Combination⁷⁸

District Jail	Section/Act	Mean Age (n)	SC+OBC in per cent (n)	Muslims in per cent (n)	Domicile (Out of District & State in per cent) (n)	Nil or <Class 5 Education in per cent (n)	Highly Informal Work (n=data for known categories)
Ghaziabad	S. 4 r/w S.25 Arms Act	25 (485)	70 (458)	33 (486)	43 (486)	48 (486)	64.7 (51)
Saharanpur	S. 4 r/w S. 25 Arms Act	27 (251)	82 (236)	51 (247)	29 (249)	57 (251)	86.90 (83)
Lakhimpur Kheri	S. 3 r/w S. 25 Arms Act	31 (138)	67 (130)	26 (136)	8 (145)	56 (145)	78.38 (37)
Mau	S. 3 r/w S. 25 Arms Act	28 (37)	72 (36)	16 (37)	24 (37)	32 (37)	31.58 (19)
Ghaziabad	S. 3 r/w S. 5 r/w S. 8 Cow Slaughter Act	32 (19)	89 (19)	95 (19)	47 (19)	68 (19)	100 (16)
Lakhimpur Kheri	S. 3 r/w S. 5 r/w S. 8 Cow Slaughter Act	30 (77)	73 (86)	100 (87)	13 (87)	83 (87)	79.25 (53)
Mau	S. 3 r/w S. 5 r/w S. 8 Cow Slaughter Act	30 (44)	84 (43)	30 (44)	50 (44)	59 (44)	100 (9)

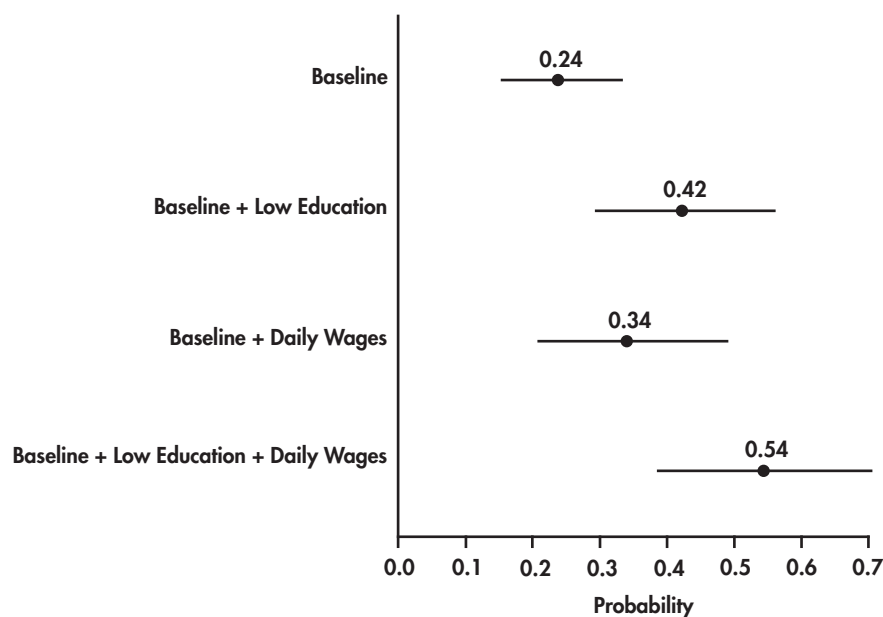
Source: Reproduced from CES study, p. 90.

number of days required by each UTP to secure bail under these offences. Days for release on bail u/s. 4 r/w s. 25 Arms Act ranged from 2 to 113 in Ghaziabad (average of 17 days), and 2 to 393 days in Saharanpur (average of 20 days); for release on bail u/s 3 r/w s. 25 Arms Act, days ranged from 2 to 378 days in Kheri (average of 18 days), and 2 to 116 days in Mau (average of 15 days); and for release on bail u/s. 3 r/w s. 5 r/w s. 8 Cow Slaughter Act days ranged from 5 to 206 days in Ghaziabad (average of 73 days), 4 to 408 days in Kheri (average of 52 days), and 4 to 40 days in Mau (average of 12 days). However, no statistically significant relationship was found between demographic characteristics including social group, religion, occupation, education, age or domicile, and the length of time a UTP spent in jail for each District and Section/Act pairing (ibid., p. 91). A UTP’s ability to access bail, is however, no doubt dependent on their access to legal representation—for which financial means are imperative to be able to pay the lawyer’s fees, present stipulated sureties, and handle the costs family members need for going to court and to visit

family members in jail. In the absence of means, UTPs from socio-economically disadvantaged backgrounds are forced to rely on legal aid.

Not one of the 11 UTPs interviewed who were charged under s. 4 r/w s. 25 Arms Act in Ghaziabad had access to a lawyer at the time of the interview to apply for bail, and each of them had spent more than two months in jail at the time of the interview. They had all resolved to plea bargain through the Jail Lok Adalat (JLA), which would occur on a weekly basis in Ghaziabad District Jail (ibid.). Their decisions to plea bargain were based on a combination of reasons including not having the means to access a lawyer to apply for bail, not knowing they had the right to access a legal aid lawyer, being given advice by other inmates that plea bargaining was a more fool-proof way of getting out rather than hoping that the legal aid lawyer would assist them in accessing bail, facing significant social pressure from jail writers⁷⁹ and staff to plea bargain, and/or believing that the stipulated bail requirements would be beyond their means.⁸⁰

Figure 2.1: Ghaziabad District: Likelihood of Conviction through Plea-bargaining based on Demographic Factors for S. 4 r/w S. 25 between 01.01.14 and 31.05.15⁸¹



Source: Reproduced from CES study, p. 102

2.2.3 Inequitable Legal Outcomes

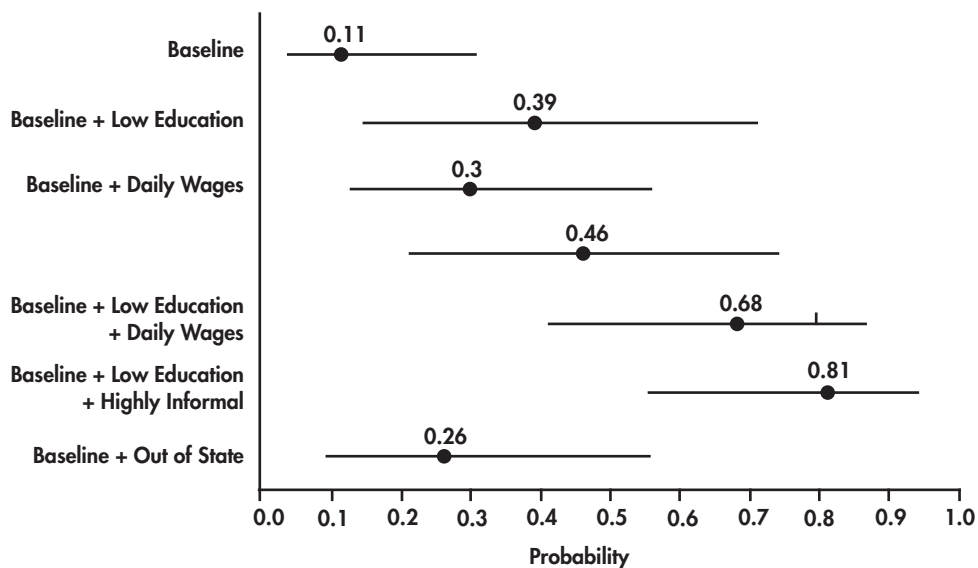
The major quantitative finding of the CES study pertains to convictions through plea bargaining versus release on bail for the offence of Sec. 4 r/w Sec. 25 of the Arms Act. Under a section titled ‘Who is More Likely to Plea Bargain’, the report delineates outcomes of a regression analysis conducted using data from two district jails for UTPs, charged with cases under s. 4 r/w s. 25 of the Arms Act between 1 January 2014 and 31 May 2015, to understand whether certain demographic characteristics of UTPs would make it more likely that a person would secure release through plea bargaining (thereby being convicted, and no longer having the chance to prove their innocence) or through access to apply for bail.

To have a point of comparison, the baseline for the statistical analysis was arrived at based on an assumption of socioeconomic factors which would put someone in a favourable position to access legal justice. It is described as the probability of someone who is from within the District, from the

General category, ie., Hindu, has some education, and is employed in a professional line of work. The probability of someone in that category receiving a conviction through plea bargaining in Ghaziabad District Jail within the stipulated time period is 24 per cent. The analysis showed that low education, daily wage work, and the combination of low education and daily wage work had a statistically significant impact on the likelihood of someone plea bargaining (rather than securing release through bail). For those doing daily wage work, the likelihood of plea bargaining went up to 34 per cent, and for those with low education, their likelihood of plea bargaining went up to 42 per cent. Those performing daily wage work and having low education were 2.25 times more likely to plea bargain compared to the baseline.

In Saharanpur, the effects of demographic factors were found to be even greater in magnitude. The baseline here was set at 11 per cent. Low education, daily wage work, highly informal occupations and domicile all had highly significant effects on the

Figure 2.2: Saharanpur District: Likelihood of Conviction through Plea-bargaining based on Demographic Factors for S. 4 r/w S. 25 between 01.01.14 and 31.05.15⁸²



Source: Reproduced from CES study, p. 104.

probability of a UTP plea bargaining vs. getting out on bail. All other factors remaining constant, someone from out of the state is 2.36 times more likely to plea bargain than someone who is from within the state. Similarly, the baseline combined with daily wage work implied a likelihood of plea bargaining of 30 per cent, and the likelihood went up to 39 per cent when the baseline was combined with low education, implying that someone with low education is 3.55 times more likely to plea bargain than someone who has education greater than low education, all other factors being equal. In the case of highly informal occupations, the likelihood went up to 46 per cent, making them 4.18 times more likely

to plea bargain. The baseline combined with low education and daily wage implied a likelihood of plea bargaining of 68 per cent. It went up even further, 70 percentage points above the baseline to 81 per cent, when the baseline was combined with both low education as well as highly informal occupations. This implies that within the study period, someone with low education working in a highly informal occupation was 7.36 times more likely to plea bargain, all other factors remaining unchanged.⁸³

While the act of plea bargaining is meant to be a voluntary one, the official proforma for the application for plea bargaining through the Jail

Image 1: Pro Forma for Jail Adalat (Ghaziabad District)

लोक अदालत
(प्रार्थी अभियुक्त जेल में है)

न्यायालय माननीय गाजियाबाद

बनाम

मु०अ०सं०

घारा

थाना

विषय—अपराध स्वीकारोक्ति एवं न्यूनतम दण्ड पर अपराध निस्तारण हेतु प्रार्थना पत्र

महोदय,

निवेदन है कि प्रार्थी / अभियुक्त दिनांक से जिला कारागार गाजियाबाद में निरूद्ध चल रहा है। प्रार्थी एक गरीब असहाय व्यक्ति है तथा उसके मामले की पेशी करने वाला कोई नहीं है। प्रार्थी स्वेच्छा से अपने जुर्म का इकबाल करता है।

अतः माननीय महोदय से सादर प्रार्थना है कि प्रार्थी को न्यूनतम दण्ड देते हुए याद को निस्तारित करने की कृपा करें।

दिनांक प्रार्थी के हस्ताक्षर/अंगूठा निशान

पत्रांक/गू०टी० दिनांक

माननीय गाजियाबाद को अग्रिम कार्यवाही हेतु सादर अग्रसारित है।

जेलर
जिला कारागार गाजियाबाद

Source: Annexure XII, CES study.

Lok Adalat in Ghaziabad District Jail (designed by the jail authorities, and used not simply as a forwarding letter but sent as the undertrial's application to court) contained the following two sentences (translated from Hindi to English): 'The applicant is a poor, vulnerable person and there is no one to assist with his/her case. The applicant would like to accept his guilt voluntarily' (Centre for Equity Studies, 2016, p.196). This language, with minor variations, was used in applications sent by each of the jails visited, indicating that the judicial authorities were abdicating their rights-protective role under the Constitution and the Cr.P.C. Instead of taking steps to provide the undertrial with legal aid as required by the law, they were instead unconcerned with the lack of legal assistance and are sustaining this highly inequitable practice. It reinforces what the statistical analysis has shown—that those with certain disadvantageous demographic characteristics related closely with a lack of financial resources and less formal schooling may be left with no choice but to plea bargain, in the absence of quality legal aid. It is also on average a very young male population that is resorting to plea bargaining for the most common offences in two jails under s. 4 r/w s. 25 of the Arms Act. This population may thereafter continue to be criminalized after becoming 'history sheeters' on the rolls of the police.

3. Processes of Exclusion

3.1 Institutional Bias in the Implementation of Law and Policy

3.1.1 Misuse of Powers of Arrest

The extent of powers of arrest conferred on the police under Chapter V of the Cr.P.C. and areas of their misuse has been discussed extensively by Law Commissions, National Police Commissions, other governmental bodies and civil society organizations.⁸⁴ In the CES study, some such practices were voiced by police officers across

districts as being intrinsic to policing in order to ensure remand of those they perceived as criminals, thereby controlling further crime. This includes the excessive use of Sec. 151 Cr.P.C., which empowers the police to arrest a person without a warrant, who (according to them) is likely to commit a cognizable offence (Centre for Equity Studies, 2016, pp. 37–47 & 50–60). Special Acts are also used to charge people with the possession of unlawful materials—unlicensed arms; narcotics; and quantities of liquor above one and a half litres. A matter of concern was the admission, by police officers, of the use of these Acts to apprehend persons in the absence of other evidence against them when they are suspected of some other crime, or in order to 'punish' those perceived as habitual offenders, or as acknowledged by the Superintendent of a District, because the paperwork takes less time than an actual investigation.⁸⁵ Analysis of 98 FIRs from three districts also indicated a great similarity in narrative, thus bringing into question the credibility of the basis of arrest, and also raising questions about the use of search procedures in public places. In over 50 per cent of the FIRs, the report contained a near-identical description of personnel encountering offenders by chance during their patrol. The remaining offenders were apprehended through tip-offs from confidential informants. In one police station in rural Saharanpur, two FIRs filed 20 days apart for the same offence were found identical in language, and as per almost all the FIRs of the Arms Act and Excise Act which were reviewed across districts, the documented reason for suspecting the accused was that they quickened their pace on seeing the officers or tried to avoid crossing their paths, largely described using one of two long phrases (*ibid.*, pp. 51–54). In some of the interviews with undertrials, and subsequently verified upon meeting their family members, it emerged that they were charged with offences they had not actually committed but were apprehended at the behest of their family members or others who requested or paid the police to do so—including

due to property or other disputes (as in the case of an 85-year-old man, charged with possession of marijuana under the NDPS Act, as admitted by his nephew; he wanted to seek revenge for not being given land by his impoverished uncle), or due to inability of the family to deal with the person's poor mental health (ibid., pp. 61, 65 and 81). It is apparent from the CES study that unnecessary arrests are a major reason for violation of rights, as well as exclusion.

3.1.2 Blatant Violations of Laws Relating to Arrest

All five UTPs charged with bailable offences in the sample of 60 interviewees across the five districts were informed neither about the charges against them, nor about their right to bail (ibid., p. 62). Instances of torture were also reported during and after arrest (ibid., pp. 61–65).

3.1.3 Biased Application of Bail Law by Police and Judiciary

The police admitted to intentionally withholding the right to bail for bailable offences at police stations. They justified this abuse of power with the following reasons: past criminal record of the arrestee, wanting to 'prevent future disturbances' or based on their assessment of the arrestee's 'criminal character' (ibid., pp. 66–67).

Further, within the judiciary, there was a great disconnect between the design of the law under Section 436(1) Cr.P.C. (a provision which allows for release on personal bond if the accused is declared indigent upon non-payment of surety within seven days), and what was practised by judicial officers across the five district courts. Aside from minor differences in their perceptions of law, each of the district judges said they do not use the provision except in the rarest of cases to avoid the risk of the person absconding (ibid., p. 83). No data was available at the courts on the numbers of people released on personal bond through Section 436(1).

However, all jail and court staff interviewed also suggested that personal bond is rarely utilized.

3.1.4 Prejudice towards Disadvantaged Communities and Lack of Diversity in Positions of Authority

Both the TISS and CES studies have delineated perceptions of prejudice against certain demographic communities from the perspectives of undertrials themselves and police personnel, respectively. This is impacted in part by the composition of the police force, which is often represented by dominant caste individuals in positions of authority. A study on caste and public institutions in Allahabad conducted in 2012 revealed that a large share of police officers, High Court judges, lawyers, and executive committee members of the Bar Association were from dominant castes (Agarwal, Dreze & Gupta, 2015, pp. 45–51). It would be worth it to probe their argument on how this would reinforce caste and class divisions, by gathering relevant data with respect to the criminal justice system.

3.1.5 Misplaced Accountability and Flawed Monitoring Mechanisms:

In 2005, the Supreme Court in *Bhim Singh v. Union of India*⁸⁶ ruled that Undertrial Review Committees should be set up in each district to monitor unnecessary incarceration during pre-trial detention. However, in UP, these committees were constituted in 2015, only after the Supreme Court in *Re Inhuman Conditions in 1382 Prisons*⁸⁷ sought status of compliance of its ruling in the *Bhim Singh* case. The CES study showed that district courts have been asking prisons for monthly data on UTPs eligible for release under Sections 436A and 436(1) Cr.P.C., as also under *Bachchey Lal v State of UP and Others*⁸⁸ (which provided that in those cases where UTPs have been granted bail but are unable to produce the bail amount after two months, they may be released on personal bond). Precise data in fact

is available only with courts and not with the prisons. Further, not providing detailed criteria for how this data should be compiled contributes to further possibilities for numerous inaccuracies (Centre for Equity Studies, 2016, p. 85).

3.1.6 Denial of Quality Legal Aid

The CES study reported grossly inadequate and poor quality legal aid provisioning across the five districts.⁸⁹ The UPSLSA responded to an RTI application saying they had ‘no information available’ for the following questions: the number of persons who had availed legal advice in UP from legal aid schemes across police stations, courts and prisons; the number of legal awareness camps organized for UTPs during that period; whether DLSAs constitute a separate panel of senior lawyers, law firms, retired judicial officers, etc., as mandated under Regulation 9 of the NALSA (Free and Competent Legal Services) Regulations, 2010; whether surveys have been conducted to determine how many people were eligible for release under s. 436(1) Cr.P.C between 1 January 2014 and 31 May 2015, the frequency of the meetings of the Undertrial Review Committees in each district during the period from 1 January 2014 to 31 May 2015 and the outcome of these meetings—that is, the number of cases reviewed and outcomes of the same (ibid., pp. 94–95). When the questions were asked, the absence of data was evident across districts.

A majority of the work being undertaken across the five DLSAs surveyed was organizing family

mediation sessions at the court for marital dispute cases and somewhat ironically, in facilitating the Jail Lok Adalats (rather than representing UTPs in their applications for bail in court). The DLSA offices were largely opaque in their dealings or inaccessible, appointments of legal aid lawyers had been delayed, legal aid panels were inactive, and in some cases allegedly not carrying out their duties due to non-payment of fees by the DLSA (ibid., pp. 94–100). Offices were managed solely by the single clerk assigned to the DLSA office, with the exception of Ghaziabad where the Secretary of the DLSA did not have dual charge, i.e., he/she did not preside over a court, unlike in other districts.⁹⁰ Deoband Sub Jail was not assigned a DLSA at all, implying that other than JLA hearings being held there once a month, UTPs had no access to legal aid services (presumably other than through the courts).⁹¹

As documented by numerous civil society reviews, this performance is not an anomaly for legal aid services across the country (GoI, UNDP and Multiple Action Research Group, 2012; TISS report PRAYAS, 2014; Bihar Legal Services Authority, 2015). As reported by the CES study, barriers to providing free legal aid as observed in the five districts included: inadequacy of human and material resources, low remuneration by the State for legal services, coupled with a near-absence of DLSA office resources, lack of monitoring and accountability, and most of all, the apparent lack of will on part of the state government and judiciary to make the system function optimally (Centre for Equity Studies, 2016, p. 100).

Case pending for > 3 years	Banda	Ghaziabad	Kheri	Mau	Saharanpur
Excise Act	277	483	3963	548	312
Arms Act	2657	9109	6537	792	1343
NDPS Act	91	897	59	244	11

Source: Data (collected in 2015) calculated from Annexure XIV, CES study.

3.1.7 Delays in Trial⁹²

The number of trials delayed for cases under the Excise Act, Arms Act and NDPS Act was high across Banda, Ghaziabad, Kheri, Mau and Saharanpur districts.⁹³

With respect to the Excise Act, cases in Kheri were pending from as long ago as 1986. In Ghaziabad and Kheri, cases under the Arms Act were pending from 1985.⁹⁵ The oldest NDPS case was pending since 1987 in Kheri.

In Saharanpur, magistrates spoke specifically about why Arms Act cases in particular go on for long periods—they tend to be given low priority by magistrates themselves. There are procedural delays too in the presentation of evidence as witnesses (often police officers) are transferred to other districts and do not appear in court on time; there are also delays in presentation of physical evidence which may get misplaced in stores (ibid., p. 113). These reasons could just as well apply to delays for cases under the Excise Act and NDPS Act. Delays in trial become relevant as the fact of a large number of cases pending in court is often cited as an argument for the usage of plea bargaining.

3.1.8 Lack of Awareness of Police and Others on Aspects of Procedural Law

The CES study reported knowledge on classification of offences as bailable or non-bailable, to be inconsistent among SHOs, SIs, and HCPs alike, which in some instances meant that bail was withheld for bailable offences (ibid., p. 68). A possible reason for not granting bail in these cases (in addition to those mentioned in Section 3.1.3) was the incorrect conflation of conditions mentioned in Sec. 41(1) (b) Cr.P.C. This provision states five conditions under which arrest may be made for offences carrying seven or less years of punishment, such as the possibility that the arrestee would abscond or commit a further offence, or the belief that he/she may not cooperate with the investigation.⁹⁶

Interview responses of police officers indicated that this was found to be incorrectly applied by some officers to withhold bail.⁹⁷ No special efforts are being made for dissemination of knowledge across the police force when new laws are enacted. Trainings are confined to senior officers alone. This impacts the quality of policing.⁹⁸

3.1.9 Illegal Practices in Prison

Interviews with UTPs and staff across all the jails studied (six total) in UP revealed a corrupt and extractive system—‘*ginti*’. Undertrials are made to pay amounts ranging from INR 1200 to INR 3300 (an amount usually standardized within a jail) on entering the prison so that a fixed barrack is assigned to them. If they were unable to pay, they were assigned to work in the central area leading to the barracks or in the kitchen, often in very harsh conditions. Noteworthy though is that jail manuals of most states prohibit undertrials from being made to work against their will.⁹⁹ In one jail, a destitute, disabled man was given his barrack for ‘free.’ In return, he swept the barrack he was assigned to every day, out of gratitude. He was not paid for his work. Other UTPs complained of having to pay extra for a place to sleep flat at night. The need for payment of bribes was alleged to be a common feature across the institutions of the criminal justice system, for almost every interaction with a functionary. Each of these practices would have a disproportionate class impact on those who are economically weaker, impacting their ability to access quality legal assistance.

3.1.10 Staff Vacancies

Nationally, 35.5 per cent of sanctioned positions of officers, 32.71 of jail cadre staff, 37.65 of medical staff and 38.89 of correctional staff remained vacant.¹⁰⁰ In 27 of 35 states and UTs there was not a single sanctioned position for psychologists or psychiatrists, in 18 there was no post for a probation/welfare officer, and in 22 there was

no position of a social worker. In Uttar Pradesh, 34 per cent or one-third of positions of jail cadre staff¹⁰¹ were vacant at the end of 2015.¹⁰² Further, in the entire state of Uttar Pradesh, there was not a single post sanctioned for either social workers or psychiatrists/psychologists. There was one sanctioned position of probation/welfare officer post for the entire state. Of importance here is the fact that the correctional staff provides the much needed space for redress of legal justice grievance of prisoners, including for the most disadvantaged. They also carry out the much-needed functions pertaining to reform and rehabilitation. The nationwide absence of positions for these posts indicates the lack of priority to reform within the custodial system.

3.2 Faulty Design of Law and Policy

3.2.1 Unjust Practice in the Name of Judicial Reform

A binary of acquittal versus conviction presupposes that fair process has been followed during investigation/trial. However, JLAs are not open to the public. There is therefore less accountability on whether procedural safeguards have been followed during the process. The CES study found that all plea bargains recorded u/s. 4 r/w s. 25 Arms Act took place at the weekly JLA held in Ghaziabad District Jail and monthly JLA in Saharanpur District Jail. The UPSLSA stated that in the 17-month period between 1 January 2014 and 31 May 2015, 5938 cases were resolved through the JLAs, implying 5938 convictions for that period in UP alone.¹⁰³ It was established through observations of three JLA proceedings in Ghaziabad, Saharanpur and Mau District Jails and through interviews with the presiding magistrate, that there were procedural limitations and inaccuracies during the process. For instance, in Saharanpur UTPs were not even presented before the Magistrate. The Magistrate looked only at the case files. Cases were observed

where UTPs were convicted in the JLA for the same offence more than once in clear contravention of the law. There appeared to be lack of information and confusion among those accepting a plea bargain—both on what the consequences would be, as well as what it meant to confess to one's guilt voluntarily.

In complex cases involving mental illness and potential juvenility, there was no clear process being followed (Centre for Equity Studies Report, 2016, pp. 114–115; Commonwealth Human Rights Initiative Report, 2009, p. 44). This is further corroborated in a study by the Commonwealth Human Rights Initiative in 2009, which assessed procedural compliance through interviews with jail staff and through RTIs. The study across 10 states while finding disparities in the frequency of JLAs, also found discrepancies in determining eligibility for plea bargaining, ambiguity around the term 'petty offences', non-conformity with the provisions under Chapter XXIA for the proceedings of the JLA, and inconsistencies in sentencing practice (Commonwealth Human Rights Initiative Report, 2009, pp. 33–39). Plea bargaining in its current form is a distortion of justice, in that in the absence of fair procedure being followed it produces inequitable outcomes for those belonging to disadvantaged socio-economic backgrounds.

3.2.2 Codified Exclusionary Police Practice

The UP police manual calls for listing and surveillance of de-notified tribes and their locations in the jurisdiction based on the 'Criminal Tribes Manual'. As documented in Section 2.1, this continued institutionalization of bias against de-notified tribes is likely to contribute to unjust policing.

3.2.3 Variations in the Value of Bail Bond and Surety Requirements

Interviews of police officers across districts, in the CES study, revealed that the value of the bail

bond is determined based on factors like gravity of the offence, the penalty it carries, the amount of illegal material recovered in the case of SLLs and the economic condition of the accused. In some instances, officers stated that amounts were fixed so as to 'bind' people down and make it difficult for arrestees to secure bail (Centre for Equity Studies, 2016, pp. 68–69). Local surety (from within the district) was required in a majority of police stations across Saharanpur, Kheri, Ghaziabad and Mau, making it challenging from those outside the district to get bail from the police station (ibid., p. 69).

3.2.4 Loopholes in the Design of Sec. 436(1) Cr.P.C.

The provision states that the accused may be released on personal bond seven days after (s) he is granted bail, if (s)he is unable to furnish the surety amount. In practice, the date of next hearing is usually scheduled by magistrates at the outer limit of 15 days, which is what is permissible under Section 167 Cr.P.C. This period for remand could be much shorter but depends on the discretion of the magistrate. This implies that it is possible that if the undertrial to whom Sec. 436(1) Cr.P.C. could apply, does not have a lawyer to file an application for release on personal bond, the provision will be overlooked until the date of the next hearing, at which point the UTP would have then spent an additional seven days in prison.

3.2.5 Application-intensive Processes of the Court

The CES study found that in Dasna jail, although applications for release on personal bond for those who are eligible after the seven-day point are sent by the jail authorities to the respective courts, the applications are rarely considered, unless the undertrial has a lawyer who can argue the case (ibid., p. 82). It is unlikely that an individual without means to produce the stipulated surety would have

the means to secure a lawyer. Such a person would therefore be at a disadvantage with respect to the law, if the state were not to provide a lawyer at the time of first production itself (ibid., p. 85).

3.2.5 Poor Infrastructure

Large physical distances of some jails from the main town/city, coupled with poor public transport connectivity creates a further disincentive for lawyers to meet their clients at the jail, and it also makes it difficult for family or friends to visit the inmate (ibid., p. 30).

4. Consequences of Exclusion

For the individual, incarceration results in a loss of social attainments and capabilities, and may also affect their future outcomes. The costs for human dignity are unimaginable, for the individual as well as their families. As in the case of a number of UTPs interviewed in the CES study (ibid., pp. 81, 108, 111 and 116), incarceration results in a break in the bonds of livelihood (which are often precarious to begin with, for those engaged in informal work), worsening of mental and other health conditions, as well as potentially affecting access to education and shelter for the families of those who are incarcerated. A denial of the right to bail and legal justice more broadly may, therefore, result in perpetuating cycles of poverty and widening inequalities (between both individuals and for entire communities). Consequences for families are particularly grave when the sole earner is in prison, or if the inmate is a single parent. This necessitates having to leave children in the care of others, sometimes in unsafe environments. Social oppression based on identity that exists in society on the basis of caste, community, religion, class, disability and/or gender is also often reinforced within the prison (ibid., pp. 89 and 110).

In addition to economic and ecological implications, legal outcomes may also be adversely

impacted due to incarceration. As discussed earlier, the Supreme Court has noted that a person on bail is in a better position to prepare or present his/her case and potentially prove their innocence when compared to one in custody. If someone accepts a plea bargain, it is unlikely that they can gain formal or government employment in the future due to a conviction in their record.¹⁰⁴ Arrest and incarceration also impacts the perceptions of others, including institutions and individuals within the criminal justice system. Even if the first arrest was unjust, if caught a second time on account of being on the police's rolls, the accused is viewed as a repeat offender.¹⁰⁵ At this scale, unjust practices by institutions of the criminal justice system may result in the criminalization of entire communities. There is a deep moral cost for the society as well with regard to a system that allows differential access to it; while it could help prove one's innocence, it can also facilitate inequitable outcomes based on the demographic background of the accused.

5. Resistance and Good Practice

Amartya Sen and Jean Drèze propose a concept of public action which entails action from above (by the State) and below (by class and mass organizations, political parties, individuals and non-governmental groups) (Sen & Dreze, 1989). While it is the State's imperative to put in place correctives and make the criminal justice system fair and just, redefining the scope of the public good—i.e., legal justice—is also contingent on robust public action. Grassroots action for improving access to legal justice is a challenging idea—those accused of crime are bound strictly by the rules of the system, and there is little room to negotiate actions of the State which may be unjust.¹⁰⁶

A model of action from below—in reinforcing the wide scope of legal justice based on rights and entitlements for the accused by emphasizing opportunities for rehabilitation—is *Prayas*, a

field action project of the Tata Institute of Social Sciences. *Prayas* works on access to legal rights and rehabilitation for undertrial prisoners in Mumbai and its suburbs and in Bharuch, Gujarat. The project's emphasis is on building support systems for families through an active court, Juvenile Justice Board and client-social worker-lawyer relationships that emphasize long-term rehabilitation focused around livelihood. There is no bar on the type of offence the inmate is alleged to have/has committed. Since its inception in 1990, *Prayas* has made incremental yet significant progress in working with the prison and court administration and producing both a change in outcomes for individuals in conflict with the law as well as knowledge production on the criminal justice system which has enabled reform (TISS Report, PRAYAS, 2015). Various organizations across the country such as the Commonwealth Human Rights Initiative in Rajasthan and West Bengal, the Vanangana Trust in Uttar Pradesh which works specifically with women prisoners, and the Bandi Adhikar Andolan, most active in Bihar have been working with the prison system through a rights-based approach. Instances of prisoners themselves being able to organize are rare. However, Soni Sori's hunger strike along with women inmates of Raipur Central Jail in Chhattisgarh to protest against their stripping and to demand decent food and health services stands out as one such example (BBC Hindi Report on Soni Sori, 2016; Hard News Media Report on Soni Sori's Hunger Strike, 2012).

6. Moving Forward: Ideas for Reform¹⁰⁷

Based on the grave exclusions that exist as a result of lack of access to bail and related legal justice outcomes (in particular for petty offences), we have proposed possible recommendations. Some of these ideas are meant to serve not as the last word on how reform should be carried out, but to respond to the

constitutional, legal, policy and moral concerns that emerge from the evidence of exclusion. The attempt is to start a conversation on changes in institutional practices which may benefit those disadvantaged in their attempts to access legal systems. In doing so, we are guided by the ideas of Prof. Marc Galanter and Justice Muralidhar. The former wrote in 1974, about what is required for redistributive justice within criminal justice systems. He illustrated that equalizing access and breaking the advantage of the 'haves' in the system would not necessarily come about through a changing of the rules as the rules are not easily accessed, but by a significant increase in institution-building and the provisioning of services which can benefit everyone (Galanter, 1974). In the Indian context this could perhaps apply to the overall functioning of the criminal justice system and the impact that greater provisioning could have on ensuring more reasonable, just, and fair processes of trial.

Justice Muralidhar argues that improving the system to make it one that more adequately serves the interests of justice and equity is not merely possible with an increase in resources as much as it is on the will (of the institutions of the criminal justice system) to adapt and change (Muralidhar, 2005). Aparna Chandra has similarly argued that while the judiciary certainly suffers from a resource problem which affects access to courts, the emphasis of access to justice must be (as a perspective) one that informs '...decision making on substantive rights, to construction of procedural norms, to fashioning remedies, to the very administration of the judicial set-up' (Chandra, 2016).

6.1 Modifying the use of Plea Bargaining by Ensuring Safeguards

Our primary concern is with promoting and encouraging Alternative Dispute Resolution methods in the name of speedy justice for the poor. This must not continue, especially in the

absence of institutionalized safeguards for those who plea bargain (Commonwealth Human Rights Initiative Report, 2009; Galanter & Krishnan, 2004). The following measures should be undertaken, contiguous with strengthening legal aid provisioning:

Plea bargaining through Jail Lok Adalats should be immediately stopped and the role of ADR in criminal cases more generally, should be re-evaluated. The procedure prescribed in Chapter XXIA of the Cr.P.C. should be strictly followed.¹⁰⁸ The UTP must also be informed of his/her right to free legal aid on first production before a magistrate. It must be a prerequisite that UTPs be offered legal representation (both for accessing bail and for the duration of their trial) before they submit applications for plea bargaining.

A video should be prepared by NALSA in conjunction with the NHRC (and translated into all local languages). This should be shown every day in prison to all inmates who have entered prison on that very day. The video should describe in detail the UTP's right to access a lawyer as well as other legal and other rights prescribed in the jail manual and through Supreme Court decisions. If plea bargaining is continued, it must be stated clearly in the video that a plea bargain would result in conviction which cannot later be appealed.

If plea bargaining is conducted, it should be in the court premises, again with full knowledge given to the undertrials about the implications. Any proforma by way of application signed by the accused must be revised to state that the applicant has understood that the plea bargain results in a conviction which cannot be appealed. Also, a standardization of procedure must be developed, with an in-person interaction between the judge and undertrial being imperative.

In light of evidence available on the shortfalls of plea bargaining in India, the Law Commission could be requested to inquire into its fair use and efficacy going forward.

6.2 Ensuring Access to Legal Aid

State Legal Services Authorities (SLSAs) must ensure implementation of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. The central government should consider making necessary amendments to the NALSA (Free and Competent Legal Services) Regulation, 2010 for provisioning of salary payments for retainer lawyers with the District Legal Services Authority, commensurate with salary payments for prosecution officers, while also reassessing the prerequisites for empanelment as legal aid lawyers. SLSAs should make requests to the State Government for higher budgetary allocations in order to have greater parity in pay for those serving as State Prosecutors and those serving as Legal Aid retainers through salaried payments, along with a commensurate rise in the experience required to be empanelled.

The role of SLSAs needs to be re-conceptualized from the current scenario, with provisioning of legal aid lawyers and higher quality work as a priority. Separate judges should be assigned to take on the sole responsibility of Secretary-ship of the DLSAs rather than it being a dual charge. Jail visits by legal aid lawyers to meet the accused should take place at least twice a week as per the 'Standard Operating Procedures for Representation of Persons in Custody'¹⁰⁹ as circulated by NALSA in May 2016 (Commonwealth Human Rights Initiative Report, 2016). Further, this and other required practices including the institution of Legal Aid Clinics in each district and protocols for jail-visiting lawyers must be closely monitored by the respective DLSAs.

Designated jail visitors should go directly to barracks to provide assistance, and emphasize release on bail rather than encouraging inmates to undertake plea bargaining for petty offences. DLSAs should affirm that legal aid cannot be

denied for petty offences and in fact must be encouraged. All jails not currently covered by a DLSA must be assigned to one. As discussed, under the first set of recommendations on plea bargaining, a video on legal and custodial rights should be jointly prepared by NALSA and the NHRC to be shown to undertrials after their entry into prison. State Police must implement legal aid availability at the stage of arrest under the Paralegal Volunteer (PLV) (Suryanarayan, n.d.), beyond the weekly *Thana Samadhaan Diwas*, to address the needs of those who are accused of crime and held in police custody. Further, the empanelment of PLVs by paying a monthly retainer rather than an honorarium should be piloted. In the event that PLVs are used within jails for legal aid programmes, NALSA should also prepare a similar training video of the responsibilities of the NALSA and respective DLSAs. PLVs should be told not to encourage plea bargaining practices before counselling the undertrial on their right to access legal aid. Finally, Undertrial Review Committees must also function based on the revised mandate in directions issued by the Supreme Court in February and May 2016 in *Re Inhuman conditions in 1382 prisons*.¹¹⁰

6.3 Carrying Out Legal Reforms

Surety practices should be streamlined by High Courts through an illustrative list of factors which make surety reasonable, while also ensuring that those who cannot provide surety do not languish in prison and are released on personal bond. Land registration papers and bank account details should not be made mandatory surety requirements at any court due to the disparate access that certain demographic groups may have to these means. Non-local surety should be allowed by all lower courts for surety amounts less than INR 100,000 while simultaneously requesting the police forces for an increase in resources for verification.

S. 436(1) Cr.P.C. should be factored into the

computerization of court records, to ensure that after seven days in jail, the court is notified that there are persons who are fit for release on personal bond. Ideally, an acknowledgement by the courts is needed that those who may abscond may be a small fraction of those who would benefit from retaining their personal liberty by remaining connected to their access to shelter, livelihood and other positive externalities while also remaining present in the court for their trials. Courts should as a matter of practice, allow release on personal bond for those eligible for release u/s. 436(1) Cr.P.C. and those who have been granted bail but are unable to furnish bail requirements within two months of such an occurrence.

The repeal of outdated colonial laws such as s. 4 r/w s. 25 Arms Act and other provisions under Special and Local Laws—which may be misused, operationalized in a disparate manner, and result in over-criminalization—should be debated.

The Supreme Court in *Arnesh Kumar v. State of Bihar*,¹¹¹ has already mandated that Magistrates while remanding a person to custody, using powers under Section 167 Cr.P.C., should ensure that the requirements of Section 41 are followed. Although the directions of the Supreme Court apply to arrests made for offences punishable with imprisonment for less than seven years,¹¹² it is recommended that Magistrates should ensure that they independently verify the need for arresting the person, before granting remand.

District Courts should pay special attention to the disposal of petty cases through trial. Trials should commence as soon as possible so that there are no undue delays in cases on account of police personnel being transferred to other districts, evidence getting lost, etc. The High Court should encourage compounding of eligible petty offences under the Excise Act and Gambling Act.

State governments should ensure the implementation of the Probation of Offenders Act,

1958 in order to create more opportunities for release on probation for those offenders who are eligible for it. This would in part involve assigning probation officers which have largely been moved to other government departments. For instance, the Delhi High Court in *Mithilesh Kumar Kushwaha v. State*¹¹³ instructed the Delhi Government to put in place amended Rules under the Prisons Act, to take into account the necessary qualifications, training and appointment of probation officers. While this was from the perspective of the pre-sentencing stage in the case of a capital offence, the judgment recognizes that the contribution of a pre-sentencing report by a professionally trained probation officer is an ‘extremely valuable tool for assessing the possibility of reform and rehabilitation of a person.’ In the case of Uttar Pradesh, the UP Prisoners’ Release on Probation Act, 1938 must also be implemented.

The lower judiciary should maintain all databases as required by the Supreme Court/High Court, e.g., Sec 436A Cr.P.C., etc., instead of relying on jails to collate this data. There should be a clearer articulation of the roles of courts, jails, and police in pre-trial detention and release measures, with individual courts taking on greater responsibility and accountability. In the event that data is to be collected from prisons, instructions from court to prison staff on what is required must contain clear guidelines rather than it being assumed that prison staff are aware of the updates in the law, e.g., instructions pertaining to which offences are bailable versus non-bailable offences, how to determine eligibility under Sec 436A, etc. Overall, there is a need for individual courts to take responsibility for granting bail and disposing of cases without the need for oversight.

Budgetary and staffing issues including longstanding vacancies, and the need for better coordination within the criminal justice system must be addressed too.

For a court to consider, and be made aware

about a person being entitled to bail, it is essential to file an application. The CES study found that the access to legal aid remains poor in prisons. Until the issue of accessing effective legal aid is rectified, PLVs should be trained to draft bail applications. These applications may then be forwarded by the prison to the court, which may assign a lawyer to assist in the case.

6.4 Police Reforms

State police must establish respect for the rights of the accused by strictly enforcing the requirement that a completed arrest memo should be read out to the arrestee and that a copy of the FIR should be given to him/her free of charge. The police manual should be updated to include a clause mandating the arresting officer to read the suspect's rights contained in the Supreme Court's D.K. Basu judgement, in *Joginder Kumar vs. State of UP* 1994 AIR 1349, 1994 SCC (4) 260 and the Cr.P.C. The recitation should include a clear description of the nature of the charge and the suspect's rights to consult a lawyer, inform others of detention, seek medical examination, as well as their right to bail from the police station when arrested for a bailable offence. The manual should also include a definition of acceptable interrogation techniques, prohibiting the use of torture and threats to elicit information or confessions. This information should also be presented visibly on the notice board of each police station.

Due to the grave consequences of arrest and incarceration, it is imperative that senior police officers closely monitor arrests under Special and Local Laws to ensure that individuals are not being arrested under false charges.

A circular/notification should be issued by all state police clarifying the difference between bailable and non-bailable offences as classified in the Cr.P.C. and the right to bail for bailable offences at the police station. The circular should also provide

a complete list of applicable bailable offences within the IPC and all Special Acts. SHOs must ensure that arrests under Special and Local Laws are not being made under incorrect pretexts. Magistrates should provide proper oversight of the process as required by the law.

There is also the need to consider standardizing the validity of non-local surety across districts rather than leaving it to the discretion of the officer-in-charge at individual police stations and encourage release on personal bond alone for bailable offences. It is equally important to provide a list of illustrative factors, for each state to be considered, while setting bail conditions at the police station. Along with the list it is imperative to emphasize that for petty offences, the number and amount of sureties should be commensurate with economic status of the arrestee, as also the gravity of the alleged offence such that they may be able to furnish surety as per their means.

Police Complaints Authorities (PCAs) need to be established wherever they are not currently active at the state and district level as mandated by the Supreme Court in *Prakash Singh and Ors. v. Union of India and Ors.*, to ensure that a certain level of external accountability exists. Rectify codified practices of profiling (including within the content of training at police academies) and unnecessary surveillance within the police manuals of all states, and conduct trainings to discourage these practices. Remove clauses in the police manual that refer to the Criminal Tribes Act and Habitual Offenders Act, wherever they exist, and amend/delete the language in clauses pertaining to the creation of history sheets in order to account for the potential for reform for all offences.

Particulars of age, religion, social category/caste, education, occupation and monthly income should be recorded in the Crime Register, as should all bail details in the Bail Register if bail is accessed at the police station.

In the course of the CES study, researchers observed that police personnel were working with poor infrastructure and in difficult conditions, which is likely to affect both their morale and performance (Centre for Equity Studies, 2016, p. 72). In light of this, we propose the following improvements to working conditions for police personnel:

- a. Consider the following changes in recruitment, training and deployment of personnel—Recruit officers at only two levels, i.e., Constables and I.P.S., as recommended by the 5th National Police Commission, to allow Constables opportunities for promotion and necessitate in-service training on investigative techniques and the law. Promotions can be based on the completion of relevant trainings, tests and work experience.
- b. Hire civilian staff for clerical and administrative work at police stations and increase the number of investigative positions, as recommended by the Padmanabhaiah Committee on Police Reforms in 2000.
- c. Instate a committee/working group in each state to develop a feasibility and implementation plan for the separation of investigative and law and order personnel and develop a plan to reduce the proportion of vacancies, particularly for sub-inspectors and below.
- d. Establish a workplace grievance redress body for police personnel, comprising non-police personnel.
- e. Develop a plan to reduce law and order duties related to VIP security/escorting along with devising a set of guidelines to determine how much police protection is required when requested (for both VIPs and civilians, i.e., also in the case of witness protection).
- f. SHOs should post a work schedule each

month that includes shifts and duty rotation, time for rest and recreation, and planned leave. Mandate a weekly day off for all police personnel at and below the rank of sub-inspector.

- g. Finally, respective state governments must consider increasing budgetary allocations and capacity building for staff across all police departments.

6.5 Prison Department Reforms

State governments, prison departments and jail authorities must work together to ensure the following measures to make the custodial system more open and less exploitative:

- a. State governments should fill non-custodial staff vacancies in prisons immediately, create posts for welfare and other correctional officers at each prison, and constitute the Board of Visitors under the Prison Act 1894 with immediate effect wherever they are not so far in place. Board of Visitor rules should be drafted for all states and the list of inquiries that visitors are responsible to establish answers for, must include special problems of youth, persons with disability, women, and other disadvantaged groups.
- b. Prison authorities must also ensure that the illegal practice of *ginti*, that is prevalent in the jails of Uttar Pradesh and elsewhere, ends with immediate effect.
- c. Prison authorities should encourage entry of jail visitors and legal aid lawyers to the barracks and not restrict them to the jailor's office or central *chakkar* area to ensure that there is greater access to legal aid visitors for UTPs.¹¹⁴
- d. Jail authorities should also conduct regular reviews of UTPs imprisoned for petty offences and forward relevant cases to the

respective DLSA and District Judge for appropriate action, including granting of timely legal aid and facilitating release on personal bond wherever possible, instead of encouraging plea bargaining.

- e. In the absence of a functioning DLSA performing the designated role, the jail authorities must provide information to UTPs about the consequences (including a formal legal conviction) of pleading guilty prior to acceptance of their application for the Jail Lok Adalat. This can be done by facilitating screenings of the proposed video at regular intervals.
- f. Finally, the state government and prison department should develop greater avenues for rehabilitation of inmates following their release and provide access to civil society organizations working for this purpose. It must not be forgotten that no period of incarceration is too short to have an effect on someone who is socio-economically disadvantaged. State governments must also ensure that they have in-house de-addiction facilities at prisons while incarcerating drug addicts. They should also ensure timely payments for those working in prison.

As noted in the CES study, some jails are on the outskirts of cities, and thus sometimes difficult to access. This could hamper both visits by families as well as those by lawyers, which could in turn impact UTPs' access to legal assistance. State governments must do all they can to ensure that jails are well connected via public transport.

6.6 Addressing Data Gaps and Inaccuracies

Massive data gaps currently exist across police, custodial and court settings. Police must record demographic information for arrestees as well as complete bail information for those who have

been released on bail from the police station. Once prison entry records are computerized, NCRB should expand the scope of their data collection to include aspects such as the duration of stay of the inmates under incarceration based on the type of offence they have been charged under.

Related to data gaps is the issue of public authorities being given the allowance to fix the fee to be paid, with a request for information under the Right to Information Act. The Allahabad High Court, for instance, has an application fee of INR 500 per question, with an additional charge of INR 15 for per page of information provided, which is prohibitive for most citizens in need of basic information.¹¹⁵ This must be reconsidered across High Courts where differential fees exist above the INR 10 requirement otherwise asked for, with a simultaneous need to increase human resource infrastructure to address supply side concerns and also create systems for recording information which should be publicly available.

Jails must also be given information on how to collect data required by the NCRB—categories such as 'No. of prisoners to whom legal aid was provided' must be explained to the jail authorities before data is collected, and those explanations must also be provided when the data is published.¹¹⁶ Accuracy of NCRB data was called into question in the CES study, where the NCRB annual Crime in India report (2014) provided an annual total figure of 725 as the number of cases under all Special and Local Laws disposed of through plea bargaining nationally¹¹⁷ with numbers of cases disposed through plea bargaining under the Arms Act, NDPS Act, and Excise Act (1944) being reported as 8, 9 and 48, respectively.¹¹⁸ These numbers are far too low to be considered accurate, after determining what the numbers of cases resolved through plea bargaining were for the period from 1 January 2014 to 31 May 2015 across four districts in Uttar Pradesh alone.¹¹⁹ The cases reported, under the Excise Act, as convictions through plea bargain

from the subordinate courts (which provided data) were 6492, with an additional 638 reported under the Arms Act, and 68 under the NDPS Act.¹²⁰

6.7 Civil Society Imperatives

Interested individuals, academic institutions and social sector organizations can play an important role in making criminal justice institutions less opaque, by being involved through initiatives

such as PLV programmes and other legal aid initiatives, participating in the Board of Visitors for jails and in judicial and police training initiatives, and developing rehabilitation programmes. Due to the high likelihood of jail populations being invisibilized, there remains a need to build solidarities across labour, feminist, Dalit and other progressive movements around issues of those disadvantaged in their access to legal justice.

Endnotes

1. The authors would like to thank Sana Das and Vijay Raghavan for their careful review of this chapter, Harsh Mander for his contributions to the recommendations section, IXR collaborators for their inputs at various stages of the writing process, and Rajanya Bose for all her help in coordinating the drafts of the chapter.
2. For a study on systemic factors that affect the extent to which litigants in India are able to enforce their rights in court, please see: Krishnan, J. et al. (2014).
3. In this essay, our emphasis is on evaluating the inclusive nature of formal legal systems. Informal institutions and networks are not under its purview.
4. Hussainara Khatoon (I) v. Union of India, (1980) 1 SCC 81, 83.
5. (2015) 13 SCC 605.
6. Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273. See also: Sibiddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694.
7. India ratified the convention while making certain declarations which deferred to the Constitution of India regarding certain articles.
8. Noor Aga v. State of Punjab, (2008) 16 SCC 417.
9. See Ibid.
10. Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281.
11. Ibid., 287.
12. Ibid. See also: Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240, 245.
13. Ibid.
14. (2011) 1 SCC 694.
15. Ibid., 709.
16. Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240, 244.
17. See: Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240, 242.
18. Proviso to Section 436(1).
19. Explanation to Section 436(1).
20. (1978) 4 SCC 47.
21. Ibid., 52.
22. Ibid.
23. Ibid., 49–50.
24. Ibid., 57.
25. (1980) 1 SCC 81.
26. Ibid., 85.
27. Ibid.
28. Ibid., 86.
29. (2012) 1 SCC 40.
30. (2012) 1 SCC 40, 52.
31. (2012) 1 SCC 40, 63.
32. State of Rajasthan v. Balchand, (1978) 4 SCC 308, 308.
33. (1978) 1 SCC 240, 242.
34. Ibid., 244.
35. Ibid., 246.
36. (1980) 1 SCC 98.
37. (1980) 1 SCC 98, 103.
38. (1981) 1 SCC 627.
39. Ibid., 631.
40. (1986) 2 SCC 401.
41. See: Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 44, D.K. Basu v. State of West Bengal, (1997) 1 SCC 416, State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600, Directorate of Revenue Intelligence v. Jugal Kisore Samra, (2011) 12 SCC 362.
42. State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600.
43. Para. 167.

44. Noor Aga, para. 71.
45. (2014) 4 SCC 747.
46. Debbarma, para 39.
47. Chapter XXIA, Cr.P.C.
48. Lok Sabha Debates: Motion for consideration of the Criminal Law (Amendment) Bill, 2005 on 22 December, 2005.
49. Section 265A(1), Cr.P.C.
50. Section 265B(2), Cr.P.C.
51. Section 265B(4), Cr.P.C.
52. Section 265C, Cr.P.C.
53. Sections 265C, Cr.P.C.
54. Section 265E, Cr.P.C.
55. Section 265G, Cr.P.C.
56. Section 265A(1), Cr.P.C. See also Commonwealth Human Rights Initiative, 2009.
57. When police personnel were asked across districts about their perceptions regarding the purpose of arrest, their responses indicated two broad aims: first, arrest for the prevention or control of crime (including through preventive detention provisions in the Cr.P.C. such as u/s. 151 Cr.P.C. but also through targeted arrests for offences under Special Acts such as the Excise Act, Arms Act, NDPS Act and UP Prevention of Cow Slaughter Act which they consider as being 'preventive' as they are 'the root of crime' or 'lead to larger crimes'). Second, arrest to ensure remand. Practices encouraging arrests under these Acts as targets for police stations were also reported by a few interviewees, including sub-inspectors. Recording information under these offences was therefore brought under the ambit of this study. For more details, please see: CES study pp. 37–43 and 50–60.
58. For methodology and data sources, please see pp. 16–35 of the CES study cited above.
59. The districts covered were Saharanpur and Ghaziabad in the west, Banda and Kheri in central UP and Mau in east UP. Six jails were covered—the District Jails in each of the district, as well as the Sub Jail in Deoband, Saharanpur.
60. Calculated from Govt. of India. (2015). NCRB Prison Statistics in India: 'Table 5.2 – Demographic Profile of Undertrial Prisoners at the end of 2015 (Continued)'p. 103. Religion-wise population: 69.77 (Hindu); 20.94 (Muslim); 3.87 (Sikh); 3.67 (Christian); 1.76 (Others) Caste-wise population: 21.67 (Scheduled Caste); 12.41 (Scheduled Tribe); 31.48 (Other Backward Classes); 34.43 (General). Retrieved December 22, 2016, from <http://ncrb.nic.in/StatPublications/PSI/Prison2015/TABLE-5.2.pdf>
61. Ibid.
62. Calculated from figures in Item 3.4 from UP Prison Statistics provided in Annexure II of Centre for Equity Studies (2016).
63. Calculated from Govt. of India. (2015). NCRB Prison Statistics in India: 'Table 5.2 – Demographic Profile of Undertrial Prisoners at the end of 2015' p. 102. An undertrial prisoner is one against whom there is a charge of violation of law, but against whom this charge has yet not been proven, and who is being kept in judicial custody and has not been released on bail. The individual remains in prison till he or she is released on bail, or is discharged or acquitted in the case, or is convicted and released on completion of sentence, payment of fine, admonition, or probation.
64. Muslims constituted 14.23 per cent of the national population based on Census of India 2011 figures.
65. AIR 1994 SC 1349.
66. AIR 1997 SC 610.
67. Centre for Equity Studies (2016).
68. Ibid., p. 66. A range of reasons for the variation in percentages of those securing bail at the police station were provided by police personnel across districts, some of which were reported across districts, and others unique to specific practices and local contexts.
69. Ibid., p. 74. Offences included s. 60 Excise Act (possession of more than 1.5 litres of liquor), s. 13 Gambling Act, s. 279, 304A and 338 IPC, s. 279 and 338 IPC, s. 309 IPC, s. 323, 325 and 504 IPC, and s. 60 r/w s. 72 Excise Act.
70. Ibid., p. 75.
71. Ibid., p. 76.
72. Section 294, IPC punishes doing an obscene act, or uttering/singing/reciting an obscene song/ballad/ words, in public.
73. Ibid., p. 77 Offences included s. 3 r/w s. 4 of the Gambling Act, s. 60 Excise Act, s. 294 IPC, s. 143 Railways Act, and s. 145 and 156 Railways Act.
74. Ibid., p. 78.
75. Ibid., p. 77.
76. Ibid., p. 79.
77. Ibid.
78. Reproduced from CES study, p. 88.
79. Writers are undertrials and convicts who work in undertrial and convict offices in the respective jails where they are incarcerated. It is a position that is vied for, as it enables the inmate to assist in office work while also getting access to certain informal privileges. A strong culture was observed across jails of persons in relative positions of power within the prison encouraging inmates to plea bargain. See CES study, pp. 109–110.

