



# India Exclusion Report

2013-14



**India  
Exclusion  
Report** | 2013-14



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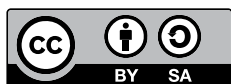
## India Exclusion Report 2013-14

*A comprehensive, annually updated analysis on the exclusion of disadvantaged groups in India*



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# Preface

*India Exclusion Report* is envisioned as a widely collaborative annual effort, involving numerous institutions and individuals working with disadvantaged and marginalized communities in India. Each year, we hope to build our collective understanding about the extent to which the state at all its levels—local, district, state and union—is fulfilling its legal, constitutional and programmatic duties and responsibilities towards excluded groups in the country.

By consolidating and generating knowledge around exclusion, the India Exclusion Report seeks to inform public opinion and debate on these issues, and to influence the political class and policy makers towards more inclusive, just and equitable governance. Equally, we hope that the report will serve as a tool to support public action for the greater inclusion of disadvantaged and marginalized communities in the country.

There will be four main segments to each India Exclusion Report:

The **first part** of the report will identify four public goods and will carefully collate both primary and secondary evidence of inclusion and exclusion of disadvantaged and vulnerable people from each of these public goods. Care will be taken to include a wide diversity of public goods for this scrutiny every year, one each from the following four thematic categories of public goods:

- (a) *Social Services*: Among others, this will include education, health care, nutrition and social protection. Under this theme, the 2013–14 report looks at school education.
- (b) *Infrastructure and Public Spaces*: Sectors such as housing, water, sanitation, electricity, irrigation, and urban and rural public spaces will be dealt with under this theme. The 2013–14 report discusses urban housing.
- (c) *Livelihoods, Labour, Land and Natural Resources*: This theme covers a broad categorization of key factors of production, including forests, common lands and water bodies, agricultural land and livelihoods. This year's report looks at labour markets, with a particular focus on the idea of 'decent work'.
- (d) *Law and Justice*: Exclusion often plays out most starkly in vulnerable groups' access to law and justice, including in criminal and custodial institutions, denials of justice in a range of civil, land and criminal law contexts, and processes like legal aid. This year, we explore the exclusionary impact of anti-terror legislation in India.

Each report will adopt the following structure in exploring the dynamics of exclusion in the four areas mentioned above:

- (a) *The Nature of Public Goods*: There will be a discussion around the nature of the public good from which exclusion is being mapped, including its legal, programmatic and regulatory frameworks.
- (b) *The Excluded Groups*: A comprehensive identification of excluded groups will be made along with an attempt to recognize the major categories to which they belong.
- (c) *Causes of Exclusion*: Special attention will be paid to analysing the key mechanisms thorough which exclusion occurs, classified into four broad levels:
  - Faulty design of law and policy;
  - Institutional bias in the implementation of law and policy;
  - Active violence and discrimination by the state;
  - Low and faulty budgetary allocations.

(d) *Consequences of Exclusion*: An analysis of the consequences of such exclusion for the excluded groups, and the broader costs of inaction for society as a whole will be undertaken.

(e) *Solutions and Reforms Needed*: The report will propose reforms to address, prevent and reverse exclusion.

The **second part** of the report will contain a detailed analysis of central and state government budgets and planning processes, from the specific prism of denial and discrimination, for broad categories of disadvantaged populations: women, Dalits, Adivasis, Muslims and persons with disabilities.

The **third part** of the report will move from public goods and exclusion to portraits of highly excluded groups, classes and communities. The purpose of this exercise is to highlight the condition of the most disadvantaged and marginalized people, who suffer an acute denial of multiple public goods, and constitute an overlapping and dense intersectionality of many markers of disadvantage—of extreme poverty, assetlessness, denial of decent and fair employment, discrimination based on gender, caste, religion, ethnicity, age, disability, occupation, stigmatized and debilitating ailments, and so on.

For each of these selected groups, the reports will illustrate the multiple denials of public goods, the discrimination, insecurity, indignity and violence that they face, and suggest public policy and legal reforms required to address the embedded and endemic exclusions that constitute their daily lived experiences.

In 2013–14, the report looks closely at transgenders, bonded labourers and the Musahars.

Finally, the **fourth part** of each report will be a statistical abstract of authentic data relevant to an understanding and tracking of inclusion and exclusion from a range of public goods. Data will be collated at the central and state government levels, and for broad categories of disadvantaged populations: women, Dalits, Adivasis, Muslims and persons with disabilities.

A defining hallmark of the report this year, and we hope every year, is that it is an extremely collaborative process, with multiple institutional and individual contributors, writers and researchers. We are extremely grateful for the generosity with which a wide range of contributors gave of their time, expertise and insights to this collective report. If the report has any value, it is only because so many people committed to the idea of a just, inclusive and caring state have given so much to this report. In this way, the report itself has acquired one of the defining principles of a public good—solidarity.

The contributing organizations are:

AARTH-ASTHA, New Delhi

Aneka, Bangalore

Brown University, Providence, USA

Centre for Budget and Governance Accountability, New Delhi

Centre for Equity Studies, New Delhi

Centre for Social Equity and Inclusion, New Delhi

Indian Institute of Human Settlements, Bangalore

Institute of Development Studies, Sussex, UK

National University of Educational Planning and Administration, New Delhi

New Education Group—Foundation for Innovation and Research in Education, New Delhi

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Rajeev Malhotra, Patrick Heller of Brown University, and Deepta Chopra and Anuradha Joshi of IDS Sussex extended overall guidance and support, in addition to reviewing individual chapters of the report. Books for Change (BfC) were an extremely helpful and patient publisher.

We are grateful to the Centre for Budget and Governance Accountability and the International Development Research Centre - Think Tank Initiative (IDRC-TTI) for financially supporting the production and dissemination of the report.

Within the Centre for Equity Studies, the entire report was anchored with exemplary dedication and industry by Amod Shah and Shikha Sethia. They coped with strained resources for the first report, impossible deadlines and the need to co-ordinate with an enormous diversity of contributors in multiple organizational and geographical locations with patience, courtesy and good cheer. Saba Sharma took responsibility for ably editing the entire report in a short time. Ambika Kapoor assisted with the layout and design of the report.

**Harsh Mander**

*Director*

Centre for Equity Studies



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# Chapter 1

## Introduction



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*Harsh Mander • Gitanjali Prasad*

## A Conceptual Framework for Exclusion

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*India Exclusion Report 2013–14* seeks to track and map the extent to which central and state governments in India have succeeded in ensuring access to a range of basic public goods for all people. A widely collaborative effort, the report relies on a range of evidence from many different sources to understand which classes, categories and groups of people are excluded from these public goods; the processes, laws, policies and institutions through which such exclusion is accomplished; the consequences of this exclusion on the people who are left out; and recommendations for public action, policies, laws and institutional reforms that are required to address, prevent and reverse such exclusion, and promote a more adequate, equitable and better quality provisioning of public goods.

At the very start, it would be useful to reflect briefly on the key concepts and terms, namely, public goods, exclusion and role of the state, as interpreted and presented in the India Exclusion Report 2013–14. This discussion around the conceptual framework of the report also provides the rationale for why it is focussed on exclusion by the state and not on exclusion by societal processes period.

### Public Goods

This report defines a public good to be a good, service, attainment, capability or freedom—individual or collective—that is essential for every human being to be able to live a life of dignity. The basic assumption of the report is that it is the duty of accountable state action to ensure that all persons are enabled to live such a life of essential human dignity and worth.

This understanding of a public good departs in many ways from the definitions of the term in liberal economic theory, and Keynesian, neo-classical and welfare economics. The term was first proposed by Adam Smith in 1776. He referred to goods ‘which though they may be in the highest degree advantageous to a great society are, however, of such a nature that the profits could never repay the expenses to any individual or small number of individuals, and which it therefore

cannot be expected that any individual or small number of individuals should erect.’<sup>1</sup> He concluded that the government must provide these goods as the market would fail to. Our understanding of public goods is also located within the conviction of the central role of the state in ensuring equitable and just provision to all persons. But as we shall observe presently, the state does not in all cases have to *directly* provision every public good.

In welfare economics, pure ‘public goods’ are those that are: (a) perfectly non-rivalrous, meaning that a number of consumers can consume the good at the same time, and one person’s consumption of the good does not affect another’s opportunity to consume it; and (b) perfectly non-excludable, meaning no one can be prevented from enjoying the benefits of the good once it has been produced. A classic example of such a public good is national defence. In the post-war period, Paul Samuelson, a Keynesian economist, proposed that goods may also be classified as ‘impure public goods’ due to their excludable nature, as they may not be both perfectly non-rivalrous and non-excludable. These have also been termed later as ‘public enterprise goods’ or ‘goods of social value’. Public goods are seen mainly in their opposition to private goods, which are both rivalrous and excludable, such as an ice cream (typically traded in markets, where the price is decided through the interaction of buyers and sellers).

In contemporary political and social analysis, it is generally concluded that public goods include both pure public goods as well as these goods of social value. School education for instance has been theorized the world over as being a public good, even though it does not strictly fulfil such a good’s non-rival and non-excludable characteristics. Inge Kaul and Ronald Mendoza make a useful distinction between the original characteristics of the goods, and what aspects society attributes to them.<sup>2</sup> They make the case that what is defined as ‘public’ and ‘private’ should not be left solely to the market, and should, instead, be defined by public policy. They also demonstrate how excludable resources, like forests, water and even land, can be considered a

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public good. The terminology depends on how the entity is defined by society in public policy. This depends less on what its original characteristics are, and more on the characteristics assigned to that good by society. In the case of India, for example, the recognition of school education as a fundamental right—through Supreme Court judgments, amendments to the Constitution and, finally, the passage of a rights-based statute—implies its redefinition as a public good, and the resistance to this redefinition has come from some private schools, that argue that education is and should be a private good. There are also compelling arguments that education can never be a truly non-excludable public good as long as there is private, for-profit provisioning of education, and that education can become a true public good only when there is a state-provided common school system.

We derive our definition of which goods are public goods from widely accepted moral principles and not just constitutional and legal frameworks and international covenants. At the most fundamental level, this definition derives from the ethical principle of the intrinsic equal human dignity of all persons. Public goods are those that are required for all persons to be able to live with basic human dignity. In this report, we assert a fundamentally moral position regarding what we consider to be a public good. We identify as public goods those goods which, if they are not enjoyed by all persons, and especially people who are most vulnerable and marginalized, result in a situation that is ethically (and sometimes legally) unacceptable.

Also contained in our definition are notions of solidarity and fraternity, the duty to take care of all persons, including those who due to biological, social, economic or other reasons are denied, discriminated against or left behind. There is an underlying implication of the moral right of all persons—of the present and, indeed, future generations—to these public goods, derived from the fundamental standpoint of the equal human dignity of all persons. Within this framework, dignity could be considered the most important of all public goods. Dignity is intrinsic to the idea of public goods, in our view, because it protects the idea from mere instrumentality or outcomes. For instance, a person who is seen as not contributing

‘productively’ as a producer or consumer (such as because of severe disability, illness or age) morally enjoys the same right to all public goods as a more ‘productive’ and indeed conforming member of the same society.

These moral rights may or may not be enshrined in the Indian Constitution or in legal statutes. After considerable debate in the Constituent Assembly, social and economic rights were not included as fundamental rights, in the way that civil and political rights, such as the rights to life and liberty, or freedom of expression and association, were. These were contained in a separate chapter of Directive Principles, which are duties of the state, but cannot be enforced in a court of law.

However, there have been a series of rulings by the Supreme Court of India that have cumulatively recognized many of these social and economic rights to be extensions of the fundamental Right to Life guaranteed under Article 21 of the Constitution. The most expansive interpretation of Article 21, which provides a constitutional basis for regarding a wide range of social and economic rights as fundamental rights, came from Justice P. N. Bhagwati:

*The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, and mixing and commingling with fellow human beings.<sup>3</sup>*

The fundamental right to life is conventionally interpreted to be primarily a negative right against the state: that a person’s life and liberty cannot be taken away without due process of law. But

the Supreme Court has also interpreted this to be a positive right. Therefore, if a person enjoys a fundamental right to life, by the same token she enjoys the right to all that makes a life *with dignity* possible, such as assured access to nutritious food with dignity, education and healthcare of a certain basic quality, decent work, decent shelter and social protection. These are all part of the idea of a public good in this report. Many of these ideas are also now backed by rights-based statutes passed by the Indian Parliament, such as the rights to education, rural unskilled employment and food.

The legal duty of the state to ensure universal access with dignity to these public goods also derives further from international covenants, to many of which India is a signatory. These include the International Covenant on Social, Economic and Cultural Rights, various International Labour Organization conventions and covenants related to gender rights, rights of people with disabilities and rights of children, among others.

At the close of this section, it may be instructive to look briefly at countries where the constitution explicitly uses the word ‘public good’. There are three such examples—Brazil, Ecuador and Gabon. The Brazilian Constitution uses the word ‘public good’ in the context of the right of all persons to ‘an ecologically balanced environment, which is a public good for the people’s use and is essential for a healthy life . . . The Government and the community have a duty to defend and to preserve the environment for present and future generations’. This reminds us that a public good is not just the right of all living persons but also that of future generations. The Constitution of Gabon refers to ‘the administration of public goods, land use, forestry, mining and habitat’.

The term is used most interestingly in the Ecuadorian Constitution, which recognizes the rights of all persons ‘to have access to quality, efficient, and effective public goods and services provided courteously, as well as to receive adequate and truthful information about their contents and characteristics’. What is valuable here is that the language in the Constitution explicitly recognizes that dignity and transparency are essential components of public goods. It also goes on to underline the principles of solidarity and equity, stating that ‘Public policies and the provision of

public goods and services shall be aimed at enforcing the good way of living and all rights and shall be drawn up on the basis of the principle of solidarity’. It further declares that ‘The State shall guarantee the equitable and mutually supportive allocation of the budget for the implementation of public policies and the provision of public goods and services’.

In this way, the idea of public good embraces many core democratic principles of dignity, equity, sustainability and solidarity. The definition of public goods is not static. The process of defining public goods is a dynamic and political one, and one goal of political and social action by people of disadvantage must be to constantly revisit and push the frontiers of the notion of public good, and thereby continuously deepen these very principles

## **Exclusion and the Role of the State**

For the purpose of this report, exclusion is defined as the processes by which individuals and population groups face barriers in relation to their access to public goods, resulting in inequitable social attainments, capabilities, development, justice and dignity outcomes. These barriers may arise from a number of causes, including through social or state neglect, social or state discrimination, tacit or active social or state denial, social or state violence and dispossession, customary practices and cultural norms, and/or by faulty design and implementation of state laws, policies and programmes, or a combination of all of these’.

We recognize that the mechanisms through which exclusion is produced and reproduced are pervasive, complex and cumulative, and often cut across state, market and society. Exclusion is produced through actions of the state, markets or social actors. Markets can exclude by under-supplying a public good: that is, by supplying it only to those who have the means to afford it, or by denying certain social groups, defined by lower skills or assets or economic opportunities. Social actors can exclude through practices of active hoarding of resources and opportunities within their group, or through outright discrimination against or exploitation of other groups (based on caste, religion, class, ethnicity, gender). States can exclude in many ways, including through discrimination, by simply failing to enforce access to public goods, or failing to provision these goods.



However, this report focuses primarily on forms of state exclusion. We recognize that state exclusions often reflect and reinforce market or societal exclusions, but we focus on the state for four main reasons.

- First, it is the constitutional and legal duty of the state to regulate markets and society against discrimination and unfair barriers of access to public goods.
- Second, in a democracy, the state can and must be held accountable. Identifying state-based forms of social exclusions can thus become the basis for democratic by excluded people and their allies.
- Third, the state has a moral duty towards the welfare of all its people.
- Finally, the state can be an affirmative actor in correcting or at least compensating for social exclusion in the market and society. The state can, for example, ensure fair and just conditions for employers and employees to negotiate terms, or legislate against domestic violence.

For those who are in a position of relative disadvantage, and those who face discrimination in accessing these goods often, by state actors themselves, the onus is on the state to ensure that they are not excluded in the provisioning of these goods. This is also clarified in Articles 14 (equality before law) and 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) of the Indian Constitution.

In summary, we argue in this report that the duty of the state to either directly provision or else to ensure just, equitable and sustainable access to public goods, derives from constitutional and legal frameworks, and from universal moral frameworks. The state may ensure universal and sustainable access to these public goods in one or more of the following ways: (a) by creating an enabling or facilitating environment for the sustainable creation and equitable access for all to the public good; (b) regulation to ensure fair and equitable access for all to the public good; and/or (c) directly provisioning the public good. It is also the duty of the state to create, uphold and defend spaces for public action to define and claim these public goods.

## Exclusion from Public Goods

The India Exclusion Report 2013–14 presents an in-depth review of exclusion with respect to four essential public goods: school education, urban housing, decent work in labour markets and legal justice in relation to anti-terror legislations in India. These are discussed in detail in the different chapters of the report. This opening chapter tries to put together the main trends and insights from the various themes covered in this report and use them to offer a detailed analytical overview of the India Exclusion Report 2013-14. It attempts to accomplish this through an exploration of the following areas: why the public goods being examined indeed fall under the definition adopted in this report, the major groups facing exclusion from the public goods, the key processes of this exclusion, the consequences of such exclusion, and recommendations to prevent, address and reverse exclusion from the public good.

### 1. Public Goods and the Role of the State

The report argues, using the conceptual framework for exclusion presented in the previous section, that school education, urban housing, decent work in labour markets and legal justice in relation to anti-terror legislations are each an important public good. Exclusions from these goods make a life of dignity impossible for the persons being excluded. Conversely, access to these goods has the potential to greatly enhance an individual's quality of life and their ability to contribute to society.

The review of each public good in this report makes the case for why the effective mediation—if not the actual provisioning—of the public good by public authorities is a necessary condition to ensure that it is actually available sustainably and equitably to every person, regardless of class, gender, caste, religious faith, disability, age, occupation or any other grounds..

### School Education

The report finds a common thread in the philosophies of Rabindranath Tagore, Mahatma Gandhi and B. R. Ambedkar. Despite their differences, they all believed in the intrinsic value of education—anchored in its transformative potential to bring about social equity, equal participation and justice. In this sense, they all saw education to be a public good that the state should ensure equitably to all children of this country.

For Ambedkar, education was also deeply political: it was potentially emancipatory for people of disadvantage, it would instil the rationality essential to overcome prejudice and would equip people with the necessary tools to be able to take reasoned and informed decisions about their governments and their destinies in a democracy. This role of education as an essential tool for social change is also why the state should take responsibility for its provisioning. It has correctly been argued that the rise in private provisioning has seriously diluted the idea of basic education as a public good. Sadly, it has not contributed to better quality education either. In fact, the poor quality of government schools, which provides a benchmark of quality, has ensured that the alternate private schools are only marginally better, if at all.

The legal and constitutional basis for the explicit recognition of education as a fundamental right was first given credence in the landmark *Unni Krishnan* case in 1993, where a Constitution Bench of the Supreme Court held that, ‘the right to free education up to the age of 14 years is a fundamental right’.<sup>4</sup> The 86<sup>th</sup> Constitutional Amendment, passed by the Indian Parliament in 2002, recognized education as a fundamental right of every child between six and 14 years of age.<sup>5</sup> However, it was only in 2009 that Parliament passed a law guaranteeing every child the right to free and compulsory education up to the age of 14 years.<sup>6</sup>

The idea of school education as a public good derives from the fact that: (a) its provisioning entails positive externalities; and (b) the marginal costs of extending its provisioning to others are relatively low. The case is only strengthened in the context of existing inequities, since the role of the state is particularly strong in cases where poverty

and social exclusion make it difficult for sections of the population to access private provisions for education. Equally importantly, the moral case for such a publicly guaranteed Right to Education lies in the grim and dark reality of millions of children in the country who, due to the specific nature of their vulnerabilities, continue to be deprived of an education. This, coupled with the discrimination faced by children within schools, and the continued inequality of educational opportunities for children based on the accident of their birth, means that India’s children require the right not just to free and compulsory education, but the right to free and compulsory equal education. Only this would be a true and comprehensive public good.

### Urban Housing

Affordable housing first and foremost addresses the need for shelter, a basic requirement for decent living. The report discusses how, in addition to this, it has the potential for employment generation, to be used as collateral that enables access to financial credit and generally as a vector to other developmental capabilities like health, education, psycho-social development, cultural assimilation, identity and economic development. Access to affordable and appropriate housing must be seen as a public good, the protection and provisioning of which requires strong public commitment and action in multiple ways, including an unambiguous framing of housing as a right and entitlement. This is primarily for two reasons: (a) the economic, social, political and developmental implications of exclusions from housing are, unlike from private goods, such as to make life with dignity impossible; and (b) the structure of the housing market is such that reasonable access is deeply prone to entrenched exclusions in the absence of corrective intervention and public action.

The report admits that in a strictly textual sense, housing is not a fundamental right in the Indian Constitution, in the way it is in countries like South Africa. But the Right to Shelter has been interpreted by some court rulings to be an extension of the fundamental Right to Life, and thereby one of the entitlements that the state owes to all its citizens. But it is important to also note that—unlike for the public good of education—there are also many court rulings that contradict such a view.

Even so, housing policy and programmes in India have emphasized an ethical commitment to increasing access to housing. The National Urban Housing and Habitat Policy (2007) sees housing and shelter as ‘basic human needs next to only food or clothing’.<sup>7</sup> In the move from ‘house’ to ‘housing’, the materiality of the dwelling unit expands to include legal status, infrastructure, aesthetics, as well as the relationship of the house to the city at large.

### **Decent Work in Labour Markets**

The report derives the idea of a public good from the concept of decent work adopted by the members of the International Labour Organization in 1999. Decent work is generally understood to mean ‘productive work by men and women, in conditions of freedom, equity, safety and dignity’. Decent work guarantees sufficient work that is safe, with effective social protection in cases where work is not possible or simply not available. In times of economic slackness or in personal crises, workers should be able to rely on some form of social security, to counter a threatening slide towards poverty and ultimately destitution. In other words, decent work comprises employment, income and social protection. It also incorporates notions of the rights at work, including the right to freedom of expression and association, and protection from exploitative labour conditions like child and forced labour, and from discrimination.

Despite the interdependent nature of capital and labour, the two almost always have competing interests, and as a result have been pitted against each other in the employment relationship. However, power has traditionally been cornered by the owners of capital, and in the absence of state protection workers’ rights are undermined. The state, in this equation, assumes the role of the guardian, enforcing work regulations and agreements. Even where labour remains plentiful and prevailing market mechanisms of demand and supply push wages down to the cheapest possible price, the state is responsible for protecting labour from undue exploitation. In this manner, the state must seek to establish some balance in the power relations between the richly endowed and a workforce traditionally prone to exploitation.

Most people need decent work to live with dignity and to support their dependents to do the

same. Labour, however, is not a commodity, and labour arrangements cannot be left to market realities alone. They are dependent on active public policies that put the creation of employment at the heart of state interventions. To guarantee decent work for all citizens, the state embraces three major responsibilities towards workers: employment creation, the protection of employment rights and the mobilization of a social security support system for people who are unable to secure employment.

While there is no constitutional right or guarantee to work in India, Article 39 of the Directive Principles of the Indian Constitution recognizes the need for state action to promote an adequate means of livelihood. The Indian state has attempted to fulfil these diverse responsibilities through a slew of legislations: employment guarantee of 100 days for unskilled rural work, at least 44 central labour protection laws, innumerable state laws and a law for social protection of unorganized workers. Special laws banning exploitative labour arrangements like boundless contract labour, bonded labour and trafficking for labour exploitation also exist. However, as the report illustrates, the state has thus far failed large populations in ensuring equitable and sustained access to decent work.

### **Legal Justice in Relation to Anti-Terror Legislations**

The report looks closely at the abridgement of a crucial public good—namely, fair and impartial access to justice—in the context of extraordinary anti-terror legislations which, both in their design and implementation, severely restrict or deny the realization of fair access to justice. It endorses the Rawlsian view that justice will be done only if the last person standing also receives justice.<sup>8</sup>

The report finds the fundamental Right to Justice implicit in the Right to Life under Article 21 of the Indian Constitution and also under Article 22, which provides for protection against arbitrary arrest and detention. Even when certain rights are not explicitly guaranteed under the Constitution—for instance, protection from torture—the Indian Supreme Court has consistently interpreted these to be implicitly protected under the Right to Life. With respect to the conduct of a police investigation or trial, two essential safeguards exist: fairness in procedure and equal application of legal standards for

all persons. These normative guidelines have often evolved through enunciations of the Supreme Court.

India also has binding obligations as a signatory to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to respect several critical human rights and fundamental freedoms—protection from ‘torture’, and from ‘cruel, inhuman or degrading treatment or punishment’, the right to a ‘fair and public hearing by an independent and impartial tribunal’, and protection from ‘arbitrary arrest and detention’.

The report rejects the utilitarian justification used often to uphold terror laws on the ‘greatest good for the greatest number’ theory. Emerging principles of international law, human rights and humanitarian legal principles establish that to ensure fundamental constitutional protections for minorities and dissenters, the promise of justice, including procedural justice, cannot be compromised for any individual: it must be an absolute and universal public good as understood by Rawls. Therefore, the utilitarian argument that it is acceptable to torture a suspected terrorist because he or she might reveal important information goes against well-established human rights principles. In fact, in difficult times, such as war or terrorism, procedural fairness assumes unprecedented importance, as certain persons, such as alleged terrorism suspects, are most likely to be excluded from this system of safeguards and not given equal access to justice. It is in such situations that we most need to uphold these protections as essential components of the public good of justice for all.

## 2. Who is Being Excluded?

Although the public goods being reviewed in the India Exclusion Report 2013–14 — education, urban housing, decent work in labour markets and legal justice in relation to anti-terror legislations—are very diverse, the dominant and striking finding from the report is that for these public goods the groups being most severely and consistently excluded are almost always the same: women, Dalits, Adivasis, Muslims and persons with disabilities. Members of these groups tend to be either excluded completely

from access to these public goods, or excluded on unequal and discriminatory terms compared to other sections of society.

The consistent exclusion of these communities from just and equitable access to diverse public goods suggests that both in their design and functioning state institutions, policies and laws tend to mirror, produce and reproduce discrimination and exploitation based on gender, caste, class, religion and disability. The report finds that exclusion is deeper when the multiple layers of these diverse forms of exclusion occur within an individual, household or group; for instance, a Dalit woman seeking work or a disabled Muslim child attending school.

### School Education

While it is officially reported that elementary school enrolment is nearing 100 per cent,<sup>9</sup> there is cause to be sceptical about this finding, because it is ‘blind’ to sizeable numbers of children who are completely invisible to the state. This invisibility is particularly shocking with respect to one category of these children, namely urban street children, who are physically visible to policy makers every day but continue to be excluded from the education system. There are few reliable estimates of these children but a 2011 study found 50,000 street children in Delhi alone. About half of them were illiterate, and only about 20 per cent had received some formal education.<sup>10</sup> As per United Nations Children’s Emergency Fund (UNICEF) estimates, there were 11 million street children in India in 1994,<sup>11</sup> a number that is likely to have gone up significantly since then. There are, in addition, according to the government, about 12 million working children in the five-to 14-years age group in 2001,<sup>12</sup> but unofficial estimates put the number at as high as 60 million.<sup>13</sup> Child Rights and You (CRY) in India estimates that there are about five million children in commercial sex work in the country, 71 per cent of whom are illiterate.<sup>14</sup> An estimated six million migrating children find their schooling interrupted and do not attend school,<sup>15</sup> while at least 500,000 people were internally displaced due to conflict and violence in India by the end of 2011.<sup>16</sup> About 145,000 of the estimated 2.1 million living with HIV/AIDS in India in 2011 were children below the age of 15.<sup>17</sup>

Children from such highly excluded groups face formidable and often insurmountable barriers in their access to schooling due to the specific nature of their vulnerabilities.

Despite high enrolment levels, the large majority of children, particularly from Dalit, Adivasi or Muslim communities, and children with disabilities, drop out without completing elementary education or school education till class X. In 2012–13, the Net Enrolment Ratio for school children was estimated to be 90.78 per cent at the primary level, but fell to 62.24 per cent at the upper primary level.<sup>18</sup> As Figure 1.1 highlights, these groups continue to have significantly lower levels of educational achievement and access compared to the general population. Poverty plays a vital role in exacerbating such exclusion from education: statistics from the 64<sup>th</sup> NSS round (2007–08), estimate that only about half of the people in the bottom 10 per cent of the population (based on Monthly Per Capita Expenditure or MPCE) were literate, as compared to a literacy rate of 88.4 per cent for the top 10 per cent of the population.<sup>19</sup> The same data also shows that poorer children have lower educational participation indicators like enrolment and attendance, and higher dropout rates. Since the incidence of poverty is higher in

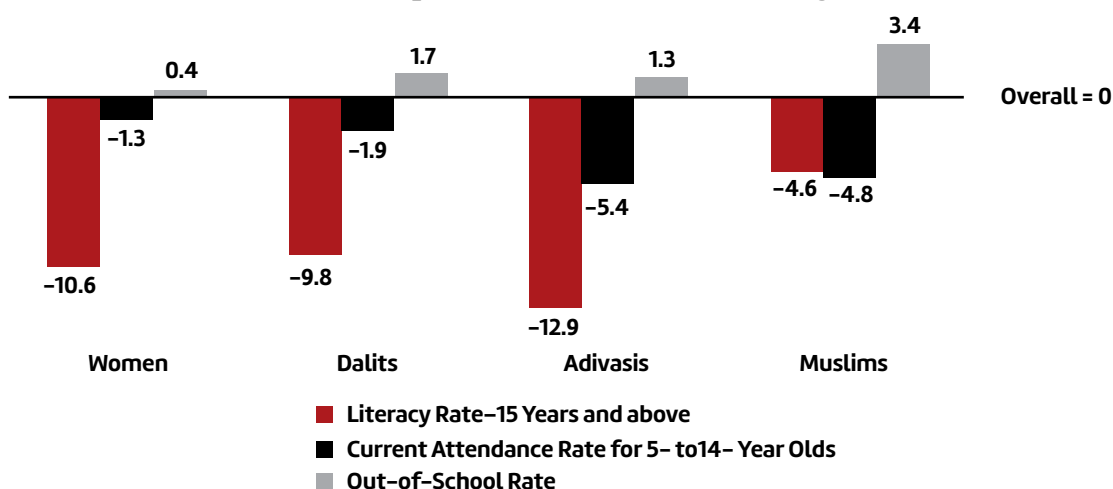
marginalized households, including Dalit, Adivasi, Muslim and female-headed households, and households with persons with disabilities, such groups are particularly vulnerable to the impacts of poverty on educational exclusion

### Urban Housing

Turning to urban housing, the picture is similar. The Kundu Committee report argues that the overall housing shortage in India is of the order of 18.78 million units.<sup>20</sup> As Figure 1.2 shows, 95 per cent of the shortage in housing affects families classified as either Low Income Group (LIG, household income between ₹5,000–10,000 a month) or Economically Weaker Sections (EWS, household income under Rs 5,000 a month). In addition to these households facing housing shortage, the Kundu Committee estimates that there are 530,000 homeless households. However, this figure is widely thought to be an underestimation, with a more realistic number being closer to 3 million households.

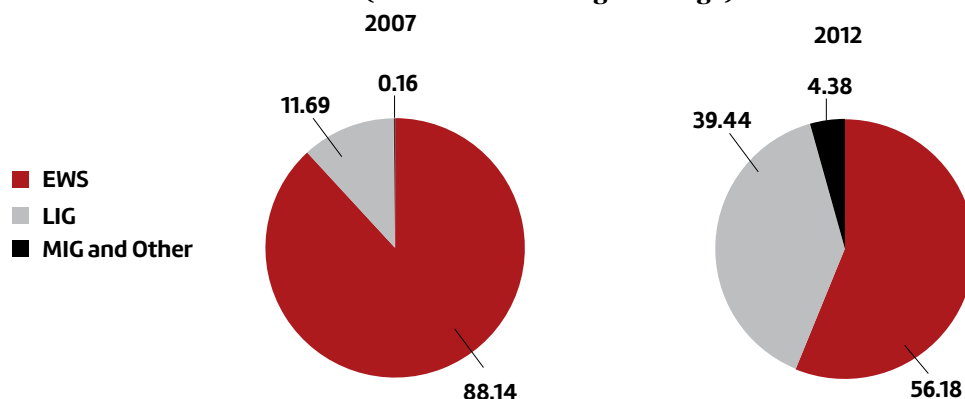
The major housing shortage in India, according to the Kundu Committee, encompasses those living in housing conditions that are defined as ‘housing poverty’, households living in unacceptable dwelling units or in ‘unacceptable physical and

**Figure 1.1** Difference in Educational Indicators for Various Groups Relative to the National Average (%)



Source: National Sample Survey Organization (2012), ‘Employment and Unemployment Situation Among Social Groups in India’, *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation (MoSPI); NSSO (2013), ‘Employment and Unemployment Situation Among Major Religious Groups in India’, *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI; Social and Rural Research Institute (2009), *All-India Survey of Out-of-School Children of Age 5 and in 6–13 Years Age Group*, New Delhi: MoHRD.

**Figure 1.2 Housing Shortage by Income Group**  
(% of Total Housing Shortage)



Source: A. M. Kundu, Susheel Kumar, C. Chandramouli, Abhey Pethe, P. C. Mohanan, Neelima Risbud, Somit Das Gupta, Darshani Mahadevia, R.V. Verma and D. S. Negi (2012), *Report of the Technical Group on Urban Housing Shortage*, New Delhi: Ministry of Housing and Urban Poverty Alleviation.

social conditions'.<sup>21</sup> They argue that housing shortage in India is not one of vast numbers of the shelterless, but the inadequacy of the existing, often self-built housing.

Housing quality indicators from the 2011 Census<sup>22</sup> also indicate significant differences based on caste and tribal status. SCs and STs, and among them, female-headed Scheduled Castes (SCs) and Scheduled Tribes (STs) households, have lower quality housing on average. SC households are more likely to be built of grass, thatch, bamboo or mud than the average household, for example. ST households are more likely to have walls of mud or unburnt brick—only 22 per cent of ST households have walls made of brick or concrete. While 53 per cent of all households nationally do not have a latrine within the premises, the figure rises to 66 and 77 per cent for SCs and STs, respectively, and within them, to 78 and 88 per cent for female-headed SC and ST households, respectively. About 82 per cent of all households in India have either open or no drains for waste water. Again, this figure rises to 88 per cent for female-headed households, and to 94 per cent for ST households.

In low-income and slum settlements in India, it is common to find a preference for male tenants, or exclusion of tenants of certain regions of the country, and even a binary inclusion of a particular community.<sup>23</sup> This experience is mirrored in access to housing finance, for example, which has clear exclusions along religious, caste and class lines, marked most notably by periodic outcry over banks

declaring minority-dominated neighbourhoods as 'no-lending zones', officially and unofficially.

Discrimination in access to housing is difficult to measure at scale. Yet, individual studies repeatedly suggest patterns of systemic segregation. In Mumbai, for example, Sameera Khan found a common and complex pattern of exclusion and self-segregation. Muslims were receding from mixed housing as a result of denial of rental and ownership access, and making a strategic retreat to Muslim-dominated localities, where they felt safer.<sup>24</sup> Additionally, studies have found pervasive discrimination in housing access to Dalits,<sup>25</sup> people living with HIV,<sup>26</sup> transgender and Hijra communities,<sup>27</sup> and people with disabilities.<sup>28</sup> What seems to emerge, underscoring the argument of this report, is the overlapping of familiar disadvantages in the housing space: gender, caste, religion and ability.

### **Decent Work in Labour Markets**

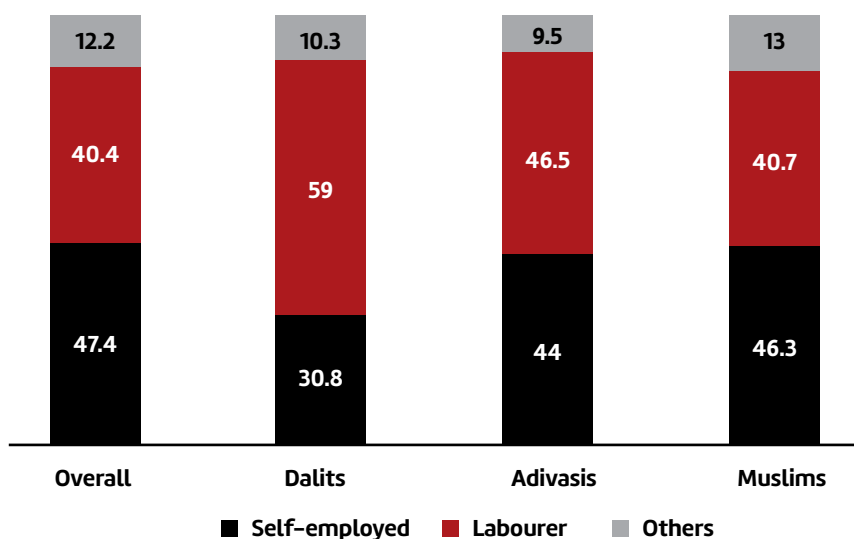
Official data estimates that around 400 million workers in India are employed in the informal sector.<sup>29</sup> Without the availability of formal employment, the solution for workers lies either in opting for self-employment or becoming a casual labourer. In fact, the vast majority of jobs created in recent years have been in the informal sector. Even within the formal sector, workers are increasingly being engaged in what is effectively 'informal' employment,<sup>30</sup> with no secured tenure of employment, social security or other protections.

Such informal-sector and informally employed workers are extremely vulnerable to exclusion from decent work.

The report also finds that certain sections of society are overrepresented among those who are consistently denied access to decent work. For these groups, the inaccessibility of decent work is not an arbitrary occurrence, but is buried in traditions of caste, class, religion and gender. For instance, as

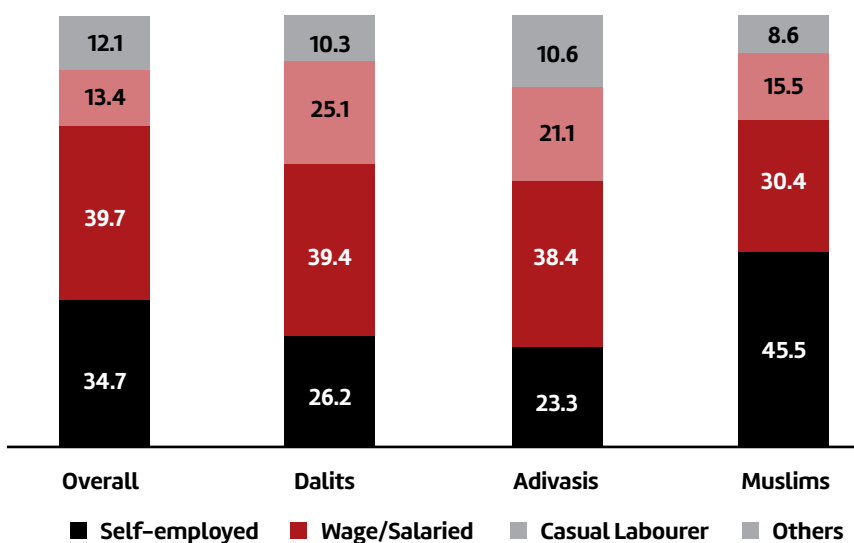
Figures 1.3 and 1.4 show, there is a preponderance of Dalits in casual labour. In 2009–10, 59 per cent of SCs in rural areas were engaged as agricultural or non-agricultural labourers, compared to an overall average of 40.4 per cent; in urban areas too, 25.1 per cent of SCs worked as casual labour, as opposed to 13.4 per cent of the overall population.<sup>31</sup> Along with Dalits, Adivasis make up a substantial part of the workforce engaged in casual labour, in both rural and urban areas.

**Figure 1.3 Employment Status for Various Groups in Rural Areas, 2009-10 (%)**



Source: National Sample Survey Organization (2012), 'Employment and Unemployment Situation among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; National Sample Survey Organization (2013), 'Employment and Unemployment Situation among Major Religious Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI.

**Figure 1.4 'Employment Status for Various Groups in Urban Areas, 2009-10 (%)**



Source: NSSO (2012), 'Employment and Unemployment Situation Among Social Groups in India'; NSSO (2013), 'Employment and Unemployment Situation Among Major Religious Groups in India'.

The data for Muslims is stark, even when compared to other vulnerable groups. Data shows that in 2009–10, only 30.4 per cent of the Muslim workers in urban areas were engaged in regular wage paying or salaried work, compared to 39.7 per cent of the total population.<sup>32</sup> Muslims with regular employment are mostly involved in inferior or low-end work, and as a result their job conditions are generally much worse than those of other regular workers, including Dalits and Adivasis.

Persons with disabilities are also particularly excluded from the labour market. Estimates from the 58<sup>th</sup> round of the 'National Sample Survey Organization (NSSO) surveys showed that only 26.3 per cent of disabled persons were employed in economic activities, saying nothing of the nature or conditions of employment.<sup>33</sup> The proportion of employed people among the mentally disabled was the lowest, at 5.6 per cent. The proportion of employed persons among disabled women was just 10.4 per cent.

Women also suffer from multiple disadvantages in the labour market. In a global survey on female labour market participation, India ranked 11<sup>th</sup> from the bottom out of 133 countries.<sup>34</sup> Figure 1.5 shows the large difference in labour market participation between men and women. Women face the double burden of unpaid care work at home, and paid work in the informal sector, usually in low-paying and precarious jobs, to balance their unpaid care work responsibilities. A considerable

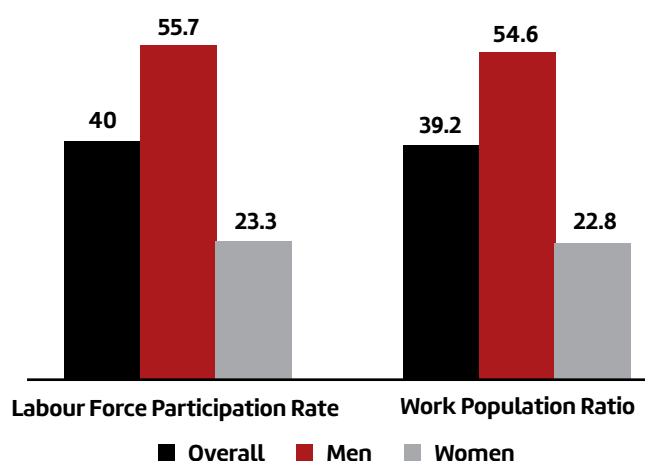
pay gap also exists between men and women, in both the formal and informal sectors.<sup>35</sup> These and other exclusionary practices largely coincide with general discriminatory attitudes and practices towards women, as well as their lower social status, leaving them highly vulnerable to exploitation, abuse and violence, including sexual harassment at the workplace.

### Legal Justice in Relation to Anti-Terror Laws

One of the clearest indicators of the exclusionary nature of law and justice in India is the significant overrepresentation of marginalized groups like Dalits, Adivasis and Muslims in prison population, particularly of undertrial prisoners who are yet to be convicted for their alleged crime (see Figure 1.6).

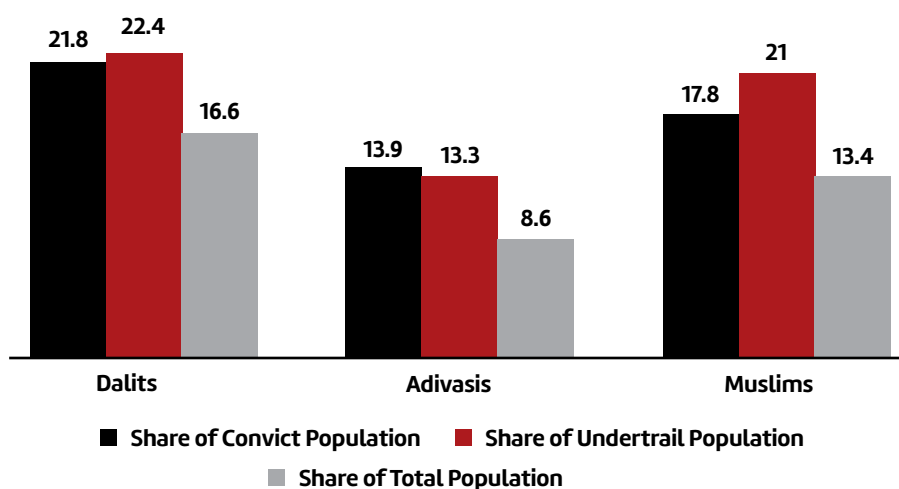
With respect to the application of anti-terror legislations in India, and the socio-economic background of persons charged or detained under such laws, there is little official data available. However, a number of unofficial sources have documented the extensive misuse of anti-terror laws, particularly in terms of their selective targeting of Muslims, Dalits, Adivasis, activists, and political opponents. Between 1985, when the Terrorist and Disruptive Activities (Prevention) Act (TADA) came into force, and 1994, approximately 67,000 persons were arrested, of which only 8,000 went to trial and just 725 were convicted.<sup>36</sup>

**Figure 1.5 Labour Market Participation for Men and Women (%)**



Source: NSSO (2012), 'Employment and Unemployment Situation Among Social Groups in India'.



**Figure 1.6 Profile of Prison Population (%)**

Source: Government of India (2013), *Prison Statistics India 2012*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs

Examples of the misuse of TADA included the targeting of minorities, particularly Muslims (for example, in Rajasthan, where only Muslims and Sikhs were detained under the act), and its heavy use in states that were relatively unaffected by terrorism.<sup>37</sup> By 1993, for instance, 19,263 persons had been arrested under TADA in Gujarat, the majority of them anti-dam protestors, trade unionists and persons belonging to religious minorities.<sup>38</sup> With the Prevention of Terrorism Act (POTA), similar cases of misuse began to surface soon after its enactment in 2002. Jharkhand, for instance, had already arrested 202 persons (including at least one minor) under POTA by February 2003, much higher number than for other states. Most of those charged under the act were Adivasis, Dalits and members of other marginalized groups.<sup>39</sup> In Gujarat, all but one of the cases registered under the Act by the end of 2003 were against Muslims, and the one exception was a Sikh.<sup>40</sup>

While both TADA and POTA stand repealed, several of their draconian provisions have found their way into the the Unlawful Activities (Prevention) Act, UAPA (in its later amendments) and various state-specific anti-terror laws, which themselves remain extremely prone to abuse. The Coordination of Democratic Rights Organizations (CDRO) has documented numerous such instances of the improper application of the UAPA to silence

activists and political dissenters, and selectively target members of certain communities, particularly Muslims, Dalits and Adivasis.<sup>41</sup> Similarly, the Jamia Teachers' Solidarity Association (JTSA) has documented the widespread targeting of Muslims in Delhi,<sup>42</sup> Karnataka<sup>43</sup> and Madhya Pradesh<sup>44</sup> under anti-terror laws. The reports detail how Muslim youth in these states have been arrested and charged with serious offences under the UAPA, based on flimsy, tampered or fabricated evidence linking them to a terrorist attack or a terrorist organization. The investigative journalism website, Gulail, has reported on the abuse of the Maharashtra Control of Organised Crime Act (MCOCA), to falsely implicate 13 innocent Muslim men in the July 2006 train blasts in Mumbai.<sup>45</sup> A similar investigation by Gulail in Odisha found that the UAPA and other laws were being widely misused to quell dissent and target numerous activists, journalists, lawyers, students and Adivasis. Based on its investigation, the website estimated that in 2013 there were 530 persons (about 400 of them Adivasis) in jail for what appeared to be fabricated cases.<sup>46</sup> In Chhattisgarh, a number of Adivasis and human rights activists, perhaps most prominently Binayak Sen, have been charged under the UAPA and the Chhattisgarh Special Public Security Act (CSPSA) for being members or sympathizers of Maoist organizations.

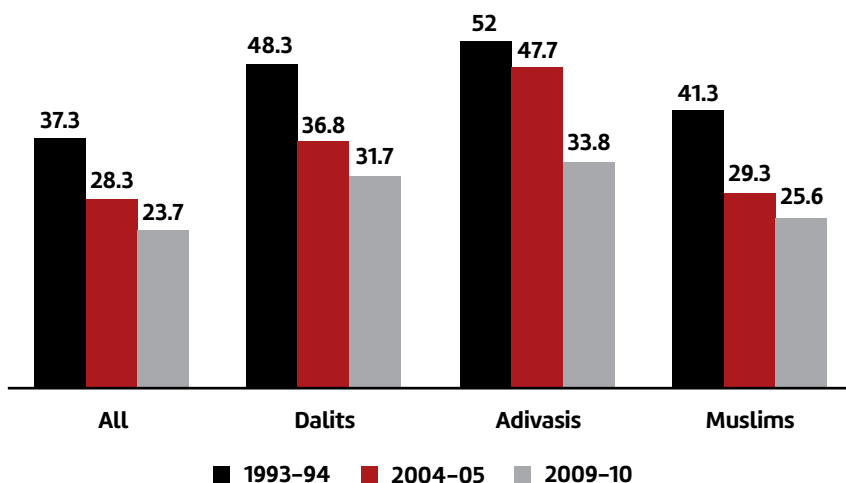
### The Role of Poverty

The previous section highlights the close relationship between poverty levels and educational indicators like literacy, enrolment, attendance and dropout rates. Similarly, urban housing exclusions are almost exclusively concentrated among families classified as either Low Income Group (LIG) or EWS. The poor find themselves heavily overrepresented among informal-sector workers and those denied access to decent work. Poor economic status can also significantly harm an accused person’s access to fair and impartial justice, particularly by hampering their ability to

secure suitable legal representation. Poverty can thus play an important role in facilitating exclusion from public goods and in the case of marginalized and discriminated communities, exacerbating such exclusions. There are, however, complex linkages between poverty and exclusion; poverty is both a cause and a consequence of exclusion from critical public goods, often pushing those at the margins into a vicious cycle of deprivation that is hard to escape.

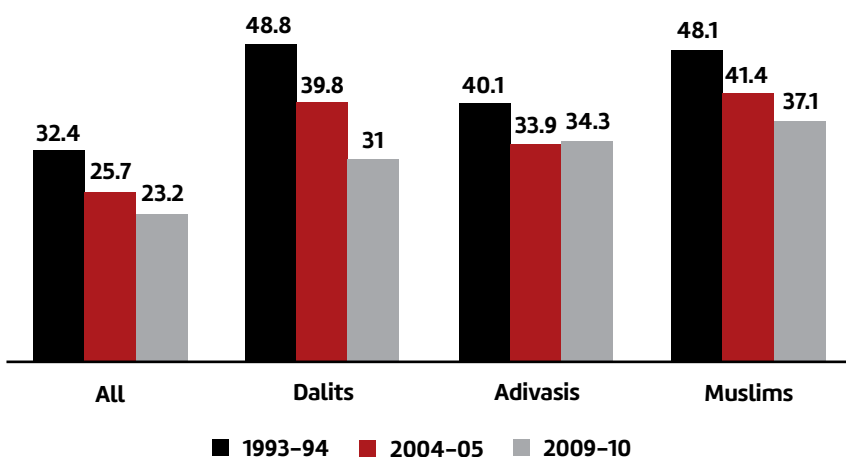
Though India’s poverty has declined over time, Figures 1.7 and 1.8 show that this has not been a uniform process. There is evidence to suggest that

**Figure 1.7 Poverty Incidence for Various Groups in Rural Areas (%)**



Source: Rajeev Malhotra (2014), *India Public Policy Report 2014*, New Delhi: Oxford University Press.

**Figure 1.8 Poverty Incidence for Various Groups in Urban Areas (%)**



Source: Malhotra (2014), *India Public Policy Report 2014*.

'poverty is getting increasingly concentrated in a few geographical areas (Uttar Pradesh, Madhya Pradesh, Bihar and Odisha), and among specific social groups, including Dalits and Adivasis (in both rural and urban areas), Muslims in urban areas and Christians in rural areas (mainly Odisha), assetless labour (landless rural labour and casual workers in urban areas) and women. There is also evidence to suggest that interpersonal, rural–urban and across-state inequalities in per capita consumption and in human development outcomes have increased in recent years, though not uniformly.<sup>47</sup> These trends have a direct bearing on understanding and addressing the exclusions faced by the different groups discussed in this report.

### 3. Processes of Exclusion

As discussed in the previous section, despite the diverse nature of public goods covered in this report, the people who tend to be most excluded from these goods are frequently from the same social groups. Another key finding of the report is that the *processes* by which these disadvantaged communities and groups are denied access to public goods also have many common characteristics. These processes can be classified into the following broad categories:

- Faulty design of law and policy;
- Failures and institutional bias in the implementation of law and policy;
- Active violence and discrimination by the state;
- Low and faulty budgetary allocations.

#### 3.1 Faulty Design of Law and Policy

Consistently, across the public goods reviewed in this report, it is found that exclusion of vulnerable populations is in many ways built into the design of laws and policies concerning these public goods. This exclusion is therefore not a chance or random occurrence, but instead is the inevitable consequence of the ways in which laws and policies are framed.

##### **School Education**

In school education, the report questions the segmented approach adopted by the state in dealing with the education of children from deprived and

excluded sections of society, because this has led to the provisioning of sub-standard facilities for them. Instead of focussing on improving the quality of government schooling for all, the government has followed a fractured and piecemeal approach with a disproportionate reliance on 'incentives' to attract children from neglected sections of society into the fold of formal education. Government policies have also stressed on investing most resources on expanding physical infrastructure, rather than the more intangible but basic *quality* of education for poor children. As a result, the increase in physical access has come at a huge cost to quality.

On the one hand, this has led to an increase in the exodus away from government schools, and the growth of a parallel private system of basic education. On the other hand, different classes of schools have developed within the government system itself, with the setting up of so-called 'model' schools such as the Sarvodayas and Navodayas, while turning a blind eye to the mass of regular government schools that most of India's children and almost all of its children from socially and economically weaker sections attend.<sup>48</sup>

The union government's most ambitious education programme for achieving universalization of basic education—the Sarva Shiksha Abhiyan (SSA)—has also been fraught with design flaws and implementation loopholes, leading to a less than desired impact. A small fund has been created to address equity issues within the SSA, but there is little vision or commitment to this or to the recognition that inequality and exclusion are the main barriers to universal school education. The provisioning of low-quality, low-funded, separate services for Dalit, Adivasi and minority children has also continued under the SSA. Since this programme affects the education of the marginalized the most, the poor quality education it delivers adds to their burden of inequality.

The final thrust given most recently to universalizing access to the public good of education is in the form of the passage of the Right of Children to Free and Compulsory Education Act, commonly known as the Right to Education (RTE) Act, in 2009. The RTE, if enforced, can transform the quality of schools, especially government schools, and enable children from all walks of life to acquire at least eight years of basic education of a decent quality. However, the biggest challenge faced by the

RTE Act is that it has not fundamentally altered the manner in which elementary education is perceived by those involved with the enforcement of the act. The act, for instance, makes no special provisions for children from marginalized communities, such as street children, children from migrant or nomadic families, children in conflict zones, etc. Moreover, despite its legal connotations, no accountabilities have been fixed within the Ministry of Human Resource Development (MoHRD) and state education departments to redress the grievances of people seeking to claim their rights under the Act.

### **Urban Housing**

Housing is not textually a constitutional or legal right in India. Many court judgments variously read housing and shelter into the Right to Life.<sup>49</sup> Yet many others have refused such an interpretation of Article 21.<sup>50</sup> This implies that certain forms of judicial remedy are not available to housing rights advocates. Only the government's current policies and programmes can be challenged, or an indirect argument via the Right to Life can be made; the lack of an adequate policy framework itself becomes much harder to challenge. The absence of a Right to Housing also has a deeply political impact on the perception of the entitlements of urban citizens to housing. When something is acknowledged as a right, inequities in the provision of that right are more difficult to explain away.

At present, cities in the policy imagination of both the union government and the states are engines of growth and a very particular type of development. While the Rajiv Awas Yojna (RAY) and Basic Services for the Urban Poor (BSUP) both attempt to make urban services reach the poor, the main thrust of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) has been in urban infrastructure and governance, building large-scale, capital-intensive projects. Current policy frameworks on housing have an increasing emphasis on the involvement of private actors and developers, and 'the importance of housing as an economic good seems to outweigh its importance as a component of welfare and social security.

Further, current urban development policies are finding it increasingly difficult to regulate the supply of land and direct it to particular uses such as social housing. The expansion of a regime of exceptions

and special economic and planning zones has made the aggregation of land and its ownership fairly concentrated towards particular, high-end uses. Policies that prevent such concentration and counter speculation, as well as those that can achieve balanced regional development are notably absent or very weak.

Housing policies have systematically over time broken the link between housing and work. In many transitional economies as well as more egalitarian states, it is the employer who is responsible for the provision of housing. The dismantling of the employer's responsibilities in the formal and informal components of the public and private sectors represents a singularly important lost opportunity for de-centralized and effective housing production and provision. The possibilities to leverage work status for housing entitlements have equally remained unseen in the informal sector where, for example, developers and construction firms remain without responsibility for the temporary or permanent housing of their workers, who are often brought into the city by them for their labour. This is a stark example how policy and legal denial of one public good—social protection in work—spurs exclusion also from others, in this case housing.

Housing policies have also been singularly ownership focussed, thinking only in terms of producing individual and titled homes. Ownership-centric policies have meant a deep neglect of, at best, and outright hostility towards, at worst rental housing and housing forms like dormitories, shelters, communal homes, etc., that can play a critical role in responding to the housing needs of homeless people and migrants as well as poor urban residents in general.

### **Decent Work in Labour Markets**

In a country where an estimated 15 million persons enter the labour market every year,<sup>51</sup> and labour-intensive sectors like agriculture are in decline, there has been little attempt by the state to adopt policies that seek to accommodate this large unskilled workforce in the economy. For instance, the services sector, which has seen rapid growth since the early 1990s, accounted for 58.3 per cent of Gross Domestic Product (GDP) in 2004–05, but its share of employment was only 29 per

cent. In contrast, labour-intensive manufacturing accounted for only 17 per cent of GDP and 12 per cent of employment, which was not materially different from the scenario in 1993–94.<sup>52</sup>

Modern labour markets also operate through a network of employment agencies and middlemen, often unregistered and unregulated. This can lead to a flagrant disregard for decent labour practices mandated by law and problems with assigning accountability for offences. However, policy makers in India have failed to recognize these changing labour market dynamics and adapt labour protection laws accordingly. As a result, there are very weak legal regimes to protect workers, particularly the large majority who are engaged in informal work.

Home-based workers, for instance, are not even recognized as ‘workers’ by the government and agencies responsible for labour welfare. One of the reasons for this is that there is no identification of the principal employer in home-based work. The contractor who is responsible for getting the work done builds the network between the employer and the worker. This lack of regulation and social security is reflected in the abysmal working conditions for home-based workers, as well as others engaged in unseen or ‘invisible’ work.

As regards existing social security measures, the Unorganized Workers Social Security Act of 2008, belatedly enacted to benefit the working poor and targeting people with little or no means of their own, was aimed at reaching out to these citizens in need of public support, to secure their survival. Prior to this act, there was no such legislation for the protection of workers in the informal sector. However, the act has largely become the sum of the existing places of social welfare schemes.<sup>53</sup> These welfare schemes do not, conversely, share the act’s rights-based approach. On the contrary, getting access to the schemes presupposes an active attitude by citizens, not by the government. The schemes throw up many conditional hurdles, blocking their easy access.

### **Legal Justice in Relation to Anti-Terror Legislations**

Extraordinary anti-terror legislations, in their very design, provide for a state of exception to be created within existing legal safeguards and

procedures relating to the investigation and prosecution of criminal offences. This leaves them highly vulnerable to abuse by the police and other law enforcement authorities, in order to suppress legitimate forms of dissent and target specific communities.

Extraordinary provisions under such laws subvert a number of fundamental human rights, and contradict well-established principles of criminal and human rights laws. For instance, whereas the maximum period for which a person can normally be detained without being charged with a crime is 90 days, most anti-terror laws allow for the detention of an accused person for a much longer period, often up to a year. Similarly, certain confessions made to the police are admissible as evidence in court, a provision that, besides running contrary to protections guaranteed under the Indian Evidence Act of 1872, also significantly increases the possibility of the use of torture to extract false confessions from the accused.

Other vital differences include the reliance on special courts and *in camera* (private) hearings for prosecution of such crimes, use of secret witnesses, the presumption of guilt in certain cases (for instance, if arms or explosives are recovered from the accused or there is evidence connecting him or her to weapons used to commit terrorist acts) and much more stringent bail norms, which effectively place the burden of proving their innocence on to the accused.

Perhaps most worryingly, such laws adopt an extremely vague interpretation of what constitutes terrorism, allowing the government broad discretion in defining a terrorist organization, and generally criminalizing even mere association or communication with suspected terrorists or membership to an organization deemed to be a terrorist organization by the government. For instance, the Unlawful Activities (Prevention) Act (UAPA), enacted in 1967, gives broad discretion to the central government to decide on what constitutes an ‘unlawful activity’ or an ‘unlawful association’. Amendments to the UAPA in 2004 adopted definitions for a ‘terrorist act’ and ‘terrorist organization’, which were similar to the then recently repealed Prevention of Terrorism Act, 2002 (POTA), and amendments in 2008 and 2012 further broadened these definitions. The UAPA’s

vague and broad definition of ‘terrorist acts’ is in fact inconsistent with internationally acceptable standards and can be interpreted to include many forms of non-violent political protest.<sup>54</sup>

### 3.2 Failures and Institutional Bias in the Implementation of Law and Policy

Even more grave than the faulty design of laws and policies are the failures and institutional biases that are encountered in the course of their implementation. The report argues that such failures and biases tend to disproportionately disadvantage persons from marginalized and vulnerable communities, who are heavily reliant on access to such public goods and are unable to effectively claim their rights in the event of implementation failures.

#### School Education

Even as the RTE Act lays down nine essential infrastructure facilities<sup>55</sup> to be provided in all elementary schools, the large majority of schools are devoid of them. Despite concentrated attention and budget allocations to build adequate schools and classrooms with necessary infrastructure facilities and equipment, at the end of the three-year RTE deadline in March 2013, the government reported that less than 10 per cent of the 1.3 million government schools in the country were RTE compliant in terms of infrastructure.<sup>56</sup> While such infrastructure shortfalls are felt by all students, some of them have a particularly detrimental impact on children from marginalized groups. Many schools still do not have separate girls’ toilets, which often leads to girls dropping out of school, especially after puberty, or forces them to stay at home during menstruation. Similarly, the absence of ramps severely restricts school access for children with disabilities.

Government reports also suggest that the stated policy of providing a primary school within 1 kilometre of place of habitaion and an upper primary school within 3 kilometres of place of habitaion have been fulfilled in almost all eligible areas in the country.<sup>57</sup> However, this policy does not ensure that all children are able to access these schools. In urban areas, a school within the mandated distance is not sufficient to accommodate all the children in the catchment area, given the high population density.

Even when schools are available, heavy traffic may prevent young children from accessing the school, given that their parents are not able to take the time to bring children to and take them back them. An estimated 4 per cent of habitations in the country do not have primary schools within walking distance of homes.<sup>58</sup> This almost immediately excludes several disadvantaged children from accessing education, as they cannot travel long distances to attend school.

Inadequate infrastructure also has an enormous impact on school access for children with disabilities. Unfortunately, their concerns have been reduced to the catchall notion of ‘barrier-free ‘access’, meaning ramps and rails, rather than a framework that enables the participation of children with disabilities in all aspects of school life, be it classrooms, playgrounds, toilets, drinking water facilities or mid-day meals.

Institutional failures and biases that impact children from excluded groups are clearly apparent in the implementation of school curricula and pedagogies. The National Curriculum Framework 2005, aimed at guiding the development of state-level curriculum frameworks, syllabi and textbooks, lays emphasis on promoting citizenship, social inclusion and empathy, and contributing to economic and social changes.<sup>59</sup> While some changes have been made along these lines, states have varied considerably in their understanding, translation and application of these principles, with a lack of clarity on addressing issues of social exclusion. As a result, many children continue to be excluded, not just in terms of the content of textbooks, but also on account of curricular content, hidden curriculum and how it is transacted in the classroom by the teacher.

The report highlights many examples of the hidden curriculum that reinforce gender stereotypes, including organizational and seating arrangements, assignment of tasks, and systems of rewards and punishments. Similarly, students from a minority background find themselves particularly alienated by the hidden curriculum, such as through dominant religious rituals and practices built into the school routine (symbols of Hindu gods and goddesses in schools, *pooja* and *havan* ceremonies, celebration of some festivals over others, etc.). Such rituals often also result in caste-based discrimination against Dalit students.

School curricula typically do not acknowledge the cultural rights of Adivasis, nor do they take account of tribal cultures as autonomous knowledge systems with their own uniqueness, history and context. Moreover, Adivasi children, who generally speak in their own local dialect, are unfamiliar with the state language used in schools. As a result, they are unable to fully comprehend classroom teaching and activities, read in the state language or understand texts properly.<sup>60</sup> Children with special needs may also get excluded from classroom activities because of difficulties in communication with the teacher and peers: for instance, if they are unable to hear well or speak clearly, or if a mental disability makes it difficult for them to understand or respond to the teacher.

### **Urban Housing**

The ‘failure’ of urban planning is a common refrain in Indian cities. When seen from the perspective of access to affordable housing, however, this issue is complex. Citing the example of Delhi, the report discusses the range of implementation failures that have resulted in the inadequate supply of quality low-income housing. These include: (a) the inadequacy of targets that estimated requirements for low-income housing; (b) the failure of the state to build even this underestimated quota, particularly for low-income housing; (c) the failure of adequate infrastructural provision that meant even built housing was marked by housing poverty and inadequacy; and (d) the failure of the state to make land available for low-income housing. While Delhi marks a failure where the state fails its own commitments to building housing, equally important are implementation failures that result from the inability of planners to adequately adapt and respond to the dynamics of rapid growth in urban areas.

An illustrative example of institutional bias is the ‘illegality’ of informal and self-built housing by the poor. Illegality represents the reduction of the urban poor to the status of an ‘encroacher’,<sup>61</sup> an identity that allows the substantive erosion of their rights and makes them into improper citizens.<sup>62</sup> It also prevents investment in individual and community infrastructure, thereby impeding the development of a settlement incrementally over time. The report notes that informal and illegal

practices of inhabitation are not limited to the poor but, in fact, ubiquitous to poor and elite residents alike.<sup>63</sup> For instance, in 2009 only 24.7 per cent of Delhi’s residents lived in what are called ‘planned colonies’.<sup>64</sup> What separates the illegality practised by the elite and the poor are the differentiated consequences that result from such practices. Both rich and poor are ‘illegal’ but it is the poor who live under the continuous consequences of this illegality not the rich, because of the selective institutional bias of the many agencies responsible for interpreting and enforcing the law related to tenure in cities. Insecurity of tenure makes even the fragile development gains made by poor households vulnerable to the shock of eviction.

At the very other end, and equally illustrative of this institutional bias, are the new ‘acceptable’ forms of urbanization—Special Economic Zones or SEZ cities, new towns, satellite cities, as well as ‘integrated townships’ and gated communities within cities. Urban space, land and housing markets are thus increasingly being designed to cater to an emboldened and skilled economic citizen with very different housing needs as compared to the urban poor. Within this development model, finding the political will and ability to direct public resources to low-income housing, especially through interventions in land, becomes an increasingly difficult task to imagine, let alone implement.

### **Decent Work in Labour Markets**

The report finds that by and large it is not the letter of labour laws but their large-scale violation enabled by a complicit state that is responsible for denial of the public good of decent work for all. With the advent of globalization, there has been a profound change in the discourse, fuelled by business concerns that public welfare and labour laws are harming economic growth. The state has wholeheartedly sided with employers and investors on this front, actively working to keep labour as cheap as possible. There is, in parallel, a trend noted in the report, of a series of anti-labour judicial rulings since 2000, reversing the tradition of pro-poor judicial activism since the 1980s. While such judgments have made labour markets more flexible, allowing companies to adjust their needs of fluctuating demand, they have also led to an incremental destruction of workers’ rights.

In this hostile environment, the labour law regime has evolved into what the report describes as a regime of 'pseudo laws'. The Minimum Wages Act 1948, is one such case. Many workers claim they almost never receive minimum wages. Few workers get detailed wage slips indicating all relevant data, while most have no serious proof of payment.<sup>65</sup> However, there has been almost no attempt by the state to adequately enforce this law. The state itself has contributed to the questioning of this right to credible and legal payments by arguing that beneficiaries of the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) are not entitled to statutory minimum wages.<sup>66</sup> Another such law, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is India's least applied labour law. Under this act, both recruiters and workers moving between states need to be registered. However, this only happens for a small fraction of all migrating workers.

Even when workers approach government labour authorities or the police to seek remedy against cheating, violence or lack of adherence to labour laws, the chances of them obtaining a solution are slim. The number of labour inspectors is highly insufficient to properly scrutinize working conditions in the diverse range of workplaces across the country.<sup>67</sup> As a result, labour inspectors mostly get into action only when complaints have been filed, and largely operate in formally registered enterprises with an average workforce above a certain size. In 2011–12, for instance, the office of the Chief Labour Commissioner and labour departments of the state governments conducted a total of only 41,081 labour inspections across the country, with an extremely low conviction rate for violations of labour laws.<sup>68</sup>

### **Legal Justice in Relation to Anti-Terror Legislations**

The report points to growing evidence that the UAPA and other anti-terror legislations, rather than assisting the state in combating terrorism, are being abused by the police and other investigative agencies to arbitrarily detain, harass and convict innocent persons and organizations. The misuse and misapplication of these laws occur in numerous ways, including major procedural lapses that subvert vital safeguards applicable to arrested persons, the dilution of evidentiary standards,

the use of forced confessions, and a reliance on blatantly false and fabricated evidence.

Three factors, illustrative of the deep institutional bias against specific groups—activists, political dissidents, Muslims, Dalits and Adivasis—have facilitated their selective targeting under the draconian provisions of anti-terror laws. First, anti-terror laws have become an important tool for a state that is increasingly trying to criminalize all forms of dissent, including legitimate and non-violent forms of protest against its actions.

Second, there exists a high level of communalization within key apparatuses of the government, like the police, bureaucracy and judiciary. A number of reports, including official commissions of inquiry investigating incidents of communal violence, have documented the highly biased response of the police against Muslims and other minorities during such incidents.<sup>69</sup> Other symptoms of such communalization include the heavy over-representation of Muslims, Adivasis and Dalits within prison populations,<sup>70</sup> and the low share of Muslim personnel in the police force.<sup>71</sup> In the context of terror cases, widespread communal bias, within both investigative agencies and the judiciary, has served to facilitate the unequal application of anti-terror laws and has undermined crucial checks and balances meant to prevent their being abused to target specific groups.

Last, an increasingly sensationalist and ratings-hungry news media has often been guilty of an unquestioning acceptance of claims made by the police and other agencies investigating terror cases. The uncritical response to the media results in extremely limited public scrutiny of the actions of the investigative agencies, and undermines another vital check on the abuse of anti-terror legislation.

### **3.3. Active Violence and Discrimination**

The institutional biases noted in the previous section incorporate many forms of covert discrimination and hidden violence by the state against vulnerable populations, which result in the denial of their access to public goods. But the report also identifies many forms of active violence and discrimination, directly perpetrated by the state and its functionaries against marginalized and vulnerable groups.



### School Education

Negative teacher attitudes exhibiting class, caste, religious and gender biases manifest themselves as discriminatory behaviour and exclusionary practices that thwart diversity and plurality in a classroom. They create an environment of fear and non-participation among children, with the result that they restrain themselves in their learning efforts.

A major manifestation of discriminatory behaviour by teachers is corporal punishment. Children from marginalized groups often perceive and report that they are punished more often, punished more severely, punished unjustly when it is not their mistake or punished for offences for which others are condoned.

Teacher bias against students is reflected in verbal abuse, which relates to their caste or religious identity—‘Churha’, ‘Chamar’, ‘Chamarin’, ‘Mulla’ and ‘Mohammed’—are terms that are routinely derogatorily used. In conversations with one of the authors of the report, Muslim children reported that they are often referred to as ‘Mulle’, ‘Katya’, ‘Aatankwadi’, ‘Osama’, ‘Taliban’, ‘Kashmiri’ and ‘Dawood’; another child related how his teacher never called him by his own name but as ‘Mohammad’, ‘Miyan’ or ‘Maulana’. Moreover, statements such as ‘*Chamar ka baccha chori hi karega*’ or ‘*Musalman aatankvadi hi hai*’, (the son of a ‘Chamar’ will only be a thief and Muslims are all terrorists) are reflective of the deep caste-, religion- and identity-based prejudices held by teachers. Adivasi children are also often subjected to overt discrimination by teachers who view them as ‘slow learners’, ‘weak’, ‘un-teachable’, etc. They are humiliated and their parents are called ‘drunkards’ and deemed not interested in their children’s education. Labelling children with disabilities with derogatory words like ‘*paagal*’ is also very common.

Teachers tend to discourage hard work among Dalit and Adivasi students, either unfairly stereotyping them as beneficiaries of reservations or questioning the value of education for such children, who they presume will only undertake menial, traditional, caste-based occupations later in life. Muslim students are similarly stereotyped as gravitating towards violence and terrorism. Children with disabilities find themselves ignored in

class, as teachers are generally unwilling to devote the time and effort to enable their participation.

Often teachers consciously do not give children from marginalized backgrounds a chance to come and write on the blackboard or lead the reading in the classroom. Another prominent process of discrimination in the classroom is differential or segregated seating. This can lead to a range of difficulties—such as lack of teacher attention, inability to read from a distance from a badly maintained or lit blackboard, being stereotyped as uninterested in studies or not sharp—which have a negative impact on their learning and development. Similarly, children from marginalized communities complain of not being recognized or selected for leadership in schools and extra-curricular activities.

Discrimination also occurs in the task allocation related to cleaning and maintaining school infrastructure and facilities. Often it is Dalit children who clean the playground, verandah, rooms and toilets in school.<sup>72</sup> Teachers tend to differentiate between neat and clean children and those who they regard as untidy or ‘dirty’. Colour of the skin of a child can also play a role in the assignment of special duties, like speaking in the assembly or leading morning prayers.<sup>73</sup>

### Urban Housing

A direct consequence of the institutional bias against the informal and self-built housing of the poor is the ever-present threat (and increasingly frequent reality) of forced eviction. Evictions have become part and parcel of an urban development model that has, in the last couple of decades, seen eviction as a primary and common mode of producing urban space period. As cycles of eviction and relocation have heightened across Indian cities,<sup>74</sup> they have effectively erased a generation’s ability to move from *kutcha* to *pucca*.

Cycles of forced eviction and resettlement have multiple impacts on housing exclusions. They erase existing, if vulnerable, housing that has often been built incrementally over decades, thereby causing housing poverty to deepen. They also result in the relocation of the evicted poor to peripheral resettlement colonies that are, in fact, unliveable due both to the impossibility of livelihood and the paucity of infrastructure, tenure security and services.

In addition to the threat of forced eviction, those living in 'illegal colonies' face a denial of basic public services like water, waste management and electricity. While there has been a move to de-link tenure from service provision in recent years, the results have been mixed. As recently as 2012, the Bombay High Court, in denying the petition filed by the *Pani Haq Samiti*, articulated the common fear that providing water to slum residents would make residents feel entitled to tenure security.<sup>75</sup>

### **Decent Work in Labour Markets**

As if the uncertainties surrounding the scope, meaning and enforcement of labour rights do not sufficiently work out to the advantage of employers, the state has further facilitated opportunities for the erosion of these rights. An example of this is the creation of Special SEZs. In order to incentivize private investment, many state governments have modified labour laws in favour of employers operating units in these SEZs. These changes include the diminished likelihood of the application of labour laws, absence of trade unions and no visits by the labour inspectorate. In fact, data on working conditions in SEZs is neither available nor reliable, since employers are permitted to obtain reports from accredited agencies, rather than being subject to mandatory labour inspections by government authorities.<sup>76</sup>

While employers are firmly organized at all levels, four out of every five workers in India have no trade union membership.<sup>77</sup> While there are a number of reasons for this, the state is also complicit. It has actively worked towards keeping trade union membership down, while turning a blind eye towards intimidation of unions by employers and the establishment of parallel 'yellow unions' (which are co-opted by employers). In some cases, labour authorities have simply refused to register unions.<sup>78</sup> The state also discourages workers' voices by labelling trade union activism as Maoist or Naxalite terrorist threats, quickly opening up avenues for their prosecution under stringent anti-terror laws.<sup>79</sup> Such undermining of union activity further marginalizes workers, even at the level of the workplace.

Where the state has acted, it has done so at odds with the interest of workers, especially those in the

informal sector. Thus, street vendors, rickshaw pullers or waste pickers find that public spaces are increasingly being marked as areas where it is illegal to do business. To continue their trade, they pay bribes to the police, hoping to enjoy their entrepreneurial 'freedom'. To them, the state is an obstacle, if not an enemy.

### **Legal Justice in Relation to Anti-Terror Legislations**

Active violence and discrimination by state authorities are direct and rampant in the context of persons accused under anti-terror laws. This is most striking in the context of the use of torture against alleged terror suspects. In the case of Students Islamic Movement of India (SIMI), members of which were accused of carrying out the Jaipur bomb blasts, their arrest date was fudged and shown over a week after the actual illegal detention.<sup>80</sup> During this period, all of the accused were tortured by the Rajasthan police in order to extract false confessions admitting to the crime. In addition to severe physical violence, their prolonged torture included solitary confinement, threats against their families, discriminatory treatment in jail, denial of clean drinking water, denial of blankets as protection against the cold, and being kept hooded when they were taken outside their jail cells.<sup>81</sup> In the other case discussed in the report, Soni Sori, a tribal activist in Chhattisgarh, was subjected to brutal torture by the state police, eventually resulting in her admission into hospital in an unconscious state. In its medical report, the hospital recorded the serious injuries sustained by her, included injuries due to possible electrocution, and those caused by a 'hard and blunt' object.<sup>82</sup> A later examination also revealed two stones in her vagina, and one in her rectum, which Soni said had been inserted during the torture meted out to her while in police custody. Instances like this illustrate the severe violations of human dignity suffered by alleged terror suspects at the hands of the very state that is meant to protect them.