80. Ibid., pp. 91–92.
81. For the given period, out of the 486 UTPs u/s. 4 r/w s. 25 Arms Act, 347 secured release through bail, 132 obtained convictions and secured release through plea bargaining, and the remaining 7 UTPs were still in jail at the time of data collection. The percentage of those plea bargaining was 27.58.
82. For the given period, out of the 251 UTPs charged u/s. 4 r/w s. 25 Arms Act, 167 UTPs secured release through bail, and 84 UTPs secured release by obtaining convictions through plea bargaining. The percentage of those plea bargaining was 33.47.
83. Centre for Equity Studies (2016).
84. For more details, see: Bureau of Police Research and Development. (1980). *Report of the Third National Police Commission*; Law Commission of India. (1994). *One Hundred and Fifty Second Report on Custodial Crimes*. New Delhi: GoI; Law Commission of India. (1996). *One Hundred and Fifty Fourth Report on The Code of Criminal Procedure*. New Delhi: GoI as cited in Centre for Equity Studies. (2016). *Access to Justice in Uttar Pradesh: A Pilot Study in Five Districts*. p. 31.
85. Ibid., pp. 42 and 56.
86. (2015) 13 SCC 605.
87. Writ Petition (Civil) No. 406/2013.
88. Allahabad High Court CrI. PIL no. 2357 of 1997.
89. This was based on data gathering from the UP State Legal Aid Services Authority (UPSLSA), and DLSA offices, as well as interviews with jail staff and inmates.
90. The position of Secretary DLSA is usually assigned to a judge of the rank of Civil Judge (Senior Division).
91. Centre for Equity Studies (2016), p. 99.
92. The 245th Law Commission Report titled 'Arrears and Backlog: Creating Additional Judicial (wo) manpower' defines 'Delay' as 'A case that has been in the Court/judicial system for longer than the normal time that it should take for a case of that type to be disposed of'. Applied to cases pertaining to petty offences under the Excise Act, Arms Act and NDPS Act which are tried in subordinate courts, we have assumed a reasonable trial completion period of three years. The cut-off period for calculating delays based on year-wise pendency figures would therefore be cases pending since 2011 and earlier, as data collection took place in the year 2015.
93. Data calculated from Annexure XIV of Centre for Equity Studies (2016). Data from select courts in each district was unavailable.
94. Data from select courts in each district was unavailable.
95. Case of Mohan, p. 110.
96. Section 41(1)(b)(ii), Cr.P.C.
97. See also Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
98. Centre for Equity Studies (2016), pp. 38 and 71.
99. Ibid., p. 89.
100. Figures calculated from Govt. of India. (2015). *NCRB Prison Statistics in India*: Table 11.1 – Sanctioned and Actual Strength of Jail Officers/Staff as on 31 December 2015. New Delhi. Pp. 146–149.
101. Including 'Head Warder', 'Warder', and 'Others'.
102. Centre for Equity Studies (2016), p. 30.
103. Ibid., p. 95.
104. See Pawan Kumar v. State of Haryana and Anr1996 SCC (4) 17.
105. Centre for Equity Studies (2016), p. 112.
106. The authors suggest that action may be 'collaborative', through civic cooperation, or 'adversarial', through political opposition and social criticism.
107. Many of these recommendations are a subset of those included in the CES study, pp. 126–132.
108. Emphasized also in Pawan Kumar v. State of Haryana and Anr1996 SCC (4) 17.
109. Standard Operating Procedures available on the NALSA website at <http://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf>
110. Detailed analysis of the Supreme Court orders are available on the Commonwealth Human Rights Initiative website at <http://www.humanrightsinitiative.org/download/1475562698Guiding%20Note%20on%20the%20expanded%20mandate%20of%20the%20UTRC.pdf>
111. (2014) 8 SCC 273.
112. Section 41(1)(b), Cr.P.C.
113. CrI. A. No. 249/2011.
114. Centre for Equity Studies (2016), p. 96: The jail visitor in Banda reported that he was not allowed to go into the barracks and usually met inmates in the Superintendent or Jailor's office.
115. Allahabad High Court (Right to Information) Rules, 2006: <http://www.allahabadhighcourt.in/rti/>. As referenced in Centre for Equity Studies (2016), p. 117.
116. Govt. of India (2015) NCRB Prison Statistics in India 2015: Table M.6 'Rehabilitation of Prisoners during the Year 2015'. The figure provided for total number of people being provided with legal aid was 94,673, without an explanation of what 'legal aid' entails or how the data was tabulated at the prisons.
117. NCRB Crime Stats 2014, Table 4.7: 'Disposal of SLL Criminal Cases by Courts During 2014'. as cited in Centre for Equity Studies (2016), p. 125.

118. Ibid.
 119. Ghaziabad, Kheri, Mau and Saharanpur.
 120. Centre for Equity Studies (2016), pp. 117–125.
 We concur that the additional five-month period

of the CES study data cannot possibly account for the number of cases exceeded over the estimate provided by the NCRB.

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SECTION II



Wall painting as a mode of public disclosure of expenditure of a particular government program, i.e., MGNREGA
Photo Credit: Mazdoor Kisan Shakti Sangathan (MKSS)

Recent Changes in India's Fiscal Architecture

Implications for Public Provisioning in Social Sectors

*Subrat Das, Amar Chanchal and Jawed Alam Khan**

1. Context, Scope and Methodology of the Analysis

1.1 Context

India's federal fiscal architecture has witnessed a number of substantive changes over the last couple of years. Replacing the Planning Commission with NITI Aayog has changed the institutional set-up of policymaking at the national level; the recommendations of the Fourteenth Finance Commission (FFC) have led to significant changes in the domain of resource-sharing between the union (or centre) and the states; and the decision by the union government to drop the distinction between Plan and Non-plan¹ expenditures in its budgets (starting from the financial year 2017–18) is going to change the way public spending is designed, reported and carried out in the country. One of the important questions that arises in the context of such changes pertains to the impact of the same on the responsiveness of India's fiscal policy to social inclusion.

India's fiscal policy has been marked for long by a relatively low level of tax-GDP ratio and the consequent limited fiscal policy space available to the country for public expenditure. Within the comparatively lower magnitude of overall

public expenditure in the country, the priority for social sectors (i.e., sectors like education, health, drinking water and sanitation, and social security measures, among others, which are primarily the areas where the poor and underprivileged sections are dependent on public provisioning of services to a much greater extent) has not been very high because of a number of reasons. As a result, the country has grappled with the problem of underfunding of public services in social sectors for decades now. In such a scenario, any assessment of India's fiscal policy from the perspective of social inclusion needs to probe the developments that are likely to affect the adequacy of public resources for social sectors, which is what this chapter is primarily concerned with.

The recommendations of the Fourteenth Finance Commission or FFC (meant for the years 2015–16 to 2019–20), which were accepted by the union government in February 2015 and adopted for implementation from financial year 2015–16 onwards, have implications for public financing of government services and interventions in a range of sectors. Based on the recommendations of the FFC, the union government is now sharing a higher magnitude of untied funds with the states, which is on account of the share of states in the divisible

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pool of central taxes being raised from 32 per cent (that had prevailed during 2010–11 to 2014–15) to 42 per cent every year. This was a quantum jump in the share of states in the divisible pool of central taxes, which had earlier hovered around the 30 per cent mark during the recommendation periods of the 10th, 11th, 12th and 13th Finance Commissions (i.e., during 1995–96 to 2014–15).

But, the considerable increase in the magnitude of untied resources transferred to states since 2015–16 has been accompanied by significant reductions in union government's financial assistance to states for their Plan spending (i.e., the Central Assistance for State Plan) and its budget outlays for a number of central schemes in different sectors. In several of the development programmes, especially the social sector schemes, the states are now expected to provide additional budgetary resources from their

untied funds to compensate for the reduced budget outlays by the union government. Nonetheless, the net effect in terms of the overall quantum of funds transferred from union to state is positive for the states and, more importantly, every state government now has a much greater proportion of untied funds in its budget.

Following this kind of restructuring, there has been an intense debate on the adequacy of overall budgetary resources (i.e., taking into account both the union budget and state budget outlays) for the social sectors.

It has been argued that the ability of the poorer states to expand their fiscal space with own revenue collection is limited. Moreover, the competition for budgetary resources across sectors could be more intense in these states. However, if the social sectors are not given adequate levels of priority

Box 1: Debate following the FFC Report and Restructuring of the Union Budget since 2015–16

Following the report of the FFC and restructuring of the union budget, there has been intense debate around two objectives or priorities, viz., the objective of increasing the autonomy of the State Governments in setting the spending priorities in their budgets, and that of ensuring adequate budgetary resources for the social sectors and development programmes for the vulnerable sections of the population (taking into account both the union budget and state budget outlays for these sectors).

While a major push has been given to the first objective, i.e., greater autonomy of State Governments in setting their spending priorities, in the recommendations of the FFC and the consequent restructuring of the union budget in 2015–16, apprehensions have been raised that the second objective may get compromised in the coming years at least in some of the states with relatively poor fiscal health and lower levels of economic development.

This is largely because of the limited ability of the poorer states to expand their fiscal space with own revenue collection and the fact that they also face more acute shortages of funds for other sectors such as general administration, law and order, and infrastructure. Hence, the competition for budgetary resources could be more intense in these states and the social sectors may not be given the priority for resources that are needed; this could aggravate the problem of regional disparity in the longer run. Although, we may note here that both of the above-mentioned objectives could be pursued together if the tax-GDP ratio of the country is stepped up visibly.

for resources in these states, it could aggravate the problem of regional disparity in the country in the long run. Hence, it is pertinent to delve deeper into this debate of restructuring of union budget and state budgets from the lens of public spending on social sectors in the country.

1.2 Objective

In such a backdrop, the present chapter examines the issue of prioritization of budgetary resources for social sectors in the changed milieu, focusing on select states. The state budget expenditures/allocations for the last three financial years, viz. 2014–15 (Actuals), 2015–16 (Revised Estimates) and 2016–17 (Budget Estimates)², are analysed to address questions like,

- What has been the impact of the FFC recommendations and restructuring of union budget on the overall spending capacity of state governments?
- Given their increased autonomy in setting spending priorities, have the state governments reprioritized their budgets significantly in 2015–16 and 2016–17?
- If they have done so, what has happened to the priority for social sectors in the state budgets in the new scenario?
- What can we infer about the impact of the FFC recommendations and restructuring of union budget on the responsiveness of India's fiscal policy to social inclusion on the basis of the trends and patterns emerging over the last two years?

1.3 Scope of the Analysis

The analysis presented here covers 10 states, viz., Assam, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, and Uttar Pradesh. Among these, while

Tamil Nadu and Maharashtra are economically more developed and hence have a stronger ability to expand their fiscal space with own tax and non-tax revenue, the other eight states are relatively more dependent on the transfer of union resources for financing their public expenditure.

Until 2013–14, the union budget outlays for a host of central schemes (like *Sarva Shiksha Abhiyan*, National Health Mission and MGNREGA, among others) were getting transferred directly to autonomous bank accounts of the agencies set up for implementing those schemes, and hence the state budget documents did not capture the complete allocations/outlays (i.e., central and state share combined) for several of the central schemes. However, since 2014–15, the central shares of outlays for all schemes are flowing through the state budgets and the budget documents of states do report the entire outlays for all central schemes. Therefore, in order to ensure comparability of the budget figures, we examine in this chapter the state budget expenditures/allocations in 2014–15 (Actual Expenditure), 2015–16 (Revised Estimates) and 2016–17 (Budget Estimates).

The data for 2014–15 are actual expenditure (AE) for that year; this is the latest financial year for which expenditure figures audited and certified by the country's supreme audit institution were available in the public domain. The data for 2015–16 are revised estimates (RE), but this was the first year of implementation of FFC recommendations and hence many states made adjustments during the course of the financial year through additional outlays for various departments and schemes in two to three Supplementary Budgets for the year. The data for the latest financial year, 2016–17, are budget estimates (BE) for the year.

It could be argued that since the figures for 2016–17 and 2015–16 are approved outlays/allocations, we should compare those with the approved outlays for 2014–15 instead of actual expenditures

for that year. However, in the process of budgeting for various sectors and government interventions, state finance departments usually refer to the actual expenditures in the previous years while determining allocations for the most recent or the ensuing financial years. Hence, taking the actual expenditures for 2014–15 in the analysis enables us to clearly identify the priorities of the state finance departments for various sectors and interventions in their respective state budgets for 2015–16 and 2016–17—the first two years of implementation of the FFC recommendations, which have given the states a lot more flexibility in deciding budget priorities for different areas.

1.4 Methodology

All figures for the state budget expenditures/allocations for 2014–15 (AE), 2015–16 (RE) and 2016–17 (BE) have been taken from the latest budget documents of the respective states (i.e., state budgets for 2016–17). The figures for the Gross State Domestic Product (GSDP) of the selected states are also from the budget documents (or, in case of a few states, from publications of the RBI).

In the analysis of the sector-wise priorities within the state budgets, the total expenditure/ allocation figures for different sectors are based on the allocations for one or more Departments reported in the *Detailed Demands for Grants* (which are the most detailed budget documents) in the state budgets. Annexure Table 5 explains

which Demands have been clubbed together for arriving at sector-specific total allocation figures in the case of different states. A note of caution here is that the data on different sector-wise allocations might not be strictly comparable across states, since the composition of Departments/Demands is not completely uniform across states. However, for any selected state, the figures for the three years are fully comparable.

In the analysis of the sector-wise priorities in the state budgets, the chapter covers 13 different sectors, which are as listed out below:

- i. Education
- ii. Health
- iii. Drinking Water and Sanitation
- iv. Social Welfare
- v. Agriculture and Allied Sectors (viz. Animal Husbandry, Dairy, Fisheries)
- vi. Irrigation and Water Resources
- vii. Cooperation and Food & Civil Supplies
- viii. Rural Development
- ix. Panchayati Raj
- x. Urban Development and Housing
- xi. Power and Energy
- xii. Public works, and
- xiii. Forest & Environment

Of these, sectors (i) to (ix) have been clubbed together in some parts of the analysis and referred to as ‘Social Sectors’, which is a much broader definition of social sectors than what is usually found in budget documents.

(A). Social Services— as per the union budget and state budget documents	(B). Social Sectors— as per RBI’s publication <i>State Finances: A Study of Budgets</i>	(C). Social Sectors— in the present analysis
Education, Health & Family Welfare, Drinking Water & Sanitation, Nutrition, Social Security & Welfare, Welfare of Backward Sections, Sports, Art & Culture, etc.	Social Services as in (A), and, Rural Development, and Food Storage & Warehousing.	Social Sectors as in (B), and, Panchayati Raj, Agriculture & Allied Sectors (Animal Husbandry, Dairy, Fisheries), Irrigation & Water Resources, and Cooperation and Food & Civil Supplies.

A number of sectors other than the social sectors [i.e., sectors (x) to (xiii) in the list stated above] have been covered in the analysis in order to gauge the reprioritization (if any) in state budgets among different sectors.

1.5 Limitations

A few caveats need to be kept in mind while interpreting the findings of the analysis in this chapter, which are as stated in the following:

- i. In the year 2014–15, the levels of budgetary spending on most social sector schemes administered by the union ministries had been less (in constant prices or real terms) than those in the previous couple of years, which was considered to be a kind of an outlier. One of the reasons due to which the actual expenditures (AE) in 2014–15 fell far short of the Budget Estimates (BE) for that year was the decision by the union government to contain the Fiscal Deficit (i.e., the amount of borrowing done by the union government in a financial year). What this implies for our analysis is that the baseline with which we are comparing the figures for budgetary outlays in 2015–16 and 2016–17 is itself on the lower side. And, hence, any increase in the levels of budget allocation in 2015–16 and 2016–17, as compared to 2014–15, need not indicate that the amount of public resources being allocated for a sector in the recent years is 'adequate'. In fact, this chapter focuses mainly on the trends between 2014–15 to 2016–17 and does not try to assess the 'adequacy' of total public resources allocated to any of the sectors covered.
- ii. While the country's low tax-GDP ratio (around 17 per cent) seems to be at the root of the problem we are discussing, i.e., the inadequacy of overall budgetary resources

for social sectors, examining the tax policy and tax administration related issues in the country is beyond the scope of this chapter.

- iii. Likewise, a number of problems are there in the domain of utilization of budget outlays in the social sectors; budget 'outlays' also need to translate effectively into better 'outputs and services' on the ground, which in turn should lead to better development 'outcomes'. These issues too are not within the scope of the analysis presented here.

2. Landscape of Centre-State Fiscal Relations in India until 2014–15

2.1 Evolution of Centre-State Fiscal Relations

The issues pertaining to fiscal relations between union and state governments in India have been discussed largely around the inter-governmental allocation and transfer of funds. The evolution of fiscal relations between the union government and states had started with the system of Diarchy as per the Government of India Act, 1919.³ During the 1920s, financial contributions used to be made by the provinces to the central government.

After independence, a quasi-federal Constitution was adopted with centralizing tendencies; the Constitution of India provides for a division of responsibilities between the union (or centre) and states with regard to various areas of governance. There is a Union List, a State List and a Concurrent List enumerating the division of power to legislate on different subjects as well as the power of revenue collection and areas of expenditure. In terms of division of powers and responsibilities, the Union List mainly covers matters of national importance such as state governments' defence, transportation, infrastructure, international trade and macroeconomic management. As per the provisions made in the State List, states are

given regional matters and issues considered to be more important at the state level such as law and order, public health, sanitation, housing, irrigation, agriculture, and local governments. The Concurrent List includes sectors such as education, contracts, matters of bankruptcy and insolvency, economic and social planning, employment and labour welfare, electricity, stamp duties and any other sector which requires consensus between the union and states.

A few decades later, through the 73rd and 74th Constitution Amendment Acts, 1992, a major process of fiscal decentralization was initiated in the country to empower local governments in terms of their revenue and spending capacity. After these amendments, state governments evolved their own rules for devolving fiscal power to local governments and the extent of devolution was left to the states to decide according to local needs; as a result, it has varied widely across the states.

The division of the roles and responsibilities between the union government and state governments, given in the Constitution, has

translated into a division of expenditure responsibilities and taxation powers between the two. The state governments have been vested with the powers to levy certain types of taxes and duties, and they mobilize their own revenues from all such sources.

However, there is a vertical imbalance between the powers of the states and the union to raise revenue through taxes and duties in comparison to their expenditure requirements. The powers of revenue mobilization vested with the states are insufficient to help them mobilize resources that would meet their total expenditure requirements. This kind of a vertical imbalance was built into the fiscal architecture of India keeping in mind the need for union government's interventions to address the horizontal imbalance, i.e., the limited ability of some of the states to mobilize adequate resources from within their state economies. In the fiscal architecture that has evolved in India, a significant amount of financial resources are transferred from the union government every year to every state government so as to enable the state governments to meet their expenditure requirements.

Box 2: Division of Taxation Powers between the Three Tiers of Governments in India

In India, the power to levy taxes and duties has been divided among the governments at the three tiers, i.e., union government, state governments, and local bodies. This division follows specific provisions in the Indian Constitution.

Union Government has been vested with the power to levy: Income Tax (except tax on agricultural income, which the state governments can levy); Customs duties; Central Excise; Sales Tax; and Service Tax.

State Governments have been vested with the power to levy: Sales Tax (a tax on intra-state sale of goods)—the system of Sales Tax levied by state governments was replaced with Value Added Tax (VAT) a decade ago; Stamp Duty (a duty on transfer of property); State Excise (a duty on manufacture of alcohol); Land Revenue (a levy on land used for agricultural/non-agricultural purposes); Duty on Entertainment; and Tax on Professions.

Local Bodies have been empowered to levy: tax on properties (buildings, etc.); Octroi (a tax on entry of goods for use/consumption within areas of the Local Bodies); Tax on Markets; and Tax/User Charges for utilities like water supply, drainage, etc.

In fact, for any State, a large part of the state government's total revenues is provided by the union government in the form of: a share in tax revenue collected by the centre, grants, and loans. A part of the **grants** are 'untied' (i.e., not tied to any specific spending programme designed by the union government), which are also known as 'block grants' or 'general purpose grants'. But, a sizable chunk of the union government's grants for a state used to be 'tied' or 'specific purpose' grants. We may note here that starting from the fiscal year 2005–6, the union government had sharply reduced 'loans' for the states, following the recommendation of the 12th Finance Commission.

Among these different types of funds which flow from the union budget into the budgets of states, the share of a state in the tax revenue collected by the centre and 'untied' grants for the state have always been based on some pre-designed formula (accepted by both centre and the states). These formula-based fund transfers from union budget to the state budget were based on recommendations of the central Finance Commission and the central Planning Commission.

A **Finance Commission** is set up once every five years to recommend on sharing of financial resources between the union and the states, a major part of which pertains to the sharing of revenue collected in the Central Tax System.⁴ The most important recommendations made by the Finance Commission have been those relating to: the distribution of the tax revenue mobilized under the central tax system between the centre and the states; the allocation of the respective shares of such tax revenue among the different states; and the principles which should govern the grants-in-aid for the states to be provided out of the Consolidated Fund of India.

The **Planning Commission** is not mentioned in the Constitution of India; it was set up as an advisory and specialized institution by a resolution of the union government in March 1950. The Planning

Commission had the responsibility of making an assessment of all resources of the country, augmenting deficient resources, formulating plans for effective and balanced utilization of resources and determining priorities. The most important suggestions made by the Planning Commission were those relating to: the magnitude of funds to be given from union budget to different states and union territories as 'Central Assistance for State and UT Plans', and the magnitude of funds to be given to Central Ministries/Departments for Plan expenditure on the Central Schemes. Moreover, the need for focusing on the concerns of the disadvantaged sections of population was also a core area of development planning in the country; since the 1970s, the Planning Commission had initiated several measures to provide policy-driven benefits to Scheduled Castes, Scheduled Tribes, women and religious minorities.

Both the institutions, Finance Commission and Planning Commission, played vital roles in terms of devolving funds and working towards reducing regional imbalances in the country. The Finance Commission has generally been viewed as a neutral institution with no bias either in favour of the states or the centre. However, some observers have pointed out that starting with the 10th Finance Commission, a clear tilt towards promoting the conservative fiscal policy of the centre and dominance of the centre in the overall fiscal architecture had been witnessed in the recommendations of the Finance Commissions. The Planning Commission, however, had been criticized by many observers (and several state governments) for accentuating the dominance of the centre in the country's fiscal architecture especially over the last one and a half decades. In 2015, the Planning Commission was scrapped and a new institution called National Institution for Transforming India (NITI Aayog) was created. Also, as mentioned earlier, the Five Year Planning process in the country will end with the completion of the 12th Plan by March 2017.

2.2 Issues in Centre-State Sharing of Resources

As regards centre-state fiscal relations and fund transfers to the states, a number of issues had been pointed out over the last few decades. For instance, Rao (2000) had argued that there were several anomalies in the fiscal assignments both between the Centre and states and between states and local bodies; hence, there was a need to rationalize the fiscal assignment system to enable the decentralized governments to raise revenues and incur expenditures according to the preferences and priorities in their areas. It was also argued

that with multiple agencies being involved in fund transfers, it was difficult to ensure that the transfer system met the desired objectives.

It can be argued that the fiscal policies adopted in India since the early 1990s strengthened the Centre's position vis-à-vis the states in terms of control over fiscal resources. The trends in gross devolution and transfers (GDT) from the Centre to states as percentages of the country's Gross Domestic Product (GDP), as well as the trends in GDT as percentages of aggregate disbursements by state governments, showed a decline over the last two and a half decades, as demonstrated in Table 1 below.

Year	Gross Devolution and Transfers (GDT) from Centre to States* (in Rs. Crore)	GDT as Percentage of Gross Domestic Product	GDT as Percentage of Aggregate Disbursements of States
1988-89	30,333	7.1	45.2
1989-90	32,862	6.7	42.8
1990-91	40,859	7.2	44.9
1998-99	102,268	5.8	39.1
1999-00	95,652	4.9	31.1
2000-01	106,730	5.1	31.4
2001-02	119,213	5.2	32.3
2002-03	128,656	5.2	31.4
2003-04	143,783	5.2	28.0
2004-05	160,750	5.0	29.0
2005-06	178,871	4.8	31.8
2006-07	220,462	5.1	33.5
2007-08	267,276	5.4	35.5
2008-09	297,980	5.3	33.8
2009-10	324,090	5.0	31.9
2010-11	392,460	5.0	33.9
2011-12	438,430	4.9	30.6
2012-13	497,900	5.0	30.5
2013-14	595,630	5.2	-

Source: CBGA (2013)

Note: *Gross Devolution and Transfers (GDT) include States' Shares of Central Taxes, Grants from the Centre, and Gross Loans from the Centre.

Thus, the overall volume of fiscal resources transferred from the Centre to states did not keep pace with the growth in expenditure commitments by the states. Moreover, the composition of the overall volume of fiscal resources transferred from the Centre to the states had changed in terms of the share of untied resources in total annual transfers falling in the last decade and a half. Many experts were of the opinion that India's policies in the domain of Centre-state sharing of resources over the past decade and a half had neglected the need for greater magnitudes of untied resources to be transferred to state governments; the transfers of resources tied to the conditions and guidelines of central ministries had increased during this period.

Over the past decade, the country's tax-GDP ratio—the combined figure for taxes raised by the Centre and states—has been around 17 per cent or less, which is much lower than the tax-GDP ratios of many of the other Group of Twenty (G20) countries and some of the other BRICS countries. For instance, the tax-GDP ratio for the year 2010 was just 16.3 per cent for India, while it was a much higher 33.2 per cent for Brazil and 33.8 per cent for the OECD countries on an average (Khan and Das 2014). Table 2 shows the magnitude of total tax GDP ratio, this includes both the direct tax revenue and indirect tax revenue from 1990–91 to 2014–15. It can be seen that the total tax-GDP ratio ranged from 15 per cent to 17 per cent over this period. The indirect tax revenue contributes a large share in the tax-GDP ratio. It can be said that India has followed a somewhat regressive tax policy over the years with excessive dependence on indirect tax revenue.

Thus, the overall magnitude of public resources available to the government in India has been inadequate in comparison to several other countries, mainly owing to the low magnitude of tax revenue collected in the country. This problem of limited fiscal policy space has aggravated the challenges in the domain of Centre-state sharing of resources in the country.

Years	Direct tax revenue	Indirect tax revenue	Total Tax-GDP ratio
1990–91	2.09	12.87	14.96
2000–1	3.31	10.77	14.08
2006–7	5.39	11.77	17.15
2007–8	6.39	11.06	17.45
2008–9	5.83	10.43	16.26
2009–10	5.82	9.63	15.45
2010–11	5.78	10.53	16.31
2011–12	5.57	10.73	16.29
2012–13	5.62	11.35	16.97
2013–14 (RE)	5.70	11.39	17.09
2014–15 (BE)	5.81	11.57	17.38

Source: Indian Public Finance Statistics, 2014–15, Ministry of Finance, Department of Economic Affairs, Economic Division.

2.3 Limited Fiscal Policy Space and Implications for Public Provisioning in Social Sectors

As shown in Table 3 below, India's total public expenditure as a proportion of the country's GDP has been stagnant at around 27 per cent since 1991. It also shows that in total public spending, state budgets have contributed around half of the total expenditure.

It is also the case that a much larger part of total public expenditure on social sectors in India has come from state budgets. However, over the last decade, in their attempts to eliminate the Revenue Deficits in their budgets (and show a Revenue Surplus, in some cases), many states limited their long-term expenditure commitments, particularly in social sectors, by freezing recruitment of staff on regular cadres. An analysis of the fiscal policies of states, especially those showing a Revenue Surplus in their budgets such as Odisha, Chhattisgarh, and Bihar, among others, reveals similar trends of

Table 3: Total Expenditure as a Percentage of GDP including Centre and States					
	Combined Expenditure	Union Govt. Expenditure	GDP at current prices	Combined Share in GDP	States' Share
	in Rs Crore			in Percent	
1990-91	155141	100884	586212	26.46	17.21
2000-1	552124	313011	2168652	25.46	14.43
2006-7	1086592	564934	4294706	25.30	13.15
2007-8	1243598	701985	4987090	24.94	14.08
2008-9	1519081	874831	5630063	26.98	15.54
2009-10	1814610	1013193	6477827	28.01	15.64
2010-11	2105695	1187898	7795314	27.01	15.24
2011-12	2381434	1286997	9009722	26.43	14.28
2012-13	2649263	1393577	10113281	26.20	13.78
2013-14 (RE)	3152934	1575061	11355073	27.77	13.87
2014-15 (BE)	3537504	1779442	12876653	27.47	13.82

Source: Indian Public Finance Statistics, 2014-2015, Ministry of Finance, Department of Economic Affairs, Economic Division.

freezing recruitment in regular cadre posts for a long time.

In the budgetary classification in India, government expenditure that does not lead to any increase in the physical/financial assets or a reduction in the financial liabilities of the government is reported in the Revenue Account; it is referred to as Revenue Expenditure. Consequently, large proportions of expenditure in human resource intensive sectors like education and health get reported as Revenue Expenditure. Over the last one and a half decades, the advice by fiscal policymakers to state governments for eliminating the deficit in their Revenue Account (i.e., not borrowing at all for financing Revenue Expenditure and borrowing only for Capital Expenditure) has resulted in the states trying to check the growth of expenditure in social sectors over time. This has also been due to the fact that some of the other areas of Revenue Expenditure such as interest payments, pensions, etc., are non-negotiable.

Although the long-term benefits of public provisioning of services in the social sectors are well-recognized, the entire quantum of Revenue

Expenditure gets treated (in some of the literature on public finance) as expenditure meant for 'current consumption', which is debatable. One interesting example of following a better practice in this regard is from Bhutan; expenditure on training/capacity strengthening of government staff there gets reported as Capital Expenditure based on the logic that the benefits from the same would continue to flow even beyond the particular financial year in which the expenditure is incurred. But, in India, such expenditure on enhancing the skills and capacities of staff gets reported as Revenue Expenditure since it does not increase the physical/financial assets of the government. It could be argued, in this context, that there is a need for revisiting the Revenue-Capital classification in government expenditure in India.

However, the maximum impact of this approach of eliminating the Revenue Deficit by checking the growth of Revenue Expenditure has been on expenditure on staff both in regular cadres as well as contractual staff across sectors. We need to acknowledge that India is facing a dual challenge: of problems in rational deployment of government staff (i.e., higher concentration of staff in urban

centres as compared to rural areas and remote habitations) and increasing levels of salaries for government staff in regular cadres (attributed largely to the recommendations of the 5th Pay Commission of the late 1990s and the 6th Pay Commission of the last decade) on the one hand, and, shortages in the overall numbers of staff available for government services and interventions on the other.

A number of studies have pointed out that staff shortage has emerged as one of the major challenges in public service delivery in India; also, the gap is more acute for skilled/technical staff positions compared to unskilled/support staff positions. In this context, it has been argued that 'acute shortage of staff, especially skilled employees, across a range of administrative units at the subnational level, which are vested with the responsibilities of planning and implementing government interventions for crucial social sectors, has resulted in poor quality of

public expenditure in these sectors' (Das, 2017). As regards the availability of total staff in the expanded government sector in India (i.e., including the Central government, state governments, local bodies, and quasi-government institutions such as the public sector enterprises) as a proportion of the country's population, the evidence available shows that, as of 2010, India had approximately 1.6 government sector personnel for every 100 residents (even when we include the contractual staff in the government sector); this is relatively low when compared to the much higher figure of 5.9 government sector personnel for every 100 residents in Brazil or the figure of 3.9 government sector personnel for every 100 residents in Mexico (Das, 2017).

This problem of shortage in the overall numbers of staff available for government services and interventions appears to be more acute in the social sectors. For instance, Box 3 below indicates

Box 3: Shortages in Human Resources and Infrastructure in Public Sector Healthcare in India

A: Status of Human Resources in the Health Sector in India—Select Indicators

Obstetricians & Gynecologists at CHCs shortfall (%)	Doctors at PHCs shortfall (%)	SCs without both HW (M&F) (%)	SCs without both HW (F)/ ANM (%)	Nursing Staff at PHCs and CHCs shortfall (%)	Total Specialists at CHCs (Surgeons, OB&GY, Physicians, and Pediatricians) shortfall (%)
76	12	3.3	5	7	81

B: Status of Health Infrastructure in India—Select Indicators

Sub Centres				Primary Health Centres				
With ANM living in SC Quarter	Without Regular Water Supply	Without Regular Electricity	Without All Weather Motorable Approach Road	With Labour Room	With Operation Theatre	Without Regular Electricity	Without Regular Water Supply	Without All Weather Motorable Approach Road
65.3	28.4	25.6	11.2	70.4	39	4.4	7	6.9

Source: Compiled by CBGA from Rural Health Statistics, 2015

the extent of human resource shortage in public sector healthcare in India. However, there are also shortages in infrastructure for public provisioning of some of the essential services; Box 4 presents some indicators again from the health sector.

What this makes evident is the need for urgent attention to be paid to the adequacy of the overall public resource envelope available for crucial social sectors in the country. We should also take into account the fact that it is equally important to improve public expenditure management in India so as to get better results from government spending across sectors. However, it needs reminding in this context that staff shortages, which have weakened the delivery apparatus in most sectors across states, are themselves a result of under-funding of social sectors over the years.

3. Changes in the Fiscal Architecture since 2015–16 and their Implications

As stated earlier, the landscape of fiscal policy and budgetary processes in India has witnessed a number of changes over the last two years; the recommendations of the FFC and the consequent restructuring of the union budget has led to the most noticeable changes in this sphere.

In 2015, the NITI Aayog constituted a Sub-group of Chief Ministers of states to develop, through a consultative process, a roadmap for the ‘Rationalization of Centrally Sponsored Schemes’; this Sub-group (led by the Chief Minister of Madhya Pradesh) submitted its report to the union government in October 2015. The said report provided further clarity on the guiding principles for rationalization of Centrally Sponsored Schemes

Box 4: Key Recommendations of the Fourteenth Finance Commission

- The FFC has enhanced the share of states in the divisible pool of central taxes from 32 per cent to 42 per cent every year for the five year period 2015–16 to 2019–20.
- Its formula for the horizontal devolution of resources from the divisible pool has incorporated two new criteria, viz., demographic changes by 2011 (i.e., the population in 2011) and forest cover in a state; it has dropped the criterion of fiscal discipline.
- It has not recommended any sector-specific grants for states.
- The FFC recommended evolving a new institutional arrangement, with the overarching objective of strengthening cooperative federalism, for: (i) identifying the sectors in the states that should be eligible for grants from the union government, (ii) indicating criteria for inter-state distribution of these grants, (iii) helping design schemes with the appropriate flexibility being given to the states regarding implementation, and (iv) identifying and providing area-specific grants.
- It has recommended distribution of grants to states for local bodies (urban and rural) based on the 2011 population with a weight of 90 per cent and area with a weight of 10 per cent. Total size of this grant for all states is to be Rs 2,87,436 crore for period 2015–20.

Box 5: NITI Aayog Sub-Group of Chief Ministers on Rationalization of Centrally Sponsored Schemes

NITI Aayog constituted a Sub-Group of Chief Ministers on the rationalization of CSS with the objective of examining the existing CSS and recommending measures for ensuring that their implementation is streamlined and adequately flexible. The major recommendations, in its report released in October 2015, were as follows:

CSS will be divided into Core and Optional schemes.

From now onwards, the sharing pattern would be:

For Core Schemes

For the eight NE and three Himalayan states: Centre 90%: state 10%

For all other (general category) states: Centre 60 %: state 40%

For Union Territories: Centre: 100%

For Optional Schemes

For the eight NE and three Himalayan states: Centre 80%: state 20%

For all other (general category) States: Centre 50%: state 50%

For Union Territories: Centre: 100%

Funds for Optional Schemes would be allocated to states by the union Ministry of Finance as a lump sum and states would be free to choose which Optional Schemes they wished to implement.

Among the Core Schemes, those for social protection (including MGNREGA) and environment protection (e.g., wildlife conservation and greening) to form 'Core of the Core', which would have the first charge on funds available for the national development agenda.

(CSS) and the revised fund sharing pattern (between union and states) in the CSS.

3.1 Union Budget Outlays for Social Sectors

As mentioned earlier, the union government had reduced its budget allocations for a number of central schemes in the social sectors since 2015–16 (BE), as compared to the allocations made in 2014–15. The union budget 2015–16 documents did mention explicitly the premise on which such restructuring of the union government's expenditure was being pursued, which was that the states would compensate for such reductions through higher allocations of state shares in the

central schemes (with the help of the greater magnitude of untied funds they would receive). In this context, apprehensions were raised with regard to the overall budget outlays (i.e., central and state share combined) for some of the major central schemes in social sectors. Union budget outlays for many of the social sector schemes, except for the *Swachh Bharat Abhiyan* and *Pradhan Mantri Gram Sadak Yojana*, have declined in 2015–16 (RE) and 2016–17 (BE) as compared to 2014–15 (BE).

The Report of the NITI Aayog Sub-group of Chief Ministers on Rationalization of the CSS has grouped and categorized the CSS into 'core of the core', 'core', and 'optional' (please see Box 4 above). According to some observers, this

Table 4: Union Budget Outlays for Major Social Sector Schemes (in Rs Crore)

Schemes	2013–14 Actual	2014–15 BE	2014–15 RE	2014–15 Actual	2015– 16 BE	2015– 16 RE	2016– 17 BE
Sarva Shiksha Abhiyan (SSA)	24802	28258	24380	24097	22000	22015	22500
<i>Rastriya Madhyamik Shiksha Abhiyan (RMSA)</i>	2013	5000	3480	3398	3565	3565	3700
Mid-Day-Meal (MDM)	10918	13215	6973	10523	9236	9236	9700
Integrated Child Development Services Scheme (ICDS)*	16401	18691	16967	16684	15902	15584	14863
Scheme for Empowerment of Adolescent Girls (SABLA)	603	700	630	622	438	476	460
Indira Gandhi Matritva Sahayog Yojana (IGMSY)	232	400	360	343	10	234	400
National Health Mission (NHM)*	18634	22731	18609	19751	18875	19122	19037
National Rural Drinking Water Prog. (NRDWP)	9691	11000	9250	9190	2503	4373	5000
Swachh Bharat Mission (Rural+Urban)	2244	4260	4541	3701	3625	7525	11300
<i>Indira Awas Yojana (IAY)/ Pradhan Mantri Awas Yojana (Rural)</i>	12982	16000	11000	11096	10025	10004	15000 [#]
Pradhan Mantri Gram Sadak Yojana (PMGSY)	9805	14391	14200	9960	14291	15188	19000
Total	108325	134646	110390	109365	100470	107322	86960

Source: Connecting the Dots: An Analysis of union budget 2016–17, CBGA.

Note: *Includes ICDS, World Bank Assisted ICDS ISSNIP and National Nutrition Mission. Original Allocation for ICDS in 2015–16 BE was Rs 8754 crore. The balance amount was allocated in subsequent supplementary grants. [#]The allocation for *Indira Awas Yojana* has been discontinued from 2016–17 BE. *Pradhan Mantri Awas Yojana (Rural)*, a new scheme, has been initiated for housing in rural areas.

new set-up implies that it's mainly the expenses on infrastructure (and in only specific cases, maintenance) in the programmes at the state level, which would be borne by the union government. Given the fact that Capital Expenditure by the states in most of the social sector programmes are small and they have a larger Revenue Expenditure (mainly salaries) component, which then would have to be borne by states, it does raise a concern. Thus, if the resources of the states do not increase commensurately, there is an increased possibility that important social sector programmes will suffer due to a lack of adequate resources.

3.2 Spending Capacity of State Governments

The FFC recommended a transfer of 42 per cent of the divisible pool of central taxes to the states, which amounted to an increase of 10 percentage points from the level prevailing in the Thirteenth Finance Commission period. The increased devolution also works in tandem with the spirit of strengthening fiscal federalism with more untied resources being transferred to the states. However, a deeper examination of the amount of increased devolution provides a clearer picture of

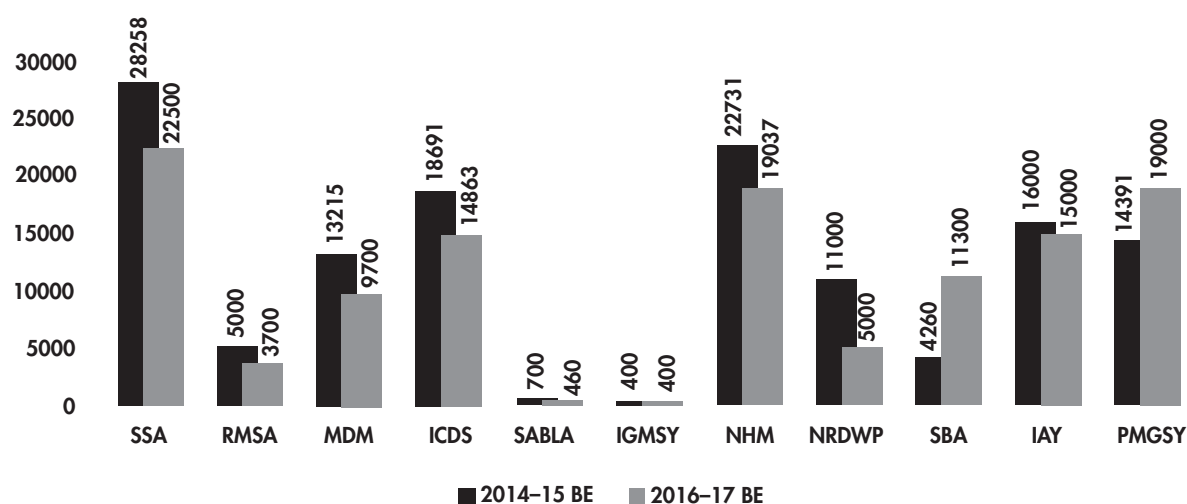


Figure 1: Union Budget Allocation for Major Social Sector Schemes: A Comparison of 2014-15 and 2016-17 (in Rs Crore)

Source: Connecting the Dots: An Analysis of Union Budget 2016-17, CBGA.

Note: ICDS also includes World Bank Assisted ICDS ISSNIP and National Nutrition Mission. The allocation for *Indira Awas Yojana* has been discontinued from 2016-17 BE. *Pradhan Mantri Awas Yojana* (Rural), a new scheme, has been initiated for housing in rural areas.

the status of overall resources being transferred to the states. Table 5 below shows that in the total union resources transferred to states, both 'states' share in central taxes' and 'non-plan grants to states' show an increase in 2015-16 (RE) and further in 2016-17 (BE) from 2014-15 (Actuals), not only

in absolute numbers but also as proportions of the country's GDP. However, another component of the union resources transferred to states, viz., central assistance to states for plan spending (which includes the block grants given to states for plan spending as well as the union government's

Table 5: Composition and Structure of Transfer of Resources to States (Rs crore)			
	2014-15 Actual	2015-16 RE	2016-17 BE
States share of taxes and duties	337808	506193	570337
Non Plan grants and loans to states	77198	108312	118437
Central Assistance to States for Plan spending	270829	216108	241900
Total Union Resources transferred to States*	675177	821520	921201
GDP at current market prices (2011-12 series)	1248205	13567192	15065010
States share of taxes and duties as % of GDP	2.7	3.7	3.8
Non Plan grants and loans to states as % of GDP	0.6	0.8	0.8
CA to States as % of GDP	2.2	1.6	1.6
Total Union Resources transferred to States as % of GDP	5.4	6.1	6.1

Source: Compiled by CBGA from union budget documents, 2015-16 and 2016-17.

Note: *Total union resources comprise states' share in central taxes, non-plan grants, Central Assistance to States for Plan spending (including the assistance for Central schemes).

assistance to states for central schemes), shows a decline in 2016–17 (BE) as compared to 2014–15 (Actuals). On the whole, the total union resources transferred to states shows an increase from 5.4 per cent of GDP in 2014–15 (actuals) to 6.1 per cent of GDP in 2016–17 (BE).

Thus, the higher magnitude of states' share in central taxes has come partly at the cost of discontinuation of central assistance for state plans and reduced funding shares of the union government in Centrally Sponsored Schemes in a host of sectors. The total resources transferred from the union government to states in 2015–16 (RE) were higher than that in 2014–15 (Actuals) by Rs 1.46 lakh crore. This increased further to Rs 2.46 lakh crores in 2016–17 (BE). In other words, the net increase in the spending capacity of the state governments, resulting from the changes introduced in Centre-state sharing of resources in 2016–17, would be to the tune of around Rs 2.46 lakh crore for all states taken together. On an average, therefore, the net increase in union resources transferred to a states in 2015–16 would be roughly Rs 8200 crore. Given that the total magnitudes of state budgets for most of the larger states are now in the range of Rs 1.5 lakh crore to Rs 2 lakh crore, an increase of Rs 8200 crore could hardly be viewed as a substantial increase in the spending capacity of the states. Annexure Table 1 presents an assessment of the net impact (of the changes in Centre-state sharing of resources in 2015–16 and 2016–17) on the overall spending capacity of state governments.

Taking into account the net effect of both the larger quantum of union resources flowing to a state as its share in central taxes and the smaller magnitude of resources flowing as grants-in-aid to the state (which combines both non-plan and plan grants to states), we find a mixed result wherein some states like Chhattisgarh, Jharkhand and Madhya Pradesh saw a major increase in total union resources transferred to the state in 2015–16 (BE) as compared to 2014–15. On the other hand,

states like Tamil Nadu, Assam, Rajasthan and Bihar got a comparatively lower increase in the resource transfer.

Thus, the changes in 2015–16 and 2016–17

which comprise its own tax revenue, own non-tax revenue, and non-debt capital receipts (e.g., disinvestment in state PSUs or recovery of loans given by the state government), (ii) Union resources transferred to the state, and (iii) borrowing. Thus, smaller the share of a state's own resources in its total budgetary expenditure, higher is its dependence on transfer of union resources.

	2014-15 AE	2015-16 RE	2016-17 BE
Bihar	25.1	20.8	22.2
Assam	29.4	...	27.5
Odisha	42	36.5	35.3
Uttar Pradesh	40.1	33.3	36.3
Madhya Pradesh	43.9	38.4	36.5
Jharkhand	36.8	34.1	40.2
Chhattisgarh	45	46.2	42.7
Rajasthan	45.4	42.9	44.7
Tamil Nadu	55.5	53.6	50.7
Maharashtra	64.9	61.6	64.3

Source: Based on data compiled by CBGA from respective state budget documents.

While we observed earlier that the changes in Centre-state sharing of resources after 2014-15 would lead to a modest increase in the overall union resources transferred to states, it would be pertinent to study what is happening to the overall scope of the state budget as compared to the size of a state's economy. In other words, we can examine the total quantum of a state budget as a proportion of the state's GSDP.

As can be seen from Table 7, except for Chhattisgarh, the total magnitude of the state budget as a proportion of the state's GSDP is showing a small increase in 2015-16 (RE) as compared to 2014-15 (AE) for all of the selected states except for Tamil Nadu which shows a marginal decline. However, in 2016-17 (BE), there is noticeable fall

for all the select states except Tamil Nadu, Madhya Pradesh and Assam. This could be because of their efforts to reduce the deficits in their budgets further, instead of increasing overall expenditure.

	2014-15 AE	2015-16 RE	2016-17 BE
Maharashtra	11.1	12.1	11.7
Tamil Nadu	14.4	14.1	14.5
Rajasthan	19.0	20.4	19.7
Madhya Pradesh	21.1	21.8	22.2
Jharkhand	20.3	27.5	24.4
Odisha	21.5	25.5	24.5
Bihar	23.5	27.3	25.9
Chhattisgarh	20.7	26.2	26.1
Uttar Pradesh	24.1	29.9	28.1
Assam	23.6	32.9	34.8

Source: Based on data compiled by CBGA from respective state budget documents.

However, it would be necessary to look at the per capita expenditure as there is a large difference in the economic status among the states because of which the state budget as a proportion of GSDP would be smaller for richer states like Maharashtra and higher for economically poor states like Assam or Bihar. Per capita expenditure also makes the data more comparable across states as it addresses the difference in population. Table 8 below shows that Bihar, followed by Uttar Pradesh, and Jharkhand are on the lower side of per capita expenditure by states, whereas Tamil Nadu, Chhattisgarh, Assam and Odisha showed highest per capita spending among the selected states in 2016-17.

Narrowing down, the share of social sectors (sum total of nine sectors as explained earlier), in the total expenditure by states shows that except for Jharkhand and Odisha, it has decreased for all 10 selected states in 2016-17 (BE) when compared to 2015-16 (RE).

	2014-15 AE	2015-16 RE	2016-17 BE
Bihar	8756	12139	13072
Uttar Pradesh	11208	15466	15984
Jharkhand	11659	17887	18003
Madhya Pradesh	14079	17183	20261
Rajasthan	16258	18898	20500
Maharashtra	16957	20053	21457
Odisha	15488	19513	21495
Assam	14468	20204	23623
Chhattisgarh	17390	24487	25708
Tamil Nadu	21437	24101	26656

Source: Based on data compiled by CBGA from various state budget documents.

Note: The population projection for 2014-15 and 2015-16 is based on the report of the technical group on population projections constituted by the National Commission on Population, 2006.

	2014-15 AE	2015-16 RE	2016-17 BE
Uttar Pradesh	39.2	37.4	40.3
Assam	45.4	49.8	47.3
Bihar	47.0	52.3	48.1
Tamil Nadu	45.3	48.9	48.5
Maharashtra	52.0	50.3	48.8
Madhya Pradesh	45.6	50.0	49.2
Rajasthan	49.4	48.6	50.1
Jharkhand	65.0	45.2	54.2
Chhattisgarh	53.6	57.4	55.3
Odisha	57.2	59.1	60.1

Source: Based on data compiled by CBGA from various state budget documents.

Note: Social Sector includes Education, Health, Drinking Water and Sanitation, Social Welfare, Agriculture and allied sectors (Animal Husbandry, Dairy, and Fisheries), Cooperation and Food & Civil Supplies, Water Resources and Irrigation, Rural Development, and Panchayati Raj.

In terms of per capita allocation for the combined social sectors, Chhattisgarh and Odisha stand out with the allocation of Rs 14,223 and Rs 12,921 respectively in 2016-17. On the other side, Bihar (Rs 6287) and Uttar Pradesh (Rs 6436) have the lowest per capita allocation for the social sectors.

	2014-15 AE	2015-16 RE	2016-17 BE
Bihar	4168	6354	6287
Uttar Pradesh	4471	5788	6436
Jharkhand	7680	8085	9755
Madhya Pradesh	6512	8591	9977
Rajasthan	8145	9186	10263
Maharashtra	8934	10091	10476
Assam	6644	11370	11184
Tamil Nadu	9958	11302	12330
Odisha	8935	11524	12921
Chhattisgarh	9436	14057	14223

Source: Based on data compiled by CBGA from various state budget documents.

Note: Social Sector defined as per Figure 2.

3.3 Sector-wise Priorities in the State Budgets for 2016-17

It would be worthwhile to examine if and how did the state governments reprioritize their Budgets in 2015-16 and 2016-17, given their increased autonomy in setting spending priorities. Since in absolute terms, the total states' budgets as well as allocation for different sectors have increased due to the practice of incremental budgeting, looking merely at budgetary allocations will not give a clear picture. Table 4 in Annexure shows, for the 10 selected states in 2014-15, 2015-16 and 2016-17, the allocations for 13 different sectors as shares of the total state budget expenditure and as proportions of the state's Gross State Domestic Product (GSDP).

To simplify it further, Figures 2.1 to 2.10 below show the pace of increase in the total expenditure of the states' and the increase in allocation for various sectors in 2016–17 from 2014–15. This analysis compares: (i) Percentage increase in the total state budget (i.e., total expenditure on all sectors) in 2016–17 (BE) over 2014–15 (Actuals); and (ii) Percentage increase in the budget (combined Central and state funds) for a specific sector in 2016–17 (BE) over 2014–15 (Actuals).

This kind of comparison of the extent of increase in the budget for a sector with that for the entire state budget over the last two years (i.e., from 2014–15 to 2016–17) has been done for 13 different sectors for each of the 10 selected states. The analysis makes the assumption that if the extent of increase in the budget for a sector is significantly higher than the extent of increase in the overall budget of the state during the two-year period, it reflects an increase in priority for the sector in the state concerned.

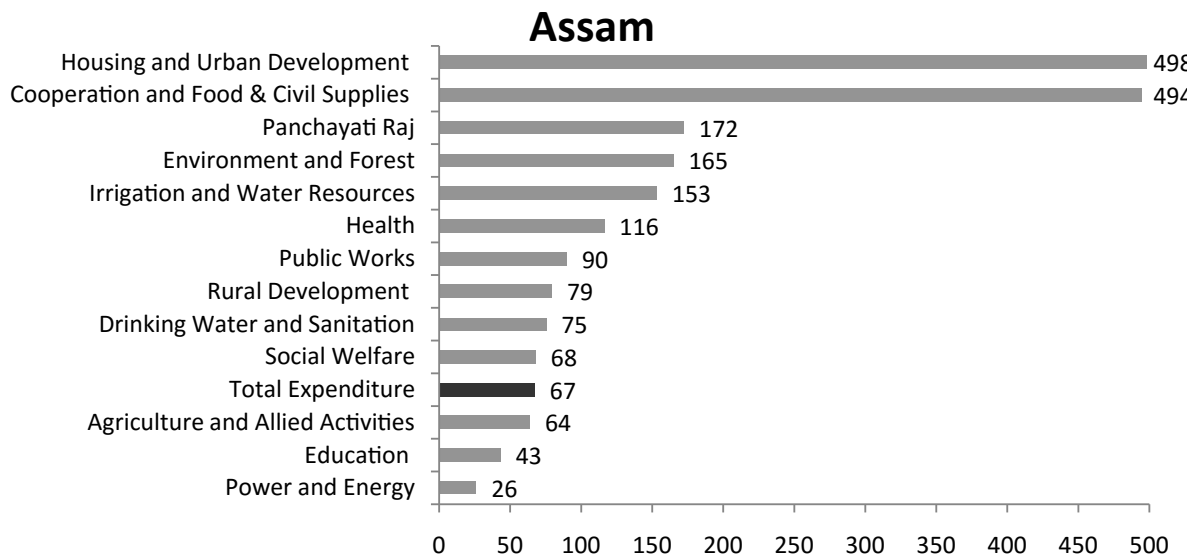


Figure 2.1: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Assam

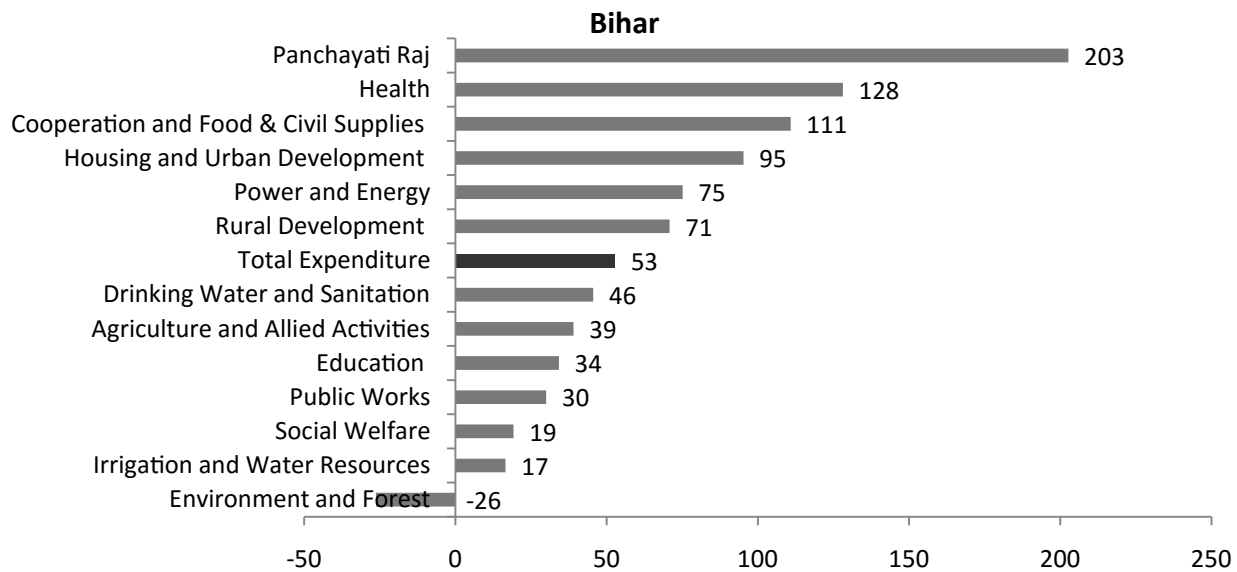


Figure 2.2: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Bihar

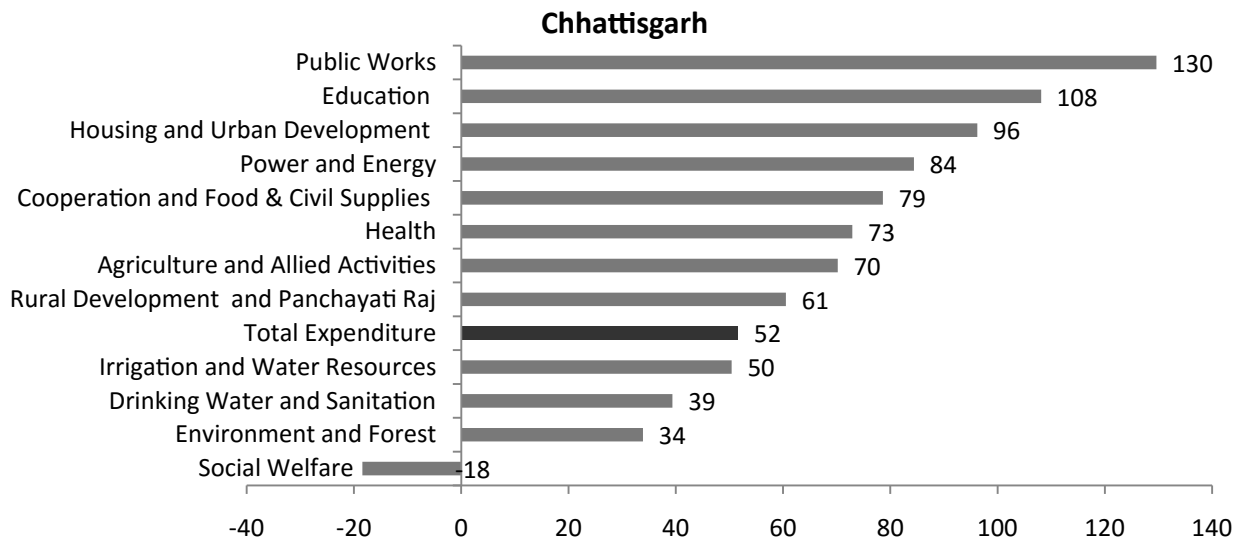


Figure 2.3: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Chhattisgarh

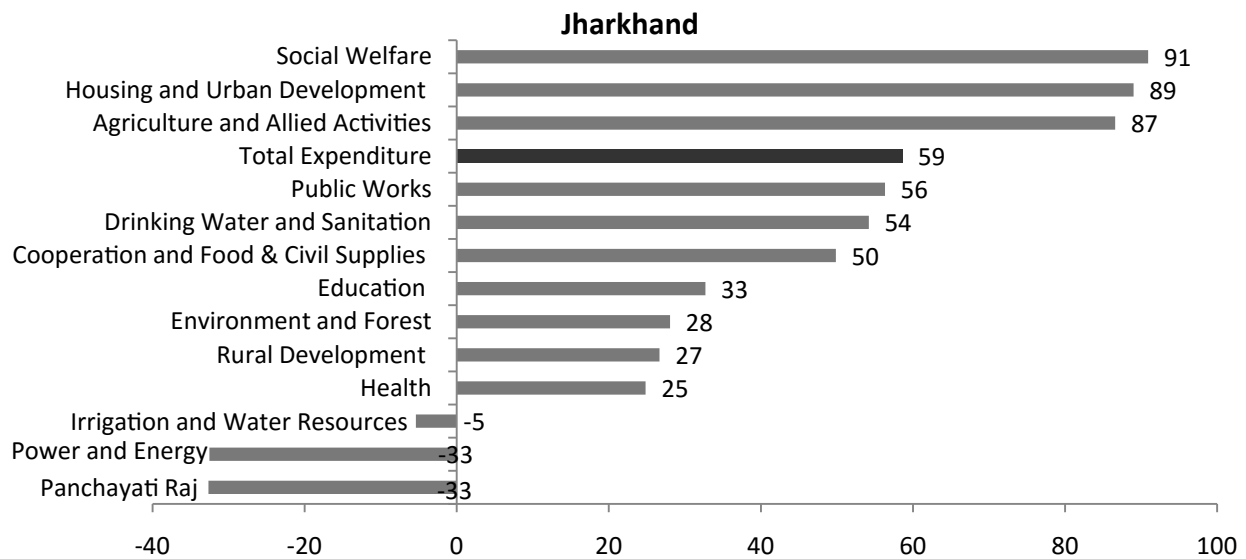


Figure 2.4: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Jharkhand

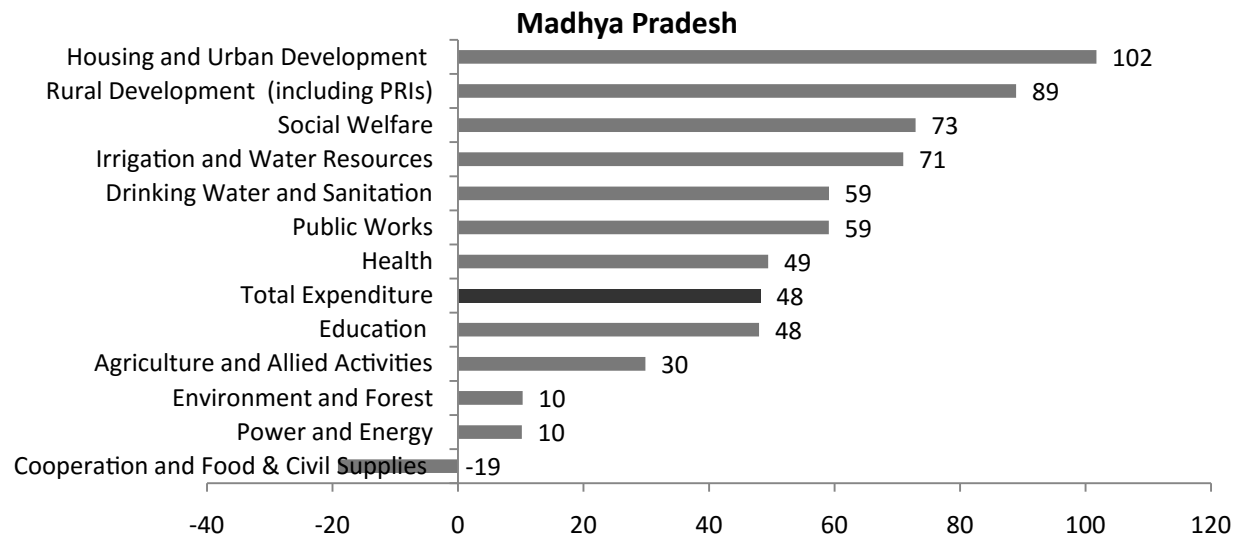


Figure 2.5: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Madhya Pradesh

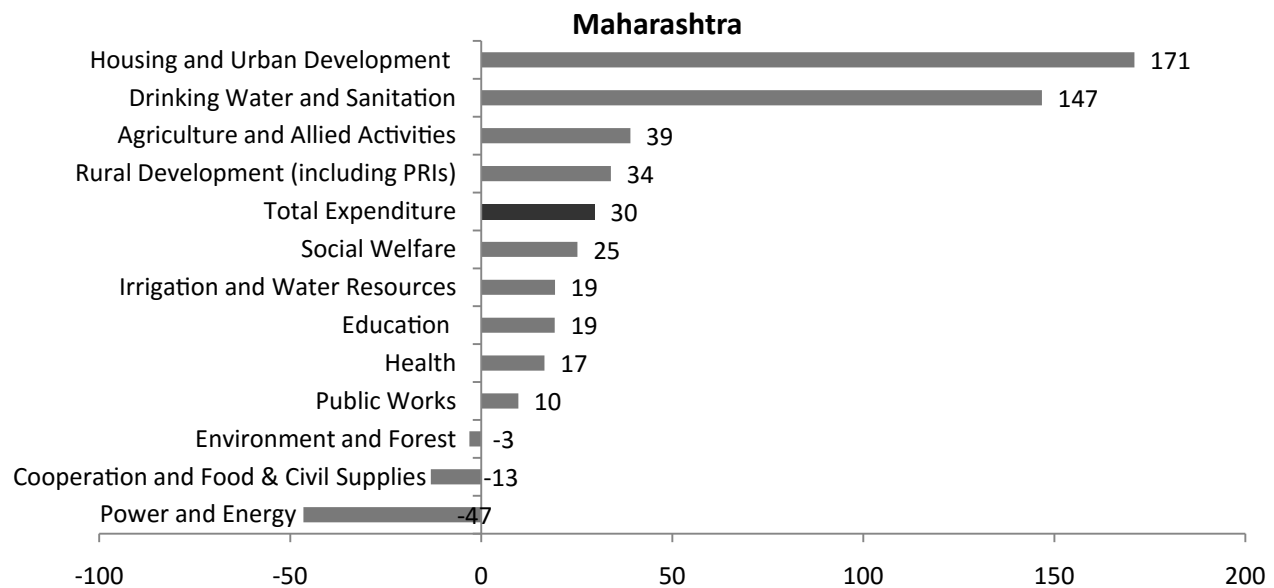


Figure 2.6: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Maharashtra

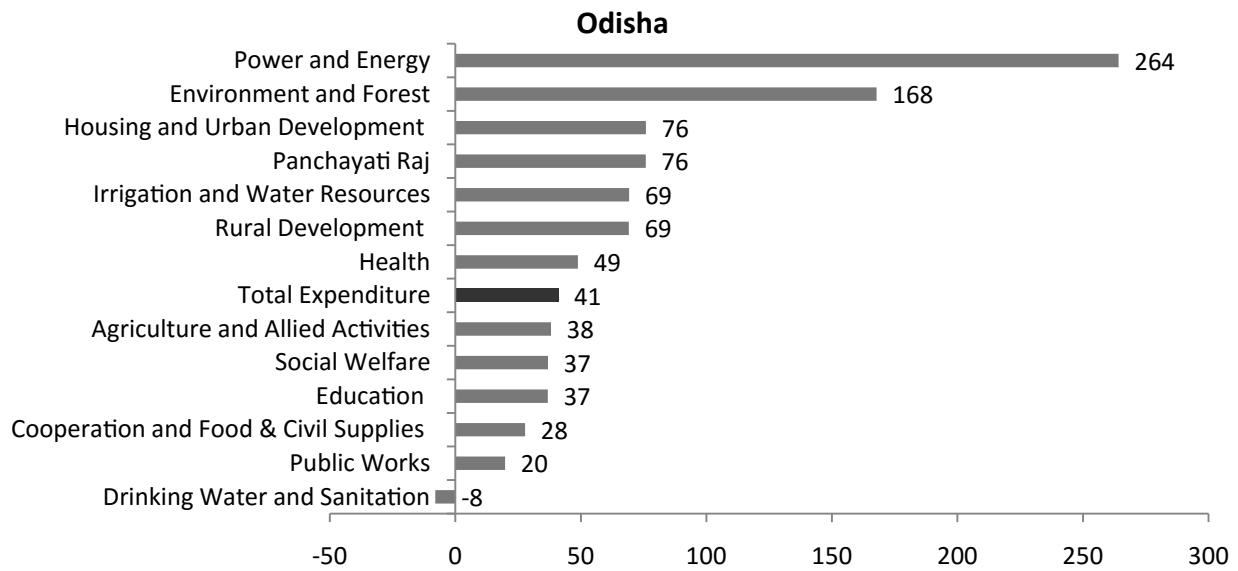


Figure 2.7: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Odisha

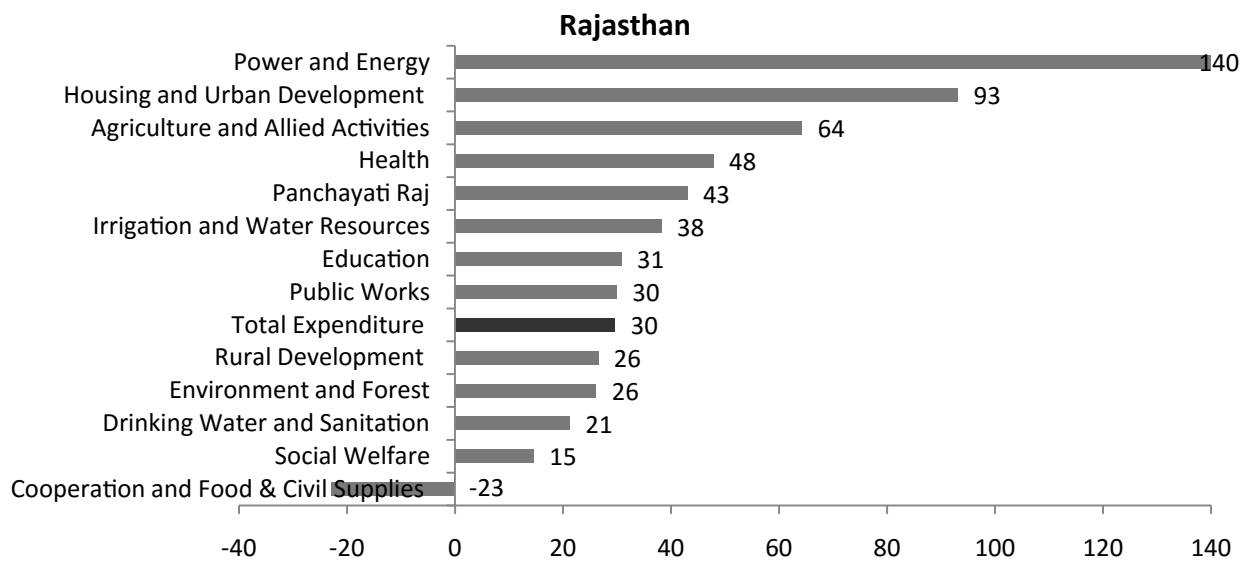


Figure 2.8: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Rajasthan

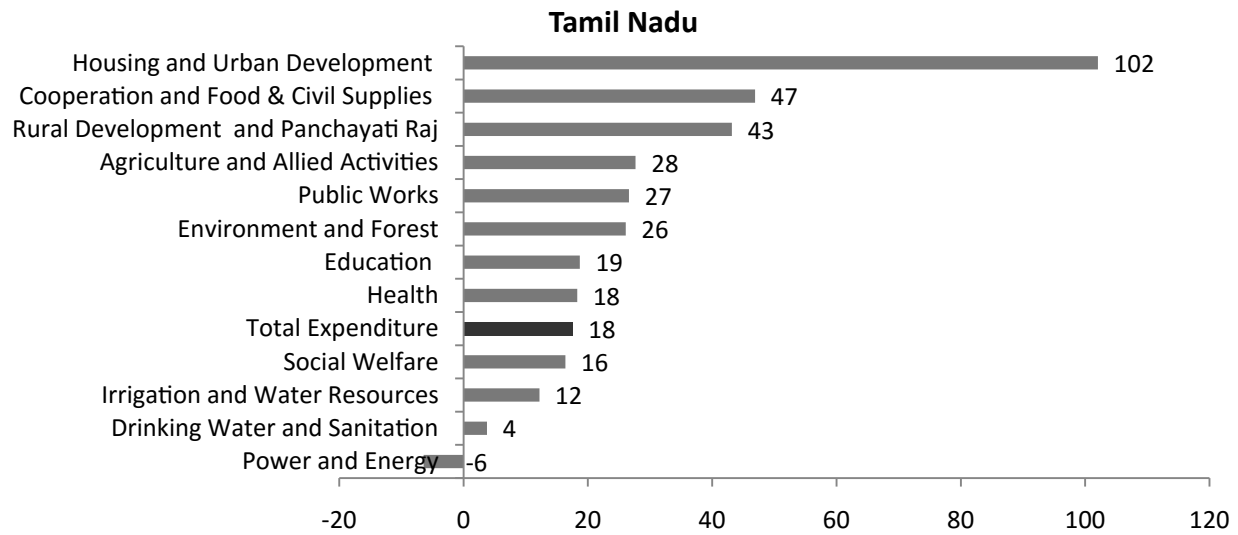


Figure 2.9: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Tamil Nadu

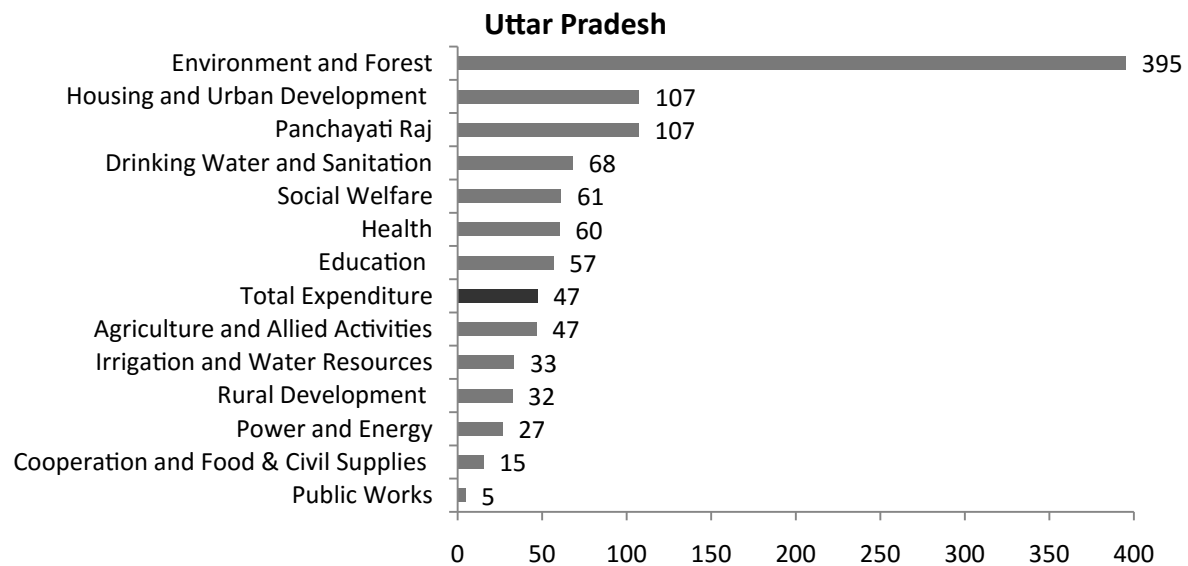


Figure 2.10: Percent Change in Budgetary Allocation for Major Sectors in 2016–17 over 2014–15 for Uttar Pradesh

Source: Based on data compiled from respective state budget documents

We find a lower priority in state budget allocation for **education** in Assam, Bihar, Madhya Pradesh, Jharkhand, Maharashtra and Odisha in 2016–17 (BE) as compared to 2014–15. On the contrary, the allocation for health has been prioritized by all states except Jharkhand and Maharashtra. The pace of allocation for social welfare is favourable (more than the total expenditure) only in Assam, Jharkhand and Madhya Pradesh; the rest of the states have not prioritized social welfare. This includes important components like allocation for women and child development, persons with disabilities and welfare of Scheduled Castes, Scheduled Tribes, Minorities, and vulnerable groups of the society. The share of Rural Development, which saw a decline in 2015–16 has been re-prioritized in 2016–17 in all states except Jharkhand, Rajasthan and Uttar Pradesh. Similarly, both Power & Energy and Public works were high on priority in 2015–16; but in 2016–17, there is a mixed trend as roughly half of the select states have prioritized these sectors.

The figures for three years indicate only a limited reprioritization of the state budgets in favour of the infrastructure sectors like energy and public works. However, some of the commentators have opined that such trends of increasing the budgetary priorities for infrastructure sectors could accentuate in the coming years as the state governments could be more receptive towards higher spending in sectors on big projects with greater and immediate visibility.

As is depicted in Table 11 above, the only two states among the 10 selected states, which have projected a Revenue Deficit (i.e., expenditure in the Revenue Account exceeding the receipts in the Revenue Account) in 2016–17 (BE) are Maharashtra and Tamil Nadu; all eight of the relatively economically weaker states have projected a surplus in their Revenue Account. What it implies is that these poorer states are trying to finance a part of their capital expenditure from their Revenue Account Surplus instead of increasing their

quantum of borrowing for financing the whole of their Capital Account Expenditure. However, these economically weaker states also require stepping up their public spending on social sectors, very large proportions of which are reported in the Revenue Account of the budget. Hence, the strong tendency of these states to reduce their Fiscal Deficit (or fresh borrowing in a year) by running a surplus on the Revenue Account could be a hurdle towards increasing budgetary expenditures in social sectors.

Table 11: Revenue Deficit / Revenue Surplus (-) of States as proportion of GSDP (in %)

	2014-15 AE	2015-16 RE	2016-17 BE
Assam*	2.80	-2.74	-2.95
Bihar	-1.45	0.30	-2.62
Chhattisgarh	0.70	-1.57	-1.87
Jharkhand	0.12	-2.37	-2.69
Madhya Pradesh	-1.23	-0.07	-0.49
Maharashtra	0.68	0.47	0.17
Odisha	-1.89	-2.05	-0.96
Rajasthan	0.53	0.78	-0.03
Tamil Nadu	0.59	0.75	1.16
Uttar Pradesh	-2.29	-1.66	-2.28

Source: Based on data compiled by CBGA from respective state budget documents.

Note: *for Assam 2014–15 RE and 2015–16 BE.

Moreover, economically weaker states like Bihar and Uttar Pradesh over the years have cut down their revenue expenditure to adhere to the FRBM norms. This has wider implications as the reduction in revenue expenditure, a major chunk of which goes for salaries of regular staff, affects the quality of service delivery. Since these states were reporting revenue surplus, they also lost in terms of securing ‘Revenue Deficit Grants’ which were recommended under the 12th and 13th Finance Commissions. Also, with the inclusion of ‘forest cover’ as one of the criteria by the 14th Finance Commission, the share

of states like Bihar and Uttar Pradesh in the total resource pool has declined 2015–16 onwards.

Fiscal Deficit as % of GSDP	2014–15 AE	2015–16 RE	2016–17 BE
Assam*	8.8	2.4	3.0
Bihar	2.8	5.9	2.9
Chhattisgarh	3.6	2.7	3.0
Jharkhand	3.3	2.3	2.2
Madhya Pradesh	2.3	3.5	3.5
Maharashtra	1.8	1.9	1.6
Odisha	1.8	3.0	3.8
Rajasthan	3.1	3.6	3.0
Tamil Nadu	2.5	2.7	3.0
Uttar Pradesh	3.3	5.8	4.0

Source: Based on data compiled by CBGA from respective state budget documents.

Note: *for Assam 2014–15 RE and 2015–16 BE

4. Concluding Remarks

The analysis presented in this chapter gives a synoptic view of the changes in expenditure prioritization of states in some of the important social sectors. Post FFC recommendations, it was felt that the resources available with the states will increase and this would give them the fiscal space to spend more on some priority areas like health, education, drinking water and sanitation, nutrition and so on. However, the net increase in states' resources has not been significant as the union government has reduced the central assistance for state plans and its outlays for central schemes in social sectors.

Since the higher magnitude of states' share in central taxes has come partly at the cost of discontinuation of central assistance for state plans and reduced funding shares of the union

government in Centrally Sponsored Schemes in a host of sectors, the changes in 2015–16 and 2016–17 have led only to some increase in the total quantum of resources being transferred from the union to the states. However, it has certainly led to a change in the composition of the state budget in favour of greater autonomy or flexibility for the state governments.

Except for Assam, Madhya Pradesh, Tamil Nadu, the total magnitude of the state budget as a proportion of the state's GSDP has shown a small decline in 2016–17 (BE) as compared to 2015–16 (RE) for all the selected states; this appears to be because of their efforts to reduce the deficits in their budgets further, instead of increasing their overall budgetary expenditure.

As regards the sector-wise priorities in the states, the figures for three years indicate only a limited reprioritization of the state budgets in favour of infrastructure sectors like energy and public works. However, some of the commentators are of the view that increasing the budgetary priorities for infrastructure sectors could gain momentum in the future as the state governments could re-prioritize the available resources in sectors which have an immediate impact with greater visibility on the ground.

In terms of the social sector programmes, major initiatives like *Integrated Child Development Services*, *SABLA*, *Mid-Day Meal*, and *National Rural Drinking Water Programme and National Health Mission* seem to have been adversely affected in terms of support from the union government as the funding pattern between the Centre and the state has changed after 2015–16. These programmes show a decline in their allocations when compared to 2014–15. The onus is now on the states to compensate for this reduction via a higher state share, which can become difficult for some of the poorer states as the volume of increase in resource transfer from the union government might not be sufficient to protect

budgetary allocation for different social sector schemes. However, the allocation for programmes with stronger political backing, like *Swachh Bharat Abhiyan*, *Pradhan Mantri Gram Sadak Yojana* (PMGSY) and, to some extent SSA, seems to have been increased or at least protected.

It can be argued that the ability of the poorer states to expand their fiscal space with their own revenue collection is limited. Moreover, they also face greater shortages of funds for sectors such as energy and other infrastructure sectors, general

administration, and law and order; hence, the competition for budgetary resources could be more intense in these states. As a consequence, the social sectors may not be given adequate levels of priority for resources. If this apprehension comes true in the coming years, it could aggravate the problem of regional disparity in the long run. The only way to achieve the twin goals of greater autonomy to states and stepping up expenditure in the social sectors would be through an increase in the tax-GDP ratio in the country.

Endnotes

- 1 Conventionally, in the budgeting system followed in India, all kinds of budget allocations/expenditures (whether on recurring heads like staff salaries or on capital heads like construction of infrastructure) are reported as **Plan** allocations/expenditures if they are incurred on any of the programmes/schemes that are part of the ongoing Five Year Plan (national or state-specific Five Year Plan). All other kinds of budget allocations/expenditures (whether on recurring or on capital heads), which are outside the purview of the ongoing FYP, are reported as **Non-plan**. However, after the 12th Five Year Plan, which ends with the ongoing financial year 2016–17, there would be no more Five Year Plans at the national level as per the decision of the Union Government.
- 2 **AE:** Actual Expenditures (AE) refer to the amounts actually spent by the government in a previous financial year, e.g., in 2014–15, which has been audited and certified by the office of C&AG of India. It usually takes the office of C&AG around eight months to audit and certify the accounts/actual expenditures reported by the government after the financial year ends. For instance, the audit of 2015–16 accounts and the subsequent certification of those would be completed around the end of November 2016. The AE for 2015–16 would be released in the Budget documents for 2017–18 in the month of February 2017. AE figures cannot change, while the BE and RE figures might change at the AE level.
BE: Budget Estimates (BE) refer to the amounts of expenditure ‘projected’ by the government for the ongoing/approaching financial year. For instance, as of now, we have only BE figures for 2016–17 for

Union and State Budgets. Last year, the government had ‘projected’ expenditures for 2015–16 and hence released BEs for 2015–16.

RE: After the initial projection of expenditure for an ensuing financial year, the government revises those projections after six months of the concerned financial year are over. These ‘revised projections’ are known as Revised Estimates (RE). The RE for 2016–17 would be prepared by the Union and State Governments after September 2016, which would be modifications of the projections made in BE figures for 2016–17. These RE for 2016–17 would be released in the Budget documents for 2017–18 in the month of February 2017.

- 3 The Act had provided a dual form of government for the major Provinces in the country then. In each such Province, control of some areas of government (e.g., Agriculture, supervision of local government, Health, Education, etc.) were given to a government of ministers answerable to the Provincial Council. However, all other areas of government (e.g., Defence, Foreign Affairs, and Communications, etc.) remained under the control of the Viceroy.
- 4 The total amount of revenue collected from all Central taxes—excluding the amount collected from cesses, surcharges and taxes of Union Territories, and an amount equivalent to the cost of collection of Central Taxes—is considered as the shareable/divisible pool of Central tax revenue. In the recommendation period of the 13th Finance Commission (2010–11 to 2014–15), 32 per cent of the shareable/divisible pool of Central tax revenue used to be transferred to states every year and the Centre retained the remaining amount for the Union Budget.

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ANNEXURES

Table 1: Transfer of Resources from the Centre to the States (in Rs crore)			
Assam	2014-15 RE	2015-16 BE	2016-17 BE
State Share in Central Taxes (1)	13889	16667	18938
Grants-in-Aid from Centre (2)	19696	23179	25761
Net Devolution (1+2)	33586	39846	42712
Bihar	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	36963	50748	58360
Grants-in-Aid from Centre (2)	19146	21785	34142
Net Devolution (1+2)	56109	72532	92502
Chhattisgarh	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	8363	16213	18650
Grants-in-Aid from Centre (2)	8988	12416	13392
Net Devolution (1+2)	17351	28630	32042
Jharkhand	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	9487	16499	18479
Grants-in-Aid from Centre (2)	7393	11000	11802
Net Devolution (1+2)	16880	27499	30281
Madhya Pradesh	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	24107	39706	43676
Grants-in-Aid from Centre (2)	17591	20808	24437
Net Devolution (1+2)	41698	60513	68114
Maharashtra	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	17604	28106	31627
Grants-in-Aid from Centre (2)	20141	24982	24964
Net Devolution (1+2)	37744	53087	56591
Odisha	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	16181	23574	26568
Grants-in-Aid from Centre (2)	12918	17295	18536
Net Devolution (1+2)	29099	40869	45104
Rajasthan	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	19817	27916	31478
Grants-in-Aid from Centre (2)	19607	21333	24389
Net Devolution (1+2)	39424	49249	55866
Tamil Nadu	2014-15 RE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	16824	21150	23018
Grants-in-Aid from Centre (2)	18589	16377	24741
Net Devolution (1+2)	35413	37527	47759
Uttar Pradesh	2014-15 AE	2015-16 RE	2016-17 BE
State Share in Central Taxes (1)	66622	94313	105637
Grants-in-Aid from Centre (2)	32692	44220	50421
Net Devolution (1+2)	99314	138533	156058

Source: Based on data compiled from respective state budget

Classification of CSS	Distribution of original 66 CSS	Remarks
(A) Schemes to be implemented un-altered	17	Some of these schemes are reformulated with addition of new components, or taken up in Central Sector
(B) Schemes to be implemented with a changed sharing pattern	33	
(C) Schemes delinked from Union support: States may decide to continue from their own resources	8	
(D) Other schemes which are part of devolution to the States or have been re-structured in (A), (B) and (C) above.	8	
Total	66	

Source: Reproduced from the Report of the Subcommittee of Chief Ministers on Restructuring the CSS. For detail of schemes under various categories please refer to the report.

State	Total Expenditure (INR Crore)			Total Expenditure as % of GSDP		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Assam	46811	66142	78253	23.6	32.9	34.8
Bihar	94698	132849	144696	23.5	27.3	25.9
Chhattisgarh	46207	65898	70059	20.7	26.2	26.1
Jharkhand	40042	62253	63503	20.3	27.5	24.4
Madhya Pradesh	107086	132647	158713	21.1	21.8	22.2
Maharashtra	198217	237327	256992	11.1	12.1	11.7
Odisha	66680	84695	94053	21.5	25.5	24.5
Rajasthan without UDAY	116605	137456	151128	19.0	20.4	19.7
Tamil Nadu	157438	177971	197883	14.4	14.1	14.5
Uttar Pradesh	235609	330430	346935	24.1	29.9	28.1

Source: Based on data compiled from respective state budget documents

Table 4.1: Assam						
Assam (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	2.7	3.5	2.6	0.7	1.3	0.9
Cooperation and Food & Civil Supplies	0.3	0.6	1.1	0.1	0.2	0.4
Rural Development	5.9	6.6	6.4	1.6	2.5	2.2
Panchayati Raj	1.6	1.7	2.6	0.4	0.6	0.9
Power and Energy	1.9	1.6	1.5	0.5	0.6	0.5
Public Works	4.2	4.9	4.8	1.1	1.8	1.7

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Irrigation and Water Resources	3.1	4.7	4.7	0.8	1.8	1.6
Environment and Forest	2.3	3.7	3.6	0.6	1.4	1.3
Housing and Urban Development	0.5	1.2	1.8	0.1	0.5	0.6
Social Welfare	4.7	6.1	4.7	1.2	2.3	1.6
Health	3.7	5.6	4.8	1.0	2.1	1.7
Education	21.0	17.5	17.9	5.5	6.5	6.3
Drinking Water and Sanitation	2.4	3.5	2.5	0.6	1.3	0.9

Table 4.2: Bihar						
Bihar (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	2.5	2.6	2.3	0.7	0.7	0.6
Cooperation and Food & Civil Supplies	1.4	2.5	1.9	0.4	0.7	0.5
Rural Development	7.8	10.9	8.7	2.2	3.0	2.3
Panchayati Raj	2.5	3.4	5.0	0.7	0.9	1.3
Power and Energy	8.7	7.5	9.9	2.4	2.0	2.6
Public Works	5.4	4.3	4.6	1.5	1.2	1.2
Irrigation and Water Resources	2.6	2.6	2.0	0.7	0.7	0.5
Environment and Forest	0.3	0.3	0.2	0.1	0.1	0.0
Housing and Urban Development	1.8	2.0	2.4	0.5	0.5	0.6
Social Welfare	7.9	6.8	6.2	2.2	1.9	1.6
Health	3.8	3.8	5.7	1.1	1.0	1.5
Education	17.2	18.5	15.1	4.8	5.1	3.9
Drinking Water and Sanitation	1.3	1.3	1.2	0.4	0.3	0.3

Table 4.3: Chhattisgarh						
Chhattisgarh (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	3.5	3.4	3.9	0.8	0.9	1.0
Cooperation and Food & Civil Supplies	6.1	11.3	7.2	1.4	3.0	1.9
Rural Development and Panchayati Raj	7.4	8.7	7.9	1.7	2.3	2.0
Power and Energy	3.0	5.7	3.6	0.7	1.5	0.9
Public Works	6.4	6.8	9.7	1.4	1.8	2.5
Irrigation and Water Resources	4.2	3.4	4.2	0.9	0.9	1.1
Environment and Forest	1.7	1.4	1.5	0.4	0.4	0.4
Housing and Urban Development	4.2	4.9	5.5	0.9	1.3	1.4
Social Welfare	12.5	10.8	6.7	2.8	2.8	1.7

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Health	5.0	5.2	5.7	1.1	1.4	1.5
Education	13.4	13.4	18.5	3.0	3.5	4.8
Drinking Water and Sanitation	1.4	1.4	1.3	0.3	0.4	0.3

Table 4.4: Jharkhand						
Jharkhand (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	3.5	2.3	4.1	0.8	0.6	1.0
Cooperation and Food & Civil Supplies	2.7	1.7	2.5	0.6	0.5	0.6
Rural Development	14.5	10.3	11.6	3.4	2.8	2.8
Panchayati Raj	5.3	2.0	2.2	1.2	0.5	0.5
Power and Energy	8.4	16.1	3.6	2.0	4.4	0.9
Public Works	7.8	6.4	7.7	1.8	1.8	1.9
Irrigation and Water Resources	6.1	2.7	3.7	1.4	0.7	0.9
Environment and Forest	1.2	0.8	0.9	0.3	0.2	0.2
Housing and Urban Development	3.2	2.6	3.8	0.7	0.7	0.9
Social Welfare	6.8	6.4	8.2	1.6	1.8	2.0
Health	6.1	4.7	4.8	1.4	1.3	1.2
Education	17.7	13.4	14.8	4.1	3.7	3.6
Drinking Water and Sanitation	2.3	1.8	2.3	0.5	0.5	0.6

Table 4.5: Madhya Pradesh						
Madhya Pradesh (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	3.4	3.9	2.9	0.8	0.8	0.7
Cooperation and Food & Civil Supplies	2.7	2.8	1.5	0.6	0.6	0.3
Rural Development (including PRIs)	12.1	13.9	15.4	2.9	3.0	3.4
Power and Energy	17.0	9.1	12.7	4.0	2.0	2.8
Public Works	4.2	4.5	4.5	1.0	1.0	1.0
Irrigation and Water Resources	3.7	4.4	4.3	0.9	1.0	0.9
Environment and Forest	2.1	1.8	1.6	0.5	0.4	0.4
Housing and Urban Development	5.4	7.9	7.4	1.3	1.7	1.6
Social Welfare	8.0	10.4	9.4	1.9	2.3	2.1
Health	4.3	3.9	4.3	1.0	0.9	1.0
Education	10.1	9.5	10.1	2.4	2.1	2.2
Drinking Water and Sanitation	1.3	1.2	1.4	0.3	0.3	0.3

Maharashtra (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
	AE	RE	BE	AE	RE	BE
Agriculture and Allied Activities	2.8	3.0	3.0	0.3	0.4	0.3
Cooperation and Food & Civil Supplies	4.3	3.3	2.9	0.5	0.4	0.3
Rural Development	5.6	5.9	5.7	0.7	0.7	0.7
Power and Energy	6.1	4.4	2.5	0.7	0.5	0.3
Public Works	4.7	4.7	4.0	0.6	0.6	0.5
Irrigation and Water Resources	5.0	4.9	4.6	0.6	0.6	0.5
Environment and Forest	4.8	4.1	3.6	0.6	0.5	0.4
Housing and Urban Development	3.4	5.2	7.1	0.4	0.6	0.8
Social Welfare	8.7	7.2	8.4	1.0	0.9	1.0
Health	4.0	4.4	3.6	0.5	0.5	0.4
Education	20.9	20.2	19.2	2.5	2.4	2.2
Drinking Water and Sanitation	0.7	1.5	1.4	0.1	0.2	0.2

Odisha (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
	AE	RE	BE	AE	RE	BE
Agriculture and Allied Activities	4.7	4.5	4.6	1.1	1.2	1.1
Cooperation and Food & Civil Supplies	3.3	2.7	3.0	0.8	0.7	0.7
Rural Development	5.8	7.9	6.9	1.4	2.0	1.7
Panchayati Raj	7.2	9.9	9.0	1.7	2.5	2.2
Power and Energy	1.2	1.9	3.0	0.3	0.5	0.7
Public Works	5.7	6.2	4.8	1.4	1.6	1.2
Irrigation and Water Resources	6.4	7.1	7.7	1.5	1.8	1.9
Environment and Forest	2.7	5.7	5.2	0.7	1.4	1.3
Housing and Urban Development	2.2	1.9	2.7	0.5	0.5	0.7
Social Welfare	8.3	6.9	8.0	2.0	1.8	2.0
Health	4.8	4.6	5.1	1.2	1.2	1.3
Education	15.4	14.3	15.0	3.7	3.7	3.7
Drinking Water and Sanitation	1.3	1.0	0.9	0.3	0.3	0.2

Table 4.8: Rajasthan						
Rajasthan (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
	AE	RE	BE	AE	RE	BE
Agriculture and Allied Activities	2.5	2.4	3.2	0.5	0.5	0.6
Cooperation and Food & Civil Supplies	1.3	0.7	0.8	0.3	0.1	0.2
Rural Development	4.1	4.2	4.0	0.9	0.9	0.8
Panchayati Raj	5.6	6.5	6.2	1.2	1.3	1.2
Power and Energy	11.7	33.4	19.1	2.5	8.9	4.3
Public Works	3.8	3.4	3.8	0.8	0.7	0.7
Irrigation and Water Resources	2.6	2.4	2.7	0.5	0.5	0.5
Environment and Forest	1.5	2.7	1.4	0.3	0.6	0.3
Housing and Urban Development	2.9	3.6	4.4	0.6	0.7	0.9
Social Welfare	5.8	5.4	5.1	1.2	1.1	1.0
Health	5.5	5.9	6.2	1.2	1.2	1.2
Education	16.4	16.0	16.5	3.5	3.3	3.3
Drinking Water and Sanitation	5.6	5.1	5.3	1.2	1.0	1.0

Table 4.9: Tamil Nadu						
Tamil Nadu (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15	2015-16	2016-17	2014-15	2015-16	2016-17
	AE	RE	BE	AE	RE	BE
Agriculture and Allied Activities	4.4	4.9	4.8	0.7	0.7	0.7
Cooperation and Food & Civil Supplies	3.7	3.8	4.6	0.6	0.5	0.6
Rural Development and Panchayati Raj	9.2	10.3	11.2	1.5	1.4	1.5
Power and Energy	6.2	4.9	4.9	1.0	0.7	0.7
Public Works	4.7	4.6	5.0	0.8	0.6	0.7
Irrigation and Water Resources	1.9	1.6	1.8	0.3	0.2	0.2
Environment and Forest	1.1	2.2	1.2	0.2	0.3	0.2
Housing and Urban Development	1.4	1.8	2.3	0.2	0.2	0.3
Social Welfare	5.7	6.8	5.7	0.9	0.9	0.8
Health	4.8	5.0	4.8	0.8	0.7	0.7
Education	14.6	15.3	14.7	2.4	2.1	2.0
Drinking Water and Sanitation	1.0	1.2	0.9	0.2	0.2	0.1

Uttar Pradesh (% of Total Exp.)	Share of Budget Exp. (%)			Share of GSDP (%)		
	2014-15 AE	2015-16 RE	2016-17 BE	2014-15 AE	2015-16 RE	2016-17 BE
Agriculture and Allied Activities	2.5	2.9	2.5	0.7	0.9	0.7
Cooperation and Food & Civil Supplies	3.1	3.1	2.4	0.9	0.9	0.7
Rural Development	4.3	3.8	3.9	1.2	1.1	1.1
Panchayati Raj	1.8	2.1	2.5	0.5	0.6	0.7
Power and Energy	11.0	15.6	9.5	3.1	4.7	2.7
Public Works	7.8	4.9	5.5	2.2	1.5	1.5
Irrigation and Water Resources	4.1	3.3	3.7	1.1	1.0	1.0
Environment and Forest	0.5	2.3	1.8	0.2	0.7	0.5
Housing and Urban Development	1.8	2.1	2.6	0.5	0.6	0.7
Social Welfare	4.5	4.8	4.9	1.3	1.4	1.4
Health	4.7	4.4	5.1	1.3	1.3	1.4
Education	13.7	12.5	14.5	3.8	3.7	4.1
Drinking Water and Sanitation	0.6	0.7	0.7	0.2	0.2	0.2

Source: Based on data compiled from respective state budget documents

	Assam	Bihar	Chhattisgarh	Jharkhand	Madhya Pradesh
1. Education	Education (higher education)	Education	School education	Higher Education	School Education
	Education (Elementary, secondary)		Higher Education	Secondary Education	Higher Education
			Technical Education and manpower planning	Primary and Public Education	Technical Education and skill development
					Technical Education and Training-EAPs
					School Education - EAPs

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	Assam	Bihar	Chhattisgarh	Jharkhand	Madhya Pradesh
2. Health and Family Welfare	Medical and Public Health	Health	Public Health and Family Welfare Department	Health, Medical Education and Family Welfare	Public Health and Family Welfare
			Medical Education Department		AAYUSH
					Medical Education
3. Drinking Water & Sanitation	Water Supply and Sanitation	Public Health Engineering	Public Health Engineering	Drinking Water and Sanitation	Public Health Engineering
4. Social Welfare	Welfare of SC/ST and OBC	Backward Community and MBC Welfare	Tribal, Scheduled Caste & Backward Classes Department	Minorities Welfare	Tribal Welfare
	Social Services	Minorities Welfare	Social welfare Department	Social Welfare, Women and Child Development	Social Justice
	Social Security, Welfare and Nutrition	SC & ST Welfare	SC welfare		Women and Child Welfare
	Relief and Rehabilitation/ Social Security & Welfare	Social Welfare	OBC and Minority Welfare		Scheduled Caste Welfare
			Women and Child Welfare		Minority Welfare
					Backward Classes Welfare
					<i>Vimukt, Ghumakkad & Ardha Ghumakkad Welfare</i>
5. Agriculture and Allied Sectors	Agriculture	Agriculture	Agriculture Department	Agriculture and Sugarcane Development	Farmer Welfare & Agriculture Development

	Assam	Bihar	Chhattisgarh	Jharkhand	Madhya Pradesh
	Soil and water conservation	Animal and Fisheries Resource	Animal Husbandry	Animal Husbandry	Animal Husbandry
	Animal Husbandry		Fisheries	Fishery	Fisheries
	Dairy Development		Agriculture Research and Education	Dairy	Horticulture and Food Processing
	Fisheries				Agricultural Research and Education
	Sericulture and weaving				
	Horticulture				
6. Irrigation & Water Resources	water resources	Water Resources	Water Resources Department	Water Resources	Water Resources
	Irrigation	Minor Water Resources	Water Resources- <i>Aayakat</i>	Minor Irrigation	Water Resources- <i>Aayakat</i>
			Micro Irrigation works		Micro Irrigation works
			Water Resources-EAPs		Water Resources-EAP
			Water Resources-NABARD assisted projects		
7. Cooperation and Food & Civil Supplies	Food Storage, Warehousing and civil	Food and Consumer Protection	Food Civil Supplies Department	Food, Public Distribution and Consumer Affairs	Food and Civil Supplies
	Co-operation	Co-operative	Co-operation Department	Co-operative	Cooperation
8. Rural Development	Other special area programmes	Rural Works	Financial Aid to PRIs under SCSP	Rural Development	SCSP-Financial aid to PRIs

Recent Changes in India's Fiscal Architecture

	Assam	Bihar	Chhattisgarh	Jharkhand	Madhya Pradesh
	Rural Development	Rural Development	Panchayat and Rural Development Department	Rural Works	Rural Development
	cottage industries		Village Industry		TSP-Financial aid to PRIs
			PRIs and Rural development-EAPs		Village Industries
			District Projects		Rural Development-EAPs
			Financial Aid to PRIs		District Projects Exp.
			Financial Aid to PRIs under TSP		Bundelkhand Package
					Panchayat
					Financial Aid to PRIs
9. Panchayati Raj	Rural Development (panchayat)	Panchayati Raj	Included in Rural Development	Panchayati Raj and N.R.E.P. (Special Division)	Included in Rural Development
	Compensation and assignment to local bodies and PRIs				
10. Urban Development & Housing	Urban Development (T&CP)	Urban Development and Housing	Housing and Environment Department	Urban Development	Urban Administration and Development
	Housing Schemes		Urban Admin and development-Urban Bodies	Housing	TSP-Financial aid to ULBs
	Urban Development (MAD)		SCP-aid to ULBs		Financial Aid to ULBs

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	Assam	Bihar	Chhattisgarh	Jharkhand	Madhya Pradesh
	Urban Development (GDD)		Urban Admin and development-urban welfare		
			Financial Aid to ULBs		
			Financial Aid to ULBs under TSP		
11. Power and Energy	Power (electricity)	Energy	Energy Department	Energy	Energy
12. Public Works	Roads and Bridges	Road Construction	Public works-roads and bridges	Road Construction	Public Works-Roads and Bridges
			SCP-Public works (roads and bridges)		TSP-Public works-roads and bridges
			Public works-buildings		Public Works-buildings
			TSP-Public works (buildings)		
			Public works-EAPs		
13. Forest & Environment	Forestry and Wildlife	Environment and Forest	Forest	Forest and Environment	Forest

	Maharashtra	Odisha	Rajasthan	Tamil Nadu	Uttar Pradesh
1. Education	School Education and Sports	School and Mass Education	school education	Higher Education	Education-Technical Education
	Higher and Technical Education	Higher Education	Higher Education	School Education	Education-Commercial
		Employment and Technical Education & Training	Technical Education		Education-Primary
			Sanskrit Education		Education-Secondary

Recent Changes in India's Fiscal Architecture

	Maharashtra	Odisha	Rajasthan	Tamil Nadu	Uttar Pradesh
					Education-Higher
					Education (Institution and Training)
2. Health and Family Welfare	Public Health	Health and Family Welfare	Medical and Health	Health and family welfare	Medical Health, Education and Training
	Medical Edu. and Drugs		Health Education		Health (Allopathy)
					Health (Ayurveda & Unani)
					Health (Homeopathy)
					Health(Family Welfare)
					Health (Public Health)
3. Drinking Water & Sanitation	Water Supply and Sanitation	Relevant heads from Housing and Urban Dev. Department	Public Health Engineering	Relevant heads from Housing and Urban Dev. Department	Relevant heads from Housing and Urban Dev. Department
4. Social Welfare	Social Justice and Social Assistance	SC,ST, OBC and Minority Welfare	Social justice and empowerment	<i>Adi-dravidar</i> and tribal welfare	Minority Welfare
	Minority Welfare	Women and Child Dev.	Minorities Affair	Welfare of differently abled persons	Social Welfare (Disability)
	Women and Child Dev.		Women and Child Dev.	Special programme implementation	Social Welfare (SC Welfare)
				Social welfare and nutritious meal programme	Social Welfare (Tribal Welfare)
					Women and Child Dev.

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	Maharashtra	Odisha	Rajasthan	Tamil Nadu	Uttar Pradesh
5. Agriculture and Allied Sectors	Agriculture, Animal Husbandry, Dairy Development & Fisheries	Agriculture	Department of Agriculture	Agriculture	Agriculture and related -Horticulture and sericulture
		Fisheries and Animal Resources Dev.	Department of Animal Husbandry	Animal husbandry	Agriculture and related-Agriculture
			Horticulture	Fisheries	Agriculture and related -Animal Husbandry
				Dairy development	Agriculture and related-Milk Development
					Agriculture and related-Fisheries
					Sugarcane development (sugarcane)
					Sugarcane development (sugar industry)
6. Irrigation & Water Resources	Water Resources-Irrigation	Water Resources	Irrigation	Demand 40 irrigation (public works department)	Agriculture and related-land development and water sources
			Water Resources		Irrigation (construction works)
			IG Canal		Irrigation (<i>Adhithaan</i>)
7. Cooperation and Food & Civil Supplies	Food Civil Supplies and Consumer Protection	Food Supplies and Consumer Welfare	Food supply and public distribution	Food and consumer protection	Food and Civil Supplies
	Cooperation	Co-operation	Co operative	Co-operation	Agriculture and related -Cooperation

Recent Changes in India's Fiscal Architecture

	Maharashtra	Odisha	Rajasthan	Tamil Nadu	Uttar Pradesh
8. Rural Development	Rural Dev. and Water Conservation	Rural Dev.	Rural Development	Khadi, village industries and handicrafts	Industries -Khadi and village industries
			cottage and khadi industry	Rural dev. and panchayat raj department	Agriculture and related- Rural Development
9. Panchayati Raj	Included in Rural Dev.	Panchayati Raj	Panchayati Raj	Included in Rural Dev.	Agriculture and related- Panchayati Raj
10. Urban Development & Housing	Urban Development	Housing and Urban Dev.	Urban Dev.	Housing and urban Dev.	Housing
	Housing			Municipal administration and water supply	Urban Development
11. Power and Energy	Energy	Energy	Energy	Energy	Energy
12. Public Works	Public Works	Works	Public Works	Highways and minor ports	Public Works (<i>Adhasthan</i>)
				Buildings (public works department)	Public Works (buildings)
					Public Works (communication and bridges)
					Public Works (communication and roads)
					Public Works (directorate)
13. Forest & Environment	Forest and Environment	Forest and Environment	Environment	Environment	Environment
			Forests	Forests	

SECTION III



Life on the streets: A young cobbler and his cousin, Central Delhi.

Photo Credit: Rahul M.

Little Men and Little Women of City Streets

Urban Street Children

Harsh Mander, Deepti Srivastava, Preeti Mathew and Satya Pillai*

'There can be no better measure of governance than the way we treat our children, and no greater failing on our part to allow them to be subjected to violence, abuse or exploitation.'

–Jessica Lange (UNICEF, 2004)

Street children challenge the social representation that childhood is always sheltered and protected. In fact, children in street situations are extremely vulnerable and endure severely deprived living conditions, a profound lack of protection and the basic support for nutrition, health and education. While India, the second most populous and one of the fastest growing economies, is home to the world's largest population of street children, we still do not have any definitive and accurate official figures of the number of children for whom city streets are home. They escape the attention and counting in all official censuses and surveys, including the decadal censuses, official national sample surveys, as well as surveys of out-of-school children; as these are designed and conducted around counting people who live in 'census houses' and their imagination very imperfectly includes people who are homeless, even less children who are alone on the streets. In fact they survive by keeping out of sight of all state authorities as they do not even have any proof of identification. Going by the findings of a recent survey (Save the Children report on Life on the Street, 2016, p. 34)

that street children constitute 0.5 to 1.4 per cent of the population, we can only broadly assume that there are likely to be anywhere between 1.5 to 5.3 million children on the streets in India today.

Table 1: Estimate of Street Children if they were 1 per cent of the Population

City	Population as per Census 2011	1% of city population
Delhi	11034555	110346
Mumbai	6993262	69933
Kolkata	4496694	44964
Chennai	4646732	46467

Children end up on city streets due to a range of reasons, including extreme poverty and deprivation, abuse, violence and neglect by families, abandonment, trafficking and forced child labour, lure of glamour and opportunities, developmental displacement, migration, natural disasters and sometimes horrendous massacres (ibid., p. 18). Whatever be the reason, once on city streets, the rights of these children are withheld in many ways, their basic needs unmet, their prospects and futures profoundly damaged by conditions that threaten their physical, social and emotional health and undermine their development (UNICEF, 2010). Kofi Annan, the UN Secretary General, acknowledged that while cities are often described as cradles of civilization, and sources of cultural

* Reviewer: Robert Chambers, Devika Singh, Shanta Sinha

and economic renaissance, for roughly one-third of the developing world's urban population that lives in extreme poverty, they are anything but that (UNICEF Report on Poverty and Exclusion among Urban Children, 2002, p. 1). As the World Health Organization has recognized, urban settlements can become among the world's most life-threatening environments, with the street child being the most vulnerable of all. They say '...being poor is in itself a health hazard; worse, however, is being urban and poor. Much worse, is being poor, urban, and a child. But worst of all is being a street child in an urban environment.' (De la Barra, 1998, p. 1)

This chapter attempts to open up the unseen and unheard lives of the urban street child. It illustrates how they are inadvertently or otherwise marginalized, rendered invisible and eventually excluded from access to public goods, such as safety and protection, food and nutrition, health, public space and education. It highlights the deprivations, denials, violence and exploitation they face, and their daily struggles to merely survive. It questions the national commitment, the state responsibility and the public conscience as these relate to street children. Finally, we have attempted to propose a set of recommendations that can reverse the situation from that of chronic exclusion into inclusion and is truly in the 'best interest' of the children in street situations.

Many of the insights in the chapter are based on the experiences of all the writers with the Rainbow Home Model¹ through which we have been supporting the street children to reclaim their childhood. During our work with the children in the last 10 years, we studied, reviewed and analysed our own experiences as well as perspectives existing worldwide to build an in-depth understanding of the nuances of vulnerabilities, laws, policies, responses, lacunas therein, etc., and documented them. One document that has been an important source of information has been our series of handbooks on various aspects of quality care for children formerly on the streets.

A report titled 'Life stories of children in street situations: An interactive exploration into lives of street children who are now in institutional homes or are independent adults' was undertaken by the authors of this report, at the Rainbow Foundation India, in collaboration with Save the Children supported by the Department for International Development (DFID)/UK Aid. It has helped to further deepen our understanding of the streets and the children. It captured the indifference, and sometimes active hostility, endured by street children from people in power (by virtue of age, resources, position or privilege), leading to intense, dense and persistent suffering, the magnitude and dimensions of which are rarely understood. Similarly, the same collaboration undertook a detailed census survey of street children (Save the Children report on Life on the Street, 2016, p. 34), which included a head-count and also looked closely at the circumstances of street children in five locations namely, Lucknow and Mughal Sarai in Uttar Pradesh, Patna (Bihar), Kolkata-Howrah twin cities in West Bengal, and Hyderabad, the joint capital of Andhra Pradesh and Telangana. A budget analysis which tracked the translation of political commitments into plans, budgets and expenditures was also a contributor to this study (Policy & Budget Analysis, 2016). Another study, a mapping of policies and programmes for street children that looked into the factors that shape the existence of homelessness, urban children, the existing perspectives, policies, schemes, interventions, their strengths and gaps that have a direct bearing on the work with children, has also deepened our thoughts on the subject (Save the Children report on Policy Mapping and Analysis, 2015).