### **3.4 Low and Faulty Budgetary Allocations**

State neglect is also highly visible in the gross inadequacy of funds allocated to the provisioning of these public goods, low fund utilization and misallocation of funds to non-essential uses.

### **School Education**

In the case of education, the Education Commission led by D. S. Kothari in 1966 recommended that 6 per cent of the national income should be allocated for education. However, even today, the total expenditure on education remains well below this mark. In 2012–13, the total expenditure on education by central and state governments combined was only 2.75 per cent of GDP.<sup>83</sup> With respect to SSA, concerns related to low fund utilization persist. Fund utilization as a percentage of approved outlays has consistently decreased over the years, from about 77 per cent in 2008–09 to about 69 per cent in 2010–11.<sup>84</sup> Further, most of this spending has gone towards school infrastructure and construction activities, rather than on recruitment of teachers and components related to improving teaching.<sup>85</sup> Special allocations exist for promoting the education of marginalized groups through the various sub-plans—Scheduled Castes Sub-Plan (SCSP), Tribal Sub-Plan (TSP), Multi-Sectoral Development Programme (MSDP)—as well as through various ‘programmes’ specifically targeted at marginalized groups. However, all of these strategies suffer from the familiar trend of inadequate financial allocations and poor utilization.

### **Urban Housing**

Budgetary expenditure on housing and public services also shows similar trends of under-spending and misallocation. In comparison to the quantum of allocations made for the rural housing programme under the Indira Awas Yojana (IAY), the allocation in urban areas—under the BSUP and Integrated Housing & Slum Development Programme (IHSDP)—is highly inadequate to cover the large population of the urban poor. Under the BSUP scheme, fund utilization was 84 per cent of the budgeted allocation in 2008–09, but has declined over the years to just 22 per cent in 2012–13 (up to 6 February 2013); utilization under the IHSDP declined from 116 per cent in 2008–09 to 65 per cent in 2012–13 (up to 6 February 2013).<sup>86</sup> In the case of the IAY, fund utilization had fallen to 55 per cent in 2011–12 (up to February 2012), from 84 per cent in 2007–08.<sup>87</sup>

### **Decent Work in Labour Markets**

The Ministry of Labour and Employment (MoLE) is the nodal ministry for labour welfare and implementation of labour laws in India. However, an assessment of the ministry’s policies, programmes and budgets shows that the total allocation made for labour and employment amounted to just 0.26 per cent of the total union government budget in 2012–13.<sup>88</sup> No specific allocations have been made for the implementation of labour laws, a vital component to ensure decent work within labour markets. With the MGNREGS, the flagship rural employment generation scheme, the rate of utilization of funds over the period from 2006–07 to 2012–13 has risen over 80 per cent just once, in 2007–08; in 2011–12 and 2012–13 (up to 31 January 2013), fund utilization stood at 78 per cent and 67 per cent, respectively.<sup>89</sup> Similar under-utilization of available resources is also apparent in the Swarna Jayanti Swarozgar Yojna (SGSY) scheme, now renamed the National Rural Livelihood Mission (NRLM).<sup>90</sup> On the other hand, the Swarna Jayanti Shahari Rozgar Yojana (SJSRY) has been highly successful in utilizing allocated funds. However, unlike the SGSY/NRLM, this scheme does not earmark specific financial allocations for marginalized groups.

### **Legal Justice in Relation to Anti-Terror Legislations**

There is very limited information available on budgetary allocations and utilizations for the legal justice system in the country. In 2010–11, central and state government expenditure on the administration of justice, which broadly covers the various components that help the judiciary to function on a day-to-day basis, stood at just 0.38 per cent of total government expenditure.<sup>91</sup> Moreover, expenditure on aspects such as training, capacity building and legal aid make up a minuscule amount of the total spending on legal justice in India. Given the acute problems in justice delivery and access to justice, it is evident that the current public spending is inadequate and needs to be increased substantially.

## 4. Key Consequences of Exclusion

The report finds that the consequences of denial and discrimination in relation to all the public goods under scrutiny in the report are to further deepen and embed the poverty, exploitation and very low social power of vulnerable populations. Importantly, exclusion from one public good reflects, produces and reproduces exclusion from other public goods, and further entrenches the social and economic disadvantages of marginalized persons. For example, exclusion from schooling reduces chances of securing decent housing and decent work. Exclusion from decent housing—and the unending ‘cycles of eviction and relocation—make the possibilities of finding regular schooling and decent work much harder. Without decent work, it is hard for households to secure good education and decent legalized housing. And for all of these groups, if they happen to be trapped on the wrong side of the law—especially if charged with terror crimes—the chances of finding decent work, a house to rent or a good school for their children reduce precipitously.

### School Education

For children who spend a greater part of the day in school, experiences of discrimination, neglect, active biases and prejudices, and ill-treatment from teachers and peers often result in a decision to drop out or frequently absent themselves from school. In an atmosphere where their identity, based on caste, religion, tribe, gender or sexuality is unaccepted and mocked, the school, instead of being a nurturing space, can become a place that is feared for its divisive environment. They drop out without accessing minimum levels of learning, reading and writing skills, or the confidence to move ahead in life. Many return to the occupations of their parents, or enter the unorganized sector with a high degree of insecurity and vulnerability, continuing to live on the margins of society. The perception that they lack opportunities beyond their given surroundings also acutely constrains their sense of agency. For children on the streets, in conflict areas, children of nomads or those completely excluded from schools, it is a childhood robbed off the opportunity to learn with peers, in addition to making nearly impossible the possibility of breaking out of the poverty cycle in which they find themselves trapped.

Appreciation of diversity and respect for all can be best learnt in school. Processes of exclusion run counter to the philosophical purpose of a school as a place of nurturing children’s full potential. Ill-treatment of children, practice of caste segregation and insensitivity towards children with special needs breeds a school and classroom environment that discourages active participation, critical thinking and the development of social awareness among children.

Parents of children from marginalized backgrounds, while they strive to eke out a living, are desirous that their children benefit from the long-term fruits of education that were denied to them. Most parents, if not all, project their aspirations on to their children, in the hope that a ‘good’ education will pave the way for better opportunities and lift them out of poverty in the future. In this context, poor quality of education often reinforces in the minds of the parents the existing inequality, and weakens their trust in the school as a social institution serving to enhance the capabilities of their children.

The impact of school education is felt not just in terms of direct educational attainment, but also in a range of other important spheres—for instance, the ability to secure good quality employment, or an awareness of one’s rights and entitlements. In this context, the failures of the state in India to ensure access of all children to the public good of quality—and equal—education, results in further deepening inequality and denying of equality of opportunity.

### Urban Housing

The report clearly maps what one kind of denial—in this case the public good of decent quality urban housing—does to other capabilities and public goods. For instance, the absence of access to water, sanitation and waste management and disposal is often determined by housing exclusions. While such linkages are intuitive for homelessness, housing poverty and illegality are also good proxies for inadequate access to basic services. Census 2011 data shows that 63 per cent of all households in recognized or notified slums have either open or no drainage for waste water. About 34 per cent of slum households have no latrine on the premises, and members of over half of such households thus

defecate in the open. Almost 43 per cent of slum households do not have a source of drinking water within the premises of their household.<sup>92</sup> These figures merely use the slum as a proxy for housing poverty. Yet, since measures of slum populations themselves are possibly underestimations of urban poverty, it is likely that these figures exclude precisely the most vulnerable urban poor communities.<sup>93</sup>

While it is clear that homeless populations tend to have higher non-enrolment in schools and high rates of illiteracy,<sup>94</sup> lack of stability in the housing condition can also lead to deterioration in school outcomes for children.<sup>95</sup> In Indian cities, where slum evictions are becoming more the norm than the exception, this lack of stability can lead to severe deficiencies and even breakdown of the already precarious education outcomes of children in low-income groups.<sup>96</sup> Housing poverty is associated with poor academic achievement, behavioural adjustment issues and the induction of 'learned helplessness', a condition that leads children to believe in the lack of control over the outcomes of their own education.<sup>97</sup> Studies show that education (and also health) outcomes are far lower in non-notified slums than in notified slums of similar demographic and socio-economic profiles.<sup>98</sup>

One of the ways in which housing influences health is through human exposure to inadequate housing conditions, including lack of safe drinking water, ineffective waste disposal, intrusion by diseases vectors and inadequate food storage.<sup>99</sup> On the other hand, adequate and well-serviced housing reduces illnesses and related expenditure, and increases the wellbeing and productivity of its inhabitants.<sup>100</sup> The urban poor tend to spatially occupy areas that are of high environmental risk—the sides of open drains, for example—precisely because they are the only populations unable to trade off this risk for affordable housing. The spatiality of housing for the urban poor, therefore, is a geography of health risks itself, exacerbated by their poor and inadequate access to basic services.

Housing or the lack thereof also directly and indirectly impacts the economic capacities of an individual or household, especially in relation to securing decent work. For many, the link is as direct as the house itself being a workplace, be it for running a shop or a household industry or

undertaking contracted work. A direct relation between housing location and economic capacities is its proximity to employment centres and ease of access. Location of housing also becomes important for self-employed home-based workers, in order to have visibility, access to markets for raw materials, finished goods, contractors and customers. As a result, there are major employment impacts due to resettlement, including elevated transportation costs, breaking of employment networks, restricted mobility (with particular impacts for women and the disabled), as well as productivity losses due to the erasure of savings and assets during resettlement.<sup>101</sup>

### **Decent Work in Labour Markets**

As with the other public goods discussed in this report, exclusions from decent work have severe negative consequences on people's ability to live a life of dignity. Workers with formal jobs enjoy a certain status in life. Their jobs are secure, their payments sufficient to maintain a family, send their children to school, live in a decent house and keep aside time for leisure. But this security breaks down when employment security ends.

The report underlines that boundaries and distinctions between the organized and the unorganized sectors are gradually disappearing. Informal employment is rising in the formal sector, as is informality in the economy as a whole. Estimations put the number of destitute persons at more than 100 million people, approximately 10 per cent of the total population and one-third of the extremely poor.<sup>102</sup> An equally significant number of people are surviving at just over destitution levels. The continuing decline in decent work opportunities, with an increase in more insecure forms of labour arrangements designed to depress labour costs, is at the root of such large-scale poverty.

Under such a combination of extreme exclusion from decent work and deep poverty, the survival mechanisms that kick in come at a heavy price. The will to survive is inherent to every human being, but the means to succeed in overcoming destitution become desperate. Some turn to criminal behaviour as a last resort, while others are forced to sell their bodies or enter into highly exploitative labour arrangements. Many become addicted to alcohol,

or other substances. Parents have no choice but to push their children into child labour or begging, in order to support the family. For the ultra-poor in India, this commodification of human relations is not a far-fetched story but a mechanism of brute survival.

### **Legal Justice in Relation to Anti-Terror Legislations**

The unfair and unequal application of anti-terror legislations and their frequent misuse to systematically target specific communities has serious consequences, at both individual and societal levels. Wrongful arrest, detention and torture of innocent persons at the hands of the police and other investigative agencies continue to impact their lives, even after they have been subsequently found to be innocent and acquitted by the courts. Many of them suffer serious psychological impacts from their brutal torture and prolonged detention.<sup>103</sup> Often, families find themselves socially ostracized and cannot turn even to their local community for support. This can take an immense emotional toll on the family, as they struggle to fight cases that drag on for years in court.

Perhaps most significantly, the tag of ‘terrorist’ continues to follow accused persons, even if they are acquitted. They continue to face harassment by the police and are frequently arrested after subsequent terror attacks, without any evidence linking them to the incident. Victims of wrongful arrest and detention in terror crimes also face a particularly difficult time in their access to livelihood opportunities. Many are unable to find secure jobs after their release, both on account of the years lost in jail, and the fact that they have been tried in terror-related cases. In many cases, where the sole breadwinner of the household is in jail for years, families are reduced to destitution and extreme poverty.<sup>104</sup> Similarly, for youth whose education is interrupted by their prolonged detention, reentering the system with a ‘terrorist’ label proves highly challenging.

For society, the frequent and repeated abuse of anti-terror laws severely undermines the credibility of the legal system and the faith of citizens in state institutions of justice. When legal processes are unequal, and exclude critical protections and

safeguards for certain communities, it is not only those excluded sections that are affected but also the entire investigative and judicial process. It has become abundantly clear that the law enforcement agencies regularly fabricate evidence and often do not pursue credible investigations to resolve terror cases. Yet, there is insufficient scrutiny and questioning of their actions at the level of the lower judiciary. Since cases take years to settle, an eventual acquittal still means that the accused has already spent years behind bars.

Equally, the targeted misuse of terror laws against specific communities feeds into a larger communal division within the country. There is an increasingly strong perception among Muslims that their community is under attack, with government agencies working in tandem with communal forces and other vested interests. Similarly, the crushing of legitimate dissent by Adivasis and other marginalized groups, through the misuse of the UAPA and state-specific terror laws, alienates these communities further. The indifferent response of the state and its institutions to violence perpetrated against marginalized groups only serves to reinforce such beliefs. In this sense, the misuse of anti-terror laws also has serious negative implications for the secular fabric of Indian society.

## **5. Recommendations**

The report makes several recommendations to counter and reverse various forms of entrenched exclusions and improve access to public goods for marginalized and vulnerable groups. Broadly, these recommendations fall into four categories:

- Changes in law and policy for greater inclusion and justice;
- Improved implementation of existing laws and policies to secure greater inclusion;
- Measures to prevent discrimination, injustice and violence;
- Addressing data gaps to track and monitor inclusion.

While the detailed recommendations are in the relevant chapters of the report, some important recommendations cutting across the thematic sectors are summarized now.

## 5.1 Changes in Law and Policy for Greater Inclusion and Justice

### School Education

Across marginalized groups, there is need for the teaching cadre to represent the plurality of backgrounds that is seen amongst children enrolled in school. A system of local recruitment that is based on a model of representation proportional to the share in population would go a long way in building confidence among excluded communities and facilitating the attendance of children from these communities. The recruitment of more Muslim, Adivasi and Dalit teachers would be ideal, especially female teachers and those with special needs, in areas dominated by these communities.

The government must set up high quality residential schools and hostels at the secondary level and upwards for Dalits, Muslims, Adivasis, and girls at the block or district levels. There are funds allocated for education within the Scheduled Caste Sub-Plan, Tribal Sub-Plan and Multi-Sectoral Development Programme budgets, which can be used for establishing such schools and ensuring an adequate quality of education in these institutions.

Special measures are required to address the specific vulnerabilities of highly excluded children, who have largely been ignored by the RTE Act. Additional measures are needed to ensure their inclusion and participation in the school education system. For instance, an adequate number of seasonal hostels for migrant children must be established at their place of residence, so that they are not compelled to leave school and migrate with their parents. Mapping and identification of all out-of-school children, including child labourers, should be done at the village or ward level. Special training programmes and ongoing support are also necessary to ensure their age-appropriate entry and continuation in school.

For street children, the basic needs of food, shelter and health need to be met first, and therefore these must be integrated into the educational model. It should be made mandatory for all appropriate governments to map the numbers and locations of street children in every city, and provide sufficient numbers of open and voluntary residential hostels to ensure that all street children secure their right

to education. For children in conflict areas, schools must remain safe zones where they can continue their education without fear and insecurity. For this, measures must be enacted to prohibit the use of schools and other educational facilities for housing police or other military or paramilitary forces.

### Urban Housing

The broader approach in how to move forward from a position of deep and entrenched housing exclusions must begin with a new agreement on the centrality of housing as a right, public good and basic need. This agreement must then reflect, in both letter and spirit, that housing is an entitlement for urban residents, keenly linked to and imagined within other forms of social security and social protection like education, health, food and information.

Housing policy in India has long focussed on ownership-centric models rather than a broader view of housing. This is reflected most strongly in the emphasis even within programmes such as the RAY on redevelopment and the building of new housing units, or eviction and relocation, rather than on a strategy that has proved globally most effective in addressing housing poverty and its attendant exclusions: *in situ* up-gradation, which should become the centrepiece of urban housing policy.

The expansion of rental and temporary housing—particularly suited to migrants and low-income workers—as a diversification of housing stock is critically necessary to answer the diverse and dynamic needs of urban poor residents. The fact that nearly one-third of urban households in India live on rent gives testimony to a housing solution that already exists informally, and one that could work well if given both formal sanction as well as support.<sup>105</sup>

Linked to a focus on *in situ* upgrading is an expansion of the notion of security of tenure. Secure tenure implies a *de facto* or *de jure* protection from eviction or dispossession. One way of providing this security is through an ownership title. Community and long-term lease titles have both advantages and disadvantages when compared to individual home ownership. However, communal titles can also enable the protection of low-income housing

communities from market-induced displacement in the context of a deeply unequal and fractured housing market.

Finally, moving away from cut-off dates of minimum stay in the city to make slum and pavement dwellers eligible for housing, the report proposes a different approach to determining eligibility for social security benefits more broadly, including housing. The Intent to Reside (ITR) approach<sup>106</sup> argues for embracing universal (or quasi-universal) entitlements (for access to basic services, education, the Public Distribution System (PDS), decent work, and health for all urban residents as part of an urban social security regime) through evidence of an *intention* to reside in the city, which includes residents at an early stage of this residence. The ITR approach is, in a sense, the anti-thesis of the cut-off date. Rather than asking residents to prove that they deserve to be included as urban residents by surviving for years in the city, it includes them from the very beginning.

### **Decent Work in Labour Markets**

The report recommends an entirely new labour law covering all workers irrespective of their contractual nature, sector or workplace. This ‘omnibus law’ must protect all workers against the violation of fundamental rights at work and guarantee them equality before the law. Hiring and firing can be flexible, in line with today’s labour market requirements, but only when lapses of employment security are compensated by an effective system of social security accessible to all. The wording of the law should be simple and accessible. It must have clear-cut provisions for wage payment, the fixing of wage levels, working hours and working conditions.

With respect to sub-contracting, registration and monitoring of contracting agencies should be made mandatory. The licensing of labour contractors is also critical for ensuring that workers can migrate safely, with their movements monitored. The key to ending discrimination of contract workers lies in assigning responsibility for maintaining decent work conditions. A worker must know beforehand whether the contractor or the principal employer is responsible for respecting the terms of employment.

Most unorganized sector workers are still not covered under existing social security measures. Through the provision of universal social protection, all workers must have access to pensions, unemployment insurance and health insurance as a minimum. This is particularly important for the non-working poor and those engaged in unseen work, who remain extremely vulnerable to exclusion from decent work.

The reservation policy is an instrument of job security for many Dalits and Adivasis but certainly not an instrument promoting the upward social mobility of these groups. Most jobs created under reservation are low-value jobs, for which little skills or education are required. Downsizing of staff in the public sector has also diminished employment opportunities for Dalits and Adivasis. To compensate for this loss of job opportunities, the Dalit community, in particular, has been calling for similar job reservations in the private sector.<sup>107</sup>

### **Legal Justice in Relation to Anti-Terror Legislations**

The report establishes that the UAPA and other state-specific anti-terror laws are prone to severe abuse by the police and other agencies responsible for the investigation of terror crimes. The unjust and unequal application of these laws has serious implications for the individuals and communities affected by their abuse, as well as the broader promise of a secular and democratic India. Yet, there is no evidence suggesting that such draconian anti-terror legislations are in any way necessary for the state to prevent or solve acts of terrorism. There is, therefore, an urgent need for the UAPA and various state-specific terror laws to be repealed. In case such laws are not repealed, they must at the very least be amended to incorporate serious safeguards against their misuse and made consistent with constitutionally guaranteed rights and protections. Existing provisions relating to the definition of terrorists or terrorist organizations, the detention of suspects, evidentiary standards, the use of confessions and bail norms are a few key areas that demand close examination.

Moreover, it is important to establish and implement measures for the adequate compensation for, and rehabilitation of, victims



of abuse of anti-terror laws, even after their eventual acquittal and release. Despite the severe psychological and socio-economic consequences suffered by people who are falsely implicated in terror cases, there is at present no mechanism to provide victims with proper compensation for the harm caused to them, nor is any assistance provided in starting their lives afresh after their release. International human rights law, including Article 2 of the ICCPR, lays out clear provisions for effective remedy for individuals whose rights and freedoms are violated, regardless of whether the violations are committed by a person acting in an official capacity. An ‘effective remedy’ in this context is not limited to monetary compensation, and may involve a range of other compensatory measures, such as the restoration of residence, property, family life and employment, physical and psychological rehabilitation, prosecution of those responsible, official acknowledgement and apology, and guarantees of non-repetition.<sup>108</sup>

## 5.2 Improved Implementation of Existing Laws and Policies to Secure Greater Inclusion

### *School Education*

While the NCF 2005 has made wide-ranging changes in the curriculum framework keeping diversity in mind, it is important to ensure that its principles are translated to syllabi and textbooks adopted by schools across all states. This would require recognizing and incorporating into the school curriculum the rich diversity of religions, cultures and leaders from various communities, and creating sensitivity and respect for them among all children and teachers.

Involvement of parents and community members of children belonging to excluded groups in school activities is bound to reduce the social distance between school and community. This may be achieved by giving representation to the parents in the School Management Committees (SMCs), to ensure their concerns and aspirations are brought into the School Development Plans (SDPs). For instance, parents of children with disabilities would be able to sensitively assist the SDP committee to reflect the challenges and pedagogical needs of their children.

Importantly for children with disabilities, barrier-free access in schools needs to move beyond simply ramps and rails, and incorporate a much broader vision. Their participation in all school activities, safety and security, and a non-discriminatory atmosphere are equally important elements of this term. Existing provisions for the transport needs of children with disabilities, as well as those related to free assistive devices, accommodation or personal assistance should be effectively implemented, to ensure their access to and participation in school.

### *Urban Housing*

Contemporary Indian cities are marked by a particular form of exclusion from access to housing stock, one that indicates that the poor have housing stock (usually self-built, often precarious) that is considered inadequate. Addressing exclusion, therefore, must begin from this existing housing, no matter what its condition. The approach that needs to be adopted is to recognize existing housing stock—most often built by the poor themselves incrementally over time, as investment becomes possible in fits and starts—and then gradually reduce the inadequacy and raise the liveability of such housing without necessarily building new building units. Upgrading, with its focus on improvement in infrastructure and services, as opposed to dwelling units exclusively, represents a different approach to addressing housing poverty, one that increases the liveability of the settlement rather than the materiality of the dwelling unit itself.

Upgrading also has one further crucial function: it represents land that the poor have already occupied and inhabited. In other words, the liveability of that site and its linkages to employment, education and health have stood the test of time. The answer to the common question ‘where do I find land?’ is already found in upgradation—the poor have found, occupied and developed the land already. The question is not then the literal availability of the land but, in fact, the ability to use it for housing the poor.

### *Decent Work in Labour Markets*

The presence of a job does not in itself guarantee a living wage. Living wages must take into account

rising costs of living and expected inflation levels. More importantly, wages must be established through dialogue between all stakeholders, achieving consensus on wage levels. The consensus will promote long-term and peaceful relations between capital and labour, as epitomized by the idea of a 'social contract'. The Asian Floor Wage Alliance, set up in 2005, is an example of a growing campaign seeking to correct wage levels and ensure a steady source of sufficient income for workers.<sup>109</sup>

In addition, highly exploitative labour arrangements, like bonded labour, child labour and manual scavenging, continue to thrive in many parts of the country. There is an equally urgent need for official recognition and enforcement of existing regulations to protect and rehabilitate those engaged in such conditions and punish those responsible for their exploitation.

The state needs to work proactively towards absorbing the workforce leaving agriculture into suitable alternative jobs. This would involve supporting a combination of skill development and vocational training, through initiatives like the National Skills Development Mission, and building the requisite infrastructure to support the creation of formal sector jobs in rural areas. For instance, employment exchanges can be created to match the jobs created with those looking for work. Specific support is also necessary to enable employment in better working and living conditions for excluded groups in occupations that are highly vulnerable, marginalized or undignified. Examples include government programmes to support self-employment of weavers, access to credit and training for home-based workers, support for self help groups and co-operatives, and absorption of bonded labour and manual scavengers into alternative economic activities.

### **Legal Justice in Relation to Anti-Terror Legislations**

The polarized nature of the public discourse around terrorism compromises access to proper and competent legal representation for those accused in terror cases. While the situation is slowly changing in urban areas, most lawyers are still unwilling to defend terror suspects, fearing this will be perceived as being anti-national and hurt their legal reputation. The threat of violence is also very real for lawyers representing those accused in

terror cases, and many have been brutally attacked by members of right wing Hindutva groups, and, at times, even by fellow lawyers.<sup>110</sup> The judiciary must also take strict action against lawyers' unions that have passed resolutions forcing their members to boycott terror suspects and not provide them with legal representation.

Similarly, access to proper legal aid for accused persons unable to afford or find a suitable lawyer is essential, but at present lawyers assigned to terror suspects are often insufficiently trained to handle such cases or are unwilling to put up a robust defence due to the reasons just discussed. Since offences under anti-terror laws carry severe penalties, including life imprisonment and capital punishment, the lack of adequate legal representation can lead to serious miscarriages of justice.

The experience with the passage and amendment of anti-terror legislations also demonstrates the absence of a mechanism to thoroughly and impartially scrutinize such laws. Though TADA and POTA were eventually repealed, amendments to the UAPA have incorporated many of their most draconian provisions, defeating the very purpose of their repeal. Similarly, existing checks on the passage of state-level anti-terror legislations are limited to central government approval for such laws, a process that is discretionary and prone to political manipulation.

## **5.3 Measures to Prevent Discrimination, Injustice and Violence**

### **School Education**

Schools must become 'zero discrimination zones' and promote social inclusion across diverse groups of children and communities. To this end, laws should be amended to explicitly prohibit discrimination against children of disadvantaged groups and children of weaker sections and to provide for stringent punishments, preferably criminal consequences, for such offences. It is also necessary to make education and schooling under the government system truly secular without imposing any religious rituals, dominant festivals or practices, thereby ensuring that all children are able to participate equally in schooling processes.

Currently, very few interventions exist for training and sensitization of teachers to the diversity that they encounter in their classrooms. Pre-service training, in-service training and all other areas of teacher education must include special modules on diversity and inclusion so that teachers are sensitized to the challenges faced by marginalized communities and they can address their own caste-based, religious and class biases, and other stereotypes that act as barriers to children's learning. Teachers also need to be sensitized in overcoming the high levels of stigma with regard to various groups of children, most of all HIV positive children and children of HIV positive parents, and those whose parents are engaged in stigmatized occupations like manual scavenging and commercial sex work.

A public campaign against discrimination in education is equally important. Given that discrimination is reflected and reinforced in society and school, proactive efforts are needed to change this mindset. School education is perhaps the most feasible space where such a change can be fostered. While most efforts in bringing children to school rely on school-based interventions, breaking the barriers to education for children from disadvantaged communities also requires in roads into the communities from where the children come. Often, it is the constraints faced at the family and community levels that inhibit their participation.

### **Urban Housing**

Self-built housing is, in itself, a response to the state's failure to ensure housing for all. Yet, such attempts are typically met with state violence in the form of forced evictions, usually implemented with great brutality. Typically, such housing exclusions have been perpetuated both through the legality of the settlement, with through the 'cut-off date' that mandates a minimum period of residence in a particular address. Both these exclusions have significant impacts on not just access to housing but to its attendant exclusions in health, education, work, mobility and citizenship.

The RAY is the closest non-judicial articulation of a Right to Shelter in Indian policy making. Its acknowledgment of state failure and the rejection

of cut-off dates are important steps, implying that all residents, no matter where they live in the city or how long they have been there, have a right to be there. In its most recent evolution, it includes homeless and pavement dwellers, and caters to incremental housing and not just new units. It implies a moratorium on demolitions because people, including poor people, have a right to live and work in a city. Such measures can go a long way in addressing state violence against the housing poor, which remains central to urban policy in most cities.

### **Decent Work in Labour Markets**

Workplaces, particularly informal settings, are marred by various forms of violence. Along with high levels of exploitation and under-payment, the systematic and everyday forms in which workers are subjected to constant punishment and humiliation include the incarceration of workers, posting of thugs at factory entries, casteist and sexist abuse, actual physical violence and sexual harassment. The report notes that it is quite astonishing that such acts of violence are not prosecuted under criminal laws. It seems that workplaces provide shelter for acts of violence that would normally lead to some form of punishment by the state if committed elsewhere. There needs to be strict enforcement of the law within workplaces, to ensure security to workers and an end to the high degree of impunity which the perpetrators of violence presently enjoy.

Such exploitation and violence also exists because unionization is a reality for only a small segment of workers. The state has a duty to register unions objectively without invoking excessive discretionary powers. Mandatory recognition by employers of registered trade unions must be ensured, and measures are also required to prevent co-option of trade unions by employers, for instance, by setting up yellow unions. Unions are important, not just as a check on violence and exploitation by employers and the state, but also as a means for workers to use their collective bargaining power to protect their interests.

### **Legal Justice in Relation to Anti-Terror Legislations**

The selective targeting of specific communities in terror cases reflects a deep institutional bias

in the investigation and prosecution of terror cases. Though the government has suggested fast track courts to prosecute such cases, this is not a permanent solution to the issue. The setting up of special courts will always be a political decision, and while this may accelerate the trial process, it does not tackle the thornier problem of the prevalent bias and prejudice against particular communities, which is also reflected in the actions of the judiciary, especially the lower courts.

The need, therefore, is to push the government to ensure fair investigation and establish a strict monitoring and review mechanism of all cases where individuals have been charged under provisions of anti-terror laws. Police officials must be liable to stern action in cases where suspects are tortured, or evidence has been fabricated or manipulated to frame a person. At the moment, there is virtually no accountability on the part of investigative authorities responsible for such misuse. Other measures to address the discrimination and violence against marginalized groups by the police can include increased representation in police and paramilitary forces, better training and sensitization, more humane and sophisticated methods of crowd control and intelligence gathering, courses on the basic tenets of various religions, the principles of human rights and the constitutional safeguards provided for minorities, screening for communal bias among police personnel, and greater interaction between the police force and citizens.<sup>111</sup>

There is an urgent need for public awareness campaigns and responsible media coverage that honestly highlight the drastic implications of the selective targeting, labelling and framing of members of specific communities in the name of fighting terror. A more balanced perspective on the implications of anti-terror legislation, in terms of their subversion of fundamental freedoms and widespread abuse, is necessary to counter the state's propagation of this false notion that such laws are indispensable to India's 'war on terrorism'. This increased public awareness and scrutiny can also play a vital role in reducing bias and prejudice in the use of anti-terror laws.

## **5.4 Addressing Data Gaps to Track and Monitor Exclusion**

A major factor in the exclusion of various groups is the absence of data surrounding access to public goods and the impact of such exclusions on related human development outcomes. In many cases, while a lot of anecdotal evidence points to the exclusion of certain groups, there is a lack of large scale, reliable and recent empirical data that highlights the true extent of the problem. This in turn makes it harder to acknowledge such exclusion or respond to it through a meaningful state intervention. While data gaps are an issue for all marginalized groups, they are perhaps most severe for persons with disabilities.

This paucity of data is also reflected at the level of government budgets and programmes, where there is limited availability of disaggregated data on the major groups of excluded persons discussed in the report. This makes it difficult to assess the equitable nature of state interventions as well as their effectiveness in addressing the needs and exclusions of these marginalized groups.

Some of the major gaps in the data on exclusion of various groups from public goods are identified in the statistical appendix at the end of this report. Addressing these and some other gaps that we now highlight will go a long way towards ensuring a better understanding of the extent and nature of exclusion of major marginalized groups in India.

### **School Education**

The absence of data is clearly apparent for each of the public goods discussed in this report. In the case of school education, there are serious questions on the reliability of the District Information System on Education (DISE), the primary official source of data on access and quality of school education. DISE relies solely on information provided by teachers, without a process of community or parental participation. Its focus on collecting information on enrolment levels, rather than actual school attendance provides a highly inaccurate estimation of access to education. In reality, children with highly irregular school attendance should also be included in the list of out-of-school 'children, as they are virtually out of the school system and

are potential dropouts. Many categories of highly excluded children, including street children, migrant children, nomadic children, children in conflict zones and a host of others, are also completely out of the purview of DISE.

### **Urban Housing**

With respect to urban housing, there is limited data available on the conditions of the housing poor—slum dwellers, residents of illegal settlements and unplanned colonies, or those living in congested or poor quality housing. The lack of regular and accurate data on the substantial homeless population in India is also a serious gap. In fact, the only regular source of data on housing and access to public services, disaggregated by groups, is the Census, which is conducted every 10 years.

### **Decent Work in Labour Markets**

Within labour markets, there is an almost complete lack of information on the nature and terms of employment, particularly in the informal sector. This is also reflected in the state's unwillingness or inability to accurately count the large number of workers in exploitative labour conditions, like child workers, bonded labour, migrant workers,

home-based workers, domestic workers and manual scavengers. In most of these cases, data is obtained largely through informed guesswork. The narrow definition of 'work' also means that various labour activities are not even recognized as such, and there is therefore a paucity of data on these activities even from independent and unofficial sources.

### **Legal Justice in Relation to Anti-Terror Legislations**

There also exists very little official data on the application of anti-terror legislations in India and on the socio-economic background of persons charged or detained under such laws. In many cases, no attempt has been made by the government to collect such data. For instance, the central government has admitted to not having information on persons arrested under the UAPA by the state police,<sup>112</sup> despite numerous reports of misapplication and misuse of the Act by state police forces. While data on the demographic composition of prison populations is available, other important information, such as access to legal aid and conviction rates, are not available on a disaggregated basis for different social groups.

## **Profiles of Highly Excluded Groups**

Besides the major categories of excluded groups—women, Dalits, Adivasis, Muslims and persons with disabilities—discussed in this report, certain communities in India are particularly marginalized and vulnerable. These highly excluded groups suffer an acute denial of multiple public goods and constitute an overlapping and dense intersectionality of many markers of disadvantage. They are typically poor, landless and from historically disadvantaged groups, which significantly accentuates their vulnerabilities and limits their ability to challenge the social and cultural norms that lead to their exclusion. Their exclusions can also be of a specific nature, requiring redressal mechanisms that take into account these peculiarities. In this report, we profile three such highly excluded groups—transgenders, bonded labourers and Musahars.

### **Transgenders**

Transgender people are those who live fully or partially in the gender role 'opposite' to their biological sex. The ambiguous sexuality of transpeople and their refusal to accept the sexual identity imposed on them by biology and social norms has led to a long history of social and official refusal to accept them as equal citizens. Instead, they are treated as the 'other', often being subjected to violence, ridicule and disgust.

The report highlights the many ways in which the transgender community has been discriminated against in India and denied elementary rights, largely through the instruments of civil and criminal law. Transpeople often find themselves, almost by definition, on the wrong side of the law and rarely, if ever, are awarded the protections that the rule of

law should provide to any citizen. Section 377 of the Indian Penal Code (IPC), for example, makes punishable ‘unnatural offences’ of voluntary and consenting sexual intercourse which go ‘against the order of nature’. The Immoral Trafficking Prevention Act, 1896 has been amended to be gender neutral, and in theory does not criminalize sex work; but by making soliciting and running brothels illegal, sex workers are continuously vulnerable. Apart from sex work, the only other profession that society permits transgender people to enter is begging, but anti-begging laws, another colonial legacy, are used to arrest and detain transgender people who beg for alms for a living. Sexual non-conformity is also used to bar transpeople access to many civil rights, even though, in theory, they enjoy the same fundamental rights as people who accept the sexual identities that biology has assigned them.

The report looks at society’s deep discomfort with transpeople and puts forward the explanation that they trouble us so much because they force us to question body and desire. Their existence challenges, even subverts, patriarchy, which celebrates masculinity, for here is a group that rejects its biologically given gender. And it is a very lonely community. Unlike other oppressed communities, transpeople face rejection even from their families and are forced to create alternative support networks that almost exclusively consist of other transgender people. They repeatedly face discrimination even from the arms of the state, particularly the police. The resulting poverty, illiteracy and lack of access to many mainstream forms of employment only accentuates their vulnerability.

In April 2014, India’s Supreme Court took a major step in making India more inclusive and humane, by according legal recognition for the first time to transpeople as a ‘third’ gender, and went on to classify them as ‘Other Backward Classes’, thereby making them eligible for affirmative reservations in education and public employment. As highlighted in the report, this enlightened judgment is enormously significant in reversing a long history of violence and denial of basic rights endured by the transgender community since colonial times. While it will not change the destinies of transpeople overnight, it is a great step forward in challenging the binary idea of gender

deeply entrenched in society and paving the way for this community to finally have access to their elementary rights as citizens of this country.

## Bonded Labourers

As is relatively well known, the large majority of India’s labour force is in the informal sector—unorganized, poorly paid, without job security and unshielded by most labour protections. What is less known is the extent to which these workers work in conditions of bonded labour. Bonded workers toil for exploitatively long hours, get paid extremely low and irregular wages and are blocked (often forcibly) from changing their employers in search of better work conditions. This labour is sometimes offered in exchange for monetary advances taken to meet household expenses, large family expenditures such as marriages and religious ceremonies, or medical emergencies. Jan Breman estimates that this system is the fate of about 10 percent of India’s workforce.<sup>113</sup>

Labour bondage is a centuries-old practice that is assuming newer forms based on the prevalent social and economic structures of the day. Traditional forms of labour bondage, mostly observed in agriculture, involved several generations of the same family being bonded to the same household. The element of patronage in traditional bonded labour arrangements also ensured some degree of social protection for the labourer. This feature is largely absent from newer forms of labour bondage, which are of a shorter duration and primarily an economic relationship. The employer now feels unfettered from even the feudal forms of protection of the bonded worker of the past, such as ensuring that the labourer’s family does not starve. It is in many ways the worst of both worlds, of feudal and capitalist relations. Apart from agriculture, where both traditional and newer forms of bondage co-exist, bonded labour is now also found among workers in a wide range of non-agricultural sectors: stone quarries, brick kilns, sex workers, fishermen, forest labourers, *bidi* workers, carpet makers, weavers, head loaders and children in match and firework factories, among others.

India enacted a strong and progressive statute outlawing bonded labour in 1976, which provides for the discharge of all debt obligations of bonded

workers and their rehabilitation, as well as punishments for employers. However, as with much of India's progressive labour law regime, this law too has been subverted by a corrupt and indifferent bureaucracy. Governments continue to deny the existence of bondage and hardly any employers of bonded labour have been punished to date. Moreover, the law has failed to address the enabling conditions that make bondage possible and is more responsive than preventative.

India's poorest and socially most vulnerable communities fall into bondage for many reasons. Most are landless, with little access to formal credit, and in times of need, have no option except to turn to usurious moneylenders. New forms of bondage are further spurred by the desperation of millions of India's footloose distress migrants who, lacking secure forms of wage employment, flock to the informal sector every year. Ultimately, bonded labour survives also because of grim and unconscionable state complicity. Higher public investment in agriculture and rural employment, provisions for formal rural credit and reliable implementation of existing laws are essential measures for eradicating this shameful form of slavery which persists in 21<sup>st</sup> century India.

## Musahars

India has been conspicuously less successful than many other emerging economies in the scale, speed and depth of its reversal of poverty. However, it is widely accepted that whatever one's measures of poverty, young people on average have better educational and economic prospects today than did their parents and grandparents.

While this is perhaps true for many indigent Indian people, there are also entire communities that have been unable to escape the trap of desperate poverty from generation to generation. One of the starkest examples of this is of the Musahar community of eastern Uttar Pradesh and Bihar. There is a strong need to inquire why the destinies of this community remain unaltered, even as people of other impoverished Dalit castes have accomplished small but visible improvements in their educational and economic conditions. For instance, female literacy among the Musahars is a shockingly low 2 per cent (9 per cent for the

community as a whole).<sup>114</sup> A third of Dalit children in the five- to 14-years age group are in school, but less than 10 percent of Musahar children study, while dropout rates are nearly 100 per cent.<sup>115</sup>

Drawing from research conducted with the Musahar community in Muzzafarpur district in Bihar, the report finds that the enduring power of exploitative institutions, particularly caste, is largely to blame. Even today, poverty and inequality are embedded in the social structure, with upper castes controlling much of the assets and opportunities. At the heart of this predicament is landlessness. Most Musahar families do not even own the land on which their tiny huts stand. Each Musahar family is linked to a *dabbang* (literally 'strong') upper-caste household in a highly unequal symbiotic relationship. Some escape to Punjab to work in farmers' fields or entire families toil for a pittance in brick kilns or construction work. These are situations of semi-bondage, very hard labour, little savings and bodies debilitated by poor nutrition. At the same time, the lack of assets, capabilities and skills severely restrict the ability of Musahars to switch to alternative forms of employment, both in agriculture and elsewhere.

The poor implementation of the numerous pro-poor laws, policies and development programmes, many of which are of vital importance to Musahars and others in similar circumstances, further hampers their development efforts. The report argues that this failure is not due to any oversight, poor resources or bureaucratic incapacity. Rather, it is a deliberate act by those responsible for development to deny it to Musahars (and communities like them), thereby perpetuating the unequal order where the Musahar serves and the upper caste master rules

At the same time, the report documents significant recent efforts towards developing a 'voice' among Musahars, through building their capacity to organize themselves, articulate their views and demands, ask for and access information, and acquire the self-confidence to stand up to officials and oppressive forces in the struggle for their rights. Such community-level initiatives have had a very positive impact on the empowerment of Musahars.

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Part I  
**Public Goods**



## Chapter 2 School Education and Exclusion



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## 1. Introduction: Education as a Public Good

### 1.1 Towards a Philosophy of Education

India's philosophical tradition has engaged with the idea of education in multiple ways. Rabindranath Tagore, one of the first to take a wider and more progressive view of schooling, stressed school as being a place not just of learning but of experiencing all the wonders of life—art, music, literature. He took the classroom outdoors, where children could learn as much from nature as they could from textbooks. For Tagore, the role of teachers was to create a pedagogical environment that thrived on curiosity, not competition, on learning from nature as much as from textbooks, on creativity and self-expression, and where self-discipline and not corporal punishment was the norm. This opened up a whole new dimension in thinking about education and stripped it of its earlier, dull, competitive and pedagogically uninteresting form.

M. K. Gandhi's philosophy, enunciated in his notion of 'Nai Taleem', also envisaged a special rapport, based on empathy and mutual respect, between the teacher and the student, where the teacher was in constant dialogue with students, unconstrained by the rigidities of a textbook and curriculum. Its focus was on the idea of education in terms of the overall development of a person's mind, body and soul through engagement of the head, hands and heart.

B. R. Ambedkar's philosophy of education, shaped by a profound experience of inequality and caste-based discrimination, championed the idea of education as a means to social change. For him education was a means of acquiring the properties of rationality and criticality, needed to engage in discursive arguments with the 'other', to convince them of the importance of reason and the danger of prejudice the neglect of prejudice.

It provided for Ambedkar the entry point to the struggles for social justice. In fact, Ambedkar established the political nature of education, as it had a deep significance in the context of the kind of state India was striving to become. In a democracy, every citizen is required to be capable of participating in decisions related to them. In other words, they must have the capacity for rational deliberation. This is possible only through education. It follows, thus, that it is the duty of the state to provide education. In this way, the foundation of education as a public good was laid.

These were the revolutionary thoughts Ambedkar carried to the drafting of the Constitution, in which he played a critical role. The Constitution of India is thus unequivocally committed to the idea of social justice and equality of all citizens, as well as to the responsibility of the state to preserve, protect and assure the rights of marginalized groups and minorities. This is outlined in its Preamble, which lays down the basic and unmutable structure of the Constitution, affirming the objective of securing for all citizens of India the basics of dignity, freedom and equality, especially equality of opportunity and status. Equality of opportunity, while open to discussion, has been widely interpreted to include equality in the provision of education, seen as a crucial factor in securing equality of status.

There is a common thread in modern India's legacy of educational philosophy, as embodied in the thoughts of Tagore, Gandhi and Ambedkar. Despite their differences, they all believed in the intrinsic value of education—anchored in its transformative potential to bring about social equity, equal participation and justice. In this sense, they all saw education to be a public good that the state should ensure equitably to all children of this country.

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## 1.2 The Constitutional Imperative

The significance of education in meeting the objectives of social justice has been recognized in various parts of the Constitution of India. Article 39 of the Directive Principles of State Policy lays out the role of the state in fostering opportunities for social justice and welfare, while Article 45 specifically requires that it endeavour to ensure free and compulsory education up to the age of 14 years. Article 19 of the Constitution provides a fundamental Right to Freedom of Speech and Expression, which is also interpreted as the right to know. Similarly, the educational interests of minority and disadvantaged communities are also constitutionally guaranteed. Article 29 of the Constitution provides for the protection of educational and cultural rights of minorities, whereas Article 30 allows minorities to establish and administer educational institutions. Article 46 of the Directive Principles also places a responsibility on the state to promote the educational interests of the weaker sections of the people with special care, in particular Scheduled Castes (SCs) and Scheduled Tribes (STs). Perhaps the strongest support to education as a constitutional principle has come from Justice P. N. Bhagwati's interpretation of Article 21, concerning the Right to Life, as expressed in the following remarks:

*The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person . . . The right to life includes right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, and mixing and commingling with fellow human beings.<sup>1</sup>*

This provided the basis for the inclusion of education in the list of fundamental rights and was given further credence in the landmark *Unni Krishnan* case in 1993, where a Constitution Bench of the

Supreme Court held that, 'the right to free education up to the age of 14 years is a fundamental right'.<sup>2</sup> The 86<sup>th</sup> Constitutional Amendment, passed by the Indian Parliament in 2002, recognized education as a fundamental right of every child between six and 14 years of age.<sup>3</sup> However, it was only in 2009 that Parliament passed a law guaranteeing every child the right to free and compulsory education up to the age of 14 years.<sup>4</sup>

Despite robust philosophical debates and the legal, moral and political background to democracy and equality and their relationship to education, the policies framed by the government over the years, as well as their implementation, have left a lot to be desired. Even the special privileges accorded to minorities, or the promotion of education for Dalits and Adivasis, have not enabled many among them to establish the equality of opportunity and status desired in the Constitution. So much so that it would be no exaggeration to say that the single greatest challenge facing the education sector today is inequity in the provision and utilization of educational opportunities across social and economic groups.

The idea of school education as a public good derives from the fact that: (a) its provisioning entails positive externalities and (b) the marginal costs of extending its provisioning to others are relatively low. The case is only strengthened in the context of existing inequities, as already described, since the role of the state is particularly strong in cases where poverty and social exclusion make it difficult for sections of the population to access private provisions for education. Equally importantly, the moral case for such a publicly guaranteed Right to Education lies in the grim and dark reality of millions of children in the country who, due to the specific nature of their vulnerabilities, continue to be deprived of an education. This, coupled with the discrimination faced by children within schools, and the continued inequality of educational opportunities for children based on the accident of their birth, means that India's children require the right not just to free and compulsory education, but the right to free and compulsory *equal* education. Only this would be a true and comprehensive public good.

This chapter examines key policy documents, existing research as well as primary field studies to

analyse the manner in which equity and inclusion have been conceptually approached, formally articulated and practically translated in the accompanying instruments of implementation. The subsequent sections of this chapter are arranged as follows: section two profiles some of the major groups of children facing exclusion from school education, as well as smaller, highly vulnerable groups of children who are almost completely excluded from education. Section three discusses the key processes by which such exclusion occurs. It looks at how programmatic shortcomings, or 'by-the-system' exclusions, combine with 'in-the-system' discriminatory practices and barriers faced in school by children from marginalized groups. It also looks at the wider socio-cultural and economic context of their families—the 'home–community–work' continuum—and the impact this has on their exclusion from schooling. Section four looks at the major consequences of such exclusion from school, not just for children themselves, but more generally for their families, the school system and society as a whole. Finally, section five concludes with a set of key recommendations relating to policy formulation and practical aspects of schooling for excluded children, which can serve to address their exclusion from school education

## 2. Groups Facing Exclusion from School Education

Despite the efforts of the government, a large number of children remain highly vulnerable to exclusion from schooling. Such children face a range of barriers that compel them to stay away from school, or, upon entering school, render them unable to continue their education, forcing them to drop out. Crucially, there are close linkages between socio-economic status and educational access, as a result of which children from marginalized groups face significantly higher exclusion from education. Indicators on educational access and attainment presented in Table 2.1 clearly illustrate the exclusionary nature of the education system for five major groups of excluded children—girls, Dalits, Adivasis, Muslims and children with disabilities. This chapter seeks to closely examine the diverse access barriers and mechanisms that result in such exclusion from schooling, with a particular focus on these five groups. In addition, it also discusses

the specific vulnerabilities and concerns that result in the near complete exclusion from education for children belonging to a number of other highly marginalized groups. A common thread across these discussions is the key role played by poverty in perpetuating and exacerbating such exclusions from education, which is discussed in detail in a later section.

### 2.1 Major Groups of Excluded Children

#### 2.1.1 Girls

The female literacy rate, as per the Census of 2011, stood at 64.6 per cent, below the national average of 73 per cent and much below the male literacy rate of 80.9 per cent.<sup>5</sup> This gender gap in literacy is consistent across socio-economic groups irrespective of class, caste, tribe, religion or disability. Despite a broad rise in educational attainment levels, girls continue to lag behind. What is particularly worrying is that the government has focussed its efforts in the last decade on removing this gap, but the gains continue to be slow, particularly among marginalized communities. This calls for a more detailed examination of what is preventing girls from accessing education in the manner they should.

#### 2.1.2 Dalits

The literacy rate for SCs in 2011 was similarly below the national average, at 66.1 per cent.<sup>6</sup> In 2012–13, the drop in enrolment of SC children from the primary (classes I–V) to upper primary (classes V–VII) level was 54.4 per cent, compared to an overall dropout rate of 51.8 per cent.<sup>7</sup> Accompanying such trends of lower participation in school education among SC children are lower educational achievements. A National Sample Survey Organization (NSSO) Baseline Survey in 2005 in 43 districts in the country found that 58.2 per cent of SC children were able to read and write, compared to 72 per cent of children from non-SC/ST/Other Backward Classes (OBC) households.<sup>8</sup> Similarly, the National Council of Educational Research and Training's (NCERT) National Achievement Survey (NAS) of class V students, conducted in 2012 across 6,602 schools in India, revealed that while girls and boys performed similarly when tested in reading comprehension, mathematics and environmental sciences, SC and

**Table 2.1 Education Indicators for Major Groups of Excluded Children**

	Literacy Rate (%)		Current Attendance Rate Among 5- to 14 -year-olds (%)	Drop in Enrolment from Primary to Upper Primary Level (%)	Out-of-School Rate (%)
	2011	2009-10			
<b>Overall</b>	73.0	68.3	87.1	51.8	4.28
<b>Girls</b>	64.6	57.7	85.8	51.4	4.71
<b>Dalits</b>	66.1	58.5	85.2	54.4	5.96
<b>Adivasis</b>	58.9	55.4	81.7	58.5	5.60
<b>Muslims</b>	-	63.7	82.3	58.9	7.67
<b>Children with Disabilities</b>	48.0*	45.3#	-	63.3	34.12

\*From Census of India 2001

#From NSS 58<sup>th</sup> Round (2002)

Sources: Registrar General of India (2011), 'Literates and Literacy Rate (Primary Census Abstract Data Highlights)', *Census of India 2011*, New Delhi: RGI; National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; NSSO (2013), 'Employment and Unemployment Situation among Major Religious Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI; NSSO (2003); 'Disabled Persons in India', *NSS 58<sup>th</sup> Round (2002)*, New Delhi: MoSPI; National University of Educational Planning and Administration (2013), *Elementary Education in India: Progress Towards UEE, DISE 2012-13 Flash Statistics*, New Delhi: NUEPA and MoHRD; Social and Rural Research Institute (2009), *All-India Survey of Out-of-School Children of Age 5 and in 6-13-Years Age Group*, New Delhi: MoHRD.

ST students consistently under-performed with respect to other caste students in all three subject areas.<sup>9</sup>

### 2.1.3 Adivasis

The literacy rate for STs, as per the Census of 2011, was 58.9 per cent, significantly lower than for the general population.<sup>10</sup> Similarly, the dropout rate from the primary (classes I-V) to upper primary (classes V-VII) level for ST children in 2012-13 was 58.5 per cent,<sup>11</sup> also much higher than the overall dropout rate. ST children have lower attendance rates relative to other social and religious groups; in 2009-10, the attendance rate for ST children in the five- to 14-years age group was 81.7 per cent, compared to an all-India average of 87.1 per cent.<sup>12</sup> Similarly, in terms of quality of learning, the NSSO baseline survey of 2005 also found that only 52.4 per cent of ST children between the ages of six and 14 could read and write, the lowest among all social groups.<sup>13</sup> Similar results were reported for ST students in the NCERT NAS report.<sup>14</sup>

### 2.1.4 Muslims

Literacy data for Muslims from the Census of 2011 is not available. However, the NSS 66<sup>th</sup> round (2009-

10) estimates the Muslim literacy rate (among persons aged 15 years and above) to be 63.7 per cent, lower than the overall literacy rate (68.3 per cent), but higher than for SCs (58.5 per cent) and STs (55.4 per cent).<sup>15</sup> However, unlike SCs and STs, who have significantly reduced their educational gap relative to other groups (albeit from very low levels), improvements in Muslim literacy rates have lagged behind others, particularly since the 1980s. Comparing data from the NSS 61<sup>st</sup> round (2004-05)<sup>16</sup> and 2009-10, for instance, the literacy rate for SCs and STs increased by 8.1 per cent and 11 per cent, respectively. In contrast, the Muslim literacy rate increased by 6.5 per cent in rural areas, and 4.2 per cent in urban areas. The current attendance rate for Muslim children aged between five and 14, at 82.3 per cent, is the lowest among social and religious groups, with the exception of STs.<sup>17</sup> Similarly, the all-India-survey of out-of-school children aged between six and 13 years in 2009 by the Social and Rural Research Institute (SRI) estimated that 7.67 per cent of Muslim children were out of school, which was significantly higher than the overall out-of-school rate of 4.28 per cent, and those for girls (4.71 per cent), SCs (5.96 per cent) and STs (5.6 per cent).<sup>18</sup>

### 2.1.5 Children with Disabilities

Comprising about 2.2 per cent of the country's population in the 2011 Census,<sup>19</sup> persons with disabilities face some of the highest levels of exclusion from the school education system in India. In the absence of reliable recent data on educational access and achievement for persons with disabilities, data from earlier periods is presented here. As per the Census of 2001, at an aggregate level, persons with disabilities had a 48 per cent literacy rate.<sup>20</sup> Similarly, the NSS 58<sup>th</sup> round (2002) estimated the literacy rate among persons with disabilities (aged five years and above) to be 45.3 per cent.<sup>21</sup> Less than 30 per cent of persons with severe disabilities were literate, and even for those with mild disabilities, the literacy rate was only around 50 per cent.<sup>22</sup> Data from the 2009 SRI survey of out-of-school children found that among children with disabilities, 34.12 per cent were out of school. The out-of-school rate was as high as 58.57 per cent for children with multiple disabilities and 48.03 per cent for children with mental disabilities.<sup>23</sup> Across the board, a large proportion of children with disabilities do not progress beyond primary school. According to the NSS 58<sup>th</sup> round data, just over 10 per cent of severely disabled persons and 20 per cent of moderately disabled persons achieve middle school or higher education.<sup>24</sup>

### 2.2 Highly Excluded Groups: Children the State Forgot

In addition to the major marginalized groups hitherto discussed, there exist a significant number of children who live in extremely difficult circumstances, and due to the specific nature of their vulnerabilities face formidable, and often insurmountable barriers in their access to schooling. Such barriers—the absence of home and family, extreme levels of social stigma, the compulsion to work or migrate, and fear and insecurity associated with conflict, among others—compel the child to stay away from school altogether or drop out of school. Some examples include: (a) street children; (b) children without adult care and protection; (c) children in conflict with the law; (d) child workers; (e) children of parents in stigmatized occupations, like sex work, waste picking

and manual scavenging, and children engaged in these occupations; (f) HIV positive children and children of HIV positive parents; (g) migrant children; (h) children from de-notified, nomadic and semi-nomadic tribes, and particularly vulnerable tribal groups and; (i) children living in conflict-affected areas.

There is extremely little information on educational access and achievement for children from such highly vulnerable groups. However, the available evidence highlights that they make up a significant proportion of the child population in India, and in particular of illiterate and out-of-school children. For instance, a study of Delhi's street children conducted in 2008 found that about half of them were illiterate, and only about 20 per cent had received some formal education.<sup>25</sup> As per United Nations Children's Emergency Fund (UNICEF) estimates, there were 11 million street children in India in 1994,<sup>26</sup> a number which is likely to have gone up significantly since then. About 145,000 of the estimated 2.1 million living with HIV/AIDS in India in 2011 were children below the age of 15.<sup>27</sup> Child Rights and You (CRY) in India estimates that there are about five million children in commercial sex work in the country, 71 per cent of whom are illiterate.<sup>28</sup> According to the government, there were about 12 million working children in the five-to 14-years age group in 2001,<sup>29</sup> but unofficial estimates put the number at as high as 60 million.<sup>30</sup> An estimated six million migrating children do not attend school,<sup>31</sup> while at least 500,000 people were internally displaced due to conflict and violence in India by the end of 2011.<sup>32</sup>

For such children, the presence of a more expanded network of schools is insufficient, and without very special efforts they will continue to face an almost complete exclusion from the education system. The inability of existing education policies and programmes in India to adequately address the needs and vulnerabilities of such children thus has a severe negative impact on the country's ability to achieve true universalization of school education.

### 3. Key Processes of Exclusion from School Education

#### 3.1 Faulty Design of Law and Policy, or Exclusion 'By the System': A Critical Analysis of the Education Policy in India

This section attempts to underline how the evolution of education policy in India beginning in the post-independence period of the 20<sup>th</sup> century did not satisfactorily address the challenges of inequity and exclusion from education of children from marginalized sections of society. It examines the failures of state policy in providing quality education to all within the framework of universalization, keeping in mind the special needs of the marginalized.

##### 3.1.1 The Journey Until 2001

The first National Policy on Education (NPE) was framed in 1968, following the recommendations of the Education Commission led by D. S. Kothari. It explicitly mentioned a common school system 'to promote social cohesion and national integration',<sup>33</sup> but made no suggestions for how to bring it about, other than providing 'free student-ships' to children from indigent families. The special objective of girls' education and mainstreaming children with disabilities into regular schools was also mentioned, but with no corresponding policy or programme specifics. Thus, while the NPE of 1968 did acknowledge the need for equalizing educational opportunities, without the corresponding support in the form of financial and organizational structures or even programme design it failed to have the desired impact. The first attempt at laying down a National Policy on Education thus did not go beyond providing some broad principles.

The next NPE of 1986, subsequently revised in 1992,<sup>34</sup> did give a boost to the attention paid to basic education, but it remained based on the presumption of a lack of demand among the poor and marginalized. Hence, physical access was increased in a bid to reach out to sections of the population that were perceived to be left out, but little thought was given to addressing the social causes that affected demand. Unfortunately, the increase in physical access was done at a huge cost to quality, underlying the elitist tendency in

policy thinking, which sanctioned poor quality facilities for the poor and marginalized. This has had a disproportionate impact on the opportunities available to children of economically and socially marginalized families—keeping them on the fringes of quality education and the chance to get ahead.

Nevertheless, the NPE (1986/1992) did move several steps in that it made separate mention of education for SC and ST children, minorities, girls, other educationally backward sections, and children with disabilities (although they were referred to as the 'handicapped'). It also made special mention of increasing people's involvement, especially women, and establishing accountability in relation to objectives and norms. However, the specific suggestions for each of the excluded groups revolved around the following basic interventions: (a) incentives for SC/ST and other educationally backward classes; (b) separate hostels for SC children and *Ashram* schools for ST children; (c) schools in SC and ST neighbourhoods and areas; (d) curricular reform to include tribal culture and objectively reflect minorities, (e) innovative methods for participation of SC children and promoting integration of children from minority backgrounds so as to promote national integration, (f) recruitment of 50 per cent female teachers and emphasis on recruitment of SC teachers, and (g) Navodaya Vidyalayas with reservation for SC and ST children. However, even this focus did not result in universalization since, as discussed in the previous section, several categories of children remained excluded from the system entirely.

These interventions, limited as they were in scope and design, did not have the desired impact, as they also remained poorly financed and administered. Instead of giving greater priority and resources to education, the government in fact took recourse to a range of cost-cutting and quality-diminishing measures such as setting up Education Guarantees Centres (EGCs) and appointing 'para-teachers'—both of which were not required to subscribe to any given norms of quality or training. Para-teachers, being under-qualified and under-paid had neither the capacity nor the incentive to perform the very challenging task of teaching children—many of whom were first generation learners. This led to a further diminishing of quality and an increase in the exodus away from government schools, and

the growth of a parallel private system of basic education.

On the other hand, different ‘classes’ of schools developed within the government system itself, with the setting up of so-called ‘model’ schools such as the Sarvodayas and Navodayas, while turning a blind eye to the mass of regular government schools where most of India’s children and almost all of its children from socially and economically weaker sections were being sent.<sup>35</sup> In these special schools, meant for ‘special’ children, the expenditures per child were far above that in other schools. The argument made was that they allowed children of greater ‘merit’ to have the opportunity to study in schools that would allow them to realize their full potential. The blatant contradiction with the constitutional provision of equality of opportunity could not be starker.

In fact, what these initiatives have done is to create what Vimala Ramachandran calls ‘hierarchies of access’.<sup>36</sup> The adoption of a segmented approach in dealing with the education of children from deprived and excluded sections of society has led to the provisioning of sub-standard facilities for them. Instead of focussing on improving the quality of government schooling for all, which would have provided children from all walks of life the ‘equality of opportunity’ they needed to join the mainstream of social and economic life, the government has followed a fractured and piecemeal approach with a disproportionate reliance on ‘incentives’ to attract children from neglected sections of society into the fold of formal education. Moreover, the inability or unwillingness to gather information on the social aspects of exclusion, discrimination and marginalization has affected policy makers’ ability to address the causes of marginalization and tackle them systematically. Hence, children from excluded sections with physical access often find themselves excluded within the system, as classroom practices continue to keep them out and in many instances force them to drop out.

It is no wonder that the 1990s saw a huge rise in the number of private schools that mushroomed all over the country to take care of both the rise in demand, as well as the exodus from government schools. In many states, this impetus was supported through subsidized land and other incentives to the private sector. It has correctly been argued that

the rise in private provision has seriously diluted the idea of basic education as a public good. Sadly, it has not contributed to better quality education either. In fact, the poor state of government schools, which provide a benchmark of quality, has ensured that the alternative private schools are of only marginally better quality, if at all. The growth of the private sector has also contributed to gender inequalities being perpetuated, as typically only boys are sent to private schools while girls continue to be sent to the cheaper government facilities.

The first 50 years after independence are thus marked by a gross lack of political will towards the education sector, evidenced by the limited resources allocated to it and the singular lack of imagination shown in the efforts made to address the issue of equity and universalization.

### **3.1.2. Education for All – Sarva Shiksha Abhiyan**

In 2001, the Indian government launched its most ambitious education programme – the Sarva Shiksha Abhiyan (SSA). This was meant to be the vehicle that would take India towards fulfilling its Millennial Development Goals (MDGs) of education as well. However, the competing goals of economic growth and social justice resulted in the latter taking a backseat, as maintaining the country’s image as an ‘emerging market’ took precedence. While SSA was launched with much fanfare, and the policy rhetoric reflected its commitment to achieving universal education, the manner in which the policy was framed had fundamental flaws. The government’s response to the human development crisis at this point took a policy turn that had far-reaching consequences in the following decades.

The SSA funds come with extremely strict and inflexible financial norms determined at the central government level with no possibility of local inputs or reform. As a result, the ability to use funds based on need is severely reduced, leading to a scenario of unspent funds in the face of massive need. This was particularly disastrous for marginalized children and equity. In particular, the category of ‘equity’ in the SSA’s list for financial allocations is worth mentioning.<sup>37</sup> It is meant to increase equality of access to marginalized sections and carries with it an amount of Rs 10 million per district. However, it also carries a the rider that 50 per

cent of this amount must be spent on Information and Communication Technology (ICT) alone. One is hard pressed to understand the link between the two. The other 50 per cent tends to be under-utilized due to a lack of innovative ideas emanating from the state education departments. Thus, while on paper SSA has allocated a substantial amount for 'equity', in reality it amounts to little.

Other elements meant to have an impact on equity, such as gender co-ordinators, suffer from lack of appropriate training, resources and programme inputs that could make them effective for the roles conceived for them. It is extremely important that such design flaws be exposed and discussed in the public domain if actual reform in the manner in which 'education for all' is being implemented is to change.

With research and the efforts of activists shedding light on specific issues affecting exclusion in education, the policy regime acknowledged the need for special efforts to reach the 'unreached'. However these efforts took the form either of scattered incentives to 'motivate' parents to send children to school, or of farming out of responsibilities among different arms of the government machinery (rather than being implemented by the Ministry of Human Resource Development [MoHRD] and state education departments). Thus, the Ministry of Tribal Affairs set up 'Ashram Schools' for tribal children; scholarships for Scheduled Caste children were established by the Ministry of Social Justice and Empowerment; 'modernization' of *madrassas* was attempted for Muslim children; and so on. Besides fostering separatism in provisioning, the low priority these ministries enjoyed in the allocation of resources meant that very limited resources were available for their efforts, leading to poor quality of services. The incentives, on the other hand—limited and poorly administered as they were—could not compensate for the very poor quality of education provided in 'government schools'. Besides, they were targeted at only a limited section of the marginalized. Street and homeless children, children from migrant families, children of nomadic tribes and even children from minority communities were not given incentives. In fact, the focus of inclusion was skewed towards Dalit and Adivasi children, and the girl child.

SSA systems meant for tracking the progress of elementary education at the national level also, sadly, contribute to exclusion. This system, called the District Information System on Education (DISE) relies on a questionnaire filled by teachers in all government schools (and now many private schools as well). Laudable as the objectives and the effort have been, they suffer from several shortcomings. Teachers essentially transfer information from school registers on to DISE formats. A household-level survey, which could provide valuable information about issues of exclusion, marginalization, etc., is not conducted at all. In fact, the data on out-of-school children is also compiled in a flawed manner. Instead of looking at attendance, only enrolment levels are checked. In reality, children attending school very irregularly must also be included in the list of out-of-school children, as they are virtually out of the school system and are potential dropouts. Further, many categories of highly excluded children, including street children, migrant children, nomadic children, children in conflict zones and a host of others, are completely out of the purview of DISE. Besides, lack of verification of information put together solely by teachers, without a process of community or parental participation, has raised serious doubts about the veracity of DISE data.

Bringing children from marginalized backgrounds into the education system is perhaps the biggest challenge facing the universalization of elementary education today. Authentic and timely data on the status of these children and the problems preventing them from coming to school regularly are thus an extremely crucial part of any policy that seeks to rectify the imbalance. Without such regular and reliable data, policy and planning run the risk of not being able to catch up and the problem remains inadequately estimated and diagnosed.

Finally, the lack of priority given to this sector, in terms of committing the financial, human and administrative resources required, has continued even after the passage of the Right to Education (RTE) Act, in 2009. Moreover, the widespread acknowledgement of the poor quality of government schools, particularly in terms of learning achievements (albeit measured through standardized tests of literacy and numeracy), has contributed greatly to a discrediting of the

government school system. So much so that even the state machinery appears to be throwing its hands up and looking towards the private sector for solutions — either directly or indirectly, through the so-called public–private–partnerships (PPPs).

What is becoming tragically apparent is that after a few decades of efforts towards universalization—however ill-conceived and misdirected—there is again a shift towards higher and more elite forms of education. Thus, the education policy appears to have come full circle, while leaving the core promise of ‘equality of opportunity’ still pending. This is especially apparent in the approach of the 12<sup>th</sup> Plan, which appears to be in sharp contrast to the previous plan period, where the focus was on inclusive growth. This rather contradictory movement within government is inexplicable as it is co-terminus with its own initiative of making elementary education a fundamental right through the passage of the RTE Act, which mandates that all children be provided at least eight years of elementary education by the state. It is especially disturbing that given these shortcomings, the government is proceeding with undeterred focus on secondary and higher levels of education, as though it has achieved the desired results as far as elementary education is concerned.

### **The Achievements**

Despite the contradictions in policy and the pitfalls in implementation, one cannot deny that improvements in the educational status of children from all sections of society have taken place. For this, the increase in physical access that came about from government efforts must be given credit. Large parts of the country that were devoid of any educational facilities did acquire schools; the MoHRD did develop an administrative structure separately for education down to the block level, and then with the passage of the 73<sup>rd</sup> Constitutional Amendment,<sup>38</sup> this was extended to the Panchayat level. A large data system in the form of the DISE has also been developed, which provides ‘school report cards’ for scores of schools across the country. Basic data on school infrastructure, enrolment and teacher appointments are available in the report card. A National Curriculum Framework (NCF), which lays down the philosophy towards learning, taking into account the diversity in culture and systems of knowledge across the country, has provided an

excellent base on which to build an appropriate structure for textbook writing, evaluation methods and classroom interaction.

The 86<sup>th</sup> Constitutional Amendment in 2002 and the consequent passage of the RTE Act in 2009 are also big steps in the right direction. Not only does the RTE Act acknowledge basic education as a fundamental right for all children, it also lays down the minimum parameters of quality education for all children. In that, it is a frontal attack on the hierarchical and divisive systems that have for so long persisted in the delivery of education.

These are no mean achievements. However, in order to address the persistent concerns, especially as they relate to exclusion and inequality, each of these efforts needs to be oriented towards addressing the specific problems faced by children who continue to be deprived of the full benefits of quality education. Thus, more specific data needs to be collected on the issues plaguing children from socially and economically marginalized groups; the curriculum framework and the textbooks need to develop practical methods of transacting the philosophy of education laid down in the NCF of 2005; the social aspects of exclusion and marginalization need to be factored in; the provisions of the RTE Act need to be enforced in letter and spirit; adequate resources need to be deployed to improve the overall quality of government schools; and, above all, greater political will towards overcoming this fundamental malaise needs to be displayed at all levels.

### **3.1.3 The Right to Education**

The persistent gaps, the realization that India would not be able to meet its Millennium Development Goals (MDGs) obligations in time and the growing clamour for a greater push from public policy towards universalizing elementary education culminated in perhaps the most significant development in this sector so far. The Right of Children to Free and Compulsory Education Act, commonly known as the Right to Education (RTE) Act, was passed by the Indian Parliament on 4 August 2009, and came into effect from 1 April 2010.

The RTE Act has several radical features, which need to be mentioned: (a) for the first time it has attempted to lay down the parameters of what a



regular school of *minimum*<sup>39</sup> quality must be. Thus the basic requirements of infrastructure, teacher qualification, curriculum design and classroom transactions (including evaluation) have been enunciated in the act<sup>40</sup>; (b) it has outlawed corporal punishment and discrimination in all its forms, adding to the existing legislations against abuse and discrimination; (c) it has included the private sector within its purview, insisting that the same parameters of quality apply to them as well; and (d) it has also called for a 25 per cent reservation, in the incoming class in private schools for children from socially and economically marginalized communities. All these features, if enforced, can transform the quality of schools, especially

government schools, and enable children from all walks of life to acquire at least eight years of basic education of a decent quality.

However, the passage of the act has been met with unprecedented criticism, cynicism and even condemnation. The following are possible reasons: first, there is severe opposition to the very provisions in the RTE Act that would bring greater diversity into classrooms and help to bridge the huge divide that exists between different sections of society. The private sector is appalled that children from the disadvantaged (DA) and economically weaker sections (EWS) of society will be given the opportunity to study in the same classrooms as

#### The Role of Private Schools under the Right to Education (RTE) Act

Any attempt to ensure a fundamental right to education for every child in India would be untenable without the participation of the private sector, which at present plays a large role in the provisioning of school education across the country. To this end, private schools have been brought under the rubric of the act by requiring them to maintain the same minimum standards and norms that apply to government schools. In order to ensure that prohibitive private school fees do not create barriers to entry for a vast section of the population (unlike in government schools, where access is free), the act also mandates that 25 per cent seats in private schools in the incoming class be reserved for children from economically and socially marginalized communities. The cost of school education for these children will be borne by the government, and they will also be provided mid-day meals, as would children in any government school.

As one of the basic goals of education is to enable children to be citizens of their countries, and of the schools to contribute to the nation-building project, these goals are not met in exclusivist environs of private schools, when the very premise of these institutions is based on differentiating one citizen from the other on the basis of economic advantage. Besides, the range of talent, skills, experiences and perspectives that children from different economic and social backgrounds bring to the classroom adds immensely to the learning of children who are completely cut off from the realities that children from disadvantaged backgrounds experience. This is not a simple matter of adding 'diversity' to the classroom; there are real, concrete ways in which children learn from one another, including children of privilege from those of disadvantaged backgrounds.

In other words, while the discussions around the so-called 'quotas' have centred around providing an 'opportunity' to children from the weaker sections of society, it is important to bear in mind that, in fact, the opportunity is as much for the privileged children as for the under-privileged. Another relevant point is that the objective of section 12([1][c]) of the RTE Act is not of 'reservation in private schools' but of 'regulation of private schools', in a manner that allows them to continue to play a role in the delivery of elementary education as conceived of by the Constitution and laid down in the RTE Act. It is these considerations that must govern the practices of the private schools and not those of incentives or the economic logic of the private sector.

The majority of the private schools, however, continue to consider these provisions an unjustified burden imposed on them by an incompetent state that must provide education itself without meddling with the autonomous functioning of schools. In 2010, a consortium of 350 unaided private schools petitioned the Supreme Court, contending that the RTE Act violated their constitutional right, guaranteed under Article 19(1)(g), to practise any business ('trade'), and their right to equality before law, right to liberty and right against non-discrimination based on religion, caste and other considerations enshrined under Articles 14, 21 and 15(1), respectively. The Supreme Court upheld the constitutional validity of the RTE Act and reasoned that while the state is the chief duty-bearer, it could place a horizontal responsibility on private educational institutions in public interest, since the advancement of education is not a business enterprise but a charitable goal. Recognizing the fact that provision of education cannot be equated with a business enterprise, the court pointed to the 'public' nature of education. In May 2014, a five-member Constitutional Bench examined a review petition for the judgment and reaffirmed the court's 2012 position, but excluded minority institutions from the purview of the RTE act.

children from elite families. The horror has been so great that they have taken the matter to court citing constitutional privileges accorded to citizens. This matter has raised several fundamental questions about the way education is perceived and the constitutional principles it is challenging by taking this legal position. It is extremely important that not only the idea of elementary education as a public good should be reiterated, but the law of the land (in this case the RTE Act) should be applied equally to the private sector as well.

Second, no special provisions have been made for children from marginalized communities, such as street children, children from migrant or nomadic families, children in conflict zones, etc.,. This was expected to be dealt with through state rules, but none of the states have made rules or guidelines that specifically deal with such children.

Third, the act is being called a right to schooling, but not education, claiming that too much attention is being paid to 'infrastructure' as opposed to 'learning' parameters. This is factually incorrect, as several provisions in the Act relate precisely to learning aspects — such as teacher qualification, Continuous and Comprehensive Evaluation (CCE), ban on corporal punishment and discrimination, and curriculum in accordance with constitutional values. What is correct, however, is that these provisions, in order to be properly enforced, require resources, training and a host of other efforts, which at present do not appear to be forthcoming. This is a genuine concern about, and criticism of, the act.

### **A Right without Fundamentals**

Perhaps the biggest challenge faced by the RTE Act is that it has not fundamentally altered the manner in which elementary education is perceived by those involved with the enforcement of the act. The fact that children still do not have access to schools, are being forced to drop out of school or are not learning adequately reflects serious shortcomings in the implementation of a scheme that has not been grasped by those in charge of its enforcement.

The lack of understanding of the enormity of the task and its ramifications is most starkly evident from the fact that a proper assessment of the financial needs under RTE is yet to be made.

Besides, the huge investments required to revamp the education and training of teachers, so that they meet the standards stated in the act, have not been initiated. Similarly, the special attention that is required to enable excluded and marginalized children, including the provision of 'special training' to mainstream dropouts, have remained neglected areas even three years after the act came into effect.

Despite the legal connotations, no accountabilities have been fixed within the MoHRD and state education departments to take up the grievances that arise. No rules have been framed for grievance redressal to allow people to stake a claim to their rights under the act. No publicity or awareness campaigns have been undertaken to inform people of all their rights and entitlements. This last omission, in particular, shows the lack of political and administrative will towards the fulfilment of this important constitutional mandate.

The attack on the RTE Act that was launched by private schools and some groups representing minority institutions has led to the unfortunate exclusion of minority educational institutions from the purview of the act. As the Constitution promises minorities the right to run their own educational institutions, the Supreme Court has interpreted this privilege in a rather narrow sense, giving them the legal freedom to opt out of the requirements of RTE. This has dealt a blow to the idea of 'inclusion', which is an important aspect of the RTE Act. One can only hope that this can be reviewed again in the near future.

Last, the act has given a boost to de-centralization by giving an important role to Panchayati Raj Institutions (local authorities) as well as to School Management Committees (SMCs), formed with 75 per cent parent membership. However, these sections of the act have been either completely neglected, as in the case of the local authorities, or treated very cursorily, as in the case of SMCs. This neglect, too, shows the lack of political and bureaucratic will towards implementing the act in its true spirit.