1. Understanding the Child on the Streets

The standard understanding on street children is: A street child is 'any girl or boy...for whom the

street (in the widest sense of the word, including unoccupied dwellings, parks, parking lots, spaces under bridges, shop corridors, wastelands, etc.) has become his or her habitual abode and/or source of livelihood; and who is inadequately protected, supervised, or directed by responsible adults' (Inter-NGO Programme cited in UNCHS, 2000, p. 273). Within this population, UNICEF identifies two groups of street children, children 'ON' the streets and children 'OF' the streets. Children 'of' the streets are more vulnerable than children 'on' the streets, because they have no adult protection. Either they have no parents, or have escaped onto the streets from abusive, violent, alcoholic or irresponsible parents and live on the street with no home to go back to. These children are most 'at risk'. As distinct from children of the street, children on the street retain contact with their families in the city, who may live on the streets or in slums. However, because of extreme poverty, substance abuse or irresponsible parentage, the children are left largely to their own devices.

The survey report (Save the Children report on Life on the Street, 2016, p. 17) shows that there is not always as sharp a distinction as may be expected between these two categories, as some children of the streets may still have loose and occasional links with their families and some children on the streets often sleep on the streets away from their families. From our years of engagement with the street children, we identify street children as children who have abandoned their families, children whose families have abandoned them and children who have ties with their families. Families here are not always normative families where '...children are domiciled at home, are dependent on their parents for necessities and who are nurtured at school and at home to succeed as adults,' (Aptekar & Stoeklin, 2014, p. 21). Many a times their families are a network of jointly created social relations or relations they find themselves in.



Figure 1: Categorizing the street children

Children living & working on the streets

- Without adult protection
- With homeless parents
- With parents in slums
- With parents in the villages

Working Children

- Self -Employed—rag picking, hawking, cleaners, assistants

Trafficked Children

- Prostitution
- Domestic Work
- Unorganised labor

Children of Migrants

- Seasonally migrating with parents
- Migrants without parents
- De Notified Tribes

Stigmatized Children

- Children of Sex workers
- Children of Sanitation workers
- HIV, Leprosy
- Children of Prisoners

Institutionalized Children

- Orphanages
- JJ Homes
- Adoption Centres
- Children of prisoners
- Children's homes

Figure 2: Broad profile of children who live and work on the streets

2. Life on the Streets: Indifference, Deprivation, Violence and Exploitation²

It is a freezing winter night on the streets of Delhi. Through the swirling smog, on pavements, side streets, road dividers, under-bridges, in subways, shop-fronts and lofts of staircases, in railway platforms and bus stations, one can dimly make out the huddled forms of sleeping children. If one cares to count, the numbers on any night would cross fifty thousand, children who live, work, play, eat, fall sick, fight and love, despair and dream, all under the open sky. One of them is Raju, a boy of twelve, who sleeps with other homeless children around the water tank at New Delhi station. For most of the five years since he left his home in Shantipur, a small town in the Kamrup district of Assam, this has been his only home. Like many children who flee their families to escape intolerable abuse, Raju is unwilling to talk about precisely what drove him from his home. But one night at the age of seven, he walked away decisively from his truck driving father, mother and two younger brothers, never to return.

(Mander, 2016)

It was an act of incredible courage for a child so young, echoed and repeated in the lives of tens of thousands of street children who decide at very young ages to bravely escape violence and abuse in their homes—alcoholic fathers, physical and sexual violence—by fending for themselves, whatever it costs.

Streets have fewer girls than boys, but those girls who are forced to work on the mean streets negotiate daily the metropolis at its predatory worst. Rosy was barely ten years old when she lost her parents and saw her sister commit suicide just days after their death. Her brother did not keep her, so her aunt took her to Assam saying that she might have a better living. But as things turned out, she was a 'burden' even there. She was a girl. Her aunt would not pay for her upkeep as

she grew up, and one day gave her thirty rupees and sent her away with other village folk in the train, to Delhi. Listless with jaundice, she does not remember how long the journey was. She reached Delhi and located her way back to where she stayed earlier with her family. Only this time, there was no house.

(Save the Children and ARUN's study on Life stories of street children in India, 2015).

Shubham's mother abandoned him when he was young. He remembers running after her, calling, shouting and screaming so she would turn back and take him along but she walked away with her husband's younger brother. What had he done? Why did she leave him alone? He saw her get on a train. He climbed in too but never found her. Instead he reached Mumbai. He didn't know where he was.

(Ibid.)

These snippets mark just the beginning of the unremitting struggle of a street child for the most basic rights—a guaranteed and safe place to stay, affection and care of adults and longing for protection and respect for self. The survey (Save the Children report on Life on the Street, 2016, p. 50) shows that 14.4 per cent of children on the streets are in the most vulnerable age group of 0–3 years who require immediate attention of the child protection system, 6 per cent are those who are differently abled, for whom the situation must be doubly difficult and 46 per cent children are in an impressionable age group of 8–14 years.

The survey also showed that over 29 per cent of the total number of children covered under the study did not have a permanent place to sleep. In Hyderabad, this figure was a numbing 91 per cent. At night, boys in particular, sleep mostly in the open; usually under or on the sides of flyovers, on pavements, public parks, and even graveyards. Intermittently, they find their way into some kind of temporary shelters in *katchi abadi* (make-

shift) homes or squatter settlements, informal, small ghettos or pockets of concentration that are invariably overcrowded, with poor sanitation and no basic amenities, prone to disasters, but where they can live without the fear of eviction. This is especially important for children who have abandoned their families and fear discovery or forced repatriation to their biological family.

To protect themselves from the weather, children use makeshift arrangements like blankets that someone may have donated or flimsy plastic and cardboard materials or curl up inside large pipes stocked up at construction sites.

Rosy had to look for a place to sleep. She learnt to trade her labour of rag-picking for a space to sleep and a plate of food. She was accompanied by another girl her age. They were woken up at 4:00 am to sort through and pick garbage. She remembers how difficult it was, to evade the predatory men on the streets. Those abuses were like poison forced down her throat. She dared not rebuke them for she was a street girl. She would find clothes in the garbage bin. She collected them for she needed a change of clothes when she bled. After a day's work, when she returned at night, she was able to buy a plate of food which she ate ravenously and slept, curled up inside the hardboard boxes, around the place. It gave her a feeling of safety, just a feeling for there were nights when she was raped.

(Save the Children and ARUN's study on Life Stories of Street Children in India, 2015)

Leave alone a safe place to sleep, even necessary amenities for defecating or bathing and washing are missing for children on the streets. While 58 per cent of them defecate in the open, near rail lines or secluded lanes, older children, especially girls, find this even more difficult during their menstrual cycles and the lack of sanitary napkins further complicates the problems (Save the Children report on Life on the Street, 2016, p. 75). In such cases, they wake up very early in the morning when it is still dark and

where possible, resort to pay and use toilets and bathe when they get a chance at railway stations or community taps. Girls usually bathe in the open when it gets dark or in the shacks that are close to their homes. During the survey, one of the older girls in Mughalsarai commented, 'The government has made toilets for us just like they make roads but still they charge money for using these toilets.'

The survey also pointed out that girls on the street are involved in sex work from an early age and many were sent out/given to do sex work by their families, with their mothers or guardians acting as 'pimps'.

Shubham returned to Patna as Delhi was more difficult to survive. At Patna, the police thrashed the other boys but him. One day however, a policeman caught hold of him, pulled him into the bogey and shut all doors. He demanded sexual favours. He remembers breaking open an emergency window and lunging out to save himself. He felt humiliated. The next time he saw the policeman, he got onto the moving train with a stone in his hand, his face ahead, cracked the policeman's head with it. The policeman could not identify him as he did not look back and the train moved on.

(Save the Children and ARUN's study on Life stories of street children in India, 2015).

Boys face peer bullying and sexual abuse too. Older boys and adults who have had a longer presence at the stations do not let new children work until they have 'permission' and sometimes as this 'permission' to work at the station comes at the cost of sexual favours, it results in the sexual exploitation of children on a regular basis.

According to a newspaper report of 2010, the National Crime Record Bureau (NCRB) came out with shocking figures of crimes against children: 5484 children were raped and 1408 others killed in India. In the capital alone, 29 children were murdered and 304 raped. Not surprising is the fact

that these figures do not include even a fraction of the crimes committed against children on the streets. 'Not even 10% cases of rape, sodomy or murder of street children are recorded. Who is going to file an FIR for these children who have been abandoned by society and trapped by gangs?' (*Times of India*, 2011)

Many children, who are on the streets to avoid ill treatment and abuse by adults around them, find an aggressor in the law enforcing agency, the police who once again subject them, to hostility and violence.

The survey (Save the Children, 2011) showed that 38.2 per cent male children and 23.7 per cent females on streets reported abuse. Interestingly, abuse by male police officers was higher on male children (42.6 per cent) and female police abuse (30 per cent) was reported higher on female children.

In July 2013, the Delhi Police brought out a campaign on street children that said, 'Help him learn to chop an onion, before someone teaches him how to chop a head.' (In Image 1) This portrayal of children also shows the deep rooted bias against

Box 1: Street Children and the Law: A View from Human Rights Watch

Children living on the streets are charged with vague 'offences' such as vagrancy or loitering, or status offences such as being 'in need of protection or discipline,' which effectively make child poverty and homelessness, or status as children, a crime. Some street children are arrested and jailed because of their involvement in small businesses, deemed to be illegal, such as unlicensed hawking, or are accused of petty theft, drug related crimes, or prostitution. Some are arrested as scapegoats, or in order to catch others. Many police officers believe that street children have information about crimes committed on their beat, or attribute crimes in the area to street children directly, thereby imputing criminal associations and criminal activities to street children in general.

Whatever be the alleged crime, children who live on the streets face frequent roundups. They are often held in jails for days and even weeks, under horrendous conditions, and usually mixed with adults. There they may be further beaten by the police, or forced to pay bribes in order to be released. Girls may be coerced into providing sexual services to police in exchange for release, or are raped. From jails, street children may be transferred eventually to long-term penal institutions, sometimes euphemistically called 'homes' or 'schools', where they may languish, out of sight, for years. Few advocates, let alone lawyers or prosecutors, speak up for these children, and street children rarely have family members or other concerned adults able to intervene on their behalf.

Widespread impunity and the slowness of law enforcement bodies to investigate and prosecute cases of abuses against street children have allowed violence against these children to continue unchecked. Establishing police accountability is further hampered by the fact that street children often have no alternative but to complain directly to the police about police abuses. The threat of police reprisals acts as a serious deterrent to any child willing to come forward to testify or make a complaint against an officer. After witnessing and experiencing acts of brutality inflicted by law enforcement, it is no surprise that street children place little faith in the system to bring their tormentors to justice.

Source: Poverty and Exclusion Among Urban Children, Innocenti Digest no. 10 – November, 2002, <http://www.unicef-irc.org/publications/pdf/digest10e.pdf> ; Children's Rights. Street Children at Human Rights Watch, 2010 www.hrw.org/children/street.htm

street children and the perception that street children are a menace to the society.

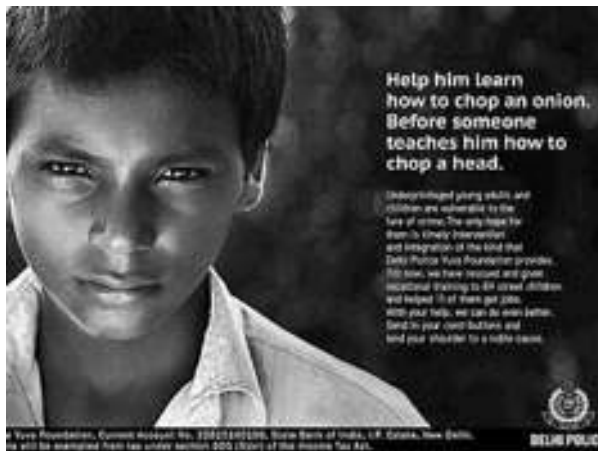


Image 1: Delhi Police Campaign on Street Children

With time, street children learn to live by their wits on the streets, find work or beg to get money and fight for whatever they need. Contrary to popular belief, more children prefer to work than to beg. They do rag-picking, hawking/street-vending or find odd jobs at roadside stalls. As per the survey done amongst Mumbai children by Action Aid, while 68.6 per cent street children were involved in some or the other occupations, only 7.9 per cent were involved in begging. While 87 per cent children in Delhi worked, only 4 per cent children begged in Patna and Hyderabad respectively. Asif asks, ‘Why should I beg when I can work? I sell pens, flowers, flags, etc., at the signal, but the police do not allow us to do even that, often shooing us away, or confiscating our things. Now you tell me; is it wrong to sell pens or flower? If I beg, it’s not ok, if I work, I am caught. How am I supposed to survive?’³

Before long, Raju learnt to earn his living by rag-picking, starting out in the early hours of the morning, with a huge sack often bigger than his own small frame, with separate pockets for bits of paper, cloth, plastic pieces, scraps of iron and other trash. At the end of the day, he sells his

daily foraging to wholesale waste traders near the Shiela Cinema Bridge, who in turn sell these to recycling units. Some of Raju’s friends also take up other seasonal occupations like working with caterers in the wedding season, reserving places in the trains during vacations, selling cinema tickets at higher rates, cleaning cars or taxis, buses or lorries, even trains, as vendors for tea and food stalls, apprentices in roadside automobile repair garages, carrying loads and shoe polishing.

(Mander, 2009)

Among the occupations, rag/scrap picking is the most preferred occupation of children, as it gives them the freedom to live and work independently without adult supervision. On an average, they work for 9–10 hours a day. Rag-picking also gives them the freedom to choose their hours of work and leisure (Save the Children report on Life on the Street, 2016, p. 42). Although boys are equally susceptible and also get trafficked, girls who get trapped into being ‘domestic help’ have their own serious vulnerabilities and traumas. Around 14 per cent of the girls surveyed in Patna and 16 per cent in Hyderabad were found working as domestic help in neighbourhood homes. There are many unregistered agencies in the urban centres that provide domestic help across the city. Children trafficked into work are treated like slaves and endure extremely long working hours, absence of leave and rest, deprivation of food, delayed or non-payment of wages, physical and sexual abuse (Rao, 2015). As the staff members in a home in Kolkata shared with the surveyors, ‘Mostly girls are brought by their uncles, aunts and other relatives in the name of providing work. Even if they join as domestic helps in houses they are tortured and beaten by the owners; such girl children run away and come here to the railway station’ (Shelter staff, Kolkata).

Ganga decided to come to Delhi to work, against her mother’s wish, for she could not bear to see

her father, suffering from mental illness, scream and whine. She used to stay back at home and fend for her father while her mother would go out to earn. Once while she was brooding over her father's condition, a certain uncle suggested she leave this life and go to a better place, like Delhi. Since her mother disagreed with her, she decided to slip out with the help of a man who traded her with an unregistered agency in Delhi as domestic help. During the journey, she lost her mother's phone number written on a piece of paper and the little money she carried. In Delhi 'that very evening, that agent took me to their house. They were doctors, both of them. I waited outside till they discussed and called me in. I was told that I had to work well and could call any time I wanted but they gave me no number.' That woman led her inside a room and examined her luggage. Ganga couldn't help crying as that woman pulled out a lotion and ordered her to undress and apply it in front of her. She sobbed as she complied. That night passed somehow but what was to come was even more horrifying. Each day started with her having a bath, kneading the flour and cooking food. Her entire day was slotted to do chores. It started at 4 am to end at 2 pm. She got beaten the very first day itself when her *rotis* (flat bread made of wholemeal flour) were not round. When she resisted work, both of them dug their nails into her flesh and pulled out her hair. They fed her stale old dried *rotis*. They asked her to sit like a cock and hit her face with their boots. They went for a holiday for five days and she was left alone without food. The ration was reachable yet inaccessible, as the box was marked for quantity she could eat. They even counted the pieces of chicken so that she could not steal.

(Save the Children and ARUN's study on Life Stories of Street Children in India, 2015).

The survey (Save the Children report on Life on the Street, 2016, p. 69) also informs us that timely meals are a rarity and skipping a meal once a day is a common occurrence among street children.

25 per cent of children have to go hungry at least once a week because of lack of money (20 per cent) or have to skip it because of long working hours (12 per cent). 52.5 per cent children beg or eat leftovers on railway platforms while at other times their meals get snatched away. Even if the quantities of food may (not always) be sufficient, the quality tends to be monotonous, elementary, of poor nutritional value and unhygienic. Similarly, they are unable to access clean drinking water, and rely on water supplied at roadside eateries, tea stalls, shops, public hand pumps and wells, parks and bus stands.

Making a living off the streets is hazardous work and a predictor of poor health. The survey found that at least 30 per cent of the children on the streets report sick and ailments like cold, cough, fever, diarrhoea, dysentery, headache, etc., are so commonplace that they are not even considered illnesses and are therefore ignored. 47 per cent children prefer not to seek treatment till they can no longer bear the problem but on finding it difficult to buy medicines, when the government-run health facilities or NGOs do not offer it for free, settle mostly for easier to approach quacks and faith healers. This also leads to discontinuation of treatment. A grave problem that they face is the lack of emergency medical care facilities like ambulance and transport facilities. Most of them are helped only when they are reached out to by an NGO working in the area. The persistent and harsh struggles of coping with traumatic experiences of neglect, abuse, hostility, discrimination and exclusion also leave behind a range of mental health issues like depression and anxiety on the street child's psyche.

The widespread intake of drugs further complicates the situation for them. Drugs are used to suppress hunger, dodge the cold and to keep them awake for work. Intoxication also allows for a short-lived thrill and helps suppress the sense of loneliness and abandonment (Mander, 2009). The survey

(Save the Children report on Life on the Street, 2016, p. 19) found that the prevalence of drug use among the boys before coming to the observation home was between 60–70 per cent. They usually consume substances which are readily available and cheap like tobacco, alcohol, food additives, adhesives, correction fluid, petrol/diesel solution, shoe polish and industrial chemicals, certain over-the-counter medicines, over-the-counter drugs and also grass (*ganja*) which is common. Children on the streets, in short, end up spending a large part of their earnings on substances.

Raju like most street children was introduced to the easy but deadly escape from pain and loneliness offered by soft drugs early in his days on the streets of Delhi. Thinners are readily available at any stationery shop for 25 rupees a bottle. Shopkeepers know that the children who buy these are not using them for painting, but they do not hesitate to sell to the street urchins who flock their stores. Two bottles are enough for a day for one child. They soak a rag and inhale the fumes of the solution, and it transports them to another world. But it also destroys their lungs, rendering them vulnerable to TB. Many children graduate to hard drugs like smack, but Raju has steered himself away. He knows that for those who succumb to smack, it is virtually the end of the road....

(Mander, 2016)

Another fundamental right that is violated among street children is Education. The Right to Education Act, 2009, that came into effect in 2009, entitles free and compulsory education to children of 6–14 years in an environment that is equity-

based, non-discriminatory, and free from fear, anxiety and stress, but to children on the streets, education still remains a dream.

Defining basic literacy as ‘...the ability to read or write in any language’ the survey (Save the Children report on Life on the Street, 2016, p. 12) found that about 63 per cent of the children were illiterate. Illiteracy was highest among street working children, which shows that getting involved in earning money adversely impacts a child’s learning opportunities. Analysis of education data of the Survey across five cities, around various age groups, reveals that the school drop-out rate of street children is very high, especially after 14 years of age. There are many reasons for leaving school and poverty, which necessitates more helping hands to earn and support the family, is the most prominent of all. Children, who were forced to leave school due to poverty, however, admitted that they knew they were missing out on the opportunity to study.

School-going street children emphasized during FGDs (Focus Group Discussions) that the school environment and facilities require major improvement if they are to meet the needs and aspirations of children. A young girl reported, ‘I like to go to school and study but I would also like to play in school but there is no place to play... even to eat our lunch we are asked to stay in class’ (FGD Street Children Living with Families, Younger Girls, 2015, Lucknow). Some also mentioned about the discrimination they faced in school like how they were made to clean the classroom and toilet since they were from the backward castes.

Box 2:

The Survey showed that 68.8% children work and do not pursue any kind of education. Only 23% have received education of some kind. 39% work on all seven days of the week and 35 to 73% children work for 5 to 8 hours on an average, in a day. 47.3% receive only two years of schooling.

Source: Save the Children report on Life on the Street, 2016, p. 48

During the day, Shubham went to a newly opened day care centre at the station. It provided them food and non-formal education. He started going there on a regular basis as the care-givers offered him a place to rest, watch TV, play games and eat. When he became regular, they offered him help to locate his family. He misled them about where

to look as he never wanted to go home. Why would he want to suffer rejection? When he saw their persistence, he took them along. His uncles were shocked to see him. They did not want him to stay with them therefore he returned to the streets of the city. He remembers what he last saw, his ox had been taken by the village headman, his

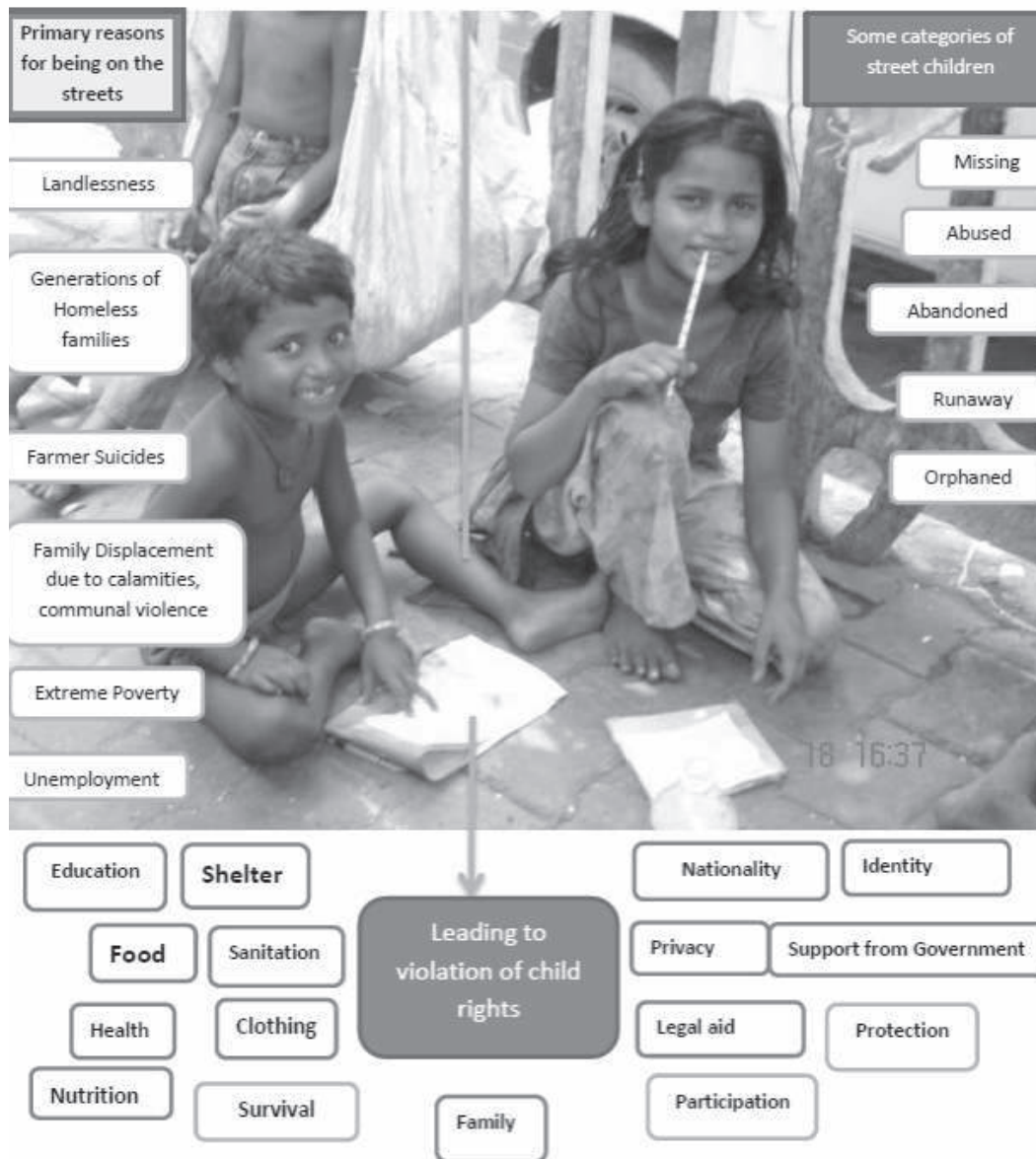


Figure 3: Violation of Rights Suffered by Children on Streets

Source: Photograph by Dil se Delhi team in 2005.

fields were sold off and his belongings removed from the room. All his belongings were gone. He came back. He felt there was no point pursuing temporary 'time pass' education and so started rag picking bottles again. One day a woman lost her purse at the station and all the boys at the station were forced into a lock-up for a month. Sometime later they were caught again. This time, it was a big theft. They were locked up in a newly inaugurated remand home. That place was a jail. He was thrashed and beaten hard. He says he became resistant. He stayed there for five years before he was released to be back at the railway station, picking bottles once again....

(Save the Children and ARUN's study on Life stories of street children in India, 2015).

As the survey report points out, for a part of population living in such highly challenging circumstances, assistance of any kind can be more than helpful—it can even be life changing. Data shows that only a miniscule percentage of children on the streets are aware of any authority or agency that can be approached for any assistance at times of need. Of those 224 children who were aware of assistance services or options, only 112 (51.6 per cent) said that they had ever received it.

Deprived of families, adequate and appropriate adult protection, education and healthcare, and the unsafe environment of city streets, street children bring to the fore all the agencies and resilience required to survive each day precariously and bravely. Despite being highly visible on the urban city landscape, we have chosen to keep them 'invisible' and 'hidden from our conscience', thus pushing them to the bottom of the social hierarchy and keeping them away from what is their due.

3. Current Provisions

With no legitimate identity, recognition or social status that can make them count, and no specific

policy, street children are missing in most policies for child rights, protection, education, water, sanitation, and urban welfare in general. Locating the street child in the policies in India, Mander says,

'The law, policies and programmes at the various levels of government covers categories of vulnerable children with whom the street child partially overlaps. These are the legal categories of the "child in need of care and protection", child labour; and also the urban deprived, out-of-school child. Every street child is all of these—a child in intense need of care and protection, a child worker, and an urban deprived, out-of-school child—but by no means is every child in need of care and protection, every child worker and every urban out-of-school child a street child. Within the policies, laws and programmes aimed at these broad groups, street children are to be identified as a major sub-group to be targeted with specific intervention that casts a special lens singularly pointed on their unique vulnerabilities.'

(2016)

Even at the State level there are no examples of policies, laws and programmes targeted at street children and interventions are largely restricted to implementing the existing Central government laws and programmes. Local government bodies, i.e., municipal corporations in urban areas and *panchayats* (oldest form of local government in the Indian Subcontinent) in rural areas, which play a crucial role in ensuring that government interventions effectively achieve their intended objectives on the ground, also have an extremely limited role in relation to interventions for street children which are largely restricted to implementing the directions of the state government.

Some of the specific laws and policies for children (from the Save the Children report on Policy Mapping and Analysis, 2015) that need to be highlighted in this context are—

3.1 The National Policy for Children

(Revised in 2013), it is an overarching policy meant to guide and inform all government interventions affecting children in India. A progressive document in principle, it adopts a rights-based approach to address the situation of children and emphasizes that the best interests and the own view of a child must be the primary concern in all decisions and actions affecting them. Although it recognizes that children are not a homogenous group and that special efforts are required to respond to the needs of children living in difficult circumstances who face multi-dimensional vulnerabilities, it does not specifically mention street children.

3.2 Juvenile Justice (JJ) Act

This is the primary legislation dealing with children in need of care and protection and children in conflict with the law. It was enacted in 1986 and first passed in the year 2000. It aims to ensure that laws dealing with such children are in the best interests of the child and it is consistent with India's obligations under the UNCRC and other relevant international laws that the country is a party to. Here too, despite several revisions in the act, with the latest one in 2015, the interventions are for the broad set of CNCP, with the street children (barring mention at two instances) being fit into the scheme as one of them, thus hampering its ability to address their acute and very specific vulnerabilities.

3.3 Integrated Child Protection Scheme (ICPS)

Launched in 2009, it is a broad flagship government programme that brought under its ambit the various institutions and provisions established under the JJ Act. As a programme, the ICPS has definitely aided in the improvement of the existing infrastructure for child protection. Operationally, despite its commendable aims, the ICPS lacks

a structured mechanism to reach out to street children through proactive and sustained efforts for their identification, rescue and rehabilitation. Instead, interventions under the scheme remain almost exclusively reactive in nature, with a focus on institutionalization of children. Moreover crucial aspects of the scheme that are of high relevance for street children, such as foster care, sponsorship programmes and aftercare for older children remain highly underdeveloped even six years after its launch.

3.4 Right to Free and Compulsory Education (RTE)

The passage of the 86th Constitutional Amendment in 2002 and the Right of Children to Free and Compulsory Education Act, 2009, that mandates mainstream education to every child between 6 and 14 years of age is potentially the most significant large government programme, under the SSA programme, designed to cater substantially to the specific needs of street children. However, there are many concerns regarding its implementation due to which it is not benefiting them as much as it should or can.

3.5 National Health Policy

This talks about the government interventions related to the survival, health and nutrition of children; it also does not explicitly identify street children as a target group with specific vulnerabilities and needs. Though there is a provision under the ICPS to designate at least one shelter home in each state for the care, detoxification and counselling of children affected by substance abuse, very few such specialized homes have been established so far.

The **Draft National Health Policy, 2015** however does make a special mention of street children as a high-risk category, and suggests specific measures such as health centres at railway stations and bus

stands. Similarly, the **National Mental Health Policy, 2014** proposes to pay special attention to vulnerable populations, including children in custodial settings, who bear a disproportionate and higher burden of mental health problems. There is, however, no evidence of these on the ground.

3.6 National Child Labour Project (NCLP)

NCLP mandates children in the 9–14 year age groups, who are engaged in hazardous occupations, to be withdrawn from employment and enrolled in Special Training Centres, where they receive bridge education, vocational training, nutrition, healthcare and a monthly stipend, and are mainstreamed into an age-appropriate class in formal schools. Here too, the facilities are typically non-residential in nature, which makes them less relevant for street children and other groups of children who, besides working, are also deprived of a family environment.

In the absence of a specific policy for street children, their issues are addressed under the broad category of CNCP. Although these contain many elements which are critical for street children, they do not address adequately how the services should be organized and operationalized bearing in mind the unique situation and vulnerabilities of street children. The next section explores the numerous practical gaps and bottlenecks that make their access and engagement difficult for these children.

4. Ground Realities

4.1 Lack of Mechanisms to Identify

To begin with, there are no formal systematic operationalized mechanisms and processes for locating and engaging street children for their rescue and rehabilitation. The major stakeholders who come in contact with the street children are the Police and the NGOs. Police, (as understood earlier in this report) in the absence of any alternative instructions, usually resort to rounding up the

children insensitively and roughly produce them to the Child Welfare Committee (CWC), which only reinforces the mistrust and suspicion that street children already have for adults around them. Although there is a provision for every police station to have an officer marked as Special Juvenile Officer who is trained especially for meeting children, this is rarely seen in practice. Even the *anganwadi* (courtyard shelter) workers reach out to children only in age groups of 0–6 years and reaching out to homeless children is not a key highlight of their work profiles. Although Child-line has been effective in reaching out to children in distress, its role is restricted to attending to children who they are ‘informed’ about. Even under RTE, their task to count ‘Out of school children’ focuses only on children who live with families and in homes, thereby leaving out a significant portion of the street children.

4.2 Inadequate Options for Care

The interventions for care of street children have seen little modification and innovations either in its principles or methods to suit the distinct needs of a child coming off the streets. For example, India prides itself on a well-studied and developed system for adoptions for the youngest children, especially orphaned/abandoned/separated children. However the adoption agencies are not mandated to seek out the children (under 6 years who may be abandoned) who may potentially benefit by getting adopted by a family. Parents who are in dire circumstances and wish to relinquish their child/children do not know where and whom to approach, and often abandon the child, whose survival is then entirely left to chance. It is only in the recent revision that JJ recognizes the relevance of this child-care model and encourages it as an intervention for children in need of care and protection.

Similarly **Foster care**, which countries worldwide believe is the next-best-thing to family

care and can form the backbone of an alternative care system for children, has evolved too slowly in India and evidence of its existence can only be seen, and that too rarely, in Maharashtra, Rajasthan and Karnataka so far. There are also very few sponsorship programmes and street-based programmes in India that work with the family and address the myriad issues that surround homelessness in order to improve the lives of the children. At the most, efforts are made to provide medical and legal aid, temporary shelter, basic education, and livelihood options, which do not address the far more complex issues needed to tackle the travails of homelessness and deprivation.

An intervention of direct relevance for the protection of street children are the homeless night and open shelters, to be established under a Supreme Court order in the Right to Food case and mandated by the Court to be operated in all major cities. Such shelters in urban and semi-urban areas are an important component of the ICPS too. For children who are most at risk, long-term residential care facility is essential for any kind of impact to ensue. Barring a few instances under the JJ and RTE, the schemes and its operations on the ground typically offer facilities that are non-residential in nature, which make them less relevant for street children and other groups of children who are living and working on the streets.

4.3 Inadequate Number and Quality of Services

Compared to the volume of deprived children on the streets requiring safety and protection, the numbers of the above-mentioned services are still woefully inadequate. As of December 2014, only 1389 homes of various kinds, and 283 special adoption agencies were receiving funding from ICPS (Save the Children report on Policy Mapping and Analysis, 2015). Of these only 639 homes (46 per cent) are

government-run although the government has the core mandate to reach out to the largest possible number of children in need of care and protection.

Chandni is one among the 3500 such children who had been surviving on streets before they joined one such hostel. Her blind mother has begged all her life but heroically taken her five daughters through elementary school. Proud that she has studied up to class 7, Chandni insists on speaking in broken English. But most street girls are not so fortunate. Every single girl we have met on the streets longs to study, but this is possible only if the government opens hundreds of residential schools for them. The Delhi government has at last agreed to open four such residential schools for street children, and many more mothers have agreed, than we have space for, to sacrifice the earnings of their girls so that they live safe and happy childhoods illuminated by learning.

(Save the Children and ARUN's study on Life stories of street children in India, 2015).

Similarly, the Delhi Street Children Survey (2011) done by Save the Children indicates that there were about 51,000 children (which might have increased with every passing year) but the government-run homes catered to only 2471 children in Delhi during 2014–15, and that too mainly through custodial jail-like institutions.

Quality of care in the existing homes is most criticized for being synonymous with custodialization, wherein the children, in the name of care and protection are locked up. Many government-run homes are overcrowded as the number of children exceeds the sanctioned strength, leading to insufficient space and amenities. The most important element missing in such a set-up is the lack of care from the staff. Instances of abuse and violence are frequent (but unreported). Rehabilitation plans are not given due attention and no post-rehabilitation reviews are done.

4.4 Lack of Support from Ancillary Services

The JJ Act is a crucial legislation for the care and protection of children. It was amended twice (in 2006 and 2011), repealed and re-enacted in 2015 considering the incidents of increased abuse of children, quality of care and protection, pendency of cases and so on. As per the act, the Child Welfare Committee (CWC) is a district-level body having critical responsibility towards the ‘best interest’ of children in need of care and protection. As per the year-end review of the Department of Women and Child Development (WCD) in December 2014, only 619 CWCs have been set up in the country. The CWC enjoys enormous powers to make orders affecting children and families in substantial ways but they lack procedural or functional discipline owing to want of training in court functioning, skill of conducting proceedings, writing judicial orders and maintaining judicial discipline.

Our own experience and the findings of the Policy mapping (Save the Children report on Policy Mapping and Analysis, 2015) confirm that there are many instances when children were hurriedly restored to high risk or exploitative families and on the other hand, correspondingly, there are a higher number of instances of repeated re-entries of children into government homes or NGO homes. This shows lack of sufficient options for the state to ensure that street children are given the most appropriate response. This is a clear limitation of the state’s intervention.

As per the JJ Act revised in 2015, the District Child Protection Unit (DCPU) has been entrusted with the administration and monitoring of child-care institutions and the CWCs. This automatically shifts the focus to children already in institutional care rather than proactively reaching for the child on the street—as highlighted earlier in this section—an element crucial for ensuring participation and the best interest of the child. In our experience, on the ground, there is a lot of confusion about the roles

of the DCPU and the CWC. Whereas the CWC has the authority to write orders for the rescue and rehabilitation of the children in need of care and protection, the DCPU provides funds and secretarial support to the CWCs. The DCPU is mandated as per the Act to review the implementation of the act at the district level. It has powers to administer and monitor child-care institutions as well as the CWC but in case of missing or abandoned children, the DCPU has to submit a report to the CWC about the child’s family background. Thus there remains some confusion regarding its role and reporting lines.

National bodies like the National Commission for Protection of Child Rights (NCPCR) and its state counterpart, State Commissions for Protection of Child Rights (SCPCR), set up under the Commissions for Protection of Child Rights Act (CPCR Act), 2005 have wide-ranging powers to inquire into violations of child rights, including the lack of implementation or compliance with relevant laws, policy decisions, guidelines and instructions. It is also the designated grievance

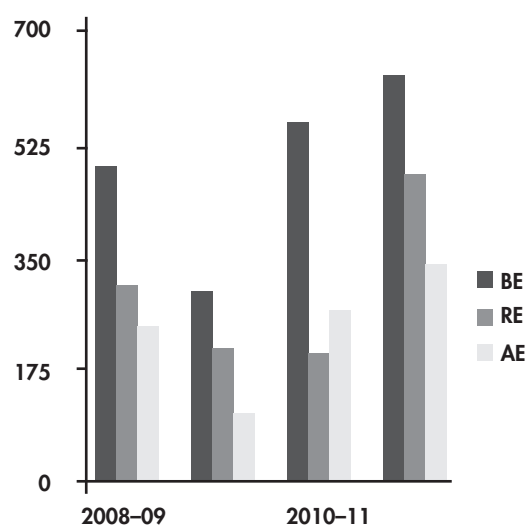


Figure 5: Trend in Budget and Expenditure for Child Protection

Source: Budget for Children in India, 2008–9 to 2013–14, HAQ Centre for Child rights

redressal and monitoring institution under the RTE, the Protection of Children from Sexual Offences Act (POCSO), and most recently, the JJ Act, and provides for the creation of Children's Courts, Special Court and the appointment of a Special Public Prosecutor, in order to ensure speedy trials for offences against children or of violation of child rights. Despite the important role that they play, their functioning remains heavily dependent on governmental support, in terms of accepting and taking action based on their findings. The performance of the SCPCRs varies considerably from state to state, based on the expertise and initiative of its members.

4.5 Low-budget Allocations

The share for children in the union budget has fallen in the recent years (HAQ: Centre for Child Rights report on Budget for Children 2016–17, 2016). Currently it stands at 3.32 per cent as against 4.76 per cent in the year 2012–13. Within the budget for children, the share of child protection is reduced and remains the most under-resourced area among all the other sectors.

Under the ICPS—the scheme most relevant to street children—however, the financial norms for various components were revised upwards in 2014, including a rise in the child maintenance grant from INR 750 to INR 2000 per month per child, construction and maintenance of a home for 50 children from INR 77.61 lakh to INR 129.85 lakh, for children with special needs from INR 4.22 lakh to INR 10.48 lakh, and greater flexibility in staffing patterns and enhanced cost of construction. Despite these increased proposals, actual funds sanctioned and released to state governments have been significantly below the proposed allocations, reflecting poor fund utilization by states, including in states like Tamil Nadu and Delhi which have been relatively proactive in implementing the scheme. The decreasing trend of actual expenditures

indicates the lack of sufficient planning and allocation of resources. It also shows that investing in children can be delayed as the government does not come under any pressure as much as they do while working on programmes for adult citizens. More so because the latter are part of a vote bank and children are not. Budgetary allocation for 2015–16 for children has been left unchanged from the previous year, at INR 402.23 crore as against the projected demand of INR 700 crore.

Another scheme that can benefit the street child directly is the URH under the SSA. Children are provided residential facility to stay within the government premises which are run by NGOs. The allocation of the building is done by the Municipal Corporation. This scheme enables street children to live in the safety of a home within public institutions. The funding pattern of this scheme however is based on that of the Kasturba Gandhi Balika Vidyalayas (KGBV) which is inappropriate because the KGBVs (residential schools) start from Class 5, whereas street children under URH include those as young as 6 years of age. Moreover, due to the per child expenditure by the government being very low, in most cases, NGOs have to make up for this shortfall with their own funds.

The above facts reveal that despite laws, policies and schemes for children, and state and non-state actors, the street child is clearly falling through the cracks and only an alarmingly miniscule proportion are really being impacted. Beginning from a lack of understanding of who the child on the streets really is and what they need, to lack of coordination and convergence, lack of will and budget issues, we have been utterly unsuccessful in addressing the needs of scores of children suffering on the streets.

5. Recommendations

According to Articles 20.1 and 20.2 of CRC (Convention on the Rights of the Child), a child

temporarily or permanently deprived of his or her family environment, or in whose own interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. As a signatory to the CRC committed to ensuring all children's basic rights, the State has to act more proactively and responsibly towards the growing number of children left out and violated on the streets.

When it comes to the issue of street children, honest reflection might reveal that the nation, state, as well as the community are part of the continuum of discounting it because of 1. lack of recognition of the issue ('it's not a problem') 2. no cognizance of the gravity of the situation ('it's not a serious one') 3. shaky trust in the rights perspective and the expectations of positive impact ('there are no real

solutions') and 4. denial of ownership and therefore responsibility towards contributing to the process ('it's not really my responsibility').

As a UN study (UNICEF report on Excluded & Invisible, 2006, p. 59) states, a 'business as usual' approach will never reach excluded and invisible children. It has to be a concerted, collaborative effort and the recognition and belief of each of these steps in the continuum has a role that cannot be compromised. It is long overdue and we must force ourselves to take a clearer look at the slate and make corrections urgently.

5.1 Revisiting Existing Policies and Schemes

Schemes, policies and initiatives targeted at the general children's population, aiming to include as many children as possible (ibid., p. 67), cannot reach the street child and therefore will continue to keep them invisible and excluded. Instead of being seen as sub-sets of other groups, such as children in care of need and protection, child labour or out-of-school children, children living and working on the streets are in need of unique schemes and interventions, including health and drug policies, with clearly demarcated roles for central, state and local governments within these (Save the Children report on Policy Mapping and Analysis, 2015).

Box 3

We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundations of life. Many of the things we need can wait, but the child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer 'tomorrow', his name is today.
—Gabriel Mistral, 'His Name is Today', Nobel Prize Winning Poet from Chile.

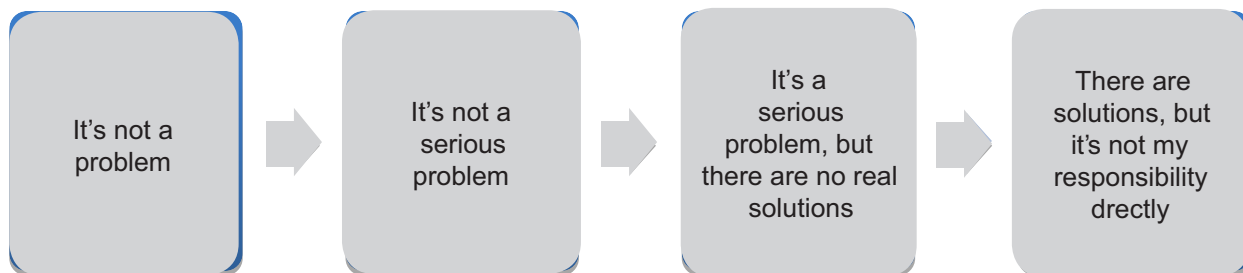


Figure 6: The continuum of discounting

The existing policies that need revision to address specific vulnerabilities include the Juvenile Justice (Care and Protection of Children) ICPS, RTE, etc., and they must contain a section about the protection of street children, underlining the duty of the State to secure for every street child comprehensive, non-coercive, rights-based care and protection. Similarly, the Integrated Child Protection Scheme (ICPS) should have greater flexibility for innovation and designing interventions based on the specific needs of street children. The Sarva Shiksha Abhiyan (SSA) that has provisions for Non-residential Special Training Centres, Residential Special Training Centres and Urban Residential Hostels, contains the potential to reach out to the largest numbers of street children with voluntary, non-coercive, rights-based care (such as the Rainbow Homes) and therefore their numbers should increase. Likewise, the National Urban Health Mission (NUHM) should be made more effective in reaching out to street children as a highly 'at-risk' category by creating more health centres at railway stations and bus stands for street children.

5.2 Assessing the Magnitude, Bridging the Data Gaps

In the absence of any formal, overall data, as a preliminary step to making the street child 'visible', the government must inform itself, through a national as well as state-level survey, about the number of children living and working on the streets in situations and conditions that make their lives a gross human rights violation. This mapping exercise will not only provide the numbers of homeless children and adults residing permanently or temporarily on streets, but will even help to include and lay the foundation for mobilizing and synergizing the local stakeholders to rise and respond. Since streets are dynamic and street children a highly mobile population, it is important that every state should review and update their data over a time period of not more than two years and use that data to fine-tune the interventions and implementation plans to the changing needs.

The survey is on the lines of the ones recently concluded by SC-RFI (Save the Children report on Life on the Street, 2016; Save the Children report

Box 4

Good Practice: In what can be called a model collaboration, Pune city in 2016 undertook a detailed study beginning with a headcount of the children on its streets. Initiated by the Municipal Corporation of Pune, in partnership with Rainbow Foundation India and other local NGOs, they undertook an intensive mapping of the children across the 76 wards and two cantonments of the city, and their situation. The intensive exercise was collectively undertaken by a team consisting of 31 social mobilizers of the social service department who were already active in their respective wards and were familiar with the dynamics and situations that exist therein, and 40 field workers from RFI and other local NGOs with a strong experience of the street situation and its realities, especially vis-a-vis children. With the commissioner as the driving force and the teams complementing each other perfectly, they were able to complete this mammoth exercise smoothly in a record 24 days. Based on the findings and recommendations, the corporation is committed to drawing up a substantial, realistic plan towards the convergence of the good offices of various related departments such as the water department, *Aganwadi*, PWD, Housing, Health, Education, etc., and roll it out at the earliest.

Source: Pune Survey Report, December 2016, By Pune Municipal Corporation and RFI.

Box 5: The MV Approach

Based on the non-negotiable principles that ‘no child works and every child attends full time formal school as a matter of right’, MV (Mamidipudi Venkatarangaiya) foundation has been working on abolishing child labour in all its forms and mainstreaming children into mainstream formal schools. They follow an area approach rather than a target approach seeking to address the children in the entire area. The Child Rights Protection Forum constituted for this includes the gram *panchayat* members, school committee members, school teachers, youth, local employers, women’s groups and political leaders.

Source: Excerpts from interaction with Venkat Reddy, MV Foundation, August 2015.

on Survey of Delhi, 2012; ARUN’s Survey Report of Street Children in Pune City, 2015) that includes information like where to locate them, when to meet them, how to get them to elicit information about themselves and their lived experience, expectations, etc., which can then be used as a reference resource for such an exercise. The local findings should be clubbed with recommendations for stakeholders, lessons learned from experiences of other regions and even other countries to produce the most effective response.

5.3 Stronger Mechanisms for Identification and Mobilization of the Children

Such a mapping survey would reveal the prevalence and the points of concentration in the city, usually spread across temples, stations, bus terminals, etc. However, merely identifying the hotspots does not mean that street children will automatically begin to access any facility that one will provide for them, even if in and around the same locality. For that a trained person over a period of time has to consistently meet and mobilize them through a manner that rebuilds the faith in them that there are genuine alternate possibilities. Going by the shocking finding by a survey on railway children, every five minutes, a child arrives alone on a platform in India, 1,12,000 children arrive on platforms at

35 stations every year. Before the horrors of life on the platforms become a reality for them,⁴ an effective intervention can be ensured by reaching them promptly on their first arrival. This makes for a strong preventive intervention only if the police, railways and community-based organizations play a proactive role towards the same.

6. ‘Best Interest’; Moving beyond the Polarities of Detention and Restoration

The two typical extreme perceptions and responses when a child is met on the street are: 1. The child is a nuisance and the best reaction would be to detain or lock him/her up in the best interest of everybody, or, 2. The child is young and innocent and can only be helped by placing them back in the family. Both perceptions operate either on the assumption that it is not really the state’s responsibility or that there are no real solutions and the best one can do is a temporary Band-Aid approach of ‘managing them here and now’.

One of the reasons that has built the image of street children as being dangerous and risky has been the criminalization of activities that street children have to indulge in for their sheer survival, which includes running away from home,

scavenging, loitering or begging, selling sex toys, petty stealing or vagrancy. In 2015 alone, 56,501 children were apprehended out of which eventually 2578 were released after a small fine, 7354 were sent home, 8842 were restored to their families, 1918 were sent to institutions, and 4582 children were acquitted or the case disposed of (NCRB, 2015). This clearly shows the overuse of detention on the part of the state. We need to reduce the number of children entering justice systems by decriminalizing 'status offences' (offences that are only a crime when committed by children, such as truancy, running away from home, survival behaviours such as rag-picking, scavenging, or loitering) (UN Report on Violence against Children, 2006, p. 29). Even those detained should be offered the best and most intensive community-based rehabilitation and reintegration programmes (ibid.)

The other customary response that is exercised in the name of 'best interest' is restoration/repatriation, i.e., placing the child back with its biological family. Many times the child has escaped from an abusive situation of their own will and to save themselves from abuse and/or violence; simply sending them back after 'counselling' does not prove to be a lasting solution. It, in fact, can be a traumatic and harmful one. Hence, one should not be in a hurry to repatriate and this decision should be taken in close consultation with the child, respecting their agency and without influencing them by putting undue moral stress on reunification with the family. The best interest of the child would be to have a plan based on factors such as the age, quality of the child's attachment to his/her family, the family's capacity and readiness to safeguard the child's well-being and holistic development and most significantly, the child's desire to be part of the family.

6.1 Creating Safe Spaces

Creating safe spaces for rest during the day and especially at night are important for street children.

Operationally, it should be a focus of state and local governments to establish a large network of drop-in shelters at all public spaces such as major urban railway stations and bus stations, as well as other points of assembly of street children not less than 3 km apart. These open shelters should have provisions for children such as lockers, showers and toilets that allow them to maintain hygiene and change their clothes, apart from feeding and basic healthcare services including drug de-addiction and education. These shelters should be linked with basic essential services like immunization programmes, entitlement documents like proof of identity (legal recognition of the child as a member of society) like the Aadhar card, etc., helping them to move one step closer to accessing public goods and services and negotiating the system seamlessly.

These shelters, however, should not be the final destination and should also be closely linked to other child-care interventions. A child who is say, discharged from a drug addiction unit, should thus be able to graduate smoothly to other appropriate long-term interventions such as restoration, sponsorship, foster care and urban residential special training centres and hostels.

6.2 Residential Services: A Real Need

The multi-faceted nature of deprivation faced by street children means that their rights cannot be guaranteed merely by temporary spaces like drop-in shelters. For those children who are without families or have abusive or irresponsible families and do not wish to connect with them any longer, or children who are alone on the streets, it is important to ensure that they have access to appropriate residential facilities. While there is a strong wave of moving away from institutional care in many parts of the world, in our country, due to the absence of established alternative care options and with the number of children on the streets growing, it would be inappropriate to simply move away from institutional care.

As observed earlier in the chapter, although residential ‘Children Care Institutions’ (CCIs) run by the government now do exist across the country, they are not adequate in numbers and usually follow the custodial approach. The quality of care should be professionalized (through SOPs for quality care) and the regressive (repressive) custodial approach towards children’s needs to be phased out, and replaced by voluntary homes where children are not locked up; instead these should be places where children stay willingly rather than being forced to run away. Children from the street do not take kindly to being locked inside a gate, being supervised closely, and being corrected constantly. They learn and grow when not approached by condemnation or rejection and when in non-threatening, accepting, loving, caring, stimulating secular environments and not merely temporary shelters (Mander, 2011).

6.3 Good Practice, the Non-custodial, Residential, Long-term Care Approach

The idea of opening Rainbow Homes⁵ (run under SSA) offering long-term care grew out of the limitations of custodial care, and cannot be equated with the idea of institutionalization. The homes are open and non-custodial or in other words, entirely voluntary and the decision to enter and stay on is the child’s. In fact, even after coming off

the free life of the street, most children coming into the homes remain in an unsettled, ambivalent state for long and invariably go through multiple exits and re-entries. During this initial stage of indecisiveness and perplexity and later throughout the stay in it, caution is exercised to ensure that the administrative systems and protocols are not limiting for the children and do not leave them with a feeling of being just a number in an institution. The programme is also participatory and provides a broad outline of the basic needs of the growing children and the fundamental non-negotiable principles, with the choice of activities relying significantly on the feedback of a council consisting of the children and staff. This results in a rich mix of educational, life-skills, recreational and health activities catering to the needs of every individual child in a violence-free environment. The families are key members of the care team and stay connected with the children during the entire duration of their stay in the home. With long-term care as one of its strong characteristics, when the children reach young adulthood they are, through a carefully conceptualized ‘Futures’ programme, launched into independent living.

Although the residential services extended so far under the RTE add up just to a drop in the ocean, the Urban Residential Hostels (URH) of the SSA have been an effective option for the neediest of the

Box 6

Bridging programmes are based on the unstated idea that every child has a family. After completion of the bridge course, the child is expected to be mainstreamed into the regular school, but there is inadequate provision for residential schooling for children without families or homes. Whatever provisions are made under the component of URH, they are restricted to children at the elementary stage only. As these children move to the secondary stage, they are expected to move to other hostels or schools to complete their schooling. The education department of the Indian government needs to conceive education from elementary to secondary and indeed senior secondary as a continuum, which enables children to seamlessly transit from bridge courses to elementary, and to the secondary/post-secondary stage of education.

Source: Comprehensive Residential Care for Street Children, A Study by Anita Kaul, supported by UNICEF, 2015.

needy among the 'out of school' children. However this has not been implemented universally; for e.g., there is a variation in the age of admission into URHs and the onus to identify and prepare the child for the age-appropriate class practically falls on the NGOs. Further, the duration of the support also varies: e.g. in Tamil Nadu, a child admitted to a Residential Special Training Centre (RSTC) is eligible for funding for up to two years, while in Delhi, Bihar, Telangana and Andhra Pradesh, RSTC is available for a maximum period of one year. Both schemes lack a continuum of care, not catering to children outside the age group of 6–14 years. One of the limitations of the current provisions is that many children who initially enter into the special training scheme are expected to start living at home by the end of the year. Acknowledging the predicament of street children who mostly do not have a home, or a family, or both to return to, the scheme must have provision for their automatic graduation to hostels (URH), which should be made available to them in a maximum period of three years. Also recognizing that such children have either never been to school or dropped out very early, it is also important for SSA to have a strong and uniform bridging mechanism that will prepare the children to join their age-appropriate class in one to two years.

Educationists should be brought in to design high-quality bridge courses, especially for the much harder to bridge group of children, i.e., those who have never been to school, or dropped out early, and are now over 10 years of age. Language difficulties must be given adequate importance in this learning process. Once the courses are developed, the teachers need to be trained to transact this effectively with the children. For the children entering the formal schools late, concession for age of completion of education should be relaxed by two years.

Life skills education, including healing, self-care, social skills, responsibility in relationships and sexuality, drugs and substance abuse, health and hygiene, yoga, etc., could be included. Strong,

flexible assessment systems to diagnose need and monitor learning and development of individual students should also be introduced. Further, a system for teacher development and support over time, in order to provide child-centred, need-based teaching and support, will help them appreciate the unique background and spirit of children who live and work on the street.

6.4 Alternative Care Options

Although residential care services are required for a section of street children, there are others for whom family-based alternatives like adoption, and state-supported foster care, will be more suitable and beneficial. Central and state governments, in consultation with WCD and NCPCR and the SCPCR's, should operationalize foster care under the existing provisions (Juvenile Justice Act, 2015) or should prepare appropriate schemes for these, and actively and widely promote these family-based alternatives. Foster care must be provided for juveniles in conflict with the law as well as for children in need of care and protection. For children restored to destitute and homeless families, the sponsorship programme should be activated to provide families and homes with supplementary support to meet their needs and for the establishment of after-care organizations to support them once they have left a home.