### 3.2 Institutional Failures and Bias, or Exclusion 'In the System': Experiences of Discrimination Inside Schools

Official data from DISE shows that while we have successfully managed to enhance enrolment to almost 100 per cent, many children, particularly from SC, ST Muslim communities, and disabled children, drop out without completing elementary education or school education till class X.<sup>41</sup> School and classroom experiences are important factors in the non-retention and poor performance of these children. Moving from the policy domain to the lived realities of excluded children, this section documents a range of 'in-the-system' discriminatory practices and barriers, manifested, for instance, in poor infrastructure, pedagogical inadequacies and discrimination, and bias and neglect by teachers towards children from marginalized groups, among others. Such practices and barriers prevent schools and classrooms from becoming the learning, transformative, inclusive spaces they are meant to be, and result in the exclusion of a large number of children from these marginalized groups.

#### 3.2.1 Physical and Spatial Disadvantages in Accessing Schools

Government reports suggest that the stated policy of providing a primary school within 1 kilometre of a habitation and an upper primary school within 3 kilometres of a habitation have been fulfilled in almost all eligible areas in the country.<sup>42</sup> However, this policy does not ensure that all children are able to access these schools. In urban areas, a school within the mandated distance is not sufficient to accommodate all the children in the catchment area, given the high population density. Even when schools are available, heavy traffic may prevent young children from accessing the school, given that their parents are not able to take the time to bring children to, and take them back from, school. As the Ministry of Urban Housing and Poverty Alleviation reports:

*Education infrastructure is poorer in cities with larger population base and higher urbanization, thus increasing the possibility of marginalizing children of urban poor from education. There is still a huge gap in achieving universal access to education in all*

*cities, impacting the disadvantaged children the most.*<sup>43</sup>

An estimated 4 per cent of habitations in the country (especially in remote and hilly areas in Himachal Pradesh, Uttarakhand, Uttar Pradesh and the northeast, tribal belts of Chhattisgarh, Madhya Pradesh and Orissa, and desert areas of Rajasthan) do not have primary schools within walking distance of homes.<sup>44</sup> This almost immediately excludes several children from accessing education as they cannot travel long distances to attend school. K. Sujatha notes that 'the population and distance norms formed by the government have not been beneficial to tribal locations because of their sparse population and sporadic residential patterns'.<sup>45</sup> In addition, these locations are bereft of basic infrastructural facilities like transport and communication. This also ties in with parental anxiety, where parents are unwilling to send their daughters to schools that are located far off from their villages. In such scenarios, girls will drop out almost immediately. Further, even where primary schools are available, non-availability of middle and high schools in the vicinity places further limitations on the educational motivation and aspirations of tribal children.

Distance from school also serves as a barrier for Dalit children, against whom caste bias and widely prejudicial societal beliefs often lead to objections and harassment by dominant communities when they walk through the village roads to reach school. Such concerns become pronounced when there may be other social or economic conflicts between Dalits and the dominant community.

Inadequate or non-existent school access is also a major concern for children in conflict-affected areas, including regions facing Naxalite insurgencies, communal violence and social unrest. The forced displacement of people from their homes, particularly in cases of communal conflict or tension between two religious or ethnic communities (recent examples being the Jat-Muslim clash in Muzaffarnagar in 2013 and the Bodo-Muslim clashes in Assam in 2012) often leads to a discontinuation of education for children, since most relief camps are devoid of even basic services, let alone schools. Similarly, damage to schools during such conflict, as well as their subsequent occupation for security or police

operations can severely affect school access for children. For instance, nearly 300 schools were reportedly blown up by Maoist rebels between 2006 and 2009, with Bihar, Chhattisgarh and Jharkhand being the most affected states.<sup>46</sup> In this context, efforts by civil society organizations to provide ‘educational relief’ are critical but generally too haphazard in their design and scope to offer an alternative on par with formal education.

For migrant children and children of nomadic and semi-nomadic communities, cycles of movement and routes of migration that may not coincide with school cycles can lead to difficulty in securing admissions mid-session or for parts of the session as necessitated by the patterns of migration. Moreover, due to the lack of hostel facilities for children who stay back when parents migrate seasonally, children often lose out on schooling both in their native place and in migrating areas.

### 3.2.2 Inadequate School Infrastructure and Facilities

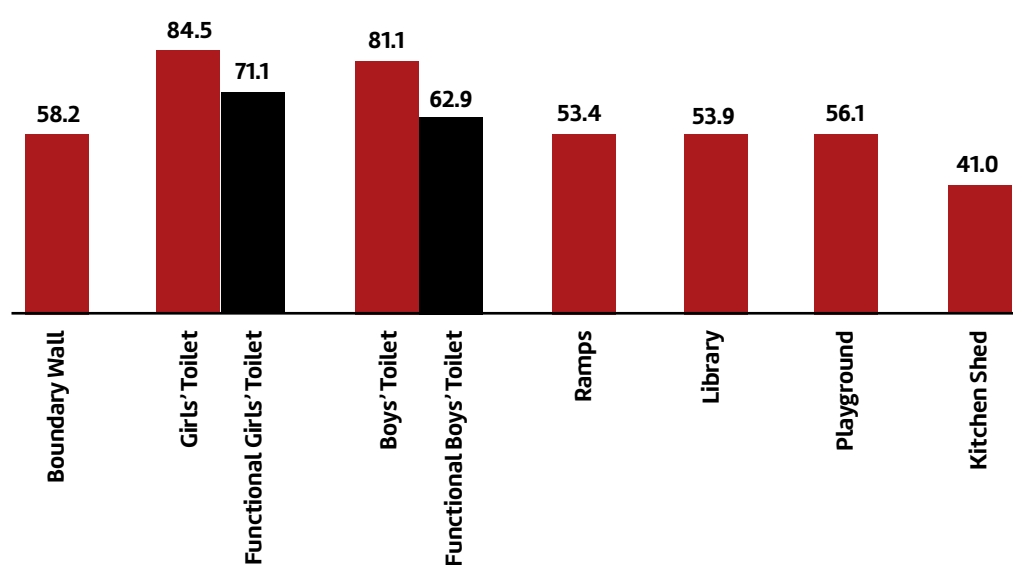
Overcrowding and a lack of basic facilities in schools can exacerbate the exclusion of disadvantaged children. Even as the RTE Act lays down nine essential infrastructure facilities<sup>47</sup> to be provided in

all elementary schools, the large majority of schools are devoid of them. Despite concentrated attention and budget allocations to build adequate schools and classrooms with necessary infrastructure facilities and equipment, at the end of the three-year RTE deadline in March 2013, less than 10 per cent of the 1.3 million government schools in the country were RTE compliant in terms of infrastructure and teacher availability.<sup>48</sup>

A review of school infrastructure-related indicators (see Figure 2.1) shows that while progress has been made in some areas—for instance, in the construction of school buildings and provision of drinking water facilities—a number of major gaps continue to exist. While such infrastructure shortfalls are felt by all students, some of them have a particularly detrimental impact on children from marginalized groups. Many schools still do not have separate girls’ toilets, which often leads to girls dropping out of school, especially after puberty, or staying home during menstruation. Similarly, the absence of ramps severely restricts school access for children with disabilities.

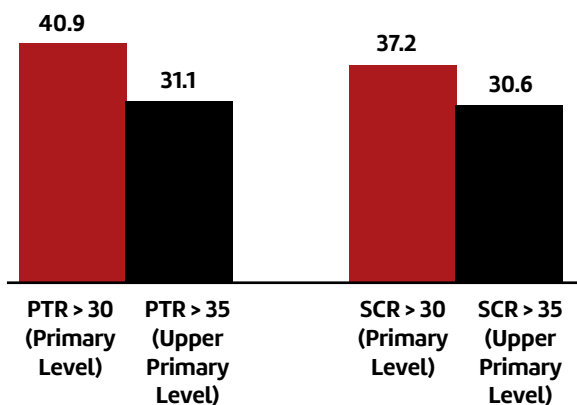
The DISE statistics also show that about one-third of schools, at both the primary and upper

**Figure 2.1 Percentage of Schools with Different Infrastructure Facilities**



Source: Arun C. Mehta (2013), *Elementary Education in India: Progress Towards UEE, Analytical Tables 2011–12*, New Delhi: NUEPA and MoHRD.

**Figure 2.2 Percentage of Schools with Higher than Targeted Pupil–Teacher Ratio (PTR) and Student–Classroom Ratio (SCR)**



Source: Mehta (2013), *Elementary Education in India*.

primary levels, had more than the mandated number of students per classroom and students per teacher (see Figure 2.2). High student–classroom and pupil–teacher ratios mean that the teacher has to take charge of a large class and is unable to give individual attention to students. Dalit children in Bihar have reported that they do not attend schools regularly as there is not enough space in the classroom, in addition to the poor teaching.<sup>49</sup> Extremely overcrowded schools, at times with about 100 children per classroom or teacher, and inadequate infrastructure, water and toilet facilities, have been reported in a number of million-plus cities.<sup>50</sup>

A study by Dhaatri reported the inadequate infrastructure and poor facilities in the *Ashram* schools run by the Tribal Welfare Department in Andhra Pradesh.<sup>51</sup> In some places, hostels or dormitories were non-existent, and classrooms doubled up as dormitories. There was a lack of safety and security for adolescent girls, toilets were few in number and badly maintained, some girls' hostels had male wardens, and no medical staff – all creating a vulnerable situation in these residential schools.

A qualitative study of five SC and ST residential schools in Bihar found their condition to be dismal, without basic liveable infrastructure, adequate facilities or academic support for students.<sup>52</sup> In addition to these general problems, it was found that neither schools nor the state education department had made efforts to fill the available

seats in these schools. Thus, an important provision meant to facilitate the education of Dalit and Adivasi children, and reduce their educational inequalities, is being under-utilized. While the RTE Act is supposed to cover all children in the six- to 14-years age group, there is little convergence of the Ministry of Human Resource Development with the Ministry of Social Justice and Empowerment and the Ministry of Tribal Affairs, which run the special schools for SC and ST children respectively.

Infrastructure issues have an enormous impact on school access for children with disabilities. Unfortunately, their concerns have been reduced to the catchall notion of 'barrier-free access', meaning, ramps and rails, rather than a framework that enables the participation of children with disabilities in all aspects of school life, be it classrooms, playgrounds, toilets, drinking water facilities or mid-day meals. Even based on this narrow interpretation, as of 2012–13, only 69.43 per cent of schools had been provided with barrier-free access.<sup>53</sup> It must be recognized that while children with disabilities may not be able to access schools in the same way as other children, the barrier-free access made for children with disabilities can be used by children without disabilities too. Hence, rather than making separate or special access for children with disabilities, a more inclusive strategy would be to have access features that can be used by all children, including children with disabilities.

### 3.2.3 Discrimination in the Use of School Infrastructure and Facilities

A study by MoHRD reports many instances of discrimination in the use of infrastructure facilities in primary and upper primary schools in six states.<sup>54</sup> Existing patterns of discrimination against socially marginalized communities are replicated within the schools across dominant and marginalized groups, and may happen even among children from the same communities. Even among Dalit or Adivasi children, particular sub-groups such as Valmiki or Musahar children, or Sahariya children, face greater discrimination from others, including from other Dalit or Adivasi children.

Children with disabilities face particular problems in the use of school infrastructure and activities such as the use of computers, games, art, music and drama, due to a lack of accessibility

or difficulties in adapting these activities to their needs. Even in cases where a child is unable to participate, teachers usually do not plan another activity and the child is left doing nothing.

Discrimination has often been reported in the task allocation related to cleaning and maintaining school infrastructure and facilities. The MoHRD study found that usually it was SC children who cleaned the playground, verandah and rooms in school, although there were instances where OBC and sometimes general caste children also did the cleaning, as long as it did not involve cleaning the toilets. In many places, cleaning tasks were reserved for SC girls, as boys did not touch the brooms or mops. The study further reported that the condition of toilets was extremely bad, with many of them being dysfunctional. But even in the few cases of functional toilets, these were being cleaned by SC children.<sup>55</sup>

### 3.2.4 Curricular and Pedagogical Inadequacies

The National Curriculum Framework, 2005 (NCF 2005) is one of the three National Curriculum Frameworks (1988, 2000 and 2005) developed by NCERT after the National Policy on Education of 1986.<sup>56</sup> NCFs are aimed at guiding the development of state-level curriculum frameworks, syllabi and textbooks across states and union territories in the country. The NCF 2005 lays emphasis on promoting citizenship, social inclusion and empathy, and contributing to economic and social changes, in addition to laying stress on 'nurturing an overriding identity informed by caring concerns within the democratic polity of the country.'<sup>57</sup> It acknowledges the persistence of social exclusion in the country, and presents a broad vision for contextualizing school curriculum in this social reality. However, being a broad guiding document, it fails to detail how this may be achieved. While this may not be the task of a curriculum framework for obvious reasons, it creates varied kinds of ambiguities in interpretations at the state level. The genesis of these ambiguities, in some ways at least, can be traced to the NCF itself — which presents ideas like 'social context', 'plurality', 'paradigm shift to the perspective of the marginalized' and 'critical pedagogy' in a vague manner. Although the spirit of the document is clear, this clarity does not seem to find a reflection in the revised

textbooks developed at the state level and by the NCERT as well (in some cases at least). Would representing social context imply reflecting 'real' political over- or under-tones embedded therein? How does one make textbooks 'joyful' and 'critical' at the same time? How may a textbook's contents incorporate concerns of varied social groups, varied views of reality, marginality and criticality, and train children to be socially sensitive?

The revised textbooks developed as per the NCF 2005 guidelines seem to be products of the various ways in which the state-level teams have grappled with these issues.<sup>58</sup> However, the trend indicates that several rigorous review exercises would be required to make the textbooks suited to address 'exclusion' critically. Broadly, it can be said that despite efforts towards inclusion, the perspectives of Dalits, Adivasis, disabled persons and religious minorities find few references in the textbooks. The textbooks do demonstrate a trend towards a more balanced representation of the two sexes. However, the representations follow a descriptive and uncritical trajectory (with some exceptions) that reasserts traditional gender roles. Also, the complexity of the constitution of gender and diversity in sexuality do not find a place in the textbooks. Themes like poverty, unemployment, hunger, conflict, multiplicity in ideologies and the like, which are omnipresent in the social context of India and the world, also do not emerge from the textbooks. At the same time, certain kinds of stereotypes continue to be embedded in subtle ways. Thus, although it would take a closer and a more holistic analysis to understand whether or not contents of textbooks are exclusionary, it is evident that they are far from addressing the category of exclusion in a comprehensive and critical fashion.

One reason for this may be that the functions that schools perform and the roles they assume are not just 'pedagogic'. Schools are social institutions,<sup>59</sup> and their pedagogic and academic agendas revolve around their social functions — which are much more contested, even when the debates appear to concern only the pedagogic aspect. As a result, children from marginalized groups continue to be considerably excluded, not just in terms of the content of textbooks, but also on account of other curricular content, hidden curriculum and the way this is transacted in the classroom by the teacher.

Feminist evaluations of school curricula have highlighted many examples of the 'hidden curriculum'. It includes:

- Organizational arrangements (including the division of physical spaces within the classroom and the school along gender lines);
- Differential task assignment and sexual division of labour in school (boys are allowed to go out of school, girls sweep and clean);
- Systems of rewards and punishments, disciplining of boys and girls through different strategies, teachers' labelling patterns, teacher–student and student–student interactions;
- Routines, rituals and practices in everyday school life (like segregated seating, separate lines for girls and boys or having them form separate teams).<sup>60</sup>

Students from a minority background find themselves particularly alienated by the hidden curriculum, such as through dominant religious rituals. Symbols of Hindu gods and goddesses in schools, *pooja* and *havan* on ordinary or festive days, celebration of some festivals over others, and practices like touching the feet of teachers gain legitimacy when practised in schools. Studies by Geetha Nambissan of Dalit students in Rajasthan also reported how teachers performed *pooja* to Goddess Saraswati in schools in which Dalit students were not asked to light the incense sticks or participate in these rituals in any manner.<sup>61</sup> These practices, built into the daily school routine, reinforce caste boundaries drawn in the process of the construction of the 'sacred' and thereby the 'polluted' within the institution.

State curricula do not acknowledge the cultural rights of Adivasis. The school curriculum fails to take account of tribal cultures as autonomous knowledge systems with their own uniqueness, history and context. The absence of community history, language and culture makes the linkage between education and day-to-day life complicated and stressful for the Adivasi child. Not only is the knowledge, and linguistic and cognitive abilities that Adivasi children possess ignored—for example, their intimate knowledge of their environment — schooling also actively encourages a sense of inferiority about tribal cultures.<sup>62</sup>

Another example of pedagogical inadequacy is the language used for instruction and communication, which affects children of migrant, nomadic and semi-nomadic communities when they move to an area where they are not familiar with the local language. Such barriers are also faced by Adivasi children, who generally speak in their own local dialect, and are unfamiliar with the state language used in schools. As a result, they are unable to fully comprehend classroom teaching and activities, read in the state language or understand the texts properly.<sup>63</sup> The problem may be compounded in the event where children in the same classroom come from diverse linguistic backgrounds, for instance, in the context of different tribal dialects in the same area, or migrant children in urban areas.

Children with special needs may also get excluded from classroom activities because of difficulties in communication with the teacher and peers. In many cases, small changes in classroom practices can go a long way in accommodating the needs of children with disabilities. For instance, in the case of students with hearing impairments who can communicate using lip-reading skills, teachers can ensure that they converse clearly, naturally and at a normal pace, without pausing unnecessarily between words, which would break the coherence in their message. Such students can also communicate better when seated directly in the line of the teacher.<sup>64</sup> Often, however, when faced with such communication difficulties, the teacher stops asking them questions or including them in discussions, thereby restricting their participation in the classroom. While there is substantial literature on making the classroom a more inclusive space for children with disabilities, teachers and school staff often lack the training required to effectively implement such measures. Many formal schools also do not possess trained teachers and the special books and equipment required to support the learning needs of children with disabilities.

### **3.2.5 Active Discrimination and Violence: Negative Teacher Attitudes**

Negative teacher attitudes exhibiting class, caste, religious and gender bias manifest themselves as discriminatory behaviour and exclusionary practices that thwart diversity and plurality in a

### Exclusion in Mid-day Meals Programme

The Mid-Day Meal (MDM) scheme originated in 1982 to promote children's attendance and retention in school, as well as to reduce hunger and malnutrition. Today, it ensures a meal a day for more than 100 million children across the country. The project lies on the fault lines of caste discrimination, a fact that is gnawing away at its social fundamentals. In 2006, a study by the Indian Institute of Dalit Studies extensively documented discrimination against Dalit children and cooks in the mid-day meals programme across Rajasthan, Andhra Pradesh and Tamil Nadu.<sup>a</sup> Despite a Supreme Court directive in 2004 to give preference to Dalit and Adivasi women as cooks and helpers, their numbers continue to be limited. Dominant caste communities object to their children eating food cooked by Dalit women. In addition, Dalit children report segregation during the meal, being served after others were served, not being given a second helping and other similar forms of discrimination. These findings are repeated in the MoHRD study across six states in 2012, which found a range of exclusionary practices against children from marginalized groups.<sup>b</sup> For instance, Dalit children were found to bring their own plates and were not allowed to use the plates in the school as other children objected. Teachers suggested that Dalit and Adivasi children came to school to partake of the mid-day meal and not to study. It is also common practice that children do not stay in schools after the mid-day meal and teachers spend considerable time in the preparation and serving of mid-day meals, eating into their teaching time. In many tribal areas, the scheme is implemented with delays in the delivery of funds and stock, and poor guidance to cooks and their poor monitoring. For children with disabilities, difficulties can arise when a child has specific needs, for instance when he or she requires assistance while eating, or is unable to move easily to the place where the mid-day meal is served.<sup>c</sup> In the absence of suitable arrangements, such children are often unable to access the meal. While the social benefits of the mid-day meal were a primary consideration in the development of the scheme, they are thus undermined in a variety of ways.

Sources: a. Joel Lee and Sukhdeo Thorat (2006), 'Dalits and the Right to Food: Discrimination and Exclusion in Food-Related Government Programmes', *IIDS and UNICEF Working Paper Series*, vol. 1, no. 3.

b. Technical Support Group, EdCIL India Limited (2012), *Inclusion and Exclusion of Students in the School and in the Classroom in Primary and Upper Primary Schools: A Qualitative Study commissioned by the Sarva Shiksha Abhiyan*, New Delhi: MoHRD.

c. AARTH-ASTHA (2013), *Third Annual Report on Status of Children With Disabilities Under the Right to Education Act*, New Delhi: AARTH-AASTHA

classroom, bringing about an internalization of bias in excluded children, and resulting in unequal participation with respect to leadership roles and school activities.

A major manifestation of discriminatory behaviour by teachers is corporal punishment. Children from marginalized groups often perceive and report that they are punished more often, punished more severely, punished unjustly when it is not their mistake or punished for offences for which others are condoned. Other forms of indirect discrimination by teachers include neglecting or paying less attention to such students, repeated blaming and labelling them as weak performers. Such negative teacher attitudes and discrimination are a major reason for children from marginalized backgrounds not entering the school system or dropping out early. Other consequences include irregular attendance in classrooms, lowered concentration in studies, reduced amount of participation in school activities, lower performance, failure and dropping out of school. Despite some quantitative gains, marginalized children are experiencing considerable qualitative

setbacks. A negative teacher attitude towards children is chief among these.

Discrimination is particularly severe for children facing extreme social stigma — children who are HIV positive or have HIV positive parents, children of commercial sex workers, children engaged in sex work, and children of manual scavengers, among others. Human Rights Watch, for instance, has compiled an extensive collection of case studies which show the high prevalence of discrimination in schools due to the HIV positive status of children and their parents, including denial of admission and mistreatment in schools.<sup>65</sup> Often, the discrimination is covert, such as low tolerance by teachers of frequent absenteeism due to illness or the need to care for unwell family members. In one study, such stigma, during the admission process and in school, was one of the primary reasons cited for children dropping out of school. In a similar manner, migrant children and children of nomadic and semi-nomadic groups also face significant discrimination by the local communities in the areas where their families migrate for work.



Dalit, Adivasi and Muslim children often recount various experiences of discriminatory behaviour in the teaching–learning practices in the classrooms. Teachers often discourage hard work and good grades among Dalit and Adivasi students, unfairly presuming that the ‘privilege’ of reservations in education and employment makes them work less hard. Teachers also perpetuate caste-based discrimination by questioning the value of education for children from ‘low’ castes, who they (teachers) will end up undertaking menial, traditional, caste-based occupations. Teachers also stereotype Muslim students as children who will gravitate towards violence and terrorism in the future and therefore believe that investment in education for them is worthless. A similar attitude affects children with disability. Government expenditure on inclusive education for children with special needs (CWSN), teacher-time and learning for them are all considered to be a burden on the state, which takes away space and opportunity for others.

Additionally, Dalit and Adivasi children face discriminatory attitudes from fellow students and the community as a whole, in particular from ‘dominant caste’ members who perceive education for these children as a waste and a threat to village hierarchies and power relations, and believe them incapable of being educated.

Teacher bias against students is reflected in verbal abuse, which relates to their caste or religious identity — ‘Churha’, ‘Chamar’, ‘Chamarin’, ‘Mulla’ and ‘Mohammed’ are terms that are routinely derogatorily used. In conversations with one of the authors, Muslim children reported that they are often referred to as ‘Mulle’, ‘Katya’, ‘Aatankwadi’, ‘Osama’, ‘Taliban’, ‘Kashmiri’ and ‘Dawood’; another child related how his teacher never called him by his own name but as ‘Mohammad’, ‘Miyan’ or ‘Maulana’. Moreover, statements such as ‘*Chamar ka baccha chori hi karega*’ or ‘*Musalman aatankvadi hi hai*’, (the son of a ‘Chamar’ will only be a thief and Muslims are all terrorists) are reflective of the deep caste-, religion- and identity-based prejudices held by teachers. Adivasi children are often subjected to overt discrimination by teachers who view them as ‘slow learners’, ‘weak’ or ‘unteachable’. They are humiliated and their parents are called ‘drunkards’ and deemed not

interested in their children’s education. Similarly, negative teacher attitudes towards children with disabilities, and labelling them with derogatory words like ‘*paagal*’ are unfortunately very common.

Often teachers consciously do not give children from marginalized backgrounds a chance to come and write on the blackboard or lead the reading in the classroom. Another way to discriminate in the classroom is through differential or segregated seating. Children have reported many difficulties arising out of this — such as lack of teacher attention, inability to read from a distance or a badly maintained or lit blackboard, being stereotyped as uninterested in studies or not sharp — which have a negative impact on their learning and development. A study of 158 Dalit children in Madhya Pradesh reported that only 22 per cent children could sit in the front rows in their class while 78 per cent reported that they had to sit at the back.<sup>66</sup> A similar study in Rajasthan reported that while 25 out of 64 children said they were free to sit anywhere in the class, only four reported actually sitting in the front row in their class.<sup>67</sup> The actual seating is influenced largely by teacher expectations and preferences, peer group dynamics and social identity.

Such actions can create an environment of fear and non-participation among children, where they restrain themselves in their learning efforts. Children themselves state that they are not smart or intelligent and are not able to read or write correctly, thereby accepting the teacher’s perceptions about them, even though they would like these perceptions to change.

In the study on Rajasthan,<sup>68</sup> Dalit children respondents mentioned being largely silent in class when it came to curriculum transaction. Many said they could not ask their teachers for explanations when they did not understand what was being taught, or could do so only with some teachers. Reasons given for not asking questions or seeking clarifications included being scared that teachers would scold, beat or insult them, or that peers would make fun of them for what they did not know. Some said they were too shy and hesitant to speak and would wait for another child to ask the teacher for clarifications. Others reported that they would ask a friend instead or just leave out that portion of the lesson, if need be.

Similarly, children from marginalized communities complain of not being recognized or selected for leadership in schools and extra-curricular activities. While the explanation usually is that teachers select leaders from among students with regular attendance, or those who are 'good' at studies, these children do not feel that the selection is honest or just. Children are conscious of the bias and prejudice of teachers in denying them a chance because of their caste, religion, gender or sexual identity. The MoHRD study reported that:

*Teachers differentiated between neat and clean children and the ones who were untidy or 'dirty'. Colour of the skin of a child seemed to play an important role when special duties were assigned in school like speaking in the assembly or leading morning prayers. With respect to appointing class monitors, boys were given preference.*<sup>69</sup>

One would expect from teachers, in the light of teaching-learning principles and pedagogy, facilitation in helping children learn about and respect one another, collaborate and co-operate in learning pursuits, share resources, etc. Diversity as a learning resource, however, is hardly stressed in teacher education. Rather, it is perceived as a limitation and distraction, a drain on teacher energy and resources. Pre-conceived notions about who is acceptable, what is desirable, who is worthy, who is deserving and who is capable drive teacher attitudes. Often, the positive associations are with the children from the dominant sections of society, and the negative with the marginalized.

While some aspects of teacher in-service training have been revised, these pertain primarily to gender and disability, and do not include the concept of inclusion for other groups of marginalized children on the basis of caste, religion, etc. Sadly, these deep-seated biases are not the subject matter of teacher training. The quality of both pre-service and in-service training is poor and these seem to be exercises in discharging certain obligations. Teachers feel that particularly after the RTE Act of 2009 and the NCF 2005, their dependence on and expectations from training programmes have increased. However, these expectations are rarely met.

Very few teachers are able to change the discriminatory and exclusionary practices against

marginalized groups as this demands conviction and clarity, which is not provided by the teacher education process; energy and effort, which teachers are seldom willing to invest; and also the strength to challenge conventional beliefs and attitudes in which they are often not supported by others at the school or in the local communities. The school management may not also demand these changes or support teachers in making the changes. The same is communicated in multiple ways in the classroom and school, and reinforced by the attitudes of the children of dominant castes towards those of the marginalized castes. Hence, peer relationships among children from different social groups and across gender or ability are limited, do not cut across comfort boundaries, or explore knowledge and practices about each other. Instead, they replicate existing attitudes and practices, and schools rarely become spaces for transformation. As a result, children from marginalized social groups express comfort in staying with friends from their own community.

### **3.2.6 Positive Developments in the Inclusion of Marginalized Groups**

#### **Kasturba Gandhi Balika Vidyalaya (KGBV)**

The KGBV scheme has been functioning since 2004 in 27 states. Residential schooling facilities are provided to those girls who have dropped out in primary school, and the programme helps them complete the elementary level of education via bridge courses and tutorials. It caters exclusively to girls from the SC, ST, OBC and religious minority groups, as well as those living minority the poverty line. At present there are 190,404 girls studying in a total of 2578 KGBVs.<sup>70</sup> The scheme is an important institutional mechanism to mainstream young girls into education as it also impacts the practice of early marriage among girls.<sup>71</sup>

#### **Scholarships**

The state provision of pre-matric scholarships to Dalit, Adivasi and Muslim students provides some succour to families in meeting additional costs. In addition, children whose parents are engaged in stigmatized occupations also receive pre-matric scholarships. Special incentives to girls have increased their enrolment. Discussions with parents show that they value the scholarship amount even though it does not meet all the school costs.

School costs have increased considerably with the increased dependence on additional tuitions, even among children who study in government schools.

### **Residential Facilities**

The state provision of residential schools or hostels for SC, ST and OBC children, despite their often inadequate infrastructure and poor academic support, is particularly beneficial for Adivasi children living in remote areas with limited school access. Dalit parents also value residential facilities for their children, as there is no learning environment or academic support in their habitations. Examples of Non-Governmental Organization (NGO)-managed residential facilities include Janishalas, which are residential learning centres run by Nirantar for Dalit and Adivasi girls in Lalitpur district of Uttar Pradesh. Residential hostels are also run by NGOs in the high outmigration districts of Bolangir and Nuapada in Orissa, and in Madhya Pradesh and Andhra Pradesh, providing children the option of staying behind and continuing their schooling, while their parents migrate for work.<sup>72</sup>

### **Bridge Courses**

Special bridge courses are run by the SSA, in partnership with Action Aid, for children of migrant brick kiln workers in Andhra Pradesh. Located near brick kiln sites, children in these courses are taught in their native Oriya language in order to overcome language barriers, and are also given a certificate of passing to ensure promotion to the next class in their local schools back home. Other such examples include *bhonga shalas* at brick kiln sites and *shakar shalas* at settlements of migrant sugarcane cutters, both in Maharashtra,<sup>73</sup> and *bhatta* schools in brick kilns in Jhajjar, Haryana.

### **Tola Sevaks or Talim-e-Markaz in Bihar**

Bihar has created an extensive cadre of community-level education volunteers called *tola sevaks*. or *Talim-e-Markaz* to facilitate the education of Dalit and Muslim children. These volunteers are required to provide additional coaching to the children in their habitations, and ensure they attend school regularly. The increased enrolment of Mahadalit children was attributed to the engagement of these volunteers, even when they were not equipped

through training or other facilities to do their best in the role.

In addition to government efforts, there are several initiatives by civil society organizations to promote and support marginalized children in get access to education, for instance residential and non-residential camps for out-of-school children so that they can be readmitted into school. Organizations also provide 'out-of-school-hours' coaching support to school-going children and learning support through innovative pedagogies in science, mathematics or environmental sciences, among other areas. In addition, NGOs work with schools to promote children's participation in initiatives like *baal sansad*<sup>74</sup> and *meena manch*,<sup>75</sup> promote inclusion activities and games in schools, promote human rights education, and set up libraries and other facilities in schools. In particular, many NGOs engage with children in extremely vulnerable situations, such as street children and child labourers. Besides teaching and learning activities, such initiatives also focus on promoting children's participation and building their self-confidence.

## **3.3 Exclusions in the Home–Community–Work Continuum**

While the earlier section examined the issues of exclusion originating within the education system, this section extends the analysis to beyond the system, to the other spaces occupied by children and their families, to understand the impact of these spheres on the schooling decisions of children from marginalized backgrounds. In particular, this section examines the crucial interlinkages between poverty and educational exclusion, and other important factors located within the home and community – for instance, parental illiteracy, lack of academic support at home, and societal prejudices and gender bias – that intersect with school participation and create a vicious cycle of exclusion, illiteracy and poverty.

### **3.3.1 Role of Poverty**

*Education necessarily demands long-term horizons. Poverty, on the contrary, compels people to remain embedded in immediate or short-term concerns. The informal economy on which the poor survive forces them to live from*

**Table 2.2 Education Indicators for Persons from Different Categories of MPCE**

	Decile Class (%) of Monthly Per Capita Expenditure (MPCE)									
	0-10	10-20	20-30	30-40	40-50	50-60	60-70	70-80	80-90	90-100
<b>Literacy Rate (%)</b>	49.3	53.0	55.8	58.4	60.4	63.4	66.8	70.6	78.5	88.4
<b>Current Enrolment Rate (%)</b>	50.4	51.0	51.8	51.8	52.8	52.4	54.6	53.5	56.9	61.8
<b>Current Attendance Rate (%)</b>	48.7	49.6	50.4	50.5	51.0	50.9	52.9	52.0	55.3	60.0

Source: National Sample Survey Organization (2010), 'Education in India, 2007-08: Participation and Expenditure', NSS 64<sup>th</sup> Round (2007-08), New Delhi: MoSPI.

*day to day. They want to — but usually fail to — plan for the distant future in which their progeny might reap the fruits of education.*<sup>76</sup>

There are close linkages between poverty and educational status. Statistics from the 64<sup>th</sup> NSSO round (2007-08), shown in Table 2.2, estimate that only about half of the people in the bottom 10 per cent of the population (based on Monthly Per Capita Expenditure or MPCE) were literate, as compared to a literacy rate of 88.4 per cent for the top 10 per cent of the population. Similar trends are seen in the attainment of secondary and tertiary education. Similarly, poorer children have lower educational participation indicators like enrolment, attendance and dropout rates; for instance, as Table 2.2 highlights, 48.7 per cent of people in the lowest decile class were currently attending educational institutions, compared to 60 per cent in the highest decile class. Further, since the incidence of poverty is higher in marginalized households, including those of Dalits, Adivasis, Muslims, female-headed households, and households with persons with disabilities, such groups are particularly vulnerable to the impacts of poverty on educational exclusion.

The Consortium for Research on Educational Access, Transitions and Equity (CREATE) Country Analytical Review for India has noted that children from poorer households are deprived of education because of two main reasons: namely, a lack of affordability due to the financial burden, and the indirect opportunity costs of seeking an education over the need to work, either in family occupations or as wage earners supplementing the household income.<sup>77</sup> Such purely economic reasons are particularly relevant, as the education system has not been able to adequately deal with these constraints.

Besides the direct financial costs of going to school, indirect opportunity costs can include, among others, the inability to perform domestic chores or take care of siblings, or the loss of time that could have been spent as a child worker. In the case of persons with disabilities, there is also a loss in employability and income for caretakers. In many cases, other expenditures can also lead to a significant weakening of the household's economic wellbeing, and consequently its ability to educate children. Examples include expenditures related to the care of a disabled member—higher medical expenses, the cost of aids and appliances, dependence on private transport—or, in the case of children of HIV positive parents or those who are HIV positive themselves, increased medical expenses and the loss of family wage earners to the disease.<sup>78</sup>

Perhaps most crucially, a major section of children who are living in a situation of abject poverty are engaged in child labour, which places a severe barrier in the ability to go to school. According to the Census of 2001, India had 12.6 million children, aged between five and 14, who worked either part-time or full-time. Of these, over 60 per cent worked in the unorganized agriculture sector and the rest in other unorganized labour markets where they are extremely prone to exploitation. NGOs however estimate that there are at present 60 million child labourers in India, about five times the official number. Many children have to work during school hours, and even if they work before or after school, the work often leaves them tired and unable to participate fully at school, or prevents them from spending time studying after school hours.

There is also substantial overlap between migration and child labour, and child migrants

form a significant part of the workforce in several major sectors, such as construction, brick kilns, small industries, domestic work and farm work.<sup>79</sup> Similarly, the struggle to survive forces children on the street into unsafe and demeaning occupations, such as waste picking and begging.

A study of the Mahavats (Muslims) of Barabanki in Uttar Pradesh reveals how children are compelled by the pull of economic necessity to lose the freedom to go to school, and juggle household work and outside labour to supplement family incomes.<sup>80</sup> The community, being wholly asset-less, must rely on pawning physical labour, locally, but increasingly also in distant cities, to eke out a living. This necessitates parents absenting themselves from families on a daily basis for locally available work in Barabanki as rickshaw pullers and plastic flower makers, or for long durations, as migrant labour. Women additionally work as domestic help in houses of the better-off families in the village. As a consequence, children, from very early on, are left to themselves, girls looking after their younger siblings, and boys free to do as they please or helping their fathers with manual labour. Schooling is not a priority, especially when there is little attempt by education administrators to make schooling readily and easily available for such vulnerable communities.

The same study finds that among families that practice home-based work, particularly weaving, much of the burden of work falls on children, boys as well as girls, cutting them off from attending school or *madrassa* regularly. Almost all weaver families interviewed in the study claimed that they sent their wards to the local *madrassa* or school, but actual attendance was clearly very erratic, mostly due to their being preoccupied at home. Similarly, in urban areas,<sup>81</sup> many houses double up both as *karkhanas* (workshops) and living space, where entire families are engaged in extremely low-paying, often hazardous informal-sector work. For instance, in Jehangirpuri, in northwest Delhi, a sizeable population of urban poor Muslims are involved in home-based activities such as *papad* making, embroidery work on bangles, removing peas from pods (seasonal), *manjha* thread (abrasive thread used in flying kites) making, rag picking, *bidi* making, etc. In rag picking, both organizing the raw material (rags picked by family members themselves) and sorting it are time-

intensive activities and involve all family members. Labouring in the *karkhanas* and in home-based work, trying to juggle work-related responsibilities with studies, striving to concentrate in congested and cramped spaces — all in an effort to bootstrap their families out of poverty — excludes these children from full participation in school and classroom learning.

### 3.3.2 Low Significance Attached to Education

Closely related to the issue of poverty is the weak perception of the value of education among poor and marginalized households. According to data from the 64<sup>th</sup> round of NSSO, lack of interest of children in studies has been cited as the major reason for a dropout rate of 17 per cent among girls and 24 per cent among boys in rural areas. Needless to say, all of these children belong to poor families. The proportion of such children is also quite high in urban areas, around 20 per cent male and 15 per cent female. The loss of interest in studies is due to various reasons, including the poor quality of education in government schools, the inability to afford private tuition and the lack of academic support at home, all of which affect their learning outcomes drastically. The discriminatory practices in the school and classroom also add to the level of demoralization among such children, increasing their sense of hopelessness and lack of agency.

Many children from marginalized backgrounds also develop a perception that they lack opportunities beyond their immediate surroundings, and this acutely limits their goals and their agency. Linked to the issue of goals the issue of what parents expect out of education, and what it means to them for economic and social mobility. When parents do not see their child's education translating into formal employment, and as a route out of poverty, it is not perceived as being worth investing time and resources in. Rather, that resource of the child's labour is better used to contribute to the family income, towards making ends meet.

On the other hand, for many families of children with disabilities, the idea that the child can go to school and learn is still relatively new. This, coupled with the difficulties associated with sending a child with disability to school, and the discrimination and neglect they tend to suffer in the formal schooling

system has meant that there does not exist a groundswell of demand for education, particularly the inclusive education of children with disabilities in formal schools.

### **3.3.3 Negative Perceptions and Stereotypes of Marginalized Groups**

Stereotypes and prejudices, which reflect the cultural perceptions and practices of the wider society, are an important determinant of educational access for children belonging to marginalized groups. The attitudes of families towards women and the low significance given to education for the girl child often mean that parents are unwilling to bear the necessary expenses for the same. Early marriage and pregnancy among girls, in addition to the undue onus of domestic responsibilities, also increase the possibility of girls dropping out of school.

In a similar manner, rigid gender stereotypes mean that transgender children are teased because their behaviour does not conform to that expected of their sex, i.e., they don't behave as a boy or girl should. As discussed in the chapter on the transgender community in this report, in addition to harassment in school, transgender children often suffer from neglect and even violence directed against them in the family, which invariably has a severe negative impact on their ability to access and continue schooling.

Labelling, stereotyping or hurling of taunts and 'jokes' all constitute common practices that may affect a child's mindset in adverse ways. This needs to be seen against the backdrop of the contemporary social setting, in which there is very limited interaction between members of dominant and marginalized groups, and views are formed largely on the basis of prejudices and stereotypes perpetuated in the media and popular culture. As a result, Dalits and Adivasis are often regarded as undeserving beneficiaries of reservation, Muslims as inherently violent and fanatical and as terrorists, while persons with disabilities or transgendered persons are made objects of ridicule and derision.

### **3.4 Specific Vulnerabilities of Highly Excluded Children**

In addition to the different exclusionary mechanisms discussed in previous sections, children from highly excluded groups often have other specific vulnerabilities that can exacerbate their marginalization and denial of schooling. While it is extremely difficult to elaborate on the specific nature of exclusion of each of these groups, some key issues affecting children living in conflict-affected areas, street children and children in conflict with the law are now discussed.

For children in areas of armed conflict and social unrest, poor school access is exacerbated by a host of other problems, including frequent absenteeism of students and teachers, decrease in the number of working days and poor supply of books and educational materials. Perhaps most crucially, the constant fear and mental trauma associated with conflict situations severely hamper the creation of a safe and conducive environment for education. There is also widespread evidence of children across the country being recruited, often forcibly, as child soldiers. By one estimate in 2008, about 80,000 children in Chhattisgarh were participating directly or indirectly in the Maoist conflict, including about 12,000 minors recruited by the Salwa Judum, a state-backed anti-insurgency force; many of the 4,200 Special Police Officers (SPOs) recruited by the Chhattisgarh state government were also suspected to be under 18.<sup>82</sup> There have also been reports of children being recruited by rebel groups in Jammu and Kashmir, and the northeastern states.<sup>83</sup>

Children on the street also suffer a whole range of significant deprivations, including homelessness, coercion to work in unsafe and demeaning occupations, inadequate nutrition, harassment by law enforcement officials, and severe mental and physical abuse, all of which serve as significant barriers in the access to education. Even among street children, those who lack responsible adult protection are perhaps the most heavily excluded and vulnerable, and a study in 2007 found that about one-third of street children lived away from their families.<sup>84</sup> For such children, the right to education cannot be guaranteed merely by admission into schools; appropriate non-custodial residential homes, which function as a place of

security for children and also provide basic services such as shelter, food and health, are in many ways a necessary pre-condition for street children to be able to secure an education.

Similarly, children in conflict with the law face a hostile law enforcement and juvenile justice system, leading to their incarceration in juvenile homes for even petty offences like vagrancy, truancy begging, or alcohol use. While arrest or conviction for a crime should not result in the denial of a child's right to education, the poor condition of these homes means that juvenile offenders are deprived of basic needs like adequate healthcare, nutrition and schooling. At the same time, there is little effort on the part of the authorities to address the diverse causes which lead children to commit offences, such as extreme poverty, starvation, high levels of violence and abuse, and abandonment by families.

## 4. Consequences of Exclusion from Education

Exclusion 'by the system', 'from the system', 'within the system', and over the 'home–community–work' continuum may bring about the deep estrangement and alienation of children and their families at multiple levels, with unfavourable consequences for the child, school, family and society. These are elucidated in this section.

### 4.1 For Children

For children who spend a greater part of the day in school, experiences of discrimination, neglect, active biases or prejudices, and ill-treatment from teachers and peers often result in their decision to drop out or frequently absent themselves out of fear or psychological hurt. In an atmosphere where their identity, based on caste, religion, tribe, gender or sexuality, is not accepted and mocked, the school, instead of being a nurturing space, can become a place that is feared for its divisive environment. The perception that they lack opportunities beyond their given surroundings acutely constrains their sense of agency. For children on the streets, in conflict-affected areas, children of nomads and other children completely excluded from the schools, it is a childhood robbed of the opportunity to learn with peers, in addition to being a violation of the legal obligation to guarantee age-appropriate

admission under the RTE Act. Despite their gravely adverse circumstances there are many children who brave all odds to be in school. This spirit needs to be applauded and encouraged by initiating immediate reforms.

### 4.2 For Schools

Appreciation of diversity and respect for all is best learnt in school. The school is a second home for children where they can foster friendships, grow, be creative, make mistakes, actively learn, and feel safe in the company of peers and teachers. Processes of exclusion, however, run counter to the philosophical purpose of school as a place of nurturing children's full potential. Ill-treatment of children, practice of caste segregation and insensitivity towards children with special needs cultivates a school and classroom environment that discourages active participation, critical thinking and development of social awareness among children. Uncaring and insensitive leadership (often, if not always, starved of both capacity and incentive) that denies children their dignity invites the mistrust of parents, who lose faith in education as a public good.

### 4.3 For Families

Parents of children from marginalized backgrounds, while striving to eke out a living, are desirous that their children benefit from the long-term fruits of education that were denied to them. Most parents, if not all, project their aspirations on to their children, in the hope that a 'good' education would pave the way for better opportunities and bootstrap them out of poverty in the future. In this context, poor quality education often reinforces in the minds of the parents the existing inequality, and weakens their trust in the school as a social institution serving to enhance the capabilities of their children. In the absence of diligent and sincere classroom teaching, parents are burdened with expenditure on private tuitions even for junior classes. In spite of it being legally binding under the RTE Act, schools stop short of sincerely initiating the involvement of parents in School Management Committees, thereby knowingly distancing parents from the regular functioning and activities in schools. Conversely, examples of parents dismissing the value of education merit an understanding of

the context of extreme poverty and vulnerability, which compels them to force their children to work and supplement the family's income. 'Dismissive attitude towards education is often also born out of a deep disenchantment with a system that has over time deprived them of the basic necessities for a dignified survival. This mindset and the continued perception of being discriminated against leads to further exclusion and marginalization.

#### 4.4 For Society

Gandhi believed that the purpose of school was to shape students into becoming better future citizens, who would contribute to nation building. Tagore and Ambedkar, too, imagined school to be a place of critical thinking, questioning and social justice. Tagore saw it as the birthplace of pluralism and togetherness, where students and teachers could appreciate each other's cultures, similarities and differences. He proceeded to argue that a society with low educational achievements was society rife with divisions, inequalities, and disharmony, and one that would make little progress. Education, these luminaries believed, enabled one to question parochial mindsets that discriminated against caste, religion, sexuality and class. The progress of a nation is closely intertwined with the realization of fundamental rights and freedoms for its citizens. This, however, is poorly mirrored in the insignificant social sector spending, especially on education, undertaken by the Government of India. The result of this is deepening inequality in society on account of denial of education and equality of opportunity and status to all.

### 5. Recommendations for Children Excluded from School Education<sup>85</sup>

The previous sections have outlined the profoundly exclusionary processes by the system, within schools and at the level of the community, family and workplace. The success of the recommendations adopted will depend crucially on an understanding that much of exclusion is social and arises from deeply entrenched hierarchical structures that have historically determined roots. The transformative social and political change that is envisaged in the Right to Education Act necessitates a multiplicity of effort from all sections of society to ensure its successful implementation. This section

endeavours to propose an array of comprehensive reforms, which, if implemented, can result in the robust realization of the fundamental right to education.

#### 5.1 At the Level of the System

##### 5.1.1 Awareness-Building Campaign

Large-scale awareness-building strategies will have to be adopted for the RTE, which must include specific elements targeted towards marginalized communities, so that information about the entitlements available under the act effectively reaches them. Specific suggestions for such a campaign include: (a) special Gram Sabhas dedicated to discussion of RTE; (b) wall paintings listing entitlements; (c) development of communication materials, pamphlets, primers, etc.

##### 5.1.2 Campaign Against Discrimination

A public campaign against discrimination in education is important here. Given that discrimination is reflected and reinforced in society and school, proactive efforts are needed to change this mindset and school education is perhaps the most feasible space where such a change can be fostered. Schools must become 'zero discrimination zones' and promote social inclusion across diverse groups of children and communities.

##### 5.1.3 Training and Recruitment of Teachers

Currently, very few interventions exist for training teachers in, and sensitizing them to, the diversity that they encounter in their classrooms. Pre-service training, in-service training and all other areas of teacher education must include special modules on diversity and inclusion so that teachers are sensitized to the challenges faced by marginalized communities, and can address their own caste-based, religious and class biases, and other stereotypes that act as barriers to children's learning.

Across marginalized groups, there is a felt need for the teaching cadre to represent the plurality of backgrounds that is seen amongst the children enrolled in school. A system of local recruitment that is based on a model of representation proportional to the share in population would go a long way in building confidence among excluded communities, and facilitate the attendance of



children from these communities. The recruitment of more Muslim, Adivasi and Dalit teachers would be ideal, especially female teachers and those with special needs, in areas dominated by these communities.

Adequate faculty, innovative curriculum, infrastructure and budgets to strengthen teacher-training institutions such as District Institutes for Education Training (DIETs) and State Councils for Education Research and Training (SCERTs) have to be ensured. Besides the development of textbooks, teacher training would also need to be in accordance with the principles laid down in the National Curriculum Framework; guidebooks or source books for teachers would need to be developed; ongoing academic support at the level of the block would also need to be provided.

#### **5.1.4 Curricular and Pedagogical Reform**

While the NCF 2005 has made wide-ranging changes in the curriculum framework keeping diversity in mind, it is important to ensure that its principles are translated to syllabi and textbooks adopted by schools across all states.

#### **Evolve Culturally Representative Curricula**

This would require recognizing and incorporating into the school curriculum the rich diversity of religions, cultures and leaders from various communities, and creating sensitivity and respect for them among all children and teachers.

#### **Adopt Multi-Lingual Education (MLE)**

Language should be recognized as a 'right and resource' in education, and the mother-tongue-based Multi-Lingual Education (MLE) should be adopted through its application in the curriculum and teaching and learning materials, as well as by having an adequate numbers of trained teachers.

#### **5.1.5 Greater Need for Context-Specific Data Collection on Exclusion**

An in-depth understanding of the realities of the situation faced by marginalized children at the community and school levels, including an identification of all the points of exclusion, from the level of the household up to the education system,

is required. Recording voices, especially children's own voices and corroborating their accounts with parents and communities, will pave the way for acknowledging these processes and taking context-specific preventive or remedial action.

#### **5.1.6 Creative Utilization of Funds and Budgetary Allocations**

The funds earmarked for equity should be put to efficient and creative use. The current situation of limiting the effective allocation to 50 per cent needs to be reviewed. A thorough review of the manner in which these funds are being used is required to enable better planning and use.

Further, there should be a scrupulous attempt to increase and utilize allocations under the Scheduled Caste Sub-Plan (SCSP), Tribal Sub-Plan (TSP) and Multi-Sectoral Development Programme (MSDP) for SC, ST and Muslim children, respectively, to eliminate educational disparities between them and other children. These funds should directly benefit children and not be used for general functions already mandated, such as construction, school facilities and infrastructure.

#### **5.1.7 Thoughtful Convergence Across Sectors and Departments**

In the first instance, there is a need for close collaboration between different arms of the government, especially the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs, Ministry of Minority Affairs, Ministry of Women and Child Development, and the Ministry of Labour and Employment, to name a few, as they all have important roles to play with respect to the education of different disadvantaged groups. RTE provides an opportunity and framework to consolidate strategies as well as activities across these departments. For instance, greater convergence and co-ordination between ministries responsible for providing different entitlements to children with disabilities — education, nutrition, disability certification, health, rehabilitation services, etc. — will ensure that children do not miss out on such entitlements, most of which have a major impact on their ability to benefit from truly inclusive education in formal schools.

### **5.1.8 Provide High Quality Ashram/Residential School Facilities**

The government must set up high quality residential schools and hostels at the secondary school level and upwards for Dalit, Muslim, Adivasi and girl children at the block or district levels, and ensure that all child rights and RTE norms are met. These can include Kasturba Gandhi Balika Vidyalayas (KGBVs) for promoting better enrolment and retention of girls. SCSP, TSP and MSDP budgets in education may be used towards the establishment of such schools in urban and rural areas on a priority basis. MoHRD should be responsible for monitoring the quality of education in these institutions.

### **5.1.9 Abide By and Deliver Under International Frameworks**

The state must recognize the rights of Adivasi children within the overarching principles of the Constitution and international human rights, and in particular rights of indigenous communities. The International Labour Organization's Conventions no. 169 on Indigenous and Tribal Persons and no. 182 on Child Labour in particular relate to the education and other human rights of Adivasi children, and are relevant in setting the 'framework.<sup>86</sup> The state must also abide by General Recommendation no. 29 of the UN Convention on the Elimination of Racial Discrimination (UNCERD), which prohibits segregation and discrimination of Dalit children in education.

## **5.2 At the Level of the School**

### **5.2.1 Foster a Secular Environment in Schools**

It is necessary to make education and schooling under the government system truly secular, without imposing any religious rituals, dominant festivals or practices to ensure all children participate equally in schooling processes.

### **5.2.2 Inspire Confidence Among Adivasi, Muslim and Dalit Parents**

Involvement of parents and community members in school activities is bound to reduce the social distance between school and community. Efforts should be made to create platforms for participation of parents through better involvement of their

efforts in the functioning, planning and monitoring of schools, as well as in grievance redressal. This may be achieved by giving representation to the parents of children belonging to excluded groups in the School Management Committees (SMCs) to ensure their concerns and aspirations are brought into the School Development Plans (SDPs). Illustratively, parents of children with special needs would be able to sensitively assist the SDP committee to reflect the challenges and pedagogical needs of these children.

### **5.2.3 Recognize, Monitor and Address 'Within School' Discrimination**

The following suggestions may stem discriminatory practices:

- Establishing norms of behaviour within the school for teachers and students;
- Timely detection of the forms of discrimination practised in a particular context by either teachers or students. Setting up a system of reporting on discriminatory practices at the school level, such as complaint boxes that are regularly dealt with at SMC meetings;
- Timely redressal of instances of discrimination at the level of the school or block.

### **5.2.4 Children with Disabilities**

Better training and sensitization of school staff, in particular teachers and resource persons, is imperative in dealing with children with disabilities, as are greater efforts to monitor and tackle both direct and indirect forms of discrimination taking place within the education system.

Barrier-free access in schools needs to move beyond simply ramps and rails, and incorporate a much broader vision. The transport needs of disabled children needs to be attended to, specially in order to enable them to access schools, and free assistive devices, accommodation or personal assistance should be available to children with disabilities. The participation of such children in all school activities, their safety and security and a non-discriminatory atmosphere are equally important elements of this term.

### 5.2.5 Regulate and Monitor 25 per cent Reservation in Private Schools

Stringent transparency rules that make it mandatory for private schools to disclose lists of the children admitted in this category will be a start in this direction. Ensuring that the 25 per cent reservation also represents a diversity of backgrounds from among the disadvantaged groups will be important.

Regular social audits that report on the practices inside the school and classrooms regarding the included children will also help in monitoring the continued and active participation of these children in the private schools.

### 5.3 At the Level of the Community

While most efforts in bringing children to school rely on school-based interventions, breaking the barriers to education for children from disadvantaged communities requires inroads into the communities from where the children come. More often than not, it is the constraints faced at family and community levels that inhibit their participation. Strategies of engaging with key persons from the community will be crucial in acquiring information as well as encouraging the sustained participation of children from disadvantaged backgrounds. The following sets of interventions would be useful:

- Organizing community support structures for dealing with instances of discrimination;
- Identifying key persons in the community who can be enlisted as ‘champions’ or ‘icons’ for promoting the education of marginalized children;
- Building a cadre of youth volunteers (‘child defenders’) to be part of the system of monitoring the participation of children from disadvantaged groups;
- Instituting a system of NGO accreditation to support government efforts in identifying, tracking, monitoring and supporting participation of disadvantaged groups;
- Involving community resource persons (musicians, street theatre groups, etc.) in awareness-generation campaigns;
- Involving community resource persons in providing academic support to children from disadvantaged backgrounds.

### 5.4 Special Recommendations for Highly Excluded Children

In addition to the foregoing recommendations, special measures are required to address the specific vulnerabilities of highly excluded children. Such children have largely been ignored by the RTE Act, and additional measures are needed to ensure their inclusion and participation in the school education system. It is important to involve the many active civil society organizations that have significant experience and knowledge of working with these children, in this process of advocating, developing and monitoring such strategies. However, more active engagement of the MoHRD and the National Commission for the Protection of Child Rights is also essential for their success. Some of the major recommendations are now listed:

#### 5.4.1 Migrant Children

State governments should provide an adequate number of seasonal hostels for migrant children at their place of residence, so that they are not compelled to leave school and migrate with their parents. For children who travel with their parents, the government should ensure availability of food and other conditions of health and wellbeing at the destination site. It must also be the responsibility of the government authorities at the destination site to provide for the children’s education without any hindrance, and preferably in the mother tongue of the child. Upon return to their place of residence, the relevant state government must ensure that they are suitably reintegrated into the schooling system.

#### 5.4.2 Working Children

Mapping and identification of out-of-school children, including child labourers, should be done by the education department at the village or ward level, in close co-ordination with Panchayati Raj Institutions, SMCs and NGOs. Special training programmes should be available for such children to enable their age-appropriate entry into the classroom. Continuous support should be extended to the integrated children to ensure their continuation as well as improved performance in school. This is essential as a constant poor performer in class could be a potential child labourer.

### 5.4.3 Street Children

It is important to recognize that the basic needs of food, shelter and health of street children need to be met first, and therefore these must be integrated into the educational model. The priority must be on residential care for such children, which must be open and voluntary. It should be made mandatory for all appropriate governments to map the numbers and locations of street children in every city, and provide a sufficient numbers of residential hostels to ensure that all street children secure their right to education. The best approach is to share spaces in existing schools that are vacant, and use them as residential hostels for urban vulnerable children.

### 5.4.4 Children Facing Stigma

Teachers should be sensitized in overcoming the high levels of stigma with regard to various groups of children, particularly HIV positive children and children of HIV positive parents, and those whose parents are engaged in stigmatized occupations like manual scavenging and commercial sex work. This

can be best achieved through compulsory training programmes at the school, block and district levels. Laws must be amended to explicitly prohibit discrimination against children of disadvantaged groups and children of weaker sections, and to provide for harsher punishments, preferably criminal consequences, for such offences.

### 5.4.5 Children in Conflict Areas

It is important to make schools safe zones by providing adequate security to enable children to come to school and continue their education undisturbed. For this, measures must be enacted to prohibit the use of schools and other educational facilities for housing police or other military or paramilitary forces. If it is not possible to make the school secure, safe transport arrangements should be provided to the closest safe school, where education can continue uninterrupted, or, alternatively, residential facilities should be provided to such children.

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## Chapter 3

# Urban Housing and Exclusion



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## 1. Introduction

Housing is many things to many people. The National Urban Housing and Habitat Policy (2007) sees housing and shelter as ‘basic human needs next to only food or clothing’,<sup>1</sup> putting *makaan* in its familiar place beside *roti* and *kapda*. The United Nations agrees, speaking of the ‘right to adequate housing’ as a human right. However, the qualifier—‘adequate’—begins to push at the boundaries of what is meant when talking about ‘housing’. Adequacy here includes a litany of elements: ‘(a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy’.<sup>2</sup> In the move from ‘house’ to ‘housing’, the materiality of the dwelling unit expands to include legal status, infrastructure, aesthetics, as well as the relationship of the house to the city at large.

Both these definitions share a common, unstated refrain: the consequences of exclusion from a basic human need or right are such that, in most societies, such exclusions are seen as ethically and often legally unacceptable. It is important to note that while housing policy and programmes in India have emphasized an ethical commitment to increasing access to housing, the latter is not a textual, constitutional right in India. Legal jurisprudence does, however, offer significant precedents—though even these are contested, as will be seen later—that many have used to argue that access to housing is a derived right, and certainly one of the entitlements that a state owes to its citizens.<sup>3</sup>

Other discourses of housing speak at some distance from the claims of ‘rights’ and ‘needs’. They speak of housing more as a commodity to be bought and sold as per the dictates of supply and demand—to each as she or he can afford. Housing here is closer to the narrower economic categories of real estate and property, both its means and ends reconfigured. The two imaginations sometimes overlap: as developers building ‘affordable housing’ units demand concessions from the state, they draw upon both the commodity nature of housing as well as recognition of the social and need-based characteristics of the commodity they produce.

In different ways, however, these contrasting imaginations of housing eventually see it as an asset to be accessed, consumed and used, be it by households or developers, for use or exchange. Housing is, in other words, an end unto itself. However, housing is not just what it is but what it *does*. Declaring affordable housing to be a sector marked for priority lending, the Reserve Bank of India spoke not just of access to housing but of the ‘employment generation potential of these sectors’.<sup>4</sup> Similarly, for the National Housing Bank, housing is a basic need but also ‘a valuable collateral that can enable the access of credit from the financial market’.<sup>5</sup> Others argue that housing is a vector to other developmental capabilities. Without it, health, education, psycho-social development, cultural assimilation, belonging, and economic development are impossible. As a *bidi* worker and member of the Self-Employed Women’s Association (SEWA), Manjuben, says, ‘My house is my asset, my savings, my workshop, and my place to rest and belong.’<sup>6</sup> Debates within development circles disagree only about where the virtuous or vicious cycle begins—the fact that these developmental capabilities are interlinked is widely accepted.

It is, therefore, within the multiple meanings and roles of housing (as need, right, commodity, infrastructure, legal status, and financial asset) as well as the dual nature of housing (as an end in itself as well as a means to other desired outcomes) that it is essential to approach the question of exclusion in access to housing. In this chapter, this is done so from a particular location. It is argued, in keeping with the framework of this report, that access to affordable and appropriate housing must be seen as a public good, the protection and provision of which requires strong public commitment and action in multiple ways, including an unambiguous framing of housing as a right and entitlement. This is primarily for two reasons: (a) a belief that the economic, social, political, and developmental implications of exclusions from housing, unlike with private goods, make life with dignity impossible; and (b) the structure of the housing market is such that reasonable access is deeply prone to entrenched exclusions in the absence of corrective intervention and public action.

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It is the nature and form of this public action that is the focus of the analysis. To shape public action, however, is it important to first understand the particularity and nature of different exclusions in access to housing. This chapter traces these exclusions, looking both at what housing is and what housing does. It is important to note that this is done so focussing on urban housing. Section two of the chapter characterizes a particular approach to understanding what is commonly understood as 'housing shortage', or the 'lack of housing', and identifies the major groups that face such exclusions from urban housing. It combines three elements within 'shortage': (a) homelessness; (b) an expanded definition of 'housing poverty';<sup>7</sup> and (c) illegality. In doing so, the chapter agrees with and nuances further what A. M. Kundu et al. have called, in the Kundu Committee Report, the dilemma of 'affordable housing that is inadequate, and adequate housing that is unaffordable'<sup>8</sup> with reference to the particular nature of exclusions from access to housing in India'.

Section three of the chapter then looks at how homelessness, housing poverty and illegality impact other capabilities, namely basic environmental services, including water supply, sanitation, drainage, solid waste management, health and education, mobility, economic capacities, as well as socio-political belonging and citizenship. Section four explores the structural causes of this exclusion. The concluding and final section of the chapter offers a set of approaches for public policy and action, to deal with housing and the redressal of its exclusions.

## 2. The Nature of Exclusion: Decoding Housing 'Shortage'

How can one understand current exclusions within access to housing? In this section, three key conceptual ways to understand such exclusions are laid out: (a) homelessness; (b) housing poverty; and (c) illegality.

### 2.1 The Kundu Committee Report (2012)

Data is drawn first from the report of the Kundu Committee, constituted as a technical group by the Planning Commission of India to estimate

housing shortage. The report is currently the most authoritative public data on housing shortage in the country, widely reported in the media as well as used by policy makers in formulating the 12<sup>th</sup> Five Year Plan. The paragraphs that follow present the Committee's findings and its concept of 'housing poverty', but then extends the latter beyond the Committee's definition.

The Kundu Committee Report argues that the overall housing shortage in India is of the order of 18.78 million units. Table 3.1 lays out the estimation of this shortage, along with comparisons with both the earlier Kundu Committee Report as well as the Census of 2001.

Who bears the brunt of this shortage? The nearly 19 million units are concentrated in, and almost entirely accounted for by, a particular income segment of the population. Figure 3.1 shows that in 2007 nearly 100 per cent and in 2012 a little over 95 per cent of the shortage in housing affected families classified as either part of the Low Income Group (LIG, household income between ₹5,000–10,000 a month) or Economically Weaker Sections (EWS, household income under ₹5,000 a month).<sup>9</sup> The commonly heard refrain that, 'even middle class and working households cannot afford adequate housing' in Indian cities is untrue. The housing market does not, as is commonly believed, exclude large number of middle and working class communities from adequate housing, though it may well exclude them from the kind of housing stock they want.

Yet, it is in disaggregating the shortage into different constituent elements that Kundu et al. allow for a useful conceptual lens to understand housing shortage. Let us take each element in turn.

### 2.2 Homelessness

The Kundu Committee Report measures homelessness at 0.53 million households. These figures are widely thought to be underestimations, particularly given that homelessness is defined by a lack of abode, address and even a fixed spatial location. Added to this, many people who are homeless lack even a single formal document that allows them to prove identity. Given this, it is worth quoting rather extensively from one of the few large sample studies on homelessness that exists. This

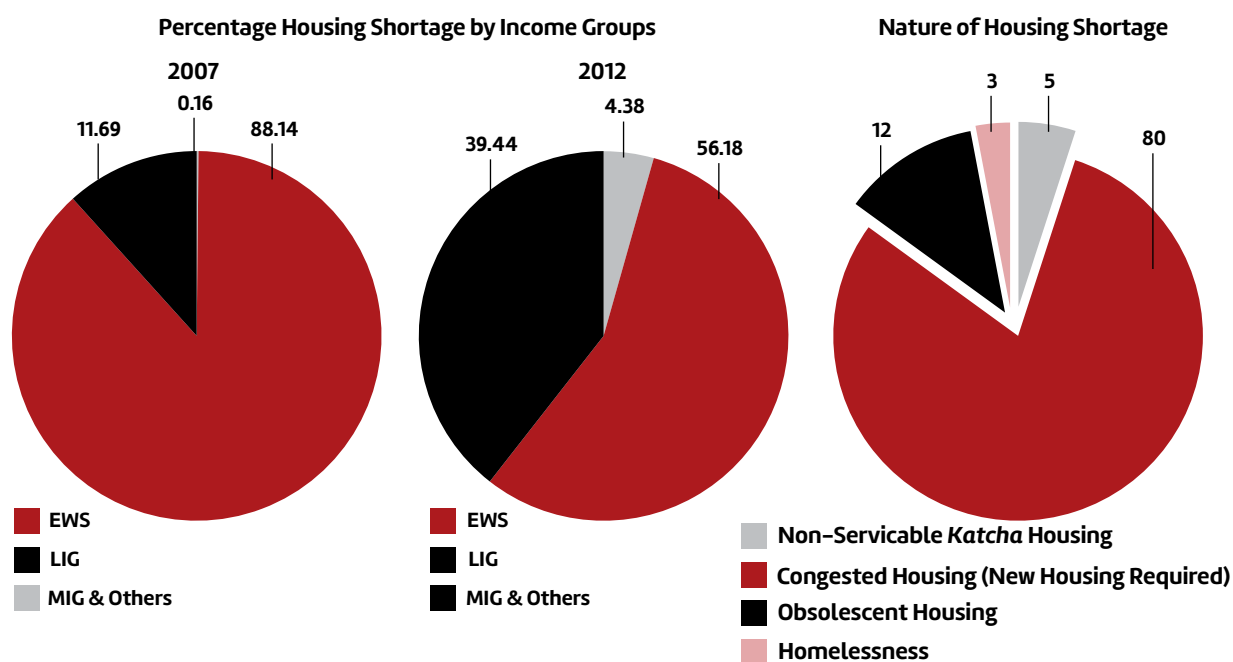
**Table 3.1 Estimates of Housing Shortage**

Housing Deficit	2001	2007	2012
Total Number of Households (HH)	55.83	66.3	81.35
Total Housing Stock (HS)	50.95	58.83	78.48
Housing Deficit (HH-HS)	4.88	7.47	2.87
Households requiring new housing			
Up-gradation of <i>Kutcha</i> Housing	1.7	Not included	Not included
1. Living in non-serviceable <i>kutcha</i> housing	-	2.18	0.99
2. Living in obsolescent housing	2.01	2.39	2.27
3. Living in congested housing	1.97	12.67	14.99
4. Homeless	Not included	Not included	0.53
Sub-Total (1+2+3+4)	5.68	17.24	18.78
Housing Deficit (HH-HS)	4.88	7.47	Not included
Total Housing Shortage	10.56	24.71	18.78

All figures are in millions.

Source: A. M. Kundu, Susheel Kumar, C. Chandramouli, Abhey Pethe, P. C. Mohanan, Neelima Risbud, Somit Das Gupta, Darshani Mahadevia, R.V. Verma, and D. S. Negi (2012), *Report of the Technical Group on Urban Housing Shortage*, New Delhi: Ministry of Housing and Urban Poverty Alleviation.

**Figure 3.1 Housing Shortage by Income Group**



All figures are in millions. Source: A. M. Kundu, Susheel Kumar, C. Chandramouli, Abhey Pethe, P. C. Mohanan, Neelima Risbud, Somit Das Gupta, Darshani Mahadevia, R.V. Verma, and D. S. Negi (2012), *Report of the Technical Group on Urban Housing Shortage*, New Delhi: Ministry of Housing and Urban Poverty Alleviation.

report argues that the Census in 2001 enumerated 1.94 million homeless people in India, of whom 1.16 million lived in villages and 0.77 million lived in cities and towns. The number of homeless individuals counted in Delhi, for example, was 21,895. Yet the Delhi Development Authority estimated that the homeless constitute 1 per cent of the population, i.e., 150,000 people.<sup>10</sup> The order of underestimation, therefore, can be as high as a factor of seven, which would put homelessness much closer to nearly 3 million households.

### 2.3 Housing Poverty

The main thrust of the Kundu Committee report argues that the nature of housing shortage in India constitutes those living in housing conditions that are defined as ‘housing poverty’. These include households living either in unacceptable dwelling units, or in what the authors call ‘unacceptable physical and social conditions’.<sup>11</sup> In their report, these are represented by obsolescent or congested houses. The former refers to material dilapidation while the latter to multiple families who live in a single dwelling unit out of compulsion. As Table 3.1 shows, the majority of existing housing shortage comes from housing poverty rather than the absence of homes entirely. Figure 3.1 breaks down housing poverty into its constituent elements. What is important to notice here as well is that only 5 per cent of the existing housing stock is seen as ‘non-serviceable’ (the import of this will be dealt with later in the chapter). It is this characteristic that prompts the Kundu Committee to argue that housing shortage in India is not one of vast shelterless communities, but of existing, often self-built affordable housing that is inadequate.

To the Kundu Committee’s notion of housing poverty beyond obsolescence and congestion, it is possible to add several indicators from the Census

of India 2011, for example (Tables 3.2–3.5). Table 3.2 shows the quality of housing, as described by residents.

Again, the percentage of residents reporting the condition of their housing to be dilapidated is low (5.3 per cent) though it is certain that, according to building norms or standards, or even the intuition of many, a large proportion of the housing that residents deem ‘liveable’ would be dismissed as ‘slums’ or ‘inadequate’. Thus, affordable shelter that is inadequate by some standards is seen as either ‘liveable’ or ‘good’ by those within them. There are differences by caste and tribal status, with Scheduled Caste (SC) and Scheduled Tribe (ST) households reporting a higher percentage of dilapidated homes as well as a lower percentage of ‘good’ homes. These differences are statistically significant.

Looking at other indicators, even a cursory look at the materials of walls and roofs allow us to see significant housing poverty, as well as its nuances upon adding adding factors of gender (by looking at female-headed households), as well as caste and tribe (looking at SC and ST households). Tables 3.3 and 3.4 remind us that a significant portion of households in India are not made of brick or concrete, but grass, thatch, tiles, metal sheets, asbestos and mud. Only 50 per cent of all households have walls made of brick or concrete.

It is interesting to note that female-headed households do not seem to have a markedly different distribution pattern in either material of roofs or material of walls. Differences emerge strongly, however, on looking at caste and tribe. SC households are more likely to be built of grass, thatch, bamboo, or mud than the average general caste household. ST households are more likely to have walls of mud or unburnt brick—only 22 per cent of ST households have walls made of brick

**Table 3.2 Self-Reported Condition of Housing**

	Good (%)	Liveable (%)	Dilapidated (%)
All India	53.2	41.5	5.3
SC Households	43.2	48.7	8.1
ST Households	41.0	52.7	6.3

Source: Registrar General of India (2011), ‘Housing Stock, Amenities and Assets in Slums: Tables Based on Houselisting and Housing Census’, *Census of India 2011*, New Delhi: RGI.

or concrete. Again, within SC and ST households, female-headed households do not show significant differences in either material of roofs or material of walls.

Differences in gender and caste emerge starkly when one sees the availability of a latrine in the house (Table 3.5). While 53 per cent of all households nationally do not have a latrine within the premises, the figure rises to 66 per cent and 77 per cent for SC and ST households, respectively, and, within them, to 78 per cent and 88 per cent for

female-headed SC and ST households, respectively. About 82 per cent of all households in India have either open or no drains for waste water. This figure rises to 88 per cent for female-headed households and to 94 per cent for ST households.

Housing poverty, then, as understood in this chapter, refers not just to the congestion or dilapidation discussed in the Kundu Report Committee, but additionally to the infrastructure of the house and its environment through measuring access to basic services, latrines, water and

**Table 3.3 Material of Roofs**

	Grass/ Thatch/ Bamboo/ Wood/Mud etc.,	Plastic/ Polythene	Hand- Made Tiles	Machine- Made Tiles	Burnt Brick	Stone/ Slate	G.I./Metal/ Asbestos Sheets	Concrete	Any Other
All Households	15.1	0.6	14.5	9.3	6.6	8.6	15.9	29.1	0.4
SC Households	20.9	0.8	14.2	8.2	8.0	9.1	16.4	21.9	0.4
ST Households	18.4	0.9	32.7	12.1	1.1	4.5	19.9	10.1	0.3
Female- Headed Households	15.3	0.7	13.9	12.7	5.5	7.5	16.7	27.4	0.4
Female- Headed SC Households	19.6	0.9	13.5	11.2	6.6	8.3	17.7	21.7	0.4
Female- Headed ST Households	19.0	0.9	28.4	12.3	0.1	3.9	23.8	10.3	0.3

Source: RGI (2011), 'Housing Tables', *Census 2011*.

**Table 3.4 Material of Walls**

	Grass/ Thatch/ Bamboo etc.,	Plastic/ Polythene	Mud/ Unburnt Brick	Wood	Stone Not packed with Mortar	Stone Packed with Mortar	G.I./ Metal/ Asbestos Sheets	Burnt Brick	Concrete	Any Other
All Households	8.96	0.33	23.69	0.68	3.35	10.76	0.58	47.54	3.49	0.61
SC Households	10.48	0.42	27.92	0.46	3.34	9.13	0.84	44.26	2.48	0.68
ST Households	15.69	0.52	46.45	2.6	3.56	6.94	0.87	21.21	1.85	0.32
Female-Headed Households	8.91	0.37	25.09	0.82	4.04	12.79	0.64	43.32	3.45	0.58
Female-Headed SC Households	10.21	0.47	28.01	0.54	4.13	10.34	0.88	42.13	2.65	0.63
Female-Headed ST Households	15.09	0.57	44.93	3.36	3.57	6.45	1.29	21.86	2.48	0.41

Source: Registrar General of India (2011), 'Housing Tables', *Census 2011*.

drainage. This is an essential difference in thinking not about the dwelling unit and the structure of the 'house', but of 'housing' as a broader category that captures an essential part of a dignified life. It is liveable, not just affordable and existing housing that must be our focus. What is clear from the data is that housing poverty is widespread in India and that it is deepened by gender and caste in almost every case. This confirms one of the key findings the present report—that multiple exclusions aggregate along particular fault lines of, for example, gender and caste.

## 2.4 Housing Illegality

What the empirics are less able to capture are both the reasons for a strong correlation between poor housing and poor infrastructure, as well as a different kind of vulnerability that is not material: insecurity of tenure. What the Census measures as 'owned' or 'rented' in reality covers a great deal of secure and insecure tenure. Tenure security can be understood as the *de facto* or *de jure* sense of security that one will not be evicted from or dispossessed of one's home. Insecurity of tenure can take different forms but, in Indian cities, it most commonly manifests itself in the idea of the 'informality' or 'illegality' of the settlement.

What is meant by the 'illegality' of, for example, a slum? One form of illegality, most commonly associated with the settlements of the poor, typically refers to occupation of land and the building of housing which one does not own in title. Significant scholarship exists on the undisputed fact that a considerable proportion of residents in Indian cities live 'illegally', by occupying and building

settlements on public or private land. The reasons for such occupation are equally diverse: a failure of the state to keep its own stated commitments in building low-income and affordable housing;<sup>12</sup> the inadequate notification of urban, residential land in planning documents that could provide space for legal housing to be built;<sup>13</sup> the skewed structure of our urban land and housing markets that makes entry into the formal housing market nearly impossible for most urban residents; the absence of sufficient investments in regional and urban infrastructure to expand settlement structure and accommodate migration as well as natural growth,<sup>14</sup> among many others.

Empirical work across cities of the Global South shows that informal or illegal practices of inhabitation are not limited to the poor but are, in fact, ubiquitous to poor and elite residents alike, in constantly shifting terrains of how urban space is settled and produced.<sup>15</sup> What separates these 'degrees of illegality'<sup>16</sup> practised by the elite and the poor are different forms and degrees of informality or illegality, and the differentiated consequences that result from such practices. Let us illustrate this empirically, drawing upon the work of Gautam Bhan.<sup>17</sup> Table 3.6 describes settlement typologies for Delhi using data from the year 2000. What is important to note in reading it is that only 24.7 per cent of the city's residents lived in what are called 'planned colonies'. What does it mean for three-fourths of city residents to live in settlements that are 'unplanned'?

Let us focus on only two categories of Table 3.6: Jhuggi Jhopdi (JJ) Clusters and Resettlement Colonies. JJ Clusters exist on either public or private land that has an owner who has not sold

**Table 3.5 Latrine Within the House and Drainage for Waste Water**

	No Latrine Within Premises of House	Open or No Drainage for Waste Water
All Households	53	82
SC Households	66	89
ST Households	77	94
Female-Headed Households	66	82
Female-Headed SC Households	78	88
Female-Headed ST Households	88	93

Source: RGI (2011), 'Housing Tables', *Census 2011*.

**Table 3.6 Settlement Typologies in Delhi**

Type of Settlement	Est. Population in 2000 (100,000s)	Percentage of Total Population of City
JJ Clusters	20.72	14.8
Slum-Designated Areas	26.64	19.1
Unauthorized Colonies	7.4	5.3
Resettlement Colonies	17.76	12.7
Rural Villages	7.4	5.3
Regularized Unauthorized and Colonies	17.76	12.7
Urban Villages	8.88	6.4
Planned Colonies	33.08	23.7
Total	139.64	100.0

Source: Government of Delhi (2009), 'Statement 14.4', *Delhi Economic Survey 2008-09*.

the land to the residents of the cluster. These residents have either occupied this land or paid someone who has done so before them. There can, then, be no claim to ownership via property title at all for residents of a JJ Cluster. For residents of JJ Clusters, their 'titles' are illegal and often not even formalized in written contracts of sale. Yet there can be security of tenure in many such clusters based not only on political protection and government inaction but also (this is discussed later in the chapter) through the slow acquisition of services, as well as from identity papers such as ration cards for the Public Distribution System (PDS), that creates a *de facto* if not *de jure* sense of security.

Individual residents can also be illegal within a settlement that is itself legal. A Resettlement Colony is a settlement where those evicted from JJ Clusters are given legal plots of land, subject to multiple conditions. The Resettlement Colony is thus a legal, planned settlement. Yet residents of Resettlement Colonies are intended to be eternal owner-occupiers, making inhabitation by anyone other than the original allottee of the plot illegal. Studies have shown, however, that rental housing comprises anywhere from one-third to one-half of Resettlement Colonies. Renters in a Resettlement Colony, however, cannot be legal residents.<sup>18</sup>

It is important to recognize insecurity of tenure an exclusion unto itself when speaking of access to housing. Insecurity of tenure makes even the fragile development gains made by poor households

vulnerable to the shock of eviction. The last two decades have seen cycles of eviction and relocation heighten across Indian cities,<sup>19</sup> thus erasing a generation's ability to move from *kutchra* to *pucca*. Illegality represents the reduction of the urban poor to the status of 'encroacher',<sup>20</sup> an identity that allows the substantive erosion of their rights and turns them into improper citizens.<sup>21</sup> Authors have argued that illegality prevents investment into individual and community infrastructure, thereby impeding the development of a settlement incrementally over time.

The other significant consequence of illegality is the ever-present threat (and increasingly frequent reality) of forced eviction. Evictions are economic and social shocks for poor households, from which several households do not recover. Studying the impact of one instance of eviction on poor households in Delhi, Gautam Bhan and Kalyani Menon-Sen argue that eviction and peripheral resettlement causes what they call 'permanent poverty', as a generation is prevented from development by depletion of assets, breaking of livelihoods, increased costs due to distance from work and the city, increased violence, fracturing of long-built community ties, as well as large-scale dropouts from school education.<sup>22</sup>

## 2.5 Discrimination and Access to Housing

For anyone who has had the experience of searching for a house to rent in Indian cities, it is



obvious that there are few landlords who would accept tenants who are not aligned with their own religious, socio-economic and cultural persuasions. Religion and associated food habits are the main levers of exclusion in the rental housing market—often leading to a ghettoization on religious and cultural lines. In studies in low-income and slum settlements in India, phenomena such as preference for male tenants, or exclusion of tenants of certain regions of the country, and even a binary inclusion of a particular community, etc., were found to be common.<sup>23</sup> This experience is mirrored in access to housing finance, for example, that has clear exclusions along religious, caste and class lines, marked most notably by periodic outcry over banks declaring minority-dominated neighbourhoods as ‘no-lending zones’, officially and unofficially.

Discrimination in access to housing is difficult to measure at scale. Yet individual studies repeatedly suggest patterns of systemic segregation. In Mumbai, for example, Sameera Khan finds a common and complex pattern of exclusion and self-segregation:

*While on one hand there is a decrease of Muslims residing in mixed housing, on the other there is a visible increase in the number of Muslim-dominated residential enclaves in the city. This is both a result of Muslims being intentionally denied access to mixed housing, both rentals and ownership, as well as making a choice to retreat to homogeneous community dominated localities because they felt physically safer and less at risk from violence.<sup>24</sup>*

Similar studies find pervasive discrimination in housing access to Dalits,<sup>25</sup> people living with HIV,<sup>26</sup> transgender and Hijra,<sup>27</sup> and people with disabilities.<sup>28</sup> At the time of writing, a self-declared neighbourhood association in Delhi had issued a notice not to rent to people from the northeast.<sup>29</sup> What does seem to emerge, however, underscoring the argument of this report, is the overlapping of familiar disadvantages in the housing space: gender, caste, religion and ability.

The presence of discrimination is not, in itself, surprising. What makes it particularly important in the Indian context is the near absence of any

legal remedy for identity-based discrimination between citizens or at the hands of private actors. Discrimination at the hands of the state or along legally protected identities such as caste and gender is possible to address legally under a variety of laws and regulations. However, no legal remedy exists to counter a private landlord or co-operative society that puts restrictions on who they will rent to.

### 3. The Nature of Exclusion: What Housing Does

The first two sections of this chapter have established and described exclusions in access to housing across three kinds of categories: homelessness, housing poverty and illegality. The third section now looks at four key areas and the impact of these three types of exclusions on each of them. This section focusses, in other words, on the consequences of housing, and particularly exclusions in access to housing through the three lenses, on other capabilities of citizens.

#### 3.1 Access to Basic Environmental Services

The absence of access to water, sanitation and waste management and disposal is often determined by housing exclusions. For homelessness, this is both intuitive and well documented. The homeless rarely use public toilets, which are unaffordable even when available, and without a ‘house’, *per se*, suffer multiple deprivations in access to sanitation facilities. As a study argues: ‘the urban homeless have little, and difficult access to even the most elementary services. Things that people living in homes take for granted—every visit to the toilet, every bath—must be paid for, in cash and immediately’.<sup>30</sup> The study went on to find that ‘about two-thirds avail of drinking water from public taps, which while free, is often not potable and erratic in supply. 13 per cent buy water from tankers and 12 per cent get it from those shops that offer the homeless water as an act of charity.’<sup>31</sup>

Housing poverty and illegality are also good proxies for inadequate access to basic services. Census 2011 data shows that 63 per cent of all households in recognized or notified slums have either open or no drainage for waste water. About

34 per cent of slum households have no latrine in the premises, and members of over half of such households thus defecate in the open. Almost 43 per cent of slum households do not have a source of drinking water within the premises of their household.<sup>32</sup> These figures merely use the slum as a proxy for housing poverty. Yet, since measures of slum populations themselves are possibly underestimations of urban poverty, it is likely that these figures exclude precisely the most vulnerable urban poor communities.<sup>33</sup>

There is a history to why such empirical correlations are so clearly empirically visible. The provision of basic services, especially environmental services, was, until recently, prohibited to 'illegal colonies'. Municipalities and urban utilities were meant to not provide environmental services like water and waste management, as well as infrastructure such as legal electricity connections, to non-notified slums and unauthorized colonies. This missing geography in basic urban infrastructure has until recently followed the line of planned/unplanned, legal/illegal settlements that dominantly affects the poor.

Let us take water as an example. The Supreme Court, as with shelter, has affirmed the fundamental right of 'enjoyment of pollution free water [and air] for full enjoyment of life'<sup>34</sup> and further added that 'the right to access to drinking water is fundamental to life and there is a duty on the state under Article 21 to provide drinking water to its citizens'.<sup>35</sup> How does access to this fundamental right play out on the ground? The Delhi Jal Board invites applications for water connections from 'unauthorized / regularised colonies, Approved colonies, Resettlement colonies / Urban Villages, Rural Villages'<sup>36</sup>—thereby implicitly excluding JJ Clusters. The Bombay Municipal Corporation (BMC) Rules have a similar exclusion, but one that is, importantly, time-bound. Under a General Resolution issued by the Government of Maharashtra in 1996 and the Water Supply Rules issued by the BMC in 2002, households that cannot provide proof of residence prior to 1 January 1995 have no entitlements to municipal water provision. A recent judicial challenge to this exclusion in the Bombay High Court has resulted only in its reinforcement. Denying the petition filed by the *Pani Haq Samiti*, the Bombay High Court articulated a common fear underlying the denial

of water to slum residents—that services would make residents feel entitled to tenure security: 'you would not want to move away from that place if you have water'.<sup>37</sup>

Legality of tenure in urban India can thus determine access to services, even as it does so differently across cities, states and sectors. Recently, however, a move to de-link tenure from service provision has been coming into place. Under the Basic Services to the Urban Poor (BSUP) component of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), it is recognized that the absence of legal tenure prevents the provision of locally provided urban services like access to water, sanitation and solid waste management. The Ministry of Urban Development implicitly acknowledges this: 'Slums, not currently notified, must be enlisted by the local body through a formal process so that these become eligible for provision of basic services'.<sup>38</sup>

Policy regimes over the past decade—through, for example, national and state schemes on basic service provision—have begun to reverse restrictions on providing basic services to 'illegal' communities and have argued that service provision must be de-linked from tenure status. However, the removal of a formal restriction will still both take time and political attention to reach urban poor settlements that have long been excluded.

## 3.2 Access to Health

The paragraphs that follow elucidate how housing exclusions—homelessness, housing poverty and illegality—impact health outcomes of both households and individuals. While the full scope of the relationships between housing and health are beyond the scope of this chapter, outlined here are several key and paradigmatic ways in which housing exclusions lead to lowered health outcomes to illustrate the argument. Three kinds of relationships are traced—conditions within the home, neighbourhood conditions and housing affordability.<sup>39</sup>

### 3.2.1 Homelessness and Health

Studies in the Indian context highlight the severe mental and physical health traumas that arise from homelessness. Intake and availability of food

is scarce, irregular and of little nutritional value. One study in Delhi found that almost a quarter (23 per cent) of the homeless population interviewed ate nothing but cereals over two days prior to the interview, and another quarter (25 per cent) ate vegetables or protein-based foods only once in the two days prior to the study. This is despite the fact that in the same sample, 63 per cent of the homeless reported spending 50 per cent to 90 per cent of their income on food, with nearly 12 per cent spending almost all their income on daily food.<sup>40</sup> Water and sanitation services are equally scarce, leading to particular health burdens from communicable and water-borne disease. The absence of a proof of address or identity, the absence of even small amounts of money and discrimination based on the way they look or smell present deep barriers to care-seeking for even small illnesses. Further, homeless populations often have higher rates of mental illness and substance abuse, which could be both the cause and result of their homelessness. The particularity of their health needs is then heightened by their isolation from spaces and sites of care.<sup>41</sup>

### 3.2.2 Housing Poverty and Health

There is a general agreement about housing being a key health resource.<sup>42</sup> While the housing unit itself is a key determinant of health, one of the ways in which housing influences health is through human exposure to inadequate housing conditions, including lack of safe drinking water, ineffective waste disposal, intrusion by disease vectors and inadequate food storage.<sup>43</sup> Empirically, health outcomes are often related to the slum as a marker of housing poverty and illegality. Residents of slums tend to have lower health and education outcomes than residents of non-slum areas.<sup>44</sup> Lack of basic services in slums such as safe drinking water and sanitation increase the risk of waterborne diseases.<sup>45</sup> Even within a single city, slums with different levels of security of tenure can have significant differences in health and education outcomes, as argued above.<sup>46</sup> In a study conducted in Mumbai's informal settlements, assessing maternal and newborn health risks, it was found that health vulnerability was related to inadequate access to water, toilets and electricity, non-durable housing, hazardous location and rental tenancy.<sup>47</sup> On the other hand, adequate and well-serviced

housing reduces illnesses and related expenditure, and increases the wellbeing and productivity of its inhabitants.<sup>48</sup>

Location itself places poor households at increased health risk. The urban poor tend to spatially occupy areas that are of high environmental risk—the sides of open drains, for example—precisely because they are the only populations unable to trade off this risk for affordable housing. The spatiality of housing for the urban poor, therefore, indicates the geography of health risks itself, exacerbated by poor and inadequate access to environmental services discussed in the previous section. In addition to the location and access to environmental services, other aspects of neighbourhoods that can potentially have an impact on health include the presence or absence of social amenities, perception of a neighbourhood as being 'safe' and whether or not the neighbourhoods affect health-risk behaviours that in turn can impact health (for instance, smoking and substance abuse).<sup>49</sup>

Congestion, as measured by the Kundu Committee Report cited earlier, is itself linked to lowered health outcomes. Overcrowding results in heightened exposure to communicable diseases such as tuberculosis and respiratory infections.<sup>50</sup> Crowded housing is also associated with increased exposure risk to several serious diseases in children—meningitis, tuberculosis, respiratory diseases like asthma, and even coronary heart diseases later in life.<sup>51</sup> Studies have shown the correlation between infant mortality and the reproductive health of women and housing poverty.<sup>52</sup> In a study on women's reproductive health in slum and non-slum areas across India, significant differences in the quality and quantity of reproductive health practices were found between the two population groups.<sup>53</sup>

Further, housing poverty defined by the inadequacy or dilapidation of the housing unit has also been found to affect health outcomes. The material and quality of the floors, walls, roofs, kitchen, and sanitary facilities can substantially influence health outcomes of residents. Indoor air quality is known to have a significant effect on the health of residents.<sup>54</sup> In a study of the health effects on children by the replacement of dirt floors with cement floors in the houses of a slum in Mexico, it

was found that there was a reduction of 78 per cent in parasitic infections, 49 per cent in diarrhoea and 81 per cent in anaemia.<sup>55</sup> Well-designed housing can also reduce the risk of fire and accidents, which severely impact low-income and vulnerable groups due to their already precarious housing conditions.

### 3.2.3 Housing Illegality and Health

Housing illegality primarily impacts health through difficulty in access to environmental services in illegal settlements, as already discussed. Secure tenure allows more access to physical and social infrastructure in slums in India,<sup>56</sup> just as it frees up household resources for investment in nutritious foods, as well as healthcare.<sup>57</sup> In a comparative study on residents' access to health and education in notified and non-notified slums, it was found that slums which are non-notified are at a comparative disadvantage when it comes to access to health and education. Due to the non-notified status of slums, there can be serious challenges for residents to access water supply (through forced dependence on informal and often criminalized supply systems), sanitation (and prevalence of open defecation) and solid waste management.<sup>58</sup> Through what has been called the 'poverty premium', poor households also pay a higher price for basic services, often illegally, than non-poor households, leading to significant trade-offs for health and education spending.

Many studies have shown that the eviction and resettlement of these illegal settlements, whether temporary or not, lead to a severe deterioration in the health outcomes of the residents. Children and the elderly are more vulnerable and therefore suffer from various degrees of trauma during such evictions. Many residents are injured and can even lose their lives in such demolitions and evictions.<sup>59</sup>

### 3.3 Access to Education

Similarly, housing exclusions have strong impacts on education. While homeless populations tend to have direct and clear non-enrolment in schools and high rates of illiteracy,<sup>60</sup> housing poverty and illegality exert their own set of exclusions on education. There are few studies on the impact of lack of access to adequate housing on education outcomes in India. This is an attempt at an overview of the general findings from a few national and some

international studies, interpreted to the specific conditions of India. The following paragraphs summarize these key findings and interpret their relevance to Indian conditions. Illustrative links between housing poverty and illegality and education include:

- Lack of stability in the housing condition can lead to deterioration in school outcomes for children.<sup>61</sup> Movement of the family (or other supporting unit), especially involuntarily and/or unexpectedly, implies disruption in instruction, absenteeism due to the physical move and a possible disruption of peer and personal networks for children. Children who move frequently may also require more teacher attention and school resources, and can thus have a negative impact on other children as well.<sup>62</sup> In Indian cities, where slum evictions becoming more the norm rather than the exception, this lack of stability can lead to severe deficiencies and even a breakdown of the already precarious education outcomes of children in low-income groups.<sup>63</sup>
- Housing poverty is associated with poor academic achievement, behavioural adjustment issues and the induction of 'learned helplessness'.<sup>64</sup> In a study of 10- to 12-year old working class children in a public school in Pune, the authors found a significant positive correlation between overcrowding in the housing conditions of the children and behavioural adjustment problems, and a strong negative correlation with academic standing. Importantly, there was a significant correlation found between overcrowding and 'learned helplessness' amongst girls, a condition which implied that residential overcrowding led girls to believe in the lack of control over the outcomes of their own education.<sup>65</sup>
- Studies show that education outcomes are far lower in non-notified slums than notified slums of similar demographic and socio-economic profiles.<sup>66</sup> In one particular study, the lack of a legal status and/or non-recognition by the government meant that it was very difficult to get electricity supply, impacting learning environments for children. Further, since the land was 'illegally' occupied, the municipality was unable to build a school there, and therefore residents had to send their children

several kilometres away to the nearest available school. Since this was not affordable for some of the residents, their children would drop out of school.<sup>67</sup>

- Many studies have shown that evictions and resettlement could further exclude households from education. While it may be that the original settlements were characterized by inadequate physical and social infrastructure, the resettlement (as well as the transit) sites are often characterized by a complete absence of such facilities, as they are on the fringes of the city and suffer from a lack of physical and social connection to the city. This puts great challenges on the ability of households to continue their children's education, as most of these places do not have a school or college.<sup>68</sup> In a study done in a resettlement colony in Ahmedabad,<sup>69</sup> it was found that the percentage of children going to school had dropped from 87 to 41 per cent because of the lack of a school nearby, and inability to afford transportation to far-off schools.

### 3.4 Economic Capacities

Housing, and lack thereof, directly and indirectly impacts the economic capacities of an individual or a household. For many, the link is as direct as the house itself being a workplace. For others, a house is an asset that can be leveraged upon for economic gains. Even if seen only as a source of shelter, housing impacts economic capacities by acting as an agent for risk mitigation, reducing opportunity and productivity costs due to illness. The paragraphs that follow highlight the impact of housing exclusions on two important aspects of life for the urban poor: (a) home-based work and (b) housing location and employment.

#### 3.4.1 Home-Based Work

A house can provide not only shelter and basic services but can also be used as a workplace, be it for running a shop or a household industry, or undertaking contracted work. This is particularly true for the urban poor. Over 50 per cent of the world's total home-based workers reside in South Asia, and they are either self-employed or sub-

contracted workers.<sup>70</sup> Home-based work refers to not only work in one's own dwelling but in structures attached to or near one's own dwelling, as well as open area adjacent to one's own dwelling.<sup>71</sup>

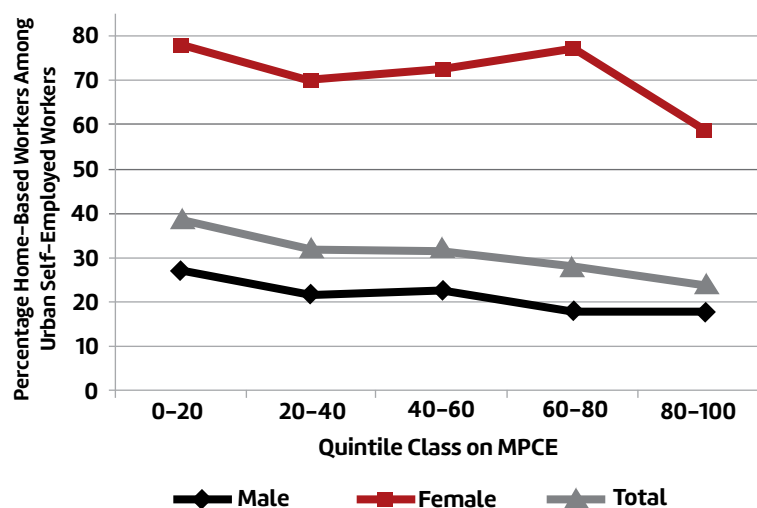
There are no exact estimates for the total number of home-based workers in urban India. About 23 per cent of urban informal employment in India comprises of home-based workers. According to the Census of India 2011, about 5 per cent of workers in urban areas are employed in household industries, out of which about 40 per cent are women.<sup>72</sup> During 1999–2000, there were about 23.5 million home-based workers in India, out of which 44 per cent were women.<sup>73</sup> National Sample Survey Organization (NSSO) data of 2009–10 shows that 30.7 per cent of self-employed persons in urban India worked at home; 72.1 per cent of self-employed females in urban India worked at home, while 21.3 per cent self-employed males worked at home.<sup>74</sup> Home-based workers tend to be among the poorest Monthly Per Capita Expenditure (MPCE) quintile classes. Put simply, most home-based workers are relatively poor (see Figure 3.2).

#### 3.4.2 Gender, Caste, Ability, and Home-Based Work

One of the striking features of home-based work is its gendered construction. Women choose to work at home because this makes it easier in terms of child-care, cooking and other household duties. In the South Asian context, where women's choices regarding the location of work are often dictated by social norms and social and cultural constraints on mobility, home-based work turns out to be the best (and sometimes only) option for many women to access income.<sup>75</sup>

Saraswati Raju argues that one of the reasons for the universal presence of home-based work throughout the country is that 'it sits comfortably in-sync with pre-existing gendered codes of assigning women to the confines of domesticity'.<sup>76</sup> Indeed, in a livelihood study conducted in low-income settlements of Katihar (Bihar), it was found that seven out of 10 non-working women wanted to engage in some kind of home-based work including stitching, *papad* making, etc., and only three out of 10 women were ready to go outside their homes to engage in any kind of economic activity.<sup>77</sup>

**Figure 3.2 Percentage of Home-Based Workers Among Urban Self-Employed Workers Across Quintile Class on MPCE**



Source: National Sample Survey Organization (2012), 'Home-Based Workers in India', *NSS 66<sup>th</sup> Round*, New Delhi: Ministry of Statistics and Programme Implementation, Government of India.

While women are over-represented among home-based workers, the gendered nature of this work is equally 'mediated by one's class and caste/community position in the society'.<sup>78</sup> Not only are there more women home-based workers than men, 'their demographic profile, educational levels, caste composition and the occupational structure tell a story of overlapping vulnerabilities that are more serious than their male counterparts'.<sup>79</sup> While data does not always provide these differentiated categories, studies show that caste, religion and ability all impact preference for home-based work and often shape the conditions of employment.<sup>80</sup>

### 3.4.2 Housing Poverty, Illegality and Home-Based Work

How do housing exclusions impact home-based workers? Many home-based workers work in poor and cramped conditions, with bad lighting and seating.<sup>81</sup> The needs most often articulated by home-based workers are the lack of adequate housing, lack of electricity and lack of storage space.<sup>82</sup> Spacious, safe, serviced, well-lit housing is of particular concern for home-based workers. Poor infrastructure and living conditions (water and sanitation, waste disposal) eat into their earning time—as they do for all slum dwellers.<sup>83</sup>

#### SEWA's Support to Women Home-Based Workers

The Self-Employed Women's Association (SEWA) in India has been organizing women home-based workers since its inception in the 1970s. Recognizing that the home is a productive asset, SEWA has been making specific interventions targeted at home-as-workplace needs of urban home-based workers. These include: housing finance, slum up-gradation programmes and electrical connections. SEWA Bank offers housing loans to buy or build a new house, or make repairs to the existing one. Over the years it was observed that most of the members of SEWA Bank had taken loans for housing; moreover they had shown concern for their housing facilities. This gave birth to Gujarat Mahila Housing SEWA Trust (MHT) in the year 1994. MHT has been working towards the transformation of the physical environment of slums in Ahmedabad and other cities. MHT has also worked in electrification of slum dwellings in the city of Ahmedabad and other cities of Gujarat and Rajasthan.

Besides these support strategies, SEWA works towards building voice and visibility of these home-based workers, and influencing policies and programmes to protect them. It also provides training for skill-building and facilitates business development, product development and marketing. SEWA has also been instrumental in introducing enterprise loans and micro-insurance for home-based workers.

Source: Shalini Sinha (2013), 'Supporting Women Home-Based Workers: The Approach of the Self-Employed Women's Association in India', *WIEGO Policy Brief (Urban Policies)*, no. 13, Cambridge, MA: WIEGO

The majority of home-based workers are from low-income households, living in small houses. In addition to lack of space, many of these homes lack adequate light and other facilities. In many situations, they are vulnerable to fire, theft, and natural and civil disasters.<sup>84</sup> For example, 70 per cent of *agarbatti* rollers in Ahmedabad work from homes that are one- or two-room mud houses in slums. In the absence of adequate space and proper ventilation, they find it very difficult to roll and dry the *agarbattis*.<sup>85</sup> Individual productivity and economic capacity could be improved by ensuring an improved environment for home-based work.<sup>86</sup> Security of tenure guarantees protection by the state against forced eviction, thereby ‘making a significant impact on the living and working conditions of the urban poor’.<sup>87</sup> It also leads to an increase in home-based work.<sup>88</sup>

Most urban planning and development in India is governed by land use zoning and development control regulations, driven by the promotion of single-use zones that are aimed at separating incompatible uses. While that idea has its merits, overtly strict separation of virtually all uses arguably imposes more costs than benefits.<sup>89</sup> For home-based workers, this means that unless such enterprises are zoned as permissible in residential areas, they would be termed as informal, if not illegal, subjecting them to various forms of socio-economic exclusion and exploitation. For example, informal businesses tend to be excluded from access to formal financial capital.<sup>90</sup>

There is an evident loss of earning opportunities resulting from such restrictive regulations and urban layouts that forbid workshops, retail stores, etc., in residential buildings.<sup>91</sup> However, it cannot be denied that some uses, if put together, could potentially bring more harm than good; for example, a small tailoring workshop in a residential neighbourhood is totally different from a garment factory. Thus, a blanket policy on mixed-use zoning is also not desirable. As Matthias Nohn rightly puts it, there is a need to balance the two rivaling objectives of preventing harm by separating the uses that negatively affect each other, and promoting a mix of uses that co-exist in harmony.<sup>92</sup>

#### 3.4.4 Housing Location and its Impact on Economic Capacities

In addition to the linkages discussed above between housing and economic capacities, an important factor of housing that has a positive or negative impact on an individual’s or household’s economic capacity is its location. The location of the house, directly and indirectly, affects the social and economic lives of individuals, and plays an important role in undermining or enhancing the economic capacities of an individual or a household.

A direct relation between housing location and economic capacities is proximity to employment centres and ease of access. Location of housing also becomes important for self-employed or home-based workers in order to have visibility and to access markets for raw materials, finished goods, contractors and customers. This reiterates a point made repeatedly in this chapter—the impact of forced evictions and peripheral resettlement, which marks the contemporary Indian city. It is recognized that forced displacements result in disruption of slum dwellers’ livelihoods in the city.<sup>93</sup> In a study conducted in a resettlement colony in Chennai, it was found that forced relocation created discontinuities in employment and resulted in increased costs in accessing work for all segments of the workforce, because of long distances to workplaces, loss of networks, a large concentration of self-employed workers in a small zone and the costs of maintaining households in under-serviced, peripheral resettlement sites.<sup>94</sup> Multiple studies point to the employment impact of resettlement, including elevated transportation costs, breaking of employment networks, restricted mobility (with particular impacts for women and the disabled), as well as the productivity losses due to the erasure of savings and assets during resettlement.<sup>95</sup>

#### 3.5 Housing and Mobility

This section aims at highlighting the aspects through which housing, and exclusions from it, impact mobility of the urban poor. It examines how the dimensions of housing location, gender and other socio-economic lenses further exclude citizens from accessing their basic needs.

### 3.5.1 Understanding Mobility

Mobility is a necessary element of social and economic interaction, and is linked to the availability and ease of access to the means of transportation available in cities. The existing spatial distribution of activities with respect to work, housing, recreation, commerce, etc., makes the provision of adequate transport a prerequisite means for citizens to access activities in the city, thereby enabling them to enjoy a certain standard of living, as its absence for the majority can lead to severe development consequences.<sup>96</sup>

There is a cyclical relationship between housing location and mobility. In the absence of private means of transport, housing location impacts the mobility of the urban poor. Conversely, mobility may be an important factor while choosing housing location in order to minimize travel time and related expenditures. However, many poor households do not have that choice, either because of forced displacement, or market-induced displacement, as land and housing prices are often very high close to the centre. The notion of mobility in this context therefore can be understood not only in geographical terms as the distance between different locations, but can also be seen to include economic concerns related to affordability, socio-cultural aspects related to safety and security in public space, ease of use of transport and its related infrastructure, and also time spent in commuting.<sup>97</sup>

Housing impacts households and individual mobility through its location. Location cannot be understood in isolation, as it needs to be juxtaposed with the available infrastructure, especially public transport. Within this chapter's understanding of housing exclusions, housing illegality and forced displacements both impact mobility.

### 3.5.2 Peripheralization of the Urban Poor

Decisions on mobility are framed within the context of certain space-time structures, wherein the relations between housing and mobility can be understood in terms of (a) the spatial distance to the centre of the city and the availability of public transport (accessibility); (b) the social and demographic structure (age, size of household and income); and (c) the deficits (built environment, social and spatial mobility).

These do not take place in isolation but are much influenced by gender, age, social relations and ability. Land development patterns impact and define the arrangement of activities, which defines proximity between travel origins and destinations. Increased compactness of use and concentration reduces trip lengths and increased choice in modes of travel reduces vehicle ownership.<sup>98</sup> This not only accounts for the reproduction of powerful dominant interests in the transport system, but also in the spatial structure and land uses of the city, creating a framework of inequality in which decisions about travel are made.<sup>99</sup> Income, or the lack of it, influences household transportation decisions and the ways in which individuals travel. Transport patterns of the poor are often a complex trade-off between residential location, travel distance and travel mode, in an attempt to minimize the social exclusion. In accessible parts of the city, the poor can often afford to live in only precarious sites with insecure tenure.

Conversely, affordable sites that may have more secure tenure are more likely to be located in the less accessible periphery of the city and involve higher commuting times and costs. Low-cost housing in the suburbs and outskirts are matched by high-cost transportation, or vice-versa. Less accessible locations command lower land prices; however, this is offset by higher outlays for reaching jobs and schools. Within the constraints of their limited mobility and other expenses, the location of residence gets further limited to nearby areas in order to reduce travelling time and costs, leaving them in a situation where they have few or no housing options.<sup>100</sup> The overall effect in this leads to increasing inaccessibility. As these needs are often not reflected in mainstream transport planning, the overall outcome is a system that does not reflect the requirements of the majority of urban dwellers. Transport options are accessible to some but not all, and there are not enough options for making optimal travel choices.

### 3.5.3 Non-Motorized Transport in Car Culture

The allocation of funds under transport policy in India continues to focus on motorized, private transport.<sup>101</sup> As Indian cities continue to sprawl, those residents too poor to afford motorized transport will be increasingly disadvantaged,



further cutting them off from many employment opportunities. For people from low-income groups, commuting to work, walking, cycling or taking affordable public transport is not a matter of choice but a necessity for survival. Availability of public transport is critical for ensuring access to basic services such as education and health, and integrating communities into the economic mainstream. As these are travel modes that people from low-income groups rely on, access and mobility for these groups are adversely affected. Thus, the already extreme inequity in mobility and accessibility worsens.<sup>102</sup>

In 2008, Kolkata banned non-motorized vehicles like rickshaws and cycles from 38 arterial roads in the city, with the aim to decongest narrow roads, reduce traffic bottlenecks and improve overall traffic management.<sup>103</sup> Recently, in 2013, the ban was extended to cover a total of 174 arterial roads banning non-motorized vehicles from plying on them during the hours of 7am to 11pm. The rationale behind the ban stems from wanting to ensure a smoother flow of 'traffic'; a significant portion of which comprises of private motorized means of transport.<sup>104</sup>

Cycles provide inexpensive and eco-friendly transport options for households unable to afford other means, and are also particularly useful for women, children, the disabled and the elderly who might either not have access to public transportation, or may not be able to afford private means of transportation. The ban on rickshaws has deep economic impacts. It affects the poorest class, whose livelihood depends on their ability to commute and sell goods on non-motorized transport like cycles, cycle vans, handcarts, pull-carts and bakery vans. In Calcutta, 2.5 million daily trips are made on cycles alone, accounting for 11 per cent of the modal split in the city.<sup>105</sup>

### 3.5.4 Gender and Mobility

Exclusion from housing particularly impacts the mobility of women. An example of this is a case where 700,000 squatters were resettled on the periphery of Delhi; in the same settlement, female employment fell 27 per cent, while travel time increased threefold.<sup>106</sup> Women's mobility is often compromised on the questions of safety, time constraints and inaccessibility to public spaces.

These limitations are reproduced by gender-based restrictions, inferior access to transport means, a high dependence on low-quality public transport and a lack of availability of affordable modes of travel.

In households, domestic responsibilities coupled with weaker access to household resources have further consequences for their mobility. Owing to housing location and limited time, they have to look for work at shorter distances from their home, thus decreasing their choices and opportunities. For example, in the absence of nearby higher-income housing, employment opportunities in the form of domestic work are no longer available for women from neighbouring settlements and they are forced to seek employment elsewhere. This, compounded with housing location, restricts their employment opportunities as safety, work timings, time spent in travelling, etc., all have to be considered. Furthering these is the lack of safety. Absence of footpaths, location of bus shelters, inconvenient timings, etc., all contribute to an infrastructure that is hostile to the needs of women.<sup>107</sup>

## 3.6 On Citizenship

Citizens are not made only at the national level through constitutions and elections. Recently, theorists have argued for a new scale for the determination of citizenship: the city. Arguing that, 'formal membership in the nation-state is increasingly neither a necessary nor a sufficient condition for substantive citizenship',<sup>108</sup> James Holston and Arjun Appadurai suggest instead that it is cities that are 'especially privileged sites for considering the current renegotiations of citizenship'.<sup>109</sup> Indeed, the idea of an urban citizen has been bolstered by Henri Lefebvre's idea of the 'right to the city'<sup>110</sup> and many arguments have been made since to consider citizenship in a de-nationalized way. Holston and Appadurai additionally argue that in post-colonial societies, a new generation that creates 'urban cultures distinct from colonial memories and nationalist fictions on which independence and subsequent rule were founded',<sup>111</sup> thus arguing for a deeper understanding of possibilities of urban citizenship in India.

What kind of citizens are the urban poor? First, the homeless. Homelessness has been underappreciated for the erasure of humanity and citizenship that it represents. The homeless are not just vulnerable; they are also imagined as subjects without rights. As scholars argue, ‘The homeless lack a formal address’.<sup>112</sup> They are rendered anonymous because they usually lack the markers of citizenship of even poor people in India, such as ration cards and voter identity cards.<sup>113</sup>

Yet, even for those that are not homeless, it can be argued that the poor in urban India have always been viewed as ‘different’ from the rest of the city. If anything has changed, it is the perception of the roles played by this ‘different’ citizen and the extent to which their rights or claims are recognized as legitimate. If the urban poor in post-independence India were originally perceived to be ‘humble’, ‘vulnerable’, migrant workers providing legitimate services and benefiting from an independent India’s development ideals, the urban poor of more recent decades have been labelled ‘a nuisance’,<sup>114</sup> their presence equated with pollution<sup>115</sup> and their homes reduced to ‘slums’, devoid of history or structure while characterized by poverty, filth and fragility.<sup>116</sup> It is important that the illegality of this slum is at least partly the basis of such misrecognition. There is a key move here: the housing poverty of the poor that marked their vulnerability now marks their undesirability.

Seeing the poor as illegal as a basis for disavowing their claim to substantive citizenship must, as argued earlier in this chapter, evade the illegalities of the non-poor and elite that also equally define the production of space in Indian cities. This is often done by redefining legality of residence beyond the technical definitions of city authorities. For instance, D. Asher Ghertner mentions the ‘rule of aesthetic’, where slums and informal settlements in Delhi are portrayed as ‘unsightly’ and the ideas of a ‘world-class city’ and ‘slum-free city’ are used to justify the ‘cleaning up’ of slums.<sup>117</sup> In Bangalore, Janaki Nair talks about counter-attempts that pit the legitimacy of the city planner against the legitimacy of religious norms by reclaiming geographical space through illegally constructed shrines and motifs<sup>118</sup> and the consequent social tensions that emanate from these reclamations. On the other hand, Amita Baviskar describes how the imagination of the Yamuna riverbed in Delhi

as occupied by poor people with polluting practices became the grounds for the demolition of their homes.<sup>119</sup> Leela Fernandes talks about the ‘politics of forgetting’, where the portrayal of a rising, dominant middle class is drawn at the expense of specific marginalized groups being rendered invisible in the national political culture.<sup>120</sup> As the spaces of the poor are themselves reimagined, the poor can be erased as citizens within them.

## 4. Causes of Exclusion

While it is beyond the scope of this chapter to trace the various histories and factors that have brought us to this point, the section below briefly marks the key set of drivers for exclusions from access to housing that focus on causes of exclusion linked to policy and policy-relevant outcomes.

### 4.1 The Absence of Legal Rights and Entitlements

Housing is not a right in India. Not only is it not in the chapter of fundamental rights in the Indian Constitution, it, in fact, does not even find explicit mention in the Directive Principles of State Policy. This does not mean that housing has not been seen as a subject of state action within the understanding of its obligations to citizens. It does, however, mean that such action is not justiciable against an explicitly articulated Right to Housing as, for example, the Right to Information or Right to Education is. It also means that housing becomes a matter of policy, programme and mission—work that should be done but that bears no direct consequences for the state should it not be done, and is subject to the whims of changing electoral governments.

Rights to housing and shelter do exist in derived form, i.e., in interpretations of fundamental rights to include housing. Housing rights advocates point to a string of canonical judgments by the higher courts of the judiciary that have read housing and shelter as basic needs and rights, particularly as part of Article 21 or the Right to Life. There is a familiar line of judgments that variously read housing and shelter into the Right to Life.<sup>121</sup> Yet, as evidenced in juridically ordered evictions across Indian cities, these precedents are not binding on higher courts, and there is another set

of equally cited judgments where the courts have refused such an interpretation of Article 21.<sup>122</sup>

The judicial record on protecting even a derived Right to Housing and Shelter is, therefore, at best uncertain. This implies that certain forms of judicial remedy are not available to housing rights advocates: in the presence of a Right to Housing, a legislative challenge can be mounted against a housing shortage. In the absence of it, only the government's current policies and programmes can be challenged, or an indirect argument via the Right to Life can be made. Certainly, the absence of an adequate policy framework itself becomes much harder to challenge.

The absence of a Right to Housing also has a deeply political impact on the perception of the entitlements of urban citizens to housing. When something is acknowledged as a right, inequities in the provision of that right are more difficult to explain away. This does not imply that simply bestowing a textual right immediately results in more egalitarian situations or that housing conditions cannot improve without an explicit right under the Constitution. Yet it bears pondering if the nature of our fragmented policies and programmes to housing has been able to maintain itself precisely because of the absence of such a right.

## 4.2 Policy Gaps

Looking at policy gaps in housing would suggest that it is indeed true that the absence in rights frameworks translates into both policy gaps and inadequacies. Housing is a state subject and policy histories of housing have varied greatly across the country. On the national level, however, there was no coherent and enabling policy attention until the mid-1980s. The National Housing Policy of 1988 was universally thought to lack teeth, and was almost immediately followed by a National Housing and Habitat Policy that was strengthened in 2007. The emergence of national housing policies in this period as opposed to, for example, in the 1960s, however, places them in an entirely different political economy.

As the JNNURM makes clear, cities in the modern policy imagination are engines of growth and a very particular type of development. While the Rajiv Awas Yojna (RAY) and BSUP both

attempt to make urban services reach the poor, the main thrust of the JNNURM has been in urban infrastructure and governance, building large-scale, capital-intensive projects. Current policy frames on housing have an increasing emphasis on the involvement of private actors and developers, and the role of housing as an economic good seems to outweigh its presence as a component of welfare and social security.

Further, current urban development policies are increasingly finding it more and more difficult to regulate the supply of land and direct it to particular uses. The expansion of a regime of exceptions and special economic and planning zones has made the aggregation of land and its ownership fairly concentrated towards particular, high-end uses. Policies that prevent such concentration and counter speculation, as well as as well as those that can achieve balanced regional development are notably absent or very weak. The regime of what Michael Goldman has called 'speculative urbanism'<sup>123</sup> has seen the emergence of urban governments as brokers rather than providers, with an imperative to monetize and capitalize on public and urban land rather than regulate and guard against market failure and exclusions.

Finally, housing policies have systematically over time broken the link between housing and work. In many transitional economies as well as more egalitarian states, employment is a key part of housing and it is the employer that is responsible for the provision of housing. Historically, the incentives of a well-housed, proximate and productive workforce prompted textile mill owners, for example, to build the eponymous *chawls* in which a generation of workers in Mumbai earned development time and opportunity. The dismantling of employers' responsibilities in the formal and informal components of the public and private sectors represents a singularly important lost opportunity for de-centralized and effective housing production and provision. The possibilities to leverage work status for housing entitlements has equally remained unseen in the informal sector where, for example, developers and construction firms remain without responsibility for the temporary or permanent housing of their workers, who are often brought into the city by them for their labour.

### 4.3 Lack of Rental Housing

Housing policies have also been singularly ownership-focussed, thinking only in terms of producing individual and titled homes. While this often expands the formal market at the lower end of the market, experience across Indian cities show that such forms of housing are quickly gentrified and used by non-poor households, or by the upper spectrum of the poor at the expense of those with relatively less capital and resources. Ownership-centric policies have meant a deep neglect of, at best, and outright hostility to, at worst, to rental housing Policies that prevent such concentration and counter speculation, as well as of housing forms like dormitories, shelters and communal homes, which play a critical role in responding to the housing needs of the homeless, migrants as well as poor urban residents in general.

Now, in spite of limited policy support towards rental housing, 30 per cent of urban households in India live in rented housing.<sup>124</sup> Importantly, even within slums, 30–40 per cent of households live in rented accommodation.<sup>125</sup> For households that cannot afford to own a house, or young households or migrant households that might not wish to own a house, access to rental housing means access to the urban economy, which can lead to individual and household development. What is equally interesting to note is that in low-income segments of the population, landlords are often as poor, if not poorer, than their tenants.<sup>126</sup> For many landlords, giving a room or space out on rent is in fact a livelihood response to tenuous or otherwise unpredictable employment. Rental income forms a stable and regular source of income. This rental income becomes especially critical when the landlord is a woman, or an elderly or disabled person.

The rental market can be a source of sustenance to both tenants and landlords, if balanced protection for each is institutionalized and supply of rental housing increased. Moreover, it is increasingly being accepted that a vibrant rental housing market enables greater mobility of labour and therefore higher workforce participation<sup>127</sup>—leading to development of households as well as higher productivity for the city. Current penetration of rental markets holds despite the absence of enabling legislation, at best, and an illegalization

of rental accommodation in resettlement colonies and slums, at worst.

### 4.4 The 'Failures' of Urban Planning

The 'failure' of urban planning is a common refrain in Indian cities. When seen from the perspective of access to affordable housing, however, this failure is complex. On the one hand, the failure to enforce, for example, the mandatory reservation of land for low-income housing worsens access. On the other hand, the failure of Master Plans to fully dictate land use is what has allowed the urban poor to occupy and remain in city centres near work, albeit illegally. It is essential, therefore, to be nuanced in the understanding of how the different kinds of failure of planning impact access to affordable housing, particularly to avoid a simplistic argument that a stronger enforcement of current plans will lead to more egalitarian cities.

Let us take five different kinds of failure. In Delhi, for example, the failures of planning take a particular form. Through a massive nationalization of urban lands in 1959, the state took upon itself to build low-, middle- and high-income housing stock precisely because it felt that private providers would create exclusionary markets. Yet what happened was marked by a set of failures: (a) the inadequacy of targets that estimated requirements for low-income housing; (b) the failure of the state to build even this underestimated quota, particularly for low-income housing; (c) the failure of adequate infrastructural provision that meant even built housing was marked by housing poverty and inadequacy; and (d) the failure of the state to make land available for low-income housing.

While Delhi marks a failure where the state fails its own commitments to building housing in a market that is (to some degree) typical of other post-independence Indian cities, the slow but steady rise of slums in expanding cities like Bangalore point to a different kind of failure. As the city has grown in a post-reform period, previously low housing shortages have widened and all three of our indicators—homelessness, housing poverty and illegality—have worsened. While some would argue this is the failures of planners to anticipate growth in the city over the past two decades, others say instead that Bangalore points not to

the failure but inability of planners to respond to Bangalore's changing dynamics. They argue that de-regulation, the logic of special economic zones, and the powerful demands of capital on urban land and real estate have meant that planning is unable to respond to changing land and housing markets. Within 'speculative urbanism', as Michael Goldman describes it,<sup>128</sup> public institutions of planning are unable—even if they wanted, which Goldman doesn't believe they do—to intervene to further access at the bottom end of the market.

A third kind of failure within planning is in its absent institutional structure in Tier Two and Tier Three towns, whose local institutions lack either the capacity or foresight to begin planning practices that could prevent them following the same pathways of broken housing markets in larger cities. Cities like Nellore, by no means small towns, still have opportunities to reserve land for low-income housing, to build adequate reserve housing stock and to use zoning to prevent uneven growth. These are cities where land values are rising but still low, and pressure from real estate lobbies is yet to gain momentum. Yet, it is precisely these cities that have almost no medium- to long-term strategies for housing, nor see it as a pressing need to put these in place. In the absence of such strategies, it is only a matter of time before a new set of cities emerge with an old and persistent set of housing problems.

The fourth kind of failure is the inflexibility and rigidity of planning norms. Master Plans can often last 10 to 20 years where they exist. Development controls norms and building guidelines are standardized across vastly different socio-economic and spatial contexts. Across time and space, planning processes and norms in India exemplify a rigidity which forces the innovations that poorer residents use to survive to become illegal. As the previous sections highlight, homes cannot be used as workspaces; small additions cannot be used to generate rental income or provide cheap and accessible housing; layout designs impose norms for density or the use of space that often bear no relation to how people in fact use space; housing is built without regard to future expansion of families or the incremental nature in which the poor in particular build housing, etc. Over time, these restrictions within planning have created and exacerbated the conditions of both housing poverty

as well as illegality, as plans have been pitted against what many must do to thrive.

The fifth and most pressing failure of planning, however, is the inability to fulfil its main purpose: the spatial governance of land through dictates on its use. There are two embedded failures here. For too long, planners insufficiently used zoning to protect land and direct it to low-income housing. When they finally thought to do so, they did so inadequately, offering piecemeal land reservations that remained unenforced and paled in comparison to the degree of need and the depth of the housing shortage. Housing illegality, as many scholars have argued, is a result of the inadequacies of planning. These are 'planned illegalities'.<sup>129</sup>

#### 4.5 Eviction and Resettlement

One of the clear causes of current and cyclical housing exclusions is the eviction from self-built housing and the building of peripheral resettlement colonies which are, effectively, what many have called 'planned slums'. Cycles of forced eviction and resettlement have multiple impacts on housing exclusions. They erase existing, if vulnerable, housing that has often been built incrementally over decades, thereby causing housing poverty to deepen. They create homelessness. They create, as this chapter has repeatedly argued, peripheral resettlement colonies that are, in fact, unliveable due to the impossibility of livelihood and the paucity of infrastructure, tenure security and services. Resettlement has its own impacts on health, services, economic and livelihoods, as the previous sections have detailed. The result is the continued proliferation of housing poverty and, indeed, its reproduction as another generation is placed into what Bhan and Menon-Sen have called 'permanent poverty'.<sup>130</sup> It has also prompted some authors to ask: 'can the persistence of urban poverty be partly explained by such forced mobilities within cities?'.<sup>131</sup>

Let us take just one example of many. In January 2013, an eviction drive was carried out in an EWS housing quarters in the area of Ejipura in Bangalore.<sup>132</sup> The drive was conducted to facilitate the demolition of the quarters and subsequent construction of a new set of EWS quarters as well as a commercial mall, both of which were to be jointly developed by the corporation and a

private partner. The city corporation agreed to relocate the 1,512 'original allottees' of the quarters (constructed by the corporation in the early 1990s) but, on the basis of a Karnataka High Court order, refused to do the same for those who came to reside there later. This decision was taken, in spite of both claims from the residents that they had been living in Ejipura for several years as well as the fact that an earlier resolution had been taken by the city corporation to accommodate both the original allottees as well as the 'present residents', and the distribution of ration cards and 'voter identity cards had taken place at various times.<sup>133</sup>

As a consequence, several residents of the quarters were rendered homeless. As late as July 2013, many former residents continued to reside on the footpaths of Ejipura, often in plastic tents or concrete pipes, subject to several health and sanitation hazards leading to illnesses and deaths.<sup>134</sup> The Ejipura case demonstrates how evictions exacerbate and produce homelessness. It also showcases evictions as part and parcel of an urban development model that has, in the last couple of decades, seen eviction as a primary and common mode of producing urban space. Ejipura is just one of a series of evictions that have increased in frequency and intensity from Chennai to Delhi, Mumbai to Kolkata. Indeed, these evictions can no longer be considered merely an outcome of housing poverty and illegality, but part of what causes them generation after generation.

#### 4.6 Uneven Development

One of the fundamental causes of exclusion in the housing market, though harder to grasp as tangibly as the ones already listed, stems from the long-term consequences of a development paradigm marked by economic inequality. While poverty has no doubt declined significantly in India since independence, this decline has not been enough to prevent a systemic absence of effective demand for a majority of urban residents. In the medium- to long-term, housing exclusions cannot be addressed by policy alone, regardless of whether the provision is public or private. Put simply, housing shortage in India remains both a supply and a demand issue, and enabling lower income households to demand

more effectively must be part of the solution.

Once again, as already argued, the separation of work status and housing entitlements plays a strong role here. Mediating demand through employer-provided housing has marked the historical transition of many low-income countries, as it bridges the gap between what poor households can afford in open markets and what is available to them in exchange for work. A further point worth mentioning here is the continuing prevalence of identity-based discrimination based on caste, religion, ability, gender, sexuality and linguistic lines, among others. Here, even the presence of economic demand cannot offset artificial supply constraints caused due to prejudice. When combined with income poverty, this results in multiple vulnerabilities for the poor and a deeper set of housing exclusions that cannot be solved by increasing demand and supply alone.

As the previous sections have argued in different ways, the current growth model and imagination of urban development—marked most conspicuously by the imagination of cities as 'engines of growth', as the JNNURM describes them—is one that privileges a certain form and register of value. Nowhere is this most visible than in urban land and housing markets. The inability to reserve public land for public purpose was a historical explanation for the state's inability to provide housing. In the current growth model, however, it is 'public purpose' that has itself been reimagined to include highways and airports rather than shelter and bus stops. A rapid financialization has meant that urban local bodies are increasingly under pressure to monetize their land holdings and raise a portion of their own revenues. When the same public land is demanded for infrastructure and for low-income housing, it is not surprising which way it heads.

New forms of urbanization—Special Economic Zones or SEZ cities, new towns, satellite cities, as well as 'integrated townships' and gated communities within cities—are built on entirely different economic and spatial footprints than older settlements. Service sector economies have reduced the working poor to informal, contractual, fragmented and uncertain employment just as new urban forms reshape urban space, land and housing markets to cater to a different economic

citizen—one emboldened and skilled with very different housing needs. Within this development model, finding the political will and ability to direct public resources to low-income housing, especially through interventions in land, becomes an increasingly difficult task to imagine, let alone implement.

## 5. Moving Forward

In conclusion, four broad approaches can be suggested that could take us forward in addressing housing exclusions.

### 5.1 Housing as an Entitlement and New Policy Frameworks

The broader approach to how to move forward from a position of deep and entrenched housing exclusions must begin with a new agreement on the centrality of housing as a right, public good and basic need. This agreement must then reflect, in both letter and spirit, that housing is an entitlement for urban residents, keenly linked to and imagined within other forms of social security and social protection like education, health, food and information.

In its spirit, the RAY, the flagship affordable housing scheme of the Ministry of Housing and Urban Poverty Alleviation, moves towards such an articulation. It explicitly takes a ‘city-wide approach’ that includes all slums—whether notified or not. It seeks to ‘redress the failure of the formal systems’ that lies ‘behind the creation of slums’. The RAY challenges the prevailing practices of ‘cut-off dates’ where residents are only eligible for benefits if they can prove they have been in the city for a certain number of years. It argues instead that all residents must be counted if they are there on the date of the citywide survey. The acknowledgement of state failure and the rejection of cut-off dates are important steps for a policy announcement to take. It implies that all residents, no matter where they live in the city or how long they have been there, have a right to be there. In its most recent evolution, it includes the homeless and pavement dwellers, and caters to incremental housing and not just new units. In this sense, the RAY is the closest non-judicial articulation of a Right to Shelter that has been seen.

Yet, programmatically, the RAY faces many of the same challenges that have plagued historical housing programmes. One critical concern for our focus is the weak imagination of regulations that would use inclusionary planning to bring land back into use and supply for affordable housing. Land remains the single largest stumbling block for affordable housing, whether built privately or built by the state under programmes like RAY. While RAY does imagine a ‘Phase II’ in which town planning and municipal acts are amended to enable mandatory use of land for affordable housing, it remains unclear how effective it will be in getting urban local bodies to amend state acts.

How can land be made available for affordable housing through regulation? There are a number of ways; mandatory reservation at either the regional or project level; restrictions on use of existing land, using inclusionary zoning<sup>135</sup> as used in Thailand and Brazil; the more familiar use of planning controls like Floor Area Ratio (FAR), Floor Space Index (FSI)<sup>136</sup> and Transfer Development Rights;<sup>137</sup> or town planning schemes and acts. While this is not the place to discuss each in detail, the point to emphasize is that the use of such techniques—and they are simply that, techniques—and the efficiency of their implementation depends entirely on the broader spirit and political framework in which they are deployed. India’s track record in implementing even existing reservation for EWS housing in new private and public development projects, for example, remains abysmal.

Part of this failure possibly derives from the fact that housing, unlike education, health and food, is not subject to clear policy and rights-based frames, acts and policies that insist upon certain outcomes. A step in the right direction is the emergence of ‘Affordable Housing Policies’ in several states like Rajasthan and Karnataka, with draft policies ready in Andhra Pradesh and Odisha. The Affordable Housing Policy in Rajasthan has been in place since 2009 and mandates reservation of land at the regional level in city Master Plans, with different minimum requirements for urban local bodies, housing boards and private developers. This is different from just mandating EWS housing, for example, in a single development or project and it is much stronger than using zoning to regulate land use. What is striking about Rajasthan is that it seems to have achieved some success in banking

land for affordable housing. From 2009 to the present, public authorities have built over 100,000 units, and nearly 60 per cent are on land reserved and used under mandates of the Affordable Housing Policy.

The historical and contemporary policy gaps in housing outlined in the previous sections are by no means accidental. What is clear is that unless our political debate can reorient itself to seeing housing as a non-negotiable entitlement, policies can only play a stop-gap role in redressing housing exclusions. It is only when an entitlement framework reaches some coherence and agreement that different stakeholders will be able to act on the scale required to address the depth of our housing exclusion.

## 5.2 Prioritizing *In Situ* Up-gradation

Even as more medium- and long-term frameworks shift, however, there is also an urgent need to address the ‘project’ mode in which current housing policies are functioning. Housing policy in India has long focussed, as argued earlier, on ownership-centric models that have emphasized a particular view of individually owned and titled housing units, rather than seeing a broader view of housing. This is reflected most strongly in the emphasis even within programmes such as the RAY on redevelopment and the building of new housing units, or eviction and relocation, rather than a strategy that has proved globally most effective in addressing housing poverty and its attendant exclusions: *in situ* up-gradation.

Contemporary Indian cities are marked by a particular form of exclusion from access to housing, one that indicates that the poor have housing stock (usually self-built, often precarious) that is considered inadequate. Addressing exclusion, therefore, must begin from this existing housing, no matter what its condition. So how does one address inadequate housing that is affordable? There are two possibilities. One argument is that households living in unacceptable housing must be given new housing units. The other is to recognize existing housing stock—most often built by the poor themselves incrementally over time, as investment becomes possible in fits and starts—and then gradually reduce the inadequacy and raise the liveability of such housing without necessarily

building new building units. The first represents redevelopment (whether on-site or at a new site altogether), while the second is more commonly understood as a form of upgrading. Current housing policy in India shuttles between upgrading, redevelopment and relocation. However, recent trends point strongly to the tendency to build new housing units, often citing the inadequacy of what is dismissed as ‘slum’.

There is a significant danger here. While the vulnerability faced by households living in housing poverty cannot be denied, it must also be acknowledged that such housing represents a level of investment and affordability that is most aligned to the current incomes and aspirations of those households. Put simply, households living in what are considered inadequate conditions are also, at times, living in the kind of housing that they can afford and making trade-offs that others may or may not agree with. It is not uncommon that a poor household will continue to live in a temporary shelter while investing income into better health or education outcomes rather than improvements in housing. The fact that, in the Census of 2011, nearly 41 per cent of households rated their housing as ‘liveable’ and only 5 per cent of housing stock as ‘non-serviceable’ testifies to this.<sup>138</sup>

Rapid transformations in such housing stock—like the rebuilding of low-income housing into multi-storey buildings or the allotment of brand new flats under housing schemes—break the incremental nature by which many poor households improve inadequate housing stock and often lead to market-induced displacements as poor households cannot afford maintenance; cannot afford to move to new locations where livelihoods are uncertain and mobility questioned; or simply cannot afford to refuse offers to sell allocated flats. Upgrading, with its focus on improvement in infrastructure and services as opposed to dwelling units exclusively, represents a different approach to addressing housing poverty, one that increases the liveability of the settlement rather than the materiality of the dwelling unit itself.

Upgrading also has one further crucial function: it represents land that the poor have already occupied and inhabited. In other words, the liveability of that site and its linkages to employment, education and health have stood the test of time. The answer



to the common question “where do I find land” is to be found in up-gradation—the poor have found, occupied and developed the land already. The question is not then the literal availability of the land but, in fact, the ability to use it for housing the poor. This equires dealing with a set of different challenges—agreements with public or private landowners, using the range of regulatory and incentive-linked tools in policy makers’ hands to do so. Slum upgrading programmes that have occurred at scale—most notably in Thailand and Brazil—are the single most effective means of seeing the clear impact of housing improvement and vulnerability reduction within a generation.

Upgrading has now entered the language of housing policy. The challenge that remains is to both convince and enable local and state governments to implement it as the primary mode of housing interventions, rather than redevelopment or relocation.

### 5.3 Security of Tenure, Not Titling

Linked to a focus on upgrading is an expansion of the notion of security of tenure. Secure tenure implies a *de facto* or *de jure* protection from eviction or dispossession. One way of providing this security is through an ownership title. Yet, in the context of widespread housing illegality, how should the relationship between individual titles and secure tenure be seen? In the *Baan Mankong* programme in Thailand, often considered the inspiration for the RAY, the largest number of housing projects used community titles in the form of long-term leases. Drawing upon the idea of co-operative housing, these titles gave secure tenure. Change to: ‘communities previously considered by the state to have had illegal tenancy, and often living on occupied land that authorities had successfully got permission to use and upgrade.

Community and long-term lease titles have both advantages and disadvantages when compared to individual home ownership. Leasehold titles do not satisfy the felt needs for a ‘house of one’s own’, many argue, and they are not as easily bankable or transferable. These are legitimate concerns. Yet, what community titles do enable us to do is to protect low-income housing communities from market-induced displacement in the context of a deeply unequal and fractured housing market. Put

quite simply, building housing units for the poor and giving individual titles as the RAY intends to do could possibly result in large-scale sale of these units to non-poor families, and the subsequent modification and up-gradation of those units.

In one sense, the right to sell is one that should not be denied to the poor. Yet, from the lens of public policy, one of the objectives in reducing housing exclusions is to have housing stock available at all levels of affordability and income. How, then, is it possible to protect housing stock intended for the poor from being sold to and modified by the non-poor? There is a delicate balance to be struck here but it can emerge only if it is recognized that secure tenure can come through a range of processes, including community leaseholds or even a humble ‘permission to use’ as was successfully tried in the Ahmedabad Slum Networking Project, and not just from private, individual titles.<sup>39</sup> Community titling can be modified, as elite co-operative housing has long done in cities like Mumbai, to allow a certain controlled transfer of assets as well, allowing certain poor families to sell but monitoring such sales to ensure that the housing stock remains affordable, by and large.

The focus on ownership expands a formal housing market in ways that are no doubt necessary. But if this new formal market excludes the very households it sought to target, then the intentions of policy makers will have once again been thwarted and the housing shortage will remain unaffected. The emphasis on titling has also led to a diminished attention to other forms of housing like rentals, dormitories and shelters. The expansion of rental and temporary housing—particularly suited to migrants and low-income workers—as a diversification of housing stock is critically necessary to answer the diverse and dynamic needs of urban poor residents. The fact that nearly one-third of households in urban slums live on rent gives testimony to a housing solution that already exists informally, and could work very well if given both formal sanction as well as support.

### 5.4 The Intent to Reside

One of the key tensions in addressing housing exclusions is determining who is eligible for what kind of benefit under various policy regimes. Typically, as this chapter has argued, exclusions

have been perpetuated both through the legality of the settlement, or through the ‘cut-off date’ that mandates a minimum period of residence in a particular address. Both these exclusions have significant impacts on not just access to housing but to its attendant exclusions in health, education, work, mobility and citizenship.

In work elsewhere, one of the authors of this chapter has jointly proposed a different approach to determining eligibility for social security benefits more broadly, including housing. The Intent to Reside (ITR) approach<sup>140</sup> argues that aims at embracing universal (or quasi-universal) entitlements (for access to basic services, education, PDS, decent work, and health for all urban residents as part of an urban social security regime) through evidence of an *intention* to reside in the city, that includes residents at an early stage of this residence. The ITR approach is, in a sense, the anti-thesis of the cut-off date. Rather than asking residents to prove that they deserve to be included as urban residents by surviving for years in the city, it includes them from the very beginning. It attempts at being more mindful of errors of exclusion within a context of universalization and in real situations where operationalization and implementation of

services are themselves premised on conditions and modes of residence.

The ITR Approach has constitutional, legal and policy precedents that have been analysed in detail elsewhere.<sup>141</sup> In marking it in this chapter, it is important to emphasize once again that operationalizing an inclusive notion of ‘residence’ is indispensable to addressing the role spatial illegality plays in (re)producing the housing exclusions faced by the urban poor. It may well be that the ITR approach takes the long road towards eventually affirming a Right to Housing or Shelter—by ensuring a set of social security entitlements, at least in the provisioning of fundamental rights to clean drinking water, education and livelihood among other services. In the short run, it is an attempt to overcome the unwieldy requirements of minimum cut-off dates and current policy exclusions on providing such services. It is an acknowledgement of the difficulties faced by implementing agencies, reflected in jurisdictional issues and claims over residence, but offers a much lower floor to operationalize these provisions, based on the Constitutional framework of guaranteed fundamental rights.

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## Chapter 4

# Labour Markets: Exclusion from 'Decent Work'



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## 1. Introduction

The classic theories of economic production teach us that three ingredients are imperative to achieve the ideals of value addition, economic growth and profits: land, capital and labour. These ingredients are interdependent—one cannot do without the other. In reality, however, the ownership of land and capital has traditionally been concentrated in the hands of relatively few people. Vast majorities are left without land or capital and selling off their labour is the only option for survival.

The history of labour is full of stories of subservient workers forced to surrender their labour and live a life without freedom, from slaves and serfs to coolies and paupers—people at the bottom of the labour pyramid. Their daily dealings consist of nothing more than attempts at basic survival, despite the fact that they are completely immersed in performing an economic activity. Physical conditions at the bottom of the labour market are harsh. Work is tedious, dirty, dangerous, and demeaning, demanding strenuous efforts from body and mind. As a famous saying has it, slaves must be working when they are not sleeping.<sup>1</sup>

So the worker wakes up, drags a tired body to work, drudges through the day, trying to keep the mind focussed on finding some form of relief, only to return to sleep in a state of exhaustion. Working hours are long, leaving no time for leisure and very little time for the preparation and consumption of food. Such food as is available is of insufficient quantity, without variety and lacking in nutrition. Housing and living conditions are abysmal. Personal grooming is a luxury, reserved for those rare moments in which no work is required. Only at night is there some form of a break, however short. Life is nothing but a punishment, without hope of any betterment, day after day. In this basic battle against life, small setbacks can have serious consequences, and mind and spirit are easily

broken. Bereft of any support system, the worker can only pray for overcoming an injury or an illness, as the capacity to survive is directly linked to the ability to perform labour.

It is being increasingly accepted that it is this support system that the state must provide. Labour has not always commanded the protection of the state, however. For a long time, economies were fuelled by slavery and servitude, a business conducted primarily by public powers. The state itself was responsible for trading in humans as animals, leaving the treatment of an individual worker completely dependent on the benevolence of the master. It took many years for this to change. Devoid of their freedom, workers did not remain docile. The world found it necessary to learn the hard way that labour matters can be an explosive subject. Revolutions and wars were waged to abolish slavery and other forms of labour exploitation before a framework of labour protection became established. As a result, workers today are, in theory, constitutionally and legally protected against exploitative labour arrangements.

Few subjects have therefore stirred more emotions than the relation between capital and labour, or what we have come to call the ‘social question’. Without labour, land and capital do not bear fruit. But for labour to prosper, it needs to be healthy and strong. This implies a sufficiently high price to ensure its maintenance. To resolve the social question and to turn labour matters into an equitable affair, workers and employers entered into a ‘social contract’. The state, then, is supposed to assume the role of the guardian of the social contract. It is expected to promote its implementation and enforce work regulations and agreements. Even where labour remains plentiful and prevailing market mechanisms of demand and supply push wages down to the cheapest possible price, the state is responsible for protecting labour from undue exploitation. In this manner, the

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state has sought to establish some balance in the power relations between the richly endowed and a workforce traditionally prone to exploitation. If this social contract model is respected, it will boost productivity too, as the social contract is ideally based on the platform of workers' dignity, deriving from the premise that a happy worker is a productive worker.

Today, this social contract is best understood through the concept of 'decent work', adopted by the members of the International Labour Organization (ILO)<sup>2</sup> in 1999. Decent work is defined as 'productive work by men and women, in conditions of freedom, equity, safety and dignity', where productive work is that which benefits people by enabling the generation of an adequate income. Decent work guarantees sufficient work, which is safe, with effective social protection in cases where work is not possible or simply not available. In times of economic slackness or in personal crises, workers should be able to rely on some form of social security, to counter a threatening slide towards poverty and ultimately destitution. In other words, decent work is a political choice in which employment, income and social protection can be achieved without compromising rights at work. These rights fundamentally confer workers with the right to freedom of expression and association, from exploitative labour conditions like child and forced labour, and from discrimination.

While there is a strong case to be made for improving access to decent work purely from a legal and social justice standpoint as an end in itself, there is also an economic case to be made. Invoking this business case of labour rights on the opinion page of *The New York Times*, Amartya Sen states that 'the case for combating debilitating inequality in India is not only a matter of social justice'. He goes on to say that, 'For India to match China in its range of manufacturing capacity . . . it needs a better-educated and healthier labor force at all levels of society.'<sup>3</sup>

The idea of 'decent work' is not a fairy tale, but a globally accepted principle. In 2010, the Ministry of Labour and Employment in New Delhi proclaimed that it is striving 'for productive employment generation with "decent work" conditions, an important concern, not only for a national employment policy, but also for the national

agenda of inclusive growth'.<sup>4</sup> These objectives of the government also coincide with the objectives of ILO Convention no. 122 on Employment Policy, 1964, to which India is party. The Convention requires signatories to 'declare and pursue, as a major goal, an active policy designed to promote *full, productive and freely chosen employment*'.<sup>5</sup>

## 1.1 The Framework for State Intervention

In the context of guaranteeing 'decent work' for all citizens, the state embraces three major responsibilities towards labour: employment creation,<sup>6</sup> the protection of employment rights, and the mobilization of a social security support system for people who are unable to secure employment.

### 1.1.1 Employment Creation

In India, there is no constitutional right or guarantee to work, Article 39 of the Directive Principles of the Constitution recognizes the need for state action to promote an adequate means of livelihood. In India, as elsewhere, the predominant view of policy makers is firmly rooted in the belief that the primary vehicle for creating decent employment opportunities is economic growth.

The relatively high economic growth in the past decade has not, however, met these 'trickle down' expectations. Very few jobs have been added, mostly of low quality, whereas employment opportunities in public enterprises, the formal private sector and agriculture have actually declined.<sup>7</sup> While Gross Domestic Product (GDP) growth in the past two decades 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.<sup>8</sup> Just 2.7 million jobs were added in the period from 2004–05 to 2009–10, compared to over 60 million during the previous five-year period.<sup>9</sup> This refutes the assumption that economic growth necessarily leads to growth in employment. In fact, employment growth has been above the long run average when GDP growth has been flat or lower, for example between 2000 and 2005.<sup>10</sup>

In a country where an estimated 15 million persons enter the labour market every year,<sup>11</sup> and labour-intensive sectors like agriculture are in decline, there has been little attempt to adopt

policies that seek to accommodate this large unskilled workforce in the economy. For instance, the services sector, which has seen rapid growth since the early 1990s, accounted for 58.3 per cent of GDP in 2004–05, but its share of employment was only 29 per cent. In contrast, labour-intensive manufacturing accounted for only 17 per cent of GDP and 12 per cent of employment, which was not materially different from the scenario in 1993–94.<sup>12</sup>

Labour, it must be recognized, is not a commodity,<sup>13</sup> and history has shown us time and time again that demand for labour of adequate quality cannot be left to market realities alone. It is dependent on active public policies that put the creation of employment at the heart of state intervention.

### 1.1.2 Protection of Employment Rights

People depend on having a job for their survival, but not just any job on any terms. Jobs must maintain the dignity of any working person and need to be governed by a normative system. This system cannot rely on voluntary rules, since the interests of employers and employees mostly represent opposite sides. Therefore, the state must create a minimum normative framework that guarantees this dignity.

Constitutionally, in India, labour is a concurrent subject, with public powers divided between the central government and its counterparts at the state level. The Constitution of India recognizes the right to practise any profession, or to carry on any occupation, trade or business,<sup>14</sup> which implies freedom at work. India also has a true plethora of labour laws to protect workers from exploitation, and to effectively govern labour relations. At least 44 central labour laws have been enacted, all enforceable in court. At the state level, many laws complement these central legislations. These laws touch upon a large number of issues, aspiring to achieve the principles of decent work, and reflect the provisions of the international labour standards of the ILO, of which India is a founding member.

The average worker can form trade unions, is entitled to minimum wages paid at regular intervals, is protected against excessive working hours and can enjoy at least one day off during a working week.

In larger industrial establishments, the Factories Act, 1948 aims to maintain a regime of safety and security at work, and workers at enterprises outside its coverage get equal protection from other laws. In some sectors, workers are protected by laws specifically tailored towards the need of that industry.<sup>15</sup> Labour excesses such as boundless contract labour and bonded labour and forms of contemporary slavery such as trafficking for labour exploitation are banned by special laws.<sup>16</sup> Women workers are entitled to maternity benefits equal pay as men for similar work<sup>17</sup> and are protected against sexual harassment at the workplace.<sup>18</sup>

On paper, laws for Indian workers are of a very high standard. However, the fact remains that the record for implementation has been extremely poor. Directions on providing better working conditions are hard to implement given the modern practice of sub-contracting, where the principal employer is hard to identify and accountability is difficult to assign. Exploitative forms of employment such as bonded and child labour continue to thrive.<sup>19</sup> All of these point to the failure of the state in protecting the rights of workers.

### 1.1.3 Social Security

The simple belief that supply-side economics is a magic wand for the creation of decent employment opportunities has not been warranted by the state's performance in the past decade. Stagnant wages, combined with high levels of inflation, have created armies of working poor. A preliminary conclusion to be drawn from this is of a state failing its promised deliveries of more jobs embedded in rights. Where people have no work, or cannot work, universal access to minimum social security entitlements becomes a necessity to prevent them from becoming destitute. Effective state protection to the poorest of the poor must, at a minimum, contain unemployment benefits, healthcare and pensions.

Social security in India, until very recently, was offered only to a small section of formally employed workers. This changed with the introduction of the Unorganized Workers Social Security Act of 2008. Enacted to benefit the working poor and targeting people with little or no means of their

own, like the landless and land poor, this piece of legislation was aimed at reaching out to these citizens in need of public support, to secure their survival. It has, however, largely resulted in the culmination of the sum of existing pieces of social welfare schemes.<sup>20</sup> These welfare schemes do not, conversely, share the act's rights-based approach. On the contrary, getting access to the schemes presupposes an active attitude by citizens, not by the government. As discussed in Section 3 of this chapter, on Instruments of Exclusion, the schemes throw up many conditional hurdles, blocking their easy access.

One major and labour-related exception to this rule of a passive government is the revolutionary Mahatma Gandhi National Rural Employment Guarantee Act (NREGA) of 2005. The act aims to contribute to the fulfilment of the state's promise to create 'full employment' by guaranteeing 100 days of unskilled wage employment to one member of any family volunteering to be part of this public work scheme. The NREGA's strength also lies in its provision for universal access to minimum social security, providing effective state protection to the poorest of the poor. It is one of the rare occurrences where citizens of India are actually approached and invited by the state to be part of a public process, and opens new employment avenues for its beneficiaries.

This chapter seeks to examine the causes for this denial of decent work to a large section of the population, how this denial takes place and what can be done to enable access to it for the excluded. Section two looks at who is excluded from decent work and the overlap of these groups with social categories that have historically been discriminated against. Section three then goes on to highlight the instruments of exclusion from decent work, as a result of changing perceptions about the 'social contract' between labour and capital and the withdrawal of the state from its role as a guardian of this contract. Section four elaborates on the consequences of the denial of decent work for workers and also society at large. Section five, finally, puts forward recommendations to the state for guaranteeing decent work for all. The chapter ends with a short discussion about the role civil society organizations can play in this process.

## **2. Who is Excluded from 'Decent Work'?**

In their single-minded focus on headline economic growth, policy makers have failed to adequately consider the dynamics of labour markets in India, leading to the exclusion of a large section of workers from access to decent work. A few broad categories of such groups have been identified as follows.

### **2.1 Informally Employed Persons**

In 2009, the report of the National Commission for Enterprises in the Unorganized Sector (NCEUS) revealed shocking data about India's labour landscape. A vast majority of jobs created in recent years have been in the informal sector, outside of a legal framework for labour protection and social security. Out of every 100 workers, the report revealed, 86 work in the informal economy, producing half of India's economic output.<sup>21</sup> Hence, around 400 million workers,<sup>22</sup> a number considerably larger than the total population of the United States of America, are employed with little job security or any formal entitlement to the protection of the state. Without the availability of formal employment, the solution for workers lies either in opting for self-employment, or becoming casual labourers answerable to a labour contractor.

Informally employed workers are vulnerable to exclusion from decent work on a number of counts. Under this regime, workers no longer benefit from the protection of labour laws. For them the presumed social contract ceases to exist. Their sole responsibility in the eyes of the contractor is the completion of the assignment, which forms the basis of their remuneration. The modalities under which the assignment is completed are the responsibility of the contracted party. Whether these imply excessive working hours, lack of safety gear and hazardous working conditions, the help of children and other family members, these issues no longer concern the contractor. In the new labour market, workers have to fend for themselves, and the state is nowhere to be seen.

The disempowerment of these workers is compounded when they obtain work through an intermediary. It is this agent who determines who gets to work where, for how long and at what price.

For the service of matching supply and demand of labour, the agent receives a fee, further depressing the remuneration of contracted labour, and further reducing the negotiating ability of contracted workers to strive for a proper deal. This chain of command also means that work in the informal sector is more often than not conducted under inhumane conditions. Employers at each level attempt to escape direct responsibility for the health and safety of their employees, as well as the duty to provide them with the minimum remuneration that they would otherwise be legally obliged to pay. The NCEUS has estimated that in 2004–05, 836 million Indians lived on ₹20 or less per day,<sup>23</sup> which, in all likelihood, has a strong correlation with their conditions of employment.