6.5 Continuum of Care till they are Settled

We go to find some work; we are asked a series of questions like: 'From where have you come? What do you do? Do you thieve? Since when have you left your home? For all these days, where were you and what were you doing? Since when are you here? During that period, what were you doing? Is there anyone who knows you? Who can stand guarantee for you?' Now you tell me, how can you get work like this?

(Mander, 2009)

For those who come into care late, say at 14 years or even later, transition milestones obviously do not occur in a linear fashion that one expects, especially so in the case of a child from the streets. Despite this fact, between the ages of 14 and 18 years, while their education is still incomplete and they are vocationally unemployable, the services available to the children and adolescents under state schemes (both under JJ as well as SSA) come to an end abruptly and sometimes in phases. In effect, they get pushed from temporary inclusion to exclusion overnight in the last phase of care, leaving them to their own devices.

The minimum supports that the transitioning child should be provided with are—completion of basic education, safe and secure accommodation, movement towards dignified source of income and adequate daily living skills.

The home gave me a life, everything I needed, it was a heavenly opportunity. When they asked me to leave the day I turned 18, I forgot the years of support and only the anger and sadness of this betrayal and abandonment stayed with me.... This was the finishing line, if I was not to be supported at this important time in my life, what was the point of getting me here from the streets.

(RFI-ARUN, 2016)

It is important that the laws and policies be extended uniformly across the schemes for the street child. The current 'Aftercare' option mandated under the JJ Act is applicable only up to 21 years and in order to ensure the smooth transition and reintegration of a young adult stepping into adulthood, there should be a policy of special stipends and scholarships for higher and technical education as well as assistance for supported group living until they complete their higher and technical education. This support should be on par with admission quotas, stipends and scholarships available for SC and ST children.

6.6 Stronger Ancillary Protection Service Units and Mechanisms

The existing ancillary protection services need strengthening to ensure that the response is well-rounded. First, there should be an adequate number of CWCs, thoroughly capacitated to appreciate the unique circumstances of a child from the street, their range and the interplay and dynamics that impact a child's behaviour patterns and the choices they (have to) make. As a service mandated for ensuring the welfare of the child, the dealings must be made more participatory with strong weightage given to

Box 7: Good Practice

One particularly innovative action has been the Child Friendly Police initiative, **NABADISHA** whereby the Kolkata Police adopted a Child Protection Card, which can be issued to any child, but is of particular use to children with inadequate family support who live on the streets, in stations or in markets. Since 1998, CLPOA [City Level Programme of Action] has coordinated with Kolkata Police in conducting training courses for police officers with the aim of sensitizing them to the rights of deprived children and juvenile offenders, and of establishing stronger links with social welfare and protection services. Yearly city-level and zone-level work-plans are developed jointly to identify activities for implementation and provide a framework for area-based monitoring. The police also provide self-defence training to children at risk and host health service delivery in their stations every Sunday morning. As many as 42 police stations in the city are involved in such activities to protect children at risk.

Source: Community Policing Wing, Kolkata Police. See: <http://www.kolkatapolice.gov.in/images/docs/cpw.pdf>

the opinion of the child and the parents wherever appropriate, and to the extent possible their consent must be taken before decisions are reached. Similarly the state should design a comprehensive programme to sensitize the police force to enhance its capacities to understand the circumstances and challenges of the children on the streets and to be equipped and trained to respond to them without violence, but in appropriately child-friendly ways. This synergy with the law keepers is extremely significant in the context of street children.

6.7 Resolving Budgets Woes

Modifying schemes and policies to make them more inclusive will mean little, if the financial resources to implement and enforce them are not forthcoming or inadequate to fulfil the commitments to these children. As a case in example, the budgetary allocation for Telangana in FY 14–15 was 26.92 crore, which includes several components like running of CCIs, open shelter, Child Line, maintenance for Juvenile Justice Boards (JJB), CWC, etc., whereas going by a per child maintenance grant of INR 2000 per month alone, the requirement adds up to 70 crore. Such lacunae must be corrected and allocations should be made realistic to match ground realities. According to research findings (Policy & Budget Analysis, 2016),⁶ the Union Government transfers funds in two instalments to state governments—once in April and then again in September. But, the second installment is released only after the state government also adds its contribution. So if there is a delay in releasing the state's matching share, the second instalment gets delayed which also means a rush to spend money as the year ends which may result in poor quality spending. Unspent funds in turn point to low or no achievement of objectives of these schemes. Instead of simply reducing the next year's allocation the Centre, as well as states, should introspect at all levels and examine the processes as well as outcomes so that shortfalls can be corrected.

6.8 Prevention, to the Extent Possible

Considering that street children phenomenon is largely an urban one, along with taking steps for managing the immediate situation at hand, the State also needs to act on 'Pull and Push' factors that contribute to bringing the children to the streets.

For instance, people are rendered homeless because of the demolition of their slums. Like the experience of 14-year-old Lakshmi:

She remembers happier times, when she was still living in the JJ colony at Yamuna Pushta. They had a home then, her father was a rickshaw puller, she and her sister went to school in the slum, they had friends who they played with and her mother stayed at home with her younger siblings. Her whole world was shattered when one day they received a notice setting a date for the demolition of the slum she was living in. Hers was one of the slums demolished a few years back as part of the slum demolition campaign of the Government of Delhi. Once the slum was demolished her family was 'rehabilitated' in Bawana, where they were given a small piece of land. However, the area was so inhabitable that Lakshmi's father decided to sell it and with no option remaining moved to living on the street. Lakshmi, her mother and her siblings now survive by begging and rag-picking.

(Mander, 2009)

Some are also simply born to the streets and have lived for several generations on the same piece of pavement and the new generations too grew up in the same stretch of pavement. Mohan, a street boy in Chennai shared, 'Homelessness is not a new thing for me. I was born into streets, and it was here that I was brought up. I have a lot of friends who still live on the streets. Our parents got a house very recently and I am not sure how long they can manage to be there.' He is convinced that they will be forced to return to the streets. Likewise, Mythili, (Mander, 2009) describes herself of 'homeless lineage', recalls that her father was irresponsible, '...a drunkard, he

never cared for us...’ and that her mother fed them by selling food cooked by her on the pavements to other homeless people. (Mander, 2009)

A critical aspect of prevention should mean reaching the families and the children with essential services before they get sucked into the vortex of an abyss of street life and, for others, breaking the cycle of chronic homelessness. Apart from the specialized set of services for children, adequate safe spaces, livelihood training and services to especially support single women, those disabled, or those migrating initially into the city in search of better prospects, etc., these families can significantly limit the number of people becoming unproductive and pushed into marginalization and exclusion. Although it’s a complex maze, a strong, multi-pronged approach aimed at poverty alleviation, better education and health in the rural parts, better opportunities, etc., will certainly be helpful.

Conclusion

Street children have been hugely misunderstood and shunned by mainstream society. They are

viewed as a menace but actually their lives on the streets are a result of the indifference of society. Despite having signed the CRC nearly 25 years ago, that emphasizes the rights-based perspective, as a country we need to honestly answer the question whether we have really begun to see children on the streets as citizens with legitimate rights.

If the physical, emotional and sexual health and educational needs of these children go unaddressed, they will become inter-generational, and further, failing to organize support and resources for them and keeping them excluded will have serious implications not just for the children but also for the society, more than we have ever chosen to acknowledge. We simply cannot let the lives of millions of children be destroyed only because they don’t have a voice or are not a vote bank.

While the barriers faced by excluded children are high, they are very much reversible and some of the recent moves of the government indicate this. We hope that these efforts can be consolidated, collaborations strengthened and aligned to the real needs and synergized to ensure that no child is left out on the streets of India.

Endnotes

- 1 Rainbow Homes for Girls and Sneha Ghars for boys are run in eight cities by Rainbow Foundation India using the Residential, Non-custodial, Comprehensive, long-term care approach.
- 2 In all the examples of children’s experiences appearing across this chapter, their real names have been changed for the purpose of confidentiality.
- 3 From *Patri Par Bachpan*, a documentary film made by street children with the assistance of ActionAid India aimed at empowering the less privileged sections. See: <http://www.thehindu.com/lf/2004/03/23/stories/2004032301470200.htm>
- 4 Railway Children is an international children’s charity working with street children in India, East Africa and the UK.
- 5 All the authors are part of the team that runs Rainbow homes across the country.

List of Abbreviations

- CCI:** Child Care Institution means children home, open shelter, special home, place of stay, specialized adoption agency and a fit facility recognized under the JJ Act for providing care and protection to the children, who are in need of such services. (source: JJ Act 2015, section 2 (21)).
- CLPOA:** City Level Programme of Action is a networking body of more than 200 NGOs throughout the state of West Bengal. It reaches out to more than 1 lakh children in areas of education, health, sensitization and capacity building.
- Child Line:** It is India’s 24 hour, free emergency phone service for children’s aid and assistance. This service is provided by the Department of Telecommunication, accessed through the toll free number 1098.
- CNCP:** Child in Need of Care and Protection covers children who need care and protection from a broad range of

neglect, abuse, exploitation, injury, illness, abandonment, torture including armed conflicts, civil unrest and natural calamity. For a specific definition please refer to JJ (Care and Protection of Children) Act, 2015, section 2 (14).

CPCR Act: The Commissions for Protection of Child Rights Act, 2005, is an Act to provide for the constitution of a national commission and state commissions for protection of child rights and children's courts for providing speedy trial for offences against children or of violation of child rights or for matters connected therewith. (source: http://www.egazette.nic.in/WriteReadData/2006/E_5_2011_080.pdf)

CWC: Child Welfare Committees have the sole authority to deal with matters concerning children in need of care and protection. They comprise one chairperson and four members of whom at least one member of the board should be a woman. The CWC has the same powers as a metropolitan magistrate or a judicial magistrate of the first class.

DCPU: District Child Protection Unit is a fundamental unit in the districts under the ICPS scheme. The DCPU coordinates and implements all child rights and protection activities at the district level. Its specific functions include effective implementation of child protection legislation, and achievement of child protection goals laid out in the National Plan of Action for Children.

FGD: Focus Group Discussion is a qualitative research method that involves interaction within the group based on topics supplied by the researcher (Morgan, 1997, quoted in <http://sru.soc.surrey.ac.uk/SRU19.html>).

ICPS: Integrated Child Protection Scheme is a centrally sponsored scheme aimed at building a protective environment for children in difficult circumstances as well as other vulnerable children through government-civil society partnership. Some of the service structures for care, support and protection of children under ICPS are Child Line, open shelters, improvement of sponsorship, foster care, adoption and after-care services.

JJ Act: The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for protection of children. It was amended in 2006 and 2011. It was repealed in 2015.

JJB: Juvenile Justice Boards are constituted in every district by the state government to exercise powers and discharge functions relating to children in conflict with law under the JJ Act, 2015. They comprises a Metropolitan Magistrate or a Judicial Magistrate of first class with at least three years of experience and two social workers (of whom at least one should be a woman). The purpose of setting up the JJB is to make possible socio-legal rehabilitation in a child-friendly space not intimidating or overwhelming for the child.

JJ Colony: Jhugi Jhopari clusters are squatter settlements located on public land that come under the category of unplanned settlements in urban cities.

KGBV: Kasturba Gandhi Balika Vidyalaya is a Government of India scheme integrated with the SSA to provide educational facilities to girls belonging to SC, ST, OBC, minority communities and families below the poverty line in educationally backward blocks where female literacy is below the national average and gender gap in literacy is above the national average.

NCPCR: National Commission for Protection of Child Rights is a statutory body under the CPCR Act, 2005, under the administrative control of the Ministry of Women and Child Development, Government of India. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (source: <http://www.ncpcr.gov.in/>).

POCSO: The Protection of Children from Sexual Offences Act, 2012, was formulated in order to effectively address sexual abuse and sexual exploitation of children.

RTE: The Right of children to Free and Compulsory Education Act commonly known as the RTE Act mandates that the State provide free and compulsory education to all children of the ages of 6–14 years.

SCPCR: State Commissions for Protection of Child Rights were established in each state as per the provisions of the CPCR Act, 2005. They were set up to protect, promote and defend child rights in each state. The commission consists of a chairperson and six persons (one of whom should be a woman) who are well-versed in child welfare. The functions of the SCPCR are same as those of NCPCR (source: <http://www.childlineindia.org.in/state-commission-on-the-protection-of-child-rights.htm>).

SOP: Standard Operating Procedure

SSA: Sarva Shiksha Abhiyan (SSA) is an intervention programme launched in 2000–2001 with the aim of achieving universalization of elementary education. This campaign is committed to achieving its objectives in a time-bound manner as mandated by the 86th amendment to the Constitution of India that makes free and compulsory education to children of the ages of 6–14 years a fundamental right.

UDRH: Urban Deprived Residential Hostels are a full-time residential facility for the urban deprived children run in government buildings where children in the age group of 6–14 years undergo bridge courses and are subsequently admitted to formal schools for education. The residential facility adopts the voluntary, long-term, non-custodial, comprehensive care approach.

UNCRC: United Nations Convention on the Rights of the Child is a legally binding international agreement setting out the civil, economic, political, social and cultural rights of every child, regardless of their race, religion or abilities.

It was adopted by the United Nations in 1989 and ratified by India on 11 December 1992. (source: <http://www.savethechildren.org.uk/about-us/what-we-do/child-rights/un-convention-on-the-rights-of-the-child>)

WCD: Department of Women and Child Development, Government of India, is a nodal ministry for the

advancement of women and children. It formulates plans, policies and programmes. It coordinates efforts of governmental and non-governmental organizations working in the field of Women and Child Development.

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Old people waiting outside a bank in Tadimarri, a village in Anantapur, during demonetisation. Many of them used to return home without money during the cash-crunch. Disability adds to the challenges in ways that still remain invisibilized in public policy.

Photo Credit: Rahul M.

Resisting the Margins

Women and Girls with Disabilities in Rural India*

Rhea John, Anita Ghai, Radhika Alkazi,
Radhika Jha and Harsh Mander¹

I cringe when people tell me they don't see me as disabled, because before I even get out of bed in the morning, I have to consider at least 20 things that probably never go through the mind of the average able-bodied person. I cringe because accessible transportation and accessible housing are still nearly impossible to find. I cringe because my disability makes me more likely to be unemployed, homeless, and the victim of violence. I cringe because when people tell me they don't see my disability, they are telling me that they don't see the injustice and inequality that still exists in the world.

How you see me matters. See me as me. See me as a daughter, sister, friend, writer, and student. See me as smart, strong, outgoing, and capable. See me as all these things, but see me as disabled, too. See my chair, and acknowledge that it changes the way I experience the world. See my disability, and understand that is an integral part of who I am. See me, and realize that I don't have to erase my disability in order for any other part of me to shine through. I can be a complex and valuable person while still being disabled.

See me for me. Disability and all.

—Karin Hitselberger

1. Introduction

Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.... Disability is neither simply a biological nor a social phenomenon but arises from the relationship between health condition and context.

—Article 1, UN Convention on the Rights of Persons with Disabilities, 2007

Amartya Sen observes that 'people with physical or mental disability are not only **among the most deprived** human beings in the world, they are also, frequently enough, the **most neglected**'. This chapter explores both deprivation and neglect for disabled women in rural areas, investigating how intersectionality operates to deny them equitable access to a range of public goods, ranging from education, healthcare, decent work and social security to protection and dignity. Women and girls are the largest single group of persons who face discrimination, violence and denials. And residents of the countryside tend on an average to face much harder and more deprived lives than

* Authors' Note: The expressions 'disabled persons' and 'persons with disabilities' (PwDs) have been used interchangeably in this chapter.

Reviewers: Pauline Oosterhoff

their urban counterparts. The study on which the chapter is based consists of in-depth interviews with 225 women in Jharkhand, Odisha and Karnataka, led by disabled women researchers from the local community. The findings suggest that the social model understanding of being disabled by circumstances rather than impairments is only strengthened when considering the interlocking exclusions based on gender, rural location and poverty.

Even more than most other systems of social denial and oppression, disability is both systematically overlooked as well as continuously invisibilized. In the Indian context, the response to disability at a cultural level has been paradoxical, viewing it both as 'God's will' as well as a form of retribution for past sins, reinforced through mythology, religion and cultural practices. In this respect, the 'biomedical' perspective on disability appears as an advance in understanding—in the sense that it locates the appropriate response firmly in the material realm. At the same time, the medical model of disability limits the understanding of disability to a mere pathology, and reduces the disabled individual to their disabilities. This notion is reinforced through the advancement of eugenics and the attempt to create 'designer babies' through genetic engineering.

The theoretical framework for understanding disability has in recent decades advanced from this medicalized understanding. While health support for the disabled is recognized as necessary, there is now a growing recognition of disability as a socially constructed experience, and therefore a political issue. The experience of discrimination, inaccessible environments and constrained opportunities faced by disabled people are socially formed and perpetuated, and must be politically confronted. In this, disability rights movements find common ground with feminist movements, opposing norms in which the average human being is assumed to be non-disabled and male. The critique from the

disability standpoint, in particular, disturbs both conventional public opinion as well as established intellectual models, questioning critiques based on economic disparity, rurality, caste, ethnicity, and even gender on their ableist assumptions.

In the context of a deeply patriarchal society such as India, where sex-selective abortions continue to be prevalent, women can rarely exercise the freedom of reproductive choice. Moreover, prevailing social and medical influences create an environment in which the perceived worth of a baby girl with disabilities is minimal. Should they survive this eugenic impulse, the gendered expectations and life chances of these girls, especially when taxed with economic deprivation, makes it doubly difficult for them to achieve personal fulfilment either through social-emotional roles—as partners and mothers—or through professional roles and financial independence.

The vast majority of India's disabled population lives in rural areas. At the same time, the rural experience of disability differs significantly from the urban experience, most starkly in terms of geographical terrain and infrastructure, as well as in opportunities for education and employment. However, there has been little academic engagement so far with the experience of disability in rural India.

This chapter seeks to address those gaps in both popular and academic understanding. In doing so, it tries to refrain from constructing this intersection (described in Section 2) as yet another category that eclipses the individual voices and experiences of rural girls and women with disability. We hope to cast light on the specific processes, whether through institutions, norms or relationships, by which the marginalization of these girls and women is continuously effected. The methodology used to achieve these ends, along with the limitations faced is briefly outlined in Section 3. In Section 4, the chapter attempts to identify processes in which intervention is possible, to disrupt the continuing

conditions of deprivation, violence and silence that these women presently confront. It further tries to outline a theoretical frame and structural context in which these processes can be better understood in Section 5. Finally, it makes recommendations for relevant policy changes based on the findings (Section 6).

2. Introduction to the group

2.1 Data and Demography

The prevalence of disability in India is pegged at approximately 2.1 per cent of the population, as per the Census 2011 estimates, of which 44.1 per cent are females. This indicates that approximately 2.01 per cent of all females in India are disabled girls and women. The disabled population is predominantly rural (64.49 per cent) while the proportion of women in the rural disabled population is consistent with the national average (44.13 per cent).

The figures for disability prevalence based on the Census in the states of Jharkhand, Odisha and Karnataka (in which the study took place) are given in Box 1.

However, these numbers cannot be taken to be an accurate representation of the size of the disabled population. For one, there are major discrepancies

in disability data based on the definitions used by different organizations—for instance, the NSSO data uses a wider definition for hearing, speech and locomotor impairments than the Census. A second issue is that the standard for defining disability in these national estimates has been rejected almost universally by disability rights activists. They argue that disability, being a social construct, cannot be measured in medical terms solely. Third, these estimates rely on a fairly restrictive definition of disability (for example, these exclude autism, thalassemia, haemophilia, and many learning disabilities). In India, there are further claims that assessments are not credible and standardized: each state has different medical criteria for issuing a disability certificate, and certificates obtained from different hospitals within the same state too can be widely discrepant (Ghai, 2003; Jeffrey & Singal, 2008).

This is part of a larger global trend of undercounting the disabled population, noted by international organizations such as the World Health Organization and the World Bank, both of which estimate a 15 per cent real prevalence of disability in the world population. Using more inclusive definitions and methodologies, the World Bank estimated in 2007 that disabled persons were anywhere between 4 to 8 per cent of India's

Box 1: Disability Prevalence in Jharkhand, Odisha and Karnataka					
State		Total number of persons with disabilities	Proportion to total state population (in percentage)	Total number of females with disability	Proportion to total disabled population (in percentage)
Jharkhand	Overall	769980	2.3	343104	44.5
	Hazaribagh District	35132	0.1	15036	42.8
Odisha	Overall	1244402	2.9	569627	45.7
	Koraput District	36291	0.08	17521	48.2
Karnataka	Overall	1324205	2.1	597684	45.1
	Gadag District	25114	0.04	11078	44.1

Source: Census of India, 2011

population, or about 40–90 million persons. In India, this data has political as well as social implications, as the state is responsible for providing social support and benefits to those included in the definition.

2.2 The State's View of Disability

The idea of the 'citizen' is associated with a hegemonic norm (as discussed above), and pervades the State's interaction with its citizens, as well as mutual relations between citizens. The most conspicuous instance of this is that the incarceration and institutionalization of people with intellectual or learning disabilities are widely tolerated, although they violate basic rights of citizenship. This denial of rights is also evident in the personal laws, which allow for separation and divorce on grounds of mental illness, as well as in laws relating to property and inheritance, besides many others.

Policies for affirmative action and social support for the disabled are also poorly implemented. The Rights of Persons with Disabilities Act, 2016, provides for 5 per cent reservation for disabled people in government posts, a 2 per cent increase from the former Persons with Disabilities Act, 1995. In a 2016 judgement, the Supreme Court noted the dismal number of disabled people in government employment despite the provision existing for more than two decades, and quashed the Central Government Office Memorandum restricting reservation for the disabled to 'identified' (Group C&D) posts, extending the reservation to all Central and State Government posts (*Rajiv Kumar Gupta & Others vs Union of India* 2008). While this ruling is significant, its impact on women with disabilities, without requisite opportunities for education and basic assistive devices, remains minimal. Moreover, the impact of this judgement has been reversed in the provisions for reservation in the 2016 Act. Likewise, a meagre Central disability pension of Rs 200 (unevenly supplemented by states) undermines

the principles of social protection and dignity on which such support is based. In the Union Budget of India 2015–16, the total budget allocation was a paltry INR 632.89 crore (or INR 236 for each of the 2,68,14,994 disabled people counted by the Census) for the Department of Disability Affairs. Of this, there was non-utilization of 30 per cent (INR 192 crore), and also of 54 per cent of the amount allotted for the implementation of the Persons with Disabilities Act, 1995 (Dogra, 2016).

Access to all welfare schemes and provisions for disabled people requires a disability certificate, which is a further obstacle. Many activists as well as our respondents describe the procedure to obtain a certificate as tedious, uncertain and arbitrary. A Right to Information application in 2014 ascertained that only 38 per cent of disabled persons in the country have managed to get the certificate. While Tamil Nadu has recently made it possible to apply for the certificate online, to be delivered to the residence of the person with disability within seven days, in other states the process may last from anywhere between six months to a year, with multiple visits to state authorities and medical officers required. Moreover, the certificate of one state is inapplicable in another state.

2.3 Socio-economic Conditions

It is widely acknowledged that women with disabilities are a significantly more vulnerable group, and most commonly-used indicators of well-being confirm this. Available research shows that disabled people and their households are more likely to live in poverty than the rest of the population. Elwan (1999) estimated that disabled people make up 15 to 20 per cent of the poor in developing countries, significantly higher than their share in the general population. Research by the World Bank shows that in 2011, disability prevalence among the poor in developing countries was significantly higher in 11 out of the 14 countries that were included in

the analysis. Another study on household welfare in rural UP and Tamil Nadu by the World Bank in 2008, using asset ownership and per capita consumption as indicators, found that among the poorest, households with disabled members were on average much poorer than households without disabled members. The survey also finds that on a number of non-income indicators, such as regular access to three meals a day, the ability to save, and access to good quality housing, households of disabled people were significantly worse off.

According to Census 2011, only 44 per cent of India's disabled women are literate, and the difference between rural and urban literacy is stark: only 37.4 per cent of rural disabled women are literate, compared to 60.9 per cent of urban disabled women (see Figure 1). Research indicates that the proportion of disabled children not enrolled in school is much higher than even children from socially disadvantaged segments of society; for example, as per the 2014 SRI survey, the out-of-school rate for disabled children in the 6–13 year category was 28 per cent, while for SC, ST, OBC and Muslim children it was less than 5 per cent. Low literacy rates among disabled people have a key role to play in hindering their economic well-being later in life.

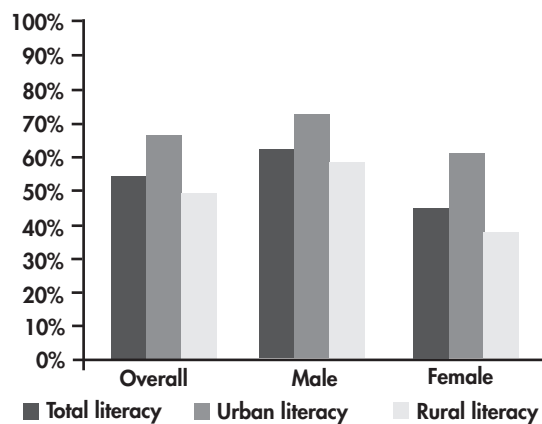


Figure 1: Literacy of Persons with Disabilities in India, by Gender and Location

Source: Census 2011

According to a study by the South India Disability Evidence (SIDE), disabled women show significantly poorer reproductive health outcomes than non-disabled women. Although they have more living children per mother than non-disabled women (possibly reflecting contraceptive use), they have a lower rate of successful pregnancies. They also have a significantly higher incidence of diabetes and depression, as well as other pregnancy complications and co-morbidities. The authors suggest this might be related to nutritional deficiencies, and perhaps under-confidence of health workers in dealing with their concerns (Murthy, John, Sagar, 2016).

Disabled women in rural areas are also much less likely to be employed (see Figure 2). The International Labour Organization (ILO)'s 2011 report states that 73.6 per cent of the disabled in India are still outside the labour force. Given the educational, social and physical barriers faced by disabled people, it is perhaps not surprising that disabled persons are at a significant disadvantage with regard to employment. NSS data for 2002 shows that employment rates for disabled people were about 40 per cent, compared to 60 per cent for the general population. Among employed disabled people, the majority were self-employed (58 per cent) or casual workers (30 per cent), with only a small share in regular jobs. All categories of disabled people had lower employment rates than the general population, though there is significant variation between them. For example, hearing-impaired persons had employment rates almost at par with the general working age population, while the mentally- and visually-impaired had extremely low employment rates. These differences cannot be explained solely by the lower educational levels of disabled people. Disabled persons with comparatively higher educational qualifications have somewhat lower employment rates relative to the general population, but the difference between less educated disabled people and their non-disabled peers is extremely high.

Of these, those with mental disability, disabled women and those in rural areas are most excluded from employment. An NCW report further suggests that due to mobility constraints, those disabled women who do work are far more likely to be doing unfairly-remunerated and labour-intensive piecework at home, possibly organized by agents or NGOs, and without legal or social protections. Those women who go out to perform manual labour may also receive remuneration unequal to both men with disabilities as well as other women.

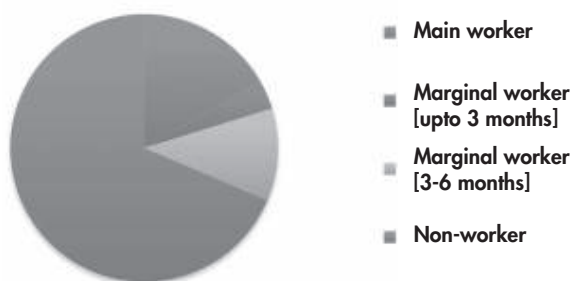


Figure 2: Rural women with Disabilities as Workers

Source: Census 2011

In terms of marriage as well, disabled women are far more likely to be unmarried or widowed than their non-disabled counterparts, and this disparity is even higher for women with mental disabilities or illnesses (see Figure 3). In rural India, where the norm for women to be married and married early is very strong, this discrepancy suggests strong social prejudice against disabled women. This finding in fact holds even in comparison to disabled men, of whom 62 per cent are currently married, relative to just 54 per cent of disabled women. Strikingly, compared to just 6 per cent of disabled men and 7 per cent of all adult women, 22 per cent of disabled women over 14 are recorded by the Census of 2011 as being widowed—possibly reflecting practices of their being married to much older men.

3. Methodology

This chapter is based primarily on the findings of a study carried out by the Centre for Equity Studies about the lives and perspectives of 225 women and girls with disabilities living in rural areas of three districts, Koraput in Odisha; Gadag

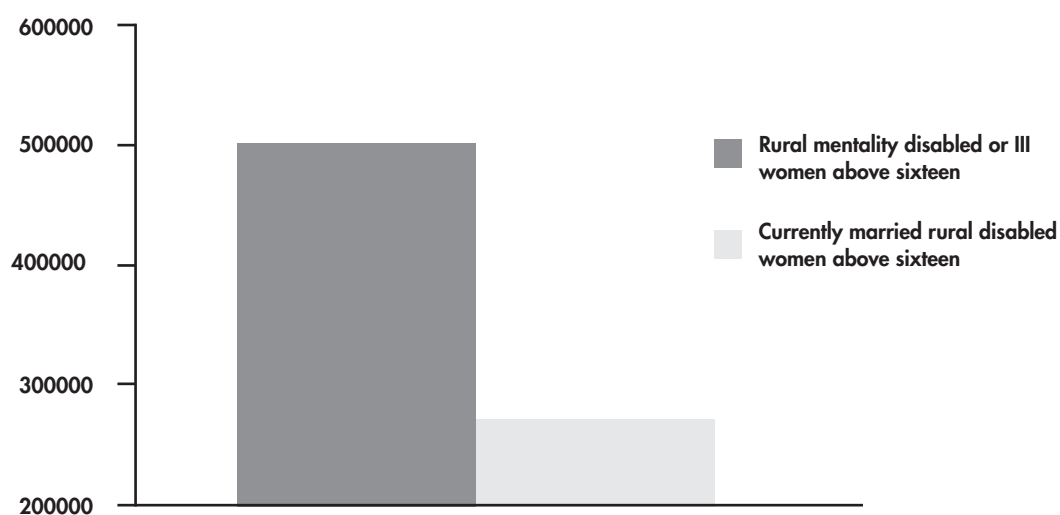


Figure 3: Proportion of Rural Mentally Ill or Disabled Women above the Age of 16 who are Currently Married

Source: Census 2011

in Karnataka; and Hazaribagh in Jharkhand. The methodology for the study was based on the Centre's emphasis on including people from vulnerable groups as equal partners in research into their own experiences, and prioritizing their insights, gained over a lifetime, over those of the 'objective' outsider. The study therefore relied on local women with disabilities as primary researchers in order to incorporate this empathy at the stage of data collection itself. These women, sometimes non-literate, were to use their unique perspective in the interviews and ethnographic observation, supported in the process by persons formally trained in documentation.

The present study was therefore a qualitative one, based on in-depth interviews with these women and girls and their families and communities. The study prioritized using as broad as possible a definition of disability to identify respondents, so as not to replicate the official oversight mentioned above. At the same time, rather than a medical definition, we prioritized self-reporting through the snowballing method employed by our researchers.

Most, if not all, the chapters in this report, rely on forging a direct link between state action and the condition of particular vulnerable communities, and thus holding the State accountable for redress. However, in the experiences of our respondents there is no clear differentiation between the roles of State and society, community and family, individual identity and collective beliefs, in the construction of what it means to be disabled. All these are deeply intermingled in their lived experiences and the understanding of their situations. The representative coherence in the story of how disabilities are created is ultimately only to be found in the persons of these women and girls. We do not claim to represent all of these women here, or even to generalize across such an impossible category as 'women with disabilities in rural India'—each attribute of which contains an incredible diversity. We merely put forward

some experiences that are shared by many of the women we met, and highlight possible patterns of correlation between their circumstances, cultural contexts and marginalization.

Finally, a note on the selection of sites: the three sites for the study were decided with purpose, each based on a specific rationale as well as on availability of field partners. The districts of Koraput in Odisha (Jeypore and Pottangi blocks) and Hazaribagh in Jharkhand (Chauparan and Churchu blocks) were selected based on their largely tribal population, the remote and difficult terrain, and their status as 'backward districts'. Gadag in Karnataka was selected in some ways as a comparison case, being a state in which both disability activism and the state's disability support framework are strong, yet where the incidence of both disability and poverty remain high—in Mundargi taluka specifically, due to the high prevalence of fluorosis. Within the villages selected for the study, the respondents were identified by the snowballing method, given that women with disabilities are often invisibilized in villages due to the stigma attached to their condition, and are thus not easily accessible to outsiders.

4. Nature of Exclusion

When the researchers returned to Jharkhand for a second round of more in-depth interviews, the very first piece of news they received was that one of the women they meant to meet had passed away barely a month before. Suman was 19 years old with multiple disabilities, and only able to move from her bed with difficulty. She had never been to school and rarely went out of the house. But when asked if she thought of getting married, after a short silence, she had said, 'Of course I'll get married. What else?' Her mother, when spoken with later, had not agreed. At the time of the revisit, we asked a person who was present for the funeral ceremonies what had happened. He said he had asked, but the

family was vague—and perhaps relieved. Yet they had loved her, had taken care of her exceptionally well, and had fought for her right to be admitted in school.

Women and girls living with disabilities in India's rural areas face distinct forms of exclusion. Not only do they face the kinds of exclusion endemic to members of poverty-stricken rural households—access to food, water and safe housing, social security and health care, basic services and mechanisms of justice delivery—but also have to deal with aggravated issues of access to these because of the lack of enabling infrastructure, and limitations imposed by their specific conditions. In the words of a teacher in Churchu, 'Poverty is the curse for these children'. At the same time, the gendered social exclusions that these girls and women face go far deeper. These are built into the very structure of a society where a physical 'defect' or 'abnormality' is assumed to invalidate a woman's potential to be educated, or married, while marriage remains—within hetero-normative and patriarchal frameworks—the sole route to a stable and permanent source of emotional support.

In a rural context, where infrastructure for, and an imagination of, 'assisted living' is more or less non-existent, membership of a family becomes increasingly crucial as it is decreasingly 'deserved'—in the implicit utilitarian perspective, it is earned through individual contributions to the labour necessary to sustain the family. The labour of sustaining a household is disproportionately the women's responsibility, and a failure to perform it is an invalidation of one's viability as a woman. Along with the shame and material consequences of this failure, disabled women also face a frequent, almost chronic lack of dignity, companionship and sense of individual fulfilment.

At the same time, women and girls with disabilities do not constitute a group in the sense of people joined together with a common experience

or interest. The diversity of experiences between people with different disabilities and between the gender roles and performances in various contexts has been sufficiently highlighted. Moreover, although these women may know and support each other, they do not see their problems as shared, perhaps because solidarity based on a shared experience of ableist patriarchy would require its participants to transgress other entrenched solidarities such as caste, class, religion and family.

What defines their unique situations then, as seen in the research, are two specific and interlocking problems: limitations to their mobility and ability to perform some kind of physical labour, and the lack of educational, professional and social opportunities accessible to these women. Limited mobility—whether enacted directly, in terms of the pain and weakness they feel, or indirectly, through their or their families' fear for their well-being and safety—renders them frequently unable to access work or education outside the home, while simultaneously, in some cases, limiting their attempts to be self-sufficient in housework and self-care. The lack of opportunities prevents them from finding dignity in alternative occupations and reduces them to their circumstantial incapacities. These processes of exclusion will be explored in detail in this section, with specific focus on the consequences they have for these girls' and women's lives.

4.1 Relations with Family

Suman's story, described above, echoes a fundamental contradiction faced by many, which is reinforced by a biomedical (rather than social) conception of disability. Namely, although Suman's family loves her and cares for her, they have in a sense placed a lower value on the *worth* of her life than on the lives of other people, whether due to triage considerations or beliefs about the inherent incapacity of disabled people. This is what prompts the admission from strained mothers across our

field sites, that it would have been better had their daughters never been born. It is only the extraordinary care required from parents that is sustaining her—therefore, in their view, it is better for her if she should pass away before they do, because even her siblings cannot be relied on to take care of her afterwards. And indeed, an adult woman like Meena Kumari from Chauparan, forced to depend on her brother for food and shelter, does face neglect, cruelty and being made to feel a burden daily, and would attest to the centrality of parental care.

In the absence of inclusive education, health services, accessibility infrastructure and work opportunities for those with different kinds of disabilities (detailed below), the onus for enabling access to these resources falls on the family. Whether by taking a girl to a nearby town hospital for sustained treatment or fighting with school authorities for her right to enrolment, the disabled girl's access to rights is determined by her family's ability to negotiate for them. When the family neglects her, she is left alone in her suffering—like Padmini, from Koraput, who roams outside the village with her few sheep and goats since she is asked to get out of the house and out of the way, or Nilima, who is sometimes left alone at home for days when her family goes out, going hungry and thirsty because she cannot eat without help.

Families are also often the major source of information and access to opportunities for those women whose mobility and social interactions are restricted. Older male relatives may help obtain certificates and pensions, or assist in travel; sisters may provide social news or act as playmates, carers and buffers against ostracism, and mothers are almost always the primary carers and advocates for their daughters' rights. At the same time, families themselves are limited by their circumstances. Soni's family, struggling to make ends meet in Larha village in Jharkhand, have not taken her to a doctor once in her 12 years living with a

developmental disability. They say they see no urgency because she has always been like this—it isn't a disease. When they save enough money, they can go see a 'good doctor'. They hadn't taken Soni's elder brother to the health centre either, when as a child he seriously injured his leg, resulting in an orthopaedic disability three months later. Without a diagnosis, Soni cannot get paperwork that helps her access the disability pension—which could help the family with medical expenses.

Within the family, patriarchal power relations and possession of cultural capital tend to shape how these women are treated. Somi and Bina, both educated and working as teachers, are among the very few of our respondents who said that they were fully consulted in household decisions. The ability of these women to both articulate their opinions and contribute financial and cultural capital to the household improved their position in it. Many others have much less of a say—like Aarti, who is silenced by her husband's physical violence against her infant son and herself, but also by verbal abuse and neglect from her mother and sister-in-law. In Aarti's situation, being the younger daughter-in-law means that she has, by norm, the major share of household responsibilities, along with the least decision-making authority; it is notable that both Bina and Somi live in nuclear families, which might make it easier to have one's voice heard. They also have the resources to do so, unlike Aarti whose husband and mother-in-law jointly sell vegetables from a cart in the village.

Women with mental disabilities face the most severe forms of exclusion in household decision-making and in having their agency recognized by the family. Family members intercede in most, if not all of their interactions with the outside world, with mothers emphasizing that casual public cruelty and stigma, such as stone-pelting, name-calling and isolation at social events, makes this necessary. Families pre-empt these situations by keeping the girls in the house under watch,

or by the entire family not going out at all. These decisions have significant social costs, as with Lakshmi's family, who have broken ties with the rest of the village; according to them other children pelted Lakshmi with stones and called her names, while according to the other families, the severing of ties has happened because they are the only non-tribal family there and trying to maintain social distance. More importantly, this strategy has negative effects on the girls and women themselves, making them feel lonely, vulnerable and outsiders in their communities. It reproduces the existing 'invisibilization' of these women in village society and creates a barrier of mutual fear and distrust between these girls and women and everyone else. For instance, some of our researchers (including women with orthopaedic and communication disabilities) were initially unwilling to interview women with mental disabilities at all, having heard rumours that they behave unpredictably and violently.

While interviews suggest that the protective isolation extended by the family has only added a cocoon of silence to the pervasive sexual exploitation of those with disabilities, none of our respondents were willing to speak about sexual violence. Yet some fears named by women—of strangers, or being out alone, or of being caught from behind in the dark—suggest that it is a lurking concern, possibly reinforced by their experiences or stories they have heard. Protective isolation does not prevent fear.

4.2 Forming Intimate Relationships

'She can't even take care of herself—who will marry her?'

Marriage is considered the ubiquitous form of social security for rural women by most of our respondents across the three states. Whether or not she was able to earn her own livelihood, perform housework or self-care, and irrespective of her

desire to marry, it was a life arrangement to which nearly all aspired, or wished they could aspire, and felt of lesser worth if their situation made marriage seem an unrealistic aspiration. For a girl who 'can't take care of herself', even dreaming of marriage, as one woman put it, 'is a sin'.

The marriageable woman is the ideal from which the disabled woman is 'othered' and excluded. She is capable of reproducing, supporting and sustaining the family; she can not only 'take care of herself', she can be relied upon to take care of her husband, her children and their house, preferably without any help whatsoever. Thus, in rural areas, she must be capable of cooking, cleaning, childbearing and child care, washing and fetching water, besides agricultural work if the family owns land, and manual labour if it does not. Married respondents who were able to perform most, but not all, of these tasks expressed guilt at the burden their incapacity placed on others, or else gratitude for the good luck of having relatives or neighbours who helped them with these tasks. Even Bina and Somi, both happily married and working as teachers, professed deep gratitude to their husbands for 'allowing' or 'supporting' them to undertake paid work—even when they carry the standard 'double burden' of domestic work and paid work that most so-called 'working women' carry.

When conditions of marriageability were discussed in our interviews, these labour capacities were emphasized, and standards of attractiveness were hardly spoken of. At the same time, the significance of even a slight limp in the most happily married women—in terms of dowry amounts, marriage prospects and being identified as 'having a defect'—suggests that some standards of physical 'normality' are also involved in the choice of a potential partner. Yet women, both married and unmarried, identified that men with disabilities had only conditions of economic independence to fulfil, and sometimes not even that—and they were frequently married to non-disabled women.

Despite recognizing it as highly unequal and oppressive, why do disabled women continue to value marriage so highly? For some, marriage is the gateway to one's future family, which is a crucial support structure in everyday life. Rasmati, blinded in one eye by her first husband's violence and cast into poverty by her second husband's desertion, still resented the second far more. Paid less and able to find work less frequently, she finds it near impossible to support her three children on her own income—they often go hungry and she could not even seek treatment when she had malaria. Others see marriage as an inevitable rite of passage. A girl who fails to be married is a 'burden' on her parents, prolonging the dependent state of their childhood (irrespective of her contributions to that household)—in this view, the girl becomes a 'woman' by helping her family in the only significant way possible for her—leaving them. Over half of our adult respondents had never been married.

The valorizing of marriage was widespread but not universal among our respondents. Sangita mentioned that she had not wanted to get married, and in that one sense, losing her vision just at the end of school when her family was beginning to discuss her marriage, came as a relief. Although she takes care of her two bedridden parents, with limited help from her intellectually disabled sister and none from her non-disabled brothers who live in the same village, for this one aspect of her situation Sangita remains grateful.

Those unhappily married reflect on it with resignation and some regret. Chhaya was married to a mentally ill man because it was considered 'fit' for a girl with a vision disability. 'My sister's marriage is so good,' she told us ruefully, 'When she's sick, they don't even make her cook. They tell her to rest.' She and her two-year-old son remain dependent on her natal family for medicines, items of personal care and clothes, and she is mostly confined to her house because it is located next to a highway that she cannot see well enough to cross. At least, she says,

the violence is less now because they have resigned themselves to the fact that more dowry is not forthcoming on pretext of her disability. However, even Chhaya does not suggest being single as a valid alternative. Without education, sufficient vision to work or even to venture outside the house with confidence, Chhaya feels she must accept her marriage and try to negotiate terms within it, no matter how unequal.

Kuni, who is 55 and has a severe orthopaedic disability, did not have a choice. Although she was abandoned by her husband in favour of her younger sister after she lost the ability to walk, the village sees her disability, abandonment and frequent illnesses as divine punishment, and ostracizes her for the presumed sin.

4.3 Education

Bina, a teacher in a government school in Churchu, was adamant that plenty of government provisions exist for children with special needs in Jharkhand. This is in stark contrast to Martha, her hearing-impaired predecessor, who said that there must be some provisions for such children, but never having had any such child in her school, she had never found out what they were. According to Bina, teachers have to create and maintain a register of all children with special needs in their school's catchment area, along with up-to-date records of their educational status (also the rule in Karnataka). For those who can learn in the classroom, every effort is made to ensure they attend, and her teachers have so far had two training sessions on how to teach them effectively. For those who cannot attend classes, para-teachers are engaged to teach them at home, focusing, in particular, on self-care and other basic skills in addition to literacy. This is the policy as Bina explained it; the rest of our respondents cannot attest to any part of its implementation.

We did not meet any girls who were taught at home by a teacher or para-teacher. Instead, we heard

from many parents that enrolment is denied by schools to those with severe disabilities on grounds of untrained staff, lack of appropriate infrastructure, and in some cases, even a perception of the child as ‘incapable of learning’. In many cases, of course, the decision to not send these girls to school is taken at home, by parents who prioritize their non-disabled or male children. At the same time, parents who themselves have had limited or no education and are uncertain about their children’s fitness for school, and about the utility of education for them in a situation of such limited work opportunities, are consequently discouraged by this attitude and keep their children at home. Even in ability-segregated schools, of which there are few, discrimination persists. One mother told us she was discouraged on hearing that the special-needs school in Hazaribagh would only accept children who could wash their own clothes, which her daughter could not do. In the interviews, these parents depicted completing school as an extraordinary achievement in itself, difficult enough for ‘normal’ children and thus too much to hope for from their own children.

Like many of our respondents, Walsi, a visually impaired girl of 13 in a hamlet in Pottangi, said that she had stopped attending school some years ago, and could give no specific reason for the same. After her father passed away and her mother remarried, she was taken in by an uncle and aunt, on whose instruction or suggestion she stayed at home and did chores instead of studying further. She told us in the presence of her guardians that she had been indifferent about school at the time; she only remembered that some of the boys used to tease her unpleasantly, but she had good friends too. When we are away from her house, however, she confessed quietly that she now wishes she could go to school or get married—as her cousins will do—and feels sure that her guardians will not let her do either.

Children who are able to attend school, mostly children with less restricting disabilities or with access to assistive devices, rarely complained to

us about the experience. On the one hand, they all agreed that there was insufficient access to drinking water and toilets, that all parts of the school were not always accessible, and that teachers did not make a special effort to ensure they were able to participate. On the other hand, most children expressed that they were treated well by teachers and students, some friends even stopping by their houses before school to help them carry their schoolbags. At the same time, many of the women who dropped out of school young, mention ‘teasing’ as a source of discomfort, and that when their parents took them out of school, or allowed them to stop attending, they were comfortable with the decision. There may have been changes in the experience and attitudes to education that the women in our study faced as girls, and the ones that the girls do presently. This also varies significantly by state—most of the girls from Karnataka were in school, while many in the other states were not—but may also have to do with differing beliefs about the capability of disabled girls.

For girls like Munita and Kiran, who have developmental disabilities, their parents mock the researchers when asked if these girls have attended school or might do so in future. Their parents restrict their hopes to their daughters’ ‘getting better’ (meaning better at self-care, communication and social interaction) when they have enough money saved for a medical remedy—the ‘good doctor’ in the city. Munita’s father is a schoolteacher, and quite clear that education, as he understands it, has little role to play here. In the meantime, if their children can simply be kept occupied, prevented from misconduct, and physically taken care of, their own aspirations will be met. As to Munita’s own opinion, her mother says lightly that they have no idea what she thinks.

Education, among the families interviewed, is desired because it is considered to increase social status, capacity for articulation, and possibly even greater work opportunities—if relevant opportunities happen to be available in

the woman's context. However, whether it is the empowered, socially valued and articulate who receive an education, or the educated who attain for themselves this increased esteem, remains unclear.

4.4 Equitable Access to Decent Work

Equitable access to work that is 'fairly remunerated, safe and dignified' as well as 'compatible with aspirations and capabilities', which last year's *India Exclusion Report* demanded for women, is even more difficult to access for women with disabilities, often incrementally so. Discrimination about capacity for work and gendered wage rates compound the difficulties many women with orthopaedic and vision disabilities face in going out to work every day, ensuring they earn lower incomes. Manju, who lives in Pottangi, supported her family by selling bangles at the village fair or in remote villages, travelling by bus for long hours. When she could, she also did agricultural labour, besides most of the domestic work—her daughter helped a little. But Manju was determined her children would go to school, and after borrowing money to treat them for malaria the previous year, she couldn't afford to get herself treated for frequent fevers this year—which meant she was not able to work as much or as often.

Even with more education, opportunities for employment other than manual labour are practically nil in most villages—education opens up opportunities only in more urban areas and the villages close to them (with public transport), or else in government employment. Except for those women sufficiently educated to become teachers, for others, education itself can become of doubtful value. Lachma, who has completed school and could go to college, says she would rather open a small grocery or food shop in the village and become financially independent as further education is less certain to provide her those opportunities. Her brothers, who are all employed in a family carpentry

business, are willing (and able) to provide the capital, rather than having her live alone in a town, given what they see as her exceptional vulnerability.

For others, who find capital hard to come by, self-help groups (SHGs) organized by local NGOs can offer a (rare) way out. One such group, composed entirely of disabled women, decided on embroidery and basket-making rather than the agricultural work done by other SHGs in the area. Despite choosing two crafts at which they excelled, as well as there being a state government scheme to promote such products, they hit numerous roadblocks and ran out of capital. Though the embroidery was acknowledged to be fine, it was expensive, and it was difficult for even the most mobile member of the group—Sangita, who is visually challenged—to travel and buy the materials necessary or to market the products adequately. The state scheme also refused to market the baskets, since they used plastic thread for binding, and the scheme was committed to 'natural' products. Both problems arose from insufficient information and mobility infrastructure, but neither the NGO nor the women decided to pursue the attempt further. One of the women mentioned that it was difficult to find time for a larger scale and better-organized attempt—there was already too much work to do.

It is important at this point to emphasize that for poor rural women in these locations, domestic work—which includes the two distinct tasks of household work and care work—is always the 'first shift'. This includes time-consuming and physically demanding tasks such as fetching water over long distances and cooking for the family over a coal or wood fire. Care of children and the sick also take up time, and cannot be shared unless a daughter reaches adolescence. If physically fit for it, cultivation of any land owned by the family is the next priority, and only after that, wage labour—it is no surprise, then, that women who are not in straitened circumstances do not choose to pursue paid work. It is an arena in which self-fulfilment comes at a high cost in terms

of time, energy and the co-operation of others in the family. Paradoxically, it may be more important for those not able to perform agricultural or household tasks to find dignity through other forms of work.

4.5 Health Care

'The village people believe that disability is God-given, but they aren't superstitious about it.'

— Phulmani, 45.

Rural communities from all three states often explained disability as 'God-given', and thus beyond their capacity to control or change. Yet families still make efforts to change the situation, and seek a 'cure'. If the option is available, local remedies—whether alternative medicine or various magical practices—are tried first since they have community sanction while also being more immediately accessible. The researcher and Somi's mother, for instance, discussed at length the effectiveness of a 'machine' in the nearest town, which they had heard might cure disability of any kind. (The researcher had paraplegia and Somi, a developmental disability). One of the chief benefits of the treatment was that it required only a one-time payment of INR 300. Cost, as Somi's mother reminded us, was the major prohibitive factor in even seeking care, combined with a distrust of the medical practitioners within physical and financial reach.

The concentration of medical expertise and infrastructure at urban centres is an idea deeply ingrained in the rural families of our respondents. Both for treatments related to their disability as well as for other major illnesses, while some expressed faith in 'big doctors' at Ranchi, Patna or Kolkata, others went to district hospitals at Koraput or Hazaribagh. ANMs⁵ might be able to help with fever or pain medicines, but are no more informed about disability than the families themselves, and very few people reported being able to see a doctor close to their own village. The physical

and psychological distance between these families and health practitioners then gives rise to either consistent scepticism or blind faith. Diagnoses are frequently not explained or not understood, in which case doctors evaluate on results alone. Particularly with intellectual disabilities, where such results are difficult to perceive despite a significant application of time, effort and money, the distance between doctor and patient only grows. One such doctor in Ranchi, famous among our respondents in Jharkhand, insisted that he kept no records of patients he had seen, and also said that his rural patients were often not capable of understanding his diagnosis, so he simply sold them the medicines and sent them away. On the door to his office, a large sign read: 'It is strictly forbidden to touch the feet of the doctor.'

The distance between the centre of care and the site of disability also brings into question the one-size-fits-all approach of both medical practitioners and existing rehabilitative devices. Wheelchairs are an instance of this. While Masidhani had a wheelchair 'specially made for her' by an NGO in faraway Kolkata, she was afraid to go anywhere in it, because its high seat and small front wheel made it unstable for travelling on the uneven paths of her village—she had already fallen twice. Savita, one of our researchers, had also given up using her wheelchair, which was fitted with a hand-pedal—it didn't fit inside her house, the paths in her *tola* (colony) were too uneven, and despite the tarred main road connecting the village to the block headquarters at Churchu, it was too far to pedal to. In any case, Savita usually remained within the house and its precincts and so did not consider herself less disabled by the presence of the wheelchair.

When Savita was affected by polio as a child, she says, no one knew what it was or what to do about it. When she was told that polio has been eradicated, she first looked sceptical, then resigned—as though used to hearing announcements of positive change that did not apply to her life.

4.6 Water and Sanitation

The Swachh Bharat Abhiyan (SBA) has been one of the largest government programmes in recent years, under which the government claims to have constructed 95 lakh toilets in India in the first year. Yet for women with disabilities in rural India, access to toilets and sanitation remains a major challenge.

Masidhani has not one, but two toilets built near her house. The one constructed by the government is used to store grain, because they believe the pit is not deep enough for the toilet to be sanitary. The NGO-constructed toilet, which is functional, is used only by two women out of the 10 members of the household. Masidhani herself can use neither toilet, since they are too narrow to accommodate her wheelchair and she cannot use an Indian-style toilet in any case. She uses a bedpan—the toilet is perhaps only helpful in that this does not have to be carried far to be cleaned.

The penalty that inadequate sanitation imposes on a disabled person is indignity. The long journey to the site for open defecation is painful for those with a locomotor disability. For those with low vision, having to make that journey either at night or before dawn always bears a risk of injury. Cleaning and other forms of self-care are not always possible for those with intellectual disabilities and this inability is rendered publicly visible. Whatever the disability, bodily functions are usually strictly controlled to minimize the need for the journey, and its attendant risk of sexual assault. Toilets are crucial for these vulnerable women, but difficult to use for many, and still out of reach for most, despite disabled people officially being prioritized in the construction of government toilets.

In a less visible, but no less important way, water access is also a source of indignity for women with disabilities. Fetching water is one of the main tasks expected of women—and almost all our respondents had difficulty doing it. This gives rise to a sense of incompleteness and shame, exacerbated

by the everyday nature of the task, as it is seen as a daily burden passed on to someone else. However, many women still do it, with tremendous pain and difficulty—like Sangita, who has very low vision, and broke her leg carrying water from the village borewell to her house.

4.7 Human Dignity, Agency and Legal Capacity

Dignity is often associated with independence, and physical, financial and social independence could be seen as degrees of such independence or dignity. If we accept this loose definition, then materially, dignity is related to such concrete details as the amount and regularity of pension received, how much each person contributes to earning or to maintaining the household, and their participation in the life of the community—religious, political, and so on. However, dignity, as well as a related concept, agency, cannot be limited to this external form, because it is an individualistic vision of society that gives independence such centrality. In such a society, the capacity for production and the exercise of power—in a sense, the use of different forms of capital—are the precondition for value as a human being.

In contrast, Meyer (2010) argues that ‘collectivist’ cultures take one of two positions with respect to disabled persons: segregating and subordinating them within the group or society to which they belong, or else the group taking care of such members. While Meyer himself argues that there is more evidence for the first interpretation, in the present study, it appears that both explanations are true to an extent, and interact to produce the present situation.

Sargun Devi had received Rs 200 as pension since the pension was first activated; her neighbour receives Rs 400—the mandated amount is Rs 600. Sargun did not know why she received so little: the weakness associated with old age, added to her

paraplegia, means she cannot leave the house to ask at the bank herself. Her sons, though meagrely employed, seemed disinterested in the matter. She said they were indifferent to her presence and concerns—although she lived in a joint family with her four sons, daughters-in-law and their children, no one talked to her all day.

Like Sargun, Mangari Devi's children too offered to have her live with them. Instead, her daughter-in-law avows that Mangari insisted on moving out of their house into a tiny hut of her own. While she can, Mangari means to look after her elderly, vision-impaired husband and herself, supporting themselves on his pension and the income from their few goats, and cooking with her one well-functioning hand. Both Sargun and Mangari's children would fulfil their social obligations towards their parents, in terms of providing them food and shelter. Yet becoming disabled meant dependence and subordination. While some elders may receive respect and even have a say in the decisions of their adult children, these women did not. Nor do members of their society respect them—Sargun said that in the years since she stopped being able to walk, one by one all her friends and acquaintances stopped coming to see her. Even in a relatively dense village society, she had become invisible.