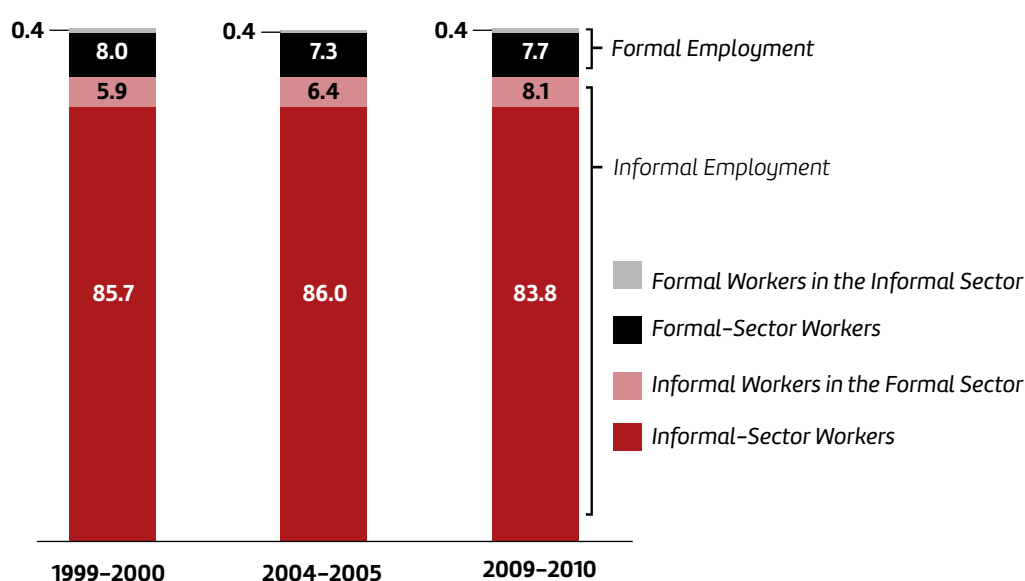
Even in the formal sector, over half the workers are informally employed. Such workers have no secured tenure of employment, social security and other protections. Trilok S. Papola and Partha P. Sahu further note that the proportion of informally employed workers in the formal sector has also risen over time, from 42 per cent of total formal sector employment in 1999–2000, to 51 per cent in 2009–10. As a result, in 2009–10, 92

per cent of all workers, in the formal and informal sectors combined, were effectively in ‘informal’ employment (see Figure 4.1).<sup>24</sup> Such trends can be explained by the increasing move towards the use of contract labour within the formal-sector, in order to increase profits and avoid adhering to labour laws.<sup>25</sup>

## 2.2 Persons Engaged in Unseen Work

Persons engaged in unseen work are, in a sense, some of the most deprived and vulnerable categories of those denied access to decent work. The official labour force participation rate for men, which measures the proportion of the total male population in the labour force, stood at 55.6 per cent in 2011–12, unchanged from its level in 2004–05. For women, already scarcely represented in India’s labour market, the labour market participation in the same period dropped from 29.4 per cent to 22.5 per cent.<sup>26</sup> This large remaining share of the population, while not recorded as being a part of the labour force, is nonetheless involved in a range of labour activities. Some of these activities are non-remunerative—examples include the involvement

**Figure 4.1 Percentage Distribution of Workers by Type of Employment**



Source: K. P. Kannan (2012), cited in Trilok S. Papola and Partha P. Sahu (2012), *Growth and Structure of Employment in India: Long-Term and Post-Reform Performance and the Emerging Challenge*, New Delhi: Institute for Studies in Industrial Development; and National Commission for Enterprises in the Unorganized Sector (2009), *The Challenge of Employment in India: An Informal Economy Perspective*, New Delhi: NCEUS.

of women, children and the elderly in household tasks and care-giving—while others, like home-based work, domestic work, child labour, and work by the elderly, are remunerated but remain unseen and difficult to detect under formal labour registration systems.

The high participation of women in home-based work is discussed in detail later in this section. In the case of home-based work, other members of the family, including the elderly and children, are also often drawn into participating in the production process, and their contribution remains largely unrecognized and unremunerated. Since the home is the production shop floor and payments are made on a piece-rate basis, all available family labour is utilized to produce as many pieces as possible.

It is not only in the home that the elderly participate, however. The combination of extreme poverty and the lack of adequate social security in India makes the elderly a part of the expanded labour force in the country. The unorganized sector has no retirement age. Labour force participation rates and other conventional indicators tracked globally mostly look at persons of working age when assessing the available labour force. A large section of the elderly, usually classified as 'dependent' due to their age, are actually independent and engaged in remunerative work. In India, NSSO survey in 2007–08 revealed that 40 per cent of those aged

60 years and above were still working. The figure is much higher among men, and in rural areas. In developed countries this ratio is closer to 20 per cent.<sup>27</sup>

## 2.3 Overlap with Historically Excluded Groups

Since the onslaught of liberalization, labour has never been cheaper than it is today. This has resulted in a labour market flooded with the working poor, who are largely unskilled and illiterate. Informally employed workers, already lacking essential labour protections, deserve special consideration when they are also excluded due to social reasons, as these can significantly magnify the already raw nature of poverty these workers experience. Tables 4.1 and 4.2 present some key employment-related statistics for these excluded groups. The specific issues and vulnerabilities faced by these groups are discussed in detail in this section.

### 2.3.1 Scheduled Castes (Dalits)

India's caste system is a relatively rare and peculiar remnant of longstanding practices of exclusion based on a person's birth. Bhimrao Ambedkar famously formulated that the caste system was not merely a division of labour, but also a division of

**Table 4.1. Labour Force Participation Rate (LFPR) and Worker Population Ratio (WPR) for Different Groups (2009–10)**

	Labour Force Participation Rate (LFPR)	Worker–Population Ratio (WPR)
Overall	40.0	39.2
Men	55.7	54.6
Women	23.3	22.8
Dalits	41.2	40.4
Adivasis	46.0	45.2
OBCs	40.0	39.3
Other social groups	37.5	36.5
Muslims	33.8	33.1

Source: National Sample Survey Organization (2012), 'Employment and Unemployment Situation among Social Groups in India', NSS 66th Round (2009–10), New Delhi: Ministry of Statistics and Programme Implementation; National Sample Survey Organization (2013), 'Employment and Unemployment Situation among Major Religious Groups in India', NSS 66th Round (2009–10), New Delhi: MoSPI.

**Table 4.2 Percentage Distribution of Households by Employment Status for Different Groups (2009–10)**

	Rural Areas			Urban Areas			
	Self-Employed	Agricultural/Non-Agricultural Labourer	Others	Self-Employed	Wage/Salaried	Casual Labourer	Others
Overall	47.4	40.4	12.2	34.7	39.7	13.4	12.1
Scheduled Castes	30.8	59.0	10.3	26.2	39.4	25.1	9.2
Scheduled Tribes	44.0	46.5	9.5	23.3	38.4	21.1	16.9
OBCs	51.3	37.3	11.4	36.8	35.0	17.1	11.1
Other Social Groups	57.5	26.2	16.3	36.2	44.1	6.0	13.6
Muslims	46.3	40.7	13.0	45.5	30.4	15.5	8.6

Source: NSSO (2012), 'Employment and Unemployment Situation among Social Groups in India'; NSSO (2013), 'Employment and Unemployment Situation among Major Religious Groups in India'.

labourers.<sup>28</sup>

Historically, Dalits have either been landless or marginal landholders, and due to the lack of adequate land reforms, this trend continues even today. NSSO data for 2009–10 shows that 92.1 per cent of Scheduled Castes (SCs) in rural areas were landless or had landholdings of one hectare or less.<sup>29</sup> This has led to a preponderance of SCs in casual labour. As Table 4.2 highlights, in 2009–10, 59 per cent of SCs in rural areas were engaged as agricultural or non-agricultural labourers, compared to an overall average of 40.4 per cent; in urban areas too, 25.1 per cent of SCs worked as casual labour, as opposed to 13.4 per cent of the overall population.<sup>30</sup>

Today, caste lines have somewhat blurred in the social landscape of India, but caste remains a key determinant of a person's future. This is perfectly reflected in India's labour market, which is more governed by laws of social origin than by statutory legislation.<sup>31</sup> Moreover, violation of caste rules by Dalits seeking to break caste-related employment barriers is prone to severe punishment from dominant castes, including economic boycotts and even physical violence.

### 2.3.2 Scheduled Tribes (Adivasis)

NSSO statistics indicate that in 2009–10, 76.5 per cent of Scheduled Tribe (ST) households in rural areas were either landless or had less than 1 hectare of land.<sup>32</sup> The share of tribal households with small

and marginal landholdings has been steadily increasing over time. Studies have also shown that land under ownership of tribals is often informally occupied by non-tribals, and is, on average of, lower quality compared to land held by other backward classes.<sup>33</sup> Over time, the traditional non-monetized and self-sufficient economy Adivasis has gradually crumbled. Settled agriculture has brought with it its inevitable imperatives and linkages with credit, inputs and markets. Dependency on moneylenders has driven many Adivasis to seek jobs in urban areas or trapped them into forced labour arrangements.

Along with Dalits, Adivasis make up a substantial part of the workforce engaged in casual labour, in both rural and urban areas. Even among them, tribal communities are at times the most marginalized and destitute, undertaking the hardest work and getting paid the lowest wages. In the construction industry in Ahmedabad,<sup>34</sup> for instance, there is a preference for hiring tribal labour compared to local Dalits at *nakkas*, informal street places of recruitment where both groups compete for limited work opportunities. Dalits and workers of other castes often move up the value chain. Labour contractors of masons, painters, plumbers and electricians, are increasingly Dalits themselves. Adivasi workers, however, are rarely able to make this transition.<sup>35</sup>

The case of nomadic and de-notified tribes (DNTs), who number an estimated 60 million in India, is also worth highlighting here. The caste-



based Census has not identified DNTs as a separate category, and they are counted within the SC, ST and OBC communities. Finding recent and exact statistical data for this group is very difficult. However, in a survey carried out in western Maharashtra in 1990–92, it was found out that 53.75 per cent of DNT families were dependent on wage labour, 22.6 per cent on service (public and private sector), 9.59 per cent on petty trade, 9.22 per cent on so-called criminal activities like begging, pick-pocketing and distilling alcohol, and 4.81 per cent on agriculture.<sup>36</sup> DNTs are also employed as migrant bonded labourers in brick kilns, sugarcane and stone cutting industries.

### 2.3.3 Women

Table 4.1 highlights the extremely low participation of women in the labour force in India, compared to other groups. According to an ILO report of 2013, in terms of female labour market participation, India ranked 11<sup>th</sup> from the bottom out of 133 countries.<sup>37</sup> This dismal labour market participation number for women is subject to fierce debate, and a number of clear facilitating factors are highlighted below.<sup>38</sup>

First, women carry a greater weight of unpaid economic activities, within homes or as 'volunteers'; thus very often their economic contributions are simply not counted. Second, within remunerated work, they remain concentrated in areas of 'invisible' or unseen labour activities, like domestic work and home-based activities, which fall outside the scope of formal labour registration systems. Third, employment numbers in agriculture have been coming down and women have suffered disproportionately from this decline, since they comprise a significantly larger share of the agricultural workforce. Fourth, a considerable pay gap exists between men and women, in both the formal and informal sectors.<sup>39</sup> Fifth, the overall fall in women's employment in urban areas has been steepest among Dalit and Adivasi women, an indication of the linkages between women's social status and employment. Dalit and Adivasi women are concentrated in casual jobs with low pay, and are liable to drop out of the labour force because of extremely poor wages.<sup>40</sup> Sixth, labour and social security laws direct their protection and benefits towards male household heads, excluding women from equal access. These factors largely coincide

with general discriminatory attitudes and practices towards women, as well as their lower social status, leaving them highly vulnerable to exploitation, abuse and violence, including sexual harassment at the workplace.

The case of women engaged in home-based work is particularly instructive in highlighting the extensive involvement of women in labour markets, despite their absence from official statistics. The 66<sup>th</sup> round of the NSSO survey in 2009–10 estimated that 79.2 per cent of the non-agricultural female workforce in urban areas was employed in home-based work.<sup>41</sup> The rising trend in home-based work among women is also captured in a survey conducted by the Centre for Indian Trade Unions (CITU) in 2012–13, which studied the conditions of home-based workers in 49 towns of 10 states.<sup>42</sup> About 82.5 per cent of the 3,000 workers surveyed in this study were women. These figures are still likely to be an underestimation because many home-based workers do not report themselves as such, or are simply not counted. Of the sample in the CITU survey, 48 per cent identified poverty and economic crises as the main reasons for engaging in this type of work, which is undertaken alongside domestic and social responsibilities. The large majority of women involved in such home-based piece rate work come from the low-income groups of the working classes, but it is difficult to point towards the exact nature of social group involvement because of the erratic and disparate nature of the work.

### 2.3.4 Muslims

Table 4.2 shows that in 2009–10, only 30.4 per cent of the Muslim workers in urban areas were engaged in regular wage paying or salaried work, compared to 39.7 per cent of the total population.<sup>43</sup> Muslims with regular employment are mostly involved in inferior or low-end work, and as a result their job conditions are generally much worse than those of other regular workers, including Dalit and Adivasi workers. The work participation ratios of Muslim women are also very low, particularly in urban areas.

Data compiled by the Sachar Committee shows that overall only 5 per cent of employees in government departments, agencies and institutions were Muslims, which was much less than their 13.4

per cent share of the population. The proportion of Muslims was found to be only 3 per cent in the Indian Administrative Service (IAS), 1.8 per cent in the Indian Foreign Service (IFS) and 4 per cent in the Indian Police Service (IPS).<sup>44</sup> In urban areas, the proportion of Muslims engaged in self-employment is much higher than other groups.

Given the high concentration of Muslims in self-employment and the informal sector, access to adequate financing and credit is critical to ensuring sustainable livelihoods. For Muslims, access to bank credit remains highly inadequate. The aggregate amount lent to Muslims is generally much lower than their share of the population, and average loan sizes are also small compared with other social and religious categories. Such financial exclusion of Muslims has a major impact on their socio-economic condition.<sup>45</sup>

### **2.3.5 Persons with Disabilities**

Persons with disabilities see their employment opportunities structurally reduced due to incorrect perceptions about their capabilities as employees. The vast majority of disabled persons have no income from employment. There is hardly any reliable recent data on employment for persons with disabilities. Estimates from The 58<sup>th</sup> round of the NSSO, conducted in 2002, showed that only 26.3 per cent of disabled persons were engaged in economic activities,<sup>46</sup> saying nothing of the nature or conditions of their employment.

Even among persons with disabilities, there are those who are particularly disadvantaged. The proportion of employed among the mentally disabled was the lowest, at 5.6 per cent. The proportion of employed among disabled women was just 10.4 per cent.<sup>47</sup> In the absence of accessible social security, disabled persons, especially mentally disabled persons and disabled women, are often found to be totally destitute.

People with disabilities deserve better, and employers are unwittingly harming their own interests by not hiring them. A number of studies have revealed that people with disability are highly motivated and productive workers.<sup>48</sup> There is a strong business case for hiring people with disabilities, which sometimes requires employers

to invest in adapting workplaces to their needs. For this, subsidies are available, but the real gains come from rising productivity. This insight on potential productivity gains may finally help in the rapid filling of the 5 per cent employment quota mandated in public sector enterprises by the proposed Rights of Persons with Disabilities Bill, which the drawing of subsidies alone has thus far failed to do.<sup>49</sup>

### **2.3.6 Persons Living with HIV/AIDS**

An estimated 2.1 million people in India are living with HIV.<sup>50</sup> A job is generally associated with better quality of life, and active and productive engagement in society. The availability of effective Anti-Retroviral Therapy (ART) has had a profound impact on the ability of people with HIV to remain in employment. An ILO study estimates that adherence to ART is very high (more than 95 per cent) if a person is employed,<sup>51</sup> emphasizing how essential jobs are for HIV positive people. Work, almost literally, can save lives. A study by the Delhi State Aids Control Society, in collaboration with the ILO, at two ART centres in Delhi, however, revealed that almost half of all people living with HIV are unemployed. With no job and no source of income, people living with HIV are treated as a burden by the family. The study showed that 12 per cent of HIV positive people in the study were daily wage labourers, and 37 per cent were either in regular salaried employment or were self-employed.<sup>52</sup>

Disclosure of HIV status and fear of discrimination are major concerns for people who are employed or seeking employment. There are some fundamental legal and ethical principles guiding the employment of people living with HIV/AIDS.<sup>53</sup> One, there should be no mandatory testing for HIV, and health checks should be limited to regular fitness requirements. Two, when a person is HIV positive, the status must be kept confidential. Stigma and discrimination are the worst enemies of people living with HIV. An employer should never disclose the positive status of an employee. It is the choice and right of the individual whether or not to disclose HIV-related personal information. In practice, very few workplaces or occupations are actually touched by infection risks, although the main issue is one of behaviour, not occupation.

### 3. Instruments of Exclusion from 'Decent Work'

In a 1983 judgment, the Supreme Court reasoned, in strong social justice terms, that in addition to capital, workers also contributed to the amassing of national wealth:

*While the former invest only a part of their moneys the latter invest their sweat and toil; in fact, their life itself... they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital; they supply labour without which capital would be impotent.*<sup>54</sup>

However, with the advent of globalization, there has been a profound change in the discourse around the 'social contract', fuelled by concerns of businesses that public welfare and labour laws are harming economic growth. Production has to be cheap for companies to grow. The state has wholeheartedly sided with employers and investors to keep labour as cheap as possible and severely limit the application of labour protection laws. While employers get huge subsidies, incentives and regulatory exemptions, labour has been left to fend for itself. The exclusions in the labour market originate from this siege on the rule of law by employers. The strong social regulation of the labour market, based on caste, religion and gender, reinforces this siege.

The following instruments of exclusion, all contributing to lowering the cost of labour, are some of the ways in which labour is denied the enjoyment of decent work.

#### 3.1 Child Labour<sup>55</sup>

In order to survive, poor people are forced to seek refuge in working tactics that ultimately only worsen their outlook on a more hopeful future existence. Child labour is one of these tactics. Child labour is both a symptom and cause of poverty. Without education, the child's opportunity to rise on the ladder of upward social mobility is squandered. The vast majority of working children originate from socio-economically disadvantaged communities. The linkages between child labour, illiteracy and poverty are discussed in detail in the

chapter on exclusion from school education in this report.

Child labour figures in India are not reliable, and estimates vary. The government puts the number of working children in the five to 14 years age group at about 12 million,<sup>56</sup> but this relies on a very narrow definition of 'work', and also excludes children employed in the underground economy, thereby understating the true scale of this problem. As per unofficial estimates, the number of child labourers in India is as high as 60 million.<sup>57</sup> At the same time, it is known that adult under-employment is massive, underpinned, for instance, by the necessity to enact the NREGA. From an employment point of view, there is absolutely no necessity for any child to work. Each of them can be replaced by an adult worker.

Child labour is further proof of the total disdain by employers towards the law, and of a state condoning these violations on a large scale. A child in India is mandated to go to school from the age of six to 14, and a new Child Labour Bill, prohibiting child labour, has been in Parliament for two years now, an astoundingly long period.<sup>58</sup> Working children are not only deprived of their childhood and future, studies have also shown that in the long run, economic development of countries as a whole is substantially hindered by the persistence of child labour.<sup>59</sup> Socially, child labour is a disaster; economically, it is suicide.

#### 3.2 Worsening Terms of Employment

In the new labour market of the present day, employers hire the same employees, no longer on the basis of an employment relationship for a specified period of time, but to perform and complete a certain task. Workers are no longer being attached to an enterprise, but hired as individuals who themselves are considered 'entrepreneurs'.<sup>60</sup> They bring their own tools and, in fact, work at their own expense. Once the assigned task is accomplished, they get their fee for delivered services and move on to the next job. Their labour inputs are no longer part of an employment relationship between an employer and an employee, but part of a business contract between two different 'enterprises'.

The working poor have plenty of reasons to protest the new terms of employment that are

increasingly becoming the norm. Arriving at their workplace, many workers, especially migrants, find that their wages and employment terms are not what they expected to receive, or that they have been lured into jobs that do not exist. This practice of deception by recruiters is tantamount to trafficking, which is prohibited by law. Many workers pay a fee to recruiters in order to obtain a job, and end up in a situation in which their remuneration is much lower than expected, and which does not cover the payment of the fee.<sup>61</sup> As a result, workers have to work for longer periods or longer hours than foreseen. They cannot leave the workplace, as contractors will constantly remind them of their incurred debts; they become, in effect, bonded. To make sure workers do not leave their workplaces unexpectedly, recruiters and employers turn to violent practices to forcibly retain workers.<sup>62</sup> The cycle of exclusion closes in on itself when workers fall sick or get injured, leaving them unable to work. The costs of not working for someone already close to starvation levels of poverty are extremely high, and many are forced to take on debts for their treatment. The objective of this exploitation is the availability of an ultra-cheap labour force that is deprived of the freedom to choose the terms of its employment.

Shortened workweeks are another characteristic of the changing terms of employment in many industries with detrimental consequences for labourers. In the case of migrant workers, for example, contractors sometimes artificially diminish working time, to keep their working days outside the purview of legislation. They deliberately shift contract workers from one workplace to another, keeping workers unemployed for some time. Many workers in agriculture and the informal sector also face similar under-employment. Work is available intermittently and, even then, for only three or four days a week.

Even for the working poor employed in many traditional occupations, the worsening terms of employment are a reflection of the new realities of mechanization and the increasing role played by middlemen. The resulting pressures to keep labour costs low have made it virtually impossible for them to leverage their traditional crafts on fair terms that will ensure a secure livelihood. Primary research undertaken by one of the authors with the Bunkar (weaver) community in Barabanki

reveals a steady pauperization of the community in recent years, with most now reduced to daily-wage labourers who are completely dependent on middlemen and local traders.<sup>63</sup> There is high wage insecurity, payments are made by piece rate and any shock (illness, emergencies in family and resultant impact on pace of work) makes an irreparable dent in the family income. Weavers find themselves in a buyer's market, where weavers are many but demand for work is limited. That ensures that the traders and middlemen call the shots, and weavers are forced to take whatever terms are offered to them. Moreover, the traditional association of some communities with the craft of their ancestors (for example, the Ansari Muslim community in Barabanki with weaving) makes it difficult for them, despite their adverse conditions, to transition to alternative forms of livelihood.

### 3.3 Distress Labour Circulation

Millions of workers in India are migrant workers, circulating from place to place with no intention of settling down. They return to their native villages and towns once a job is completed or a working season comes to an end. No official data exists on such workers. The most reliable numbers put the estimate at somewhere between 30 and 50 million people.<sup>64</sup> Their freedom of movement from one state to another is guaranteed by the Constitution,<sup>65</sup> and monitored under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, India's least applied labour law. Under the act, both recruiters and workers moving between states must be registered. In reality, this only happens for a fraction of all migrating workers.<sup>66</sup>

There are several reasons why people are driven from their homes in search of work. First, in rural areas, employment in agriculture has come down significantly. Second, land redistribution was never successfully implemented in most parts of India, leaving many people from excluded groups land poor or landless. Third, there is a lack of employment opportunities in their place of residence. Employers also often prefer to hire migrant workers even where local labour is available. Migrant workers do not go home at the end of the day and can be called for work at any point in time during the day

or night. Since the vast majority of workers are hired through intermediaries, employers leave many responsibilities of managing the workforce to these intermediaries, who keep the workforce under their control.

The brick kiln sector in India is a perfect example of the employment of migrant labourers in highly exploitative labour arrangements.<sup>67</sup> Employing about 8 million persons, this sector complements work in the agricultural sector by providing seasonal employment in the agricultural lean season, from October to March every year. Most workers migrate from the poorer states to the relatively more developed ones.<sup>68</sup> States like Punjab attract about 1.4 million workers every year, and other major destinations include Andhra Pradesh, Uttar Pradesh and Gujarat. Typically, the industry works with migrant labourers, who look for assured work, as well as advances to meet the expenses at home, in the lean season. This is the gap that labour contractors fill, by providing advances varying from as little as ₹4,000 to as much as ₹40,000 per family, while employers extend these advances to the contractors directly.

The existence of the labour contractors in this arrangement ensures that the employer–employee relationship between the principal employer, in this case the brick kiln owner, and the worker, is never established. It is therefore unclear who is to be held accountable for the highly exploitative conditions under which these workers must make their living. There are no proper wage calculations, and advances are only settled by the contractor at

the end of the six-month period. In the interim, the migrant workers are completely dependent on the labour contractor, living in extremely harsh working conditions and under constant threat of violence. In most cases, children accompanying their parents also work at the kilns, which deprives them of school education.

### 3.4 Absence of State Protection

Labour standards in India continue to remain below internationally accepted norms, largely because they have failed to recognize changing labour market dynamics and adapt labour protection laws accordingly. There is a need for the state to recognize that modern labour markets work through a network of employment agencies and middlemen, often unregistered and unregulated. This leads to flagrant disregard for decent labour practices mandated by law, and problems with assigning accountability for offences.

When workers approach government labour authorities or the police to seek remedy against cheating, violence or lack of adherence to labour laws, the chances of them obtaining a solution are slim. While the provision exists for government-appointed labour inspectors to monitor working conditions and employment terms, available data indicates that the number of labour inspectors is insufficient to properly scrutinize working conditions in the diverse range of workplaces across the country.<sup>69</sup> As a result, labour inspectors mostly get into action only when complaints have been

**Table 4.3** Details on Labour Inspections and Violations of Labour Laws

Year	Number of Inspections	Number of Irregularities Detected	Number of Convictions	Conviction Rate (%)
2009–2010	48,899	3,80,184	7,300	1.92
2010–2011	43,816	4,01,151	14,433	3.60
2011–2012	41,081	3,53,813	12,736	3.60
2012–2013 (up to Dec 2012)	30,466	2,59,451	7,090	2.73

Source: 'Inspections Against Violations of Labour Laws', Lok Sabha Unstarred Question no. 4448, answered on 22 April 2013, Ministry of Labour and Employment.

filed, and largely operate in formally registered enterprises with an average workforce above a certain size. As shown in Table 4.3, in 2011–12, the office of the Chief Labour Commissioner and labour departments of the state governments conducted a total of only 41,081 labour inspections across the country, with an extremely low conviction rate for violations of labour laws.<sup>70</sup>

Inspectors are also frustrated by a lack of clarity about the exact scope of labour laws. Their assigned authority varies considerably, depending on the state or industry concerned. For instance, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is still not applicable in a number of states. The Business Process Outsourcing and Information Technology sectors are completely exempted from labour laws, but it is unclear why. The Micro, Small and Medium Enterprises Development Act, 2006 does not have a single section dealing with labour conditions. For workers, the difficulty in approaching labour inspection services comes on top of an employers' lobby. For workers, the difficulty in approaching external review of labour conditions in their workplaces.

Kamala Sankaran writes:

*For a fairly long time now, employers' organizations have been calling for doing away with the inspector raj; that is, the burdensome system of inspection carried out under innumerable labour and safety laws in India. For instance, it is reported that a factory in India is, on an average, subjected to 37 inspections from various inspectors representing different agencies. In line with the widespread feeling across industry that inspections are only a source of harassment and corruption, there is a consensus among employers that inspections by government departments should be rationalised and reduced.*<sup>71</sup>

As if the uncertainties surrounding the scope, meaning and enforcement of labour rights do not sufficiently work out to the advantage of employers, the state further facilitates opportunities for erosion of these rights, for example, through the creation of Special Economic Zones (SEZs). In

order to incentivize private investment, many state governments have modified labour laws in favour of employers operating units in these SEZs. These changes include the diminished likelihood of the application of labour laws, a lack of presence of trade unions and no visits by the labour inspectorate. In fact, data on working conditions in SEZs is neither available nor reliable, since employers are permitted to obtain reports from accredited agencies, rather than being subject to mandatory labour inspections by government authorities.<sup>72</sup> Till October 2011, the establishment of 583 SEZs had been formally approved, of which 143 were operational.<sup>73</sup> Direct employment in SEZs jumped from 135,000 in 2006 to almost 400,000 in 2009.<sup>74</sup>

This inability and unwillingness of the state to enforce labour laws is also mirrored in its poor record of implementing labour welfare measures. While special labour welfare boards have been created for workers in a number of industries, in practice, they exclude a large number of them. In the construction industry,<sup>75</sup> which employs over 30 million workers in India, only 12 per cent of construction workers were registered under the State Construction Welfare Boards, as of August 2011. There were no workers registered in 13 states and union territories, and less than 10 per cent were registered in another 11 states and UTs. Only three states did relatively well; 99 per cent, 75 per cent and 68 per cent workers are registered in Kerala, Tamil Nadu and Madhya Pradesh, respectively. Poor worker registration rates give rise to twin problems. First, workers do not receive due benefits under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and public schemes such as the Rashtriya Swasthya Bima Yojana (RSBY) that utilize the worker databases of the Welfare Boards. Second, the extent of problems among construction workers, such as injuries and accidents, is of an unknown magnitude. A large and increasing proportion of construction workers are also seasonal and/or interstate migrants, who are seldom registered by the Welfare Boards.

A preliminary conclusion of the situational analysis of India at work points to a state decreasing its services to workers, and retreating from its obligations towards enabling and protecting their access to working and public spaces. When authorities do act, it is often against the interest of

workers. Their slums are demolished in the name of public health risks or for beautification projects, and workers are resettled in faraway places where they are no longer eyesore to the middle class. These new remote places of living increase distances to labour opportunities and force workers to pay transportation costs they did not need to bear earlier. At the same time, access to other services like water, schooling and medical care further diminishes, compounding their feelings of being abandoned by society.

When workers do have the strength and opportunity to reinvent their professional lives, as street vendors, rickshaw pullers or waste pickers, they often find that public spaces are increasingly being marked as areas where it is illegal to do business. To continue their trade they pay bribes to the police, hoping they can thus enjoy their entrepreneurial 'freedom'. To them, the state is an obstacle, if not an enemy.

### 3.5 Sliding Judicial Scales

The government's concern has largely been directed towards the creation of a healthy operational climate for employers. Production has to be cheap for companies to grow. At present, faltering elements in a production process, like the lack of a steady electricity supply, transparent and simple investment rules and reliable infrastructure, make economic output unnecessarily expensive. To compensate for these potential losses, the government has chosen to side with business by keeping labour as cheap as possible, as seen earlier, through processes of casualization and exploitation. The government's lethargy towards labour, which is absolving employers from obligations that should otherwise be considered standard for doing business, is increasingly forcing workers to turn to the judiciary in their quest for justice.

However, judicial protection from labour law violations has been a mixed bag of accomplishments. Where workers are poor and largely illiterate, or semi-literate, access to any public body becomes problematic. Justice P. N. Bhagwati was one of the first to recognize this. He introduced an instrument called the Public Interest Litigation (PIL), which made it possible for members of the public to approach courts and seek judicial relief on behalf of persons or classes unable to do so 'by reason of

poverty or disability or socially or economically disadvantaged position'.<sup>76</sup> Since the introduction of PILs in 1979, the Supreme Court of India has become known for its judicial activism with famous cases like *Bandhua Mukti Morcha*,<sup>77</sup> *Vishaka*,<sup>78</sup> *Neeraja Chaudhary*,<sup>79</sup> or *the ASIAD Workers Case*<sup>80</sup> all of which saw decisions against intense and long-standing forms of labour exploitation.

In 2001, the landmark *SAIL* judgment changed all this.<sup>81</sup> It marked the beginning of a trend of courts undermining workers' entitlements and protection. The Supreme Court ruled that the Contract Labour Act of 1970 did not require the mandatory absorption of contract workers as 'permanent workers' after employment of long periods at the same workplace, where workers were often employed under different contractors.<sup>82</sup> In effect, this did not abolish contract labour, the stated aim of the act, but instead abolished entitlements protecting the secure employment of contract workers. Employers admit that the *SAIL* ruling allowed them to maintain a flexible workforce, which they attributed to constant restructuring demands caused by globalization. Contract labour also offered opportunities to duck payment of social security benefits. Since contract workers are mostly hired by employment agencies or middlemen, administrative costs related to labour management also came down.<sup>83</sup>

In 2006, the Supreme Court further ruled that casual and temporary workers could not seek regularization of their services, even after employment of more than 10 years.<sup>84</sup> In public sector companies, many workers were dismissed without the state making any efforts to reemploy them elsewhere. In another move, the Supreme Court reduced options for workers to receive back wages after dismissal, by shifting the burden of proof from employers to employees.<sup>85</sup> It also lamented the indiscipline of workers at the workplace,<sup>86</sup> while employers were not obliged to maintain any discipline by keeping written employment records that workers could produce as proof of receipt of wages.<sup>87</sup> The right to strike was restricted,<sup>88</sup> and it was not found necessary to consult with workers when companies were privatized.<sup>89</sup> In one case, a worker acquitted in a criminal trial was still compelled to prove his innocence once more before another court,<sup>90</sup> which goes against the solid legal principle that no one can be tried twice for the

same offence. Workers were no longer considered preferential creditors in case of insolvency of their employers,<sup>91</sup> and, most shocking of all, a worker who was illegally terminated was not entitled to reinstatement, leaving huge loopholes for employers to dismiss unwanted workers at random without fearing claims for reinstatement.<sup>92</sup>

While such judgments have made labour markets more flexible, allowing companies to adjust their needs of fluctuating demand, they have also led to an incremental destruction of workers' rights. Informalization and contractualization have been accepted as the reality of the globalizing world, without the necessary move towards guaranteeing decent working conditions for all, regardless of the terms of their engagement. Many of these judgments are at odds with the international labour standards of the ILO, which are supposed to apply equally to all workers.

### 3.6 Depressed Wages

The pillars of law meant to protect workers, at least in the formal sector, are increasingly becoming ineffective. The enforcement of these protections is also fraught with confusion and insecurity. For informal workers, laws do not even provide the required protection. It is no longer clear which workers fall within the scope of which labour laws, nor is it clear what the law actually means. Employers meanwhile enjoy the benefits of these legal loopholes. Attempts to undermine the application of laws, which are already under pressure by a labour regime of social determinants, 'means a capitulation to those already breaking them, which de-legitimizes the state.'<sup>93</sup> The labour law regime has evolved into a regime of pseudo laws.

The Minimum Wages Act, 1948 is one such case. Many workers claim they almost never receive minimum wages. Few workers get detailed wage slips indicating all the relevant data, while the rest have no legitimate proof of payment.<sup>94</sup> Again, the state itself has contributed to the questioning of this right to credible and legal payments, when it started a discussion arguing that beneficiaries of NREGA were not entitled to statutory minimum wages.<sup>95</sup>

The use of piece rate payments set at disputable 'schedules of rates' makes it difficult to calculate the value of remuneration, as opposed to if the work had been time-based. Production targets are high, and a single person cannot complete these tasks alone. Often, there are penalties for defaults and not meeting targets. As a result, family members are compelled to work as well, which further reduces the wages earned per person. Such low wages have stark consequences for the wellbeing of the families involved in this labour. Moreover, in the case of migrant workers, the culmination of assets in the hands of the same persons—meaning that employers are owners of shops and houses as well as wage providers—obliterates any wage increases, since rents and food and living expenses increase accordingly.

Other examples of wage-depressing practices include the employment of child labour or bonded labour, where payments are incomplete, insecure, irregular and late. In Tamil Nadu, young Dalit girls working in spinning mills under the 'dowry' system of *sumangali* receive no payment at all apart from some pocket money. They are only entitled to receive a lump sum payment once they complete their contract of three or five years, which varies from between ₹30,000 to 75,000. The calculation of their wages on a time-based output would result in much higher wage rates. In order to depress wages further, they are engaged as apprentices for the entire duration of the contract, though the genuine required apprenticeship period for such work is estimated to be only three months.<sup>96</sup> This is a general, deliberate practice by employers to save money. Workers' skills everywhere are incorrectly classified to facilitate this downward wage direction.

At *nakkas*, the first workers selected for a day job get the highest wages, because they look strong and able. The later it gets in the morning, the lower the wages offered to workers. When the worker is a migrant worker, the intermediary negotiating wages with the principal employer on behalf of workers will typically pocket part of the wage meant for the worker.

In the case of home-based work,<sup>97</sup> it is the home-based worker who subsidizes her employer and industry by bearing the infrastructural and attendant cost of production that would otherwise



accrue to a factory. This means that these workers bear the cost of the rented space used for production, the electricity and water needed, and the transport cost of the raw materials. However, their wages rarely reflect this additional burden on the employee. In addition, they have no access to any credit that could facilitate their work. The Janwadi Mahila Samiti survey of 2008–09 showed that most home-based workers (irrespective of the industries that they worked in) earned between ₹20–50 per day after five to eight hours of work. Payments for the work done are received intermittently, i.e., once a fortnight, or at best once a week. For this, the woman has to make several trips at her own cost. Similarly, in the research undertaken in Barabanki, Uttar Pradesh, weavers reportedly received monthly wages of as little as ₹2,500 a month for their labour.<sup>98</sup>

### 3.7 Hampering of Collective Action

While employers are firmly organized at all levels, in all sectors, four out of every five workers in India have no trade union membership.<sup>99</sup> In light of the prevailing terms of employment for workers this seems odd; after all, trade unions are the embodiment of 'defending and furthering the interests of workers'.<sup>100</sup> The Trade Union Act of 1926 requires a minimum membership of one-third or 100 workers in a workplace, whichever is less, but on paper any seven workers can still establish a union. Such liberal legal standards make the paradox of low union membership even more puzzling.

One reason behind the poor numbers of trade union membership is that the huge number of workers drifting from one state to another makes it difficult to pin them down at one specific workplace. This labour circulation has a profound impact on the capability of trade unions to organize workers. Access to trade unions is also limited in the case of home-based work, because of definitional issues, which deny both home-based workers and domestic workers the legal status of 'employee'. Moreover, their working environment is individualized, further hampering their capacity to unite or to set up co-operatives. In other cases, for instance in SEZs and factories operating under the *sumangali* system, workers generally stay on premises that are directly or indirectly controlled by employers.

Employers also do not shy away from intimidation, or even creating their own unions. These 'yellow unions' not only directly contravene the principles of international labour standards,<sup>101</sup> which state that workers' and employers' organizations shall not interfere in each other's affairs, but also amount to 'unfair labour practices' by employers.<sup>102</sup> In one case, an employer who had two unions in his factory, one of them a yellow union, did not shy away from diverting all union membership contributions to the union set up by the management.<sup>103</sup>

The state is complicit again, this time in keeping trade union membership down. Labour authorities simply refuse to register unions.<sup>104</sup> Registration of unions is not a legal requirement for their establishment, but a requirement for entering into collective agreements with employers. The law, however, does not lay down any processes and rules for employers to recognize unions for purposes of collective bargaining. As a result, less than 2 per cent of all workers in India are covered by the security of collective agreements.<sup>105</sup> The state also discourages the 'voice' of the workers by branding and labelling trade union activists as Maoist or Naxalite terrorist threats, quickly opening up avenues for prosecution under stringent anti-terror laws.<sup>106</sup>

### 3.8 Access to Government Schemes

The state has created the impression that it has taken an array of measures to alleviate employment insecurity and poverty by subsidizing workers with all kinds of welfare schemes. Scratching the surface of labour relations reveals that other state interventions are fully supportive of employers and the private sector, with the intended aim of spurring economic growth. Many of these measures go against the interest of workers.

This is also the case when potential beneficiaries try to get access to social security entitlements. One piece of social security covered by the Social Security Act, 2008 is the RSBY, which registers a maximum of five persons of any 'Below Poverty Line' (BPL) family for the purpose of hospitalization in both private and public hospitals. As of 31 March 2014, about 37 million cards have been issued, covering more than seven million hospitalization cases.<sup>107</sup> Initially, the information flow towards beneficiaries was weak, with many beneficiaries unaware of how to register or benefit from the

scheme. The BPL requirement implies that around 73 million households (out of a total of 227 million households) are entitled to benefits under the RSBY, but this does not take into account targeting errors, due to which many households are wrongly accorded BPL cards, and many households eligible for BPL status are unable to get it.

The intended beneficiaries of schemes such as the RSBY are primarily Dalits, Muslims and Adivasis.<sup>108</sup> The ability to master their own resources is already minimalized for these categories of citizens. As discussed earlier, only in very few instances does the state actually actively extend support to its citizens. Instead, citizens need to reach out to the government. Migrant workers face additional obstacles, even when they have permanently settled down elsewhere, because their social security entitlements are linked to their state of origin.

Declining employment opportunities leave many without sufficient work, while for others there is no work at all. Many workers remain poor despite the fact that they are working. Had the state enforced prerogatives mandated by labour and other laws, wages would never have reached such low levels. Workers' dependency on welfare schemes would decrease. Had the decisions of the Supreme Court relating to contract labour not been so generous towards employers, workers would have enjoyed greater levels of employment security.

This means that the state itself has allowed labour to be squeezed. At the same time, the state is trying to remedy these missteps by measures aimed at improving the lives of the working and non-working poor. Instead, as a result of these measures, employers are absolved from obligations towards labour. It is the state picking up the bill of employers' exoneration. Under current conditions, these welfare schemes consist of nothing but a compensation for low wages, allowing employers to maintain these low wages. In other words, the schemes it is the state that picks up the bill instead indirect subsidies to employers. The efforts seemingly targeting income distribution towards the poor are in fact serving employers, allowing them to keep their labour costs artificially low.

## 4. Consequences of Exclusion

The economic laws of demand and supply are clearly not protecting workers from a downward spiral towards social Darwinism, in which only the fittest will survive. It has been seen that a number of interrelated vulnerabilities of all kinds have already resulted in various and massive forms of contemporary slavery such as distress migration, exploitative contract labour, trafficking and forced labour.

The relevant question now, it seems, is no longer the classification of the forms and origins of labour exploitation, but the determination of the extent and degree of labour exploitation. In earlier sections, arguments have been put forward suggesting that the labour market in India is inherently prone to exclusion practices that make large quantities of people extremely vulnerable to a sliding path towards destitution. The excluded almost exclusively belong to the suppressed castes, religious minorities and tribal groups. Within these categories, women are perhaps the worst off. It has also been argued that the state has been colluding with the private sector in accordance with its faith in economic growth as the engine of the economy, leaving labour behind in a state of deprivation despite a number of responsibilities towards workers, summarized as decent work obligations. Every person counts and each individual is entitled to a life of dignity, and this cannot be achieved as long as workers have no access to decent working conditions.

### 4.1 Poverty

As discussed earlier, the boundaries between the organized and unorganized sectors are gradually disappearing. Informal employment is rising in the formal sector, as is the informality of the economy as a whole, and the formal and informal economies are firmly intertwined. The demise of the employment relationship is not a typically Indian phenomenon; the trend is worldwide. In his work, Guy Standing deals with this phenomenon of 'precarious work' in industrialized countries.<sup>109</sup> Like their counterparts in India, workers in Europe and the United States are increasingly engaged in

jobs without employment security. Nevertheless, their predicament is still as when compared to their precarious counterparts in the developing world, India included.

Although there is some dispute over the actual numbers, the ILO estimates that globally there are 870 million workers living with their families on less than US\$2 per person per day, the internationally agreed figure for poverty line. Of these, 400 million are living in extreme poverty, on less than US\$1.50 a day. A further 660 million workers are living just above the poverty line and are, in the current scenario of hyper-economic liberalization, at high risk of falling back below the poverty line.<sup>110</sup>

Estimations put the number of destitute persons in India at approximately 10 per cent of the total population, more than 100 million people. The same estimation projects that these 100 million form one-third of the extremely poor.<sup>111</sup> On the other hand, India counts 55 billionaires, representing a total net worth of US\$194 billion.<sup>112</sup> The continuing decline in decent work opportunities, in favour of more insecure forms of labour arrangements designed to depress labour costs, is a root cause of this large-scale poverty and accumulation of wealth in the hands of a privileged few. This situation is not tenable.

## 4.2 Dominance of Capital

The labour market in India is more socially organized than legally, with a strong overlap between caste and class. Persons from marginalized groups, particularly Dalits and Adivasis, form the bulk of the workforce at the bottom of the informal economy, as well as in the factories of the formal sector. This imbalance is recognized in India, and job reservations for these communities in the public sector are meant to correct such imbalances.

Instead of similar reservations in the private sector, companies' efforts to positively contribute to society have taken the form of what is commonly called Corporate Social Responsibility (CSR). However, it is important to acknowledge that 'social responsibility' can only follow when 'legal responsibilities' have been fulfilled. Earlier sections of this chapter discussed how labour laws are being widely circumvented, and how the corporate private sector greatly benefits from its cheap linkages to

suppliers in the informal economy. As long as production by these companies remains unethical, or worse, illegal, this by itself directly contributes to larger corporate profits. Instead of CSR, companies could opt for paying higher wages, which would not only reduce the need for their social charity, but also expand demand for their goods.

As always, the state is meekly following this paradoxical corporate choice and ever expanding it. The new Companies Act of 2013 requires that private sector companies spend at least 2 per cent of their profits on CSR-related activities.<sup>113</sup> For companies in the public sector, a similar rule was introduced earlier with the result that huge amount of funds are lying idle, since there are many strings attached to the utilization of these funds. From a worker's point of view, it would be more effective to abolish CSR and start respecting the legal requirements first. In this case, CSR could become a true responsibility for only those companies having the moral courage to respect rights at work.

However, workers are scarcely represented in the various political fora in which such decisions are made, which are the monopoly of the owners of capital. With the undermining of union activity and the establishment of parallel yellow unions that have been co-opted by the owners of capital, their voice is being further marginalized, even at the level of the workplace.

## 4.3 Alienation

Where the state has acted, it has done so at odds with the interests of workers. This happens, for instance, when street vendors, rickshaw drivers, hawkers and beggars are chased away from public spaces, and their merchandise or earnings are confiscated. This also happens when unions are not registered, or when employers are allowed to suppress and intimidate their workers. It happens when social security is refused due to the extensive discretionary powers of officials, and citizens and workers at the bottom of society start to think that they are simply not wanted as citizens. They become alienated from society.

These feelings of alienation can occur at different times in people's lives. Workers with formal jobs enjoy a certain status in life. Their jobs are secure, their payments are sufficient to maintain a family,

send their children to school, live in a decent house and keep aside time for leisure. To them it would come as a shock if they were dismissed. With no longer-term unemployment security, their income would drop drastically, suddenly making all aspects of life insecure. To the outside world it would be obvious that this person no longer belonged to a privileged class of secure workers, and the drop in status would fuel feelings of frustration and insecurity.

This alienation can also happen when slums are torn down, or when people are evicted from (semi-) public spaces for beautification or other purposes. In other instances, male migrant workers leave behind their families, with the hopes of family members in want of their remittances fixed upon them. High costs of living in towns and cities, however, reduce remittances. When they fail to live up to these expectations, workers may turn to petty criminal behaviour or run away, leaving behind broken families with reduced income. Saving some money is out of the question as every penny is invested in the hope of getting at least one square meal every few days. With no money for rent, housing conditions constantly deteriorate until one possesses nothing but some plastic sheets covering branches or abandoned pieces of wood. Fuel is expensive as well. Poor health resulting from this poverty shortens life spans. If under these conditions the state is absent, alienation is complete. Categories of people are created who are considered a burden. People once labelled as 'paupers' are now termed 'disposable people',<sup>114</sup> 'nowhere people',<sup>115</sup> 'surplus people'<sup>116</sup> or 'labour surplus'.<sup>117</sup>

#### 4.4 Commodification of Human Relations

Humans are not humans if they have no survival strategy to overcome extreme exclusion and deep poverty. Once these factors make a person destitute, unable to survive without help from outside, new survival mechanisms kick in, which come at a heavy price. People are forced to scramble daily for every morsel of food to survive, which, at the same time, is widely and easily available to others. The will to survive is inherent in every human being, but the means to succeed in overcoming destitution become desperate. Some turn to criminal behaviour

as a last resort, while some are forced to sell their bodies. Many become addicted to alcohol or other substances.

Under these conditions of sheer survival, people no longer look at each other as fellow human beings, but as objects of income. Parents push their children into begging not because they do not love their children or are indifferent to them, but simply because they can no longer afford to admit to feelings of human compassion. The child must bring some money back and is perceived as a vehicle capable of earning an income. For the ultra-poor in India, this commodification of human relations is not a far-fetched story, but a mechanism of brute survival.<sup>118</sup> The cruelty, in fact, lies with society at large and with the state, which allows this to happen.

#### 4.5 Revival of Labour Agitation

Labour in India is not passive, however. India has a longstanding history of labour rising against injustice, a trend that has its roots in the anti-colonial freedom movement, and is praised for its contribution towards the achievement of independence. In fact, one of the main characteristics of public sector enterprises in the pre-liberalization period was their high degree of unionization, especially after the legalization of trade unions took place in 1926. Labour unrest was not confined to industries only. In Bardoli in Gujarat, landowning castes joined the freedom movement in the 1930s to fight against imposed colonial land taxes. This also reverberated towards land poor and landless Dalit and Adivasi workers, who demanded an end to demeaning forms of traditional debt bondage, which kept rural workers under virtual slavery for the entire duration of their lives.

In what is now being deplored as the 'dualist' economy of India—a small organized and formal sector, where rights are being upheld on the one hand, against a huge lawless unorganized economy on the other, one must keep in mind that the protective net of labour laws in public companies was the result of a labour struggle that lasted for many decades.

Today's labour actions must be seen in light of more localized struggles. Strategies vary, but by

making use of modern communication technology, leaders from various areas are closely in touch with each other, and regularly share information about the results of their labour actions. Localized, thus, does not mean isolated, because exploitation is everywhere.

In 2012, around 5,000 workers, mostly from Orissa, went on strike in the brick kilns of Dundigal in Andhra Pradesh.<sup>119</sup> Supported by public meetings and petitioning of the Labour Department, the efforts of the small unions paid off. Wages of some categories of workers went up by 30 per cent, in some cases reaching the level of statutory minimum wages. In addition to this action at the destination area, the unions also mobilized workers at their areas of origin, from where they were recruited. Apart from higher wages, workers also demanded an end to the feudal set-up of bondage. In this respect, it is alarming to note that for many workers, bonded labour practices from the days of Bardoli<sup>120</sup> are still continuing today in parts of the country.

In the spinning mills of Tamil Nadu, trade unions have opted for an alternative strategy to fight bondage, because entry into the mills is virtually impossible. Relying on petitions filed before the Madras High Court, they have demanded investigation by the labour authorities of complaints regarding bonded and child labour in the mills.<sup>120</sup> However, for legal action to become effective, much depends on the willingness of bureaucrats to actually start proceedings against factory owners.

Perhaps these recent events of collective action, combined with the passive attitude of authorities towards taking action against labour exploitation, has, since 2008, resulted in an increase in trade union membership. The national trade union federations, which have their roots in the public sector, now show data that goes against the popular belief that trade unions are something of the past.<sup>121</sup>

Despite severe sanctions following labour resistance, the individualization within workplaces and a high likelihood of the state coming down heavily on workers to maintain labour discipline, workers in the unorganized economy do not remain passive. Individual workers do seek recourse against unfree employment, and as a last resort deploy what are called 'weapons of

the weak'.<sup>122</sup> Breman lists the various strategies: 'covert resistance includes inertia, feigned lack of understanding, foot dragging, avoidance, withdrawal, sabotage, loitering and shirking, obstruction, and other weapons of the weak before it flares up in overt confrontation'.<sup>123</sup> Others do not hesitate to leave without proper notice. These forms of labour resistance give workers a negative reputation, but are also proof of their attempts to maintain a minimum degree of dignity.

## 5. Recommendations

Under its mandate of providing 'decent work' to all its citizens, the state has three major responsibilities: to stimulate job growth, uphold rights at work and put minimum social security in place. The government's performance in all three areas has been extremely poor. India's labour market is predominantly socially organized, in which equality is not a relevant concept. Labour laws form a regime of pseudo-laws and subsequently the poor have no power. In case the state remains absent, and does not correct the distribution of wealth, which is also generated by labour, the risk of rising social Darwinism is genuine.<sup>124</sup>

At an international level, a movement is under way to either make unacceptable work acceptable or prohibit it completely. The idea of 'unacceptable forms of work' is the anti-thesis of decent work. It not only implies the violation of any of the fundamental principles of the Right to Work, but it comprises additionally any form of work that harms the physical integrity of a worker (related to working conditions), the dignity of a worker (related to employment terms and job security) and the degree of powerlessness of workers (related to lack of remedies and coercion).

### 5.1 Enacting Fresh Regulation

The need of the hour is an entirely new labour law covering all workers irrespective of their contractual nature, sector or workplace. This 'omnibus law' must protect all workers against the violation of fundamental rights at work; do away with child labour and forced labour; protect against discrimination at the workplace; and promote trade union membership and collective bargaining. It must guarantee workers' equality before the

law. Hiring and firing can be flexible, in line with today's labour market requirements, but only if lapses of employment security are compensated for by an effective system of social security accessible to all. The wording of the law should be simple and accessible. It must have clear-cut provisions for wage payment, the fixing of wage levels, working hours and working conditions.

## 5.2 Putting an End to Violence

Many workplaces are marred by various forms of violence. Women garment workers at a public hearing in Bangalore in November 2012 reported that there is a pattern of systematic punishment and humiliation at the work floor. It takes on gendered forms, including outright sexual harassment through frequent verbal abuse and unwanted physical touch. Men were beaten for raising questions, women had pieces of cloth thrown at them. A woman worker was made to stand for hours outside the factory gates for being five minutes late.<sup>125</sup> Along with high levels of exploitation and forms of under-payment, the systematic and everyday forms in which workers could be subjected to constant punishment and humiliation were starkly visible.

Other reports claim incarceration of workers, the posting of thugs at factory entries, and casteist verbal and physical abuses. In another instance, a man's hand was chopped off merely for asking for payment of back wages.<sup>126</sup> It is quite astonishing that such acts of violence are not prosecuted under criminal laws. It seems that workplaces provide shelter for acts of violence that would normally lead to some form of punishment by the state if committed elsewhere. Workplace-related violence is not limited to workers alone. Researchers and auditors, including prominent persons like Jean Dreze, Shantha Sinha<sup>127</sup> and Aruna Roy,<sup>128</sup> have faced officers employers and local government officers who feared the research and audit results. Workplaces are often more impregnable than prisons. The high degree of impunity for perpetrators of violence, combined with the structural inequality between the informal workforce and their bosses, forms a fatal fusion of social and economic stagnancy.

## 5.3 Producing Reliable Data

The lack of data is a tool of exclusion in itself. Official estimates for the unemployment rate child and bonded labour, the extent of labour circulation, home-based work, domestic workers, and manual scavengers are obtained largely through informed guesswork. It is clear that official government numbers must be taken with a pinch of salt.

In academic circles, the numbers produced by the National Commission on Enterprises in the Unorganized Sector (NCEUS) are generally considered sound and reliable. The facts revealed by the NCEUS were of such shocking nature that the state saw no other option than to shove the report into a drawer. Regressive steps initiated by the state itself, in relation to the benchmarking of BPL levels and non-payment of minimum wages for NREGA beneficiaries, show the need for accurate data produced by independent and objective research institutions.

## 5.4 Facilitating Organization

Employers are firmly organized at all levels, while the unionization of workers exists for small sections only. It has been demonstrated why union membership is virtually unavailable to many informally employed workers, reducing their collective bargaining power to near zero. This is particularly true of migrant workers. Co-option of trade unions by employers, by setting up yellow unions, is a clear 'unfair labour practice' and is not to be tolerated. The state has a duty to register unions objectively without invoking excessive discretionary powers. Mandatory recognition by employers of registered trade unions must be regulated. As a result, workers will know beforehand what kind of entitlements they can expect. This will reduce opportunities for employers to divide the workforce by providing different employment terms to similar categories of workers. Alternative strategies promoting forms of workers' organization, such as Self-Help Groups (SHGs), co-operatives and even production groups, must be more vigorously pursued.

## 5.5 Closer Monitoring of Contracting Agencies and Protection of Contract Labour

At the national level, registration of contracting agencies should be made mandatory. Better implementation, it is important to remember, does not only imply the registration of contractors, but also the registration of workers by employers. For this, written contracts are essential, signed by both workers and employers. Currently, the practice is to have no contract at all. Some sign appointment letters that are not shared with them, which makes it impossible for workers to know their terms of employment. A worker must also know beforehand whether it is the contractor or the principal employer who is responsible for respecting the terms of employment. The licensing of labour contractors is critical for ensuring that workers can migrate safely, with their movements monitored.

It is equally important to digitize the data of contractors and workers, and share it across source and destination states, to improve interstate and intrastate co-ordination. Once workers see the benefits of such co-ordination through better wages, improved working conditions and better access to government schemes, registration can increase rapidly. Unions have a large role to play in this process, and this is a unique opportunity to broaden and enlarge their membership. It may also encourage direct contracts between employers and workers, pushing out middlemen and opening avenues for a transparent tripartite mechanism for recruitment and placement of workers.

The key to ending discrimination of contract workers is assigning responsibility for maintaining decent work conditions. To accomplish this, the example of the ILO Maritime Labour Convention<sup>129</sup> created a clear precedent. In this Convention, it is stated that whatever the degree of sub-contracting taking place on ships, 'the employment contract should always and exclusively be signed by the ship owner on behalf of the employer, contractor or sub-contractor. In other words, for any labour violation, the ship owner is directly responsible and liable. If the ILO has been able to create tripartite consensus on a global scale, covering every seafarer in the world, it should not be difficult to apply such legislation to all working relationships in India. If capitalism wants to become more responsible, and

there are signs from various corners that many actors want to make employment relations a more equitable affair, they must accept a higher degree of shared responsibilities throughout the production chain.

## 5.6 Increasing Wage Levels

Jobs do not guarantee a living wage. More than a quarter of the working population earns less than the controversially defined official poverty line. At the same time, inequality in income and inequality has risen dramatically since India's liberalization in the early 1990s. Tremendous wealth has been created but has not been distributed fairly. This calls for a structural correction. For instance, the Asian Floor Wage Alliance, set up in 2005, is campaigning to correct wage levels and ensure a steady source of sufficient income for workers.<sup>130</sup> This campaign is limited to the garment industry, largely motivated by the buying practices of highly profitable transnational companies.

In 1948, a tripartite Committee on Fair Wages was appointed in India. The time has come to repeat this feature. It must take into account rising costs of living and expected inflation levels. More importantly, fair wages must be established through dialogue between all stakeholders, achieving consensus on wage levels. The consensus will promote long-term and peaceful relations between capital and labour, as epitomized by the idea of a 'social contract'. Respect for payment of wages should also take into account the earlier described numerous exclusory tricks regarding wage payments.

## 5.7 Generating More Employment

The state needs to have an active policy towards absorbing the workforce leaving agriculture into suitable alternative jobs. This involves supporting a combination of skill development and vocational training through initiatives like The National Skills Development Mission and building the requisite infrastructure that would support the creation of formal-sector jobs in rural areas. For example, employment exchanges can be created to match the jobs created with those looking for work.

Specific support is also necessary to ensure better working and living conditions for excluded

groups in occupations that are marginalized or undignified. Examples include government programmes to support self-employment of weavers, access to credit and training for home-based workers, support for SHGs and co-operatives, and the absorption of bonded labour and manual scavengers into alternative economic activities.

The reservation policy is an instrument of job security for many Dalits and Adivasis, but certainly not an instrument promoting the upward social mobility of these groups. Most jobs created under reservation are low-valued jobs, for which little skills or education are required. Downsizing of staff in the public sector has diminished employment opportunities for Dalits and Adivasis. To compensate for this loss of job opportunities, the Dalit community, in particular, is calling for similar job reservations in the private sector.<sup>131</sup> This call for reservation in the private sector is not about numbers. The demand for reservations is more related to quality employment for Dalits. Ashwini Deshpande writes that 'in the last two decades of liberalization and globalization of the Indian economy, there seems to be scant evidence of a break in patterns of caste inequalities'.<sup>132</sup>

## 5.8 Providing Social Protection for All

Most unorganized sector workers are still not covered under existing social security measures. Various schemes remain under-utilized as the intended beneficiaries often lack the agency or ability to access these schemes by themselves. For example, the National Old Age Pension Scheme (NOAPS), implemented by the Ministry of Rural Development for persons above 65 years from BPL households, aims to provide at least ₹200 a month to each beneficiary. As of December 2012, this scheme was availed of by only 22.3 million beneficiaries.<sup>133</sup> As per the Census of 2011, there were about 103.9 million aged persons (60 years or above) in India.<sup>134</sup> The lesson here is that the state must play an active role in providing entitlements to the intended beneficiaries, enabling the process through better scheme design.

The state should also use interventions for providing other basic services to the poor. Strengthening service delivery through service

providers would help slash the conditional barriers blocking access to social security measures. Such structures already exist, for instance, in the form of Accredited Social Health Activist (ASHA) workers and *Anganwadis* that are helping the excluded get access to the national health system. Payments to service providers could be made through an NREGA-like policy.

Through the provision of universal social protection, all workers must, at the minimum, have access to pensions, unemployment insurance and health insurance. Universal coverage could imply that some people would take advantage of social security even if their level of income did not merit this access. This 'leakage' to undeserving beneficiaries, however, will be less expensive than the administration of a system cemented with accessibility conditions.

The non-working poor groups require special mention here, reliant as they are on social security. A perceived weakness of the decent work concept is the perception that it only defends working people. Non-working people, even when they perform some work with or without remuneration for purposes of sheer survival, must have the same entitlements to decent work as working people. This coincides largely with the demands made for universal social security systems.

## 5.9 Ending the Culture of Denial

Bonded labour, child labour and manual scavenging continue to thrive in many regions, despite official denial. Concurrently, there is an equally urgent need for recognizing and regulating the specific nature of particularly vulnerable occupations and protecting those engaged in these occupations. A strong labour law, while beneficial in promoting labour standards across the board, will not, for example, be able to address the need for the social and financial rehabilitation required for freed bonded labour. While new legislation—protecting, and the proposed amendments to the 'existing legislation on child labour make one hopeful that conditions for those employed on these terms are set to improve, the fact remains that implementation has been weak, and state neglect continues to hamper any real progress on these fronts.



## 6. United We Stand—The Role of Civil Society

Non-Governmental Organizations (NGOs) have also greatly aided government efforts in providing services and social security to excluded workers' groups. Some examples of such initiatives are the Action for Community Organization, Rehabilitation and Development (ACCORD), the Association for Sarva Seva Farms (ASSEFA) and the Society for Promotion of Area Resource Centres (SPARC). Discussing the success of the insurance scheme run by the Self-Employed Women Association (SEWA), Sharad Singh and Meraj Ashraf observe that to, be effective, social security schemes for the unorganized sector should be locally managed and controlled, and they are only viable when they are need-based and integrated with the economic activities of local people. In the case of SEWA, they observe that if poor people are supported through capacity building and the necessary linkages are provided with their own economic activities, the chances of success of such social security efforts increase significantly. Further, they say that it is not only necessary to find new social security programmes, but also new social security organizations to run them.<sup>135</sup>

To make a difference, NGOs must not operate in isolation and must broaden their perspectives. In February 2014, for example, representatives from 80 NGOs, trade unions, alliances of organizations and social movements working with people dependent on the informal economy drafted a Working People's Charter. Their demands for social security included:

- Old-age pension and health benefits along with employer liability; contribution towards a

provident fund; compensation for workplace-related injuries and hazards, pension and gratuity; maternity benefits and crèche facilities.

- Expansion of the Employees State Insurance scheme to all in the informal sector;
- Set aside 3 per cent of the total annual revenue of the central government to form a recurring welfare fund for unorganized sector workers who are currently not covered;
- Ensure registration and recognition of all workers under the tripartite welfare board;
- On closure of a company, first charge of a portion of its assets to be used for workers' compensation and rehabilitation;
- Host-state welfare schemes to be open to interstate migrant workers;
- Ensure compensatory allowances for disabled communities to help them function at the workspace;
- Right of protection to those unable to work, for example the very young, elderly, ill, and, those with severe disabilities;
- State to ensure employment and provide skills training to the youth of working families;
- The Right to Housing.

In addition to social security expansion, the charter addressed the right to organize, security of tenure, right to livelihood and decent work, enforcement of minimum wages, better conditions at work, stronger labour legislation and adherence to labour conventions.

## Notes and References

1. Quote commonly attributed to Cato the Elder, a Roman statesman (234–149 B.C).
2. The ILO is the specialized labour agency of the United Nations promoting social justice in the world of work. It currently has 185 member countries. Within the ILO, trade unions and employers' organizations operate on equal footing with governments. The organization was founded in 1919.
3. Amartya Sen (2013), 'Why India Trails China', *The New York Times*, 19 June 2013, <http://www.nytimes.com/2013/06/20/opinion/why-india-trails-china.html> (accessed 11 May 2014).
4. Government of India (2010), *Annual Report to the People on Employment*, New Delhi: Ministry of

- Labour and Employment, p. 1.
5. Emphasis added. International Labour Organization, Article 1.1, *Employment Policy Convention*, 1964, no. 122. While a National Employment Policy in India has been stuck in draft form for many years now, the obligation arising from the ILO Employment Policy Convention will require the declaration of an employment policy sooner rather than later.
  6. For the purpose of this chapter, the term 'employment' should be considered in the broadest sense of its meaning. It includes any form of livelihood whether in agriculture, rural areas or the unorganized sector. It also includes anyone looking for remuneration in return for work, irrespective of gender or age.
  7. Brajesh Jha (2006), *Employment, Wages and Productivity in Indian Agriculture*, New Delhi: Institute of Economic Growth.
  8. Trilok S. Papola and Partha P. Sahu (2012), *Growth and Structure of Employment in India: Long-Term and Post-Reform Performance and the Emerging Challenge*, New Delhi: Institute for Studies in Industrial Development.
  9. International Labour Organization (2013), *Global Employment Trends 2013: Recovering from a Second Jobs Dip*, Geneva: ILO: (Henceforth shortened reference to International Labour Organization is ILO.)
  10. Papola and Sahu (2012), *Growth and Structure of Employment in India*.
  11. 'India Needs to Create 15 million Jobs Annually: Pitroda', *The Indian Express*, 23 March 2013, <http://archive.indianexpress.com/news/india-needs-to-create-15-million-jobs-annually-pitroda/1092411> (accessed 11 May 2014).
  12. Ashok Kotwal, Bharat Ramaswami and Wilima Wadhwa (2010), *Economic Liberalization and Indian Economic Growth: What's the Evidence?*, New Delhi: Indian Statistical Institute.
  13. Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), adopted at the 26<sup>th</sup> session of the ILO, Philadelphia, 10 May 1944. The Declaration of Philadelphia was subsequently annexed to the ILO Constitution in 1946.
  14. Article 19, *The Constitution of India*, 1950.
  15. Some of these separate laws, without being exhaustive, exist for *bidi* workers, nurses, construction workers, people working in mining, sewage workers and manual scavengers, the last being an economic activity that is prohibited.
  16. The practice of bonded labour was outlawed under the Bonded Labour System (Abolition) Act, 1976. The Criminal Law (Amendment) Act, 2013 amended the India Penal Code (IPC) to prohibit the trafficking of persons for exploitation, under sections 370 and 370A of the IPC. For a detailed review of anti-trafficking provisions in India, see Prabha Kotiswaran (2013), 'A Battle Half-Won', *Economic and Political Weekly*, vol. 47, no. 17.
  17. The Equal Remuneration Act, 1976 is one of the least applied laws in the country, despite a huge pay gap between men and women for work of similar nature.
  18. The Sexual Harassment of Women at Workplace Act, 2013.
  19. A bill to amend the Child Labour (Prohibition and Regulation) Act, 1986 was introduced in the Indian Parliament on 4 December 2012, but is yet to be passed. The amended law respects the ILO child labour conventions, which have not been ratified by India, one of the very few countries to not do so. It entails a blanket prohibition of child labour for children younger than 14, and prohibits hazardous work by children younger than 18 years of age. The Bonded Labour System (Abolition) Act, 1976 has been subject to many revision attempts to cover other forms of forced labour, most recently by the National Advisory Council, without result.
  20. An estimated 2,700 welfare schemes are currently operational in India.
  21. National Commission for Enterprises in the Unorganized Sector (2009), *The Challenge of Employment in India: An Informal Economy Perspective*, New Delhi: NCEUS.
  22. National Sample Survey Organization (2013), 'Key Indicators of Employment and Unemployment in India 2011-12', *NSS 68<sup>th</sup> Round (2011-12)*, New Delhi: Ministry of Statistics and Programme Implementation (MoSPI). As per the report, the total labour force of India is 483.7 million. (Henceforth shortened reference for National Sample Survey Organization is NSSO; shortened reference for Ministry of Statistics and Programme Implementation is MoSPI)
  23. National Commission for Enterprises in the Unorganized Sector (2007), *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, New Delhi: NCEUS.
  24. Papola and Sahu (2012), *Growth and Structure of Employment in India*.
  25. For instance, the percentage of contract work in organized manufacturing industries rose from 13.5 per cent in 1990 to 34 per cent in 2011. See Institute for Human Development (2014), *India Labour and Employment Report 2014*, New Delhi: Academic Foundation, p. 58.

26. NSSO (2013), 'Key Indicators of Employment and Unemployment in India 2011–12'; and NSSO (2012), 'Employment and Unemployment Situation among Social Groups in India', *NSS 66th Round (2009–10)*, New Delhi: MoSPI.
27. Government of India (2011), *Situation Analysis of the Elderly in India*, New Delhi: MoSPI.
28. Bhimrao Ramji Ambedkar (1891–1956), was a jurist, thinker, writer and social revolutionary, and the main drafter of the Constitution of India. He is widely revered for his political stature and leadership of the Dalit movement in India. See B. R. Ambedkar ([1936] 2014), *Annihilation of Caste*, New Delhi: Navayana.
29. NSSO (2012), 'Employment and Unemployment Situation among Social Groups in India'.
30. Ibid.
31. For an excellent portrayal of the labour market's organization along caste lines, see Kaveri Gill (2009), *Of Poverty and Plastic*, New Delhi: Oxford University Press.
32. NSSO (2012), 'Employment and Unemployment Situation among Social Groups in India'.
33. T. Haque (2010), 'Improving the Rural Poor's Access to Land in India', *Working Paper for the Governance Knowledge Centre*, Department of Administrative Reforms and Public Grievances, Government of India, <http://indiagovernance.gov.in/files/improving-rural-poor-access-to-land-t-haque.pdf> (accessed 15 May 2014).
34. Inputs from the case study on the Construction Sector prepared for this chapter.
35. India has ratified ILO Convention no. 107 on Tribal and Indigenous Populations, 1957. Although outdated and subsequently replaced by ILO Convention no. 169 on Tribal and Indigenous Peoples, 1989, the Convention of 1957 remains in force in India. Both conventions promote equal opportunities and non-discrimination of indigenous peoples, but Convention no. 107 is worded in archaic integrationist parlance.
36. Laxman Mane (1997), quoted in Milind Bokil (2002), 'De-notified and Nomadic Tribes', *Economic and Political Weekly*, vol. 37, no. 2.
37. ILO (2013), *Global Employment Trends 2013*.
38. The following paragraph is based on inputs from Santosh Mehrotra, Partha Saha, Ankita Gandhi, Kamala Devi and Sharmistha Sinha (2013), *Low Female Employment in a Period of High Growth: Insights from Primary Survey in Uttar Pradesh and Gujarat*, New Delhi: Institute of Applied Manpower Research.
39. According to calculations on the broader household survey data for 2004–05, male casual workers employed in the formal sector earned on average Rs 73 per day, whereas male casual workers employed in the informal sector earned on average Rs 51.3 per day. For female casual workers, these amounts were Rs 47.4 and Rs 32.4, respectively, indicating a gender pay gap of 35 per cent and 37 per cent, respectively. See NCEUS (2009), *The Challenge of Employment in India*.
40. In 2009–10, just 5.8 per cent of women from dominant castes were engaged in casual labour in urban areas, while the corresponding figures for Dalit and Adivasi women were 31.5 per cent and 35.5 per cent, respectively. See Neetha N. (2013), 'Inequalities Reinforced? Social Groups, Gender and Employment', *Occasional Papers*, no. 59, New Delhi: Centre for Women's Development Studies.
41. NSSO (2012), 'Home-Based Workers in India', *NSS 66th Round (2009–10)*, New Delhi: MoSPI.
42. Inputs from the case study on home-based workers prepared for this chapter.
43. NSSO (2013), 'Employment and Unemployment Situation among Major Religious Groups in India', *NSS 66th Round (2009–10)*, New Delhi: MoSPI.
44. Government of India (2006), *Social, Economic and Educational Status of the Muslim Community of India*, New Delhi: Prime Minister's High Level Committee, Cabinet Secretariat, also referred to as the Sachar Committee Report.
45. Government of India (2012), 'Annexure IX – Dissent Note by Harsh Mander', *Report of the Expert Group to Recommend the Detailed Methodology for Identification of Families Living Below Poverty Line in Urban Areas*, New Delhi: Planning Commission of India.
46. NSSO(2003), 'Disabled Persons in India', *NSS 58th Round (2002)*, New Delhi: MoSPI.
47. Ibid.
48. For an overview of literature, visit 'Enable India' at [http://enable-india.org/new/index.php?option=com\\_content&view=article&id=10&Itemid=18](http://enable-india.org/new/index.php?option=com_content&view=article&id=10&Itemid=18) (accessed 26 April 2014).
49. The bill, introduced in parliament on 7 February 2013, is currently pending. Activists and lawyers however allege the bill does not meet the standards prescribed under the UN Convention on the Rights of Persons with Disabilities (UNCRPD).
50. Government of India (2013), *Annual Report 2012–13*, New Delhi: Department of AIDS Control, Ministry of Health and Family Welfare.

51. ILO (2013), *The Impact of Employment on HIV Treatment Adherence*, Geneva: ILO.
52. 'Basics of HIV', presentation by Dr A. K. Gupta, Additional Project Director, Delhi State AIDS Control Society, [http://delhisacs.org/training\\_material/TOTFILES/BHAE/basics\\_hivr\\_revised.ppt](http://delhisacs.org/training_material/TOTFILES/BHAE/basics_hivr_revised.ppt) (accessed 14 May 2014).
53. Also see the Recommendation concerning HIV and AIDS and the World of Work—International Labour Organization, *HIV and AIDS Recommendation*, 2010, no. 200, and the ILO Code of Practice on HIV/AIDS and the World of Work. In 2009, India adopted a 'National Policy on HIV/AIDS in the World of Work' based on the principle of the ILO Code of Practice on HIV/AIDS and the World of Work. It provides guidelines for implementing workplace interventions applicable in both the formal and informal economy.
54. *National Textile Workers v. P. R. Ramakrishnan and Ors.* (1983), 1 SCC 228, pp. 926–27.
55. Bonded labour originates from the same exclusion practices and is discussed in a separate chapter of this report.
56. 'State-wise Distribution of Working Children According to 1971, 1981, 1991 and 2001 Census in the Age Group 5–14 Years', <http://labour.gov.in/upload/uploadfiles/files/Divisions/childlabour/Census1971to2001.pdf> (accessed 15 May 2014).
57. 'Children in India—The Statistics', [www.friendsosbt.org/statistics](http://www.friendsosbt.org/statistics) (accessed 15 May 2014).
58. The current Child Labour (Prohibition and Regulation) Act of 1986 allows any child to work, unless the work is hazardous, which is prohibited for children under 14 years of age.
59. ILO (2004), *Investing in Every Child: An Economic Study of the Costs and Benefits of Eliminating Child Labour*, Geneva: ILO.
60. The ILO's recommendations concerning the employment relationship contains a 'control test', by which the degree of an employment relationship can be measured through factors like work carried out under the control of another party; the integration of the worker into the organization of the enterprise; work performed solely or mainly for the benefit of another person; work carried out within specific working hours or at a workplace specified or agreed to by the party requesting the work; periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income, etc. See ILO, Article 13, *Employment Relationship Recommendation*, 2006, no. 198.
61. The ILO conventions on migration (ILO, *Migration for Employment Convention [Revised]*, 1949, no. 97) and employment agencies (ILO, *Private Employment Agencies Convention*, 1997, no. 181) prohibit fee charging by agents. Instead, employers are liable to pay this fee.
62. See for example, Lakshmidhar Mishra (2011), *Human Bondage: Tracing its Roots in India*, New Delhi: Sage, pp. 12–13, for a narrative on violence against workers in the fish processing industries in Gujarat.
63. Inputs from the case study on the Bunkar (weaver) community in Barabanki, Uttar Pradesh, prepared for this chapter.
64. Ravi Srivastava (2011), 'Labour Migration, Inequality and Development Dynamics in India: An Introduction', *India Journal of Labour Economics*, vol. 54, no. 3.
65. Article 19 (1) (d), *The Constitution of India*, 1950.
66. Odisha and Andhra Pradesh, in collaboration with the ILO, have recently been working on facilitating the registration of migrant workers moving from Odisha to Andhra Pradesh. This is considered a breakthrough in interstate migration practices. For more details, see Satyasundar Barik (2011), 'Orissa, AP to Sign Agreement on Welfare of Migrant Labour', *The Hindu*, 18 October 2011, <http://www.thehindu.com/todays-paper/tp-national/tp-otherstates/orissa-ap-to-sign-agreement-on-welfare-of-migrant-labour/article2547662.ece> (accessed 11 May 2014).
67. Inputs from the case study on brick kiln workers prepared for this chapter.
68. Building and Woodworkers International (2012), 'Brick Kiln Industry in India: Joint Advocacy Efforts Reap Benefits', <http://www.bwint.org/default.asp?index=4562> (accessed 21 April 2014).
69. At the central level, 660 inspectors monitor central Public Sector Undertakings. Different sections within the inspectorate have different tasks. Factory inspectors monitor working conditions and aspects of occupational safety and health. Labour inspectors monitor employment terms such as wages and, working hours, and also engage in conciliation activities. Their duties also involve monitoring the functioning of welfare boards, registration of trade unions and the implementation of the Shops and Establishments Acts in various states. In Maharashtra, 725 factory inspectors monitor 45,789 factories covering a workforce of 2,432,000. Out of 725 inspectors, 607 are in position. There are 145 labour inspectors, of which 29 positions are vacant. There are inspectors who enforce the Shops and Establishments Acts, with 100 vacancies. These figures are based on information provided by labour inspectors to one of the authors.
70. 'Inspections Against Violations of Labour Laws',

- Lok Sabha Unstarred Question, no. 4448, answered on 22 April 2013, Ministry of Labour and Employment.
71. Kamala Sankaran (2011), 'Fundamental Principles and Rights at Work: India and the ILO', *Economic and Political Weekly*, vol. 46, no. 10, p. 73.
  72. See Pallavi Mansingh, Suneetha Eluri and Sreejesh N. P. (2012), 'Trade Unions and Special Economic Zones in India', *Working Document, ILO Bureau for Workers' Activities*, Geneva: ILO, for a detailed discussion around modification of labour laws in SEZs. The use of non-governmental agencies for inspections also violates Article 6 of the ILO Convention Concerning Labour Inspection in Industry and Commerce (ILO, *Labour Inspection Convention*, 1947, no. 81), which India has ratified. This states: 'The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences'.
  73. Mansingh, Eluri and Sreejesh N. P. (2012), 'Trade Unions and Special Economic Zones in India'.
  74. Ibid.
  75. Inputs from the case study on the construction sector prepared for this chapter.
  76. P. N. Bhagwati (2013), *My Trust with Justice*, New Delhi: Universal Law Publishers, p. 76.
  77. In 1984, on tackling the bonded labour system. *Bandhua Mukti Morcha v. Union of India and Ors.* (1984), AIR SC 802.
  78. In 1997, relating to the protection of women against sexual harassment. *Vishaka and Ors. v. State of Rajasthan and Ors.* (1997), 6 SCC 241.
  79. In 1984, on the inclusion of social activists as members of Vigilance Committees for bonded labour identification. *Neeraja Chaudhary v. State of Madhya Pradesh* (1984), 3 SCC 243.
  80. In 1983, ruling that working for less than minimum wages falls within the scope of forced labour (begar) prohibited under Article 23(1) of the Indian Constitution. See *People's Union For Democratic Rights and Ors. v. Union of India and Ors.* (1982), AIR 1473.
  81. *Steel Authority of India Ltd and Ors. v. National Union Waterfront Workers and Ors.* (2001), 7 SCC 1.
  82. In its 1997 judgment in *Air India Statutory Corporation v. United Labour Union* (1997), 9 SCC 377, the Supreme Court still took the view that on the abolition of the contract labour system, the workers were to be absorbed on a permanent basis.
  83. See Rajen Malhotra (undated), 'Engaging Contract Labour in Enterprises', Unpublished Research Paper.
  84. *Secretary, State of Karnataka v. Umadevi* (2006), 4 SCC 1.
  85. *U. P. State Brassware Corporation Ltd v. Udai Narain Pandey* (2006), 1 SCC 479.
  86. *L. K. Verma v. HMT Ltd. and Anr.* (2006), 2 SCC 269.
  87. *Rajasthan State Ganganagar S. Mills Ltd v. State of Rajasthan and Ors.* (2004), 8 SCC 161.
  88. *T. K. Rangarajan v. Government of Tamil Nadu and Ors.* (2003), 6 SCC 581.
  89. *BALCO Employees Union v. Union of India* (2002), 2 SCC 333.
  90. *Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr.* (2004), 8 SCC 200.
  91. *Central Bank of India v. Sirrigupa Sugars and Chemicals Ltd* (2007), 8 SCC 353.
  92. *Haryana State Co-op Land Development Bank v. Neelam* (2005), 5 SCC 91.
  93. Barbara Harris-White (2004), *India Working: Essays on Society and Economy*, Cambridge: Cambridge University Press, p. 246.
  94. National People's Tribunal on 'Living Wage as a Fundamental Right of Indian Garment Workers' Bangalore, 22–25 November, 2012. See the report from the tribunal at [http://www.evb.ch/cm\\_data/Jury\\_statement\\_and\\_verdict.pdf](http://www.evb.ch/cm_data/Jury_statement_and_verdict.pdf) (accessed 8 May 2014).
  95. India has ratified the ILO Convention on Minimum Wage Fixing (ILO, *Minimum Wage-Fixing Machinery Convention*, 1928, no. 26). Article 4-2 of the Convention says: 'A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalized proceedings, the amount by which he has been underpaid'.
  96. Expert testimony by Dr Vijay Bhaskar, Madras Institute for Development Studies, at the National People's Tribunal on 'Living Wage as a Fundamental Right of Indian Garment Workers'.
  97. Inputs from the case study on home-based workers prepared for this chapter.
  98. Inputs from the case study on the Bunkar (weaver) community in Barabanki, Uttar Pradesh, prepared for this chapter
  99. NSSO (2012), 'Informal Sector and Conditions of Employment in India', *NSS 66<sup>th</sup> Round (2009–10)*, New Delhi: MoSPI.

100. See ILO, Article 10, *Freedom of Association and the Protection of the Right to Organize Convention*, 1948, no. 87. This ILO Convention is considered 'fundamental', but has not been ratified by India.
101. In particular, the other fundamental convention, ILO, *Freedom of Association, the Right to Organize and Collective Bargaining Convention*, 1949, no. 98, has also not been ratified by India.
102. For example, see Schedules II, III and IV of the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act*, 1971.
103. For details, see the judgment in the *MRF United Workers Union v. Government of Tamil Nadu*, CWP 17991 of 2008.
104. See, for instance, the case filed by the Garment and Allied Workers' Union before the ILO Committee on Freedom of Association, case no. 2991 (India), 11 October 2012.
105. Lars Thomann (2011), *Steps to Compliance with International Labour Standards: The International Labour Organization (ILO) and the Abolition of Forced Labour*, Wiesbaden: VS Verlag für Sozialwissenschaften.
106. This Maoist angle was also insinuated in the aftermath of the violence at the Maruti Suzuki factory in Manesar, Haryana on 18 July 2012. See Anand Teltumde (2012), 'The "Maoists" of Manesar', *Countercurrents*, 29 August 2012, <http://www.countercurrents.org/teltumbde290812.htm> (accessed 11 May 2014). In this case, a contract labour conflict handled badly by the management was allowed to simmer on, and labour authorities made no attempt either to intervene, or to offer some mediation in the conflict. When emotions took over, it resulted in the death of a member of the management. The police arrested a large number of workers, but never charged jailed workers with direct accusations. While the investigation did not reveal any Maoist angle, about 150 workers still languish in jail.
107. <http://www.rsby.gov.in> (accessed 26 April 2014).
108. K. P. Kannan and Jan Breman, eds (2013), *The Long Road to Social Security: Assessing the Implementation of National Social Security Initiatives for the Working Poor in India*, New Delhi: Oxford University Press.
109. Guy Standing (2011), *The Precariat: the New Dangerous Class*, London: Bloomsbury Academic.
110. Statement by ILO director-general Guy Ryder, issued on International Day for the Eradication of Poverty, 17 October 2013. See [www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS\\_224589](http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_224589) (accessed 11 May 2014).
111. Jan Breman (2013), *At Work in the Informal Economy of India: A Perspective from the Bottom Up*, New Delhi: Oxford University Press, p. 96.
112. Shraavan Bhat and Nilofer D'Souza (2013), 'Forbes Billionaires 2013: Where India Inc Stands', *Forbes India*, 2 April 2013, <http://forbesindia.com/article/special/forbes-billionaires-2013-where-india-inc-stands/34947/1> (accessed 26 April 2014).
113. Clause 135 of the *Companies Bill*, 2012 (the 'CSR Clause') requires targeted companies to spend the prescribed amount on CSR for the applicable fiscal year, and report on these activities or explain why they failed to spend in the annual board report. Specifically, the CSR Clause applies to any company, during any fiscal year, with (a) a net worth of Rs 5 billion (about US\$90 million) or more; (b) a turnover of Rs 10 billion (about US\$180 million) or more or (c) a net profit of Rs 50 million (about US\$900,000) or more. The CSR Clause will only apply to some of the over 800,000 companies in India, including over 8,000 publicly listed companies and multi-national companies. The accounting firm Ernst & Young estimates that the law would cover over 2,500 companies in India and generate over US\$2 billion of CSR spending in local communities. See Kordant Philanthropy Advisors (2013), 'The 2% CSR Clause: New Requirements for Companies in India', *Kordant Report Series*, <http://www.kordant.com/assets/2-Percent-India-CSR-Report.pdf> (accessed 26 April 2014).
114. Kevin Bales (1999), *Disposable People: New Slavery in the Global Economy*, Los Angeles: University of California Press.
115. Rahul Pandita (2012), 'The Nowhere People', *Open Magazine*, 13 October 2012, <http://www.openthemagazine.com/article/nation/the-nowhere-people> (accessed 26 April 2014).
116. Jim Rees (2014), *Surplus People: From Wicklow to Canada*, Cork: The Collins Press.
117. Jan Breman (2009), 'The Myth of the Glocal Safety Net', *New Left Review*, no. 59.
118. Katherine Boo was widely hailed for her description of destitution in a slum in Mumbai. She did not, however, recognize the commodification of human relations as a direct consequence of deprivation. See Jan Breman (2012), 'Life and Death in Annawadi', *New Left Review*, no. 78.
119. A. Krishna and Sudhir Katiyar (2012), 'India: Historic Strike of Brick Kiln Workers in Ranga Reddy District of Andhra Pradesh', <https://usilive>.

- org/historic-strike-of-brick-kiln-workers-in-ranga-reddy-district-of-andhra-pradesh (accessed 26 April 2014).
120. Solidaridad – South and Southeast Asia (2012), 'Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages', [http://www.solidaridadnetwork.org/sites/solidaridadnetwork.org/files/understanding\\_sumangali\\_tamil\\_nadu.pdf](http://www.solidaridadnetwork.org/sites/solidaridadnetwork.org/files/understanding_sumangali_tamil_nadu.pdf) (accessed 11 May 2014).
  121. Unions attribute their rising membership to increasing contract labour; their increasing activities in the informal economy; more members in agriculture as well as NREGA beneficiaries; and more women members, such as domestic workers. As of 2013, total membership in unions was estimated to be 90–100 million, roughly one-fifth of the total workforce. This data, provided by trade unions, is yet to be verified by the Ministry of Labour and Employment. See Sreelatha Menon (2013), 'Indian Trade Unions are Getting Bigger, Coinciding With Slowdown', *Business Standard*, 6 April 2013, [http://www.business-standard.com/article/economy-policy/indian-trade-unions-are-getting-bigger-coinciding-with-slowdown-113040600392\\_1.html](http://www.business-standard.com/article/economy-policy/indian-trade-unions-are-getting-bigger-coinciding-with-slowdown-113040600392_1.html) (accessed 11 May 2014).
  122. Term introduced by James C. Scott (1985), in his book *Weapons of the Weak: Every Day Forms of Peasant Resistance*, New Haven: Yale University Press.
  123. Breman (2013), *At Work in the Informal Economy of India*, pp. 134–35.
  124. Teltumde (2012), 'The "Maoists" of Manesar'.
  125. National People's Tribunal on 'Living Wage as a Fundamental Right of Indian Garment Workers'.
  126. 'Aliyar, Indian Laborer, Gets His Hand Chopped Off Over \$3 in Wages', *The Huffington Post*, 11 September 2012, [http://www.huffingtonpost.com/2012/09/11/aliyarr-indian-laborer-hand-chopped-off\\_n\\_1874426.html](http://www.huffingtonpost.com/2012/09/11/aliyarr-indian-laborer-hand-chopped-off_n_1874426.html) (accessed 26 April 2014).
  127. In her capacity of Chairperson of the National Commission for the Protection of Child Rights.
  128. In her capacity of President of Mazdoor Kisan Shakti Sangathana (Workers and Peasants Strength Union).
  129. The ILO Maritime Labour Convention was adopted by the International Labour Conference in 2006, and entered into force in August 2013. Seafarers are the only category of workers who are directly governed by international law.
  130. 'Why an Asia Floor Wage?', <http://www.cleanclothes.org/livingwage/what-is-the-asia-floor-wage> (accessed 26 April 2014)
  131. 'Dalit Right Activists Demand Reservation in Private Sector', *Business Standard*, 16 December 2013, [http://www.business-standard.com/article/pti-stories/dalit-right-activists-demand-reservation-in-private-sector-113121601079\\_1.html](http://www.business-standard.com/article/pti-stories/dalit-right-activists-demand-reservation-in-private-sector-113121601079_1.html) (accessed 11 May 2014).
  132. Ashwini Deshpande (2011), *The Grammar of Caste: Economic Discrimination in Contemporary India*, New Delhi: Oxford University Press, p. 98.
  133. Government of India (2013), 'Annexure XXIII', *Annual Report 2012–13*, New Delhi: Ministry of Rural Development.
  134. Registrar General of India (2011), 'Table C-13: Single Year Returns by Residence and Sex', *Census of India 2011*, New Delhi: RGI.
  135. Sharad Singh and Meraj Ashraf (2007), 'Alternative Mechanisms of Social Protection for the Unorganised Sector in India', Report presented at the fifth International Research Conference on Social Security, Warsaw, 5–7 March 2007.





Chapter 5  
**Law and Justice:  
Exclusion in  
Anti-Terror  
Legislation**



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## 1. Introduction

No other word has been misused more often in the 21<sup>st</sup> century than ‘terrorism’. Across continents, countries have redefined many fundamental human freedoms and introduced extraordinary legislations that subvert these basic guarantees. Each time, the pressing need for a strong response to counter terrorist threat has been the alibi. India, in its own ‘war against terrorism’, has been no different. In this chapter, we aim to address some questions central to the passage and functioning of such anti-terror legislation in India. For instance, while the state has the power to enact laws to protect its citizens from violent attacks, has the exercise of this power been within reasonable limits, or does it constitute an unreasonable intrusion of fundamental freedoms and protections guaranteed under the Indian Constitution? What impact have these legislations had on the life and liberty of individuals arrested and prosecuted under them? Is there an equal and fair application of these laws across communities and classes in India, or is there a bias against some sections of society?

When the Constitution of India was drafted, it was one of the most progressive documents in existence, providing for a Bill of Rights and a range of fundamental freedoms, as well as a strong constitutional basis for their protection. Most importantly, Articles 21 and 22 of the Constitution provide for the Right to Life and protection against arbitrary arrest and detention, respectively. Even in cases where certain rights are not explicitly guaranteed under the Constitution—for instance, protection from torture—the Indian Supreme Court has consistently interpreted them to be implicitly protected under the Right to Life. With respect to the conduct of a police investigation or trial, two safeguards are fundamental: fairness in procedure and equal application of legal standards for all persons. There are clear normative guidelines that have evolved, often through enunciations of the Supreme Court, which make these standards objective and easy to apply across the board.

India also has binding obligations as a signatory to the Universal Declaration of Human Rights,

1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR), to respect several critical human rights and fundamental freedoms—protection from ‘torture’ and from ‘cruel, inhuman or degrading treatment or punishment’,<sup>1</sup> the right to a ‘fair and public hearing by an independent and impartial tribunal’<sup>2</sup> and protection from ‘arbitrary arrest, detention or exile’.<sup>3</sup> Articles 9 and 14 of the ICCPR also lay down a range of key protections for arrested or detained persons, including providing information about the reasons for their arrest and of the charges against them, prompt presentation before a judicial authority, trial or release within a reasonable period of time, the presumption of innocence until guilt is proven and protection from forcible confessions. Adherence to such obligations under international human rights agreements is clearly enshrined within the Indian Constitution. Article 51(c) of the Directive Principles of State Policy requires that the state ‘endeavour to foster respect for international law and treaty obligations’,<sup>4</sup> while Article 253 of the Constitution also empowers Parliament to enact any legislation required to give effect to international agreements that the country is party to.<sup>5</sup> The Supreme Court, in a number of its judgments, has also looked at India’s obligations under such international agreements as a basis for interpreting various constitutional and statutory provisions.<sup>6</sup>

Increasingly, however, we are witnessing the steady erosion of many such rights due to state practice, in particular through the passage of extraordinary anti-terror legislations. Most often, a utilitarian justification is used to uphold terror laws and their draconian application, which primarily relies on the simplistic ‘greatest good for the greatest number’ theory. But as is evidenced through emerging principles of international law, human rights and humanitarian legal principles trump utilitarian concerns. If this were not the case, it would be deemed acceptable to deny minorities their fundamental constitutional protections, and the prohibition on torture would not be absolute. The promise of justice as understood in the Rawlsian sense is that justice will be done

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only if the last man standing also receives justice.<sup>7</sup> Therefore, the utilitarian argument that it is acceptable to torture a terrorist because he or she might reveal important information goes against well-established human rights principles. It is, in fact, in difficult times, such as war or terrorism, that we most need to uphold these protections, as they are meant to provide a guiding set of principles for precisely these situations. It is at these times that procedural fairness assumes unprecedented importance, as certain persons, such as alleged terrorism suspects, are most likely to be excluded from this system of safeguards and not given equal access to justice.

We argue in this chapter that extraordinary anti-terror legislations, both in their design and implementation, severely restrict or deny the realization of a crucial public good—namely, fair and impartial access to justice—for a number of marginalized groups in India. By providing for a state of exception to be created within existing legal safeguards and procedures relating to the investigation and prosecution of criminal offences, anti-terror laws subvert a number of fundamental human rights, and contradict well-established principles of criminal and human rights laws. They are also extremely prone to abuse by the police and other investigative authorities, leading to their frequent misuse and misapplication, to suppress legitimate dissent and target specific communities, particularly Muslims, Adivasis and Dalits.

### 1.1 A Brief Overview of Anti-Terror Laws in India

The passage of the Constitution (Sixteenth Amendment) Act in 1963 authorized the central government to place reasonable restrictions on certain basic rights guaranteed in the Indian Constitution, namely the freedom of speech and expression, the right to peaceful assembly and the right to association, in the interests of the sovereignty and integrity of the country. Since then, both the central and state governments in India have enacted a number of extraordinary legislations, with the stated intention of preserving national security and combating terrorism.

At the national level, the Unlawful Activities (Prevention) Act was enacted in 1967, and has

been amended a number of times since, most recently in 2012, in order to more specifically address terrorism-related offences (see box for a detailed description of the law). Other central laws enacted to counter terrorism include the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA) and the Prevention of Terrorism Act, 2002 (POTA), both of which were later repealed in the face of strong opposition to their draconian provisions. Similarly, a number of governments have enacted anti-terror laws at the state level; these include the Maharashtra Control of Organized Crime Act, 1999 (which was subsequently also made applicable to Delhi in 2002); the Karnataka Control of Organized Crime Act, 2000, the Andhra Pradesh Control of Organized Crime Act, 2001 (which was subsequently repealed); the Madhya Pradesh Special Areas Security Act, 2001, and the Chhattisgarh Special Public Security Act, 2005. Anti-terror legislation has also been proposed in Gujarat, where the Gujarat Control of Organized Crime Act has been passed by the state legislature, but is yet to receive the approval of the central government.

Such anti-terror laws include provisions that allow the police and other investigative authorities to circumvent critical existing protections and procedural safeguards guaranteed to persons accused or suspected of having committed a crime. For instance, whereas the maximum period for which a person can normally be detained without being formally charged of a crime is 90 days, anti-terror laws allow for the detention of an accused person for a much longer period, often extending up to a year. Similarly, certain confessions made to the police are admissible as evidence in court, a provision that, besides running contrary to protections guaranteed under the Indian Evidence Act of 1872, also significantly increases the possibility of the use of torture to extract false confessions from the accused. Other vital differences include the reliance on special courts and *in camera* (private) hearings for prosecution of such crimes, use of secret witnesses, the presumption of guilt in certain cases (for instance, if arms or explosives are recovered from the accused or there is evidence connecting him or her to weapons used to commit terrorist acts) and much more stringent bail norms, which effectively place the burden of proving innocence on the accused. Perhaps most worryingly, such laws

### The Unlawful Activities (Prevention) Act, 1967

The Unlawful Activities (Prevention) Act, 1967, or UAPA, gives broad discretion to the central government to decide what constitutes an 'unlawful activity' or an 'unlawful association'. Amendments in 2004 adopted definitions for a 'terrorist act' and 'terrorist organization' that were similar to the then recently repealed POTA, and amendments in 2008 and 2012 further broadened these definitions. The UAPA's vague and broad definition of 'terrorist acts' is inconsistent with internationally acceptable standards, and can be interpreted to include many forms of non-violent political protest.<sup>a</sup> Under the 2008 amendments, a person can be detained for 90 days without filing a chargesheet, which can be extended a further 90 days by a court. Similar to POTA, section 43D (5), inserted in the 2008 amendments, authorizes courts to deny bail if it is felt that there are 'reasonable grounds for believing that the accusation against such person is prima facie true'. In another provision similar to TADA and POTA, the 2008 amendments also add a presumption of guilt if arms are recovered from the accused or there is evidence connecting him or her to weapons used to commit terrorist acts. Moreover, they add provisions for warrantless arrests, search and seizure in cases where authorities have 'reason to believe' that a person has committed, or intends to commit an offence under the act. Amendments to the UAPA in 2012 broadened the definition of a 'person' who can be held liable for a terrorist act to include even loosely formed groups of friends and acquaintances, which has the potential to criminalize mere association or interaction with a terror suspect.<sup>b</sup> They increased the period for which an association can be declared as unlawful from two years to five years. They also included terrorism-related offences by companies, societies or trusts, holding the person responsible for the conduct of the business at the time of the offence liable for imprisonment and fines. All of the above amendments have significant potential for misuse and for targeting innocent individuals and organizations.

Sources: a *Human Rights Watch (2010), Back to the Future: India's 2008 Counterterrorism Laws, New York: HRW.*

b *'Reject Amendments to UAPA – An Appeal to Members of the Rajya Sabha: JTSA', Kafiya, 4 December 2012, <http://kafiya.org/2012/12/04/reject-amendments-to-uapa-an-appeal-to-members-of-the-rajya-sabha> (accessed 6 May 2014).*

adopt an extremely vague interpretation of what constitutes terrorism, allowing the government broad discretion in defining a terrorist organization, and generally criminalizing even mere association or communication with suspected terrorists, or membership to an organization deemed to be a terrorist organization by the government.

For the purposes of this chapter, the misuse of the UAPA has been examined closely, since it is the principal central anti-terror legislation in the country at present. However, the mechanisms through which the UAPA has been used to subvert fundamental protections and procedural safeguards, as well as to target specific communities, are equally applicable to the various state-level anti-terror laws. In many ways, specific provisions under such state laws make them even more draconian than the UAPA. For instance, both the Maharashtra Control of Organized Crime Act and the proposed Gujarat Control of Organized Crime Act explicitly provide that confessions made before a police officer can be admissible as evidence in court. This runs counter to established principles of Indian law, which bar this practice in order to protect against the use of police torture to extract false confessions from accused persons.

With the Chhattisgarh Special Public Security Act, the UAPA's definition of 'unlawful activity' has been broadened to include even an action that 'tends to interfere' with the maintenance of public order, or the functioning of administrative or legal institutions and their personnel.<sup>8</sup> The act also declares as unlawful any act 'of encouraging or preaching disobedience to established law and its institutions',<sup>9</sup> a provision that can be easily misused to suppress the right to peaceful protest, free speech and expression of persons who may share the political ideology of an unlawful organization, even if they are not a part of the organization.<sup>10</sup> Wherever relevant, state-specific anti-terror laws are also discussed in the following sections of the chapter.

The rest of this chapter is arranged as follows: section two examines the existing evidence around the implementation of anti-terror legislation in India, looking particularly at the widespread abuse of these laws to target specific groups or communities. Thereafter, section three discusses the key mechanisms through which such exclusion from fair and impartial access to justice has been achieved in the case of anti-terror laws. The section uses two case studies—the ban on

the Student Islamic Movement of India (SIMI), and the detention of Soni Sori, a tribal activist in Chhattisgarh—to highlight how legal and procedural safeguards have been subverted in the investigation and prosecution of these cases. Section four looks at the consequences of the misuse and misapplication of anti-terror laws on victims and their families, as well as on society at large. Finally, section five concludes with a set of recommendations to address the exclusionary impacts of anti-terror legislation in India.

## 2. Who Do Anti-Terror Laws Target?

There exists very little official data on the application of anti-terror laws in India, and the socio-economic background of persons charged or detained under such laws. For most anti-terror legislations, no attempt has been made by the government to collect such data. For example, in May 2013, the Ministry of Home Affairs admitted that it had no information on citizens arrested under the UAPA by the state police,<sup>11</sup> despite numerous reports of misapplication and misuse of the act by state police forces. The Ministry was only able to provide information on the status of 60 cases registered under the UAPA by the National Investigation Agency (NIA), established in 2009. Half of these cases were still under investigation (with no charges filed against the accused), and trials had been completed in just two cases.

The National Crime Records Bureau of India does provide regularly updated data on the status of outstanding cases under TADA, and these statistics clearly highlight the extremely slow pace of prosecuting cases registered under the act, which was repealed almost two decades ago. By the end of 2012, 59 TADA cases, involving a total of 488 arrested persons, were still pending investigation, i.e., charges were yet to be filed against the accused in these cases. Just two persons arrested under TADA were charged in 2012, while 238 persons were released before trial during the year.<sup>12</sup> The record of courts in trying such cases is similarly poor: at the end of 2012, 1,791 TADA cases, involving 4,775 persons, were still pending trial. During the year, trial proceedings were completed in 28 cases, involving 524 persons, all of which ended in the acquittal of the accused.<sup>13</sup> The last time a case was registered under TADA

was in 2002,<sup>14</sup> which means that all of the above mentioned cases are at least a decade old.

Despite the absence of official data, a number of unofficial sources have documented the extensive misuse of anti-terror laws, particularly in terms of their selective targeting of Muslims, Dalits, Adivasis, activists and political opponents. The lack of clarity in such laws regarding what constitutes terrorism, and their suspension of critical legal safeguards and protections, have enabled the police and other investigative agencies to arbitrarily detain, harass and even convict people under these laws. As a result, terror laws are increasingly being misused to falsely implicate innocent persons or organizations, under the guise of tackling terrorism. Between 1985, when TADA came into force, and 1994, approximately 67,000 persons were arrested, of which only 8,000 went to trial and just 725 were convicted.<sup>15</sup> Examples of the misuse of TADA included the targeting of minorities, particularly Muslims (for example, in Rajasthan, where only Muslims and Sikhs were detained under the Act), and its heavy use in states that were relatively unaffected by terrorism.<sup>16</sup> By 1993, for instance, 19,263 persons had been arrested under TADA in Gujarat, the majority of them anti-dam protestors, trade unionists and persons belonging to religious minorities.<sup>17</sup> More than 50,000 cases registered under TADA were later withdrawn after review committees found that the act has been wrongly applied in these cases.<sup>18</sup> With the Prevention of Terrorism Act (POTA), similar cases of misuse began to surface soon after its enactment in 2002. Jharkhand, for instance, had already arrested 202 persons (including at least one minor) under POTA by February 2003, ‘a much higher number than for other states. Most of those charged under the act were Adivasis, Dalits and members of other marginalized groups.<sup>19</sup> In some of these cases, POTA was invoked merely on the basis of possession of Naxalite literature.<sup>20</sup> In Gujarat, all but one of the cases registered under the Act by the end of 2003 were against Muslims.<sup>21</sup> POTA was also used to target political opponents. For instance, Tamil Nadu Member of Parliament V. Gopalswamy, popularly known as Vaiko, was arrested for speeches supporting the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka.<sup>22</sup>

While both TADA and POTA stand repealed, several of their draconian provisions have found their way into the UAPA and various state-specific anti-terror laws, which themselves remain extremely prone to abuse. The ban of the Student Islamic Movement of India (SIMI), discussed in detail later in this chapter, illustrates how even organizations with no record of unlawful activity or terrorism can be arbitrarily designated as unlawful organizations by the government under the UAPA, based on extremely questionable evidence and with little legal recourse to reverse such decisions. Similarly, the Coordination of Democratic Rights Organizations (CDRO) has documented numerous such instances of the improper application of the UAPA to silence activists and political dissenters, and selectively target members of certain communities, particularly Muslims, Dalits and Adivasis.<sup>23</sup> In many of these cases, UAPA's special provisions have allowed for the arrest and prolonged detention of persons solely on the basis of their alleged association with an unlawful organization or its members, rather than any proof of their complicity in unlawful activities or terrorist acts. Similarly, the Jamia Teachers' Solidarity Association (JTSA) has documented the widespread targeting of Muslims in Delhi,<sup>24</sup> Karnataka<sup>25</sup> and Madhya Pradesh<sup>26</sup> under anti-terror laws. The reports detail how Muslim youth in these states have been arrested and charged with serious offences under the UAPA, based on flimsy, tampered or fabricated evidence linking them to a terrorist attack or a terrorist organization. The investigative journalism website, Gulail, has reported on the abuse of the Maharashtra Control of Organized Crime Act (MCOCA), to extract forced confessions through torture and falsely implicate 13 innocent Muslim men in the July 2006 train blasts in Mumbai.<sup>27</sup> A similar investigation by Gulail in Orissa found that the UAPA and other laws were being widely misused to quell dissent and target numerous activists, journalists, lawyers, students, and Adivasis. Based on its investigation, the website estimated that in 2013 there were 530 persons (about 400 of them Adivasis) in jail for what appeared to be fabricated cases.<sup>28</sup> In Chhattisgarh, a number of Adivasis and human rights activists, perhaps most prominently Binayak Sen, have been charged under the UAPA and the Chhattisgarh Special Public Security Act (CSPSA)

for being members or sympathizers of Maoist organizations. The evidence used against the accused is typically very weak, often limited to mere possession of Maoist literature or unsubstantiated allegations of providing food, water and other supplies to members of Maoist organizations. The limited data on the CSPSA, obtained by the People's Union for Civil Liberties in 2008,<sup>29</sup> shows that 52 persons were being detained under the CSPSA, while a further 67 persons were declared to be absconding, including 30 'unknown' members of unlawful organizations.

It is important to highlight that irregularities or biases in the investigation and prosecution of terror-related crimes are not limited to the UAPA and state level anti-terror laws. In many of the cases just discussed, their abuse has been accompanied by the application, often incorrectly, of other laws which are not specifically meant to deal with terrorism. Examples include the National Security Act, 1980, which provides for preventive detention of persons for up to 12 months, and the Arms Act, 1959 and the Explosive Substances Act, 1908, which have stringent penal provisions for persons in possession of illegal or unlicensed weapons and explosives. Preventive detention provisions under section 151 of the Code of Criminal Procedure (CrPC) have also been used by the police to arbitrarily arrest persons in the aftermath of terror attacks, without a warrant or any evidence of criminal intent. Another commonly used strategy is to charge alleged terror suspects with serious crimes under the Indian Penal Code (IPC), such as rioting, unlawful assembly, waging war against the state, murder and attempted murder, in order to decrease the possibility of securing bail. Similarly, in recent years, numerous human rights activists and political dissenters have been labelled as terrorists or terrorist sympathizers, and charged with sedition under section 124A of the IPC. Invariably, in such cases, Naxalite and other 'anti-national' literature found in their possession has been the sole basis for their prosecution under this stringent law, which carries a maximum punishment of life imprisonment. While it is outside the scope of this chapter to discuss these laws in detail, the following sections attempt to highlight examples of their abuse, wherever relevant.

### **3. Processes of Exclusion in the Application of Anti-Terror Law in India**

One of the most poignant and compelling Hindi movies of recent times is 'Shahid', which chronicles the life of a young Muslim lawyer Shahid Azmi, who was at the forefront of the struggle for justice for innocent Muslims who were wrongfully implicated in terror cases. Shahid was himself wrongly accused and served a five-year jail sentence. After his release he studied law, and decided to make it his life's mission to protect young innocent Muslims who were wrongly arrested and prosecuted under terror laws. Despite numerous threatening calls and abuses, he courageously continued to represent and defend 'terror suspects'. Unfortunately, just before Faheem Ansari, one of the accused that he was representing in the 26/11 Mumbai terror attack case, was acquitted, Shahid was shot dead in his office in Mumbai. The acquittal of Faheem Ansari, however, once again showed to those who had murdered Shahid that his relentless struggle and legal interventions to uphold the rule of law, even at the colossal cost of his own life, did not go to waste. Shahid's thorough and meticulous legal work not only resulted in many acquittals of innocents but also highlighted the sloppy investigations and planting of evidence in terror cases.

There is growing evidence to establish that the UAPA and other anti-terror legislations, rather than assisting the state in combating terrorism, are being misused by the police and other investigative agencies to target activists, political dissidents, Muslims, Dalits and Adivasis. The systemic exclusion of these communities from critical legal safeguards and protections enshrined in the Constitution has serious repercussions not just for the affected groups but also for the legitimacy of the state as a guarantor and protector of the fundamental rights of all its citizens. Three factors have played a crucial role in facilitating such wrongful arrest, detention and prosecution of specific communities under the draconian provisions of anti-terror laws. First, there has been an active and concerted attempt by the state to criminalize all forms of dissent, including legitimate and non-violent forms of protest against its actions. Under this paradigm, anti-terror laws function as a political tool to target those perceived

to be a threat to the government—Adivasis protesting large-scale displacement and loss of livelihoods due to unchecked industrialization in states like Chhattisgarh, Jharkhand and Orissa; activists, journalists and lawyers challenging the steady erosion of civil rights across the country; or organizations like SIMI.

Second, there exists a high level of communalization within key apparatuses of the government, like the police, bureaucracy and judiciary. A number of reports, including official commissions of inquiry investigating incidents of communal violence, have documented the highly biased response of the police to such incidents.<sup>30</sup> In almost every case, the police looked the other way as Muslims and other minorities suffered severe physical violence and destruction of property; in some instances, police personnel were found to have actively assisted the perpetrators of such violence. Lax investigation and prosecution of crimes committed against minorities during such incidents generally resulted in the acquittal of most perpetrators. Despite being the primary victims of communal violence, minorities, particularly Muslims, are disproportionately impacted by actions aimed at curtailing the violence, such as curfew, preventive arrests, house searches and police firing. Other symptoms of such communalization include the heavy over-representation of Muslims, Adivasis and Dalits within prison populations,<sup>31</sup> and the low share of Muslim personnel in the police force.<sup>32</sup> In the context of terror cases, widespread communal bias, within both investigative agencies and the judiciary, has served to facilitate the unequal application of anti-terror laws and undermine crucial checks and balances meant to prevent their abuse to target specific groups.

Last, an increasingly sensationalist and ratings-hungry news media has often been guilty of an unquestioning acceptance of claims made by the police and other agencies investigating terror cases. In most cases, the police announces that it has unravelled the conspiracy soon after a terror attack: the alleged culprits are arrested and strong evidence linking them to the attack is unearthed. This version of events is widely broadcast by media outlets, without any attempt to objectively verify these claims or question their basis. Typically, sensationalist overtones conclusively declare the alleged suspect to be a 'terrorist', with links to

banned terrorist groups.<sup>33</sup> However, by the time the truth starts to unfold in the courtrooms, the media is not present or interested in reporting on the problematic nature of such terror investigations—including procedural violations, fabricated evidences and the use of torture—or the acquittal of the so-called terrorists. The uncritical response to the media results in extremely limited public scrutiny of the actions of the investigative agencies and undermines another vital check on the abuse of anti-terror legislation.

The following sub-sections profile two case studies that examine how anti-terror legislation in India has led to the subversion of vital legal protections and procedural standards, to the detriment of marginalized communities, particularly Muslims and Adivasis. Information for these case studies is drawn from a wide range of available documentation on these cases, including fact-finding reports, court documents, judgments, chargesheets, newspaper reports, and primary interviews with victims and lawyers involved in these cases.

### **3.1 Case Study: Student Islamic Movement of India (SIMI)**

Humam Siddiqui, a former member of SIMI, and himself a lawyer by profession, has been relentlessly fighting the ban under the Unlawful Activities Prevention Act (UAPA) against the Student Islamic Movement of India (SIMI), both at the UAPA Tribunal, which adjudicates on the legality of bans under this law, and the Supreme Court. Originally from Sultanpur in Uttar Pradesh, Siddiqui and his co-petitioner, Misbaullah Islam, have been continuing the legal fight without any proper resources, driven by a commitment to ensure that the ban, which to them is unfair and illegal, is finally lifted from the organization. Shahid Badr, a founder member of SIMI, had previously contested the ban against SIMI before the tribunal. They have been helped in this legal struggle by courageous and committed lawyers for whom civil liberties and procedural justice reign supreme.

Barely days after the 11 September 2001 attack in New York, the Bhartiya Janata Party (BJP)-led National Democratic Alliance (NDA) government

banned the Student Islamic Movement of India (SIMI), which was, according to SIMI members, nothing but a conglomerate of young Muslim students from local and zonal chapters across various states. Established in 1977 as a student group at the Aligarh Muslim University, the membership of the group was open to young Muslim men under the age of 30. Once a member attained the age of 30 years, he would automatically retire from the organization. Like any predominantly religious organization, the increasing discrimination against Muslims in different countries, including India, was a major theme of discussion amongst SIMI members. This organization had also initiated a campaign to protest against the Babri Masjid demolition. The UAPA ban came as a major shock to the organization, which has denied from the beginning any wrongdoing and has also challenged the terror tag that has come along with the banning. The organization was first banned in 2001 under the UAPA, followed by subsequent government notifications continuing the ban in 2003, 2006, 2008, 2010 and 2012. The single High Court Judge Tribunal has upheld the ban on each such occasion, except for 2008, when Justice Gita Mittal of the Delhi High Court set aside the ban. This was then immediately challenged by the government in the Supreme Court, which stayed the setting aside of the UAPA ban against SIMI.

The tribunal judgments upholding the government ban were promptly challenged in the Supreme Court. All these appeals have been pending final hearing before the Supreme Court for many years now. This delay in the final judgment against the SIMI ban has caused immense hardship to the petitioners and young Muslim boys across India. The latter, falsely dubbed as SIMI members on the basis of nothing but their confessional statements, continue to be picked up by the police and investigative agencies and implicated wrongly in terror cases. Former members of SIMI maintain that all their membership records have been confiscated by investigating agencies, their offices sealed, and they have no way to cross-check their records to even see if an accused was a member of SIMI or not. Pertinently, SIMI maintained extensive membership records, and claims that if they were really involved in subversive activities, as claimed by the investigative agencies, they would not have recorded the names, ages and contact



details of each of their 'members and made them so easily available.

The wrongful arrests and prosecution of erstwhile SIMI members or supposed SIMI members framed in alleged terror cases would not have been possible if the dual principles of due process and fair procedure were followed by the investigating agencies. The processes through which such protections have been subverted in these cases are now discussed:

### 3.1.1 Procedural Lapses

The Jamia Teachers' Solidarity Organization examined the case of the Jaipur serial blasts of 2008 in which SIMI had been wrongly implicated.<sup>34</sup> Drawing from primary interviews, court documents and newspaper reports, the report provides some damning revelations. First, the date of surrender of the 11 members of SIMI, who were subsequently charged for the Jaipur bomb blasts, was fudged, and arrests were shown over a week after the actual illegal detention of all the accused. This period of illegal detention, at the Rajasthan Police Special Operations Group (SOG) headquarters in Jaipur, was also the time when the accused were tortured.<sup>35</sup> The report further describes the deep humiliation<sup>36</sup> and torture that continued against these so-called terror suspects, including solitary confinement, discriminatory treatment in jail, denial of clean drinking water or blankets as protection against the cold, and being kept hooded when they were taken outside their jail cells. Second, for a long time, these men were not charged with the specific offence of the Jaipur bomb blasts, but under sections 3, 10 and 17 of the UAPA, which relating holding membership and carrying out activities of a banned organization.<sup>37</sup>

### 3.1.2 Dilution of Evidentiary Standards

One of the ways in which justice is compromised is through the dilution of evidentiary standards during the trial. During the adjudication of the ban on SIMI under the UAPA by the tribunal, the prosecution has repeatedly adduced secret evidence against SIMI. In successive years, the defence has objected that secret evidence cannot be used against SIMI, as neither they nor their legal team have access to this material, and cannot

defend themselves against material that is not made available to them during tribunal hearings. However, the tribunal has ruled in favour of using secret material in these proceedings, thereby violating basic principles of natural justice. The use of secret evidence was ruled upon in the Supreme Court judgment of *Jamaat-e-Islami Hind v. Union of India*,<sup>38</sup> which upheld the practice of secret evidence. However, it also evolved a procedure that should be strictly followed whenever such evidence is used against any organization.

*What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.*<sup>39</sup>

Thus, although the Supreme Court upheld the non-disclosure of certain materials to the organization under scrutiny during the Tribunal proceedings, it required that any such procedure follow minimum natural justice standards. The moot question is what would be construed a minimum natural justice standard? The evidence that has been presented by the central government in defence of the SIMI ban has been so weak that the SIMI Tribunal of 2008, comprising of Justice Gita Mittal of the Delhi High Court, set aside the ban because the notification was deficient and failed to set out the grounds, which is statutorily required to ban an organization under the UAPA. The background note provided to the tribunal by the central government failed to complement the notification, and most of the allegations made in it were not supported by any deposition. In fact, the note did not present any fresh material but contained the exact grounds put forward in earlier

years. This suggests that the repeated use of secret evidence before the UAPA Tribunal is a misuse of the freedom offered to the Tribunal in this matter. Rather than serving as a means of protecting confidential sources, it has allowed the government to avoid adequate scrutiny of the evidence it has presented in support of the ban on SIMI.

Evidentiary standards have also been diluted in the individual criminal cases filed under the UAPA against SIMI members across the country. Magazines and pamphlets belonging to SIMI that were published well before it was banned in September 2001, Urdu books, Quranic literature and posters have mostly been the only so-called evidence against the accused belonging to SIMI. The District Courts have readily accepted such documents, despite their highly questionable evidentiary value. In fact, many SIMI activists have been under trial for years on the basis of nothing but a few books, pamphlets or posters that were apparently seized from their houses.

### 3.1.3 Use of Confessions

Under Indian criminal law, only confessional or witness statements made before a magistrate under section 164 of the CrPC are admissible as evidence during a trial. A confessional or witness statement made to the police during the process of investigation is considered inadmissible in court,<sup>40</sup> in order to protect against the possible use of manipulation or torture by the police to extract these statements. However, the UAPA Tribunal has allowed the prosecution to present such witness statements, as evidence to support the ban against SIMI. Moreover, the alleged SIMI members who had made these statements were not presented before the Tribunal, but officers who had recorded them appeared as witnesses, thus making their statements hearsay at best.

Similarly, in the cases against alleged SIMI members across the country, the prosecution has presented confessional statements made to the police by those undergoing trial, in which they admit to being members of SIMI. The main offences under UAPA are under section 10 and 13, for being a member of an unlawful association and for unlawful activities respectively, and such faulty evidence has often served as the primary basis for convicting the accused under the UAPA. These same illegal confessional statements have also been

presented by the government before the UAPA Tribunal, as evidence to prove their case for the extension of the ban on SIMI, even though those undergoing trials in such cases have no relation to the case before the Tribunal.

The lawyers representing SIMI have argued that the government cannot use these confessional statements as evidence, since they are barred by the Indian Evidence Act from doing so at all, leave alone using them in a case or trial different from the one in which they were allegedly made. However, the UAPA Tribunal has allowed such confessional statements, as well as witness statements made to the police, based on a misinterpretation of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968. According to this rule, the UAPA Tribunal has to follow the Indian Evidence Act while taking evidence against any organization 'as far as practicable'. In its interpretation of this expression in the *Jamaat-e-Islami v. Union of India* case,<sup>41</sup> the Supreme Court said that the expression was put in the rules for the special circumstances that may arise as a result of information based on secret intelligence reports, and other sources which are required to be kept confidential. Thus, the Supreme Court interpreted the rule as allowing the tribunal a certain degree of flexibility, so that it could take into consideration such information as well. The tribunal and the government have, however, used this as an excuse to do away with the Indian Evidence Act altogether, leaving itself and the tribunal free to deem whatever they do as 'procedure'.<sup>42</sup>

In fact, the confessions in question are patently inadmissible, and according to the lawyers representing SIMI, the tribunal's acceptance of these confessions as 'evidence' is utterly absurd and illegal. The confessions have been produced before the tribunal as annexures to the affidavits of police officers deposing before it. In most cases, the officers so deposing do not even claim that the confessions were made in their presence. Needless to say, since the makers of the alleged confessions are not before the tribunal (and nor are, in most cases, the persons before whom the 'confessions' were allegedly recorded), the 'right' to cross-examine the police officers who appended the 'confessions' as annexures to their affidavits is farcical. A ban approved or validated on such basis is equally farcical.<sup>43</sup>

### 3.1.4 Identical Pattern of Arrests and Incriminating Material

The arrests of young Muslim men by the police for alleged SIMI links show a pattern of arrests made on uncannily similar grounds: mostly they are charged for outraging religious feelings or shouting anti-government slogans outside mosques or in front of their homes, for which they are booked under the stringent UAPA. The evidence produced by the prosecution in cases against young Muslim men arrested after being dubbed SIMI activists or sympathizers is primarily based on the so called ‘incriminating material’ allegedly recovered from the accused. An examination of the ‘incriminating material’ allegedly seized by the police itself not only explains the quality of the investigations, but also exposes a deep-rooted communal mindset within the police. Urdu poetry and even verses from the Quran have been presented as incriminating material against the accused. A few examples that follow extracted from the First Information Reports (FIRs) and chargesheets filed by the police in these cases, illustrate the questionable and biased nature of such investigations.<sup>44</sup>

#### **FIR 200/2008, dated 11 April 2008—Registered at Juni Police Station, Indore**

In this FIR, Station House Officer (SHO) Mohan Singh Yadav says that he received information through a *mukhbir* (informer) that Mohammad Shahid alias Billi and Iqbal of Nandanvan colony, Indore, were standing near Shyam Nagar masjid and ‘instigating people and doing propaganda against the government’. ‘I accompanied by staff Sub Inspector Sudhir Das, constables Omprakash Solanki, Tajsingh Yadav, Pushapraj Singh Bais, Jawaharsingh Jadaun and driver Shiv Kumar arrived near the masjid,’ SHO Yadav says. ‘We hid ourselves and found two persons standing near the masjid. They were talking in a secret manner with three four more people standing there. I asked my accompanying staff to encircle them. When they saw police, they panicked and we arrested them’. Interestingly, SHO Yadav claims that they only arrested the two persons who were talking. ‘On enquiring strictly, one fat man with dark complexion stated his name as Mohamamd Shahid, age 47 years and resident of Nandanvan colony while the other lean/slim person stated

his name Iqbal, age 32 of Nandanvan colony,’ he records in the FIR. The statement further notes that when asked about ‘strategy’, ‘they told us that we are preparing the people for Jihad (crusade/religious war). The government has not done well by arresting the leaders of our SIMI and we will take revenge from the government. We will fight the court cases of our people’. The FIR states that ‘Iqbal shouted a slogan as well’. SHO Yadav further says that they recovered seven pamphlets from Shahid’s pockets, while six pamphlets were recovered from Iqbal’s pocket. The seizure memo reveals that the alleged pamphlets recovered from these two men were old SIMI documents and most of them were photocopies.

#### **FIR 129/2008, dated 2 April 2008—Registered at Sadar Bazar Police Station, Indore**

In the FIR, SHO J. D. Bhonsale states that he received information from a *mukhbir* that ‘Mohamamd Irfan Chheepa of Juna Risala is in the community hall compound near his own house and has documents, pamphlets, literature of SIMI. He has gathered people of the vicinity and is telling them they would avenge the arrest of SIMI leaders.’ The FIR also alleges that he was ‘making statements against the government and talking provocative things against society and country which could raise communal passions’. After receiving the information, SHO Bhonsale says he, accompanied by Sub-Inspector Rakesh Tiwari, Assistant Sub-Inspector Bhadoriya, Head Constable Neeraj, Constables Om Narayan, Yashwant, Rajbhan, Jitendra and Lal Singh, arrived at Juna Risala community hall compound. The FIR states: ‘We took cover and saw a person with physical features as stated by the informer who had gathered people and had some papers and pamphlets in his hand.’ The statement also alleges he was ‘talking in an excited manner’ and quotes Irfan, saying he was ‘telling the people that “you people should also join this organization so that we all unite and establish government of Islam and you should contribute so that we defeat the Hindustan government”’.

SHO Bhonsale says that on encircling them, ‘The people who had gathered ran away in the streets’ and the police could only arrest Irfan. ‘On enquiry, he told us his name as Mohammad Irfan, age 32 of Juna Risala Indore. We seized pamphlets of

SIMI that he was holding in his hand,' he says. The seizure memo in this case shows an appeal in Hindi ostensibly issued by the SIMI but interestingly the Bismillah (I begin with the name of Allah) is incorrectly spelled. Besides this poster, there is a newspaper cutting of New Crescent Publishing, Mumtaz Building, Gali Qasim Jan, New Delhi advertising their new publications. SHO Bhonsale also says that Chheepa was earlier arrested by Police Station Chhoti Gwali (Chhoti Gwal Toli) Indore. 'In this regard, there was also orders from senior officers where Irfan's name had come up saying Irfan is an active member of SIMI,' the FIR states.

**FIR 135/08, dated 10 April 2008—Registered at Sadar Bazar Police Station, Indore**

The FIR states that the police received information through a *mukhbir* that: 'Mohammad Younis S/O Mohammad Shahid Ali Musalman, who is residing in Juna Risala, was propagating [sic] the banned organization SIMI in a secret manner near around Gafoor Khan ki Bazariya and Smrati Talkies.' The statement also alleges that he, along with others, was 'collecting donations from the people' as well as 'trying to incite the muslim community against the arrests of SIMI members. He has also been an active member of SIMI. He is also in possession of literature of SIMI, which he is trying to distribute.'

The FIR further states that the police, on arriving at Smrati Talkies, found 'a person with physical features, appearance and shape matching the description of the informer was standing in a doubtful position. We encircled him in a planned way and arrested him'. Among the 'incriminating' documents mentioned in the FIR is a news item from the Hindi newspaper *Dainik Jagaran* on the arrest of SIMI members, and an advertisement for New Crescent Publishing, New Delhi.

**FIR 1106/06, dated 11 August 2006—Registered at Ghatkopar Police Station, Mumbai**

In this case, an Urdu language children's monthly journal *Umang*, published by Urdu Academy, Delhi, and edited by Margoob Hyder Aabidi, was presented as incriminating evidence recovered from the accused Shabir Ahmad Masiulla of Badshah Khan

Nagar, Malegaon and Nafis Ahmad Jameer Ahmad Ansari of Shivaji Nagar, Govandi, Mumbai. In fact, a Muslim officer of the Mumbai Police, Assistant Sub-Inspector Liaqat Mehboob Khan was called to translate this incriminating material. In his report, he says that '*Umang* is a magazine wherein moral lessons are printed for little children'. The police also claim to have recovered a few SIMI pamphlets that were printed before its ban in September 2001 and were seized in bulk from various SIMI offices across the country. These pamphlets, published when the organization was legal, are also presented as 'incriminating' evidence by the police.

**FIR 142/08, dated April 5, 2008—Registered at Narsingharh Police Station, Rajgarh**

The Station House Inspector at Narsingharh, Vikram Singh Bhadoria, states in the FIR that he had arrested the three accused, Faizal, Irfan and Shakir, on the basis of a letter from a superior, who in turn had been issued directions by the Deputy Inspector General (DIG), Intelligence in Bhopal. In this case, the police, amongst other things, claimed to have recovered an old printed pamphlet of SIMI—Babri Masjid *aur* Shirk—which protests the demolition of the Babri mosque, and a one-pager on the fundamental principles of Islam, such as Namaz and Hajj.

**3.2 Case Study: Soni Sori, Chhattisgarh<sup>45</sup>**

In Chhattisgarh, one of the states worst affected by the Maoist insurgency, the security apparatus controls almost all aspects of daily life. This has drastic consequences for those living and working there, in particular the Adivasi population. In the fight between government forces and the Maoists, the rights and dignity of the Adivasis are frequently taken away, with many among them in prison for crimes they did not commit. At the end of 2012, National Crime Records Bureau (NCRB) reported that Chhattisgarh prisons have the highest overcrowding in prisons in the country, at an occupancy rate of 252.6 per cent. There is also a shortage of critical resources, such as prison guards to escort undertrials to hearings (due to a large number of 'high security' prisoners), no women's jails and a high number of deaths in custody in 2012.<sup>46</sup>

A series of Right to Information (RTI) applications filed by the Jagdalpur Legal Aid Group on the total disposed cases in the Dantewada District Sessions Court between 2005 and 2012 showed stark results in the delivery of justice. There were a high number of accused persons per case at 6.94, i.e., almost 7 persons per case; there was a marked increase over the years in the use of specific charges against the accused under the Arms Act and Offences against Public Tranquillity under the IPC; the average acquittal rate in criminal trials was very high at 95.7 per cent (i.e., a conviction rate of 4.3 per cent compared to the national average of 38.5 per cent);<sup>47</sup> and the longest duration of cases had increased from three years in 2005 to more than six years in 2012 (there were 15 such cases). This data presents a damning scenario of access to justice in Dantewada district.

At the time of her arrest on 12 October 2011, Soni Sori was a 36-year-old *ashram shala*<sup>48</sup> in-charge in Jabeli village, Kuakonda block, Dantewada district. Belonging to the Madiya adivasi community, Soni had previously fought courageously to get justice for her nephew, Lingaram Kodopi, who was picked up by the Chhattisgarh Police in August 2009, locked up, and tortured in order to become part of the anti-Naxal Special Police Officer (SPO) cadre.<sup>49</sup> She then supported him in studying journalism in Delhi, during which time he testified on the plight of villagers in Naxal-affected areas at the Independent People's Tribunal titled 'Land Acquisition, Resource Grab and Operation Green Hunt'.<sup>50</sup> Lingaram also documented atrocities committed by the police and other security forces in March 2011 in the villages of Tadmotra, Morpalli and Timmapuram in Dantewada district, into which the Supreme Court subsequently ordered a CBI inquiry.<sup>51</sup>

The prosecution's case was that on 8 September 2011, the police received 'secret information' that Soni and Lingaram likely worked as conduits for large sums of money being paid to Naxalites by Essar, an Indian multi-national company with mining interests in Chhattisgarh. It was alleged that they were caught in a police raid when they were in the process of receiving ₹1.5 million from an Essar contractor, B. K. Lala, at the Palnar village weekly market on 9 September 2011.<sup>52</sup> The police stated that while Linga was arrested on the spot, Soni escaped in the pandemonium, but was later

arrested in Delhi on 4 October 2011. Prior to her arrest, Soni had exposed details to news magazine *Tehelka* about how she and her nephew were being framed in multiple cases.

In the Essar case, Soni and Linga were charged under sections 120B (conspiracy), 121 (waging war against the state) and 124A (sedition) of the Indian Penal Code, sections 17 and 40 of the Unlawful Activities Prevention Act (for raising funds for a terrorist act), and sections 8(1) and 8(2) of the Chhattisgarh Special Public Security Act (accepting money for an unlawful organization), which allow maximum sentences of life imprisonment and the death penalty. The police appeared to have acted at a fortuitous time, just days after a news story cited information about Essar paying Maoists, released by the WikiLeaks cables almost six months before.<sup>53</sup>

Throughout this case, key legal and procedural protections within the criminal justice system have been egregiously subverted. Some of these violations are now discussed.

### 3.2.1 Use of Custodial Torture

Despite pleading before the District Court at Saket, Delhi, regarding her fears of mistreatment in the custody of the Chhattisgarh police, Soni was remanded to its custody on 7 October 2011 by the Additional Chief Metropolitan Magistrate of the court. In Soni's letter to her Supreme Court advocate dated 24 January 2012,<sup>54</sup> she carefully describes details relating to her physical and mental torture, sexual assault and the threats made against her to force a confession at the direction of the Dantewada Superintendent of Police (SP) Ankit Garg, while in custody. Based on her account, she was intimidated, verbally abused, forced to sign some papers and make untrue statements to incriminate her and others, electrocuted through her feet, legs and clothes, stripped naked, molested, and brutally assaulted by inserting stones into her body. At one point, SP Ankit Garg said: 'You will be ashamed of yourself; you will beat your head against the walls of the jail and die of shame. You are an educated woman; you will not be able to live with this shame.'<sup>55</sup> A horrific attempt was made to break her both physically and mentally.<sup>56</sup>

Despite clear medical evidence of the torture meted out to Soni, there was no departmental

inquiry within the Chhattisgarh police following these revelations. On the contrary, SP Ankit Garg was awarded the President's Police Medal for Gallantry in January 2012 for his role in counter-insurgency operations against Naxalites in Chhattisgarh.<sup>57</sup>

### 3.2.2 Procedural Failures

#### Remand Procedures

By 10 October 2011, after being remanded in custody of the Chhattisgarh police, Soni was in such bad physical condition due to torture sustained in custody that she was unable to even get down from the police van and go to the courtroom to present herself to the magistrate in Dantewada. Her statement was taken by a court staffer and the magistrate remanded her to judicial custody without seeing or speaking with her. Despite the sensitivities of the case, the magistrate accepted the police's claim that she had slipped in the bathroom, hurt her head and was thus unable to be present. In a letter to her Supreme Court advocate dated 26 November 2011,<sup>58</sup> Soni recounts her interaction with the Dantewada magistrate. The magistrate claimed that she would have taken immediate action had she known Soni had been brutally hurt. Soni asked her why she did not call her inside the court. The Magistrate responded saying that the police had told her that she had fallen in the bathroom. Soni says that the Magistrate should have ensured that she was brought to the court, away from the policemen responsible for her condition, so that she could have given her statement elaborating the complete causes of her injuries.

#### Inconsistent Application of the Law

The accused from Essar, B. K. Lala and D. V. C. S. Verma, were granted bail by 4 February 2012 and 3 January 2012, respectively, on the grounds that their chargesheets had not been filed within 90 days from the filing of the FIR. Soni and Linga were not granted the same relief. After being denied bail by both the trial court and the Chhattisgarh High Court, they were finally granted bail by the Supreme Court on 7 February 2014, two years and five months from the date of their arrest.

This prolonged period in prison has had grave personal consequences for Soni's family. While Soni and Linga were both tortured in custody, Soni's

husband Anil Futane suffered similar brutality after his arrest on 10 July 2010, and suffered a paralytic stroke while in custody as a result of his injuries. Though he was acquitted in all four cases against him, he died three months after his release due to the injuries sustained, while Soni was still in prison.<sup>59</sup> Soni's mother took ill after her arrest and died in 2012. Soni and Anil's three children, aged between seven and 13, have suffered immensely in these circumstances. Their youngest daughter, aged seven, has thalassemia, and requires blood transfusions regularly. Despite these serious mitigating circumstances coupled with a lack of evidence, Soni was repeatedly refused bail by the courts.

#### Lack of Action by Local Public Institutions and Public Servants

On the morning of 10 October 2011, after torture sustained during three days in the custody of the Chhattisgarh police, Soni was admitted to Dantewada District Hospital. She was unconscious at the time of arrival and the medical report recorded serious injuries, included injuries sustained due to possible electrocution, and those caused by a 'hard and blunt' object.<sup>60</sup> However, she was discharged in just a few hours, and taken to the District Court. In response to news reports, Ramnivas, the Additional Director General of police (anti-Naxal operation) in Chhattisgarh, made a statement that the visit to the hospital was little more than a 'routine check-up'.<sup>61</sup> Thereafter, in the afternoon, after being remanded to judicial custody by the magistrate, Soni was taken from the jail and admitted to Maharani Hospital in Jagdalpur. Her condition on admission included injuries to the right side of her scalp and lumbar, and she was unable to stand. Two days later, she was sent to Raipur Central Jail, from where she was referred to Bhimrao Ambedkar Medical College and Hospital. Here, no significant injury or detail was noted, and she was discharged the same night. It is alleged that the police forced the doctors to remove the intravenous drip and discharge Soni, although she was not even in a condition to walk.

On 17 October 2011, Soni was produced before the magistrate in Dantewada. In a video recording, she stated that she did not reveal details about her torture in police custody to the media or in front of the Dantewada magistrate due to threats from the

police about consequences for her family if she did so. Finally, on 20 October 2011, the Supreme Court made an order that the injuries sustained by Soni 'do not prima facie appear to be as simple as has been made out to be by the Chhattisgarh police'.<sup>62</sup> The court ordered that the state of Chhattisgarh admit Soni in the Nil Ratan Sarkar Medical College and Hospital, Kolkata, within one week, and that Soni be examined by a panel of doctors. Upon examination in Kolkata on 26 October 2011, the doctors found two stones in her vagina, and one in her rectum, which she asserted had been inserted during the torture meted out to her while in police custody in Dantewada. After treatment, the Supreme Court ordered that Soni be transferred to Raipur Central Jail. There, she faced a very hostile jail administration—she was not given follow-up care for injuries sustained, and her medical needs were routinely dismissed as fictional. After five months of continuous petitioning due to her worsening condition, the Supreme Court ordered her to come to the All India Institute of Medical Sciences (AIIMS) in Delhi for treatment. The order called for a board of doctors to examine her physical condition and recommend treatment for her to undergo at AIIMS itself. After being treated for vulval excoriations and scabies, she was transferred to Jagdalpur Central Jail in light of the ill-treatment suffered in Raipur Central Jail.

Up until this time, at almost every step in the aftermath of torture sustained, public authorities, including medical superintendents and heads of public hospitals, were negligent in prioritizing Soni's care despite extreme physical agony and grave consequences for her health.

### 3.2.3 Dilution of Evidentiary Standards

In addition to the 'nature of allegation' and 'seriousness of offence', Soni and Linga were denied bail by the High Court of Chhattisgarh based on the 'quality of evidence' against them.<sup>63</sup> The only connection that the police has shown between Soni, Linga and the Maoists in the Essar case is some 'secret information', which in normal circumstances is unusable in court, and cases accusing Soni and Linga of participating in Naxalite violence. At the time of the bail order in the Essar case, Soni and Linga had been acquitted in all but one of these cases, in which Soni had received bail and in which she has recently been acquitted.

In the Essar case, based on the police's own claims, there was no actual exchange of money when the 'raid' took place, which implies that Soni and Linga were in no way in the wrong. In the FIR, station-in-charge Sub-Inspector Umesh Kumar Sahu states in his report: 'After this, B. K. Lala was taking out the ₹1,500,000, which was given by the Essar company to be given to the Naxalites, from the bag to give to Linga, at which time the police surrounded them in order to catch them.'<sup>64</sup>

There is also great variation in the content of the statements of the police witnesses taken under section 161 of the CrPC. All original statements made one day after the incident cite that the accused were brought to the police station directly from the site of the alleged exchange, and that none of the seven policemen knew Soni from before. The supplementary statements of five out of the seven policemen, recorded two months after this, state that Soni fled from the site and that they recognized her from before.

### 3.2.4 Patterns of Incriminating Material

A malicious lack of imagination has been displayed in the collection of witness statements against Soni in the other cases in which she was charged. Her lawyers conducted an analysis of the chargesheets against her in two cases—Crime no. 13/10 and Crime no. 17/10, both registered at the Kuakonda police station, and found that statements appear to have been fabricated in a highly crude manner. In many places, the statements are the same, with the only significant difference being the actual description of the crime (as they are different cases), and differences in dates. The same accused are listed by the witnesses in an identical order, each testimony describes overhearing the intent to commit a crime in a similar physical context ('walking towards the jungle'), and even though the witnesses say they saw the accused persons accompanying the Naxalites two or three months ago, in each respective chargesheet they reported this on the same day and before the same Investigating Officer.

### 3.2.5 Use of Confessions in Police Custody

Under the UAPA, CSPSA and IPC, confessions in police custody are not admissible in a court of law. Despite this, the Chhattisgarh High Court, in its judgment on the bail plea, still implicitly allowed it by saying that it is inadmissible as evidence, but

that their witness statements under section 161 of the CrPC do contribute to implicating them as Naxalites. In rejecting their bail plea, the statement of the High Court Judge Prashant Kumar Mishra reads: ‘Although statements made by the accused persons to the police, which are available in the charge sheet, may not have evidentiary value, but on a reading of these statements also, it would appear that the applicants were closely connected with the naxalites.’<sup>65</sup>

### 3.2.6 Inordinate Delays

In the Essar case, the trial has not yet commenced, and therefore no witness or evidence has been produced. Based on the analysis of Soni’s legal team, it is in the best interest of Essar and its accused officials that the trial continues to be delayed. There are six cases, in addition, in which Soni is ‘wanted’ and shown to be ‘absconding’, throughout which time she was working at the *ashram shala* with perfect attendance. The cases were weak, and she was acquitted in five of the six cases in the two years she was in jail, and acquitted in the sixth case after being given bail in the Essar case. Soni finally received regular bail in the Essar case on the orders of the Supreme Court on 7 February 2014. In addition, the restriction on not entering Chhattisgarh, imposed on her and her nephew when they were given interim bail in November, was also lifted.

These processes of exclusion from justice continue to be common throughout Chhattisgarh. Soni and Linga’s fight against injustice in highly adverse circumstances has highlighted the brutal action and inaction of the state in Naxal-affected areas. When Soni was released on interim bail, she expressed her concern that she has left behind many innocent Adivasi men and women, who continue to languish in prison without legal assistance and remedies.

## 4. Consequences of Exclusion in the Application of Anti-Terror Laws

The unfair and unequal application of anti-terror legislations and their frequent misuse to systematically target specific communities has serious consequences, at both individual and societal levels. Some of these major impacts are

examined now:

### 4.1 Consequences for the Individual<sup>66</sup>

The wrongful arrest, detention and torture of innocent persons at the hands of the police and other investigative agencies continues to impact their lives, even after they have been subsequently found to be innocent and acquitted by the courts. In testimonies before a People’s Tribunal in Hyderabad, organized by Anhad (Act Now for Harmony and Democracy) and the Human Rights Law Network (HRLN), victims spoke about how they were illegally abducted by police in civil uniforms and unmarked vehicles, blindfolded and driven to undisclosed locations, where they were tortured till they agreed to sign blank confession papers. Many of them testified to having serious psychological impacts from their brutal torture and prolonged detention, which often extended to many years.<sup>67</sup> While the focus in a terror attack is largely on the mental trauma of victims, the story of damaging and often permanent impact on the mental health of the wrongly accused and their families is rarely an issue of debate. Often, families find themselves socially ostracized and cannot turn even to their local community for support. This can take an immense emotional toll on the family, as they struggle to fight cases which drag on for years in court.

Perhaps most significantly, the tag of a terrorist continues to follow the accused persons, despite their acquittal, and prevents them from living a normal life. They continue to face harassment by the police and are frequently arrested after subsequent terror attacks, often without any evidence linking them to the incident. Their movements and communication are monitored, and even routine contact between two alleged terror suspects can lead to them being brought in for questioning. Victims of wrongful arrest and detention in terror crimes also face a particularly difficult time in their access to livelihood opportunities. Many are unable to find secure jobs after their release, or find themselves excluded from labour markets altogether, both on account of the years lost in jail and the fact that they have been tried in terror-related cases. Potential employers generally refuse jobs to terror suspects fearing unnecessary harassment and scrutiny in case they get involved



in a police case again; character certificates from the government declaring their innocence are of little help in such instances. In many cases, where the sole breadwinner in the household is in jail for years, families are reduced to destitution and extreme poverty.<sup>68</sup> The Peoples Union for Democratic Rights (PUDR) has documented the plight of several women in Gujarat, who, after their husbands were falsely charged and detained in connection with the 2002 burning of the Sabarmati Express, were forced to rely on the charity of family or community (through *maulvis*, for instance) to make a living. Others had to leave their homes, and some had to take up work to support young children and pay lawyers' fees.<sup>69</sup> Similarly, for youth whose education is interrupted by their prolonged detention, reentering the system with a 'terrorist' label proves highly challenging. Despite the havoc that false accusations and wrongful detention can wreak on the lives of innocent persons and their families, there has been almost no effort by the government to provide compensation or assistance for their rehabilitation back into society.

#### 4.2 Consequences for Society

For society, the misuse and misapplication of anti-terror laws has equally serious consequences. The frequent and repeated abuse of such laws results in an undermining of the legal system. When legal processes are unequal and exclude critical protections and safeguards for certain communities, it is not only these communities that are affected but also the entire investigative and judicial process. It has become abundantly clear that law enforcement agencies regularly fabricate evidence and often do not pursue credible investigations to resolve terror cases. Moreover, there is insufficient scrutiny and questioning of the actions of the police and other investigative agencies at the level of the lower judiciary. Since cases take years to settle, an eventual acquittal still means that the accused has already spent years behind bars. Advocate Ashok Agarwal, who led the defence to contest the ban on SIMI in the recent UAPA tribunals, calls this phenomenon 'process as punishment'. To build strong institutions that uphold the rule of law, such exclusions need to be challenged as they damage the credibility of these institutions and adversely impact the faith of citizens in state institutions of

justice.

Equally, the targeted misuse of terror laws against specific communities feeds into a larger communal division within the country. There is an increasingly strong perception among Muslims that their community is under attack, with government agencies working in tandem with communal forces and other vested interests. The crushing of legitimate dissent by Adivasis and other marginalized groups, through the misuse of the UAPA and state-specific terror laws alienates these communities further. The indifferent response of the state and its institutions to discrimination and violence perpetrated against marginalized groups—for instance, the botched investigation into attacks by Hindutva terror groups in Malegaon, Ajmer and Hyderabad, or the lack of action against police and armed forces personnel committing serious human rights violations against Adivasis in Chhattisgarh—only serves to reinforce such beliefs. The sense of victimization felt by these communities has resulted in their increasingly moving away from the social and political mainstream. In turn, such trends further increase the polarization and distrust between groups, resulting in a vicious cycle. An example of this is the increasing ghettoization of Muslims in Indian cities, as people seek out the support and security of their own community. Though such trends are partly self-imposed, societal stigmatization and marginalization play a crucial role in this process. In this sense, the misuse of anti-terror laws also has serious negative implications for the secular fabric of Indian society.

Conversely, the fake and fabricated cases slapped by law enforcement agencies, primarily on Muslim youth, have, over the years, given rise to the acceptability of a divisive and dangerous notion. Terrorism is deemed synonymous with being Muslim, and large sections of society have been strongly influenced by this communal perception. The sensationalist and one-sided media coverage of terror cases further fuels this environment of fear and suspicion around a particular community. In a sense, an entire community is stigmatized, its members labelled as criminals and terrorists. The result is reduced public scrutiny of the widespread misuse of anti-terror laws by the police and other agencies investigating terror attacks.

At a broader level, such suspicion and prejudice stifles any constructive debate around the legitimacy of anti-terror legislation and its dangerous implications for the fundamentals of Indian democracy. No major national or regional political party has opposed the subversion of constitutionally guaranteed rights and protections under such laws, or questioned the need for such unbridled powers to the police and investigating agencies, fearing it may be construed as a weak response to, or even support for, terrorism. In fact, there has been no debate at all, and all the questioning of the legitimacy and need for such draconian legislation comes from people and parties at the fringes of the larger political discourse in the country. Thus, when the latest amendments to the UAPA were passed by Parliament in 2012, there was not even a murmur of opposition from any significant political party or parliamentarian. However, the narrow and flawed understanding of India's own 'war on terror', and the need for a so-called iron fist security policy has jaundiced the view of all important political forces across party lines, and even silenced the few who, in the past, had spoken out against the legitimacy and need for anti-terror legislation.

## 5. Recommendations

### 5.1 Repealing UAPA and Other State-Specific Anti-Terror Laws

It is increasingly clear that the UAPA and other state-specific anti-terror laws are prone to severe abuse by the police and other agencies responsible for the investigation of terror crimes. Through their subversion of vital legal and procedural safeguards, these laws have allowed investigative agencies to selectively target individuals and organizations, on the basis of shoddy investigations and flimsy, often fabricated, evidence. Accused persons often languish in prison for years before they are found to be innocent and acquitted by the courts, while organizations deemed unlawful have little recourse to contest their bans. The unjust and unequal application of anti-terror laws has serious implications for the individuals and communities affected by their abuse, as well as for the broader promise of a secular and democratic India. Yet, there is no evidence suggesting that such draconian anti-terror legislations are in any way

necessary for the state to prevent or solve acts of terrorism. There is therefore an urgent need for the UAPA and various state-specific terror laws to be repealed. In case such laws are not repealed, they must at the very least be amended to incorporate serious safeguards against their misuse and made consistent with constitutionally guaranteed rights and protections. Existing provisions relating to the definition of terrorists or terrorist organizations, detention of suspects, evidentiary standards, use of confessions and bail norms are a few key areas that demand close examination.

### 5.2 Establishing a Sound Monitoring Process for the Passage of Anti-Terror Laws

The experience with the passage and amendment of national level anti-terror legislation also demonstrates the absence of a sound mechanism to monitor this process. Though TADA and POTA were eventually repealed, amendments to the UAPA have incorporated many of their most draconian provisions, defeating the very purpose of their repeal. Similarly, existing checks on the passage of state-level anti-terror legislations are limited to central government approval for such laws, a process that is discretionary and prone to political manipulation. Therefore, measures must be instituted to ensure that future legislations are thoroughly and impartially scrutinized, so that they do not lead to similar violations of fundamental rights and protections, irrespective of the political party in power.

### 5.3 Ensuring Fair Investigation and Trials

At a broader level, it is important to acknowledge that better laws by themselves are insufficient. The selective targeting of specific communities in terror cases equally reflects a deep institutional bias in the investigation and prosecution of terror cases. Though the government has suggested fast track courts to prosecute such cases, this is not a permanent solution to the issue. The setting up of special courts will always be a political decision, and while this may accelerate the trial process, it does not tackle the thornier problem of the prevalent bias and prejudice against particular communities, which also extends to the judiciary,

especially the lower courts. The need therefore is to push the government to ensure fair investigation and establish a strict monitoring and review mechanism of all cases where individuals have been charged under provisions of anti-terror laws.

#### **5.4 Fixing the Accountability of the Police**

Equally, police officials must be liable to stern action in cases where evidence has been fabricated or manipulated to frame a person. At the moment, there is virtually no accountability on the part of investigative authorities responsible for such misuse. The National Commission for Minorities, in its recommendations for the Police Act,<sup>70</sup> has also suggested a number of important reforms that can be helpful in ensuring fairer and more equitable investigations for minorities, many of which are equally applicable for other marginalized communities. These include a substantial increase in the representation of minorities in police and paramilitary forces; better training and sensitization, particularly for lower-level police personnel, on how to handle cases involving minorities and other vulnerable groups; more humane and sophisticated methods of crowd control, violence control and intelligence gathering, restricted use of firearms; and courses on the basic tenets of various religions, the principles of human rights' and the constitutional safeguards provided for minorities; screening for communal bias among police personnel during recruitment and promotion; and greater interaction between the police force and citizens.

#### **5.5 Ensuring Adequate Access to Legal Representation for Terror Suspects**

The polarized nature of the public discourse around terrorism often compromises access to proper and competent legal representation for the accused in terror cases. While the situation is slowly changing in urban areas, most lawyers are still unwilling to defend terror suspects, fearing this will be perceived as being anti-national and hurt their legal reputation. Moreover, the threat of violence is very real for lawyers representing terror accused, many of whom have been brutally attacked by members of right wing Hindutva groups and, at times, even by fellow lawyers.<sup>71</sup> The judiciary must

also take strict action against lawyers' unions that have passed resolutions forcing their members to boycott terror suspects and not provide them with legal representation. Similarly, access to proper legal aid for accused persons unable to afford or find a suitable lawyer is essential, but at present lawyers assigned to terror suspects are often insufficiently trained to handle such cases, or are unwilling to put up a robust defence due to the reasons discussed above. Since offences under anti-terror laws carry severe penalties, including life imprisonment and capital punishment, the lack of adequate legal representation can lead to serious miscarriages of justice: for instance, innocent persons being wrongly convicted or detained for many years, based on false or fabricated evidence.

#### **5.6 Compensation and Rehabilitation of the Wrongly Accused**

Despite the severe psychological and socio-economic consequences suffered by people who are falsely implicated in terror cases, there is at present no mechanism to provide victims with proper compensation, even after their eventual acquittal and release. International human rights law, including Article 2 of the ICCPR, lays out clear provisions for an effective remedy for individuals whose rights and freedoms are violated, regardless of whether the violations are committed by a person acting in an official capacity. An 'effective remedy' in this context is not limited to monetary compensation, and may involve a range of other compensatory measures, such as the restoration of residence, property, family life and employment, physical and psychological rehabilitation, prosecution of those responsible, official acknowledgement and apology, and guarantees of non-repetition.<sup>72</sup> In India however, there are no guidelines for the adequate compensation and rehabilitation for victims of abuse of anti-terror laws. Apart from a few stray instances of monetary compensation—for instance, for Muslim youth acquitted of terror crimes in Hyderabad and Jaipur, and a software engineer who was compensated for wrongful dismissal by his company after being falsely arrested in a terror case—victims have been left to fend for themselves. It is incumbent on the judicial system to powerfully intervene and institute clear mechanisms to ensure that the government provides adequate compensation for such persons,

both in terms of substantial reparations for the harm caused to them and assistance in starting their lives afresh after their release.

## 5.7 Increasing Public Awareness

There is an urgent need for public awareness campaigns that honestly highlight the drastic implications of the selective targeting, labelling and framing of members of specific communities in the name of fighting terror. Equally, the media must act responsibly in its reporting of terror cases, verifying

claims by investigative agencies and presenting them in an objective, non-sensationalist manner. A more balanced perspective on the implications of anti-terror legislation, in terms of their subversion of fundamental freedoms and widespread abuse, is necessary to counter the state's propagation of this false notion that such laws are indispensable to India's 'war on terrorism'. This increased public awareness and scrutiny can also play a vital role in reducing bias and prejudice in the use of anti-terror laws.

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**Part II**  
**Budgets and  
Planning**





**Chapter 6**  
**Exclusion in**  
**Planning and**  
**Budgetary**  
**Processes**



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## 1. Introduction

While government expenditure on sectors like health, education and agriculture can be expected to benefit the entire population (including the marginalized and vulnerable sections), the development status of certain groups significantly lags behind that of other sections of the population. Dalits, Adivasis, religious minorities, women, children and persons with disabilities comprise the major marginalized or vulnerable sections of the country's population. The relatively poor development status of these groups is due to a number of reasons, including unequal social structures, discrimination, gaps and flaws in public policies, and poor implementation of government interventions.

Tracking government expenditure on different sectors like health, education, agriculture and defence, is a straightforward process, since the union and state budget documents in India segregate the expenditure figures across sectors. However, the formats of these budget documents provide little scope for segregating expenditures for different sections of the population. Hence, a quantitative assessment of public spending on the development of any particular section of the population becomes a difficult exercise.