Social agency is also accorded by a society based more broadly on the capacity to communicate. Hearing-impaired Manju, though capable of responding to our interviewer with help from her sister-in-law, sits silently through gram sabhas and family gatherings. Others largely behave as though she cannot understand the proceedings, rather than merely not being able to respond verbally. For those with intellectual disabilities, despite long exposure to their ways of expressing themselves, the family is often unable to understand their thoughts, opinions and feelings, and either attribute to them the intent to be difficult, or else no distinct personality at all. They then cope with the difference by infantilizing the woman—she is not allowed the space to decide

‘what is best for her’, and certainly not for anybody else, even her own children.

A victimhood narrative does not do justice to this situation. It is problematic to argue that agency, dignity or independence are matters in which, paradoxically, the agency for according it all lies with others. Mangari, for instance, wrests her dignity from others and maintains it with emotional fortitude through physical hardship. Yet the significance of structural factors persists: the lack of participation of disabled women in public life is not only by choice or circumstance, but deeply embedded, for instance, in law and policy, in the structure of the economy and socio-cultural attitudes. These are discussed further in the following section.

5. Processes of Exclusion

5.1 Role of Patriarchy

Women occupy multifarious marginalized positions within a patriarchal societal structure, based on their positionality and the sociocultural identities of class, caste, rural/urban location, sexual orientation and disability. Mangari's case indicates that her experience of disability is connected to her membership, in particular of her caste, class, and residential position, but most importantly, her gender.

Within India, several authors have argued that the incidence of disability is intersected or influenced by gender (Ghai, 2003, 2015; Hans and Patri, 2003; Das and Agnihotri, 1999). The available statistics also indicate that disabled women are marginalized much more than disabled men (Agnihotri and Patel, 2007). While the Indian cultural reality has never been favourable to the birth of daughters (as is clear by the consistent fall in the gender ratio), as a society that also accepts the able-bodied norm, it subjects disabled girls and women to the most inhumane treatment possible. This holds not only for those whose disability is very severe, but also

Mangari Devi of Lasod village in Jharkhand is a 51-year-old woman with a weather-beaten face and a small, strong frame. Paralysis in her left side, after her youngest child's birth, has left a permanent mobility impairment in her arm. Living in a small hut at the edge of the village, Mangari spends her days grazing her goats out in the scrub forest beyond the fields. Though a mother of two married sons, she and her (visually impaired) husband largely sustain themselves without any assistance, on his old age pension and their few goats. The family still shows concern—for instance, when Mangari was very ill for some weeks, the couple stayed with their son for the duration. However, she moved out again afterwards.

Mangari says she needs her disability pension to pay for medicines, but hasn't been able to get it. She tried a few times to get a disability certificate, but there was 'nothing written on it'. (Her daughter-in-law brought it to show us later, and it said 35 per cent, just 5 per cent short of what was needed to get the pension. She said they didn't have money to bribe the committee for that extra 5 per cent).

Mangari's husband lost his eyesight after something sharp went into one eye during threshing, almost twenty years ago. Mangari's son later explained the complete loss of vision as the injured eye watering, and thus drawing light out of the other eye until that too went blind. Mangari's son also described his mother's disability saying she couldn't use one hand, and was also 'mildly mentally disabled'. When we ask Mangari about the mental disability her son has just mentioned in her presence, she retorts that people think she's '*paagal*', but if a thing is laughable what else is there to do but to laugh at it? She grins wryly, and then asks if we are done and she can go. Her goats are waiting to be fed.

Mangari's interview is interspersed with another one with her daughter-in-law, Soni, who is a member of the village women's self-help group, as well as a representative in the village council. She has a hand-painted poster on her wall that says '*Dalit mahilaon ke virudh hinsa bandh karo—Rashtriya Dalit Mahila Andolan*' [Stop violence against Dalit women—National Dalit Women's Movement] next to a poster of women in various uniforms and roles—including doctor, army officer, construction supervisor and farmer. Soni says they find it difficult to sustain themselves and educate their children—they live off the profits of a small food stall they run in the local market on three days of the week. Yet they have been doing their best to take care of the old couple. She shrugs and says, 'Things are very difficult, how many things will we look after?'

for anyone who is different from the ideal form. This treatment, as noted in our research, is not only meted out by unknown strangers and impersonal institutions, but even by carers and other close associates. As a mother lamented, 'Wasn't it enough that we have a hand-to-mouth existence! Why did God have to punish us further by giving a *langdi* (crippled) daughter?'

Indian feminists have analysed the impact of the evaluative male gaze in operationalizing this

negative perception. If the male gaze makes non-disabled women feel like passive objects, the 'stare' of the normative turns the disabled person into a grotesque sight. Disabled women thus contend not only with how men look at women but also with how an entire society stares at disabled people, stripping them of any semblance of resistance.

One explanation for this treatment is offered by the work of Hartsock (1998) and Harding (1991), in which the disabled are framed as an

opposition to the category of the able-bodied, or as 'pathological' to the category of the 'normal'. In this situation, 'othering' has to be understood not as a given, but as a process which pushes a certain group of people to the margin of social worth, and constitutes them as a threat to the social order and a challenge to the community. Yet, the paradox is that the 'mainstream' is unable to identify itself or corroborate the elevated—at worst 'normal'—nature of its being without reference to the margin.

Through this very centrality to dominant discourse, 'the other' is silenced and delegitimized. As Edward Sampson (1993) says:

If I find myself in and through you, but no longer control the you that grants me my self, then I am forced to deal with a self which is beyond my control, and I may not enjoy this self with which I must now contend.

Disabled women confronting recurrent exclusion are thus refused expert status either on the lives of the non-disabled, or on the colossal and brutal domination that marks their own. A related irony is that though feminists have historically engaged actively with the issue of difference, united in their attempts to empower the powerless and transform social inequalities, they have not picked up on the meaning of 'othering' for disabled women. While the disability movement's failure to acknowledge disabled women can be fathomed as reflecting the patriarchal character of a society it accepts and aims to join, their disregard by the feminist movement is less understandable. The struggle of disabled women is then not simply a struggle to assert an identity, but a fight to assert a difference, and to account for the injustices done to women that have not found expression in the language of feminism.

Nancy Hartsock (1983) argues that whether one can see the 'reality' of disability depends on where one is positioned, since 'material life structures understanding'. The vantage point for the

non-disabled is the able-bodied normative ideal. While accepting that positionality is 'a mediated rather than immediate understanding', Hartsock conceives of women's experiences as providing the foundation for a liberatory vision. Arguably, even if disability did not play the dominant role in the self-definition or 'lived experience' of the woman with disability, it still becomes the basis of most other people's definitions. However, Wendell (1996), a scholar and a woman with disability further argues that it is pragmatic for women with disabilities to use their diverse range of 'epistemic advantages... and interpretations of their experiences' to speak back to non-disabled knowledge systems.

At the same time, we cannot ignore the heterogeneity of disability as a category. A key source of the invisibility of disabled women's concerns has been the mindset that takes recourse to binaries of disabled/non-disabled. The primacy of this identity has rendered a large part of the experiences of women with disabilities, including the experience of violence, invisible.

An instance of this was the highly publicized incident in which girls with intellectual disabilities were compelled to undergo hysterectomies in Pune in 1994. The institution in question catered to a large rural community that left developmentally disabled girls under its care. The girls, however, were not allowed to wear pajamas with drawstrings as well as sanitary napkins with belts, as it was claimed that they might use these strings to commit suicide. The absence of protective gear, such as pajamas, undergarments, and sanitary napkins, made the management of the bodily functions such as menstruation difficult. To deal with their menstrual hygiene, the hospital decided to conduct hysterectomies on the girls. Notwithstanding this paternalistic deprivation of women's necessities, boys in the same institution were issued pajamas complete with drawstrings—braving the risk of suicide. Though there have since been efforts to seek a ban on forced hysterectomy for mentally

and physically challenged girls, the incident throws into sharp focus the denial of rights and autonomy that patriarchal discourse and institutions are able to enact on women with disabilities. The restrictions on mobility, reproductive choice and voice that are enacted on all women are amplified in their situation—as evidenced in the acceptability of institutionalization. The lack of enabling infrastructure and services receives so little attention in policy and public discourse (as discussed below) because empowerment is not considered equally significant for those so intrinsically devalued by society.

This is also noticeable in the uncanny silence that follows violence and sexual assault on disabled women. Since disabled women are seen as ‘asexual’, violence against them is often denied or ignored. As Avinash Sashi (2016) argues, ‘In the quest of safeguarding family honour, the practitioners of patriarchy refrain from addressing, let alone acknowledging, the violence and sexual assault experienced by disabled women within the family and in the public domain.’ It is possible that the culture of sterilization of mentally ill and challenged women, both in families and care homes, permits and perpetuates their sexual exploitation.

Though our case studies have little in the way of information about sexual violence, they substantiate the silence around the subject, the prevalence of physical and emotional violence, as well as the everyday violence of deprivation and lack of dignity. Family and local community are rarely able to intervene positively in this structural violence. In Jharkhand and Odisha, there was also almost no incidence of DPOs, and self-help groups set up by NGOs were encouraged to work towards economic goals, rather than build confidence and solidarity. This welfare-centric approach, arising from the ingrained medical and cultural understandings, then feeds into the material exclusions faced by these women.

5.2 Economic Processes

According to Oliver (1990), in capitalist society, disability was used to categorize people into either the work-based or the needs-based system of distribution. Since the factory system and assembly line were measured and paced to the ‘normal’ body, disabled people were excluded from the wage labour system. Oliver further argues that while this medicalized division could have been used to secure the economic and social status of those unable to

Panchami Devi lives in her paternal home with her husband and two children, as well as her larger joint family. The house is a large, pukka house behind the village school and surrounded by fields—mostly those belonging to the family—and with its own borewell.

Her father took care of her and arranged a marriage for her, her mother having died when she was young. She tells us that her daughter Pooja does the cooking, and has for a long time; she herself only washes dishes in the house. Panchami dotes on her daughter, but Pooja seems uncomfortable in her company. Meanwhile her husband seems accustomed to speaking on her behalf, and taking decisions for the family.

Panchami’s husband comes from an economically weak family in Bihar, and lost his home in the floods. Since his marriage, he has lived with his wife’s family in Chauparan taking care of her, their children, the house and the farms left to him by her father. ‘Of course, I have regretted marrying her,’ he says. ‘Many times. But I married her and now there is nothing more to be said about it.’

labour in such a system, in practice it reinforced existing stigma and oppression.

Even in present day (urban) workplaces, the reluctance to provide an enabling and accessible environment, the non-availability of materials in alternative formats for visually impaired people, and the mammoth task of acquiring even the disability certification ensure that the employment rates for the disabled remain abysmally low. However, these low rates are not seen as related to the structural and attitudinal barriers in capitalist societies. It is worth noticing that the multinational corporations that abide by the legislations regarding accessibility—in terms of both built infrastructure and augmentative communication—change drastically as they step into developing countries such as India.

Women, in their roles as unpaid caregivers and subsistence producers, have been historically excluded from this definition of ‘productive’ workers. The present economic system prioritizes the value of productive contribution to the market economy. This has serious implications for social services that enhance capabilities and freedoms, including education and health care, which are then seen in instrumentalist terms rather than as tools for genuine empowerment.

Consequently, training offered to the disabled often has little or no meaning outside the special school classroom. As the national focus group points out:

With these so-called vocational skills that we impart, the disabled will never be able to catch up with their peers or transfer the skills taught in school to the real world, because society has no jobs for them. Thus, we deny most of the disabled a real chance of becoming gainfully employed and living a healthy life.

A move away from the construction of deficiency mandates that we provide skills that enable full and equal citizenship rather than a bare minimum.

Though technology is helpful, job opportunities for disabled people have reduced: for example, positions as telephone operators, stenographers, and typists once available to persons with visual impairments, have declined. In their place, privatization has opened new avenues for employment of disabled people in highly-skilled and service jobs, which many remain unqualified even to aspire to.

The economic participation of our respondents was often limited to manual labour and self-employment, irrespective of their level of educational achievement, suggesting that the expansion of economic opportunities away from urban centres is an urgent need, particularly in the formal sector. For rural disabled women, the informality of their work—whether home-based piecework or as part of a small family enterprise—means that they are unable to access even those workers’ rights and protections that exist.

As Ghai (2001) contends, globalization has allowed greater access to information, assistive technologies and potentially wider solidarities, which enable re-imaginings of possibilities for people with disabilities. At the same time, the engines of power and profiteering have in practice deepened the marginalization of vulnerable groups, creating economic conditions that constrict their access to even food and livelihoods.

5.3 Law and Policy

The interaction between poverty, gender and disability and its resultant ‘multiple vulnerability’ is reflected clearly in the life of Thirukavva and many of the women who spoke about their lives from Odisha, Jharkhand and Karnataka. Law policy and programmes must then address the host/web of factors that affect the lives of rural women with disabilities so she can live with dignity and fulfilment in her environment and make choices for her life.

At 35 years of age, Thirukavva C Bajantri lives with an alcoholic husband and a son who is deaf. Thirukavva herself has lived with deafness since an attack of typhoid when she was younger.

Getting up early in the morning she completes all the housework and then goes out to work as a coolie for the rest of the day, checking in the evening with the landlord whether she has another day of work the next day. Thirukavva is the sole earning member of the family but not the major decision-maker. The decisions are made by her husband and the family lives on the edge of malnutrition as the money she earns is often taken away by her husband. She lives in a rented home with no electricity, toilet or drainage facility. There is high fluoride content in the scarce water in her village and people often have to collect water from the neighbouring villages.

It is difficult for Thirukavva to visit the Panchayat and government offices that are about eight kilometres away. Because of her deafness she cannot hear vehicles on the road making it difficult for her to move independently. Lack of money prevents her from using transport and therefore restricts her movement further. At work and in the community she is isolated and often shunned because people do not know how to communicate with her.

5.3.1 UNCRPD: Setting the Bar

In 2007, India ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which marks a paradigm shift in understanding disability. The Convention foregrounds the importance of addressing the social, economic and political barriers that prevent full participation of the person in all aspects of life. Besides holding 'equality between men and women' as a central tenet, a separate article (Article 6) emphasizes the rights of women and girls. The article also recognizes women and girls with disabilities are subject to multiple discriminations.

With its nuanced understanding of equality and non-discrimination, the Convention underlines the importance of reasonable accommodation and support of disabled people as essential for realizing their rights. Of particular significance is the emphasis on access of women and girls with disabilities to social protection programmes and poverty alleviation programmes (Article 28), as well as on making health and health-related rehabilitation services gender-sensitive (Article 26). The Convention also recognizes that women and

children with disabilities are vulnerable to violence and abuse, and asks for legislation and policies that are women- and child-focused in these areas (Article 16). Recognizing also the specific issues of sterilization of women and girls with disabilities, Article 23 (Home and Family Life) specifically underlines the right of all disabled people to retain their fertility and have a family.

At the heart of the Convention is Article 12 (Equal Recognition under the Law) that provides for recognition of equality before law and of the legal capacity of all disabled people (particularly persons with intellectual disability and mental illnesses) who have been seen as incapable of making any decisions for their lives, now have the right to determine their own life choices. Many of the principles of the Convention such as 'respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons' (Article 3) would not be valid without an equal recognition for all under the law. The recognition of capacity resonates in all the different articles of the convention with all persons with disabilities having the right to informed

consent (Health, Article 25) to marry and have a family (Article 23), the right to vote and political participation and the right to manage one's own finances and property.

Article 12 also recognizes that in the exercise of capacity, some persons with disabilities will need support and the levels of this support may vary. Wherever required, they are to be provided with support to take their own decisions instead of decisions being taken for them.

World over, this paradigm shift in thinking has caused and continues to spur great debate about how to interpret this article and how to implement it! However, it would be important at this juncture to remember that women too have fought this battle for equality under the law and continue to do so in many countries. Article 15 of the CEDAW aims at ensuring women's legal autonomy. It confirms women's equality with men before the law and additionally requires States' parties to guarantee women equal rights with men in areas of civil law where women have traditionally been discriminated against (for example, property law or inheritance law).

As women move slowly to gain their legal capacity, women with disabilities, particularly women with intellectual and psychosocial disabilities have remained many steps behind in the move towards equality under the law.

5.3.2 The Rights of Disabled Persons in India

India's four specific disability-related laws were drafted and enacted at a time when the impairment of the person was paramount in defining their identity and entitlements. The framework that the laws provided has not been one where persons with disabilities enjoy all human rights on an equal basis with others, but one where only a few rights are outlined and a large number not discussed—and for some, many rights are taken away.

Further, despite a countrywide acknowledgement of the vulnerability of women and girls in general, disability laws have had little in terms of affirmative action or underlining the rights of women and girls with disabilities. Contextual realities such as the fact that a majority of persons with disabilities live in the rural areas have not found much acknowledgement in the law.

The Persons with Disabilities Act 1995 (henceforth PWD Act) was seen as the law defining the group of persons with disabilities, and delineating their rights. It laid out a set of medically determined criteria for who among these would be officially counted as persons with disabilities (40 per cent or more disability, determined by a panel of doctors), and outlined the groups of persons with disabilities, or kinds of disability, that would be recognized. While the PWD Act dealt with education, employment, non-discrimination and affirmative action, it failed to go into the realm of rights such as the right to life, political participation, liberty, security and freedom from violence and abuse, or even health rights.

Both the National Trust for the Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities 1999 and the Mental Health Act 1987 (MH Act) were enacted at a time when the legal capacity of persons with intellectual disability and mental illness was not recognized in the law. This has resulted in their exclusion from all major legal decisions on their own behalf, including signing for oneself, entering into legal contracts, getting married and selling property.

While the stated objective of the NT Act was to enable people to live independently in their community, it detailed procedures for guardianship of persons with autism, cerebral palsy, mental retardation and multiple disabilities. Similarly, while the MH Act does talk of the rights of persons living with mental illness, a majority of its provisions

are devoted to the mechanisms of guardianship and custodial care in mental hospitals. The Act has been criticized for endorsing a custodial rather than rights-based approach.

It took nearly 10 years after India's ratification of the UNCRPD and many drafts for the Parliament to pass the Rights of Persons with Disabilities Act 2016 in December, 2016. While this law replaces the 1995 Persons with Disabilities Act, the new Mental Health Care bill 2016 which is to replace the Mental Health Act of 1987 still awaits assent of the Lok Sabha.

The Rights of Persons with Disabilities Act, 2016 (henceforth RPWD Act) was unanimously passed by the Indian Parliament in the winter session of the Parliament of 2016, thereby replacing the Persons with Disabilities Act of 1995. The new Act ushered in a series of changes in the government definition and provisions for persons with disability. It increased the number of recognized disabilities from 7 to 21, which will presumably lead to a rise in the official count of persons with disabilities in the future. Speech and specific learning disability and acid attack victims, among other forms of disability, have been included in the Act.

The RPWD Act has marked a clear shift in the government's recognition of disability from a medical definition to a social definition, in keeping with the UNCRPD guidelines. It defines a 'person with disability' as 'a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.'

The law for the first time takes cognizance of the fact that some persons with disabilities will support needs that are more than others and defines 'high support'(2(1) and 'persons with high support needs'. Steps to ensure 'reasonable accommodation' for persons with disabilities are mandated in the law. Like the UNCRPD, it widens the definition of

communication to recognize a range of forms of communication including tactile communication, signs, plain language and alternative and augmentative modes of communication among others.

The law outlines a range of rights that were earlier not covered by law. These include the right to live in the community (Section 5), protection from abuse, violence and exploitation (Section 7), protection and safety in situations of armed conflict, humanitarian emergencies and natural disasters (Section 8), the right to home and family (9), access to justice (12), the right to participate in recreational activities (29) and much more.

The Act provides for reservation in education in government and employment (albeit only in government establishments for jobs and government and government-aided for education), while also emphasizing the need for reservations in promotion. An important distinction between the RPWD Act and the erstwhile Persons with Disabilities (PWD) Act, 1995 is the provision for penalty in the form of imprisonment and/or fine for violation of provisions of the former and discrimination against persons with disabilities. The Act also provides for a two-year stipulated time-period for ensuring that a 'barrier-free access' is available for persons with disabilities in all physical infrastructure and transport systems. Designated Special Courts have been proposed to handle cases of violation of rights of persons with disabilities in a speedy manner.

Disability activists have however been deeply disappointed by the caveats in law and the weak protection in the area of discrimination on grounds of disability [Section 3(3)]. Under the chapter on rights of persons with disabilities, Section 3 says that 'no person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim'. Outlining a right and

then finding a way out of it seems to be the pattern that the new law follows.

Women with Disabilities

For women with disabilities, the new law can be seen as a starter for the delineation of their rights. Despite the Standing Committee recommendations to restore the chapter on the rights of women and children with disabilities in earlier drafts, the new law chooses to state that the ‘appropriate government and local authorities shall take measures to ensure that women and children with disabilities enjoy their rights equally with others’ [Section 4(1)].

Further sections of the law exhort the government into taking gender, disability and age dimensions into account when formulating schemes and strategies, particularly in the area of social security. This along with some strong and specific references to the rights and needs of women with disabilities also mark the new RPWD Act 2016.

Section 37 of the law provides for 5 per cent reservation in all poverty alleviation programmes with priority given to women with benchmark disability. The same reservation and priority is given to women with benchmark disabilities in the allotment of agricultural land and housing in all relevant schemes and development programmes [37(a)] as well as allotment of land at concessional rates for various purposes.

This specific priority for women is important since poverty is an overarching factor in the lives of women with disabilities in the three communities studied. We see not only the lack of money, i.e., economic poverty, but also material poverty. The access to water, food, housing, health services is precarious at best. Again and again, we hear women saying that poverty was one of the major reasons why they could not get educated.

Because of these factors, the lives of many women are also confined/limited to their families and homes. Women living in their natal homes

often supported by their parents, voice the fear concerning how they will live/survive once the people who protect and support them are no longer alive. Parents too voice this concern. This concern is voiced across all impairment groups. Situations of great vulnerability where women with disabilities are mothers of children with disabilities or there are two or more family members with disabilities have not warranted proactive support in any way.

While the law does attempt to address some of these intersectional concerns, it falls shy of making a strong commitment in these very important areas. In the section on Social Security, the RPWD Act 2016 urges governments to develop schemes and programmes ‘to safeguard and promote the rights of persons with disabilities for an adequate standard of Living to enable them to live independently or in the community.’ While stipulating that the quantum of assistance for such schemes will be at least 25 per cent higher than the similar schemes applicable to others, the law also gives the government a way out by putting in the caveat of ‘within the limits of its economic capacity!’ Governments have to consider factors such as diversity of disability, age, gender, and socio-economic status while framing such schemes.

Within the social security section too, there are clauses that could be valuable for women with disabilities. Some of these include ‘support to women with disabilities for livelihood and upbringing of their children’ [24(d)], ‘access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas’ (Section 24), ‘caregiver allowance to persons with high support needs’ [24(i)], and ‘provisions of aids and appliances, medicine and diagnostic services, and free corrective surgery to the poor’.

Rehabilitation

Rehabilitation services that enable girls and women to learn skills of self-care, mobility, communication and others are conspicuous by their absence in the rural areas of the country. Poverty, gender as well

as lack of access to any rehabilitation services are multiple factors that collude with the impairment of women and prevent full participation. The narrowing of options that women and girls experience causes great vulnerability as seen in the present study.

At present no programme or law provides for personal assistance or support to the family members who are the major safety net for women and girls with disabilities. Very little information seems to be available on what is possible and where to go, either to families, communities, or different office bearers.

While the law gives persons with disabilities the right to live in the community (Section 5), governments will only endeavour to provide 'access to a range of in house, residential and other community support services including personal assistance necessary to support living with due regard to gender and age.'

Further although the law defines rehabilitation as 'the process aimed at enabling persons with disabilities to attain and maintain optimal physical, sensory, intellectual, psychological, environmental or social function levels' the state does not take on this responsibility entirely. Instead these essential services are to be undertaken or cause to be undertaken 'within the economic capacity and development' of the state and by NGOs in the country (Section 27).

Accessibility and Personal Mobility

The realities and notions of accessibility in remote rural areas are very different from the urban. Villages may not be connected by roads and may be cut off in the monsoon by a swollen stream. Transport options from one place to another may be erratic and extremely limited affecting the personal mobility of women with disabilities in many ways. For example, women may find it difficult to walk to the next village to fetch water, or have trouble

catching the infrequent bus which they cannot board without help, or be confined to their homes because there is no information available about training or changes in the local environment that enable the visually or hearing-disabled to move about in safety and security. Poverty, a lack of choice and any accommodation or support for their impairment limits their mobility further. The distinction between the urban and the rural has not found a voice in the law as yet and many of our solutions have been urban-centric.

Some of the recent national disability-specific programmes such as the Accessible India Campaign have focused much more on the built environment and accessible websites, sign language interpreters and making accessible transport available. Though laudable, these have as yet not addressed the requirements of women with disabilities in remote rural areas whose realities may require different solutions.

The RPWD Act for the first time recognizes that strategies for the urban and the rural may be different and promises that standards and rules for accessibility in physical environment, transportation, information and communication, including appropriate technology and systems and other facilities and services, will be made taking both urban and rural realities into consideration.

Accessible transport and roads are mandated and the government will take 'suitable measures' to see that these are in place (Section 41).

The government will also support the personal mobility of persons with disabilities by developing schemes and programmes to provide incentives and concessions, retrofitting of vehicles and personal mobility assistance [41(2)].

The strong provision here is the commitment of the government to ensure that all existing public buildings are made accessible within a period of five years from the date of notification of rules.

While the law opens up a wider array of possibilities in some areas, in some contentious areas such as legal capacity and education it reflects the debates and dilemmas prevalent at present and does not take very strong stands in one direction.

Legal Capacity

Unlike the provisions of the National Trust Act and the Mental Health Act 1987, the Rights of Person with Disabilities Act 2016 starts with a presumption of legal capacity and equality under the law for all. Section 13 of the law ensures that 'persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have a right to equal recognition everywhere as any person before the law' 13(2). It gives the person with disability the right to own and inherit property and control their financial affairs, and the right to alter and modify any support arrangements.

However, in Section 14, the law provides for limited guardianship and the decision to decide this lies in the hands of the district court or an authority designated by the government. The law envisages that limited guardianship will be an equal, time bound relationship for a specific purpose, with the guardian not exercising undue influence on the person and the person having the right 'to alter, modify or dismantle any support arrangements and seek support of another' [13(4)].

However the law also provides for what it calls full support to the person to whom limited guardianship is granted.

This decision of guardianship, and the nature and manner of support given to a person is now given into the hands of the district courts or any other authority that is designated by the government. The decision is to be reviewed periodically. One of the big challenges in guardianship being decided by district courts lies in the nature of the institution of the court itself. The decision to provide guardianship is essentially a decision on the perceived capacity of

a person to take life-decisions. Such decisions must be arrived at after due process since they affect the life of a person in a very fundamental way.

The National Trust Act had broken with earlier tradition to give the power of assigning guardianship to a local level committee consisting of a person with disability and member of a registered organization for or of persons with disabilities and the District Magistrate. While there are many issues with the way in which these committees function on the ground, the attempt to put such important decision making into the hands of people rather than official bodies has been a unique one and should have been strengthened.

The implications for the process provided by the present law for rural women with disabilities, amongst the most vulnerable, are many. The perceived lack of capacity of some men and women with disabilities over generations, has deeply affected their agency in society. For rural women and girls with intellectual and psychosocial disabilities, this perceived lack of capacity coupled with poverty, lack of choices and exclusion from various institutions of society sets in motion a vicious cycle often leading to grave isolation even at an early age. The fact that they are women has certainly added to their exclusion from society. There is now substantial consensus among disability groups that the human rights of PWDs require recognition as do their capacities to take decisions critical to their lives and well-being, including relating to property and money. Yet debates continue with regard to how these rights should be operationalized and also about the need for and nature of support, checks and balances.

Manjula Nooresha Banjara, 23, who is seen as intellectually disabled, is entirely confined to her house, isolated from the community and utterly dependent on her mother. Her mother never takes her out of the house because she feels that her daughter does not understand anything and behaves like a child. According to the interviewer she is seen

as being ‘incapable of having any responsibilities.’ Manjula’s perceived incapacity does not come from the nature of her impairment. Rather it is built upon with the interaction of her impairment with years of isolation and lack of participation in society. Decisions of capacity and incapacity are therefore extremely difficult to take. Is the district court the right agency to be taking such decisions?

Education

The new law has much to say about education. While it adds to the RTE Act 2009 in some areas, it also weakens some important commitments. For the first time we have a definition of ‘inclusive education’ in the law; ‘a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.’

In order to make systems inclusive, the law details a range of very important actions. These include among others, reasonable accommodation according to individual requirements and individualized support measures. The law speaks about accessible buildings and campuses and training of professionals and staff at all levels of education to support inclusion, all of which are enabling clauses and fundamental to the success of inclusion of any child with specific requirements.

Unfortunately, the commitment to implement inclusive education is weak. The government pledges to only ‘endeavour’ to provide inclusive education in all educational institutions funded or recognized by them. This commitment immediately reduces inclusive education to a particular school or institution and not changing the system as it is defined and supposed to.

Meanwhile, children with benchmark disabilities have been given the right to ‘free education in a neighbourhood school or in a special school’. With the RTE provision of home-based education as a choice for children with severe or multiple disabilities, all

three sites of education are now available to children with disabilities. While this could be seen as a positive, the flipside of all these choices is in the way they are conceived and implemented.

The RTE provides for home-based education with no direction on how this is to be implemented. Similarly, the RPWD talks about special schools but gives no directions about how they are to be conceived. Given the reality of special schools being largely funded and run by the MSJE and schools for children with developmental disabilities being run in informal ways; it is likely that these present practices will continue. The push of the RTE for the education system to become inclusive, is now likely to get diluted. For the parent too, the general school system that continues to be of low quality and actively pushes out the child is unlikely to be the first priority.

As seen on the ground, no real choice exists for the most vulnerable. It is often the state that makes the choice regarding which child to put into home-based education and now children with disabilities are likely to be pushed into special schools too.

The RTE that held great possibilities for children with disabilities when it was amended in 2012 to specifically include them in the disadvantaged groups suffered from a narrow interpretation, absolutely no change in the Sarva Shiksha Abhiyan programme (the vehicle through which the law is implemented), and reduced budgetary allocations. All together, these and many other systemic factors have together reduced its impact for the education of children with disabilities.

At present, children with disabilities continue to be the largest out-of-school set of children in the country. Among them, far fewer girls with disabilities get a chance to go to school. Between 2009–10 and 2014–15, on an average only 74 girls with disabilities are enrolled in schools as compared to 100 boys with disabilities. When this is compared with the 94 girls enrolling in schools in relation to

100 boys, the GPI for girls with disabilities remains a cause for concern.

The experience of girls with disabilities in rural areas continues to be fraught with barriers. Many have dropped out and many have still not accessed education. Only those who can swim with the current or those who have been lucky to receive individual support have had any chance of receiving an education. In human terms, the fallout of these situations are grave as we can see from the lives of Parbati Mahji and Santoshi Kumari.

Parbati Mahji is 12 years old and blind. With no access to rehabilitation services she remains completely dependent on her mother for her daily needs. Worried about her safety and security in a village, her parents do not encourage her to go out of the house and she has not gone to school. At 12 years of age Parbati is already experiencing life second-hand through her family members who go out and visit places she does not. 'I like to talk much more' she says, 'because I am generally left at home most part of the day.'

Santoshi Kumari, is from Lara village in Jharkhand and lives with multiple disabilities. Her family is fiercely protective of her and is ready to go to any length to ensure her rights. But when her mother approached the school for admission she was refused by the headmaster who said that there was no order from the government to take in children with disabilities in school. Unable to fight back her mother gave in and Santoshi remains at home alone the whole day moving from place to place in the house and playing by herself. Worried and stressed by people's attitudes, her mother often threatens to kill herself and take her disabled daughter with her. It is her brother who saves the day by promising that he will take care of his sister.

The New Law, the New Bill and the other Disability Laws: Recommendations

The passage of the Rights of Persons with Disabilities Act 2016 has implications for the Mental Health

Care Bill, 2014 as well as the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability which has dealt primarily with issues of guardianship of these groups. With the RPWD Act having dealt with the area of legal capacity and a range of other rights, the relevance of the bill and the law is unclear. In the area of mental health, the law leaves the institutions working for the care of mentally ill persons out of the requirement of registration with the act, perhaps making room for the Mental Health Bill to regulate and outline how these institutions are run. There is now a need to look afresh at all disability-specific laws and bills in relation to what the new law says.

Resourcing the New Law

While the RPWD Act 2016 stuns you with the wide array of rights it deals with, the state gives itself a way out on some very critical areas for women with disabilities living in remote rural areas to live independently and with dignity. That is why this is a law that will require close scrutiny and auditing by person with disabilities. Much will depend on how this law is interpreted, implemented and resourced.

For example, it remains to be seen whether the disability pension will remain uneven throughout the states as it has been or will it now be equal to minimum wage, inflation-indexed, and complemented by different kinds of support?

The budget for persons with disabilities, announced in February 2017, accounts for a mere 0.0039 per cent of the GDP. With a wide-ranging new law in place, unless a larger volume of resources is pledged and used, the rights envisaged are unlikely to be translated into reality.

With varied chapters on health, protection and safety, skill development and employment, access to justice, right to culture and recreation, etc., the responsibility of the law falls on the shoulders of many different ministries. For example, the law envisages the inclusion of persons with disabilities in all mainstream policies—including formal

and non-formal, vocational and skill-training schemes and programmes and schemes to promote healthcare. It would be important to monitor closely the plans, resources and commitments of these different ministries in the coming years.

The exclusion of the disability discourse from the larger development discourse has been very strong in our country. For example, even though the links between disability and poverty are well understood and even though there are Supreme Court orders (like the Right to Food case) to include persons with disabilities in the Antyodaya scheme, the National Food Security Act 2013 does not recognize women and children with disabilities in its definition of vulnerable groups, even as it attempts to empower women by seeing them as the head of the household. Key livelihood programmes such as the MGNREGS seem to have fought shy of recognizing the vulnerability of children and persons with disabilities with no specific provisions for them in the law and their rules. To reverse these trends is going to remain a challenge unless concerted strong action and monitoring is done by disability groups.

Building Capacities

Apart from resources, the law requires capacity building of a range of personnel who need to be trained to work with children and persons with disabilities. These include panchayat members, legislators, administrators, police officials, judges, lawyers and others. A disability component for all education courses for school, college and university teachers, doctors, nurses, para-medical personnel, social welfare officers, ASHA workers, Anganwadi workers and others (Section 47). This is an extremely important section of the law if inclusion is to happen. Although not specified, it would be important now that the trainings happen and that they break away from the very medical understanding of disability and focus on the social and economic contexts and the rights of women

and children and others who are vulnerable among persons with disabilities in the country. Although the law does not mandate it, it is also important that persons with disabilities including women are at the forefront of this training.

Women with Disabilities

While the law makes a beginning in the recognition of the rights of women with disabilities and the recognition is uneven and not strong enough in many critical areas. In the areas of access to education, rehabilitation, skill development and work, for example, the explicit recognition is missing. In the area of health, while the law makes a specific reference of providing sexual and reproductive healthcare especially for women with disabilities (Sec 25(2k)), it does not mandate just access to health care for them. There is enough ground and research evidence to show that the gender element is strongly present in access to health care in India.

Work opportunities for women in rural areas need to be explored and expanded: easier access to capital, markets, and transport to work locations. Regulation of conditions for home-based work might also positively impact their livelihoods. Strategies for promoting independent, assisted living in rural areas must be explored further.

5.3.3 Recent Policies and Legislation

Recent legislative guidelines from the State as well as Courts have signalled a lack of will on the part of the government to bring in any sustainable changes. While the Rights of Persons with Disabilities Act of 2016 is a welcome piece of legislation, it is not free from major loopholes manifested in its lack of special provisions for women with disabilities, its failure to address the problems related to certification of disability, or its contentious provision on reservation for persons with disabilities. The Act has been criticized by disability-rights activists for negating the progressive judgements of 2013 in Union of

India vs National Federation of Blind, MCD vs Manoj Kumar Gupta, and Rajiv Kumar Gupta vs Union of India, wherein the Court interpreted Section 33 of the Persons with Disabilities Act 2005 so as to include reservation of persons with disabilities in all groups of government officers, i.e., A, B,C and D groups, at the time of recruitment as well as promotion. The new Act reduced the impact of the clear Court guidelines by relegating the right to reservation in promotion to a mere proviso under Section 34 of the Act. The Act also does not address the bureaucratic hurdles faced by persons with disabilities in obtaining a certificate of disability, which is the necessary gateway for demanding any entitlements from the State. While the Minister of Social Justice and Empowerment, Thaawar Chand Gehlot, announced in the Parliament that a scheme of 'universal identity card for the disabled' is on the anvil and an agency has been finalized for this purpose, the feasibility of such a scheme is debatable. This is particularly so as the identity card is proposed to be linked to the disabled person's Aadhar Card, which itself has been ruled by the Supreme Court to be not mandatory for availing State benefits.⁶

The Accessible India Campaign, another flagship scheme launched by the present government in 2015, was to be allocated INR 193 crore exclusively. But this amount was, in fact, subsumed under the existing schemes arising out of implementation of the Persons with Disabilities Act. Equals, Centre for Promotion of Social Justice, a disability rights organization based in Chennai points out that such an allocation is regressive in its focus on a select number of urban cities (50 government buildings in 26 cities, and 25 government buildings in another 22 cities), discriminating against the 69.5 per cent of rural population of persons with disabilities.

A recent 2016 judgement of the Supreme Court which provided for guidelines for persons with disabilities for when the National Anthem is being played came under intense censure by disability

rights organizations. The judgement, that directed persons with disabilities to 'maintain maximum possible alertness', has been criticized by Jayana Kothari, the author of *The Future of Disability Law in India*, as being 'completely offensive and shows disrespect and disregard for so many different conditions/disabilities that people may have'.

5.3.3.1 Government Programmes

In the absence of new legal frameworks, many of the concerns of women living in rural Odisha, Jharkhand and Karnataka, go unnoticed in both the design and implementation of programmes.

Some of the recent national disability-specific programmes such as the Accessible India Campaign have focused much more on the built environment and accessible websites, sign language interpreters and making accessible transport available. Though laudable, these have as yet not addressed the requirements of women with disabilities in remote rural areas whose realities may require different solutions. For example, women may find it difficult to walk to the next village to fetch water, or have trouble catching the infrequent bus which they cannot board without help, or be confined to their homes because there is no information available about training or changes in the local environment that enable the visually or hearing-disabled to move about in safety and security. Poverty, a lack of choice and any accommodation or support for their impairment limits their mobility further.

State-level Provisions

The disability pension, the scheme for provision of aids and appliances, and concessions in transport are some of the schemes for disabled persons.

The disability pension is one universal attempt made by the government to provide some kind of support to disabled people living in difficult economic circumstances throughout the country. Each state in the country decides on its own quantum of support which varies from INR 300 per

month in Odisha, INR 400–600 in Jharkhand, and between INR 400–1000 in Karnataka (depending on the degree of disability). Although the amounts given monthly in the pension are often very meagre, most disabled people are aware of this provision and value it highly. Other schemes such as the Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances scheme, 2014 (ADIP) through which aids and appliances are provided free of cost to disabled persons living below a certain income level, on the other hand, do not seem to have reached many women with disabilities.

In most of the narratives of women with disabilities in the three states, the Panchayat did not appear to be a strong force creating opportunities and support, as mandated by law. The empowerment of women with disabilities was not seen to be significant among their priorities and no real attempt was made to include them in the affairs of the Panchayat.

6. Recommendations

6.1 Recommendations for Law and Policy

Ensuring Correct Census of Persons with Disability

Identifying the number of disabled is not important solely from a statistical standpoint. At a macro level, these estimates guide government spending decisions on disability. In recent years, direct spending by the government on the disability sector has been a miniscule 0.05 to 0.07 per cent of its budget. At an individual level, timely and accurate identification of persons with disabilities is important in order to ensure that they receive proper care and benefit from government schemes for their welfare. In practice, the current identification and certification process reaches a small proportion of potential beneficiaries. The World Bank survey in rural Uttar Pradesh and Tamil Nadu found that 56

per cent of PWDs were not aware of the disability certification process, and that only around 21 per cent were in possession of a PWD card.

The state should adopt a much more inclusive definition of disability, incorporating many previously excluded categories of disabled persons, and use a 6 per cent disability rate in calculating budgetary requirements of this most vulnerable population. The medical criteria used to identify disabilities should also be revised, and standardized across the country

Shift towards Using Social Models

Traditionally we looked at disability mainly in terms of the medical impairment a person lives with, known as the ‘medical model’ of disability recognition. However, a ‘social model’ recognizes that it is not the medical impairment which disables a person; it is social, economic and cultural barriers which persons with disabilities face, which disable them.

The UNCRPD, as noted above, has laid grounds for changing the definition of disability, by shifting from a medical to a social model. The South African Policy on Disability is one example which incorporates this paradigm shift in how we construct disability into its perspective. It recognizes, for instance, that ‘it is the inability of the ordinary schools to deal with diversity in the classroom that forces children with disabilities into special schools.’

This results in an approach that requires that resources be made available to transform so-called ‘ordinary’ amenities and services to cater for a more diverse environment. All current laws define PWDs entirely on a medical model. These must be shifted fully to social definitions that are sensitive to multiple deprivations of gender, caste, class, religious identity and geography. This would require governments to create appropriate social scales and systems of evaluation.

Consolidation of Legal Instruments

There are multiple laws in India that provide and protect the rights of people with disability in India, many of which are currently in the process of amendment. The processes of amendment for each of these, however, are working in isolation from others. Separate ministries too are involved in amending these bills and acts, including the Ministry of Social Justice, the Ministry of Health, and the Ministry of Human Resource Development. This leads to confusion in the drafting of provisions in each of the laws, with fears not just of overlap but even contradictions. In addition, provisions regarding the right to education of children with disabilities also overlaps with Right of Children to Free and Compulsory Education Act, 2009 (RTE).

Legal Capacity for the Disabled

In consonance with the UNCRPD, the laws must affirm that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. At the same time, the system should acknowledge, as the UNCRPD mandates, the need for 'support they may require in exercising their legal capacity', with 'appropriate and effective safeguards to prevent abuse' in extending such support, checks to ensure that these 'respect the rights, will and preferences of the person', and that the supports 'are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests'.

We believe that at least where local networks of disabled persons exist, they could be given a much greater role in ensuring that the supported decision reflects as far as possible the true aspirations and best interests of the person.

Integrated Education

At present, educational outcomes for both children and adults with disabilities remain extremely poor as compared to those for non-disabled persons. This highlights the importance of promoting inclusive education programmes in regular schools, to ensure suitable support and to lower the likelihood of disabled students dropping out of school. Even supporters of special education should realize that for rural girls with disability, a network of special schools within accessible distance is impossible to accomplish: it would be a budgetary impossibility, let alone the difficulties of providing the requirements of trained personnel.

There is a need to ensure that RTE sufficiently safeguards the interests and rights of children with disabilities. Data from the SSA for 2005 shows that spending on inclusive education was only about 1 per cent of the budget, and even for this, execution rates were a lot lower than other areas. Parents, educational service providers and the community at large need to be sensitized to the special needs of children with disabilities, and promote their inclusion in regular schools. This is particularly true with respect to attitudes towards children with mental disabilities. Besides this, the development of appropriate curriculum and learning materials, adequate financial support, effective monitoring and evaluation programmes, and even ensuring physical accessibility to regular schools (for example, only 18 per cent of SSA schools nationally were considered accessible in 2005) are other important focus areas for making education more accessible and relevant for children with disabilities.

Poverty and Exclusion

Laws and programmes related to PWDs need to further recognize poverty, gender and social exclusion, and geographical exclusion (especially rural locations) as crucial factors affecting the rights of children and persons with disabilities, and nuances of how disability as a social vector of

exclusion intersects with other traditionally socially excluded groups such as Dalits, Adivasis, and Muslims to create a complex matrix of vulnerability in the Indian context. Further, the rights of the disabled need to be linked to food security in India, given the high rates of malnutrition.

It is estimated that there are 70 million disabled people in the country and studies show that 70 per cent (50 million) of these belong to poor families. Poverty is both a cause and consequence of disability. It is important for law makers to recognize that PwDs have greater needs than others to meet additional costs of health care, basic needs, accessibility and transport, whereas they have a lower earning capacity deriving from their impairment and the lack of socio-economic access and opportunities.

The law must guarantee social security benefits, aids and appliances, medicine and diagnostic, corrective surgery without cost to persons with disabilities. There should be no eligibility requirements for this right, because that would in the end tend to exclude those most in need of support.

There are provisions for reservation or preferential access for PwDs under a number of the government's poverty alleviation schemes, but in many cases implementation has been weak. The status of disability reservations in employment needs to be reviewed: are positions being left empty because of the lack of suitable applicants, or because jobs offered to PwDs are being narrowed and undermined? Take corrective action to operationalize this provision.

The law and programmes also need to recognize the practical gender needs that differentiate access for men and women, and to look at how it is doubly difficult for a disabled woman to determine and access public spaces like transport, hospitals, parks, etc. Apart from access to infrastructure and public spaces, the law also needs to look at political, cultural and social spaces, and facilitate increased access to all of these for women with disabilities.

There is not much support in existing laws and

policies to support families with disabilities or persons with disabilities themselves engaging in or accessing gainful employment. Financial and tax benefits to private employers of PwDs, subsidies and finance incentives for starting small-scale income generation activities by PwD households, should be incorporated. The national disability fund needs to play a greater role in enhancing livelihood opportunities for poor disabled people. We need to carry out further R&D in the area of technology and the use of appropriate devices for creation of livelihood opportunities of poor people with disabilities.

Public awareness programmes should be undertaken to explain the causes and remedial measures possible for disabilities and related health concerns. In particular, awareness should be raised about issues of sexual assault and bodily autonomy.

ASHA workers and ANMs should be trained as Village Rehabilitation Workers as well (as in Karnataka), and trained to recognize disabilities, provide counsel, networking, or care support to families, as the need arises. Reproductive support should be made available, and closer monitoring of women with disabilities during and after pregnancy. Forced sterilization should be discussed and strongly discouraged.

Postscript

Happy be they who understand my strange step when walking and my heavy hands. Happy be they who know that my ears have to be strengthened to understand what is said. Happy be they who understand that though my eyes shine my mind is slow. Happy be they who see yet don't notice the food that drops and falls off the side of my plate....Happy be they who listen to me, since I too have something to say.

Argentinian National Association for the Promotion of Disabled People

Endnotes

1. Jharkhand:

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2. We prefer to use the term 'disabled people' instead of 'people with disabilities' in this chapter because, in accordance with the social model, we see disability as being imposed by the environment rather than a necessary outcome of an impairment. Therefore, it is not possible to 'have' a disability, but only to have an impairment. Moreover, we believe reducing the stigma associated with being disabled begins with accepting disability as a fact of life for many people, which in no way defines their whole identity
3. According to Census of India, 2011, approximately 69.5 per cent of the disabled population resides in rural parts of the country.
4. For their invaluable help in carrying out this study, we are indebted to South Odisha Voluntary Action in Koraput, Janamukhi in Gadag and Jan Seva Parishad in Hazaribagh, respectively.
5. The snowballing method, or chain referral sampling, is a method of sample selection in which each respondent recommends or helps recruit the next respondent from among her own acquaintances.
6. Auxilliary Nurse Midwives, or the village-level female health workers in India, are commonly known as ANMs.
7. Writ Petition (Civil) No. 855 of 2016.

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Siesta on the street. Fort Kochi, Kerala.

Photo Credit: Rahul M.

Strife in a Metro

Affirming Rights to Admission in the City of Delhi*

Rajanya Bose and NC Saxena

1.1 Introduction

'When you first come here, there is a lot of hope, abhilasha. You think anything is possible. You have heard all the stories of people who have made it big in the city. Slowly, as time goes by, you start wondering what you are doing. One year, two years, three years, and bharosa, something will happen. But slowly you realize, nothing will happen, and you can live the next five years just like the last three years, and everything will be the same. Wake up, work, eat, drink, sleep, and tomorrow it's the same thing again.... After enough time in Delhi, you even stop dreaming, you could go crazy if you think about it too much.'

—*A Free Man* by Aman Sethi

The 'urban poor' is a fraught term that often hides the extreme heterogeneity of the poor in an urban space. An economic definition of poverty and the poverty line is inadequate to understand the multiple forms of deprivation that a person or a family might experience in the harsh exclusive cities in India. It is also almost impossible to define the population or the community of the 'urban poor' in the context of Delhi, neither is that the scope or the purpose of this chapter. It is even more difficult to ascertain the exact nature of the population that would come under this category given that the people themselves do not identify with this classification as a political identity. It is

rather an academic segregation imposed by those trying to understand their reality. The scope and aim of the chapter is thus to provide glimpses into the vulnerabilities faced by the population, in their living and working in Delhi, to bring out various forms of penalty and denial of citizenship rights by the state.

The first part of the chapter discusses the major trends of urbanization in India and how the 'urban poor' are defined. Stating important observations of the 2012 Hashim Committee Report (Hashim, 2012), it highlights the significance of the concept of 'vulnerability' as a break away from monetary calculations of poverty. Adopting the framework of the report, the second part of the chapter illustrates the experiences of residential, occupational and social vulnerabilities to understand how exclusion manifests itself in the national capital. The third section illustrates two examples of good practices, one through legislative efforts of the state and another through efforts of the civil society, aimed at making urban spaces more inclusive. The final section lists recommendations for the State to improve the conditions of the vulnerable communities in the city.

In 2007 for the first time, more people in the world were recorded as living in cities than in villages. In 2005, the United Nations estimated that the world's urban population growing at a rate of

* Reviewer: Patrick Heller, Richard Jolly

1.8 per cent annually would soon outpace the world population growth of 1 per cent (United Nations, 2005). Nearly 48 per cent of the world's population lived in urban areas, and the developing countries were urbanizing more rapidly compared to the developed countries.

The urban population in India is now around 377 million, constituting 31.2 per cent of the total population. It has grown 15 times in 110 years; in 1901, only 25 million people constituting 10.8 per cent of the population lived in urban India (Finance Commission, 2008, p. 237). The figure of 377 million, however, is possibly an underestimation in itself due to the undercounting in informal settlements in towns and in big metropolitan cities. Moreover, the growth of population in slums is difficult to assess since the 2001 and 2011 Censuses are not directly comparable; while the 2001 Census only covered statutory towns with population greater than 20,000, the 2011 Census covered all 4,041 statutory towns (*The Times of India*, 2013). A big gap remains between the pace of urbanization and the provision of infrastructural facilities required for supporting such a large concentration of population. As a consequence, urban environments, particularly in large cities, are deteriorating very rapidly. All cities have acute shortage of housing, water supply, sewerage, developed land, transportation and other facilities.

Only 70 per cent of urban households have access to piped water, 74 per cent of urban households have access to latrines, 23 per cent of sewage is treated, and only 30 per cent of solid waste generated is treated prior to disposal (Finance Commission, 2008). These deficiencies are particularly severe for the urban poor and have serious livelihood impacts for them. Lack of political and administrative will, inadequate finances and investment and hostility towards migrants, compounded by weak municipal institutions and poor delivery systems have constrained the administration's ability to improve the living conditions, incomes and services for the urban poor.

1.2 Urbanization: Major Trends

While the pace of urbanization in India has not been as fast as in many other middle income countries, the urban share of India's overall population rose from 23 to 31 per cent between 1980 and 2011. Changes in the share of urban population and in the decadal growth rate since 1951 are shown in Figure 1 (Planning Commission, 2012).

Urban growth in India, according to official figures, has been modest in the last few decades. Despite reaching its peak in the 1970s, the growth rate fell in the 1980s and further in the 1990s. Between 2000 and 2005, the growth rate has been estimated at only 1 per cent (Kundu, 2011).



Figure 1: Urban Share in Total Population &

Kundu has argued that urbanization has become concentrated in developed regions and larger cities, while it has stagnated in smaller towns (2011).

A World Bank agglomeration index report released in 2015 on urbanization in South Asia showed that 55.3 per cent of Indians lived in areas with urban features (*The Hindu*, 2016). The underestimation in the Census could be due to the fact that it does not enumerate populations living on peripheries of towns or other urban centres, and refuses to acknowledge the 'subaltern urbanisation' in India¹ (Denis, Mukhopadhyay, Zerah, 2012). India might be more urbanized than the official figures admit with more than 10 per cent 'living in dense built-up settlements that do not satisfy the Indian census definition of urbanization. The large cities are important and growing steadily but 41% of the urban population lives outside Class I towns, and there is growth there too (2012, p. 56)'. Subaltern urbanization takes account of 'diversified cities' (Ramachandran, 1989) which are urban centres that might not be connected to an immediate metropolis but are connected to a global centre.²

Besides 'subaltern urbanization', the increasing concentration of urban population in larger cities, is one of the key features of urbanization in India (Table 1). The number of cities with over 1,000,000 population, in 2001 was 35 and the urban population share of these cities was over 37 per cent. This number has gone up to 53 in 2011, and 42 per cent of the total urban population lives in these cities. Moreover, 11 cities, namely, Delhi, Ahmedabad, Bangalore, Kolkata, Chennai,

Hyderabad, Mumbai, Pune, Surat, Jaipur and Kanpur will have a population of over 4.0 million in 2025 and these mega cities will have a total population of 127 million, which is likely to be over 24 per cent of the total urban population of the country (Vaidya, 2009).

In addition to the 53 metro cities, each of which has a million-plus population, there are 468 cities with a population of 100,000 and more, and these account for 28 per cent of the urban population. The remaining 30 per cent of urban India is scattered over 4041 towns with populations less than 100,000 (Census of India, 2011). In addition, there are 3894 census towns, defined as those with a minimum population of 5000, with at least 75 per cent of male workers engaged in non-agricultural pursuits and a population density of at least 400 per sq. km. These have not been declared as statutory towns by the states, as the states fear that doing so would lead to a reduction in the development assistance that they receive from the Centre. Each state can decide norms for declaring these as towns, as there is no uniformity in the country regarding norms for what constitutes towns and when they should be declared as such, etc. If the population of these census towns, which technically continue to be rural, were to be taken into account, the total urban population would be an estimated 35 per cent by now.

It is worth noting that the population growth of Indian towns with population less than 100,000 has been slowing down, particularly in the 1990s. Their population growth decelerated from 3.4 per cent per annum in the 1970s to 1.6 per cent per

Table 1: Past Trend of Growth of Metro Cities in India

	1981	1991	2001	2011
Number of metro cities (population-1 million +)	12	23	35	53
Population (million)	42	70	108	161
Percentage of total urban population	26	32	37	42

Table 2: Growth of Urban Population by City Size (per cent per annum)				
	1971–81	1981–91	1991–2001	2001–2011
Cities	3.7	3.2	2.9	2.7
Metropolitan Cities >4 million (m)	2.8	3.8	2.9	3.5
Class IA >5 m	2.7	3.4	2.8	3.3
Class IB 1–5 m	3.4	4.0	3.1	3.8
Other Cities(Class IC) 0.1–1 m	4.2	3.1	3.3	1.7
Towns	3.4	3.2	2.3	1.6
Class II 50000–100000	4.8	3.7	2.5	1.6
Class III 20000–50000	2.7	3.4	2.3	1.6
Class IV+ <20000	2.3	2.4	2.2	1.6
Total				
Urban Population	3.9	3.2	2.8	2.4
Rural Population	1.8	1.8	1.7	1.2
Total Population	2.2	2.1	2.0	1.5

Source: (Planning Commission, 2012)

annum in the last decade. Migration from villages has been largely to the metropolitan cities and their peripheries, and the small and medium towns have languished for want of an economic base.

Lastly, there is a great deal of inter-state variation in urbanization. Among the larger states, Tamil Nadu is the most urbanized at 54.4 per cent followed by Maharashtra (46.2%) and Gujarat (40.3%), whereas the least urbanized states are Assam (14.1%) and Bihar (11.3%). In tune with the experience of other countries, urbanized states tend to be more prosperous, with Himachal Pradesh, a hill state, being an exception with very low poverty levels despite only having a 10.1 per cent urban population (HPEC, 2011).

1.3 Who are the Urban poor? Poverty v/s Vulnerability

The widely used terminology of ‘the urban poor’ disguises an enormous amount of heterogeneity among deprived urban populations. There are wide variations in the specific profiles and experiences

of urban poor populations based not just on caste, ethnicity, place of origin, age and gender, nature and relationship with family, but also on the nature of their living arrangements, and their occupations. The diverse groups of urban poor populations do not have the cognition of a cohesive class identity (Gooptu, 2001). The search for homogeneity in what is otherwise an extremely diverse population is an attempt on the part of researchers and planners, not emanating from the political consciousness of the group itself.

Poverty is also a subjective judgement about an acceptable standard of living in each country (Wratten, 1995, p. 16). While the poor can be effectively involved to arrive at this definition of poverty (Francis, 1991), Wratten says such definitions often highlight the concepts of vulnerability and entitlement, which help in understanding how people not only become but remain poor (1995).

Accordingly, a useful way of assessing and understanding the experience of urban poverty

is by assessing the vulnerability of a household or person or a group which indicates how dangerously close the family is to slipping below the poverty line. Vulnerability, in such case, will mean 'not lack or want, but defencelessness, insecurity, and exposure to risk, shocks and stress' (Chambers, 2006, p.1). For Chambers, vulnerability can be both internal and external, the former being of risks, shocks and stress while the latter refers to the inability to cope without suffering losses like economic impoverishment, physical weakness or psychological harm. The income or consumption measure, though convenient for policy makers, could sustain 'stereotypes of the amorphous and undifferentiated mass of the poor'. In other words, a family could increase its income and consumption levels through borrowing, but become more vulnerable due to the debt. Recognizing the concept of vulnerability is the first step towards thinking beyond income-based poverty measures to assess exclusion and deprivation.

The Hashim Committee report reads:

Poverty is an ex-post measure of a household's well-being (or lack thereof). It reflects a current state of deprivation, of lacking the resources or capabilities to satisfy current needs. Vulnerability, on the other hand, may be broadly interpreted as an ex-ante measure of well-being, reflecting not so much how well off a household currently is, but what its future prospects are. What distinguishes the two is the presence of risk—the fact that the level of future well-being is uncertain. (2012, p. 24)

Vulnerability as against income-based poverty measures especially become significant in the urban context, since cities are characterized by a greater degree of commercial exchange, where one needs money or more money to buy water, housing, food, fuel, than in rural areas (Wratten, 1995, p. 22). In that sense, urban poverty need not be seen as a spillover of rural poverty (Mitra, 1992). In fact, it has been

established that economic deprivation is not the most significant factor when it comes to rural-urban migration, not even for seasonal migrants. 'One observes that both poor and rich households report out-migration, although the reasons for sending out their family members and the nature of jobs sought by them are different' (Kundu and Sarangi, 2007, pp 306). NSS data confirms this and indicates that short-term migration opportunities are availed of by the better-off segments of population (Kundu, 2007, 2011). Therefore, even though urban poverty may be partially a spillover of rural poverty, the former's causes and manifestations differ from rural poverty. The Hashim Committee Report finds that urban poverty can be best captured through three categories of vulnerabilities: residential, occupational and social. It is using the framework of these three categories that the chapter will navigate the complex idea of the urban poor.

Residential Vulnerability

The Committee report observes:

The most visible manifestation of urban poverty is in the crowding of large masses of the urban poor under the open sky, completely vulnerable to the extremes of nature, or in precarious and unsanitary slums in sub-human conditions of survival and always lacking a sense of safety and security. (2012, p. 25)

This would consist of living arrangements such as homelessness and also physical environments lacking in hygiene, water supply, sanitation and other basic provisions in the place of living, as well as the context of land rights and rightful citizenship in the context of 'illegal' settlements and 'encroachments'. Residential vulnerability will also cover 'legal' habitations, i.e., the designated slums in the cities or rehabilitated settlements and planned settlements in the case of New Delhi will have inadequate provision of basic services (Centre for Policy Research, 2015).

Occupational Vulnerability

Educational qualifications and the nature of work arrangements are two of the many factors that determine occupational stability. For regular workers, in both large cities and small towns, the possibility of falling below the poverty line is lower than for those in casual employment.³ NSS data shows that 'the ordering in terms of poverty probability from lowest to the highest, thus works out to be regular, self-employed, unemployed and casual workers' (Kundu and Sarangi, 2007, p. 306). The Hashim Committee Report also points out that not just the status of employment but the quality of employment determines the vulnerability of an individual or group. The vulnerable group here is again heterogeneous, comprising daily wage workers, construction labour, petty traders, hawkers, street children, sex-workers, rickshaw pullers, domestic workers, etc. Labour markets remain highly segmented, in which the vulnerability and desperate survival needs of the unorganised workers and high levels of competition amongst the large army of work-seekers, enable exploitation by employers, and sometimes middlemen who mediate access (Hashim, 2012, p. 30).

Social Vulnerability

The urban poor population is socially disaggregated as well; some social groups are more at risk to fall into poverty than others. As the report says, 'Socially vulnerable groups are defined as those groups who routinely face severe social barriers to livelihood, food and dignified living' (p. 28). The gendered aspect of poverty, for example, is difficult to ignore with women constituting 68 per cent of the urban poor

look eagerly for the leftover *samosas* (fried snacks), or *roti* (bread) or discarded plastic bottles. The picture encapsulates the nature of grinding poverty in a metropolis like New Delhi.

Delhi or the National Capital Territory is the second largest metropolis in India with a population of 1.86 crore people in 2016 (World Population Review, 2016). The NSS survey results in 2012 estimated:

the total number of slums as 6343 and the total number of households therein was estimated as 10.20 lakhs. About 29% of slums were having 20-60 households, while rest 71% of slums were having more than 60 households each. Average 161 households per slum were found to be in these slums (Directorate of Economics and Statistics, 2015, p. 14).

By the government's own admission, only 23.7 per cent of the total population live in 'planned colonies' while the rest live in entirely 'illegal' settlements or areas that were never authorized for development and as such never properly planned. The absence of planning means not only that the physical space of the settlement is not laid out in accordance with basic building codes or public space requirements (including road and access grids) but that the settlement is not integrated into the city's bulk infrastructure delivery system (CPR, 2015).

Instead of delving into an analysis of policies and meting out of state provisions to alleviate urban poverty, this chapter endeavours to portray the lived experiences of the urban poor in Delhi in order to understand the nature of urban vulnerability in a mega city. The field work for the study was done between the months of May and November 2016 through focussed group discussions and in-depth interviews with homeless people, people living in unauthorized clusters and resettlement colonies set up by the government, street vendors, rag pickers, construction workers and disabled persons.

2.1 Residential Vulnerability

The Delhi government has eight ways in which it broadly classifies housing clusters in Delhi: *JhuggiJhopri* (JJ) clusters or squatter settlements (14.8 per cent), slum designated areas (19.1 per cent), unauthorized colonies (5.3 per cent), JJ resettlement colonies (12.72 per cent), rural villages (5.3 per cent), regularized unauthorized colonies (12.72 per cent), urban villages (6.35 per cent) and planned colonies (23.7 per cent).⁴ Only one of the eight categories is considered planned and the rest are considered unplanned.

These categories assume increased significance as the tenurial classification also 'represents a grid of *differentiated citizenship*, a system by which the state systematically assigns different levels of services to different categories of citizens based on their tenurial status' (CPR, 2015). Only 23.7 per cent of the population of Delhi which lives in planned colonies is in zones of full citizenship with access to electricity, piped water, sewage system, paved roads, solid waste collection, i.e., the 'inclusive city' (CPR, 2015). The Census data reveals that 14.6 per cent of households in the city live in slums, excluding resettlement colonies and big parts of unauthorized colonies.

The NSS survey in 2015 estimated that 90.24 per cent of the slums are on public land, of which 45.83 per cent are on the land owned by local bodies, 28.24 per cent on the land owned by the Railways and remaining 16.18 per cent are on the land of other government agencies. About 2 per cent of the slums are on private land and about 8 per cent of the slums are on land whose ownership is not known to the knowledgeable persons of the locality. For 86.50 per cent of slums, the major source of drinking water is either tap water or hand pump. While only 30 per cent of the slums use flush type latrines, 22 per cent had no latrine at all. Underground sewerage exists only in 16.3 per cent of the slums and garbage collection happens in less

than a third of the settlements. Only 16.76 per cent of slums have both street and house lighting (NSS, 2015).

The first category described here is that of the homeless population in the city, outside the realm of the eight tenorial classifications in the city, arguably with the worst access to any public provisioning; the second of a *JhuggiJhopri* cluster which is a squatter settlement; and the third of a resettlement colony with varying degrees of exclusion from state services.

2.1.1 Homeless

Surveys have put the number of homeless people in Delhi between 52,000 and 2,46,000 (Lama and Bharadwaj, 2016). With at least nine deaths reported in Delhi every day, according to a report by *Hindustan Times*, the government has shown apathy at best and been hostile at worst in its inability to provide roofs over heads or any protection to this vulnerable population. In 2015, there were 3285 unidentified dead bodies found in Delhi. The government estimates that there are 1,25,000 homeless people residing in Delhi (the number could be much larger) but it only has less than 200 night shelters.

In a group discussion with homeless men in a night shelter near Kashmiri Gate,⁵ most people admitted that finding a place to stay in Delhi was more difficult than finding food. Govind,⁶ originally from Nepal, was penniless when he came to Delhi. He was 11 then, knew no one and had no idea what he would do next.

occupational and residential vulnerability therefore draw inertia from each other, reinforcing the other.

Conditions are far worse for women and little girls who are often sexually harassed and molested not only by complete strangers, drug addicts or other homeless men in the shelters but also by shelter caretakers and cops on the road. Additionally, most shelters for women in Delhi are temporary structures and not conducive to inhabiting in summer (*Hindustan Times*, 2016). It has also been reported that transgenders are among the worst sufferers. Since there are no shelters for them in the city, they must 'become men' to avail of nightshelters. They face regular harassment from other pavement dwellers and are also harassed by police officials who extort money from them. The experience of homelessness is harsher when combined with social vulnerabilities, as the experiences of sexual minorities reveal.

2.1.2 Jhuggi Jhopri clusters

Settlements notified under the 1956 Slum Areas (Improvement and Clearance) Act can be considered Slum Designated Areas (SDA). The last notification of an SDA had come out in 1994, which means most other sprawling slum-like settlements are seen as *Jhuggi Jhopri* clusters (JJC), built on public land and treated as 'encroachments'. In 2011, the Delhi Urban Shelter Improvement Board (DUSIB) estimated that there are 672 clusters in 2014, with 304,188 *jhuggis*. With an approximation of even five members in each *jhuggi*, it would amount to 15 lakh people who first got recognition only in 2010 with the passing of the DUSIB Act (CPR, 2015).⁷ The Delhi Development Authority (DDA) has not built housing for the economically weaker sections, neither did it provide effective rehabilitation during the same period for those displaced during demolitions across Delhi for the Commonwealth Games 2010. Between 2004 and 2007, more than 45,000 homes were allegedly demolished while only less than a fourth of the settlers received any

alternative habitation (Bhan, 2009, p. 128). The state government, through its institutions and policies, has robbed people of any claim to the city which is seen as 'a show window to the world of our culture, heritage, traditions and way of life... and cannot be allowed to degenerate and decay' (Delhi High Court judgement, 1995).

We went to Shakur Basti, West Delhi, which was in the news for being demolished in December 2015. A few families had been brought here from Uttar Pradesh by labour contractors when a training centre was being built behind it. The contractor had built temporary huts for the workers on the piece of land which they had called home for more than three decades. More families joined them eventually, most working as casual labourers to load or unload cement trucks for the Public Works Department (PWD), as construction workers or working any other odd jobs they could find. The Railways and the Delhi government, trying to reclaim the land belonging to the Railways, were responsible for the demolition that claimed the life of a six-month-old, found buried under the rubble. Politicians were quick to show up with plenty of blankets, food and sympathy. The Delhi High Court, however, pulled up the authorities for the demolition in harsh winter, pointing out that the Delhi Urban Shelter Improvement Board (DUSIB) policy and the Delhi Laws (Special Provisions) Act provide protection for clusters that have existed since before 2006. It even ordered for rehabilitation by all the concerned authorities notwithstanding the legal status of the cluster (*Indian Express*, 2015). At the time of writing, almost a year after the demolition, which the residents claimed was the fifth in 35 years, people are living under plastic sheets and torn clothes and sarees crafted into makeshift homes. Both the approach road and internal roads are ill-built. Electricity metres have been restored in around 100 households, a few temporary mobile dry toilets have been built and residents collect and store water distributed by a

tanker that comes twice a day. The *basti* comprises five clusters and has around 1700 households. Only around 250 households, the residents report, have ration cards. There is an *Anganwadi*⁸ in the cluster but no Asha worker to support it. One of the residents told us, ‘The Anganwadi worker gets one bucket of food for 70 kids, which cannot feed even half of them. People have stopped sending children there.’ Some families are even scared to send their kids to primary school as that involves running the risk of crossing the railway line to access the school. Mohammad Kaleem, who had lost his granddaughter during the demolition said, ‘Every household has a member suffering from dengue, chikunguniya or chicken pox now. Look at my feet, mosquito bites in the evening turn into such infections; even ambulances do not want to come to *jhuggis*, and this is the Health Minister’s constituency.’⁹

The people said that railway officials often threaten the settlers to leave. Though there are no more threats of demolition due to the ongoing case in the court, officials tell them to stay in impermanent structures. Many families had put their lives’ savings into building proper houses and after the last demolition do not want to risk losing it all again. Though the people have ration cards from 35 years ago, Kaleem’s new voter card states the residential address as ‘Homeless’ followed by the address of the ‘railway *jhuggi*’. His Aadhar card however does not describe him as a homeless person. The sense of helplessness and uncertainty together with the will to fight against the authorities and to not give up their homes is palpable at the *basti*; and that sense of hope is the only relief.

2.1.3 Resettlement Colonies

Since the 1960s, there have been at least three rounds of eviction of residents who have been resettled into colonies with the promise of better planning and public services in the city. The 1960s saw 18 such resettlement colonies come up while the 1970s

saw the setting up of 26 more, with a population of 250,000 households. The third wave came post the Commonwealth Games in 2010, which took the total number of colonies to 55 (CPR, 2015).

Eviction and resettlement in Delhi have been studied at length (Ramanathan 2006, Bhan 2013). The Delhi Laws (Special Provisions Act) 2006 provided the government with the power to demolish settlements without any obligation to ensure alternative housing for the poor (Ramanathan, 2006). Between 2003 and 2008, around 350 slum clusters with more than 3,00,000 people were demolished and some estimates suggest only a third of these were rehabilitated.

In six resettlement sites in Narela, people received empty plots with no basic services like piped water, sanitation or electricity even after 15 years of resettlement. The resettlement sites being far from the city means that children lose out on decent schooling and people lose their regular livelihood opportunities (*The Quint*, 2015).

Though the DDA even established the DUSIB in 2010 to service and resettle JJC clusters, a CAG report in 2013 observed, that DSUIB ‘had no mission to relocate all the JJC’s, instead it takes action only on the request of the land owning agencies in the clusters prioritised by the department’ (CAG, 2013).

As the Cities of Delhi project says, ‘Nowhere (other than resettlement colonies) is the gap between legal designation and policy practice more pronounced and more emblematic of planned state failure’ (CPR, 2015). The legality of tenure is also unique with people getting licences and not titles, which are non-transferable and have to be renewed (though there are no records of renewal) (Bhan 2013). Rentals are therefore illegal on these plots though widely prevalent.

In a positive move recently, the Delhi government has approved a plan to give ownership rights to the land so that the original allottees can

divide properties further and avail of credit facilities at a price of INR 10,000 for the 45 old resettlement colonies (*The Hindu*, 2012). Those who are not original allottees would have to pay less than INR 50,000 (*Indian Express*, 2015).

We visited the Shakurpur colony set up near Motinagar metro station. The residents estimated it was built 30 years ago, with many households uprooted from slums in Chanakyapuri. Many residents are from the southern part of India who migrated two generations ago. Both the approach road and internal road were well made, though the residents said that waterlogging in the monsoon is a major issue. Over the years, people have built more floors above the initial single-storey houses allotted to them. The population of the colony has multiplied with many families renting houses for INR 4,000–6,000 per month. The government had constructed public toilets in the past, but most inhabitants today are building private toilets on their own. Some of these are however pit latrines, with no proper sewage system to process the waste. All the houses, however, do have electric metres and receive piped water from the municipality. It must be admitted that the condition of a resettlement colony cannot be compared with that of the clusters with no public provisioning. However, as admitted by the residents and observed by the researcher, there are serious issues people face here.

First, most people rehabilitated were staying very far away in the city when they were evicted and resettled here. As a result, many people lost their livelihood, or school admissions and had to start their life almost afresh. Second, even today women find it very difficult to get jobs in the area. Few women work as a domestic help in nearby households, but most do not have a secure source of income anymore. As Kiran (name changed) said, “I worked in a factory nearby that made jams and pickles and ran the household. My husband drank on most days and stayed at home. But the factory that employed many women from this area shut

down 10 years back. I had to pull my kids out of school.”¹⁰ Another resident Chameli moved from Bandipur in Rajasthan to Delhi after her marriage. Her husband was a manual labourer and she used to cap bottles of jam earning INR 2,000–3,000 a month. ‘But now there is no work for us; and the price of groceries has gone up so much. You take INR 100 to buy vegetables and you will get nothing. You ask any woman here what do they want, something they could earn from nearby or from home,’ she told us.

The third problem that people pointed out was that of the apathy of the local elected councillor towards helping out people with issues like open drains, or to stop the increasing epidemic of Chikunguniya and Dengue in every household. They said the authorities had dug huge pits while installing a tower nearby and never filled them up. One boy died of asphyxiation and his brother was badly injured when they fell into the pit while playing. Even after multiple appeals to the authority no one had done anything earlier, and it was only after the accident that the pit was filled.

The other issue that was pointed out was the concern regarding women’s safety, particularly in the late hours. Even though most women admitted that safety had been a concern even 30 years ago, the consensus was that the situation had become worse over time. Leena (name changed) explained, ‘There is too much alcohol in the cluster now. There are shops around, but people also sell liquor out of their homes and young boys buy it. If you come here after 7 or 8 at night, you will find the men intoxicated. The police know about it but everyone has their share of the profit, we guess.’

2.2 Occupational Vulnerability

Philip Amis suggests that proleterianization and the labour market, rather than urbanization, have to be taken as the starting points of urban poverty, where an individual becomes completely dependent on

cash wage and is deprived of subsistence production (Amis, 1995, p. 147). In the absence of full-time wage employment for those migrating into the city, the nature of urbanization marks a departure from the Euro-centric notion of rural-urban migration due to industrialization. The 61st round of the NSS data has in fact shown a decline in real wages for the first time since independence, which implies a possible decline in the standard of living and even perhaps a lower collective bargaining power of the working class. There has been a simultaneous 'shift away from wage/salaried work to self-employment and casual labour, employment situations where workers must take on a certain element of risk within the open market' and increasing dependence on the market even for staples like rice and wheat (Bhan, 2009, p. 136).

In some cases, the state itself is involved in restricting employment opportunities, as in the case of some 100,000 units closed in Delhi for not being in legal areas (Heller and Mukhopadhyay, 2015). Sometimes these were given alternative sites 'in peripheral industrial estates. As of 2009–10, 22,749 were allotted sites of which only 13,142 had taken possession.' The city had 10 lakh unemployed workers in 2003 (Harriss, 2005, p.1043) and also became more dependent on industries like garment factories, embroidery, etc., that use casual cheap labour in informalized spaces (Mezzadri, 2008).

The monetization in the urban economy, as discussed in an earlier section, makes the standing of an individual or household in the labour market a crucial determinant of their residential vulnerability as well. One's job gets both determined by and determines the living space in that sense, and one's place in economic production would shape in a sense, one's access to the urban space in the final instance.

A few attempts have been made by the state to provide skills and livelihood opportunities to the urban poor for self-employment and skilled

employment, for instance the National Urban Livelihoods Mission (NULM) under the central scheme of Swarna Jayanti Shahari Rozgar Yojana (SJSRY) in the 12th Five Year Plan (*The Hindu*, 2013). The government claims, 'The target of NULM is urban poor, with special focus on the urban homeless, street vendors, disadvantaged groups like SCs, women, minorities and disabled.' However, concrete implementation is yet to begin in the city.

Occupational vulnerability is discussed in the following section through case studies of street vendors, rag pickers and construction workers in the city.

2.2.1 Street Vendors

Delhi has roughly 3,00,000 street vendors though the official figure that the Delhi Municipal Corporation uses is 1,25,000, out of whom a third are women (Self-Employed Women's Association website). The National Association of Street Vendors of India (NASVI) conducted a 10-city survey which revealed that 30 per cent of street vendors are between age groups of 21 and 30 while more than half are between 31 and 50 years of age. Forty per cent of the vendors are illiterate and around 56 per cent live in *kuchcha* (temporary) houses. More than 70 per cent of the vendors spend 8–12 hours to sell their wares and spend two more hours for cleaning and display. And 60–70 per cent of vendors pay bribes between INR 2 and 100 per day to the authorities. In Delhi, this could go upto INR 500–700 per day for the shoe sellers at the Sunday market near Red Fort (SEWA website). Hawkers and street vendors are now guaranteed protection under the Street Vendors' (Protection of Livelihood and Regulation of Street Vending) Act, 2014, but from her interactions with vendors, this researcher learned of the poor implementation of this law which prevents its realization. For instance, Town Vending Committees which are mandated to survey and regularize vendors, are either non-existent or ineffective. The moratorium

under the Delhi Special Provisions Act for the hawkers and vendors also remains, though the central government might order their evacuation in case land is needed for 'special public projects' (Ramanathan, 2006, p. 3197).

On a Tuesday afternoon in the monsoon of 2016, we visited the busy Lajpat Nagar Central Market to meet some street vendors. Many of them were already associated with the NASVI. They said that around 500 vendors work in the market which implied that the market provides a means to live for at least 1,500 people (considering their families). The government, they complained, makes it difficult for those who are trying to earn a living honestly. Kiran, one of the leaders of the struggle for the vendors who sells readymade garments on the road said, 'It is not just us and our families. Imagine the manufacturers and suppliers of our products: street vending in this market supports lives of many more people than is apparent.'¹¹ Most people said they came to this profession through someone they knew from their village or otherwise, who was already a street vendor. They said that they had come to the city to escape the unemployment and poverty of rural life. Most began with odd jobs, employed to wire wi-fi or as a security guard.

Police harassment was another issue they highlighted. In the past, they used to pay regular bribes to the authorities; however, following the passage of the Street Vendors Act in 2014, the government is supposed to form Town Vending Committees under each municipal corporation to issue licences and collect fees from registered members (*The Hindu*, 2016). Despite this, police harassment continues. 'Even a few weeks back we were demonstrating to be allowed to sell products'¹² when the SHO picked many of us up from the market. At the police station we are often manhandled with not even a woman officer present,' said Kiran. She continued, 'The SHO gave me a letter to sign that said we never sold our wares here, neither will we do so henceforth. I refused to

sign it and they physically assaulted me. But all our vendor brothers and sisters sat outside the police station in solidarity and they released me after midnight. They insisted I go home afterwards but we refused; we wanted to get a medical done first for the assault.'¹³

Jitendra Singh, who has been selling goods in the market for the past 35 years now, said, 'The government is sleeping; it acts on behalf of the rich.' Most vendors we spoke to complained of harassment by police and municipal authorities despite the new Act. 'The British used to look at Indians like garbage; that's how the shopkeepers look at us. And the authorities? *Keede makode ke tarah vyavahar karte hain*. (They treat us like insects),' said a vendor, who wishes to remain unnamed.

Besides the police and municipal authorities, the street vendors are also fighting the union of shopkeepers at the Central Market. The shopkeepers, they allege, bring in new people to sit outside their shops so that the new government survey includes them and not the street vendors working in the market for years. Shopkeepers charge the vendors INR 500–600 per day to sit outside their shops. Such bribes or 'rents' have put most vendors under enormous debts.

There are local financiers who come to the market every day to provide loans for picking up supplies or payment of rents. For a loan of INR 10,000, the going rate of interest is INR 500 per day (at the time of writing this). When her husband built up a debt of INR 4 lakh in the market, Kamala (name changed) began to sell wares herself. She said, 'My husband was scared the loan sharks would hurt him. I started selling wares and told them every day that the man who used to sit here had run away. I sold my house back in my village and over a period of time paid back the loan. Now we sit together again; but many people just run away.' People often lose their goods to municipal raids. 'They take our

goods and return half of them after we pay the penalty. What they return is also soiled. Last Diwali they picked up goods and there was a fire at their warehouse. We did not get back anything, and no compensation was given,' says Subir who has been selling garments for 22 years at the market. For women, the marketplace is more hostile; as Kiran says, 'A woman who sits on the street is seen as "loose", someone who does not have a man at home. A woman would not come and sit on the streets if she had other options, people feel. Also, there is only one public toilet in the whole market which is often in an unusable condition.' The struggle is made more difficult by the fact that the vendors are not a part of the vote bank in the area where they work; this makes local elected authorities apathetic towards help them.

2.2.2. Ragpickers

India, according to estimates, has over 15 lakh wastepickers or ragpickers, whose work includes collecting waste, sorting, segregating, and trading it (Chintan, n.d.). According to other estimates this number stands at 40 lakh with five lakh of them in Delhi itself (Singh, 2016). Government statistics shows that 36.5 million tonnes of solid waste is generated in India annually (Chintan, 2011). Upto 20 per cent of this waste is removed from the waste stream by informal sector workers like ragpickers and petty traders. Wastepickers have been classified into four groups: those who carry sacks and collect anything of resale value from open drains, municipal bins, dumps, etc; those who carry two sacks separately on a bicycle and collect items like glass, bottles, plastics and keep them separately; those who carry tricycles and collect almost 50kg of waste each day and travel long distances to sell them; and those who work for waste dealers collecting and sorting waste for them (Sarkar, 2003, p. 7). Research shows that their health problems are linked to their occupation which exposes them to toxins with no provisions for adequate protective gear. They often

take up this work from a young age and frequently suffer from cuts, respiratory diseases, tuberculosis and other infections (Ray, Mukherjee et al., 2004). It is high time that the government took cognizance of the fact that waste management has to be treated not just as a technical crisis but as a human crisis as well.

In 'Darkness Under the Lamps', a CES study undertaken in Madanpur Khadar, a colony of ragpickers, it was reported that the residents were 'treated with suspicion and derision, because of their extreme poverty, vocation of ragpicking, minority faith and suspicions that they are from Bangladesh by the middle-class community living around' (Mander and Manikandan, 2011). Moreover, the same study found that children of ragpickers often carry on in the same occupation and are denied education.

With the support of the KachraKamgar Union, a union of rag pickers in the city, we visited a ragpicker's colony near Vasant Kunj close to the airport. More than 250 families here depend on ragpicking to earn a livelihood. The men leave early in the morning with their carts to pick waste. A few of them work where the municipal corporation deposits their waste, a few pick them from the roads while many cycle around various neighbourhoods picking anything on offer from door to door. Ranjit was a landless labourer in Bihar who came to Delhi looking for more stable and better paying work. Kundan used to graze cattle in a farmhouse in Chhattarpur for many years before he picked up this profession. Another man washed toilets at the Delhi airport prior to settling down at the ragpickers' colony. Chandrika, who was a bonded labourer in Bihar and earned 1.5 kg of vegetables for a month's work, came to Delhi in 1985 at a very young age. She said, 'It is out of absolute destitution that people come to the city. Sometimes people are contracted into the work through moneylenders who dump several people in a single room and pay a pittance to make them work. There are traders

who do it for ragpickers as well.¹⁴ But most in this colony work independently in the profession. Most men we spoke to agreed that they had tried their hand at other work but came back to ragpicking due to the very poor payment and instability in other forms of work. Most families here too follow the pattern of helping their kin from villages to get the same job they have, which means most people in the *basti* have come from two states: Bihar and Bengal.

The women we met, do not go out for picking, but are expected to sort the waste at home. Even eight- or 10-year-old children often join their parents in sorting. Kundan complains, 'If you work 12–14 hours a day, you can make a living in this work. But rates have gone down significantly. One sack of rag could fetch us INR 300 five years ago. Now it is not possible to get more than INR 175–200. See the price of rice and vegetables; it is impossible to survive now.' Police harassment is also common among ragpickers. Young boys are picked up on false allegations and beaten up in police stations. Sometimes young men pick up mobile phones or other goods which have been stolen or lost, but they get arrested when tracked. However, at this colony, regular harassment has reduced over the past few years due to the strength of the union, the residents say.

The best rates are fetched by hair and plastic, they say, but sorting waste is difficult and hazardous. 'We open sacks and there are sanitary napkins in newspapers, and human excreta in polythene; there are shards of glass, syringes or nails. We cut ourselves, develop rashes and infections. There is often completely rotten food which causes health problems. We have no pension, no recognition, no medical facilities. And here we are falling sick all the time, finding it difficult to breathe or suffering from incessant stomach infections,' says one of the residents of the colony. When the main earning member falls sick or a child does not recover for weeks, the family goes to the native village to recover. The government hospitals, they say, do

not want to treat them, and most of them go to private dispensaries to get medicines. Neither the government nor the citizens have given a thought to the human cost of how their waste is treated. For example, both diapers and sanitary napkins must be treated as medical waste. However, with no proper mechanism to treat them, they are handled as domestic waste and thrown in dumpyards where ragpickers roam around with bare feet. Without any protective gear, they are bound to fall sick (*Indian Express*, 2016).

The colony, built on 'forest land' belonging to a nearby village, has no concrete houses as the landowners will not allow any construction that suggests permanence. Only a third of the households have ration cards while no one gets a pension at present. There is no personal or public toilet in the colony, and no electric metres have been installed. We asked a few women, originally from Uttar Pradesh, sorting waste in the colony, that if the government granted them one facility what they would ask for. They replied, disposal bins for the leftover waste after sorting is done. As pointed out by them, the colony only consists of *kuchcha* houses with no proper roads or drinking water or sewerage system allowing the waste to pile up after 'valuables' like plastic, bottles, paper, wrappers or hair have been removed. 'Give us that and access to water. We buy two buckets of water every other day and pay INR 1000–2000 a month to the one person who has a hand pump. If a tanker would come, we could have a bath properly. Yes, we deal with garbage, but we want to be able to live in a space that is clean.'

2.2.3 Construction Workers

Informal employment in the construction sector almost doubled between 2004–5 and 2011–12 from 2.49 crore to 4.89 crore, according to NSS data (Srijia and Shirke, 2014).¹⁵ Construction is the largest employer in the country after agriculture (*ibid.*, 2014) though this employment is of a casual nature

(National Labour Commission Report, 2002). 'The construction industry in India is characterized by poor work habits, lack of ergonomic practices, prolonged work hours with inadequate rest periods, hazardous working conditions, migrant labor with poor rights and pay at the workplace and poor healthcare access' (Valsangkar and Sai, 2012, p. 1727). The National Commission for Labour (NCL) adds, 'Unstable employment/earnings and shifting of workplaces are the basic characteristics of work for construction workers' (2002, pp.633–34). Construction workers are recruited on a casual and often daily basis either directly by a builder or construction company, but mostly by intermediaries who take a commission on the payment being made. Women are paid lower wages (NCL) and often the children are deprived of 'primary facilities like health, water, sanitary facilities, education and ration cards' (NCL, 2002).

We spoke to a group of construction workers who are part of Nirmana, an NGO working for the rights of construction workers and the enforcement of The Building and Other Construction Workers Act and The Building and Other Construction Workers Welfare Cess Act, 1996. Most people who come as migrants, the workers said, know someone from their village or a relative, with whom they enter this field. They were landless agricultural labourers or farmers with such little land that the city was their only hope of survival. Some of them had been artisans who traditionally made shoes or ploughs or other articles. Unable to compete with mass-produced cheap consumer goods, they have all joined the urban labour force. Mangal Singh, from Ajmer in Rajasthan came to Delhi in 1977 during the Emergency. He said, 'In the village they were giving vegetables as wages and scarcity brought many of us to the city. The land in the village is not fertile since the good land parcels have been taken by upper caste men. I began as a construction worker but now take up contracts myself sometimes. My kids have grown up here

and will not go to the village.' They complained that instead of individual contractors, most of them have to work with big builders on massive projects now. 'The wages have gone down, so many of us are unemployed. In 10 years, per day wage has not even gone up by INR 10. It is around INR 300–400 a day and you will not even get 10–15 days of work in a month,' a worker rued. They complained that in a big construction site the builder only registers 500 workers if 2000 are working there so that the contribution to the welfare board is low.¹⁶ If there are inspections, they give a day's leave to the workers. In case of accidents or injuries on sites no one takes responsibility for the treatment. If a death occurs, a big contractor might give some compensation to suppress the matter, and the workers said that a construction worker working alone on a site without a family and facing grievous injuries is most vulnerable to such suppressions.

Janaki, who came to Delhi with her husband and has worked on construction sites throughout her adult life informed us that in large sites they could make disposable toilets. But in smaller sites, there are neither creches nor washrooms. The houses built on the sites are of very poor quality and women's wages, always much lower than the men's are handed over to the man of the family (National Labour Commission, 2002). Umesh Singh and Ishwar, who have been with the NCC-CL movement from its early days said, 'Even in the metro construction sites, it is compulsory to build crèches and bathrooms. But they will put tins and a curtain and pass it off as toilet. When we work in houses which have been built or are being renovated and have running water, we cannot even use it for drinking or for going to the bathroom.' A worker can send his children to school if they can afford to take a house in a slum. Otherwise they shift from one site to another and older siblings take care of the younger ones. Babita (name changed to protect identity) said, 'During the constructions for the Commonwealth Games, most labourers were hired

like bonded labourers. There were instructions that they could not leave the site or speak to anyone. The contractors paid a lump sum to the workers' family back in the village and brought them here for three months.' A woman who had joined the meeting said, 'Caste discrimination was rampant on those sites. The wages were lower for the lower caste and their children would eat separately.'

The Delhi government collected a cess of INR 1536 crores from 2002 till 2016 (though it should have collected more) but spent only a little more than 10 per cent of this, INR 174.71 crore (*Newslaundry*, 2016). The AAP government has recently decided to divert INR 1000 crores from the welfare cess the government collects at the sites to build schools and hospitals which makes the workers' fate worse (*Times of India*, 2016).

2.3 Social Vulnerability

While mapping both occupational and residential vulnerability, we have seen that the social standing of a person often makes the experience of negotiating the city more cumbersome. Gender, caste, religious identity and disability often determine a person or household's access to urban space as well as the more abstract space of the labour market. If vulnerability is conceived as the risk to slip into poverty, it is imperative to engage with the social identities of a household or an individual, to effectively recognize and analyse the multi-dimensionality of the lived experiences of marginalized subjects. Intersectionality is useful to conceptualize the simultaneity of multiple identities (Crenshaw, 1989) that make one vulnerable.

Most interviewees shared that they migrated to urban areas, to escape limited employment opportunities in the native villages. But the social identities in rural areas continued to shape their livelihoods and lives in urban areas. Research has shown that disparities have endured in India across social and religious groups due to differentiated and

unequal access to skill and education (as well as land and capital endowments) and (lack of) occupational mobility (Thorat, 2010). It has also been shown that urban male workers from 'SC, ST, OBC and Muslim communities earn disproportionately lower than what is consistent with their education and experience' (Singh and Husain, 2016). While their occupations are already low-paying, they earn even less than the market rate in these occupations.

Here, social vulnerability is discussed along three axes—disability; gender, i.e., the experience of being a single woman; and the Muslim identity. These case studies attempt to dismantle the 'universalism' (Nash, 2008)¹⁷ of residential and occupational vulnerabilities, revealing the heterogeneity of vulnerability depending on one's social location.

2.3.1 Disabled People

The United Nations Convention on the Rights of Persons with Disabilities, 2007, interprets disability as an 'evolving' concept, one that is born out of an interaction between the physical condition and the social barriers a person suffering from such a physical condition faces (Fremlin, 2015). The treatment of the medical condition, though of paramount importance, must be seen as aligned with addressing the social stigma that comes with it. The medical condition, as evident in several interviews with disabled people from different age groups and parents of disabled children, is less crippling in a city like Delhi than in rural areas or even small towns. State negligence, however, in providing proper education, public infrastructure and jobs excludes people from equal opportunities.

Social marginalization leads to exclusion from accessing health care, education, or employment leading to poverty, which in turn results in restricted access to safe housing and food, health care and so forth (Groce et al, 2011). In the *Vikalangbasti* (colony of the disabled) near the

Jawaharlal Nehru Stadium, which houses about 450 households (about 1000 people), most people are disabled and earn their livelihood by seeking alms. Only around 10 per cent households have ration cards. The case of the Viklang *basti* shows how disability is made even more challenging by state apathy (Mander and Manikandan, 2011). 26-year-old Gaurav lost his eyesight after Class 12 when a fever affected his brain. Growing up in a poor family of a single mother and other siblings, he eventually started computer classes and plans to apply for admission in a college for distance learning. 'I had only heard about disability. Now I know what it means. Sometimes I stand at bus stops for an hour because no one tells me what bus number is approaching. One day I asked the conductor to drop me at Nehru Place, and he dropped me at Nehru Nagar instead. I reached home at 10 at night,' he recalled.¹⁸ He explained that he gets a pension of INR 1500 from the government and a bus pass from the terminal on showing the disability certificate, but all he wants are options for a full-time job. He says his family has never let him feel impaired, but the lanes in the slum are so narrow that stepping out alone is difficult.

Rakesh, who has a locomotive disability since childhood, and is from the same slum in Govindpuri has a similar complaint. He says that there is no way a wheelchair or a crutch could be used in the slum. Even in school there were no ramps or lifts and often it would be difficult to attend a class on the third or fourth floor. Till the fifth standard his mother had to carry him to the school. Though the government has reserved quotas for the disabled in jobs, they are not serious about maintaining it. 'This time, my seat for the exam for a railway job was in Rohini Sector 6, 40 kilometres away from my house, even when I had attached my disability certificate and my address with the application,' said Rakesh.

Rupin, who manages a disability helpline for an NGO in Delhi, informed the researcher that they

get 7–10 calls a day, mostly from lower middle class or poor households. Most of the callers are concerned about their child's school admission or about entitlements like pensions. He said that unlike in rural areas, the urban poor in Delhi do not always stay permanently in one location. Running prolonged awareness programmes, therefore, becomes more difficult. 25-year-old Shabana pointed out that schools are not easy for such children. She, as a child, was almost never helped to go to the toilet as the teacher would not be supportive in such matters. Because of limited mobility, she chose to educate herself through a correspondence course for college. Though she might get a job in the future, she is worried about travelling to the workplace everyday. She complained that most of her seats for university examinations were in faraway colleges. In one of the examination centres, disabled students were made to sit separately, which was an insulting experience for most. When asked what she would want from the government besides a pension, she said, 'I don't even want pension if I get a job. That pension money does not even cover my medicines. I would prefer to work and earn on my own. What I want is that the government create conditions that allow for us to work.'

2.3.2 Single Women

The institution of marriage and family has been given so much importance in Indian society and its laws and policies that single women often have to face stigma in addition to solitude and poverty when there is no family support. One must acknowledge that single women are not just victims. Their decisions to either leave their husbands, often single-handedly running their families and bringing up their kids, or to not marry at all, exhibit their grit and agency. But being a woman and choosing to stay single often magnifies the gender discrimination that follows; single women are often looked at with pity, sympathy or as sexual objects. In an urban setting, with smaller nuclear families,

the experience of being single could be more difficult; but as most women we spoke to admit, it is easier to work and earn to live in one's own in a city than in their native villages. Cities, especially large urban areas have more single women or women-headed households (Khosla, 2009, p. 7). Unless backed by better human capital endowment, their participation in the labour market will continue to be on unfair terms. Poverty is higher in urban areas among female-headed households as compared to male-headed ones (Rustagi, 2006). Also, stigma and societal pressure make these women more vulnerable.

Kiran, a second-generation street vendor in the Lajpat Nagar Central Market, lost her husband to an illness a few years ago. As a child, Kiran used to stand at the car park to sell wares which she would put on car bonnets. After her marriage, she struggled with poverty in Gujarat—her husband had an unstable income and yet did not allow her to work. In 2005, she returned to Delhi with her children. She came back to Lajpat Market to work as a street vendor and paid half her earnings to her mother to stay at her house. Her husband came back to her after he gathered that she had started earning and they took a house on rent in a slum. She lost him soon after. However, even before her husband's passing, Kiran had learnt what it meant to be a single woman fighting to arrange food, shelter and education for her children. She said, 'People judge you even when you try to rent a house. So many men see you on the road and think ill of you. They tell you, "*Road pe baith ke kya karegi?* (What will you do on the road?)" They want to offer money and think you are available.'¹⁹

Jaishree in Shakurpur married outside her caste at a young age. The relationship turned out to be physically abusive and she returned to her *maika* (mother's house) in a few years. But Jaishree's mother, Kalyani, no longer welcomes her: 'I do not want Jaishree here. I did not get her married; she chose herself and must find a solution to this. I am

single and have brought up my daughters with much difficulty. If the elder one comes back, no one will marry my younger daughter.'²⁰ With a two-year-old child, and no one to support her, Jaishree finds it very difficult to work and earn without someone to take care of her infant.

Age and the inability to continue to work make single women especially dependent on their children or any support they can get from neighbours or relatives. A 70-year-old widow Antara (name changed) now lives with her daughter's family in Vasant Kunj. She said that even though she was being cared for, she wanted to have access to a pension to help her daughter financially and buy her own medicines. However, staying in the ragpicker's colony with not even a valid Voter ID card or other identity proof she has not been able to get her entitlements.

In conclusion, Kiran, Jayshree and Antara may all be clubbed together under the category of single women. However, once one considers factors such as age, mobility, area of residence, and the capacity to work, their experiences of Delhi could not have been more different.

2.3.3 Muslims

According to Planning Commission estimates, among religious groups in urban areas, the poverty ratio is highest for Muslims at 33.9 per cent, i.e., one out of every three Muslims in urban India lives below the poverty line. The Planning Commission while releasing its poverty estimates in March 2012 for the first time segregated its data into religious groups, along with the other usual social groups.²¹ But as Kalyani Menon rightly points out, it is more than economic impoverishment that a poor Muslim faces in a city like Delhi. Here, while 'the securitization of the state impacts everyday life in the form of metal detectors, security cameras, check points, identity verification and armed personnel policing public space, notions of security

are inflected by majoritarian understandings of nation and citizenship that position Hindus as the normative subject, while relegating religious minorities to the murky margins of the national imaginary' (Menon 2015, p. 114).

She (Menon) writes about Ameena Baaji who sees the *burqa* as an integral part of her religious practice. But she is forced to take it off when she comes out of her neighbourhood to see her doctor or else she is perceived as being 'dirty' or a 'thief'. Like many other major cities, Delhi also has its pockets of predominantly Muslim-inhabited areas like Jamia Nagar, Okhla, and most parts of Old Delhi which are derogatively called 'mini Pakistan' (Ahmad, 2016). In Delhi, Muslim 'ghettos' have emerged as a result of the Muslim minority community seeking a sense of security and belonging in numbers. An architect and urban planner, Sadiq Zafar writes, 'High population density, sub-standard housing structures, crowded streets, unplanned haphazard growth and encroachments make Okhla one of the most vulnerable residential pockets.... Basic issues like water supply, sewage and drainage, parking, waste collection and disposal and natural ventilation are some of the core issues which people face collectively at the grass roots' (Zafar, 2016).

This commonly observed segregation does not imply that Muslims do not live in mixed spaces in Delhi. As Mohammad Kaleem, who now lives in Shakur Basti and who had travelled to Delhi with other migrants from Uttar Pradesh long back to work in a construction site said, 'When we came it was a mix of people from different religions travelling for work. So even today after 35 years, this settlement has a mix of Hindus and Muslims staying together. Here it is different from Old Delhi; people are daily wage labourers here and discrimination based on religion is not common.'

But difficulty in finding jobs in such mixed places is commonly experienced by Muslims. Hafeez (name changed), a street vendor in Lajpat

Nagar, left his native village after he lost his father at a very young age and came to Delhi to stay with his uncle. He was not put into any school and started working as an air conditioner mechanic for cars. But because of the seasonality of the job and the low income, he came to Lajpat to sell wares. 'All other shopkeepers and even vendors would say "Yeh Musalman hai" and refuse to give me any space to work.' Access to labour markets is also limited by access to education. One fourth of Muslim children in the country go to unrecognized schools; only 15 per cent are enrolled in English medium schools and only 4 per cent in *Madrasas* (Singh and Husain, 2016, p. 43).

Exclusion in both occupational and residential spheres in such cases is deeply rooted in prejudice against and the marginalization of a religious minority.

3. Best practices

A lot of efforts are being made across the world by community-based movements and civil society organizations to improve the lives of the urban poor. However, the two examples below are not just about improving living conditions and catering to their needs, but about empowering the poor, aiding them for what is rightfully theirs: a place to live and work with dignity in the city. The first example is of a new law for the protection of street vendors while the second one is of an initiative led by a non-governmental organization to strengthen the fight of the poor for better rights.

- a. Legitimization of street vendors: The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Bill 2014, referred to earlier, is a laudable legislation that rescues street vending from the perception of being a nuisance and protects the livelihood of lakhs of vendors in the country. The law prescribes the formation

of the Town Vending Committees (TVC) at the municipal level, though the criterion for issuing street vendor licenses is based on various criteria which are not specified in the Act. The TVC is supposed to comprise street vendor representatives (40 per cent of the TVC), planning and local authorities, local police, the Municipal Commissioner, Resident Welfare Association and other trader associations. The Act provides for a certificate of vending which proves the legitimacy of street vending as a profession. Chapter VII of the Act prevents harassment of any registered street vendor, which is the most important concern of the vendors. But the penal provisions in the Act give immense power to the local police and municipal authorities. Any breach of the law can lead to a cancellation of the certificate. Additionally, the formation of the TVC itself needs a survey of all vendors which is very difficult. Moreover, the Act says the vendors cannot have any other profession, which is an unfair demand given that the income is poor and volatile (Pariroo Rattan, 2015). Such provisions coupled with the poor implementation of the Act have not provided much relief to the vendors. However, the Act has to be treated as a step in the right direction for legitimizing the profession of lakhs of people in India.

- b. Training community para-legals: The United Nations had estimated that 4 billion people live outside the protection of the law. Community organizations could help people with legal training to empower them to understand and use the law for collective rights. Training community para-legals from low income groups in the urban context has been practised in several countries which empowers the community to navigate the legal system. The poor in urban India

constantly battle state structures which treat them as illegal/criminals/encroachers. Though India offers legal aid in the judicial system, the system does not favour the weaker group and the police-lawyer-judiciary nexus often renders the poor vulnerable. As Namati, which builds grassroots legal advocates within the community explains in a report, the effort must treat people not as victims who require technical expertise, but those whose participation in the legal process must be enhanced. In a research evaluating 199 cases of providing legal services through community para-legals, 191 had positively impacted citizens, and 111 had led to an increase in legal knowledge and the willingness to act, and facilitated actual action. The most prevalent change noticed is the ‘increases in the agency of participants—both willingness to act and actual action—as well as enhanced legal knowledge (Goodwin and Maru, 2014).

In Chile, government-aided NGOs, central and local government agencies, the Justice departments and many young professionals are involved mainly in training young para-legals from low income groups. Many community leaders have also been trained to become local legal leaders (UN-Habitat) and this has been included by the UN-Habitat as one of the best practices for access to land rights for the poor (United Nations Human Settlement Programme, 2003), something which is of prime importance in urban India. In India, this has been tried by the organization Namati in Gujarat, which has a presence in 10 countries working on similar lines. It helped people in the small industrial town in Vapi, Gujarat, to file a complaint with the Gujarat Pollution Board against industries for dumping waste in the river. The board in turn issued a notice to 53

factories, asking them to abide by the law or shut down (Vijayann, 2016).

This model could be extended to other urban areas in India, however, instead of just depending on non-governmental organizations, the government must aid legal training and certification and training of para-legals under its skill development or urban development programmes to empower people to fight for their rights.

4. Recommendations

Policies and programmes in India need to respond to India's urban poverty challenges from a human development perspective. The starting point for this must be an acceptance of the presence of the urban poor in the cities. As of now, there are categories of urban poor, whose very presence is considered illegitimate by the city authorities, by denial of recognition of living spaces, denial of access to basic services, hostile working conditions through harassment by the police or municipal officials, etc. Government programmes such as Basic Services for Urban Poor (BSUP) and Integrated Housing and Slum Development (IHSDP) have been started for them, specially by the GoI, but only half-heartedly. These are marred by inadequate allocation and even lower expenditure, as city municipalities are engulfed in their obsession with smart cities, air-conditioned shopping malls, five-star hotels, and housing for the elite. Construction of these facilities for the elite creates jobs for the poor, who migrate from the countryside and live and work in inhuman conditions to earn a livelihood. Their earnings are not sufficient for them to find shelter and satisfy basic human needs in an oppressive market with little governmental intervention. Neither are the poor able to exert pressure on municipalities to give them any priority as they are not organized politically. Therefore this chapter argues that initiatives to provide essential basic amenities

to the urban poor must come from the GoI and state governments, who need to ensure that municipalities are empowered and incentivized to do justice to the poor.

The major recommendations for improving the conditions of the urban poor are:

1. Redefine urban poverty to consider both per capita expenditure and civic services while accounting for the urban poor. Migrants must be recognized by the government for the provision of subsidized food, healthcare, schooling, and services.
2. Urban housing shortage for the Economically Weaker Sections (EWS) stands at 56 per cent and the Low Income Group (LIG) households at 40 per cent (*Firstpost*, 2014). It should be obligatory to reserve 25 to 40 per cent of land in city development plans for the new social housing stock to accommodate the future inflow of poor migrants. Heavy taxation on unoccupied land or flats could be used as a deterrent to speculation.
3. The government must provide financial incentives to the states for the implementation of laws that protect informal workers, such as the law for protecting street vendors. Ragpickers, rickshaw pullers, construction workers, etc., must be issued job identity cards to allow them to work without police harassment.
4. Provision of basic water and sanitation should be de-linked from issues of land tenure and legal status. This basic service should be extended to recent and temporary/seasonal migrants as well. These services should be provided on the clear understanding that this provision does not automatically translate into legal entitlements in other spheres, especially with regard to legal rights to the land and/or dwelling space.

5. All health posts should provide outreach services to slum and slum-like areas. Special provisions should be made for providing health services to pavement dwellers and temporary settlements.
6. The improvement of affordable public transport must be made a priority by the state government. Buses ply most passengers in the urban centres, and a megacity like Delhi must focus on making its bus fleet numerically and technically adequate to deal with the pressure of transport. Buses of even small sizes could be considered, though at higher costs (number of passengers less with number of staff employed remaining the same), to be plied on narrower roads.
7. A survey of multiple workers in the unorganized sector, similar to what the Street Vendors Act aims at, and issuing of identity cards to recognize various categories of work like ragpicking, construction work, home based work, etc. One should be aware however, that such implementation of a process of identification of workers should not lead to more exclusion of workers, like already discussed in the case of street vendors.

Notes

- 1 Subaltern urbanization, as the authors define it, 'refers to the growth of settlement agglomerations, whether denoted urban by the Census of India or not, that are independent of the metropolis and autonomous in their interactions with other settlements, local and global.'
- 2 Authors argue that Gurgaon, in Delhi's periphery, could be an example to see how the nature of growth of an urban centre changes over time. While the initial growth of Gurgaon (the municipality has grown by 15.9 per cent annually from 2001–11) could be dependent on Delhi and its investment in the Maruti automobile factory, today it owes much of its expansion to its modern service sector and manufacturing sector not dependent on Delhi. So its urbanization to a great extent is independent of being peripheral to Delhi.
- 3 Definition by Ministry of Statistics and Programme Implementation:
Regular wage/salaried employee: Persons working in other's farm or non-farm enterprises (both household and non-household) and getting in return salary or wages on a regular basis (and not on the basis of daily or periodic renewal of work contract) are regular wage/salaried employees. This category not only includes persons getting time wage but also persons receiving piece wage or salary and paid apprentices, both full-time and part-time.
Casual wage labour: A person casually engaged in other's farm or non-farm enterprises (both household and non-household) and getting in return wages according to the terms of the daily or periodic work contract is a casual wage labour. Usually, in the rural areas, one category of casual labourers can be seen who normally engage themselves in 'public works' activities. The concepts related to 'public works' are discussed later in this chapter.
Accessed at <http://mail.mospi.gov.in/index.php/catalog/143/datafile/F5/V206>.
- 4 Note how percentage of population under two categories often match to the decimal. For example, both resettlement and regularized unauthorized colonies have 12.72 per cent while both rural villages and unauthorized colonies comprise 5.3 per cent of the population. This is highly unlikely and points to the quality of survey conducted to reach the mentioned figures by the government.
- 5 Approximately 200 night shelters are being run in Delhi in 2016, under the Delhi Urban Shelter Improvement Board, in collaboration with NGOs.
- 6 FGD on 22 August 2016, Kashmiri Gate, New Delhi. All quotes used in this section are from a part of a focused group discussion held on the same day and told to the author directly.
- 7 Elsewhere, DUSIB has also stated that there could be 30 lakh people living in six lakh jhuggis, while admitting that none of the numbers are based on door-to-door surveys or a systematic census.
- 8 A pre-school shelter which was started by the Indian government in 1975 as a part of Integrated

- Child Development Services. It provides health and education services to children between 0–6 years and nutrition supplements like contraceptives, maternity nutrition, etc.
- 9 FGD on 17 September 2016, Shakur Basti, New Delhi. All the quotes in this section are from a focused group discussion as a part of primary field work on the same day, and told directly to the author.
 - 10 Interview on 22 September 2016, Shakurpur, New Delhi. All the quotes in this section are from a focused group discussion as a part of primary field work on the same day, and told directly to the author.
 - 11 Interview on 20 September 2016, Lajpat Nagar, New Delhi. All the quotes in this section are from a focused group discussion as a part of primary field work on the same day, and told directly to the author.
 - 12 The incident was also reported in the *Times of India*, Lajpat Nagar street vendors protest against eviction. 7 September 2016.
 - 13 The Code of Criminal Procedure was amended after Supreme Court rules were set out to prevent custodial torture in the case of DK Basu vs West Bengal in 1997. A medical examination right at the beginning of taking someone into judicial custody is mandatory so that injuries caused during judicial custody can be determined later. Also, such a medical test has to be carried out every day while someone is in judicial custody. For more details on the rules, see <https://counterview.org/2016/12/19/deaths-in-custody-could-be-prevented-if-police-follow-rules-designed-to-deter-mistreatment/>
 - 14 Interview on 21 September 2016, VasantKunj, New Delhi.
 - 15 The Delhi Building & Other Construction Workers Welfare Board is constituted under the chairmanship of the Ministry of Labour, Delhi which is responsible for financial assistance and welfare schemes for construction workers. Under the Building and Other Construction Workers' Welfare Cess Act, all organizations carrying out construction projects need to pay a labour cess to the government for it to carry out welfare activities, like providing healthcare benefits, ration cards, mobile creches and mobile schools to the construction workers. Once workers are registered they are issued identity cards and passbooks to avail of the benefits.
 - 16 Pitampura Sudhar Samiti vs Government of National Capital Territory of Delhi (CWP 4215/1995).
 - 17 Interview on 14 September 2016. All interviews in this section were conducted between 14 September 2016 and 15 September 2016.
 - 18 Interview on 20 September 2016, Lajpat Nagar, New Delhi.
 - 19 Interview on 22 September 2016, Shakurpur, New Delhi.
 - 20 The poverty ratio in urban areas is particularly bad for Muslims in states like Rajasthan, Uttar Pradesh, Bihar, Gujarat and West Bengal (Planning Commission, 2012).

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Basket Burning by safai karmacharis at Jantar Mantar, New Delhi – a symbolic act of defiance to push the demand for elimination of manual scavenging.