Since the 1970s, the Government of India has recognized the need for making a distinction between 'incidental' benefits for certain disadvantaged communities and 'direct' policy-driven benefits for these communities from public expenditure. This recognition has led to the adoption of specific planning strategies like the Special Component Plan (later renamed the Scheduled Caste Sub-Plan or SCSP) for Scheduled Castes (Dalits), the Tribal Sub-Plan (TSP) for Scheduled Tribes (Adivasis) and the Women's Component Plan (WCP). In addition, budgetary strategies like gender-responsive budgeting and the Prime Minister's 15-Point Programme for Minorities, aimed at furthering the development status of various excluded groups, have also been instituted.

In the 11<sup>th</sup> and 12<sup>th</sup> Five Year Plans of India, the union government, with its stated emphasis

on 'inclusive growth', proclaimed to strive for the development of the vulnerable sections. Further, P. Chidambaram, former union finance minister, said in his 2013 Budget speech that 'owing to the plurality and diversity of India, and centuries of neglect, discrimination and deprivation, many sections of the people will be left behind if we do not pay special attention to them'.<sup>1</sup> Special attention to any excluded group in policy pronouncements without any concomitant prioritization in public spending is meaningless. It is therefore pertinent to make a quantitative assessment of public spending on the development of these groups, particularly in terms of determining what part of the overall public spending is earmarked for ensuring direct policy-driven benefits.

However, ensuring direct policy-driven benefits for disadvantaged sections from public expenditure is only one part of the efforts required from the government. What is more important in this context is to ensure that the development programmes and schemes that emerge out of the planning processes at different levels (such as habitation-level plans, district-level plans, state-specific Five Year Plans and the national Five Year Plan, which define public expenditure priorities in India) are responsive to the marginalized and vulnerable sections of the population.

Whether a development programme or scheme is responsive to any particular excluded group depends on whether (a) the planning process in the scheme identifies the factors underlying the development deficits of that section of the population; (b) the scheme incorporates interventions that would address the specific challenges and needs identified for the group concerned; (c) the unit costs, financial norms and operational guidelines of the scheme facilitate adequate responses to the challenges and needs identified; (d) the scheme is adequately funded in terms of budgetary resources; and (e) it is implemented properly.<sup>2</sup>

This chapter provides an assessment of the responsiveness of plans and budgets in India to some of the largest excluded sections of the population—Dalits, Adivasis, religious minorities, and women—in terms of to the framework just discussed. Section two discusses the broad

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contours of the fiscal policy framework prevalent in India over the last decade and its impact on promoting social inclusion. Section three discusses the specific planning and budgetary strategies adopted for the major excluded groups. This section highlights some of the lacunae common to these strategies and indicates possible corrective policy measures. Finally, section four concludes with some broad recommendations for improving the responsiveness of plans and budgets towards excluded groups in India.

## 2. Fiscal Policy and Social Inclusion

The fiscal policy space available to the government in India has been much less than that available in most developed countries as well as other developing countries. This limited fiscal space, among other factors, has led to low government spending on a range of public goods (education, health, drinking water and sanitation, housing, etc.) for which excluded groups are likely to be significantly dependent on public provisioning. As a result of the inadequacy of budgetary resources, public provisioning in the social sector and on social security programmes has suffered from the problems of inadequate coverage and unsatisfactory quality. There can be little doubt about the fact that the fiscal policy framework prevailing in the country has not provided enough

scope for designing and implementing substantive government interventions for these groups. The following discussion elaborates on these arguments with the help of relevant data.

### 2.1 Limited Fiscal Policy Space in India

The overall quantum of public resources available to the government has been inadequate in comparison to several other countries. An analysis of the extent of public spending in India (see Table 6.1) shows that the combined budgetary expenditure (including the union budget and state budgets) stood at around 28 per cent of Gross Domestic Product (GDP) in 2012–13. The combined budgetary expenditure of the centre and states, as compared to the size of the country's economy (i.e., the GDP), has remained stagnant since the early 1990s.

Cross-country comparisons shown in Figure 6.1 highlight similar deficiencies in the quantum of government spending in India. For the year 2010 (2010–11 for India), total government spending as a proportion of the country's GDP was 27.2 per cent for India, while it was a much higher 39.9 per cent for Brazil and 46.3 per cent for the Organization for Economic Co-operation and Development (OECD) countries on an average. The lower level of government spending in India means that the government has much less flexibility in ensuring substantive public provisioning of public goods

**Table 6.1 Magnitude of Total Budgetary Spending in India**

Year	Combined Budgetary Expenditure by Union Government and State Governments (Rs. Crore)	Gross Domestic Product (GDP) at Current Market Prices (Rs. Crore)	Combined Budgetary Expenditure (% of GDP)
1990–91	155,142	569,624	27
2000–01	552,124	2,102,314	26
2004–05	824,480	3,242,209	25
2005–06	933,642	3,693,369	25
2006–07	1,086,592	4,294,706	25
2007–08	1,243,598	4,987,090	25
2008–09	1,519,081	5,630,063	27
2009–10	1,814,610	6,477,827	28
2010–11	2,105,695	7,795,314	27
2011–12 (RE)	2,463,493	8,974,947	27
2012–13 (BE)	2,822,750	10,159,884	28

RE refers to Revised Estimates and BE refers to Budget Estimates. These figures can differ from the actual final spending.

Source: Compiled by the authors from the data given in Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance.

and other development interventions that are particularly relevant for the excluded sections of the population.

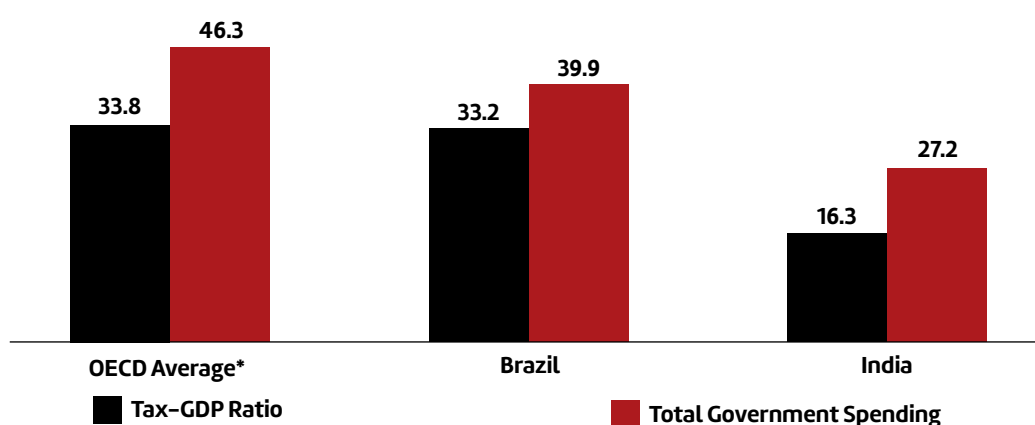
Since the adoption of pro-market economic reforms in India in the early 1990s, the proponents of a proactive fiscal policy for the country (which would necessarily require a stepping up of the quantum of government spending as a proportion of GDP) have gradually been shrinking into a minority. The dominant perspective on fiscal policy in India in the last few years is that ineffective use of budgetary resources is the biggest challenge in this domain and not the inadequacy of budgetary resources for the development sectors. It is true that in many sectors the available budgetary resources are not being utilized very well, and some resources also remain unspent in certain schemes. However, studies have shown that the problem of under-utilization of budgetary resources has been found mainly in development schemes and not so much in long-term, institutionalized public provisioning in the development sector.<sup>3</sup> These studies have also shown that staff shortages in different functions (programme management, finance and accounts, and frontline service provision) are among the

principal factors causing under-utilization of budgetary resources in these schemes, a problem which is rooted in the inadequacy of resources and the unwillingness of state governments to fill such vacancies.

Hence, the inadequacy of budgetary resources for the development sector in India is a critical challenge before the country. A comparison of per capita government revenue and expenditure between India, BRICS countries excluding India (Brazil, Russia, China and South Africa) and the OECD countries, adjusted for differences in exchange rates and purchasing power between these countries, is shown in Table 6.2. This clearly shows that the level of per capita government expenditure in India falls short of the OECD average, as well as the levels in Russia, Brazil, South Africa and even China. In fact, the level of per capita government spending in China has improved considerably between 2001 and 2011, as a result of which the gap in such spending between China and India has widened substantially, from very similar levels in 2001.

As stated earlier, one of the main reasons for the limited fiscal policy space available to the

**Figure 6.1 Tax–GDP Ratio and Total Government Spending (% of GDP) in 2010: India, Brazil and OECD Average**



\*OECD Average figure for 'Tax–GDP Ratio' is the average for all 34 member countries, while that for 'Total Government Spending as % of GDP' is the average for 32 member countries of the OECD, excluding Chile and New Zealand.

Sources: Compiled by the authors from the data given in the following publications: Organization for Economic Co-operation and Development (2014), 'Total Tax Revenue', *OECD Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; OECD (2014), 'Government Expenditures, Revenues and Deficits', *OECD Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; International Monetary Fund (2014), *World Economic Outlook—Recovery Strengthens, Remains Uneven*, Washington, DC: IMF; Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance.

**Table 6.2 Per Capita Government Revenues and Expenditures (US \$, at Current Prices and Purchasing Power Parities): India, Other BRICS Countries and OECD Average**

	General Government Revenues Per Capita		General Government Expenditures Per Capita	
	2001	2011	2001	2011
OECD Average	10,751	15,419	10,716	16,548
Russia	3,341	7,706	3,395	7,917
Brazil	2,450	4,272	2,638	4,564
South Africa	1,704	3,098	1,784	3,537
China	395	1,897	469	2,004
India	274	688	422	997

Source: Compiled from OECD (2014), 'General Government Expenditures and Revenues Per Capita', OECD Factbook 2014.

government in India is the low tax revenue collected in the country as compared to most developed countries and other developing countries. In 2010–11 the tax–GDP ratio was just 16.3 per cent for India, where as it was a much higher 33.2 per cent for Brazil and 33.8 per cent for the OECD countries on average.<sup>4</sup> In fact, Chidambaram said in his 2013 Budget speech that '[India's tax-GDP] ratios are one of the lowest for any large developing country and will not garner adequate resources for inclusive and sustainable development'.<sup>5</sup>

Despite India's low tax–GDP ratio, the government has not paid much attention to the need to raise this ratio significantly. This would require a range of measures, such as a reduction in the amount of tax revenue forgone due to a plethora of exemptions in the central government tax system, plugging loopholes in India's Double Taxation Avoidance Agreements and Tax Information Exchange Agreements with other countries, and reviving progressive taxation measures pertaining to inheritance tax, wealth tax and capital gains tax, among others. Although the government has been working on tax reforms through the Direct Taxes Code and the Goods and Services Tax, the primary purpose and benefit of these proposed reforms is bringing stability in the tax laws, as demanded by private investors, rather than a conscious effort towards stepping up the country's tax–GDP ratio.

## 2.2 Low Public Spending on Social Sectors

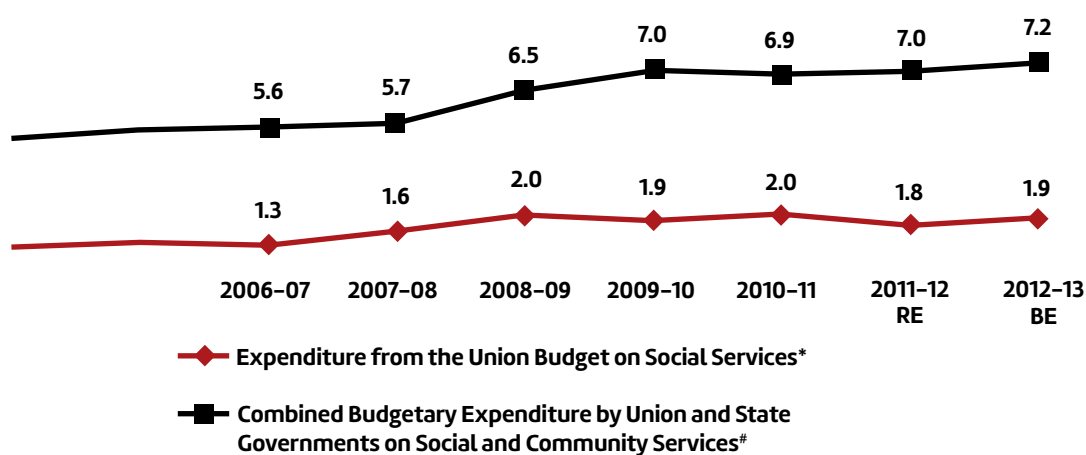
In the budgetary classification followed in India, social sectors or social services (terms used interchangeably in this chapter) usually refer to sectors like education, health, nutrition, drinking

water and sanitation, and housing; and social security measures meant for unorganized workers and disadvantaged persons. Public provisioning of these essential services and social security payments by the government, with adequate coverage and quality, are crucial to support the development of marginalized and vulnerable sections of the population.

However, the limited fiscal policy space available to the government and the low priority given to the social sectors in the country's overall budgetary spending have resulted in low public spending on these sectors. As shown in Figure 6.2, the total budgetary spending on social sectors in India used to be a meagre 5.3 per cent of the GDP in 2004–05; despite increases in social sector spending since then, the figure still hovers around only 7 per cent of GDP. Within this 7 per cent, the direct contribution from the union budget (excluding the direct spending from the state budgets) has been 2 per cent of the GDP at best. This level of public spending on social sectors is significantly lower than that in developed countries and also many developing countries.

For instance, India's public spending on critical sectors like health and education (as a share of the country's GDP) is significantly lower than that in Argentina, Mexico, Brazil, South Africa and China (see Figure 6.3). Equally disconcerting is the fact that India's public spending on social security payments for the poor has been negligible; the country's total public spending on social security for the poor (comprising primarily old age, widow and disability pension schemes) has been less than 0.15 per cent of GDP, even in the most recent years.

**Figure 6.2 India's Budgetary Spending on Social Sectors (Percentage of GDP)**

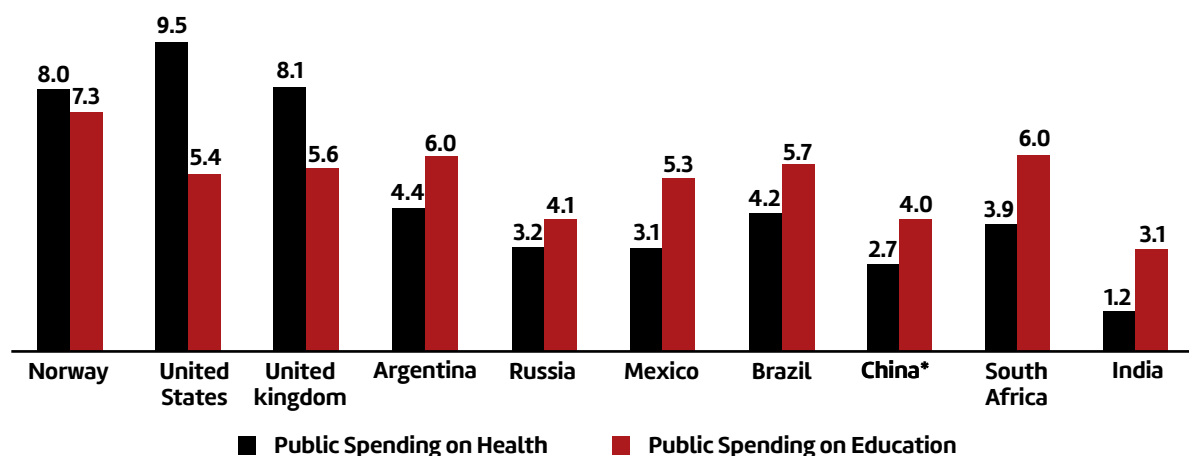


\*In the union budget documents, social services include the following sectors: education, youth affairs and sports, art and culture; health and family welfare; water supply and sanitation; housing and urban development; information and broadcasting; welfare of SCs, STs and OBCs; labour and labour welfare; social welfare and nutrition; and other social services.

#In the Indian Public Finance Statistics brought out annually by the Union Ministry of Finance, social and community services include the following sectors: all sectors covered under social services as listed above, scientific services and research, and Plan spending on relief on account of natural calamities.

Sources: Compiled by the authors from Centre for Budget and Governance Accountability (2012), *Unfulfilled Promises?—Response to Union Budget 2012–13*, New Delhi: CBGA and Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance

**Figure 6.3: Public Spending on Health and Education in 2010: An International Comparison (Percentage of GDP)**



\* Public spending on education in China is based on UNESCO data and not the source cited below.

Source: Compiled from United Nations Development Programme (2013), *Human Development Report 2013—The Rise of the South: Human Progress in a Diverse World*, New York: UNDP.

With inadequate budgetary resources for social sectors, efforts to boost human development in general, and development of disadvantaged sections in particular, have not been very effective. In fact, the persistence of development deficits in India is a problem that is rooted, among other

factors, in the deficiencies in public provisioning and government interventions in the social sectors.

The inadequacy of budgetary resources for the social sectors, especially for long-term and institutionalized public provisioning, has aggravated the systemic weaknesses in social

sector programmes. This includes poor quality infrastructure (schools, hospitals, *anganwadi* centres, etc.), shortage of qualified and trained human resources for delivery of services (teachers, doctors, para-medical personnel, *anganwadi* workers, etc.), shortage of human resources for management of programmes (for monitoring, supervision, finance, etc.), and unacceptably low unit costs for provisioning of various services in these sectors.

### 2.2.1 Low Unit Costs of Essential Public Services<sup>6</sup>

In the government's mid-day meal (MDM) scheme, the conversion cost<sup>7</sup> per day per child (excluding the labour and administrative charges) for primary and upper primary classes is ₹3.11 and ₹4.65, respectively. A monthly honorarium of ₹1,000 is paid to cooks in this scheme. In the supplementary nutrition programme under the Integrated Child Development Services (ICDS), the cost of feeding children (six to 72 months old), severely malnourished children (six to 72 months old), and pregnant and lactating mothers is ₹4, ₹9 and ₹7 per day per person, respectively. Further, in ICDS, an *anganwadi* worker is paid ₹3,000 per month and an *anganwadi* helper is paid ₹1,500 per month, amounts that are less than the minimum wages. An instructor in the government's National Child Labour Programme (NCLP) schools receives a mere ₹4,000 per month. Para-teachers in Sarva Shiksha Abhiyan (SSA), the government's flagship primary education programme, are paid only between ₹ 3000 to ₹5000 per month— roughly one-tenth of a regular teacher's salary. An Accredited Social Health Activist (ASHA) in the National Rural Health Mission (NRHM) scheme is paid the meagre amount of ₹350 each time she accompanies a pregnant woman to deliver in a hospital.

Government staff in agencies that implement these schemes in the states are generally of the opinion that these unit costs are less than the amounts required for providing services of satisfactory quality, especially because of the persistent rise in the prices of essential commodities over the last few years.<sup>8</sup> In addition, the remuneration or honorarium provided to frontline staff in these schemes continues to be less than the minimum wages prevailing in most states.

### 2.2.2 Low Coverage and Amount of Social Security Payments

With respect to social security payments, the extent of under-funding of government schemes seems to be similarly acute. Over the last decade, the union government has not been able to increase the coverage of beneficiaries or the amount of the entitlements in such schemes, which include the Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi Widow Pension Scheme (IGWPS), Indira Gandhi Disability Pension Scheme (IGDPS) and National Maternity Benefit Scheme (NMBS), all of which are part of the National Social Assistance Programme (NSAP). The amount provided for pensions by the central government under the IGNOAPS is a measly ₹200 per month per beneficiary in the age group of 60 to 79 and ₹500 per month per beneficiary in the age group of 80 and above. Many state governments contribute some amount additionally, but even with this contribution the amount of pension for the elderly is a paltry sum in most states. What is more distressing is the fact that only a small section of the elderly population is considered eligible for such pensions in most states. As of December 2012, the total number of beneficiaries under the IGNOAPS was 22.3 million, which constituted only about 21 per cent of the elderly population of the country.<sup>9</sup>

In view of the greater dependence of people from vulnerable groups on public provisioning in social sectors and social security programmes by the government, the inadequate coverage and unsatisfactory quality of government interventions in these domains raises serious questions about the development impact of public policies and public spending in the country for these groups. However, the problem of low public spending on social sectors is rooted in the inability and unwillingness of the government to step up the country's tax-GDP ratio through progressive policies in the domain of taxation.

## 3. Planning and Budgetary Strategies for Excluded Groups

Planning strategies like the SCSP for Scheduled Castes (SCs) and the TSP for Scheduled Tribes (STs) were initiated in the late 1970s. Though the

Women's Component Plan (WCP) was started much later, in 1997, the recognition of the need for such a strategy to focus on public spending on women came up in the mid-1980s. The major concern underlying the adoption of such strategies was that general public expenditure mostly provided incidental benefits to vulnerable sections and not direct policy-driven benefits. Due to a number of factors—unequal social structures, patriarchy, discrimination and gaps in public policies—people belonging to excluded groups were likely to derive fewer benefits from general public expenditure in the country than those who were better off. Hence, there was a need to provide direct policy-driven benefits to vulnerable sections by earmarking or channelizing certain minimum shares of public spending for them.

However, the formulation and implementation of planning and budgetary practices for excluded groups in India suffers from some major shortcomings. First, policy makers have often made a distinction between government services that are 'divisible' and those that are 'indivisible'. For instance, all services in which the government can identify and count individual beneficiaries (schools, scholarship schemes, immunization programmes, employment generation programmes, housing schemes, etc.) are considered divisible, while services in which the government cannot identify and count individual beneficiaries (roads and transport, power generation and supply, telecommunications, protection of law and order, etc.) are treated as indivisible. As a result of this distinction, planning and budgetary strategies for excluded groups are generally restricted to only services with divisible benefits. In fact, in 2010, the Narendra Jadhav Committee,<sup>10</sup> set up by the government to recommend steps for proper implementation of the SCSP and TSP, recommended that 43 ministries and departments be exempted from the implementation of the SCSP and TSP on the grounds of the indivisibility of benefits in their programmes and schemes.

Second, policy strategies for earmarking certain minimum shares of public spending for specific excluded groups have generally been restricted to plan spending, and do not cover non-plan expenditure, which is a much larger component of total government spending. The SCSP, TSP, WCP and Prime Minister's 15-Point Programme for

Minorities are all confined only to plan expenditure. Gender Responsive Budgeting (GRB) or gender budgeting (which has replaced the WCP as a policy strategy focussing on women, since 2009–10) is the only strategy that applies to both plan and non-plan expenditure.

Plan expenditure refers to all budgetary spending that falls under the purview of the Planning Commission of India and state planning boards. For example, all budgetary spending on a scheme like the National Rural Health Mission, which was initiated in the 10<sup>th</sup> Five Year Plan and is completely under the purview of the Planning Commission, is treated as plan spending, irrespective of whether it is on recurring expenditure heads (like staff salaries) or on non-recurring and capital expenditure heads (like construction of health centres and procurement of ambulances). On the other hand, government spending on institutions like the All India Institute of Medical Sciences and Safdarjung Hospital in New Delhi, government medical colleges in most state capitals and the Indian Council of Medical Research are treated as non-plan spending, since the budgets for these institutions are not under the purview of the Planning Commission.

Plan expenditure, which is generally around one-third of total budgetary expenditure in the country, is meant only for social sectors like education, health, drinking water and sanitation, and economic sectors like agriculture, transport, power and telecommunications. Yet, in some development sectors, like education and health, non-plan expenditure covers almost 70 per cent of the total budget for government services.<sup>11</sup> Additionally, in almost every development sector, the salaries of regular government staff and the funds for the maintenance of government infrastructure are covered from non-plan budgets. Much of the long-term and institutionalized public provisioning in many development sectors, such as government hospitals and medical colleges, a large number of government schools and colleges, universities, Indian Institutes of Technology (IITs), Indian Institutes of Management (IIMs), Kendriya Vidyalayas and Navodaya Vidyalayas, is also financed from non-plan budgets. Hence, non-plan expenditure is not 'unplanned', neither is it necessarily 'non-developmental'. The distinction between plan and non-plan budgetary expenditure



only signifies the scope of interventions undertaken by the Planning Commission.

Third, and very importantly, these policy strategies for excluded groups do not appear to have influenced overall planning or budgeting in any significant way. What they have influenced most visibly is the reporting of some of the allocations and expenditures in the budget documents for various development schemes. Even this reporting has been based largely on questionable assumptions made by the government departments with regard to the share of benefits that actually accrue to people from excluded groups.

For instance, in any development scheme meant for the entire population, it can be argued that women would get about half of the total benefits. Such an assumption can be monitored for some development schemes, such as those relating to employment generation, housing, education, scholarships and social security payments, for which data on beneficiaries is easy to compile. However, for many other schemes such a claim is difficult to prove or disprove since it is extremely difficult to collate the required data for the whole country. However, even for such schemes, the government departments concerned can claim that 50 per cent of the budget benefits women, and accordingly allocate this amount as spending targeted towards women.

As indicated earlier, any policy strategy for making public spending more responsive to a specific excluded group should ideally require: (a) identifying of the factors underlying the development deficits of the group concerned; (b) incorporating appropriate interventions in relevant government schemes that would address the specific challenges and needs identified; (c) ensuring that the unit costs, financial norms and operational guidelines of the schemes facilitate an adequate response; (d) ensuring that the schemes are adequately funded in terms of budgetary resources; and (e) outlining steps for proper implementation of the schemes.

However, the way in which most existing strategies for excluded groups have been adopted, all of these requirements have been neglected. The only additional effort has been towards reporting (often based on arbitrary assumptions) that certain proportions of existing budgetary expenditures

on different schemes have been directed to the vulnerable groups concerned, without any actual change in the process of planning and budgeting in these schemes. Although all planning and budgetary strategies have faced this issue to varying extents, it has been most acute with the WCP and GRB, somewhat less with the SCSP, and the least with the TSP. It would not be an exaggeration to say that the country has witnessed very little proper implementation of any policy strategy for earmarking or channelizing certain minimum shares of public spending for specific excluded groups. The rest of this section discusses each of these strategies in greater detail.

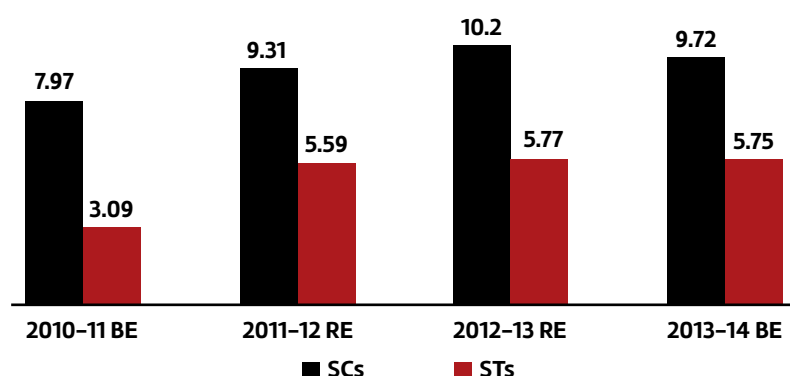
### 3.1 Scheduled Caste Sub-Plan (SCSP) and Tribal Sub-Plan (TSP)

The Planning Commission of India introduced the TSP in 1974 and the Special Component Plan in 1978 (later renamed the SCSP in 2006) in order to ensure direct policy-driven benefits for Adivasis (STs) and Dalits (SCs), respectively. The main objectives of the SCSP and TSP were to bring these communities on par with others in terms of development indicators, at a faster rate.

The SCSP and TSP guidelines envisaged that plan funds would be channelized for the development of SCs and STs in accordance with their proportion in the total population. These could also include outlays for area-oriented schemes that would benefit SC or ST hamlets or areas with a majority of SC or ST populations. These strategies also called for designing new and appropriate programmes and schemes relevant for the development of these communities. The SCSP and TSP funds were supposed to be non-divertible and non-lapsable, as per the guidelines. However, the union government has thus far been unable to fulfil the norm of earmarking 16 per cent for the SCSP and 8 per cent for the TSP from the total plan budget.<sup>12</sup>

The allocation of plan funds for SCs under the SCSP, shown in Figure 6.4, reached 9.72 per cent of the total plan allocation in the union budget of 2013–14, far short of the 16.2 per cent share stipulated under the SCSP. Similarly, trends in plan allocation for STs over the last few years show that it has not reached the stipulated 8 per cent mark; in the 2013–14 budget, it stood at 5.75 per cent.

**Figure 6.4 Plan Allocation for SCs and STs  
(Percentage of Total Plan Allocation by Union Government)**



Excluding central assistance for state and union territory plans from the plan budget of the union government.

RE refers to Revised Estimates and BE refers to Budget Estimates. These figures can differ from the actual final spending.

Source: Centre for Budget and Governance Accountability (2013), *How Has the Dice Rolled?—Response to Union Budget 2013-14*, New Delhi: CBGA.

One of the reasons underlying such non-fulfilment of the SCSP and TSP norms is that so far there has been no legal requirement on the ministries and departments to fulfil the stipulated target; the recommendations of the Planning Commission do not have any constitutional backing. Since 2011-12, following the Narendra Jadhav committee's recommendations for proper implementation of the SCSP and TSP, only some union ministries and departments (between 25 and 28 each year) have been reporting plan expenditures earmarked for SCs or STs in their budget documents.<sup>13</sup>

Moreover, many ministries and departments that have been mandated to implement the SCSP or TSP do not yet have relevant data on physical benefits or services provided to these groups, or the evaluation reports on the SCSP and TSP. More importantly, the Narendra Jadhav Committee's recommendations did not address the core problem of poor implementation of the SCSP and TSP by union ministries. The reporting of expenditure under the SCSP and TSP has been more in the nature of 'retrospective budgeting', where the allocations for SCs and STs are earmarked after the budgets for the schemes have been finalized, without any special measures taken for SCs and STs during the preparation of the budget. In several schemes, the relevant nodal ministries report a certain part of their plan allocations as the proportion of funds meant for SCs or STs, even though the schemes do not target the specific issues of SCs or STs. In fact, a majority of the schemes are

designed with a general approach for the entire population, and the nodal ministry merely assumes that SCs and STs would automatically benefit from them, along with other sections of the population. This defies the very purpose of having a strategy like the SCSP or TSP.

Projects meant for SCs and STs should have a beneficiary-oriented approach as far as possible and cover SC- and ST-dominated areas in projects related to infrastructure and basic amenities. It is imperative for the central government to urge its ministries to (a) identify the challenges confronted by SCs and STs in their sectors of concern; (b) identify measures that could be taken by them to address those challenges; and (c) earmark the amount of additional resources required for formulating special projects for these groups. These additional resources, devoted to the special measures for SCs and STs, should then be reported under the SCSP and TSP.

The implementation of the SCSP and TSP has been somewhat better in some states. Some have even adopted their own state-specific mechanisms to implement these strategies. For instance, the Bihar government constituted a Mahadalit Vikas Mission in 2007 to empower Dalits socially and economically. Under the mission, an initiative was taken to have special projects and earmark special funds for the overall development of the most deprived sections among Dalits. In the form of such special projects, 19 activities and schemes have been identified, covering housing, water supply

and sanitation, roads, school, health and nutrition, skill development, land and the Public Distribution System (PDS), among others. The mission has created a three-layered structure consisting of state, district and block missions, each with its own staff. The mission has been assigned responsibilities with regard to preparing plans and budgets, co-ordinating with different line departments and monitoring and evaluating different programmes and schemes covered under the Mahadalit Vikas Mission.

In 1991, the Uttar Pradesh government launched the Ambedkar Vikas Yojana to implement 11 development programmes for Dalits, which was revamped as the Ambedkar Gram Sabha Vikas Yojana in 2007 to cover Dalit-majority Gram Panchayats in the state. The scheme took up 13 major development activities pertaining to a range of sectors. A department at the state level was also created to monitor and evaluate these activities. Since 2012, however, the present Uttar Pradesh government has effectively replaced this scheme with the Samagra Gram Vikas Yojna, which covers villages based on their backwardness rather than their Dalit population.<sup>14</sup>

There have also been other state-specific SCSP and TSP models adopted in states like Maharashtra and Kerala, among others. The Maharashtra model requires, among other measures: (a) earmarking funds for the SCSP and TSP from the state's total annual plan outlays that are at least in proportion to their respective population shares in the state; (b) designating the social welfare and tribal welfare departments in the state as nodal departments for the formulation and implementation of the SCSP and TSP, with some autonomy in the selection of schemes and allocation of funds, and (c) entrusting these nodal departments with the responsibility of releasing allocations for development schemes for Dalits and Adivais (including those being implemented by other departments) and the authority to monitor the implementation of those schemes. Kerala has been implementing the SCSP and TSP through its decentralized model of planning and budgeting. The allocations made for SCs and STs are reflected in the budgets and annual financial statements of the state as well as local governments. Further, the SCSP and TSP funds are used to carry out development projects meant exclusively for SC and ST communities.

However, despite such encouraging practices and policy initiatives in select states, there remain a number of gaps in the implementation of SCSP and TSP in many other states. Most states have been successful in allocating plan funds for STs under the TSP in proportion to their share of the state population. However, as shown in Table 6.3, between 2009–10 and 2011–12, the total allocation for the SCSP by states was around 14.6 per cent of the annual plan, when it should ideally have been at least 16 per cent. Several states have allocated funds under the SCSP as per their respective SC population shares, but there are still states like Gujarat, Haryana, Jharkhand and Karnataka that have not been able to fulfil this requirement.

In addition to inadequate budgetary allocations, there are some glaring examples of how the SCSP and TSP funds (particularly SCSP funds) are being used for general interventions and projects that cannot be perceived as being meant specifically for the benefit of SCs or STs. For instance, the Odisha state budget for 2010–11 reported construction of jail buildings under the SCSP, with an allocation of ₹47.7 million. In the Madhya Pradesh state budget for the same year, ₹2.36 billion was allocated under the SCSP for construction of state highways, bridges and other expenses of the Public Works Department. Madhya Pradesh also allocated ₹80 million for the Satpura Thermal Power Station, ₹100 million for the Malwa Thermal Power station and ₹304.5 million for strengthening the power distribution system under the SCSP. Similar cases have been reported in states like Gujarat, Rajasthan and Delhi.<sup>15</sup>

Several such glaring examples have been highlighted by civil society groups, indicating that in terms of properly implementing the SCSP and TSP most states have a long way to go. An interesting development in this context has been in Andhra Pradesh, where a legislation has been enacted to make the implementation of the SCSP and TSP a legal obligation.<sup>16</sup> While this legislation has raised hopes among civil society groups and social activists across the country, it is yet to see actual enforcement. It is also important to note that under the previous United Progressive Alliance (UPA) government, the Ministry of Social Justice and Empowerment had drafted a similar national legislation for the SCSP.

**Table 6.3 Share of SCSP in Total Plan Allocation by Major States**

	Share of SC Population (2011 Census (%))	Share of SCSP in Total State Plan (%)		
		2009-10	2010-11	2011-12
Andhra Pradesh	16.4	15.7	16.7	16.8
Bihar	15.9	17.0	16.9	17.7
Chhattisgarh	12.8	11.6	11.6	11.1
Gujarat	6.7	5.5	4.5	5.5
Haryana	20.2	14.9	11.8	12.5
Jharkhand	12.1	10.4	10.3	9.6
Karnataka	17.1	16.2	12.5	12.2
Kerala	9.1	9.8	9.8	9.8
Madhya Pradesh	15.6	15.2	15.4	15.5
Maharashtra	11.8	7.4	10.2	10.1
Odisha	17.1	16.5	16.5	16.5
Punjab	31.9	28.9	28.9	28.9
Rajasthan	17.8	15.8	16.2	16.2
Tamil Nadu	20.0	15.5	19.1	21.3
Uttar Pradesh	20.7	21.1	21.3	21.3
West Bengal	23.5	23.0	23.0	23.0
All States	16.6	14.6	14.6	14.6

Source: Data from the Planning Commission cited in Standing Committee on Social Justice and Empowerment, 'Report on the Demands for Grants 2012-2013', www.loksabha.nic.in

### 3.2 Programmes for Religious Minorities

As per the National Commission for Minorities Act of 1992, religious minorities in India include Muslims, Christians, Sikhs, Buddhists, Parsis and Jains. This section focuses on the issues pertaining to development programmes for the Muslim community, which comprises the largest share (more than 70 per cent) of the minority population in India. The Sachar Committee Report in 2006 also detailed the significant extent to which the Muslim community lags behind other socio-religious communities in the country, across almost all development indicators.<sup>17</sup>

As a follow up of the Sachar Committee's recommendations, for the first time in the 11<sup>th</sup> Plan, the government promised to address the problems of inequality, deprivation and exclusion of the minorities within the overall approach of 'faster and inclusive growth. Since 2006-07, it has initiated four key interventions for the welfare of minorities, involving education and economic empowerment, access to basic public services, strengthening of minority institutions and area development programmes. Two specific planning and budgetary strategies designed to address the development

shortfalls faced by the religious minorities are the Prime Minister's 15-Point Programme and the Multi-Sectoral Development Programme (MSDP). The 15-Point programme, which had been operational since the 1980s, was revamped by the government in 2006 to bring within its ambit select flagship schemes and interventions. Currently, 11 ministries and departments report their involvement in implementing the 15-point Programme.<sup>18</sup> The programme envisages earmarking 15 per cent of total plan allocations and achieving physical targets under select flagship programmes for the development of minorities. Additionally, there are a few development programmes and schemes devised exclusively to directly benefit minorities, such as scholarship schemes, women's leadership programmes and *madrassa* modernization programmes. MSDP is an area development programme for improving the education, nutrition, work participation and access to basic public services in districts with a high concentration of religious minorities (termed Minority Concentrated Districts). MSDP was launched in 90 Minority Concentrated Districts (MCDs) in the 11<sup>th</sup> plan, of which 66 districts had a high concentration of Muslims.

Table 6.4 indicates that 8.4 per cent of the total union government plan budget in 2012-13 (and also about 7 per cent of the total 11<sup>th</sup> Plan funds<sup>19</sup>) have been earmarked for development programmes for religious minorities. One programme, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) accounted for almost 70 per cent of the total allocation meant for minorities. However, with regard to the benefits of JNNURM accruing to Muslims or other minorities, the reporting system does not provide actual expenditure figures or beneficiary data for minorities separately.

In fact, under the 15-Point Programme, the reporting of expenditure under a host of important flagship schemes, including the Sarva Shiksha Abhiyan (SSA), Integrated Child Development Services (ICDS) and JNNURM, appears to be retrospective reporting only, with no effort being made to ensure that minorities benefit from these allocations. No budgetary reporting mechanism exists to accurately capture the allocations being earmarked for minorities by the ministries and departments responsible for implementing these

schemes. On the other hand, budgetary allocations for programmes and schemes that benefit minority communities directly—like scholarship schemes, Indira Awas Yojana (IAY), Swarnajayanti Gram Swarozgar Yojana (SGSY), Swarnajayant Gram Swarozgar Yojana (SJSRY) and Industrial Training Institutes (ITIs)—are meagre.

At the state level, there are three different sources of financing for programmes for the development of minorities: the 15-Point Programme, MSDP and state plan interventions. With the exception of Uttar Pradesh, at present no state is implementing the 15-point Programme. In 2013, the Uttar Pradesh state government also announced that 20 per cent of plan allocations from the state budget would go towards minorities, covering 85 schemes across 30 departments. On the other hand, MSDP is currently being implemented in more than 20 states, and state governments are required to match the central government's financial contribution. A quick review of state plan documents by the authors also reveals that budgets for the state minority welfare departments (where they exist) have not exceeded

**Table 6.4 Union Budget Allocations for Minorities**

Scheme	2012-13 (RE)
Scheme for Providing Quality Education in Madrasas (SPQEM)	182.5
Infrastructure Development for Minority Institutions (IDMI)	28.4
National Rural Drinking Water Programme (NRDWP)	1,443.8
Urban Infrastructure Development Scheme for Small & Medium Towns (UIDSSMT)	2,642.2
Urban Infrastructure & Governance (UIG)	9,097.2
JNNURM—Integrated Housing Slum Development Programme (IHSDP)	2,235.8
JNNURM—Basic Service to the Urban Poor (BSUP)	7,254.8
Upgradation of Industrial Training Institutes (60 ITIs)	8.8
Swarnajayanti Shahari Rozgar Yojana (SJSRY)	30.4
Indira Awas Yojana (IAY)	1,533.6
Ministry of Minority Affairs	2,200.0
Total Budget Allocation for Minorities	26,657.6
Total Expenditure of the Union Government	14,30,825.0
Total Plan Expenditure of the Union Government	3,17,184.6
Budget Allocation for Minorities (% of Total Expenditure)	1.9
Plan Allocation for Minorities (% of Total Plan Allocation)	8.4

Figures, where not percentages, are in Rs Crore.

RE refers to Revised Estimates. These figures can differ from the actual final spending.

Source: Compiled by the authors from the data given in Government of India (2013), 'Expenditure Budget, vol. 1 and vol. 2', *Union Budget 2013-14*, New Delhi: Ministry of Finance.

₹10 billion in any state other than Uttar Pradesh. In most states, no significant state plan intervention seems to have been initiated for the development of minorities, except in terms of scholarships and support provided for *madrassas*.

At the district level, no financial or physical reporting requirements exist to evaluate the earmarking of budgetary resources for minorities in any central government schemes besides the IAY and SGSY. Even for these two schemes, field research by the Centre for Budget and Governance Accountability (CBGA) in Barabanki district in Uttar Pradesh has shown that the targeted 15 per cent financial and physical allocations for minorities (as mandated under the 15-Point Programme) have not been made.<sup>20</sup> Even with respect to the implementation of the MSDP, the bulk of the budgetary resources seem to be getting directed towards construction of the IAY houses, construction of AWCs, health sub-centres, ITIs and school buildings. Most of these provisions cater to the general population and are not exclusive to minorities. The perceptions gathered from district-level officials in Barabanki involved in implementing the IAY indicate a number of gaps in the implementation of the MSDP. For example, it was found that adhering to standard IAY guidelines, houses have been allotted only to people falling in the Below Poverty Line category. An assessment of 6,000 IAY beneficiaries under the MSDP in the district reveals that more than half of the total benefits have gone to non-minority communities due to the exclusion of many Muslims from the BPL list. Thus, the design flaw in making BPL status a prerequisite to be eligible for an IAY house has led to the exclusion of the Muslim community from the programme.

Another concern relates to the diversion of the benefits of the MSDP to non-minority areas, as evidenced in infrastructure projects in states like Bihar, Uttar Pradesh and Haryana. A directive by the Ministry of Minority Affairs to follow an area approach under the MSDP (wherein benefits under the programme may go to non-minority areas as well) in order to avoid social disruption is a clear instance of the design of the programme curtailing its ability to achieve the desired impact on Muslims. However, in a welcome development, in the 12<sup>th</sup> Plan, projects under the MSDP are required to be planned and implemented at the block level

and not at the district level. Additionally, only villages and wards are supposed to be eligible for these projects.

### 3.3 Gender-Responsive Budgeting<sup>21</sup>

Debates pertaining to gender in the context of fiscal policy are not new in the discourse on development and public policy in India. However, research on the gender responsiveness of government budgets in the country dates back only to the late 1990s. Within half a decade of such efforts, initiated by academics, and international as well as national development organizations, the Government of India adopted gender budgeting as one of its strategies for mitigating the vulnerability of women and girl children in the country to different kinds of gender-based disadvantages.

Gender budgeting is a strategy pertaining to government finances in a country that aims to amend both budgetary policies and budgetary processes with reference to gender and its implications for the society. Taking into account the existence of patriarchy and its adverse implications for women and girl children, gender budgeting highlights that there are specific gender-based disadvantages confronting women and girl children, as compared to men and boys', due to which they might derive much fewer benefits from a government policy or intervention in any sector. In other words, an intervention designed for the entire population without any special measures to address such vulnerabilities might fail to provide adequate benefits to women. Moreover, gender budgeting also highlights that any policy, if formulated and implemented without attention to gender-based disadvantages, might even end up reinforcing some of these disadvantages in the long run.

Gender budgeting does not focus merely on ensuring a specific share for women and girl children in the fund allocations provided in the budget. However, in the approach towards gender budgeting being followed in most ministries and state government departments, there seems to be a misinterpretation that the main requirement of this strategy is to ensure that a certain minimum share is allocated to women and girls in the budgets for their programmes or schemes. This misinterpretation seems to have originated from an earlier strategy of the government, the WCP,

which required ministries and state government departments (in sectors that were perceived as divisible and ‘women-related’) to earmark at least 30 per cent of the plan allocations of their schemes for women.

In fact, the WCP, introduced by the Planning Commission in the 9<sup>th</sup> Five Year Plan was the first attempt in India to ensure some commitments in the budgets towards women. This was necessary as policy pronouncements for women without any related commitments in terms of budgetary resources cannot be effective. However, focussing solely on a specific share for women in the budget allocations, without making an effort to redesign programmes or schemes to address specific gender-based challenges is also unlikely to work. Moreover, asking ministries and state government departments to earmark 30 per cent of plan allocations for women also has the inherent weakness of being applicable only to some services, where the government can count its beneficiaries, leaving out a number of indivisible services. The implementation of the WCP was sluggish in state governments and almost non-existent in central ministries. Four years after the adoption of gender budgeting, the Planning Commission formally discontinued the WCP in 2009–10.

Efforts within the government, under the Ministry of Women and Child Development and supported by the Ministry of Finance, led to the introduction of a Gender Budget Statement in budget documents in 2005–06, along with a number of other measures (such as the setting up of Gender Budget Cells in various ministries, and training and capacity-building of government officials, among others). The Gender Budget Statement has drawn a lot more attention in the policy making community than other measures, perhaps because these statements are among the few sources of verifiable, quantitative information on the government’s efforts in this domain, at both the central and state levels.

However, the approach towards gender budgeting in many ministries (with the exception of a few, such as the Department of Agriculture and Cooperation, and the Ministry of Science and Technology) and some states has not changed from what it was under the WCP. Many of them still see the mere reporting of fund allocations in the Gender Budget Statement as an end in itself, whereas it

is actually a means to facilitate improvements in budget processes and policies in favour of women. Of the several schemes being reported in the Gender Budget Statement by the union and state governments, few seem to have been designed taking into account the actual disadvantages that women face.

As already discussed, with the exception of some schemes, where data on beneficiaries of the scheme is relatively easier to compile, the actual number of women beneficiaries is extremely difficult to quantify for many development schemes and public services. In such schemes and public services, ministries and concerned departments have been claiming that between 30 to 50 per cent of the budget benefits women. While it may sound quite arbitrary, this is what has happened in many cases of reporting under the WCP and subsequently in GRB.

The strategy of gender budgeting can work effectively when there is genuine recognition of the specific gender-based challenges confronting women, upon which the objectives, operational guidelines, financial norms and unit costs of certain schemes and programmes can be adjusted to make them more gender responsive. Moreover, in the case of the indivisible services, it is imperative for the government to formulate new interventions focussing on women. In the latter case, the share of funds provided for such women-focussed interventions may be small, but their gender relevance can certainly go a long way in addressing the issues of women.

A 2012 study by the CBGA<sup>22</sup> looks at the design and implementation of gender budgeting in four states: Bihar, Karnataka, Kerala and Madhya Pradesh. The study highlights that while some efforts have been made in each of these states, the one that stands out for a relatively more substantive approach to gender budgeting is Kerala. In Kerala, particularly in the years 2009–10 and 2010–11, programmes and schemes were formulated exclusively for women, across both women-related and mainstream or indivisible sectors. For instance, the Department of Public Works in Kerala has initiated a scheme to ensure that women-friendly amenities and infrastructure facilities are created in public offices. Kerala also provides sex-disaggregated data across several sectors.

## 4. Concluding Remarks

With regard to the responsiveness of existing planning and budgetary strategies towards excluded groups, a serious concern has been that these strategies do not appear to have influenced planning or budgeting in any significant way. Rather, what they have influenced visibly is the reporting of some allocations and expenditures in budget documents. As argued in this chapter, such reporting of allocations and expenditures has been based largely on assumptions made by the government departments with regard to the benefits accruing to people from disadvantaged sections due to the public spending on various development schemes.

In this context, there is an urgent need to redesign planning and budgetary strategies to ensure that the processes of planning and budgeting incorporate specific measures to address the needs and challenges confronting different excluded groups. Adequate budgetary resources must also be provided for all such special or additional measures. Only then should such allocations be reported in the relevant budget statements.

Moreover, as was discussed in the earlier part of the chapter, the fiscal policy space available to the government in India has been much less than in most other countries, resulting in low government spending in the social sector. As a result of inadequacy of budgetary resources, public provisioning in social sectors and social security programmes by the government seem to have suffered from the problems of inadequate coverage and unsatisfactory quality. Hence, it can be said that the fiscal policy framework prevailing in the country has not provided enough scope for designing and implementing substantive government interventions for the development of the marginalized and vulnerable sections of the population. In this regard, there is a need to increase the country's tax-GDP ratio through progressive policies in the domain of taxation to ensure adequate levels of the resources required to improve the coverage and quality of public provisioning of essential services and social security programmes, which are especially crucial for such excluded groups.

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6. The details in the following paragraph are compiled by the authors from the relevant programme and scheme guidelines, based on a review of the manuals for these schemes, government orders and scheme websites maintained by the respective union government ministries implementing these schemes. All information is accurate as of September 2013.



7. Conversion cost in MDM refers to the cost of converting food grains into hot cooked meals for children.
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13. In the detailed budget documents of the ministries and departments, funds earmarked for SCs (through SCSP) and STs (through TSP) are required to be shown under specific budget heads—code/minor budget head 789 and code/minor budget head 796 denote spending specifically for SCs and STs respectively. While these budget heads have been present in the detailed state budget documents in many states, they were missing from the Detailed Demands for Grants (DDGs) submitted by most union government ministries until 2010–11. In a welcome measure, following the recommendations of the Narendra Jadhav Committee, select union ministries that were mandated to implement the SCSP or TSP introduced the required codes/budget heads for SCSP and TSP in their respective DDGs for 2011–12.
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Part III  
**Highly  
Excluded  
Groups**



Chapter 7  
**Transgenders**  
Transcending the  
Binaries: Transgender  
Exclusions in  
Law and Policy



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Shubha Chacko • Arvind Narrain

## 1. Introduction

*Accounts of hijras kidnapping children and changing their sex are a common folk myth in many parts of India . . . The Mumbai-based Daily News and Analysis quoted Bangalore's Deputy Commissioner of Police (South) on October 20 (2008) as calling for a 'drive against the city's eunuch menace'. 'Eunuch' is a widely used derogatory term for hijras.*

*On the same day, the police arrested five hijras in Bangalore and charged them with 'extortion,' beating and sexually abusing them in the process . . . Next, on November 8 and 9, five major newspapers in India, including two national dailies, carried news items about Bangalore police breaking up a 'gang' of hijras. The gang allegedly kidnapped children, performed 'sex change' operations on them, and forced them to become sex workers . . .*

*Immediately after these reports appeared, on November 9, the police inspector of Amrutahalli police station in Bangalore issued a notice to about 40 homeowners in the Dasarahalli neighborhood—known for having a substantial hijra population—requiring them to evict all hijras who rented apartments or rooms from them. More than 100 hijras rented rooms there, and most found themselves on the streets. Several lost their security deposits, and some lost all their belongings. One hijra told newspapers and local activists that she could not even find an autorickshaw driver to give her a ride because hijras had been labeled kidnappers.*

*Police claimed the hijras conducted 'immoral activities' in their houses, and the eviction notice was, according to newspaper reports, also accompanied by verbal threats to the homeowners. Some of the homeowners told newspapers that they had never had trouble with their hijra tenants, but they were afraid to disobey the arbitrary command.<sup>1</sup>*

'Transgender'<sup>2</sup> is often used as an umbrella term to signify individuals who defy rigid binary gender constructions, and who express or present a breaking and/or blurring of culturally prevalent stereotypical gender roles.<sup>3</sup> The term 'transgender' has only very recently come into popular and political use, and its definition is critical to the politics that it engenders. The term, as we have used it, is in line with the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.<sup>4</sup> It includes all those people whose internally felt sense of core gender identity does not correspond to their assigned sex at birth or the gender in which they were raised. This includes people who identify with a gender other than that assigned at birth as well as those who do not identify with any gender at all. It embraces those who feel no need for hormones, surgeries or other body modifications, as well as those who seek to modify their bodies. Some may identify as transgender, others as transsexual.<sup>5</sup>

Transpeople may live fully or partially in the gender role 'opposite' to their biological sex. They point out to us that gender is a continuum, rather than a construction of two 'opposites' that are self-contained. Transpeople are often laughed at, shunned, rejected by their families, denied jobs, ration cards and passports, and exploited by others in the professions they are allowed into (for instance, seeking alms and sex work). They repeatedly face a host of problems from institutions as diverse as family to the medical establishment, including the arms of the state, particularly the police. The social and cultural practice of discrimination, coupled with poverty, illiteracy and limited opportunities of employment have led to increased vulnerability of these communities.<sup>6</sup> Society also reduces the identity of the individual to just that of being a 'transgender', most often choosing to ignore the multiple identities they have. Yet as Veena, a Hijra in Bangalore stated at a public meeting, 'I am a transgender, a woman, Dalit, sex worker, socialist and poor. I am all these things and much more. And

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I fight to build up a world where I will be accepted for everything I am.<sup>7</sup> As transpeople challenge our most fundamental assumptions about the relationship between bodies, desire and identity, the field is both fascinating and contentious. It has either the exotic value of being the ‘other’, or is rendered invisible, ridiculous, horrific or disgusting.

In India, transgender identities are diverse, including ‘Hijras’, ‘Kothis’, ‘Jogappas’, ‘Shivshaktis’, ‘Kinnars’, ‘Thirunambi’, ‘Kotha’, among others. Though transgender communities are spread out all over the country, there are no authentic figures on the actual number. This absence of numbers is a matter for concern. Arguably, minorities do not count until they are counted. The Karnataka Backward Classes Commission in 2010, headed by C. S. Dwarakanath, poignantly observed:

*It is a tragedy that the Government does not have any data on the existence of this community. There are no studies, no records on the availability of basic needs to this community. For the Government, this community does not exist. The irony is that the Government enumerates the birds, animals, trees in the state; but it has not bothered to count the members of this community. Hence, the question of providing facilities to this community would, naturally, never arise. In the event of nil support from the Government and the Society, this community is forced to lead the life by begging and selling their body for sex.<sup>8</sup>*

Within India, the few surveys that have been conducted have been scattered and often small-scale, have tended to focus on young and urban communities of transwomen (male-to-female transpeople), and have neglected the elderly and rural, as well as transmen (female-to-male transpeople). Some numbers derived from the National AIDS Control Organization (from their HIV-prevention targeted intervention programmes aimed at groups that are considered high risk) and UNDP studies put the transgender population at 2.5 million, but these include not just transwomen but also those who fall under the category of ‘MSM’ (men-who-have-sex-with-men).<sup>9</sup>

This number also excludes those who have not been reached by the targeted intervention programme, and more importantly, has no scope to include transmen. Counting also poses challenges in terms of the difficulties in standardizing instruments, and also training data collectors to acknowledge the presence of transpeople. Involving transpeople in the process of enumeration is the only way one can get an accurate estimate that reflects the reality of transgender lives.

For transpeople, to ‘come out’ as transgendered means frequently to have one’s gender identity disputed, contested, disbelieved or fully denied. Having to prove to others that you really are who you say you are is a task that might appear surreal if it were not also, for many transpeople, quotidian. Transpeople are faced with a limited range of options for living with an identity that is both felt within as problematic and continuously contested without by society. They are also caught in a bind—on the one hand, to come out and be counted may promise some space to claim their identity; however, the price that they have to pay may be steep in terms of the very real possibility of the violence and discrimination they may have to face. Anonymity, on the hand, may offer some safety. The right to speak out and be oneself is pitched against the high possibility of violence, rejection and abuse.

The subsequent sections of this chapter are arranged as follows: section two details the exceptionally severe marginalization of the transgender community in the Indian legal system, tracing its origins to the regressive Criminal Tribes Act of 1871 and illustrating its perpetuation in Section 377 of the Indian Penal Code (IPC), the Immoral Trafficking Prevention Act of 1986, the state level beggary laws and the civil laws in India. In section three, we highlight some of the key characteristics of discrimination and exclusion in the lives of transpeople, including the unthinkable violence that marks the body of the transperson; oppression faced within the intimate sphere of the family as well as the public sphere; and exclusion from education, health and livelihood services. Section four of the chapter examines the contours of the movement for sexual minorities in India, mapping Lesbian–Gay–Bi–Transsexual (LGBT) activism and its changing landscape in the light of the Naz Foundation and National Legal Services

Authority (NALSA) judgments. Finally, section five discusses key recommendations to bring positive changes in the lives of transpeople, including in identity documents, setting up of transgender welfare boards, recognition as a backward class, and facilitating access to health and education.

## 2. A History of Legal Stigmatization

The law in India is a powerful force to control transgender communities. It has criminalized the very existence of groups like Hijras and Kothis, making the police an omnipresent reality in their lives. Apart from criminal laws, which have invited the unwarranted authority of the police in their lives, the civil aspect of law has not heeded their demands for citizenship and equality. In this section, we will consider how the the Criminal Tribes Act of 1871, Section 377 of the Indian Penal Code, Immoral Trafficking Prevention Act of 1986, state level beggary laws and civil laws in India have historically disadvantaged the transgender community, and continue to deprive them of a right to live with dignity.

### 2.1 The Criminal Tribes Act, 1871

The roots of contemporary violence can in fact be traced back to the historical form that modern law in colonial India has taken. The Criminal Tribes Act, 1871 was an extraordinary legislation that departed from the principles upon which the IPC was based. To establish an offence under the Indian Penal Code, the accusation against the accused has to be proved beyond reasonable doubt in a court of law. However, the British seemed to feel that this system of 'civilized jurisprudence' was totally inadequate for dealing with certain tribes and communities who were 'addicted to the systematic commission of non-bailable offences'.<sup>10</sup>

These communities and tribes were perceived to be criminals by birth, with criminality being passed on from generation to generation. It fit in well with the hierarchical Indian social order, in which some communities were perceived as unclean and polluted from birth. The idea of criminal tribes was based on the notion that 'crime as a profession passed on from one generation of criminal caste to another: like a carpenter would pass on his trade to the next generation, hereditary criminal caste

members would pass on this profession to their offspring'.<sup>11</sup>

Once a tribe was notified as a criminal tribe, all members of the tribe, including women and children, would have to register with the specified authority, with non-registration rendering the person liable to prosecution. Once a member of the tribe was registered, he or she was liable to be punished with imprisonment of up to three years if he or she was found in a place or in such circumstances as to satisfy the court that they were waiting for an opportunity to commit theft or robbery. Further, the registered person's movement was restricted to the limits prescribed by the authority, and any movement outside this authorized area meant that they could be arrested. Such provisions made the police an ever-present and daily threat to the very existence of these 'criminal tribes'.

The linking of criminal tribes to sexual non-conformity was entailed in the colonial administration's perception that criminalization itself was traceable to the perceived licentiousness of the itinerant communities. These itinerant communities comprised entertainers such as acrobats, singers, dancers, tightrope walkers and fortune-tellers, who were perceived as a threat to the order of sedentary societies.<sup>12</sup> This link between criminality and sexual non-conformity was made more explicit in the 1897 amendment to the Criminal Tribes Act of 1871, which was sub-titled 'An Act for the Registration of Criminal Tribes and Eunuchs'. Under the provisions of this statute, the sexual non-conformity of the eunuch earned severe strictures and penalties from the colonial administration. Being a eunuch was itself a criminal enterprise, with surveillance being the everyday reality. The surveillance mechanism criminalized the quotidian reality of a eunuch's existence by making its manifest sign, that is, cross-dressing, a criminal offence. Further, the ways in which eunuchs earned their livelihood, i.e., by singing and dancing, were criminalized. Thus, every aspect of the eunuch's existence was subject to surveillance, premised on the threat of criminal action, making the police an overt and overwhelming presence in their lives. Moreover, under the amended 1897 Act, a eunuch was considered incapable of acting as guardian, making a gift, drawing up a will or adopting a son. The very concept of personhood of eunuchs was done away with through disempowering them from



such basic rights. A phrase used by a British officer for criminal tribes is equally appropriate to describe the colonial perception about eunuchs: ‘they are absolutely the scum, the flotsam and the jetsam of Indian life, of no more regard than the beasts of the field.’<sup>13</sup>

What is important about this historical background is that the contemporary perception of Hijras as thieves, as well as the brutal violence that is inflicted against them, can be traced back to this colonial legislation that stands repealed today in theory, but continues to exist as part of the living culture of law.

## 2.2 Section 377 of the Indian Penal Cod

Section 377 of the IPC ‘says about ‘unnatural offences’ whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine. The explanation under Section 377 is that ‘penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section’.

In *Queen Empress v. Khairati*,<sup>14</sup> the police suspected the victim of being a eunuch who dressed in women’s clothes and on occasion was found dancing and singing with women, and arrested him under Section 377. The lower court observed that the accused was a regular sodomite, due to the medical reports which showed a distortion of his anal orifice as well as his feminine behaviour. While the Allahabad High Court acquitted the victim, the entire process of investigation and trial ended up stigmatizing Khairati through an invasive process, solely on the basis of her gender-non-conformative behaviour and identity.

## 2.3 Immoral Trafficking Prevention Act, 1986 (ITPA)

In modern Indian society, the state and its apparatuses—the police, judges, lawmakers—as well as social reformers have attempted with single-minded zeal to do away with sex trafficking and rehabilitate sex workers, but in ways that violate their fundamental civil, economic, social, and sexual rights, and expose them to organized

violence, public stigma and discrimination. The chief instrument of the Indian state’s regulation of prostitution is the Immoral Traffic Prevention Act of 1986 (originally the Suppression of Immoral Trafficking in Women and Girls Act, 1956), whose mandate is to prevent the trafficking of women and children into prostitution. The stated objective of the law on trafficking is not to criminalize prostitution *per se*, but to criminalize brothel keeping, trafficking, pimping and soliciting. In 1986, the act was amended to make it gender neutral and its title was modified to ‘Immoral Traffic Prevention Act’. With the 1986 amendment, both male and Hijra sex workers became criminal subjects of the ITPA, thus providing the legal basis for the arrest and intimidation of the transgender sex worker population.

In actuality, the enforcement of the ITPA invariably targets the visible figure of the sex worker (who is also the weakest link in the chain), and generally spares the hidden and powerful system that supports the institution of sex work. Thus, the operational parts of the ITPA are sections 7 and 8, which deal with prostitution in public places and soliciting, respectively. Under ITPA, all sex workers, male and female, face state violence and public stigma and discrimination. On the grounds of preventing immoral trafficking and protecting public order and decency, the police exclusively target people in prostitution, instead of the institution of prostitution, including brothel keepers and clients. Often the police proceed against the sex workers without any evidence of solicitation (as is required under the act) and merely on the suspicion that they are prostitutes. This produces an underclass of permanently targeted people who, at any time, are liable to be assaulted in public, merely because they happen to be there, taken away to the police station, wrongfully confined and restrained there, subjected to humiliating treatment and have their earnings taken away. Sometimes, false cases are lodged against them, which serve the double purpose of ‘solving’ an existing case and keeping the sex workers off the street.

## 2.4 State-level Beggary Acts

State-level beggary laws, in existence in 20 states and two Union Territories of India, criminalize begging, including seeking alms by singing songs,

dancing and other similar activities. Offences under these laws are generally punishable with imprisonment.

In the absence of a dignified basis of earning a livelihood, many members of the transgender community often have no option but to beg for a livelihood, inevitably running afoul of such laws. It is shocking that when they take to this profession out of a lack of options, what they face from the law is the question of the criminalization of their conduct. This makes a mockery of Article 21 of the Constitution, the right to live with dignity guaranteed to all persons.

## 2.5 Accessing Rights Under Civil Laws

In a cruel paradox, while the transgender identity poses no problems to the operation of criminal law and its role in criminalizing Hijra existence itself, it becomes a stumbling block as far as accessing rights under civil law are concerned. Nowhere is this more apparent than in the treatment of marginalized categories such as transgender sex workers. If one takes the position of Hijras and Kothis, it is clear that gender non-conformity does make a difference to one's ability to access basic civil rights otherwise available to all other citizens.

Official identity papers provide civil personhood. Among the instruments by which the Indian state defines civil personhood, sexual (gender) identity is a crucial and unavoidable category. Sex and gender are conflated to become one immutable category. Identification documents like birth certificates, passports or ration cards are a predicate for the ability to enter into a variety of relationships in civil and official society—to obtain a driver's license, to access legal services, for university admissions and employment, and to get essential benefits like healthcare. The Indian state's policy of recognizing only two sexes and refusing to recognize Hijras as women, or as a third sex (if a Hijra wants it), has deprived them, at a stroke, of several rights that Indian citizens take for granted. These rights include the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, the right to education, employment, health and so on. Such deprivation excludes Hijras from the very fabric of Indian society.

In north India, there are instances of Hijras contesting and winning elections as Members of Legislative Assembly (MLAs), mayors and councillors. These elections, however, become vulnerable to legal challenge precisely because of the difference between the sex at birth (male) and the assumed gender identity (woman). Thus, in February 2003, the Madhya Pradesh High Court upheld the order of an election tribunal which nullified the election of a Hijra, Kamala Jaan, to the post of mayor of Katni on the grounds that it was a seat reserved for women and that Kamala, being a 'male', was hence not entitled to contest the seat.<sup>15</sup> Similarly, a local court, on the grounds that she was not biologically female, annulled the election of Asha Rani, the mayor of Gorakhpur.<sup>16</sup> These decisions essentially imply that one cannot choose one's gender and that one should remain within the sex into which one is born.

What is noteworthy is that it is not only gender that is regulated by law, but also sex. A person, once born into one sex, is legally obligated to live within the gender ascribed to that sex. Sex changes are not yet legally recognized in India. Therefore, the binary classification of sex/gender into male/man and female/woman, which does not recognize the third-gender category, makes the transgender status of Hijras a legal non-entity. The rigidity of the law is further exemplified in the fixing of sex at birth as the sex for all subsequent legal transactions. A Hijra then, who wishes to claim her legal gender as a woman while being born a male, is unable to do so.

Although gradual, there have been some breakthroughs and transpeople are beginning to access voter identity cards in the 'other' category. In fact over 28,000 have registered themselves as 'others' in the election rolls,<sup>17</sup> with the maximum number registered in Karnataka.<sup>18</sup>

## 3. Experiencing Violence, Discrimination and Exclusion

### 3.1 Narratives of Violence that Mark the Body of the Transperson

Homophobic and transphobic violence has been recorded in all regions of the world. Such violence may be physical (including murder,

beating, kidnapping, rape and sexual assault) or psychological (including threats, coercion and arbitrary deprivations of liberty). These attacks constitute a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.<sup>19</sup> Violence against LGBT persons tends to be especially vicious compared to other bias-motivated crimes.

What is common to this diverse range of transpeople is that their gender identity is visible, and the very visibility of their gender identity, 'as already evidenced evidenced, means that they become vulnerable to sexual assault. While this is an aspect of the reality of the daily interface of the transgender community with the law enforcement machinery, these experiences have been shrouded in silence. As the Peoples' Union for Civil Liberties, Karnataka (PUCL-K) notes, 'Disturbing as these narratives are, they have yet to be picked up by mainstream human rights community in India. It is important that these narratives become part of our understanding of human suffering.'<sup>20</sup>

The PUCL-K Report documents what Upendra Baxi calls 'unthinkable violence' on the bodies of transpeople. The transgender community in particular has been subject to brutal assault by thugs, policemen and other vigilante elements. The following is just one of the many egregious instances of such assaults documented by the PUCL-K:

*Then he [the police officer] asked me to leave in a naked condition, refusing to return my clothes. But as I turned I could sense that he was getting sexually aroused. He wanted to fuck me. I didn't have a condom. I didn't even like taking it in the backside. Then he hit me very hard. He covered my mouth with his hand and started fucking me. He was very big, and without a condom, it was all so painful. My ass was bleeding. I could feel blood going down on my thighs. The policeman shouted at me, saying, 'Hey, stop crying. I will hit you again if you cried.' Then he lifted me, asked me to bend and fucked me more. Finally he was done and he left, thankfully leaving my clothes with me.<sup>21</sup>*

Based on shocking narratives like the one just cited, the PUCL-K report concludes:

*Sexual violence is a constant, pervasive theme in all these narratives. Along with subjection to physical violence such as beatings and threats of disfigurement with acid bulbs, the sexuality of the hijra also becomes a target of prurient curiosity, at the very least and brutal violence as its most extreme manifestation. As the narratives indicate, the police constantly degrade hijras by asking them sexual questions, feeling up their breasts, stripping them, and in some cases raping them. With or without the element of physical violence, such actions constitute a violation of the integrity and privacy of the very sexual being of the person. The police attitude seems to be that since kothis and hijras engage in sex work, they are not entitled to any rights of sexual citizenship.<sup>22</sup>*

### 3.2. Rejection by the Family

The tragedy of the transgender community is that as well as marginalization in the legal and public sphere, the experience of marginalization is no less acute in the intimate sphere of family relations. While other marginalized groups, be it on the basis of caste, religion, ethnicity or tribe, often have the family system to fall back upon, that is not always the case for the transgender community. The relationship with the family, with the father and brother often functioning as the upholders of the normativity of gender, is especially fraught in the transgender context.

In a study on advocacy needs among sexual minorities, most respondents spoke of deep pain, disempowerment, loneliness and guilt, which sexual minorities experience because of the rejection and violence that they face at home.<sup>23</sup> In fact, a respondent said that there is a tendency towards talking mostly of police or the state as the source of violence, but it is forgotten that family and others are equal participants. The family is often a patriarchal institution that finds it difficult to deal with the 'blurring' of the lines along gender, which it has imposed and seeks to reinforce.

At a public hearing in Tamil Nadu about human rights violations faced by the transgender community, the accounts shared demonstrated that while gender non-conformity may be tolerated in children, when changes in the gender expression

of a child become obvious—and that happens usually with the onset of puberty—parents resort to policing the child’s sexuality and adopt cruel measures to ensure gender conformity. There was a case shared of a young boy whose parents administered electric shock to his genitals in an attempt to ‘fix’ his fondness for girls’ clothes. They hoped it would ‘rouse’ the man in him. In another case, a young transwoman’s parents forced her to take male hormone tablets.<sup>24</sup>

Families are often ill-equipped to deal with family members who are ‘different’. They may feel confused, inadequate, guilty and angry. Lack of information and ways to understand the issues and being ill-equipped to strengthen themselves against the pressures from other relatives, neighbours and society are some of the issues that families deal with. Families are sometimes unaware of the possible impact their reactions could have on their children. They may be well intentioned, and yet cause damage.

Sometimes transpeople ‘buy’ their acceptance back into the families in many complex ways—by making significant financial contributions; by undertaking more work at home; by muting their identity in various ways; by not reacting to the abuse that is hurled at them. The desire to somehow keep links with their family is strong among many transpeople, and is manifested often in the silent compliance with the imposition of marriage.

The compulsion to marry to save the ‘honour’ of the family, to ‘cure’ the person, to produce heirs for the family or due to practical considerations (such as increased income, help at home) are major factors pushing transpeople towards marriage. For many, especially the female born, it is at what is deemed the ‘marriageable age that they face the maximum pressure and find it more difficult to escape or negotiate their way out. The pressure includes physical and emotional violence, and withdrawal (or threat of withdrawal) of economic and social support. The fact that marriage is considered universal in India also leads to Kothis marrying women and leading what some of them called ‘a double life’. They live in fear of being ‘found out’ and also under pressure to be what they are not—heterosexual men. The women who are married to them also face a difficult life.

There is no social institution equivalent to that

of marriage that might enable public recognition of transpeople’s intimate relationships with members of the same sex (but different gender); as a consequence, transpeople are unable to access the social and economic benefits conferred by marital status. Lack of familial support and other risk factors—unemployment, educational failure, mental ill health or alcohol dependency—can feed off one another, compounding their effects and leading to outcomes that can be very damaging for those affected.

### **3.3 Homelessness and Difficulties in Securing Housing**

In a series of Focus Group Discussions (FGDs) conducted with transpeople in south India, as part of a study on transgender lives,<sup>25</sup> respondents spoke of how the lack of understanding, the violence and anger, and the pressure to marry or adhere to a gender role that is different from their identity often resulted in their forced migration away from home. Unfamiliarity with a new place, language and food, and a sense of loneliness make migration difficult, even if it does sometimes offer a chance to be freer and more ‘themselves’, and in some cases find a means to earn a livelihood.

Transpeople are also faced with a wide range of challenges due their gender identity, from the difficulty of finding a home to the constant threat of being driven out of those homes, and having to shift residences often. A few transpeople spoke of the fact that they have to pay higher rents. Homelessness is an issue that affects young LGBT people; when they ‘come out’, they risk rejection by their family—they are asked to leave or they run away from the family home. Research has found that when young LGBT people leave home, they are more likely than their heterosexual peers to live on the streets than in public care, where such care is available.<sup>26</sup> In India, access to government support shelters, houses at subsidized rents and other such support systems are more difficult to come by than in other parts of the world, particularly the West.

### **3.4 Difficulty in Negotiating ‘Gendered’ Public Spaces**

Rapid urbanization and an economic system that is uniquely tied to the social system have made the politics of space and territory central to the lives

of India's poor. The poor are largely marginalized in a geography that is inscribed with relations of power and control, expressed in ways that sustain 'oppressive forms of cultural and political domination'.<sup>27</sup> This spatial marginalization must be understood as an expression of the broader disempowerment of the poor. For transpeople, the fact that public spaces are gendered as well as 'classed' means that they have great difficulty in negotiating these spaces. What compounds the agony of the violence is the continuous contestation of their identity by the wider society.<sup>28</sup>

Some members of transgender communities, like Hijras, Shivshaktis and Jogappas, do find some traditional space and social status. For example, women often consult Jogappas both for physical and mental health issues; and there are sections of people who believe that Hijras have special powers to grant blessings. However, these are still peripheral spaces.

As a consequence of society's lack of acceptance of and deep stigma against these communities, a profound sense of alienation often parallels concrete material effects. For example, they have greater difficulty in accessing public services like transport, public toilets, public taps and so forth, often being subjected to unwanted attention, harassment and discrimination in such spaces.

In a public meeting in Bangalore, Christie Raj, a transman, recounted his experience of travelling in a public bus.

*Once I was in a bus sitting in the seats where men sit as I am a female-to-male transgender person. On hearing my voice people around me starting shoving me around asking me to 'show them' that I am a man. They attempted to strip me. Nobody came to my rescue and in fear I jumped off the moving bus.*

Being different also imposes an economic burden. Transpeople are forced to pay a higher price to service providers like the tailor and the *dhobi*, and for services at restaurants, hotels and so on. Similar to the way in which they sometimes 'buy' acceptance into their families (as just discussed above), they 'buy' their way into communities that

they are part of by making generous donations to local festivals, etc.

The hostile attitude of society is due to notions that anything other than heterosexuality is 'deviant' and 'self-indulgent' behaviour. People commonly complain that they are uncomfortable with the behaviour of the community—especially Hijras; that Hijras are noisy and their language harsh and 'uncivil'. Such dominant perceptions and prejudices fail to take into account the multi-faceted violence that the transgender community faces on a daily basis—as nobodies, as easy targets, as scapegoats. The violence, therefore, is often for no reason but 'entertainment'—as part of a macho culture that encourages violence as a way to show superiority. These attitudes create an overall environment that allows for various violations to be perpetrated on the community with impunity. They also make it much more difficult to raise the issue of sexual minorities as people 'worthy' of rights among the general public.

As Dinesh, a Kothi activist from Belgaum explains:

*We remember an instance when a Jogappa died. Her family who had abandoned her came and dressed her in a man's attire. It was heart-wrenching. While she couldn't really get accepted as a woman when she was alive as she desired, she couldn't even die as one.<sup>29</sup>*

### 3.5 Exclusion and Discrimination in Education, Health and Employment

For many transpeople, the high school years and beyond are terrifying. They are teased because their behaviour does not conform to that expected of their sex. The experiences of adolescent transpeople (at a time when it becomes evident that they are 'different') include being segregated, harassed, bullied, and even sexually abused by both teachers and students. The trauma of this causes self-loathing and low self-esteem that often results in them dropping out of school or college. Apart from this, there are also financial concerns because of which they are unable to go to school or complete their education. They often leave home due to violence directed against them in the family, or

fear of the consequences of disclosure at home. In such a scenario, they are forced to discontinue their studies. The possible fallout, besides educational under-attainment, includes depression, attempted suicide and difficulty in forming relationships.<sup>30</sup> Reservation of seats at the tertiary level—for instance, the Bangalore University has reserved one seat at the post-graduate level for transgenders—while symbolically important, fails to take cognisance of the fact that the crisis for transpeople vis-à-vis education is fundamentally at the level of secondary education, when most of them drop out.

Healthcare professionals are often insensitive to the needs of transpeople, and lack the necessary professional training. Transpeople approaching health services commonly report that providers are unco-operative or hostile, with staff addressing or responding to them in a gender-inappropriate way, often adopting a mocking or ridiculing attitude, withholding or refusing healthcare. Transpeople are sometimes treated as ‘objects’ of study, with students and others coming to gawk at them and inspect these ‘strange being’. The stigma and prejudice put large numbers of transpeople on to a ‘stigma-sickness slope’.<sup>31</sup> Those who are HIV positive face double discrimination at hospitals. They are often denied treatment either actively or through non-co-operation. Many of them also face discrimination in sexual minority organizations and sexual health interventions.