Photo Credit: Safai Karmachari Andolan

The Long March to Eliminate Manual Scavenging

*Bezwada Wilson and Bhasha Singh**

‘For ours is a battle not for wealth or for power. It is a battle for freedom. It is the battle of reclamation of human personality.’

—*Dr. B.R. Ambedkar*
(Vundru, 2013)

We would like to begin this chapter with some difficult questions, perhaps at the risk of making you, the reader, uncomfortable. Why are the Indian government and even the media and civil society quiet about the death of more than a thousand of its citizens (Thomas, 2016)? People are being killed in sewer and septic tanks every day and yet, so far there has been no relevant discussion by policy makers, in state assemblies or the Parliament. By the time you are reading this essay, this number would have increased multifold. What could be the reason for this apathy and indifference? Is this because all who die in sewers and septic tanks are Dalits? Why is it that even amidst the rhetoric of development and progress in 2017, 1.3 million (*FirstPost*, 2016) Dalits in India, and mostly women, are forced to manually clean human excreta? Why does the country allocate a budget of INR 16,248 crore¹ for the Swachh Bharat Abhiyan while it has only INR 5 crore to spare for rehabilitation of manual scavengers, as per the Union Budget for the fiscal year 2017–18? Why is India unable to invest in finding a technology to clean sewer septic tanks without endangering human life? These are serious

* Review: Usha Ramanathan

questions that the Indian democracy must answer.

The observations and arguments in this chapter are derived from decades of first-hand experience of having lived and worked within the scavenging community. Through the chapter we will highlight the ground reality and everyday experiences of people who are dependent on manual scavenging for their livelihood. The lives of scavengers in every aspect are defined and governed by livelihood ‘choices’ which are a direct consequence of the caste group they are born into and die a part of. The chapter will focus on the extent and nature of the problem of manual scavenging and describe the struggles that have taken place against it in an attempt to ensure an ultimate goal of elimination. Before delving in to this we want to emphasize that this aim to eliminate manual scavenging is linked with the process of annihilation of caste as visualized by Baba Saheb Bhim Rao Ambedkar. It is from Ambedkar that we, the Safai Karamchari Aandolan (SKA), draw our energy, strength and intellectual clarity. Our vision can be summed up with the following words—

We shall struggle and build solidarity to reclaim our dignity, equity and human personhood. Through eradicating manual scavenging we will break the link imposed by the caste system between birth and the dehumanizing occupation.

(Safai Karamchari Andolan)

Introduction

Why are People Dying?

Most people act ignorant when faced with the issue of manual scavenging. People have often asked us in surprise, 'Are there human beings who carry other people's excreta even today? Where are these dry latrines?' These questions are often followed by an emphatic statement that they have never been witness to the act of manual scavenging. This speaks to a convenient blindness as the Indian Railways, prominently visible and public, is the largest employer of manual scavengers (*IndiaSpend*, 2015). Coaches are fitted with dry latrines from which the shit that drops onto the railway tracks, has to be manually cleaned. This denial, real or feigned, of the existence of scavenging speaks volumes about our cultural tuning and caste bias, where despite clear evidence, people cannot face the reality.

Similarly, sewer and septic deaths are not taking place in un-inhabited locations but in the midst of so-called smart cities, metropolitan cities, small towns and even in the National Capital. It is a national phenomenon. The post-mortem reports read the same for each death—gas filled in choked sewer lines or septic tanks killed the victim. Since the noxious gas is fatal, death is instantaneous. No great amount of analysis is required to see that methane gas is a killer, and yet, fellow Dalit citizens are hired for such jobs without hesitation.

The deaths of sewer workers with no one being held accountable, and the denial of justice has pushed the SKA to include the issues of sewer-septic workers within the larger ambit of the struggle against manual scavenging. This view has found some validity in recent legal and policy decisions. The Supreme Court, in a judgement in 2014 stated that in order to completely abolish the practice of manual scavenging, rehabilitation would have to take into account the issue of sewer deaths. This judgement first set up the grounds to bring the group of persons who were traditionally forced to

clean septic tanks, sewers and open drains, under the ambit of Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012. The Manual Scavenging Act, when passed in 2013 was passed with this clause, defining the employment of people for 'hazardous cleaning' as criminal. The caveat in the Act is that 'hazardous cleaning' refers to the employment of sewer workers without 'prescribed protective gear'.

According to the Supreme Court judgement (*Safai Karamchari Andolan & Ors v. Union of India & Ors.*, 2014) dated 24 March 2014, no human being should be allowed to enter into sewers or septic tanks for cleaning. The judgement says—

If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:-

Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of INR 10 lakhs should be given to the family of the deceased.

No steps to implement this judgement have been taken yet. Even at the time of writing this essay, we were informed that three people had died while cleaning underground drainage in Cuddalore (Tamil Nadu). The Cuddalore incident occurred on the heels of other similar deaths in Vijaywada, Bangalore, Mumbai. The list is endless.

We are very clear in our mind that we are not fighting for any protective gear or safety belts—we want that no human being belonging to any caste should have to enter sewer-septic tanks for cleaning. It is simply a big NO.

The struggle for survival of women like Penchamma is not getting registered on any platform, despite such deaths being reported even from the National Capital, Delhi. On 11 November 2016, 30-year-old Chandan, who was working as a

Box 1**Penchamma's husband died in Chennai while cleaning a septic tank. She calls it a murder.**

Penchamma was very straightforward. Her husband, Malakondaiah, was 48 when he died cleaning a septic tank in the Stanley Hospital area on 16 July 2014. 'This society doesn't consider us humans,' she said. 'It pushes us to the gutters to clean its shit. My husband died and you all are responsible for that. Who killed him? He didn't die of any illness. He was not killed in an accident. He was murdered.' She goes quiet for a moment, brings out a bottle of water from her bag, takes a few sips and starts again, 'This is a cold-blooded murder and the culprits are roaming free... trying to push another person into the pit of death. Neither these killings will stop, nor will the murderers ever be caught.' She was talking without any grief or anger in her voice. 'They had to get their septic tank cleaned and for long they were coercing my husband to do that. That day, they caught hold of him when he was returning from work. They took him along from the way. I was at work and had no idea whatsoever of his whereabouts. While I was returning home, I saw some commotion on the way. People were shouting. Seeing the crowd, I stopped by to find out what's happening... Oh my God! He is my husband. He was still breathing but he never opened his eyes again. When the police came and enquired about what happened, the house owner just said that this man was drunk and was desperately asking for work. He was pressing us to give the work of cleaning tank to him. We thought of helping him... and this happened. Just imagine! My husband was dying of poisonous gas in a septic tank of their house and here they were talking so shamelessly! They were the ones who pushed him in their shit and just turned the blame upon him even before he breathed his last!

'What should I do? Whom should I catch hold of? Today elders are saying that there is no "man" left in the house. How will we live? I say, it's not just matter of compensation. Even ten million will not be enough to bring back the father of my children. My husband died just a few days back. I have stepped out of the house after that for the first time, to come here and just say that these killings should be stopped forthwith.'

Source: Extracted and translated from a book called *Thavikkapattavarkal* authored by Bhasha Singh

housekeeper in Vasant Kunj Square Mall died while cleaning the septic tank in the mall. Another man, Israel, got injured in the incident and is currently in a coma. Chandan Daloi was a migrant from Sundarban area in West Bengal. His wife Putul, who is hardly 24–25 years old, and her eight-year-old son Alok Daloi are now struggling to survive. In the whole Bengali Mohalla of Masudpur Dairy 39, no one was aware of the 2014 Supreme Court judgement or The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, both of which clearly define the work

of cleaning sewer-septic tanks without adequate protective gear, as illegal. Though the SKA is trying to help bring their families justice by intervening, the criminal silence that prevails has made our work all the more difficult.

1.2 What is Manual Scavenging?

According to the 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013' (Ministry of Law and Justice, 2013) a manual scavenger is defined as:

...a person engaged or employed,... by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression 'manual scavenging' shall be construed accordingly.

Manual scavenging describes any task that involves carrying, cleaning, or dealing with human excreta with only hand tools or bare hands. Manual scavengers, or *safai-karamcharis*, are employed to clean dry latrines (toilets not connected to a disposal system), railway tracks, streets, septic tanks, or sewers. It is also carried out in private latrines and in community latrines built by governmental and non-governmental organizations. In most parts of North India where there are community toilets, these are not dry latrines. However, in South India community toilets are under the aegis of the panchayat or the municipality and are often built as dry latrines to save cost. Manual scavenging is generally one of two types: first, the cleaning of dry latrines, where the work of the manual scavengers is to gather human excrement in a bucket or some vessel and then throw it at some fixed place; second, the cleaning of septic tanks (or sewage pits) which function as the means of waste disposal for toilets in people's homes or in municipalities. The work of cleaning tanks full of excrement is done at night and often people are hired collectively for this purpose. Both men and women clean tanks, whereas the dry latrines in houses and public places are generally cleaned by women. This practice, where it is still continuing, has developed according to local needs or customs.

Manual scavenging is, in absolute terms, a caste-based occupation, gendered in nature, and finds

its roots within aspects of Hindu philosophy and religious practice. As the caste system has evolved, it has permeated all religions but it can still be found in its worst and most discriminatory form within Hinduism. The casteist practice of scavenging, whereby the burden of cleaning human excreta rests on Dalits has over the years been legitimized institutionally and continues to be propped up by the political classes and the government, as society cannot be bothered to find a way of managing its own shit. This barbaric system whereby a community is tasked with cleaning human excreta proves to be a cheap and convenient sanitation solution at the cost of the dignity of life for millions. Cleaning human waste is considered ritually 'unclean' or 'impure' as is any association with animal and human death, or even with menstruation. Jobs around these physiological processes such as burning bodies at funeral pyres, skinning and tanning of animal skin, midwifery are a few of the many other tasks assigned to the most discriminated, even within Dalit castes. From its emergence to its continuance, the practice of manual scavenging has an obnoxious link with the existing caste and patriarchal systems. We believe that unless there is concerted and direct attack on these exploitative and discriminatory structures, it is impossible to eliminate manual scavenging in all its forms.

The *safai-karamchari* (s/he who cleans) community is divided into different castes and religions all over the country. They are diverse and take pains to establish their unique identity. They all belong to Dalit castes, but are in a race to establish themselves as slightly superior to others. This complex manipulation of one's identity is indicative of how deeply the *Manusmriti* has penetrated our society.

Within those who follow the Hindu faith, examples of castes whose members are employed as manual scavengers are Bhangi, Balmiki, Mehtar, Lal Begi in the North; Har, Hadi, Dom, Sanei in the East; Mehtar, Bhangias, Ghasi, Olgana, Zadmalli,

Barvashia, Metariya, Jamphoda and Mela, etc., in central and west India; and Mukhiyar, Thoti, Chachati, Pakay, Relli in the South. However, untouchability and this labour segregation on the basis of caste is not limited to the Hindu faith. The Helas in Madhya Pradesh, Halakhors in Bihar and Uttar Pradesh are Muslim caste groups employed as

scavengers. Similarly even Christian Dalits are part of the same occupation.

It is important to understand that the associations of impurity imposed on a caste are socially and culturally entrenched. Therefore, where the struggle is against caste oppression, a change in

Box 2 **What's in a name?**

'Dabbu-wali' (Bengal), 'Balti-wali' (Kanpur), 'Tina-wali' (Bihar), those doing 'kamai' work (Lucknow and north India), 'Tokri-wali' (Haryana and Punjab), 'Thottikar' (meaning 'dustbin', in Andhra Pradesh and Karnataka), 'Paaki' or 'Peeti' (meaning 'excrement', in Orissa), 'Vaatal' (in Kashmir)—there are as many names as localities.

All these names arise from the work they do. These are not caste names; these are manual-scavenging Dalits who are known by the names of the tools they use to clean human excrement with their hands. Just listening to these terms brings an expression of contempt on the face of civilized society, but these names are stuck to living men and women, to human beings. These terms have become their identity, and they have mostly forgotten their real names. Members of the houses they work in all their lives don't know their names; they just recognize them by the upper part of their faces. In case they need to address these women, they use the tainted term particular to the state or locality they are in, be it 'Thotamma' or 'Balti-wali'.

In Anantapur of Andhra Pradesh, sixty-year-old C. Narayan Amma got used to the sound of her name only in her fiftieth year. From the age of fourteen or fifteen she had only been addressed as 'Thottame' (manual scavenger). In her daily routine of cleaning communal dry latrines from early in the morning till afternoon, she would constantly hear this call, 'Hey, Thottame, clean here, hurry up.' So for a long period of her life, she remained nameless, and when the people of the organization began addressing her by her real name she took quite some time to get used to it. It was not surprising that in the locality where she worked for so many years, no one knew her name until 2010. The dry latrines there were destroyed under Narayan Amma's leadership. But even after all that ruckus, no one knew that she was Narayan Amma.

'Across the country, our bastis [slums or localities in which the scavenger community lives] are also referred to by the same names—gandibasti, valmikibasti, vatalmohalla, etc., and entrances are separate so that household members can avoid any contact with the scavengers.'

Source: Extracted from B. Singh, *The Truth about India's Manual Scavengers* and H. Mander, *Unheard Voices: Stories of Forgotten Lives*.

a person's economic situation cannot be an end in itself. While the rehabilitation package has been designed to provide some monetary support to manual scavengers who leave the work behind, this has to be seen as a stopgap measure. Loans and subsidies to encourage entrepreneurship also run the risk of reaffirming the same caste barriers instead of helping break out of them.

As a part of the India Exclusion Report this chapter will attempt to unpack 'manual scavengers' as a vulnerable group—explore the causes of this vulnerability, and the consequences of the same. The chapter also looks at what attempts there have been to address this vulnerability. On this point we would like to state at the very outset that manual scavengers form a unique category of vulnerable group as the very existence of this group is unconstitutional and needs to be challenged. We therefore want to reaffirm that any amount of effort by the government to make scavenging safer and healthier cannot ensure a dignified life for people engaged in such dehumanizing work as cleaning human filth. Furthermore the exclusion of manual scavengers from basic services and guarantees is intrinsically tied to their caste identity and livelihood. The chapter will highlight the issue of sewer-septic deaths that has brought these workers and their right to life to the forefront of the struggle in recent years. In this context, the chapter will also touch upon the 'Swachh Bharat Mission', the government's programme aimed at making India 'open-defecation free', and providing every household with a toilet. The chapter will look at what this drive and programme means for today's safai-karamcharis.

1.3 Sewer Workers under the Ambit of Manual Scavenging

The recurring incidents of sewer-septic deaths in recent years that have been referred to in an earlier section, have stretched the scope of the SKA beyond the issues of manual scavengers defined in

the traditional sense, to encapsulate the issues of sewer-septic workers as well. Sustained struggle by the scavenger community and the changing sanitation infrastructure across India, are two among many factors that have resulted in the current situation where there are less functional dry latrines today. Dry latrines are easier to destroy than manual scavenging however, which is deeply rooted in a socio-political culture of caste oppression and untouchability. Rather than being abolished, the nature of manual scavenging has therefore adapted to the changing times. Today, the members of the same scavenging communities are employed as sewer-septic workers to clean the same human shit.

To draw this parallel is not to claim that the experience of manual scavenging and cleaning sewer-septic tanks is the same, or that they should even be compared. For one, while manual scavengers, as described in the rest of the chapter are largely women, sewer and sanitation workers are both men and women (mostly men). The nature of work also differs as do the conditions of work and nature of employment contracts. Furthermore, while manual scavenging has come to be recognized as unconditionally illegal, sewer-septic work has not. The position of the SKA however, is clear—the unimaginable hardship and indignity faced by a manual scavenger in every sphere of her life is intrinsically linked with scavenging work and the caste she is born into. Her life cannot improve unless she is able to leave the life of scavenging behind. We believe that the same argument can be made of a sewer-septic worker who is also trapped in this line of work because of the caste he belongs to. While delving into every aspect of the lives of sewer-septic worker is outside the scope of this chapter, we would like to highlight the issue of sewer-septic deaths which is one that highlights the extent of government negligence and complicity in crimes against safai-karamcharis.

There are a range of causes of sewer-septic deaths. It is very rare for sewer-septic workers to reach the age whereby they become eligible to receive old age pensions. If they do not die due to exposure to methane gas and drowning in human excreta while cleaning sewer-septic tanks then they are killed by other diseases at a young age. Mani, a sewer-cleaner in Coimbatore poignantly commented,

'Every time I enter the sewer, before sucking air into my mouth to hold my breath, I recall my daughter's face. She has always been lucky for me. Even if I don't come out alive, at least I'll die with her image in my mind' (Mani, personal communication, 20 January, 2014).

People who clean sewer-septic tanks cannot work without being intoxicated. Renu who cleans septic tanks in Patna once said, 'It is impossible to pick up a bucket of excreta without filling one's mouth with tobacco. The stench makes you throw up.' Perumal from Coimbatore who cleans septic tanks corroborates,

'We would not be able to cope and keep doing this work without getting drunk. It is not only the stench but the large number of cockroaches and other insects also creep on our bodies while we clean. Intoxication becomes a necessity for us' (Perumal, personal communication, 21 January 2014).

Box 3 **BhimYatra**

We launched a nationwide campaign against these deaths and we had a simple demand from the government—STOP KILLING US!

BhimYatra was launched on the 125th birth anniversary of Dr B.R. Ambedkar and set off on 10 December 2015. It travelled across the country for 125 days, travelling more than 30,000 kilometres and reaching more than 500 districts in 30 different states. On 13 April 2016, the eve of Ambedkar's birthday, they gathered with allies at Jantar Mantar, Delhi, in order to summon fellow citizens to stand with them in their struggle. People from the community participated in the Yatra and it received huge support from civil society. Women who lost their loved ones in sewer and septic tanks came forward and shared their agony and anger. It was the first churning in the community on this issue. An unprecedented call was sent out: STOP KILLING US IN SEWER AND SEPTIC TANKS! Earlier in 2010, SKA had organized the Samajik Parivartan Yatra to push the agenda of elimination of manual scavenging. We are sharing the experience of BhimYatra to emphasize that the scavenging community is fighting hard to come out of this casteist practice of dooming safai-karamcharis in filth and death. But the policy makers and political representatives have not even started thinking about this problem yet. Due to their criminal silence there have been so many deaths, which for us are nothing short of political murders.

Source: Authors' own description of the Bhim Yatra organized by the SKA.

2. Unpacking Vulnerability

2.1 Perpetuating Untouchability

Untouchability is banned by the Indian constitution but it continues to persist even after seven decades of independence. Not a single village or city escapes its horrifying shadow. Some of the worst victims are manual scavengers; all of them fall under the category of untouchables. Untouchability destroys their basic human right, to even dream of a life with equality and justice. Women scavengers have to face the worst kind of exploitation and mental trauma—their movement, entry into the job market and many other aspects of their life are restricted as a consequence. Many women who want to leave this livelihood are not allowed to do any other work. We have encountered thousands of such cases of liberated women scavengers who have tried to move on to a more dignified livelihood, but have been rejected by society because of their caste. Geeta Devi of Patna for example managed to leave manual

scavenging and opened a tea shop but no one was ready to have tea from her hands. Despite this she continues to fight for her right to a dignified life.

2.2 Nothing ‘Decent’ about it

The ILO defines decent work (ILO, Guidelines for Producers and Users of Statistical and Legal Framework Indicators, 2013) as productive work that you can earn a fair income from that provides security at the workplace and social security for workers and their families. It is also defined as work that aids in personal development, social integration and allows for a freedom that can be expressed through speech, association and participation in decisions that govern your life. Decent work is also about equal opportunity. Manual scavenging is an occupation that does not manage to tick off even a single of the above categories. It is work that is a direct consequence of the caste system, a system of social exclusion. It is forced work that is deeply

Box 4 Untouchability

This was the only work that Saroj Bala had known since she was 13 years old. Like many other women in Ambala—a city of more than a million residents on the border of Punjab and Haryana—she would clean dry latrines in nearly a hundred houses each day. In return, she was given two stale rotis by many householders, and eight annas at the end of the month. Two years ago, when she finally left this work, she was being paid INR 10 in some homes, INR 20 in others. The women scavengers would enter the houses from separate entrances reserved only for them, and climb segregated staircases. Their employers would purify the floor with *gangajal* after they left. The women would collect the shit in baskets, and balance these on their heads as they trudged six times a day to the dump a kilometre away. People would shrink and cover their noses with the edge of their saris or hankies. The rainy season was the most traumatic, because the shit would slip through the baskets onto their hair and shoulders. They had to use separate public water taps, and even vegetable vendors sold them vegetables from separate carts.

Source: Resource Handbook for Ending Manual Scavenging, International Labour Organization, 2014.

gendered, pays little, and ranks amongst the most unsafe and dangerous occupations.

Manual scavengers are often asked why they don't just 'choose' a different profession. This question and the ignorance about how the caste system functions is infuriating. Narayan Amma, a symbol of the fight against manual scavenging, has now become an important member of part of the highest policy structure of the SKA. She fought a decisive battle against dry latrines in Anantpur in Telangana. She asks succinctly,

How can any person with a brain and all his/her senses think that the work of carrying others' excreta can be someone's chosen work? This work can never be a work of choice. If there was any other work then why would we do this? Lifting a basket of another person's excreta puts us in a position where we begin to see ourselves as less than human.

No poor Brahmin or member of any non-Dalit caste would ever even consider this job of scavenging, not even in a state of complete penury and starvation. This is where it is important to understand how basic one's caste is to one's occupation and livelihood. You cannot choose your caste because you are born into it and die within it. Your occupation is decided by your caste and your ancestral history as you can only continue to do what your ancestors have been doing. If you speak up against caste oppression then you risk losing your livelihood and often even your life. This is the vicious cycle in which the scavenger community is trapped. The livelihood of scavenging, ironically, is in fact the only security that the community has as there is no competition. As this inhuman work is forced exclusively on this community it has been internalized by them also, as their own work.

2.3 It's a Woman's Job

A report titled 'Cleaning Human Waste: Manual Scavenging, Caste, and Discrimination in India'

prepared by Human Rights Watch highlights that 95 per cent of the removal of human excrement from public streets and dry latrines is carried out by women. This is seen as one of the dirtiest forms of manual scavenging as the untreated human excreta has to be collected by hand. From the perspective of the toilet users, dry latrines are usually inside the home and the owners prefer that women enter to clean. On the other hand the safai-karamchari community is equally patriarchal and creates conditions whereby it is women who have to take up jobs that pay the least and are most looked down upon. The women get paid as little as between INR 10 and 50 every month per household, and sometimes as a bonus they are given stale leftover food and worn-out clothes.

A system called *jajmani* prevails in safai-karamchari communities that ties generations of women to the job of manually cleaning dry latrines. *Jajmani* loosely translates into ownership over the rights to clean a select number of dry toilets. These rights are equivalent to property rights and can be bought and sold, always in connection to the women of the family. Mothers-in-law often transfer their *jajmani* to their daughters-in-law. In times of crisis, these *jajmani* documents are also pawned to borrow money. The girls of the community are often betrothed on the basis of the number of *jajmanis* their mothers have and on the other hand the girl's family also enquires about how many *jajmanis* the groom's family has. Unless the bride's family is satisfied about the number of *jajmanis* it is difficult for the match to take place. 55-year-old Vimla Kumari from Lucknow, a woman who has now been liberated from scavenging, explains the practice as an example of the caste-based inferiority complex rooted deeply in the community's mindset. Her own experience was such that her father called off three different marriage alliances because he felt that the number of households the groom's side had were too few. It was his belief that a large number of *jajmanis* would guarantee that his daughter would

never sleep hungry, that she would at least find stale food with which to fill her stomach. This is not only Vimlaji's story, but a common story for many women whose job security and future is determined through this system of bondage. While the reduced numbers of dry latrines, and changing times has meant that this system is not as widespread as before it still exists and a woman's value is still assessed in the same way.

When thinking about how policies of government to eradicate manual scavenging have impacted women specifically, it is important to remember that most manual scavengers who clean dry toilets are women and therefore all policies targeted towards scavengers should be designed primarily keeping women in mind. Despite this, however, schemes aimed at rehabilitating manual scavengers are focused on an imaginary male breadwinner.

Corruption in the implementation of rehabilitation schemes has also meant that fewer women have benefited from these schemes, than men. Of the men, many are not and have not ever been manual scavengers. The problems with how the government has envisioned, designed and implemented its policies to rehabilitate manual scavengers have been elaborated on, in a later section.

2.4 Health, not a Luxury that we can Afford

The impact of this work and lifestyle on the health of safai-karamcharis is at one level obvious, but at another level invisible, especially to people outside the community. When asked by a journalist whether manual scavenging leads to illnesses, Saroj from Haryana, quoted earlier, replied,

Would you be alright sitting in a gutter? After relieving yourself you clean your hands with soap because they are dirty, right? We have to carry that very same excreta. Our health is bound to be bad because our work is with filth. We

menstruate more during our periods, suffer from miscarriages more often, our children are often born with some deformity or disability. Asthma, and other allergies causing skin lesions and itching are common side effects. We chew tobacco to counter the smells which then leads to a higher incidence of Tuberculosis. This is only to name a few....

Addiction and intoxication are a part of the everyday for scavengers, for both men and women and come with their own set of consequences. These stories can be heard in any corner of the country; stories of lives being ruined because of this addiction/intoxication, particularly of women and children. At the same time you cannot blame the person, as any of us in his/her place would have resorted to intoxicating ourselves. The true culprit is the work of manual scavenging which needs to be stopped. Unless this practice is uprooted, it would be extremely difficult to bring the safai-karamchari community out of this addiction mess. Similarly, their diseases and other health impacts cannot be wished away with treatment and medication as long as they have to handle urine and excreta for a livelihood.

2.5 The Dream of Holding Pens instead of Brooms

Access to education is ideally a route through which manual scavengers can be liberated, and a means through which societal attitudes can be changed. Unfortunately, like access to other basic services, the level of education in the safai-karamchari community is very low. Children of the community are often addressed and insulted by various caste names in schools where children from other castes have already been conditioned to not come in contact with scavenger children. At the primary level they often attend schools in the *mohallas* exclusively meant for children of the community and identified for instance as a *valmiki* school or a

vatal school. The level of education here is extremely poor. When they come out of primary school and attend schools in which children from other communities study as well, they have to carry their scavenger identity with them (even if they do not engage in the work themselves) and are sometimes forced to clean the toilets of the schools they study in. Despite the challenges however, in our homes, the biggest warning children are given is that if they don't study then they'll have to pick up a broom.

Quality formal education is a good that very few people in India can afford, and the challenge for this community to access good education is even bigger. The government's rehabilitation package stops at scholarship support regulated through certain conditions. The SKA, in its recommendations, continues to stress that a significant measure would be for the government to open residential schools for children of manual scavengers to reduce the discrimination they face. Further, all children should have access to free government-run schools up to Class 12, with scholarship support to cover all additional costs.

The SKA believes there is no scope of debate on the idea that we will have to come out of the work of cleaning, picking up the broom, cleaning human excreta and entering the gutters.

3. Fight for the Law: Towards Eliminating Manual Scavenging?

India is the only country in the world that still practises manual scavenging. People cannot fathom who will do this work if safai-karamacharis are rehabilitated. When a parliamentary committee was set up to make a new law to end manual scavenging and all organizations were going to submit their recommendations, we witnessed even honorable MPs choosing to ignore the barbarity of the practice and ask—'How will our urine-excreta be cleaned if these people do not do it?'

The cornerstone of Indian democracy is its Constitution. The Preamble of our Constitution talks of Equality, Fraternity and Liberty. Article 17 of the Constitution prohibits untouchability. But in the form of manual scavenging, untouchability is practised across the country, without any shame. Article 32 guarantees all its citizen equality before law, but the same practice of untouchability, and the forced livelihood of scavenging renders this promise void. Democracy, a system of governance that boasts of equal participation, equal rights and opportunities is still a mirage. For instance, it has come to our notice that the Maharashtra Government has reserved sanitation-related works in local bodies for persons traditionally and generationally involved in cleaning work. How can any legitimate government perpetuate untouchability like this? This is a blatant denial of justice and equality. Justice in this context should mean that the government starts taking necessary action to eradicate untouchability, and guarantee alternative work opportunities to children of families that have handled and cleaned human shit for generations.

Untouchability was made unlawful and punishable as early as 1955 when the Untouchability Offences Act was passed. This act states that the imposition on anyone, of a practice or profession on account of untouchability, is a crime. This definition very clearly includes manual scavenging. The Untouchability Offences Act is an act that is weak in its provisions as well as in how it has been enforced. The penalty for carrying out an act of untouchability (as defined under the law) is either an imprisonment of six months or a fine of INR 500. In 1976, Section 7A was introduced into the Protection of Civil Rights Act, 1955, to make, the act of compelling any person on grounds of untouchability to scavenge, an offence punishable by imprisonment.

Furthermore, the SC ST Prevention of Atrocities Act 1989 built a stronger legal regime to prevent

and punish acts and crimes of untouchability and violence, but even this had very little impact on the continuance of 'unclean occupations' like manual scavenging, and to combat the discrimination faced by scavengers.

3.1 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993: Promises and Limitations

It took more than a decade, in 1993, for the Parliament to pass the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, which rendered even voluntary employment of manual scavengers for removing excreta an offence, and another four years for the act to be notified. This law, in spite of its many drawbacks, showed manual scavengers the way to liberation. It was for the first time in 1990—Baba Sahib Ambedkar's birth centenary year—that the government began looking seriously at the Dalit agenda, and the process of forming some opinion about it began to take shape. This culminated in the form of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

Since the subject of cleanliness and health is part of the concurrent list, this Act came under Article 252 of the Constitution. A law passed by the Central government on a subject from the concurrent list can be implemented only when the Vidhan Sabhas of the states approve it too. Unfortunately, when this law was placed before Parliament, only five states had given their prior approval, weakening the law from the very start.

At this juncture it is important to reflect on the level of seriousness of the lawmakers or our political representatives. The law was passed by Parliament in 1993 and the President signed its notification on 24 January 1997. That meant it took four years for this law to cover the distance between the Parliament and the Rashtrapati Bhavan. But

even in this extended period, the rest of the states took no note of it and did not show any eagerness to approve it. In fact, until 2005, no other state took any steps towards implementing it. Only when the SKA submitted a petition in the Supreme Court, and every state received a notice from the Court, did they wake up and appoint inspectors and executives to implement the law. In spite of this, six states, including the capital city of New Delhi, did not approve it till the end of 2010. This resistance by states paints a sorry picture.

Now let us look at the provisions of this law which hinder its basic purpose. First, in this law, the definition of manual scavengers is limited to those who clean dry latrines only, whereas those who clean railway tracks, manholes, sewerage lines, septic tanks, open toilets, etc., have not been considered, though all these jobs are various forms of the same work. Thus, a big percentage of manual scavengers were deprived of the benefits of this law. Second, in Article 3(1) of the Act, there is a provision that even after states are notified, the law will not automatically become effective over the whole state immediately. States will have to issue a separate notification and identify those districts or areas where this practice prevails. Moreover, a period of ninety days would have to be given to those areas to implement the law. As if this were not enough, in Article 3(2), there are loopholes provided by the law which serve to undermine the total eradication of this practice. In Article 3(2) (2), the condition for implementing this law is that there should be adequate supply of water in the given area for flush toilets. Similarly in Article 3(2) (3), the implementation of the law has been further hindered under the guise of protecting the environment and public health safety, which means that if any local official so wishes he can refuse to implement the law in the name of shortage of water or hazard to the environment or public health. Thus, the whole of Article 3(2) seems to be against the basic spirit behind the formulation of the law.

If these escape vents are not enough, in Article 4 of the Act, the state governments have been given total liberty that they can exempt any category of buildings or class of persons from the provisions of this law. There may or may not be a reason for this, only the whim of the state government is needed. If such exemptions have to be given, then what is the whole point of having a law?

The desire of the lawmakers is clear: everything should remain as it is and whatever little is left may be given to the manual scavengers. This is very similar to the mentality that, for centuries, has kept the Dalit castes deprived of all facilities and pushed them out of villages and towns. Lawmakers should be asked whether there should be any exemption to granting all the human dignity that is guaranteed in the Preamble to the Constitution of India. In the 1993 Act, it has also been said that only as much as is possible should be done for the purpose of rehabilitation of scavengers—meaning there is no watertight provision here. First, the law is so loosely formulated and, on top of that, the administration that has to implement is so snail-paced, even reluctant. Only a few people were ever prosecuted under this law and Central government agencies like the Railways openly violated the law.

Harsh Mander in the Resource Handbook for Ending Manual Scavenging (ILO, 2014) states that:

Even though banned by the Employment of Manual Scavengers and Construction of Dry Latrines (prohibition) Act, 1993, the practice continued unabated, almost exclusively by women whereas men clean septic tanks of wet latrines. In 1997, the statutory National Commission for Safai-Karamcharis observed that manual scavengers are ‘...totally cut off from the mainstream of progress...’ and are still ‘...subjected to the worst kind of oppression and indignities.’

Even though the government launched programmes for livelihood rehabilitation of freed manual scavengers, for the education of their

children and for promotion of flush latrines in place of dry latrines, the very design of these schemes was problematic. It entirely disregarded the aspirations of the safai-karamchari community. The schemes referred to loans and self employment but ignored the fact that pursuing these options is a challenge for a socially and economically backward group such as manual scavengers who after years of being put down are hesitant to leave the security that their livelihood and way of life provides.

3.2 The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (MS Act, 2013)

A Step Ahead from 1993

India passed a new law in 2013 that prohibits manual scavenging. The strength of the new law, unlike the 1993 law, is that it is a central law, binding on all states, and not a state law requiring endorsement by state legislatures. It recognizes the ‘...historical injustice and indignity...’ (MS Act, 2013, p. 2) caused to people forced for generations to perform this degrading work, and imposes strict penalties for its further continuance. It also proposes package measures towards rehabilitation. This law is more comprehensive than the past one, and for the first time it brings in both the railways and sewers into the ambit of its definitions and prohibitions. Technical options exist today which can ensure that no human contact with excreta is necessary. But railways and municipalities have refused to make the investments necessary for human dignity of the sanitary workers, and the new law does well to bring them under the law. The 2013 Act has more stringent penalty clauses. INR 50,000 or imprisonment up to one year; subsequent penalty is higher (INR 1,00,000 and two years in prison) and for violation of ‘hazardous cleaning’ is INR 2,00,000 (and subsequently INR 5,00,000) and two years (and subsequently five years) in prison; and this is a cognizable and non-bailable offence.

However, a mere enactment of a law doesn't liberate anyone unless the law is implemented well. There are countless examples, discussed in subsequent sections, of how governments indulge in fraudulence rather than providing benefits to the community if there are no vigilant eyes at every step.

3.3. The Safai-karamchari Andolan and its Legal Battle

The SKA has been engaged in a protracted struggle since 1983 to eliminate manual scavenging and to reclaim our dignity and human personhood. We have been employing different strategies in our campaign since 1996: conducting surveys to identify dry latrines, users and those forced into manual scavenging, filing petitions and complaints with government officials at different levels, educating and sensitizing the civil society especially dry latrine users, filing a Public Interest Litigation (PIL) in the Supreme Court and networking with individuals, media and civil society organizations to form solidarity and pressure groups.

When the situation of manual scavengers did not change even after the 1993 Act was passed, six organizations (including the SKA) and seven manual scavengers filed a PIL (Litigation no. 583) in 2003 in the Supreme Court under Article 32 for the implementation of the 1993 Act. SKA under the guidance of S.R.Sankaran strategized a legal battle as the best way to demand justice from the Indian State. The present Justice of the Delhi High Court and then advocate S. Muralidhar became the advocate for the litigants. The petition quoted the statutory National Commission for safai-karamcharis, which estimated the presence of around 96 lakh dry latrines in the country. The other reports revealed that manual scavengers were being employed by both private employers and several urban local bodies, and most unconscionably by the military engineering services and army, public sector undertakings and the Indian Railways. The

Supreme Court sent notices on this litigation on 8 January 2004 to the Central government, Social Empowerment Ministry, Railway Ministry, Defence Ministry, Ministry of Industry, National Safai Karamchari Aayog and 29 states and six Union Territories. Till the next hearing on 9 August 2004, only Goa and Tripura had sent their replies to the court. Therefore the court gave the other states four more weeks to send in their responses. After this, on 13 September 2004, the Supreme Court asked the Chief Secretaries of seven states (Assam, Jammu and Kashmir, Chhattisgarh, Manipur, Uttarakhand, Gujarat and Delhi) and one union territory (Dadra and Nagar Haveli) to appear in Court. From 2004 to 2007, there were twenty hearings on this petition. On the directive of the Court, the state governments gave affidavits about the state of manual scavenging in their respective states. Thousands of pages of replies were written. Predictably, in their affidavits most state governments denied outright that manual scavenging exists in their state. Further, there was a mockery of the Court's orders. The Supreme Court, in its earlier notices had also asked the municipalities and corporations to reply. Many corporations like the National Corporation of India, all dockyard corporations, Zinc Corporation of India, etc., replied to the notice although most of them had nothing to do with the matter, but none of the municipal corporations—the ones who were really supposed to provide answers—chose to reply. Through the duration of the hearing, it became clear that the State was not concerned with whether the scavenging basket was removed from the head of the manual scavengers or not.

States that denied the existence of either dry latrines or scavengers within their borders took to destroying dry latrines in the period between receiving the notice and sending their response. In the hearings they would then accuse the litigators of having provided false information. They were shameless enough to demand that action be taken against the litigators for this! On 5 August 2008, the

Supreme Court asked the litigators to find out all the places in the country where the work of scavenging was still continuing. They were given a period of only eight weeks to do so. To expect an organization or litigator to do a countrywide survey and hand it over in just eight weeks seemed impossible and it seemed as if we had been punished for asking for justice in the first place. The Supreme Court burdened us with work, which should have been done by the administrative system of the country. Instead of providing justice or paving the way for justice to the hapless litigators, the Supreme Court asked us to prove, on our own, that the practice of manual scavenging was still prevalent in parts of the country.

The SKA decided to take on this challenge as a part of the larger struggle to eliminate manual scavenging and with the help of 1260 activists, did a sample survey in 18 states and 274 districts. We found proof of manual scavenging in 14 states. Such facts were revealed which, in all these sixty years after independence, no government with its extensive resources had been able to collect. The many governments at the Centre and in the states, with all their political power, had conspired to render the practice of manual scavenging invisible. And yet this downtrodden community organized itself and had the courage to lift the veil from the governments' dubious claims. The surveyors managed to nail each official falsehood to the wall with moving, detailed affidavits, often with stomach churning photographs. Many of these affidavits should be compulsory reading. From Ahra, Bihar, unlettered Dinesh Ram, now 15 years old, has been doing this work since he was 9. He told the Court, 'I hate this work. I do not feel like doing it. But my problem is that I do not know any other work.' Ramrakhi, who has worked as a scavenger since she was 10, spoke up, 'The gas emitted by the shit has spoilt my eyes, and my hands and feet also swell. It sticks to my hands and makes me nauseous.'

The legal battle to establish a different truth and hold the State accountable carried on in court for 11 years. This lengthy struggle helped mobilize the community into action and the growing desperation to break out of the shackles of caste, among members of the safai-karamchari community, became evident. Lakhs of women scavengers not only burnt their baskets but also gave memorandums to district officials; they knocked on every closed government door to make their presence felt. Their voices were also heard during the Samajik Parivartan Yatra organized by the SKA in 2010. This yatra was taken out to eradicate and uproot the practice of manual scavenging from across the country and helped highlight the plight of the scavenging community. This in turn forced the Central government and the National Advisory Council to take cognizance of the problem. The Central government, which was denying the very existence of manual scavenging till then, started taking steps towards its eradication. This was reflected in the budgetary allocations that were subsequently made.

In the same year, under the guidance of the Ministry of Social Justice and Empowerment in 18 states 1,18,474 scavengers and dependents were identified for training and loans as means of rehabilitation (Press Information Bureau, 2015). Of this figure, 43,909 were documented as desirous of training, and the data shows that all 43,909 were provided training. Similarly, 78,941 were identified as loan beneficiaries, and the data shows that all 78,941 were provided loans. Under the scheme for rehabilitation, children of scavengers (or people engaged in unclean occupations) were provided with pre-matriculation and post-matriculation scholarships. In 2007–8, a total of 7,35,129 pre-matriculation scholarships were provided; in 2008–9, 6,18,277; and in 2009–10, 7,04,925. Similarly in 2007–8, 31,16,041 post-matriculation scholarships were provided; in 2008–9, 33,79,488 and in 2009–10, 4,02,49,888 children of scavengers were supposedly covered under the same scheme.

Despite steps towards spending on rehabilitation, it is also important to highlight the discrepancies in the data. With the numbers of dependents of scavengers and scavengers themselves being so incomparable, one has to ask who is being covered.

On 12 January 2011, the Supreme Court directed that the writ petition be taken forward by the various High Courts of the country, for the purpose of implementation of the various directions passed by the Court, and also for the implementation of the provisions of the 1993 Act. In multiple hearings of this case to date, governments have persisted in filing 'nil' reports of people engaged in the outlawed livelihood of manual scavenging. But each time SKA has fought back by responding to each lie, with unimpeachable data, reports and photographs detailing women still engaged in this work, and dry latrines that continue to stand.

On 27 July 2011, the Delhi High Court directed the Indian Railways to rehabilitate sanitation workers employed in cleaning railway tracks and technologically upgrade 1,72,000 toilets in trains, reaffirming the need for new legislation to encompass all forms of sanitation workers (ILO, 2014).

4. Changing of Terminology: Contesting Government Figures

The Government of India introduced a new term—insanitary latrines—for the first time in the 2011 census. Instead of pushing for exact numbers of dry toilets and finding out numbers of manual scavengers, a new jargon was created. The census shows insanitary latrines being cleaned by animals and being disposed of in open drains. This portrayal of the data marks a deliberate attempt to shift focus away from dry latrines and manual scavengers.

The number of 'insanitary latrines' was calculated for the first time in the Census of 2011 and we had pushed this to show prevalence of

manual scavenging. Overall, the total number of households with 'insanitary latrines' in India is 26,06,278 (2.25 per cent), out of which 12,76,530 (49 per cent) households are found in rural areas and 13,29,748 (51 per cent) households are in urban areas. Also, according to Census 2011 data there are 4041 statutory towns in India. In these statutory towns there are 8,82,271 households with insanitary latrines in which night soil or human excrement collected at night in buckets, is disposed into open drains and there are 1,78,296 households with insanitary latrines in which night soil is removed by humans. Uttar Pradesh reflects the highest percentage (18.2 per cent) of insanitary latrines followed by Tamil Nadu (13.4 per cent), Andhra Pradesh (12.8 per cent), Maharashtra (12.6 per cent) and Rajasthan (8 per cent). However the figures given in the census and those in the Socio-Economic Caste Census are vastly different.

Section 4 (1) of the 2013 Act mandates the survey of insanitary latrines by local authorities within two months from the commencement of the Act. These surveys should have been completed by 6 February 2014. However, far later than the deadline, even in 2015 only 11 states and union territories had reported the number of insanitary latrines in urban areas, and only nine states and union territories had reported the numbers in rural areas. The numbers declared in the survey vary greatly from the 2011 Census data. For instance, while the 2011 Census data for Odisha identifies a total of 81,285 insanitary latrines (54,066 rural and 27,219 urban), this survey identifies zero insanitary latrines in rural areas, and 25 in urban areas. This absurd difference in data calls into question the method and quality of the survey conducted by the few states that have declared numbers. Also whether both common, insanitary latrines and household latrines have been surveyed is not clear. The data if taken at face value could be used to make the argument that since 2011, states have taken measures to end scavenging, which is a clear misrepresentation of numbers.

According to the Ministry of Social Justice and Empowerment (SJ&E), Government of India, the total population of manual scavengers in 1992 was 5,88,000 (Rashtriya Garima Abhiyan, 2012). In the year 2002, a total of 7,87,000 were engaged in scavenging. In 2002–3, the same ministry quoted the number as 6,76,000. The anomalies in these estimates prevent a realistic idea of the extent and prevalence of manual scavenging. The fraudulent manipulation of statistics is something in which the governments have continued to indulge, as evident in many documents presented in different government meetings, surveys, etc.

Sections 11 and 14 of the new Act call for the survey of manual scavengers to be carried out if local authorities believe that there are manual scavengers being employed in their region of jurisdiction. As per the data extracted from the Survey of Manual Scavengers in Statutory Towns and archived by the Safai Karamchari Andolan, out of the 30 states which chose to declare survey results, 17 states declared that zero manual scavengers were identified in urban areas. Karnataka which in the same survey identified 890 insanitary latrines in rural areas declared that no manual scavengers could be identified.

Contesting the figures provided by the state and union territory governments, NGOs provided their own data on the number of scavengers in 15 states. They identified a total of 10,698 manual scavengers. It was decided that, together with the NGO that had identified scavengers, the states would verify the numbers, and where manual scavengers were located, they would provide them with the sanctioned rehabilitation package. However this verification was carried out without the presence of the NGO. Out of 10,697 identified cases, the government was only able to verify the existence of 625 manual scavengers. Of these 625 eligible beneficiaries, the government claims to have rehabilitated 528. This blatant disregard for data collected by NGOs is only made worse by the

flouting of the process laid out, where verification is supposed to be done in the presence of the NGO responsible for identification.

The latest Socio-Economic Caste Census data released on 3 July 2015 reveals that 1, 80,657 households are engaged in this degrading work for a livelihood. Maharashtra, with 63,713, tops the list with the largest number of manual scavenger households, followed by Madhya Pradesh, Uttar Pradesh, Tripura and Karnataka, as per Census data. In a review meeting held on 21 July 2016 and organized by National Commission for Scheduled Castes, data submitted by state governments show vast discrepancies between number of dry latrines and number of manual scavengers cleaning them. Telangana, for instance, reported 1,57,321 dry latrines as of 31 December, 2015, but zero manual scavengers (Pathak & Sampath, 2016). The survey results submitted by Himachal Pradesh, too, showed 854 dry latrines but nil manual scavengers. Chhattisgarh reported 4391 dry latrines but only three workers. Similarly, Karnataka reported 24,468 dry latrines but only 302 manual scavengers, and Madhya Pradesh's numbers were 39,362 and 36. Bihar reported only 11 manual scavengers, while Haryana reported nil for both dry latrines and manual scavengers (Pathak & Sampath, 2016).

Even now the Indian government doesn't have any accurate figure of the number of dry latrines and manual scavengers. Generally very little data is available with the government on the rehabilitation of manual scavengers. Government schemes such as 'The Self Employment Scheme for Rehabilitation of Manual Scavengers' (SRMS) state that liberated a manual scavenger is entitled to get a loan of a maximum of INR 15 lakh. But not a single person has received an INR 15 lakh loan. Rehabilitation also does not mean an end to untouchability and discrimination. We have seen that in a majority of cases the government will push liberated manual scavengers to take loans for livelihood activities such as pig rearing, goat rearing, etc.

All these years, the budget allocation for rehabilitation of manual scavengers and for education of their children was largely unspent. This shows deliberate negligence on part of the executive, which is still continuing. Now the government has mercilessly reduced the budget for rehabilitation to just INR 5 crore. The National Commission for Scheduled Castes (NCSC) observed in a note circulated for the meeting that ‘...expenditure for the last three years is negligible...’ under the Self-Employment Scheme for Rehabilitation of Manual Scavengers (Pathak & Sampath, 2016). The budgeted amount for SRMS for 2015–16 was INR 470.19 crore. The actual expenditure was nil.

Schemes for rehabilitation of manual scavengers have failed for reasons illuminated by the extremely insightful report released in 2003 by the Comptroller and Auditor General (Safai Karamchari Andolan & Ors v. Union of India & Ors., 2014). He found the scheme ‘a prisoner of its own statistics’, since although the government claims that it rehabilitated 2.68 lakh scavengers, the number of officially recognized scavengers did not go down, but instead rose further to 7.87 lakhs. The problem, the report pointed out, was that those scavengers it claimed to liberate were not those who were ‘rehabilitated’. The scheme instead often gave loans to persons who are not really manual scavengers, for low-skill, low-wage alternatives, ignoring factors of ‘habitation, cluster, aptitude, gender and motivation’.

5. Swachh Bharat Mission— A Critical Look

On 2 October 2014, the 150th birth anniversary of Mahatma Gandhi, Prime Minister Narendra Modi restructured the existing Nirmal Bharat Abhiyan and announced another mission called Swachh Bharat Mission. The mission aims to eradicate open defecation in India by 2019 by constructing 12 crore toilets in rural India, at a projected cost of approximately INR two lakh crore (US\$29 billion).

Ironically, under SRMS the government made shameful deductions of INR 5 crore in the budget estimate of 2017–18 as compared to the budget estimate of 2016–17. The Swachh Bharat Mission seems to be reversing all the efforts of the SKA.

Swachh Bharat has glorified the broom and has posed an obstacle in the path of caste-liberation. When the campaign to pull safai-karamcharis out of the abyss of manual scavenging was reaching a decisive stage, Swachh Bharat entered the scene with pomp and show. The entire focus shifted from those cleaning the toilets to constructing toilets. Prime Minister Narendra Modi has bet big on this Swachh Bharat campaign but nobody asked the basic question—who will clean these 12 crore toilets? Nobody asked where the excreta and urine from these toilets will go. Are sewer lines being laid out for dealing with this urine and excreta? Till now there is neither any such proclamation nor any budgetary allocation for this. It is more likely that these 12 crore toilets being built under the Swachh Bharat Abhiyan will actually be 12 crore septic tanks.

After the Swachh Bharat Abhiyan, a lot of news reports have emerged about Dalit children being forced to cleaning toilets in schools (Sudhakar, 2015). Also, the kids of manual scavengers are quite hesitant to share their parents’ occupation in their schools. This inferiority complex generated because of the shame attached to their parents’ profession also leaves them behind. And once they grow up then the only option they are left with is to do the work that their families have been doing—the work of holding the broom and cleaning. Programmes like Swachh Bharat Mission are more likely to prepare several grounds for exploitation of these kids if they continue to be compelled by their school administration to clean toilets.

Moreover, a separate cess has been levied for Swachh Bharat and hence billions are being collected for constructing toilets. The government doesn’t have any interest in identifying those who

are scavenging and doesn't care about rehabilitating them; it only cares about the construction of toilets. All the big corporate houses are also busy competing in constructing toilets in the name of their social responsibility. The Corporate Social Responsibility (CSR) money which could have been used to improve the lives of ordinary people especially the safai-karamcharis is now being used only for constructing toilets. If the CSR funds of all big corporations are probed then we'll come to know that all these companies are claiming to build toilets at a mass level. It seems that the biggest problem of the country is construction of toilets and nothing else. Apparently the government is also contemplating making 30 per cent of all CSR money mandatorily to be used for Swachh Bharat (Singh & Surabhi, 2016).

The idea of *Swachh*, implying purity, is a problematic concept in itself. Swachh Bharat is an extension of the purity and pollution theory, Swachh representing a casteist mindset that is built upon a *Manuwadi* (those whose social and political position in the society is influenced by Manuwada, particularly with respect to caste) structure. In this there is no room for the principle of justice. By focusing Swachh on the users of the toilets and silencing the lives and struggles of the cleaners, Swachh Bharat is only perpetuating the practice of manual scavenging. We feel afraid of the government's ambition to construct 12 crore toilets by 2019. Swachh Bharat Abhiyan will be counterproductive in the people's struggle to break the historical ties between their birth and caste, and between their caste and occupation. The questions then arise; how much more burden will be placed on the community? How many more sewer-septic tank deaths is this nation waiting for?

6. Conclusion

In the last seventy years, manual scavengers have never really had the opportunity to use the power

of the ballot to create political pressure for their emancipation from the torment of scavenging. The issue of eradicating manual scavenging has never been framed as a political issue. The burden of changing their own lived condition continues to rest on the backs of manual scavengers themselves.

The central problem is that most laws, policies and schemes aimed towards abolition and removal of this practice as well as towards the rehabilitation of erstwhile manual scavengers, fail to acknowledge how the practice is merely a symptom which is actually deeply rooted in the caste system. The majority of the country, unaffected by this nature of caste discrimination, feeds into this vicious cycle—where the homes remain clean, and the indignity suffered by the safai-karamchari community gets invisibilized. While over the last few years, the community itself has started treating manual scavenging as a political issue, and has begun demanding their right to life with dignity, the rest of the country often washes its hands off the moral responsibility for this violation of human rights.

Even after numerous Supreme Court orders and directives, the State has time and again failed the movement. Till as recently as February 2017, the National Commission for Safai Karamcharis (NCSK), established under the Ministry of Social Justice and Empowerment back in 1994, did not even have adequate members, with all office bearers' posts lying vacant, except those of Commission Secretary Narain Dass and the Deputy Director Varinder Singh, along with Section Officer G Srinivas (*DNA*, 2017). This has been the state of affairs for over a year now. Thus, even the little bit the government has done in order to put an end to this practice has often amounted to tokenism. While the movement will continue to grow more political, certain things at the level of the State must be done. Some recommendations are given below:

- (a) **National Level Common Survey for Safai-karamcharis:** Before the government can

effectively formulate any solution, we need to have reliable and consolidated information on the extent of the problem. The Government of India, thus, needs to initialize a national level common survey to identify the number of manual scavengers as well as dry latrines in the country and use it as a point of reference for the implementation of all policies and schemes. It needs to collect data from each state on the number of persons engaged in manual scavenging, the family information with data on dependents, the number of Community Dry Latrines (CDLs) and number of Individual Dry Latrines (IDLs).

- (b) **Need for Data from Authorities under the Central Government:** The Government of India should also initialize a survey and, in conjunction with the national level survey, acknowledge the fact that even with 'protective gear', what they are effectively doing is employing manual scavengers. The Indian Railways must provide information about the number of such workers employed by it, as well as number of employees engaged by other Ministries and other undertakings, including mines, and household information and details of their dependants, must also be collected. The government should devise a separate rehabilitation policy for such employees as well.
- (c) **Amend the 2013 Act:** There is a striking loophole in the 2013 law (The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013), whose Article 2, Clause 1, sub-clause (g) comes with an explanation that '...a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central government may notify in this behalf, shall not be deemed to be a "manual scavenger"'. What this effectively does is to dissociate the problem of scavenging from

the indignity suffered by the community on the basis of their caste. It makes it an issue of implementing better infrastructure in the form of protective gear rather than removing the practice altogether, thereby allowing the state to regularize and normalize manual scavenging as a practice. This is dangerous and the Act should be amended at the earliest in order to hold Central authorities like the Indian Railways responsible for this practice.

- (d) **The 2013 Act and Need for Accountability of the Monitoring Agency:** The 2013 law prescribes the process for the setting up of Vigilance Committees both at the Central as well as state level, in order to monitor the implementation of the act. However, as the experience of the movement has shown, the effectiveness of such committees has been negligible. Hence, there needs to be a framework for the accountability of the monitoring agency, taking cognizance of the fact that manual scavenging is a violation of human rights and the constitutional rights of the victims, and as such, a failing Vigilance Committee must be answerable to the community for not addressing their demands.
- (e) **Review of Rehabilitation Programmes:** Dignified livelihood opportunities, free of scavenging should be the core idea in framing any rehabilitation programme. This must include job security, land, housing and free, good education for their children. All the schemes should cater to the aspiration of community women. The government has formulated various rehabilitation programmes for erstwhile manual scavengers and their dependants, but given their ineffectiveness, as described in the chapter, it is necessary that the government should initiate a review of its programmes, and table status reports, state-wise, of the

implementation of welfare and development measures meant for safai-karamcharis and their children. A contract system in sanitation work should also be abolished.

(f) Amending the Swachh Bharat Programme:

No more toilets should be built under any schemes unless the government ensures that no human being will be forced to clean gutters and sewer-septic tanks. We don't want more killing gas chambers for our people. Modernization of sewage system should be guaranteed. The Swachh Bharat Programme, though popular, has turned a blind eye to the problem of caste and to the fact that notions of purity and cleanliness in India are deep-rooted in the caste system. The programme

and its rhetoric, as they stand now, run the danger of normalizing practices like manual scavenging, thus pushing the community further into the vicious cycle of continuing in this line of work. The government needs to acknowledge this caveat in its understanding of public and private cleanliness, and must alter its programme so as to work with our movement, and not become a roadblock to it.

It is a long march to break shackles of all kinds of discrimination. We have to commit ourselves towards the annihilation of caste. We have to stand as foot soldiers of the vibrant democracy in all spheres of life.

Jai Bhim!

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