The medical establishment’s attitude affects the community in many other ways. For instance, when attacked by goons or the police, they need a medical certificate for legal purposes. But government hospitals do not co-operate, and this presents problems for the case. In addition, intersex children, who are born with atypical sex characteristics, are often subjected to discrimination and medically unnecessary surgery, performed without their informed consent, or that of their parents, in an attempt to ‘fix’ their sex. Costs, especially with regard to transition healthcare, like gender affirming surgeries, hormone therapy and implants, serve to push transpeople towards sex work. In the absence of reasonable, accessible healthcare, transpeople who cannot afford these costs often have to rely on unsafe or unsupervised health services, for instance traditional or backyard castration, non-medical industrial quality silicone ‘fillers’ and ‘pumpers’ or taking hormones with

little or no medical supervision.<sup>32</sup> The need for psychiatric evaluation before provision of hormones or surgery adds to the expense and layers of difficulty, besides having implications in terms of access and availability. Besides, some health professionals (including, but not only, psychiatrists) suggest and even offer ‘reparative’ treatments intended to ‘cure’ individuals, which is unscientific, potentially harmful and contributes to the stigma.

Given that the educational system is inimical to their needs and interests, transpeople are compelled to quit education, resulting in fewer employment opportunities. Lack of employment opportunities and discrimination at the workplace are major issue for all transpeople. There are very few options that are available for Hijras other than begging and sex work, both of which are criminalized. In a few cases, they also work as masseurs. Similar to female sex workers, transgender sex workers have to confront the police, local thugs (*goondas*) and the public. They are harassed physically, sexually and mentally. They too have to pay bribes and extortion money to carry on even day-to-day activities. Most transpeople are *a priori* considered criminals and treated as guilty until proven innocent. Therefore, they grapple with constant fear and insecurity in sex work, since the chances of getting caught and being charged with false cases and tortured are high. Jogappas and Shivshaktis are involved in some traditional occupations, but this is proving to be less and less sustainable, with an increased wave of ‘modernity’ sweeping even small towns and villages. In some states, like Tamil Nadu for instance, a few of them are involved in other occupations such as cooking or fruit vending, but these are also at the lower end of the employment spectrum in the unorganized labour sector.

Transpeople who are able to secure employment are often discriminated against at the workplace and, worse, face harassment (including sexual harassment). Insecurity about the risk of being ‘found out’, and subsequently losing employment, is always high. Those who are HIV positive are even more anxious. In informal conversations with the author, a transperson with HIV talked about how he stayed on in his old job even when he had a chance to move to a better one because there was a pre-employment medical test that he was afraid of. Another decided not to avail himself of the

health facilities offered by the company because of his HIV status. A well-meaning social worker, ignorant of the importance of a transperson's sense of gendered self, once asked, 'Why can't they just adjust if they want the job so badly?'

For some, a new possibility has opened up with respect to employment opportunities in Non-Governmental Organizations (NGOs), though this too is largely restricted to those involved in HIV-related work. HIV-related work has provided opportunity and exposure for many community members who have learnt new skills and have grown in confidence. However, the flip side is that there is also widely prevalent exploitation of the staff members. The concept of 'peer-educators', for example, is a powerful one, to allow for teaching and learning within the community. But this is also used to underpay staff, using the logic that the money given to them is just an honorarium. Many of them are stuck in low-paying jobs and feel that the scope for growth, professionally and personally, is restricted and 'discouraging'.

### 3.6 Limited Political Participation and Policy Responses

Denied basic citizenship rights due to their gender identity, transpeople are often unable to even exercise their franchise. They do not find mention in the manifesto of any party. Contesting elections poses a challenge for them on many grounds, such as asserting their gender identity, gaining acceptance in society, understanding the electoral process and finding the resources to contest elections. The inability to participate in the political process limits the voice and agency of transpeople, and their access to political and other decision-making fora. Besides this, transwomen are subjected to stereotypical perceptions and are depicted by the media as engaged exclusively in 'feminine' (read apolitical) activities, like brushing their hair or fluttering their eyelashes.

However, major strides have been made in the recent past. The Lok Sabha elections of 2014 saw many transpeople in the fray. Bharathi Kannamma, a transgender candidate, contested as an independent candidate from Madurai, as did Kalki Subramaniam from Polachi (both in Tamil Nadu). In the prestigious seat of Varanasi, where

Narendra Modi of the Bhartiya Janata Party and Arvind Kejriwal of the Aam Aadmi Party were at loggerheads, Kamla, a Kinnar, decided to contest. As mentioned earlier, over 28,000 people have registered themselves in the column of 'other' in electoral voter lists. This upsurge has come after the slow start in 2009 in Bangalore when a transwoman contested in the Bangalore Municipality elections. Several transpeople also received their voter identity cards, making them eligible to vote, as they began to engage with political parties to make their issues 'political'.

In terms of policy responses, the criminalization of same-sex relationships and the non-recognition of transpeople have meant that with the exception of HIV-prevention work there are almost no state interventions that address the deprivations of this community. The HIV pandemic has forced the government to start dealing with issues of gender and sexuality, and resulted in some limited space for mobilization and policy outreach of sex workers and sexual minorities. The HIV-intervention programme has had greater community participation than most other health-related interventions, and has also put into place technical, physical and procedural infrastructure to deal with the HIV health issue. In most other policies, however, there is an almost complete effacing of sexual minorities. The development agenda has scarcely addressed issues of sexuality, except somewhat negatively as linked to population control, disease and violence. However, emerging studies by researchers, activists and organizations shows that in many cases poor people are more vulnerable to oppression on account of their sexuality and that denial of sexual rights entrenches poverty.<sup>33</sup> Economic systems and policies assume certain kinds of relationships, desires and consumptions—both sexual and material—and these rigid assumptions result in social exclusion and inequality. These issues have still not gained sufficient recognition in policy making, and apart from the few exceptions—for instance, the Gender Minorities Programme for transpeople instituted by the Karnataka Government in its 2012–13 budget, and the establishment of the Transgender Welfare Board in Tamil Nadu<sup>34</sup>—transpeople remain absent from policy and programme interventions.

### Transmen, Transmasculine Community or Female-to-Male (FtoM): A Minority Within a Minority

A transman is someone who may be born female (or intersex), is brought up as a girl (based on conventionally assigned gender roles or at least the external genitalia) but identifies as a man (and maybe earlier as a boy).<sup>a</sup> In interactions, many transmen narrate how their behaviour (of not conforming to the role of a girl) was tolerated or even accepted till they reached adolescence.

In interviews, transmen have narrated as follows: 'My father would tease me and say I am strong like a boy', or 'I was called a tomboy—and it was used affectionately.' It is around puberty that the issues become more acute. The family starts to discipline the young 'girl' and views *his* behaviour as willful disobedience.<sup>b</sup> The fact that gender norms are strictly imposed on girls, especially as they reach a certain age, means that the pressures (psychological, emotional, even physical) are enormous. They experience greater pressure to marry, stricter restrictions on mobility and more strongly imposed ideas of 'honour'—all of which make it difficult for them to exercise their choice.

Transmen, therefore, negotiate their lives through the many restrictions that society places on them—avoiding certain places, often experiencing fear and feeling very vulnerable. Some of them have reported being sexually assaulted, and in one study, the respondents affirmed certain traditional masculine values such as protection of women as 'heroic' behaviour, and they simultaneously expressed an inability to protect a partner in the event of a man 'misbehaving' with them in public. This adds to their burden of 'failed' masculinity.<sup>c</sup>

One of the biggest issues faced by transmen is their invisibility in society and culture, partly due to the high degree of intolerance in society, reinforced by patriarchal strictures on how a woman should behave. They are also overlooked in the formulation of government policies and programmes for transpeople, a case in point being the Aravani Welfare Board in Tamil Nadu, which provides services only to Aravanis (transwomen) and not transmen. While Hijras, Jogappas, Shivshaktis and some other male-to-female transgenders have formed communities occupying certain social and cultural spaces, there are no known spaces for female-to-male transpeople.

Efforts are under way to recover or forge an indigenous identity such as 'Thirunambi'. Here, the primary struggle is for recognition, since people are unfamiliar with and often times presume that they have not encountered transmen. Transmen have also started to articulate their position on a range of issues. For example, Satya Rai Nagpal has founded Sampoorana, a successful Indian transpeople network that works for advocacy on issues of transpeople with families, friends, political parties, and particularly with legal and healthcare service providers. Christy, a young filmmaker, and Kiran, a full time activist working with people with disabilities and sexual minorities in Chikballapur district in Karnataka (among others), are engaged in building their community and supporting a range of other disenfranchised and marginalized communities. It is through their depositions, their struggles and steady work (along with supporters and friends) that the idea of transgender in Karnataka, as articulated in official documents, has taken some account of female-to-male transpeople as well.

Sources: a. The authors are conscious that there is a diversity of individuals who are assigned 'woman' as their gender identity but may not see themselves as women, and that not all of them regard themselves as transmen. However, to facilitate understanding and to allow for engagement, we have used the term transmen or FtoM as a descriptor for a broad diversity of persons.

b. Interviews conducted by Aneka as part of a study undertaken by Aneka, Alternative Law Forum and PUCL-K.

c. Cath Slugget (2011), 'Is S/he More of a Man? Constructing Masculinity as a Female-to-Male Transsexual in India' in Jerker Edström and Alan Greig (eds), *Men and Development: Politicising Masculinities*, London: Zed Books Ltd.

## 4. Contours of the Sexual Minorities Movement'

The rights of sexual minorities were not part of the discourse of human rights for many years. Since its founding in 1945, the United Nations General Assembly had not discussed LGBT rights (for equality regardless of sexual orientation or gender identity) until December 2008, when a Dutch/French-initiated, European Union-backed statement was presented to the United Nations General Assembly. However, this was not officially adopted by the United Nations General Assembly.

In a major breakthrough for sexual minorities, the Human Rights Council in Geneva adopted, by a narrow margin, resolution 17/19 in June 2011—the first United Nations resolution on human rights, sexual orientation and gender identity.<sup>35</sup>

The PUCL-K report on Human Rights Violations against Sexuality Minorities in India<sup>36</sup> discusses how most human rights organizations in the country are yet to address the question of the rights of gays, lesbians, bisexuals, transpersons and others who are oppressed due to their sexuality. The question of gender identity and sexual orientation is most often seen as a 'private matter'. Generally, issues of



poverty and gender, and class and caste oppression are seen as more important than that of sexuality.

*More often than not, the abuse suffered by these subaltern sexual cultures has been made invisible even by the activist community using a convoluted logic that arrogates to itself the ability to calibrate pain. First comes class, then comes caste, gender, ecology and so on. If there is any space left on this ark of suffering, then sexuality is included as a humble cabin boy. There is no hope of the last being the first in this inheritance of the meek.<sup>37</sup>*

But this ignores the fact that sexuality is integrally linked to ideologies and structures of social oppression such as patriarchy, capitalism, caste system, and religious fundamentalism. Hence, the struggle for sexuality rights cannot be separated from the broader human rights struggle for economic, political and social liberation.<sup>38</sup>

Other issues also frustrate attempts for a more proactive push to secure the rights of sexual minorities. Activists defending rights related to sexual orientation and gender identity are targeted in a number of ways: offices are raided, there is harassment of staff and volunteers, legal registration of organizations is denied, and defenders risk suffering violations and harassment. This is especially true when activists do not come from the more privileged sections of society. Most NGOs working on issues of HIV prevention use status-quoist approaches and are reluctant to use some of the more effective and time-tested approaches that challenge the state and established social institutions. Interventions are often unduly oriented towards the fulfilling of numerical targets, with strong managerial components; currently there are added challenges such as the slashing of budgets and a push towards what is deemed as greater efficiency with a narrow focus on implementing the given project. Advocacy that is linked to a set of planned activities, which are related to larger political processes for social change in favour of the marginalized (in this case sexual minorities), finds little support in existing programmes. Within large NGOs, leadership is often in the hands of the privileged sections of sexual minorities (men from economically well-off backgrounds), who tend to

monopolize the space. The others are rarely heard and any discourse that does not toe the official line is actively discouraged. Given the lack of income-generating avenues, grassroots activists and change makers in the transgender communities are often at a disadvantage. They are forced to continue in their current employment even though it may not give them the freedom to pursue their ideas and ideals.

It might not be correct to paint an unchanging picture of transgender lives in the Indian context. Transpeople face an overwhelming sense of discrimination across multiple realms—housing, public sphere, education, livelihood, health and political participation. However, the communities have fought back against this animosity and prejudice. The movement gained to some extent from the feminist thinking that foregrounded what was perceived as a private matter as a matter of politics. And while some of the initial coming together of sexual minorities was either in small, secluded groups (mostly middle-class, English-speaking urban men), the next wave was prompted as responses to HIV and violence. There has been greater public action, articulation and organization of the sexual minority communities and sex workers, as well as deeper engagement with the state and other institutions. This has resulted in real changes on the ground, one of the clearest indicators of which is that attitudes towards sexual minorities, including transpeople, are becoming more liberal and accepting. Also noteworthy are policy spaces that are now being carved out for transpeople, particularly the Tamil Nadu Aravani Welfare Board and the Karnataka State Backward Classes Commission's inclusion of transgenders as a class of peoples who are eligible for benefits. These efforts, in combination with changes at the international level, with more countries moving towards de-criminalizing sexual minorities and a supportive media, have resulted in a less repressed atmosphere for sexual minorities across several parts of the country. While these changes portend well for sexual minorities, they are still confined to small pockets and largely focussed on the more privileged among the communities.

Due to the brave and courageous efforts of transgender activists, there have been significant advances with respect to the rights of transpeople. Two recent events deserve special mention.

#### 4.1 Victory in Naz Foundation and Setback in Suresh Kumar Koushal

The single most significant advance has to be the landmark decision of the Delhi High Court de-criminalizing consensual adult sexual acts in private, better known as the *Naz Foundation* judgment.<sup>39</sup> While this decision is often seen as a charter for the rights of gays and lesbians, what is often not noticed is the extent of sensitivity and a deep historical appreciation shown by the judges for the plight of transpeople. The judges astutely traced the victimization of the Hijras to the Criminal Tribes Act, 1871. While appreciating the specific context of the Hijra community, the judgment was also clear in including the Hijra community within the fold of the fundamental rights, the right to dignity, privacy, equality and non-discrimination. What remains at the heart of the *Naz Foundation* judgment and its plea for inclusivity was its invocation of the two founding fathers of the Indian republic: B. R. Ambedkar's notion of 'constitutional morality' superseding majoritarian sentiments, which will remain a sheet anchor for the rights of any despised minority, and Jawaharlal Nehru's idea of 'inclusiveness' as being at the heart of the Indian constitutional order. It is really within this framework that brings together the philosophies of inclusiveness and constitutional morality that the struggle for LGBTB rights can be taken forward.

It should be noted that this dramatic victory for LGBT rights was reversed through the ruling of the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation*.<sup>40</sup> However, the broad and expansive language of the *Naz Foundation* judgment has set a benchmark for LGBT rights, which one hopes will be a signifier of things to come. The date 2 July 2009 continues to be a significant day for the LGBT community, and the revolution unleashed by this decision will continue to unfold in many ways that will undercut the basis of the judgment in *Suresh Kumar Koushal*.

#### 4.2 Petition by the National Legal Services Authority (NALSA)

The Supreme Court, in a far-reaching ruling in *National Legal Services Authority v. Union of India*,<sup>41</sup> held that transgenders can identify as a 'third gender'. It also called for reservations

for transpeople in educational institutions, job opportunities and government welfare programs. The judgment took a broad view of transgender as including persons whose gender identity, gender expression or behaviour did not conform to their biological sex and, more importantly, those who did not identify with the sex assigned to them at birth. It also made medical intervention to determine gender identity unnecessary. Self-identification as man, woman or third gender, irrespective of sexual reassignment surgery, is now protected by law. While recognizing the rights of transpeople, the judgment pointed out that non-recognition of gender identity violates the rights to equality and life, and that transpeople should not be compelled to declare themselves as either male or female. As Justice Sikri stated:

*It is only with this recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on.*<sup>42</sup>

### 5. Key Initiatives for the Greater Inclusion of Transpeople

Amartya Sen, quoting Hilary Silver, says that the list of 'a few of the things the literature says people may not be excluded from' must include the following:

*A livelihood; secure, permanent employment; earnings; property, credit, or land; housing; minimal or prevailing consumption levels; education, skills, and cultural capital; the welfare state; citizenship and legal equality; democratic participation; public goods; the nation or the dominant race; family and sociability; humanity, respect, fulfillment and understanding.*<sup>43</sup>

Given the extreme nature of the exclusion of transpeople, the ongoing battle for inclusion, equality and recognition of diversity must occur in

a range of forums—politics, the courts, the media, government policies, the broader society, and even the intimate space of the family. Some of the key areas of reform are now discussed.

### 5.1 Changes in Identity Documents

Only two sexes—male and female—are recognized in Indian civil law. Furthermore, India does not recognize sex changes on, which makes it impossible for an intersex or Hijra to choose a legal female identity in most states. Lack of legal recognition has important consequences in getting a ration card, passport and bank account. There have been some major inroads into this rigid gender classification; for the purposes of securing an voter identity card, persons can now state their gender as ‘other’.<sup>44</sup> A separate ‘transgender’ category is now a reality in new identity documents such as the Unique Identification Number (UID) card. These designations are noteworthy because they allow individuals to self-identify outside of the male–female binary. The Indian government—in all of these processes—requires no proof, medical or otherwise, of third-gender status. It is a self-declared, identity-based category.

Yet, even in these instances, there is no standard way to record a transperson’s status. While the Census has a category as ‘other’, the UID allows people to register themselves as ‘transgender’. Bureaucratic regulations and general establishment rules cannot fathom and deal with the rich and diverse gender identities that exist. It is important that transpeople are recognized in other important identity documents, but also that such steps are taken in consultation with the transgender community. Among transpeople too, there are differences with respect to how they would like to be identified. Some assert that they are not men and women and should be seen as the third gender, others argue that the category ‘other’ is broad and less problematic. For some, both are undesirable and they would rather be recognized as transmen or transwomen.

### 5.2 Setting up of Transgender Welfare Boards

The Tamil Nadu government constituted a Transgender Welfare Board in April 2008, with a yearly budget of ₹5 million. The social welfare

minister is the president of the board, and other appointees include the secretaries of law and finance, and senior officials heading various agencies like the women’s commission, police, and state human rights and social justice commissions. In addition, a number of transpeople have been included as advisors to the board.<sup>45</sup> This effort is the first of its kind in India and perhaps even in the world. The mandate of the board is to look into the various problems faced by transpeople and to formulate and execute welfare schemes for their betterment.<sup>46</sup> Importantly, government and NGO partnership has been a key factor in the progress of transgender rights in Tamil Nadu, and NGOs play a vital role in the activities of the Transgender Welfare Boards. Setting up similar welfare boards in other states will be a critical step towards better addressing the needs and concerns of the transgender community.

### 5.3 Support in Accessing Education

Acting on the recommendations of a sub-committee for the rehabilitation of transpeople, the Tamil Nadu state government issued orders in December 2006 directing school and higher education departments to ensure that they are not denied admission to schools and colleges. It also recommends counselling for children with behaviour changes in schools, for which teachers need to be specially trained. The government order is clear: no discrimination should be shown against transpeople on account of their gender identity or expression. In an additional effort to improve the educational status of transpeople, the Tamil Nadu government issued an order in May 2008 to create a third-gender category for admissions to government colleges, and stated that they can share 30 per cent of seats reserved for women in government-owned and government-aided arts and science colleges. While this is a welcome step in ensuring access to education for transpeople, it takes away from provisions for an already marginalized population—women. It would be more appropriate to make separate reservations for transpeople.

### 5.4 Assistance in Sex Reassignment Operations

There is a pressing need for the government to provide financial assistance to transpeople who

undertake sex reassignment operations. At present, the Tamil Nadu government fully reimburses the cost of sex change operations in government healthcare institutions, and a few people have utilized this provision already. Yet, there are problems with this programme. To begin with, this process requires the person to be able to raise the amount for this costly operation, pay for it, process the reimbursement and wait to recover the money; this is practically impossible for most transpeople as they are people of modest means or are poor. Additionally, transpeople are reluctant to use these services as they fear becoming ‘guinea pigs’ for inadequately trained or inexperienced doctors.

### 5.5 Recognition as a Backward Class

Another key area of support for the transgender community would be its recognition as a backward class, which would allow it access to a range of benefits guaranteed to Backward Classes, under the provisions of the Constitution. This has already occurred in Karnataka where the state’s Backward Classes Commission concluded that it was amply clear that the sexual minorities, including Hijras, Kothis and Mangalamukhis, were socially and educationally backward and therefore eligible to be included in the list of Backward Classes.<sup>47</sup>

### 5.6 Greater Inclusion in Government Planning and Policies

The 12<sup>th</sup> Five Year Plan (2012–17) marks the first time that the Planning Commission has specifically provided recommendations for the transgender community.<sup>48</sup> Among other areas, the 12<sup>th</sup> Plan proposes empowerment of transpeople by advocating that the relevant ministries should support their education, housing, access to healthcare, skill development and employment, and also provide financial assistance. It also proposes their recognition as a third gender in all government and non-government records, and calls for the Ministry of Social Justice and Empowerment and the Ministry of Statistics and Programme Implementation to determine the number of transpeople in India and map their socio-economic status, with the intention of creating a law relevant to their needs.<sup>49</sup> While these are certainly very progressive measures, there is an urgent need to ensure their actual implementation by the relevant ministries.

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## Chapter 8

# Bonded Labourers

## The Changing Nature of Bonded Labour in India



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*Shikha Sethia*

*Jagir Singh is the second of four siblings, all of whom work as siris, or bonded labourers, in the village of Poonian in Punjab. His father, Gajjan Singh, now dead, was also a bonded labourer.*

*Jagir was a child when he started working as a siri, and has worked for multiple employers in his lifetime, against advances taken from them to meet his daily expenses. Raises would usually come in the form of another landlord offering to pay a higher price for his labour. The new employer would buy Jagir's debt from his current employer, paying Jagir the difference. Jagir is illiterate; his employers would keep records of the amount owed to them, and Jagir never questioned them. Ignorance about the amount that was owed to the employers and taking on further credit to meet emergencies, such as funeral expenses for his father's death, meant that Jagir has never been able to fully discharge the debt owed to his employers, even though he was bonded to one of them for close to 25 years.*

*At present, Jagir is working with a landlord called Harjit Singh, a previous employer's son, for ₹20,000 a year, against which he has taken multiple advances, amounting to between ₹8,000–9,000. As before, Jagir has no records of these transactions and Harjit is not an easy master. Once, when Jagir took leave for two days on account of an illness, Harjit Singh came to his home and beat him brutally, after which he was dragged to the cattle shed and tied to a chain with the buffaloes for two days without any food or water. The villagers witnessed this incident but did not come forward to rescue Jagir. Since then, Jagir has not dared to take even a day of leave.<sup>1</sup>*

## 1. Introduction

The Indian economy has experienced high growth rates in recent years as a result of a booming services sector that employs skilled workers.

The inequity of this growth story, however, often gets sidelined from both scholarly and public attention. Agricultural growth has been minimal, even though it employs half the country's workforce. The economy has grown in a way that continues to put wealth in the hands of a select few who can participate in the highly productive industries. It is also becoming increasingly apparent that the mobility and opportunity that these select few enjoy are, to a great extent, determined by birth. Sukhdeo Thorat observes: 'While exclusion does result in the denial of economic opportunities—such as access to capital assets, development of skills, and education—the originating cause is not lack of income, productivity, or merit but rather the individual's group identity.'<sup>2</sup> Similarly, Anirudh Krishna also writes in his paper on social mobility that 'the conclusion cannot be avoided that an urban professional elite is being reproduced, with the sons and (increasingly) the daughters of salaried and self-employed professionals themselves joining higher education and higher-status occupations in the largest numbers.'<sup>3</sup> There is increased resistance to employing labour formally, denying them various protections that would otherwise accrue to them. Only 14 per cent of the total workforce is formally employed in India.<sup>4</sup> It is not surprising, therefore, that many of those who miss out on these opportunities due to an accident of birth are engaged in low-status work, often in unacceptable conditions where health and safety norms are not respected, and minimum wages are not paid. Coercive tactics and collusion are used to restrict their mobility and keep labour underpriced. Collectivization of labour is discouraged and, with the overlay of social relations between castes, religions and class, this labour force, to a large extent, lacks the agency to exercise the right to freely choose the nature of its employment and to demand better pay and working conditions.

Jagir Singh's story at the beginning of this chapter is illustrative of the lives of a significant number of workers who do not have the privilege of being born into the sort of households that form the formally employed 14 per cent. As recently as

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December 2013, two labourers from the Kalahandi district of Orissa, who had been recruited for a job in Chhattisgarh under false pretenses, were reported to have had their hands brutally chopped off by the contractor when other members of their group escaped their captors.<sup>5</sup> While the severity of the penalty varies from case to case, it is not uncommon for captive workers to be punished to 'set an example' and to turn labour against each other.

These workers are trapped in a labour relationship in which the worst forms of impunities in recruiting, engaging and retaining labour are manifested. Labour is kept in bondage (an exploitative form of forced labour<sup>6</sup>) through coercion, and on occasion even physical violence. While agricultural bondage is the most prevalent form of labour bondage, the non-agricultural sector also employs the following categories of bonded labour: workers in stone quarries, migrant labour, brick kiln workers, *joginis* and *devdasis*, fishermen, building and construction labour, forest labour, *bidi* workers, carpet weavers, potters, weavers, head loaders and child labour engaged in match and fireworks factories.<sup>7</sup> Bonded labour in India are referred to by many different names, such as *hali*, *siri*, *gothi*, *gassi-gullu* and others, depending on the region.

The first exhaustive survey of bonded labour, carried out jointly by the Gandhi Peace Foundation and the National Labour Institute in 10 states in 1978–79, estimated the total number of bonded labourers in the agricultural sector in India at 2.62 million.<sup>8</sup> A recent report by the Walk Free Foundation states: 'The country with the largest estimated number of people in modern slavery is India, which is estimated to have between 13,300,000 and 14,700,000 people enslaved.'<sup>9</sup> The United States Trafficking in Persons Report of 2013 estimates that the numbers of those in forced labour due to debt bondage range between 20 and 65 million.<sup>10</sup> Jan Breman has estimated that the segment of the workforce that is trapped into indebtedness amounts to about 10 per cent of the total workforce, or close to 50 million people.<sup>11</sup>

The persistence of bonded labour in a country could be attributed to the lack of legislative and constitutional safeguards, but this is not the case in India. The Constitution of India clearly upholds the Right against Exploitation by banning all forms of trafficking and forced labour.<sup>12</sup> The Parliament has also exercised its power to enact a legislation with respect to labour bondage through the Bonded Labour System Abolition Act, 1976 (hereafter BLA). Through this act, all labour was freed and discharged from any obligation to bondage. Despite its progressiveness, the BLA has had very limited success, particularly in the context of the increasingly changing nature of bonded labour in India. It has also failed to address the enabling conditions that make bondage possible, and is more responsive than preventative. This is partly as a consequence of the inadequate consideration of what constitutes bonded labour, but much more because of the tendency of states to deny the existence of bondage, poor identification and continued prevalence of the enabling conditions of bonded labour, which have been problems that have dogged the administration of the BLA from the very beginning. As a result, conditions of labour bondage, far from being obsolete, continue to exist, even thrive, in nearly all parts of India and in multiple industries.

The remaining chapter is arranged as follows: Section two looks at how labour bondage has evolved over time and how contemporary bonded labour arrangements are typically organized. Section three then discusses some noteworthy characteristics of bonded labour arrangements, such as which sections of society are most vulnerable to labour bondage, the factors that push labour into bondage and the factors that sustain the practice of labour bondage. Section four looks at the role of public action in influencing state action for eradicating labour bondage. This is followed by recommendations for state action, specifically in reforming the framework to eradicate bonded labour in the light of contemporary bonded labour arrangements. Last, the chapter ends with a brief introduction to the idea of decent work as essential to any response towards total eradication of bonded labour in all its forms.

## 2. The Changing Nature of Labour Bondage

Bonded labour relationships in India are embedded intricately in systems of patronage or coercion, and are a product of caste hierarchies, class relations, a colonial history and persistent poverty. Breman has identified several characteristics of classical bondage in agriculture. First, bondage was both economic and social in nature, and dictated by the feudal social structures prevalent in the countryside. Additional forms of coercion like custom and social practice were in play, and indebtedness was one criterion among many others. Second, patronage<sup>13</sup> was a key element in these relationships. The landlord wielded both power and prestige from the number of bonded labourers he could keep. Third, bondage was not only lifelong but was also intergenerational. Fourth, the landlord could lay claim to the labour of other members of the family of the bonded labourer. Fifth, wages were in kind and extremely low, making the possibility of release unlikely.

In traditional forms of bonded labour, patronage assumed an important role in the employer–employee relationship, and there was little or no role for intermediaries. This meant that although the labour relations were exploitative and coercive, the employer took responsibility for minimal survival allowances and in some cases even granted property rights to the employee. With the commercialization of agriculture in the 20<sup>th</sup> century, the labour relationship was significantly altered. While the system of patronage all but disappeared, the landowning classes retained control of labour power by monopolizing the sources of production and consumption credit in the rural areas. Indebtedness of the labourer to credit provided by the employer therefore became the foundation for a long-term exploitative relationship between the debtor and the creditor, as the labourer had little in the way of assets to pledge in place of his or her own body and labour power.

In recent times, with the decline of feudal arrangements and the contractualization and casualization of labour,<sup>14</sup> the institution of bondage has assumed a more economic, although equally exploitative, form. Neo-bondage can be classified using the following criteria: first, the reason for

bondage is essentially economic in nature and the element of patronage in employer–employee relationships is on the decline; second, bondage is seen in migrant workers and there is an element of interstate or intrastate seasonal movement; third, indebtedness has become the primary reason for bondage (although the practice of postponement of payment of wages to prevent labour from escaping such arrangements is also common); fourth, other players like labour contractors (for example, *jobbers* and *jamadars*) play a crucial role in organizing and monitoring the labour force; fifth, employment is time-bound; and sixth, the landlord or employer does not implicitly control the labour power of other members of the indebted family.<sup>15</sup> However, the amount of credit extended to the one who contracts the debt, often a man, depends on the number of hands recruited. This forces him to then also bring along other members of his family, including children, as labour power.

A report of the International Labour Organization (ILO) provides an example that is particularly illustrative of this kind of labour arrangement. In the report, the terms of engagement of brick kiln workers in Tamil Nadu are described as follows:

*Here, much of the workforce is migrant labour, and a central feature of recruitment and labour force management is the payment by labour agents of wage advances during the rainy season at the workers' place of origin. The advances are substantial, often equivalent to between three and seven months of a family's earnings. Work is arduous, with extremely long hours, normally for six days per week. At the end of the season, workers are remunerated on a piece rate basis. Should part of the advance remain unpaid, as is often the case, the worker is obliged to return to work at the same kiln the following season. For their part, labour agents receive a commission from the kiln owner on every thousand bricks produced.<sup>16</sup>*

Even bonded labour arrangements in agriculture have assumed these characteristics and evolved from the more traditional relationships. A typical arrangement in the agricultural sector involves

a labourer taking an advance from a farmer, and in return becoming bonded to that farmer for a specified period. Advances are taken in cases where large amounts of money are needed up front, for example, in the case of marriages, religious ceremonies or medical emergencies. The amount of advance and duration of the bondage differ, but in most cases the bonded labourer works extremely long hours without any leave, performing whatever tasks are required in the fields or at the farmer's home. In case the labourer misses a day of work, the farmer usually adds a monetary penalty to his or her loan. Since he or she can't seek work anywhere else, the labourer is also completely dependent on the farmer for any monetary or in-kind assistance, all of which are also added on to the loan. As a result, by the time a labourer finishes with the initial period of bondage, he or she ends up owing a substantial sum to the farmer. In the absence of funds to repay this loan, the labourer is often forced to work for the farmer for an additional year, during which he or she slips even further into debt for the reasons already mentioned. Due to the unfavourable conditions of the loan and the opaque way in which it is administered, it is extremely difficult for the labourer to escape from this cycle of bondage. In some cases, bonded labourers may pay off their debt by taking an advance from another farmer and becoming bonded to him. However, completely freeing oneself from bondage requires repaying the entire amount that a farmer claims is due to him, which in most cases is not possible for the labourer. This type of arrangement, referred to as debt bondage, is purely economic in nature and has no element of mutual aid or preferential treatment that was a feature of traditional bonded labour relationships.

Geeta Menon describes this transformation as one where a landlord–serf relationship<sup>17</sup> that existed previously has gradually taken the form of a contractor–slave wage labour relationship. Breman also believes that this change has had a negative impact on the minimum livelihood security and related social protections offered under the traditional bonded labour relations. While the terms of the engagement have remained exploitative in essence, the decline in the element of patronage and increasing importance of the debtor–creditor dynamic have also exonerated the employers from bearing any responsibility

for the wellbeing of their employees. However, wages have not risen sufficiently to compensate for the added burden that this has imposed upon the employees themselves, although the medium of payment has become cash, rather than kind.

It is important here to note that while classical and neo-bondage exist in their pure forms, many kinds of bondage exist that exhibit characteristics of both and others besides. What is common, however, to all forms of bondage is the forced prevention of labour from realizing its full market value, equal to or above minimum wage. Not everyone paid below minimum wage is bonded, however (this is addressed later when reviewing what should be recognized as bondage). One important feature of newer forms of labour bondage is that the labourer can be bonded to multiple employers during his or her lifetime. While this allows for some freedom from patron–client relationships, and the ability to change one's employer, it does not always lead to freedom from conditions of bondage. In the case of debt bondage, for example, often the only way for the worker to escape such a labour arrangement is to be bought out by another creditor and be bonded to him, instead. In addition, whereas newer forms of bondage are shorter-term in nature, this is not always an advantage as it is also a way for employers to evade responsibility towards investing in a healthy and productive labour force. Last, the changing nature of bonded labour has done little to upset traditional hierarchies of caste and gender, which, as Barbara Harriss-White and Nandini Gooptu argue, continue to affect 'the tasks most people do, the kinds, terms and conditions of the contracts they are offered and either settle for or refuse.'<sup>18</sup>

What needs to be acknowledged is that the process of labour bondage is a dynamic one—unacceptable conditions of work are constantly replicated and multiplied, evolving to adjust to contemporary values and opportunities, abetted by society and state. Throughout history, a common thread of social or economic dependence of the labour force on the employers has characterized such labour arrangements. This dependence is maintained through labour practices whose chief purpose is to reduce the opportunity cost of labour by restricting its freedoms.

### 3. Characteristics of Bonded Labour

Some of the key characteristics that define and perpetuate the continued existence of bonded labour in India are discussed in detail in the following paragraphs.

#### 3.1 Demographic and Social Identity of Bonded Labourers

##### 3.1.1 Historically Disadvantaged Groups

Traditional caste rules mandate forced labour from certain communities. Caste is one of the foundations of the bonded labour system and remains a key feature of bondage even in non-agricultural industries today. The lack of access to their own land, combined with this expectation to perform free labour and the threat of violence and economic boycott against those who challenge their expected social roles, keeps many Dalit families in bondage and a perpetual state of poverty.<sup>19</sup>

There is a strong overlap between the community of Dalits and Adivasis and victims of bondage. According to the Gandhi Peace Foundation and National Labour Institute survey, 87 per cent of bonded labourers were from the Scheduled Caste (SC) or Scheduled Tribe (ST) communities.<sup>20</sup> A survey commissioned by the Planning Commission in 2009 also found that nearly 83 per cent of rehabilitated bonded labourers belonged to SC or ST communities.<sup>21</sup> In Punjab, it is estimated that nearly three-fourths of bonded labourers are from the same caste—the Mazhabi Sikhs.<sup>22</sup> A study by Aide et Action of three districts of Orissa, to which a high proportion of people migrate to work in brick kilns, stone crushing and construction, found that about 84 per cent of the surveyed households were SCs or STs. Those ‘who are considered as most backward and vulnerable community in Odisha . . . constitute higher percentage of migrant families’.<sup>23</sup>

On the other hand, government officials and contractors of bonded labourers generally belong to the higher castes. Some members from the Other Backward Classes (OBCs) have also been known to be owners of brick kilns, stone quarries, etc., and recruit labour in bondage. Regardless, creditors and employers are almost invariably literate, comparatively wealthy and relatively more powerful members of the community.<sup>24</sup> It would not be an exaggeration to say that labour bondage

draws greatly upon feudal social relations and the caste system.

##### 3.1.2 Gendered Nature of Bondage

Gender distribution varies depending on the sector of activity. While studies have found that the victims of bonded labour in general are overwhelmingly male,<sup>25</sup> the prevalence of women and children in bondage is higher in certain occupations such as floriculture and *bidi* making.<sup>26</sup> Women, and often children, are also recruited heavily as domestic help and for the sex trade.

Even when only the husbands are bonded, the women of the household are severely affected by this arrangement. As men have gendered advantages in accessing state and community support, employers have less control over their male workers, which enables them to escape from bonded labour relations. Women are then compelled to take up agricultural work at whatever terms that are offered, to repay the debt taken by the male members of the family, and ensure continued access to consumption credit from the employers. Even payment of advances is influenced by the gender of the bonded labourer—a study in Andhra Pradesh showed that while men under bonded labour arrangements were paid advances of ₹5,000–7,000 a year, women were only paid ₹2,000–3,000 for the same duration.<sup>27</sup> Similar gaps in advances paid to men and women have been reported in other states.

##### 3.1.3 Child Labour and Bondage

While children bonded in agriculture are often family members of adult bonded labourers, pushed into such arrangements in a desperate move to discharge their family’s debt, children also form a huge proportion of the non-agricultural labour-force trapped in bonded labour arrangements. Aside from children working as domestic help, some non-agricultural industries with a prevalence of bonded child labourers include carpet weaving, *bidi* making, and silk and silk sari production. According to a report of the Human Rights Watch in 2003, it was estimated that in just the three states of Karnataka, Uttar Pradesh and Tamil Nadu, there were more than 350,000 children working in the silk industry alone, most of whom were recruited as bonded labour.<sup>28</sup> The study found that work hours

for these children could be as long as 14 hours a day for six or seven days a week, and that they were highly susceptible to work-related health problems, including respiratory diseases, skin infections, severe burns, and hearing and vision loss, among others. The total number of children working in bonded labour arrangements is estimated to be close to 15 million, according to an earlier report.<sup>29</sup>

### 3.2 Push Factors for Bondage

An important distinction between slavery and bonded labour arrangements is that despite the heavily exploitative nature of the arrangement, many people who are bonded have ‘chosen’ that form of employment. However, this cannot really be called a free choice as it is undertaken either under conditions of extreme distress or coercion. Given this backdrop, some of the main reasons for people continuing to get into bonded labour arrangements are now discussed.

### 3.2.1 Skewed Distribution of Resources

The skewed distribution of resources, particularly restricted access to land and water, plays a significant role in determining the ability of the rural poor to make free labour choices. As the mainstay of the rural economy continues to be agriculture, the consequences of this uneven distribution are made all the more severe by mechanization, high seasonality of employment in agriculture, depletion of forests, and the absence of secure and regular avenues of non-agricultural employment.

Table 8.1 shows that the share of landless and marginal ( $\leq 1$  hectare) landholders among Dalits is significantly higher than other social groups. Research by CES in 2011 in Andhra Pradesh, Punjab, Orissa and Rajasthan similarly found that a low asset base, including landlessness or marginal landholdings, was a common feature across communities prone to bonded labour in

**Table 8.1 Landholdings by Size for Different Social Groups (% of Total Landholdings)**

	Landless	Marginal	Small	Medium	Large
Overall	8.3	72.6	9.7	6.5	3.0
Dalits	8.6	83.5	4.7	2.4	0.8
Adivasis	10.1	66.4	13.0	8.3	2.2
Other Backward Classes (OBCs)	8.0	71.4	10.5	7.0	3.1
Other Social Groups	7.9	67.2	11.2	8.7	5.0

Source: National Sample Survey Organization (2012), ‘Employment and Unemployment Situation among Social Groups in India’, NSS 66<sup>th</sup> Round (2009–10), New Delhi: Ministry of Statistics and Programme Implementation.

#### Landlessness Among Sahariya Households in Baran, Rajasthan

Landholdings have an important impact on the propensity of Sahariya households to sustain themselves without slipping into bondage. Measures adopted in recent years to redistribute land among Sahariya families and provide them with land title (*pattas*) for forestland occupied by them under the Forest Rights Act of 2006 have had mixed success. As a result, a large number of families continue to remain landless. According to a 2012 government survey, 16,217 families out of an estimated 21,000 Sahariya households in Kishanganj and Shahabad tehsils of Baran district have landholdings. However, only about 13,972 (66 per cent of all households) have actual ownership of their land, whereas a total of 2,245 families have been allocated land but do not have possession of it due to a number of reasons—the administration has been unable to take actual possession of the allotted land, or the allotted land is available but has not been measured and handed over to Sahariya families by the administration, the land has been illegally occupied by others. A second avenue for the provisioning of land to Sahariya families is the granting of *pattas* for forestland already in their possession, as per the norms of the Forest Rights Act. On this front too, progress has been slow. Out of a total of 3,089 applications, only 538 *pattas* have been awarded, while the remaining applications are either still being processed by the Gram Sabhas or have been declared to be void at the sub-district and district levels.

Source: Based on data compiled by Sankalp, an NGO working with the Sahariya community in Baran, and provided to CES researchers in September 2012

these states.<sup>30</sup> Landlessness, combined with lack of access to formal credit, is a major push factor for susceptibility to labour bondage.

Dalit and Adivasi communities have also been historically disadvantaged with respect to ownership of non-agricultural assets. One significant marker of this is their limited ability to participate in self-employment and non-agricultural business activities. In 2009–10, only 30.8 per cent of Dalit households and 44 per cent of Adivasi households in rural areas were self-employed, compared to 51.3 per cent and 57.5 per cent for OBCs and other social groups, respectively. In urban areas, 26.2 per cent of Dalits and 23.3 per cent of Adivasis were self-employed, significantly lower than OBCs (36.8 per cent) and other social groups (36.2 per cent).<sup>31</sup>

### 3.2.2 Illiteracy

Illiteracy plays a crucial role in the inability of bonded labourers to break out from the vicious cycle of bondage. The Gandhi Peace Foundation and National Labour Institute survey estimated that between 90 and 94 per cent of bonded labourers were illiterate.<sup>32</sup> Among rehabilitated bonded labourers covered in the Planning Commission survey in 2009, about 76 per cent were found to be illiterate.<sup>33</sup> For children of bonded labourers, high levels of poverty and the need to supplement the family income mean that they have few opportunities to gain an education. The situation is particularly dire for bonded child labourers and children of migrant bonded labourers, for whom educational access is virtually non-existent. Without education, bonded labourers are often unable access alternative non-exploitative employment opportunities.

### 3.2.3 Food Insecurity

The food security status of bonded labourers is also extremely precarious, and often bondage is adopted as a coping mechanism for absolute hunger. Among rehabilitated bonded labourers surveyed for the Planning Commission Report, about 92 per cent of respondents who took a loan reported doing so to cater to the family's food requirements.<sup>34</sup> Such a situation occurs because in many cases the poorest and most vulnerable remain uncovered by government food and livelihood schemes. Even among already rehabilitated bonded workers

covered in the Planning Commission survey, only 43.7 per cent reported having a Below Poverty Line (BPL) ration card. Moreover, once they are bonded, workers receive little or no wages in hand, since much of the earnings are deducted against the advance taken. This lack of income furthers adds to their food insecurity. Hunger and malnutrition is therefore widespread among bonded labourers, particularly those belonging to already vulnerable communities like the Musahars and Sahariyas.

### 3.2.4 Lack of Access to Formal Credit Markets

The existence of bonded labour and specifically debt bondage has been traced to the under-development of credit markets, leading to heavy dependence by the rural poor on their employers or landlords for consumption and production credit, in return for which they surrender their labour power. Arnab Basu and Nancy Chau too, in examining the link between credit–labour interlinkages and bonded labour, found that credit markets are better developed in countries without debt bondage.<sup>35</sup> If the degree of asymmetry in credit access is large enough, interlinked credit–labour transactions induced by market imperfections and poverty can be identified as the main cause of bonded labour in agrarian economies.

The major causes for indebtedness are emergencies, like deteriorating health or the sudden death of a family member, the need for basic necessities such as food, construction or repair of houses, and social occasions such as marriages and festivals.<sup>36</sup> The rural poor have little access to institutional credit and, where it is available, it has to be supplemented by loans from local moneylenders, who are generally from upper caste groups and charge extortionary rates of interest, taking advantage of the debtor's vulnerability by manipulating repayment terms and records. In many cases, the home is mortgaged against the amount taken from the moneylender. To repay the moneylender and save the home, the labourer will sometimes take money from a labour contractor in the form of a large advance, which then needs to be paid off through a bonded labour arrangement.

Amit Bhaduri has directly linked bonded labour and related exploitation to the interlinking of credit, land and labour markets between the same landlord and tenant.<sup>37</sup> In these situations, the

landowner's gain is derived from sharecropping, and from extortionary rates of interest charged from indebted tenants. As a result, landowners have little incentive to invest in technological improvements that raise labour productivity, as the income derived from the increase in production as a result of technological improvements is less than the income that is derived from providing usurious loans to the sharecropper.

This is particularly relevant for tribals, as increasing land alienation, displacement and de-forestation destroy their traditional means of earning a livelihood. This creates the need for credit, which then leads to them migrating in search of work or becoming indebted to landlords and repaying them through their labour, often under conditions of bondage.<sup>38</sup> In Orissa, for example, a survey by Action Aid and 20 other organizations in Malkangiri district estimated that thousands of tribals were working as bonded labourers for rich landed moneylenders. Their lands were almost entirely mortgaged or expropriated by non-tribals, and in the absence of any other source of credit, they were forced to rely on loans from landlords. Many received no wages, apart from some food and clothes, while others received wages as low as 10 per cent of the mandated minimum wage. Even when standard wages were paid, most of this was adjusted against the interest on the loan taken from the employer.<sup>39</sup>

### 3.3 Factors that Sustain Bondage

There are very strong factors at play that sustain the idea of labour bondage despite legal and constitutional provisions to deter it. Some of the key factors that define and perpetuate the continued existence of bonded labour in India are now discussed.

#### 3.3.1 Recruitment of Migrant Workers and the Role of Intermediaries

The United Nations considers those subjected to bondage to be of 'servile status'.<sup>40</sup> There are important differences between slavery and bonded labour, such as the fact that many bonded labourers voluntarily opt for such an employment arrangement (although, as discussed earlier, this cannot really be called a free choice.) At the same time, there are also important similarities in the

processes of recruitment and the exploitative terms that typify them. After the abolition of slavery, the British contracted indentured labour to work in various parts of the country, and even shipped them as cheap wage labour to other Asian and African countries, where conditions were harsh and wage payments erratic and low. Many died in transit and some even upon arrival in the host country, if they could not successfully adapt to the unfamiliar location. This is not unlike the recruitment practices used to engage migrant labour today, a large number of whom end up in conditions of bondage.

Migration and free movement of labour can be highly advantageous to the employer and employee, especially in terms of balancing supply and demand between regions with surplus labour and regions with labour scarcity. However, in recent times, migration has become increasingly de-linked from its presumed function of balancing the interlocational or intersectoral availability and scarcity of labour. The same sector or region can both import and export labour, simultaneously. Migrants often cost less than locally hired labour, are easier to control and can be laid off easily. This is partly because migrants are also less likely to be organized and assert their labour power through collective action. Economically advanced states like Andhra Pradesh are host to a large number of migrant workers under conditions of bondage from the impoverished states of Orissa, Chhattisgarh and Jharkhand. At the same time, Andhra Pradesh also exports migrant workers under similar conditions of bondage to other states. When denied jobs in their native region, labourers are forced to migrate in search of jobs, which perpetuates a vicious cycle of migration. Breman has termed this new phenomenon 'circuits' of labour.<sup>41</sup> For many of these migrant workers, the period of work is fixed beforehand to deny them bargaining power and ensure employers' control over labour. At the same time, the employer is at full liberty to lengthen the terms of the contract and will often use coercion to enforce these terms.

Away from their native regions and often in locations with an unfamiliar language and on the outskirts of the city, survival for migrants becomes even more of a challenge. They are kept in sub-human conditions, lacking proper shelter and surviving on a diet that is lacking in nutrition and is a fraction of

what is required for heavy manual labour. To keep the migrant indebted, a certain part of the migrant's salary is often withheld on the pretext of the labour provided being insufficient to repay the debt or advance taken by the labourer. This is, in reality, a means to force him or her to return the following work season, which ensures a stable labour supply for contractors throughout the season.

The intermediary is an important, almost inseparable, part of the process of recruiting migrant workers. The intermediary is ultimately responsible for providing a continuous supply of reliable workers for the employer at pre-determined wages, for payment of advances and for keeping labour docile by whatever means necessary. For this task, the intermediary will be rewarded for the number of hands recruited and/ or for the output produced. Sub-contracting, a common practice today, leads to even greater distance between the employer and employee due to the existence of multiple layers of intermediaries. There is no direct engagement between the employer and employee, and consequently no related long-term responsibility on the part of the employer to invest in creating a healthy and productive labour force. As a result, the employer considers the labour force as expendable and readily replaceable, with little thought to its welfare and working conditions.

### **3.3.2. Use of Coercion and Collective Action by Employers**

The question remains as to why a person would choose to stay in bondage, if other options of employment are available. Employers continue to use all means necessary, legal and illegal, to keep labourers from asserting themselves. When labourers are not formally employed, they remain hidden from official sight and many of the rights that should accrue to them are sidestepped by employers. Power relations between employer and employee are such that there is little scope for prosecution of employers, even when such practices come to light.

There is a necessity to recognize that bonded labour, in its very broadest sense, stems from the employer's ability to reduce the labourers' opportunity cost by limiting their alternatives in terms of employment. This is even more easily

done when labourers are informally employed. Adam Smith wrote of employers being 'always and everywhere in a sort of tacit, but constant and uniform combination'.<sup>42</sup> Employers often collude to ensure that labourers remain trapped in what is an unfair exchange. Tom Brass cites several examples to illustrate this, including one of a quarry owner in Bihar who agreed not to employ labourers when they were released from bonded labour arrangements in the agricultural fields of another employer. While bonded labourers are vulnerable and collective action among them is a rare phenomenon, employers<sup>43</sup> often resort to both interindustry and intraindustry collective action to keep labour in bondage. As a result, workers are prevented from taking up a job with another employer under better conditions, forcing them to continue with the bonded labour arrangement.

### **3.3.3 Indifference of State Machinery**

There is, on the one hand, a greater understanding of our moral duties towards those engaged in productive activities.<sup>44</sup> On the other hand, due repeatedly to official denial and indifference, the eradication of the practice of bonded labour has been a challenge. The Supreme Court judgment in the *Bandhua Mukti Morcha* case was clearest in its indictment of the government:

*It is not the existence of bonded labour that is a slur on the administration but its failure to eradicate it and moreover not taking the necessary steps for the purpose of wiping out this blot on the fair name of the State is a breach of its constitutional obligation.*<sup>45</sup>

After the 1970s and 1980s governments routinely denied the problem of bonded labour, despite evidence to the contrary. In 2002, the director general of Labour Welfare in 2002, Manohar Lal, claimed that governments had virtually solved the problem of bondage:

*As of today, we can say as the central government as from our information from the states, there are no bonded labourers to be rehabilitated . . . This is a happy situation*



*when states say there is no bonded labour and Vigilance Committees are meeting regularly—and they are very responsible people.*<sup>46</sup>

Independent studies and civil society organizations have constantly challenged this position by demonstrating with clear empirical evidence the widespread existence of bonded labour in India.<sup>47</sup> Even when labour bondage is acknowledged, the numbers quoted by the government put the number of bonded workers at a fraction of the number estimated by various independent studies, and point to continued laxness in identification on the part of the state. While identification has obviously been a problem regarding less recognized forms of contemporary bondage, even traditional bondage continues to persist and thrive.

#### **4. Role of Public Action<sup>47</sup>**

Collusion among employers of bonded labour often extends to middlemen and state machinery, such as local police and administration. Bonded labour, on the other hand, is unorganized, making it nearly impossible for the worker to escape the bonded labour arrangement without external assistance. As a result, a negligible proportion of bonded labourers have been released, even fewer have been rehabilitated and almost no employers have been prosecuted for employing labourers in conditions of bondage.

While many of the guidelines for state action have been recommended time and time again, there has been little change in the official response to the challenge that bonded labour presents. Successes, though limited and only in some isolated cases, have largely been a result of public pressure from non-governmental organizations (NGOs) and civil society groups, who have helped organize bonded labourers into collectives and given them the agency to demand a better quality of life than they have been forced to accept in the past. Volunteers for Social Justice (VSJ), an NGO in Punjab, filed more than 2,000 cases on behalf of both local and migrant bonded labourers in agriculture, brick kilns and other sectors, a majority of whom were from the Dalit community. Between 1998 and 2004, VSJ was able to secure the release of 1,832 bonded labourers.<sup>48</sup> Similarly, since 2010, more than 200

Sahariya families in Baran district of Rajasthan have refused to work as bonded agricultural labourers, and instead found work under the Mahatma Gandhi National Rural Employment Guarantee Act, assisted in their efforts by the NGOs Sankalp and Jagrut Mahila Sangathan.<sup>49</sup>

These experiences and many others suggest that in the absence of such public action that gives bonded labourers agency through collectivization, and holds the government accountable, many such workers will remain at the mercy of an indifferent state, indefinitely bound to inhumane labour arrangements with the owners of capital, who respond only to market pressures to reduce the cost of production.

It is, however, important to note that while public action has a large role to play in organizing bonded labour, a responsive local administration is necessary to ensure that bonded labour arrangements are completely dismantled, and the freed labourers are provided alternative sources of livelihoods with control over the factors of production. This can help them fully overcome their dependence (both social and financial) on their erstwhile employers. Srivastava cites an example where bonded labourers released from the stone quarries in Pudukottai were organized into co-operative societies, in which women held positions of authority, and these societies were given quarrying contracts. The money received as part of their rehabilitation package was pooled to purchase trucks. They were further supported by the state authorities, with the Government of Tamil Nadu amending the rules of the prevailing Mines and Minerals Act of 1957 in order to allow bonded labourers to have lease rights over the stone quarries.<sup>50</sup>

In fact, successful rehabilitation is next to impossible without support from the local administration, as it often involves proactive measures to respond to challenges that may or may not have been anticipated at the time of release. In the absence of appropriate government recognition and rehabilitation, these bonded labourers remain extremely vulnerable to retaliation from their former employers, and to lapsing back into bondage. In the case of the Sahariya families of Baran, as of September 2012, only 51 bonded labourers had been officially released by the district

administration, and of these just 17 had received the rehabilitation package they were entitled to.<sup>51</sup> Similarly, only four out of the 1,832 cases of bonded labour released through VSJ's intervention in Punjab were rehabilitated, and none of the employers was prosecuted.<sup>52</sup>

What is necessary, then, is continued work by civil society groups in monitoring this issue and making it a part of public consciousness, while pressurizing the administration to recognize and eradicate the practice of all forms of labour bondage. The National Human Rights Commission (NHRC) Annual Report of 2000–01 states: "The promotion and protection of human rights cannot gather momentum without the fullest co-operation between the Commission and NGOs. They are the Commission's most natural allies and most honest critics."<sup>53</sup> With a more proactive role for the NHRC, vigilance by NGOs and the fullest co-operation of a sensitive state, there is a chance that labour bondage can finally be universally recognized as an atavistic practice that must be condemned and the institutions supporting it completely dismantled.

## 5. Recommendations for State Action

### 5.1 Broadening the Definition of Labour Bondage

Ravi Srivastava has noted that India has the honour of being the first country in South Asia to enact legislation against bonded labour.<sup>54</sup> B. N. Yugandhar has referred to the Bonded Labour System (Abolition) Act, 1976 as one of the best pieces of central legislation passed in India since independence.<sup>55</sup> The primary objective of the BLA was the abolition of bonded labour systems and of customary practices that sustain labour bondage. The BLA facilitates this by discharging labour from any liability to repay bonded debt, restoration of property lost as a result of bonded debt and the penalization of creditors who accept payments against a bonded debt. Its strength lies in its unambiguity—it clearly defines bonded labour, makes it a criminal offence, transfers the burden of proof to the creditor, and fixes responsibility for the identification, release, rehabilitation and resettlement of bonded labour.

However, the BLA fails to consider incidences of bondage that do not necessarily fall within the narrow confines of a traditional debtor–creditor relationship. In some cases, for example, wages are withheld and paid in a lump sum at the end of the working period, in order to discourage the worker from leaving before the end of the stipulated period. The definitional shortcomings of the BLA become particularly problematic in the context of the increasingly changing nature of bonded labour in India. The narrowly defined nature of bonded labour in the BLA has allowed the Government of India to avoid addressing contemporary forms of bondage. While the poor identification of traditional bondage is largely due to state denial, it is also extremely important to review the BLA against the changing conditions of the Indian labour market, and especially challenges related to neo-bondage. This, of course, must not be taken to imply that more conventional forms of forced labour associated with the labour market have disappeared or are less pressing concerns.

The contemporary Indian bonded labour contract is defined by time-bound and often seasonal contracts, largely economically and not socially driven contractual relations. Often, the entire labour contract is organized through a labour contractor who moves large populations of labour from one part of the country to another. If these features are the most salient aspects of labour bondage in contemporary India, then the key regulatory challenge is the extent to which the BLA provides an adequate framework to address this situation.

The National Commission on Rural Labour Report<sup>56</sup> as well as the Sankaran Committee Report<sup>57</sup> have addressed this issue by suggesting an amendment to the definition of the bonded labour system in a manner that does not regard debt as a mandatory component of bonded labour. Building on their definition, it is proposed that bonded labour be said to exist when non-payment of minimum wage *is combined with* any of the following: an advance or debt, restraint on physical liberty, restraint on changing employment or the forced prevention of labour realizing its full market value. This way of defining bonded labour will cover labour or service relations involving both the payment of an advance and the promise

of payment of wage as a lump sum at the end of the agreed contract. This also ensures that bonded labour is not considered co-terminus with forced labour or slavery, and unfreedoms that are peculiar to bonded labour arrangements can be dealt with under the provisions of the BLA.

## 5.2 Identification

In the *Bandhua Mukti Morcha* case in 1984, the Supreme Court specifically exhorted governments not to hide incidences of bonded labour.

*One major handicap which impedes the identification of bonded labour, is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is therefore necessary to impress upon the administration that it does not help to ostrich-like bury its head in the sand and ignore the prevalence of bonded labour.*<sup>58</sup>

District administrations have sometimes been known to free a bonded labourer of his or her debt, but not recognize him or her as a bonded labourer, which in itself is an inconsistent stance. It is totally unreasonable to expect bonded labourers to identify themselves as such, especially given limited access to information about labour rights, lack of alternatives and fear of retaliation by employers. Identification must therefore necessarily be the responsibility of a government body with a clear understanding of what constitutes labour bondage, and the authority to recommend release and rehabilitation.

In *PUCL v. State of Tamil Nadu*,<sup>59</sup> the state of Tamil Nadu claimed that there were only stray incidences of bonded labour in the state, and the Supreme Court appointed a Commission to enquire into the matter. The commission estimated in its 1995 report that there were over 1 million bonded labourers in Tamil Nadu, of which 10 per cent were children, spread over 23 districts and across 20 occupations.<sup>60</sup> This prompted the Supreme Court to direct other state governments to initiate enquiries in their states as well. However, recognizing that it was not best placed to determine and monitor the scope of the problem, the Supreme Court, through a direction in this case, handed over the task of monitoring and implementing

its directions to the NHRC in 1997. Since then all state governments have been directed to file status reports in a prescribed format with the NHRC every six months.<sup>61</sup>

The Supreme Court's decision to hand over monitoring and oversight of the incidence of bonded labour to the NHRC was expected to drastically reduce the incidence of bondage. However, the current provision fails to account for the definitional issues considered so far and the political challenge of states' reluctance to admit to the existence of bondage. To address this, there is need to statutorily strengthen the role of the NHRC and give it a more proactive role in ensuring the implementation of this law.

The role of the NHRC within the BLA is envisaged as similar to that of the 'The National Commission for Protection of Child Rights (NCPCR) under the Right to Education (RTE) Act, as the apex body to supervise, monitor and oversee the implementation of the BLA Act.<sup>62</sup> The act could specify duties owed to the NHRC by other key implementing authorities envisaged in the structure of the BLA. These would include the authorities appointed by the state governments for implementing provisions of the act, and Vigilance Committees to assist the district administration in the implementation of various aspects of the act, especially relief and rehabilitation. Since states have been particularly lax in making appointments to these bodies and ensuring that vacancies are filled up in a time-bound manner, provisions could also be made to permit the NHRC to make appointments and fill up vacancies. In addition, the NHRC could also be given a supervisory role to ensure that Vigilance Committees have sufficient numbers of experienced and credible non-official members and that the committees meet regularly.

## 5.3 Streamlining the BLA with Other Related Laws

Currently, the BLA is just one of the statutes that can address the practice of labour bondage. This is even more true for contemporary forms of bonded labour that are not universally recognized as bondage, and so fall under a plethora of other acts. Not only does this make the eradication of the practice of bondage difficult, it actively denies labourers engaged in non-traditional forms of

bondage the same benefits as those engaged in traditional forms of bondage.

Previously, contract labour and migrant labour that was subjected to bondage was excluded from the BLA's definition and instead came under the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. However, by way of subsequent amendment, the BLA specified that labourers under both these acts are also to be covered by the definition of a bonded labour system if they are subjected to situations defined to fall under such a system. A similar revision is suggested in the BLA for related statutes like the Minimum Wages Act, 1948 and the Child Labour (Prohibition and Regulation) Act, 1986.

While this exercise would go some way towards recognizing the presence of bondage in contract and migrant labour, in practice these forms of bondage suffer from the same neglect and denial as traditional bondage, with the additional burden of not being recognized as bondage at all by concerned authorities, who continue to take a narrow view of bondage during identification exercises. The streamlining of the acts, thus, should be accompanied by the sensitizing of those charged with the implementation of the law and the official acknowledgement of these contemporary forms of bonded labour.

#### **5.4 Release and Rehabilitation of Bonded Labour**

Due to the unique circumstances of released bonded labourers and their vulnerability to slipping back into bondage, the BLA must remain the primary vehicle for their rehabilitation. An important change that must be introduced in the the BLA is a provision in the administration of the act that incorporates release certificates on the basis of which rehabilitation becomes an irrefutable claim. The district magistrate must ensure that processes of bonded labour are enquired into and release certificates issued. Not complying with this duty must entail a civil penalty in the form of a fine.

The Supreme Court's injunction in the *Bandhua Mukti Morcha* case provides clear instructions for a rehabilitation plan, which calls for psychological, social and economic rehabilitation. The court also

felt that freed bonded labour must be involved in the shaping of schemes of rehabilitation, which will enable them to cross the poverty line, on the one hand and, on the other, prevent them from sliding back to debt bondage. At a minimum, the court felt that the plan should mandatorily include psychological rehabilitation to accompany social and economic rehabilitation.<sup>63</sup>

At an administrative level, the rehabilitation plan must include preferential access to various central and centrally sponsored schemes, and supplementary schemes of the state governments. Some suggested interventions are: all released bonded workers should be given Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) job cards on priority; if they do not own their homesteads, they should be given first priority for free housing under the Indira Awaas Yojana; if they do not own agricultural land, they should be provided with land for cultivation; all children (who may be bonded themselves, or the children of released bonded workers) should get admission in SC/ST hostels or be admitted to local schools, if necessary after organizing residential bridge courses under the Sarva Shiksha Abhiyaan. It is indisputable that these measures would necessitate greater integration between various departments of government involved with social welfare issues and NGOs working with bonded labourers.

Availability of easily accessible formal credit should form an integral part of any rehabilitation plan, to prevent released labourers from slipping back into bondage. A large majority of bonded labourers do not apply for release as they are either too afraid of their employers to stop working for them or are uncertain about who to depend on in case of financial emergencies in the future.

#### **6. Enforcement of Minimum Wages and the Idea of Decent Work**

One of the chief reasons that the release and rehabilitation of bonded labour has been unsuccessful until now is the lack of understanding about why labour continues to be engaged in conditions of bondage. While coercion plays a large part in recruitment and in keeping labour in bondage, the lack of alternatives for earning a livelihood under decent work conditions is a far graver problem, often leading men, women and

children to willingly surrender their labour power under conditions of bondage as the only viable means of survival.

In fact, it would not be an exaggeration to say that none of the previous recommendations can be truly successful in guaranteeing a dignified existence to bonded labourers and those vulnerable to being trapped in bonded labour arrangements in the absence of a policy that guarantees payment of minimum wages for working

households, facilitates creation of employment at the right quality and skill level, guarantees minimum social security for all as a safety net, and insists on decent and dignified employment relationships. These interventions, under the broader ambit of the idea of ‘decent work’, are discussed in greater depth in the chapter on Labour Markets in this report.

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## Chapter 9

# Musahars

## What Keeps Musahars Entrapped in Poverty?



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*Sajjad Hassan*

*Dinesh Manjhi's life has run in fast motion—at 19, he is brother to two sisters and a younger brother, son to his 55-year-old mother, and breadwinner to all. His father died a year ago, due to a sudden illness that the family is still unclear about—but it is not uncommon for men in this labouring community of Musahars to drop down dead, unable to bear the burden of back-breaking manual work on an under-nourished body any further. But Dinesh's early tryst with adulthood began much before his father's demise. It was at least seven years ago that—forced by extreme poverty at home—his father first took Dinesh along to Gurdaspur, i Punjab, to help with errands on the farm that he himself worked on as a seasonal worker. Work was hard, but it added a valuable extra amount to what his father saved to bring back home every season.*

*When Dinesh is not labouring on farms in Punjab, he is at home, in Dumri village in Bihar, eking out a living as a construction labourer in neighbouring Muzaffarpur town, earning between ₹00–150 a day, on days that he is able to find work. His younger brother, Mukesh, 15, is following in Dinesh's footsteps—picking up the skills of construction labour, even though the work is hard and hazardous. But that is still better than opportunities in Dumri itself, as farm hand, available at most for 15–20 days a year, during the (paddy or wheat) harvesting season, at about ₹100 per day. There is no other source of income—'we can only do what we are good at, working with mitti (earth) is what we do', says Dinesh, ruefully. They of course have no land of their own to till—resigned forever to till lands of others. The burden of the large debt of ₹27,000 the family owes the local moneylender on account of the expenses on his father's shraad (funeral), and Dinesh's own wedding a few months ago, mostly, but not only, means that the pressure to keep earning to survive, whilst paying off a part of the debt,*

*makes the search for employment a desperate one. Punjab, despite its many hardships, is still an attractive destination.*

*No one in Dinesh's family has a job card under the flagship wage employment scheme for the poor—the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS). Nor is his mother registered under the government pension scheme for widows, although the family has made many attempts to be put on both lists. There is a 'Below Poverty Line' (BPL) card in the name of his late father, but that hardly gets them much grain or anything else. Despite their acute poverty, Dinesh and his family hardly know much about welfare programmes, including those designed specifically for Dalits.*

## 1. Introduction

Musahars, according to some anthropological accounts, draw their antecedents from the Kol tribe of Chhotanagpur (in Jharkhand), having migrated to paddy cultivable areas of what is currently Bihar, probably from the 12<sup>th</sup> century, and have been the single largest source of agricultural labour in the region since. In their movement from tribal hills to the plains, they came in contact with a sedentary, agricultural, caste-based society, characterized by Brahmanical concepts of purity and pollution, and were incorporated into the caste hierarchy at the lowest rank, becoming untouchable. According to Rafiul Ahmed, from the hills to the plains, the fate of the Musahars appears to have had a clear downward slope. The closer they came to the rice bowl, the deeper they were pulled into indigence and misery.<sup>1</sup> But precisely where they acquired the title Musahar is disputed—according to John Nesfield, it alludes to them being a 'flesh-eating' community, 'masu', meaning flesh and 'hera' meaning seeker.<sup>2</sup> On the other hand, Herbert Hope Risley concluded that the word referred to the Musahars' fondness

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for eating field rats.<sup>3</sup> In either case, Ahmed says, it was an opprobrious epithet bestowed on Musahars by caste Hindus.<sup>4</sup>

Dinesh's story represents the lives of the hundreds of thousands of Musahars (total population: 3,500,000 nationally; 2,100,000 in Bihar state; and 60,000 in Muzaffarpur district, of which Dumri village is a part),<sup>5</sup> among the poorest people in India, caught between survival and despair. There is not enough to eat, nothing to invest in education and health, and nothing, of course, for the small joys of life. Musahars, as a rule, have no choice of opportunities—being stuck with hard labour mostly on fields, but now also other manual work—for life. Social protection schemes, designed for people exactly like Dinesh, have all bypassed them, because the programmes fail to reach them, and Musahars themselves are too busy chasing survival to bother much about demanding entitlements. In effect, Dinesh and his Musahar kinsmen have little freedom or choice and little hope of gaining either soon. The abiding impression is of utter hopelessness, of the permanence of poverty and destitution, and an inability to come out of this situation. What Dinesh's condition is today was his father's, and in all likelihood will be his children's tomorrow. It is no wonder then that Musahars themselves blame it all on destiny, content to labour on and make the best of a desperate life. But is that justice? And how long can a society—even as stubbornly unequal as India's—bear the burden of this injustice? There is no escaping these questions.

What enables extreme poverty, of the kind suffered by Musahars, to endure in India? Why cannot the poorest escape the poverty trap, even across generations, despite policies and programmes, and economic and political changes and opportunities all around? This chapter seeks to understand why, in the case of the Musahars, poverty continues to be so resilient. In addressing these questions, the prism of chronic poverty is used to understand the *drivers* and *maintainers* of poverty,<sup>6</sup> such as poor asset base and weak capabilities, and structural factors like unequal land distribution and caste hierarchies, which hold back marginalized communities from making use of newer opportunities. This connects to the use of the social exclusion framework,<sup>7</sup> to help grasp

the nature of exclusion among Musahars, and the processes that sustain unequal relations.

Research for this chapter was conducted by the Centre for Equity Studies in June 2012 in Narauli and Dumri villages, in Musahari block of Muzaffarpur district. It involved qualitative household surveys to understand the Musahar situation—their assets and capabilities, access to resources and opportunities, and expectations about themselves and their children. This ethnographic examination required our immersion in the life of the community, to observe how Musahars negotiate opportunities and barriers, and what survival strategies they choose in the face of those. Focus group discussions were held with different sections to help understand in a deeper way the group dynamics and underlying forces—social norms and attitudes—determining the choices available to people. Musahar participation in village-level institutions was also examined, to understand their access to opportunities and entitlements. Interactions with service providers helped examine how Musahars negotiate their interaction with state agents over the implementation of laws and access to entitlements. Comparisons were made across the range of variables with non-Musahar sections in the village, such as other lower castes, who seem to have been more successful in overcoming exclusion, as well as upper caste and richer groups, who are part of the explanation for the enduring Musahar destitution. And finally, a visit was made to the neighbouring East Champaran district, to observe the work being done there by the Musahar Vikas Manch (MVM). MVM is a community organization of Musahars that has been mobilizing the community for rights and entitlements, demonstrating many successes, but also frustrated in its attempts to get state agents to side more vigorously with Musahars and their struggles for dignity and a better life for their children.

The rest of the chapter is arranged as follows: In section two, the specific nature of Musahar exclusion is examined, focussing in particular on the role of caste in sustaining their exploitation and marginalization. Section three discusses some of the key characteristics of Musahar poverty and exclusion, including their extremely high level of asset and capability deprivation and its

resulting impacts on their livelihoods, expenditure and saving patterns, and human development outcomes. Section four examines attempts by civil society to mobilize Musahars and strengthen their 'voice', and, finally, section five concludes with some preliminary recommendations for reforms.<sup>8</sup>

## 2. The Enduring Power of Caste in Sustaining Musahar Exclusion

To understand Dinesh's plight, it is important to understand the social context in which the Musahars live. Dumri, a village of the Gram Panchayat by the same name, in Musahari block of Muzaffarpur district, has a population of 5,996 persons, a total of 1,262 households.<sup>9</sup> It has a mixed demographic profile, with Dalits being in the majority (predominantly Musahars), along with Kurmis, Yadavs, Kayashtas, Bhumihars and Brahmins. The leader of the Sarvodaya movement, Jayaprakash Narayan, writing about the Musahari block, where he spent many months in 1970, described its situation in the following words:

*My first experience on coming face to face with the reality of Musahari was to realize how remote and unreal were the brave pronouncements of Delhi or Patna from the actuality at the ground level. Ultimately what meets the eye are utter poverty, misery, backwardness, frustration and loss of hope.<sup>10</sup>*

He went on to describe the problem:

*The situation was characterised by a lack of land for many in the area; an uncommon dominance of the landowning families; exceptionally low wages, particularly for attached labourers; a high degree of unemployment; extreme poverty of agricultural labourers; and a general climate of discontent.<sup>11</sup>*

Even today, poverty and inequality are embedded in the social structure, with upper castes controlling much of the assets and opportunities. Musahars exist at the bottom of that scale. Dependence continues to be high—exploration in Dumri and Narauli revealed aspects of Musahar

life that bound them to insecure work and poor, non-remunerative wages, involving richer landlords. Each Musahar (indeed, Dalit) family is linked to a *grihasta* family, in some sort of a symbiotic (but unequal) relationship between the two, which is wholly disadvantageous for the Musahar. Typically, the Musahar family (*kamia* or *mazdoor*), lives on land belonging to the landlord. In return the *malik* (owner) has first right over the *kamia*'s labour, for work on fields or minding cattle or household chores, at a significantly reduced daily wage rate of ₹25–40 per day, paid mostly in kind. The *kamia* would be able to earn higher wages if he worked elsewhere, but that choice is not his. Only when the *malik* has no need for the *kamia*'s labour can the latter choose to work elsewhere. Upper caste landlords defend the system claiming, 'we are their family and provide for them in *sukh* 'aur' *dukh* (good times and bad). We give them money they need and other forms of help'. However, as the Musahars claimed, 'all the money we borrow comes to us as loans, at steep rates of interest'. Mostly, *maliks* are the moneylenders that entrap the hapless *kamia* Musahar.

There are other forms of dependence too, such as Musahars having to use common lands in villages (*ghairmazrua* land)—that are mostly occupied illegally by upper caste families—or use land belonging to upper caste farmers, for reasons as varied as grazing livestock or meeting the call of nature, even to use ponds and water bodies for bathing and washing, and for livestock. None of these resources is owned by the poor. The rich use these assets as negotiating tools when faced with demands by labourers for better wages or against exploitation. *Maliks*, meanwhile continue to be the strongest powers in the village—having reinvented themselves as politicians, government functionaries, or traders and moneylenders—all with great local clout.' Please insert em dash between 'moneylenders' and 'all'. For Musahars—singly or collectively—to stand up to this web of local power is a tough and potentially dangerous call.

The strongest resistance by the rich and those locally called *dabbangs* (strong men), is towards attempts by Musahars and other landless groups (either by themselves or with support from the government) to obtain rights over land—homestead and agricultural. It is recognized by Musahars and sympathetic non-Musahars that land ownership

could be the game changer for landless groups like the Musahars. But there is very little progress there, belying laws and expectations. Any rights for the Musahars, as can be imagined, would come at the cost of the rich, and would cut into their authority, thus the pushback. Given the extent to which village or government land is illegally occupied by the powerful, it is no wonder that the government's attempts even to allocate the supposedly less contentious government land (as opposed to taking surplus land away from the rich for redistributing among the landless), comes up against stiff resistance. Many accounts are heard of claims by the landless and resistance by the powerful over land, and the failure of the government to enforce its own laws in favour of the landless. These are increasingly leading to class and caste tensions, often flaring up into violence

In a significant effort towards reducing class tensions in Bihar in the early 1970s, Jayaprakash Narayan sought to goad landlords in Musahari block (including Dumri and Narauli, and neighbouring villages) to voluntarily part with surplus land in favour of the landless. It was clear by then that the Bihar government had failed in its attempt to enforce the Bihar Land Reforms Act, 1950, the first major land redistribution effort in independent India. In return for this gesture of goodwill, the labouring classes were expected to engage in a programme of constructive work, and abjure violence, which was, at the time, sweeping Musahari block. It is edifying to note that while the lower classes kept their part of the bargain—Musahari and neighbouring areas have, to this day, remained islands of peace in a Bihar otherwise wrecked by caste and class violence—it was the landlords who held back, using prevarications and subterfuge to maintain their hold on the grossly unequal distribution of land, and the power that it brings.<sup>12</sup>

### 3. Key Characteristics of Musahar Poverty and Exclusion

#### 3.1 Extreme Level of Asset and Capability Deprivation

Illustrating the near-complete absence of land reforms, a recent study on chronic poverty in Musahari block found that 80 per cent of all families

were landless, with another 13.5 per cent being marginal landholders.<sup>13</sup> There was high incidence of (distress) migration, and as much as two-fifths of all lower castes were chronically poor 'owing to a persistent lack of infrastructure improvement, natural calamities like floods and droughts, and socio-economic challenges like malnutrition, caste deprivations, illiteracy, unemployment and the crime–politics nexus'.<sup>14</sup> A household survey by the Centre for Equity Studies (CES) in Dumri, using a small sample,<sup>15</sup> asked qualitative questions on assets, capabilities and access to public services and institutions. The survey revealed some startling facts about the village and its social profile, pointing to the roots of poverty there. While upper caste households—Srivastavs, Bhumihars and Brahmins mostly—own most of the land, (on an average 5 *bighas* per household),<sup>16</sup> middle castes—mostly Kurmis—and the progressive sections among the Dalits—Rams, Paswans and Dhobis, for instance—though technically landless, were mostly sharecroppers on lands owned by others, or even marginal landowners. It was the Musahars, mostly, who were wholly landless. Only a handful owned the land on which their houses were built. But it is not only land that Musahars were deprived of. They lacked all forms of assets—livestock, housing and savings. The typical Musahar abode was a thatched hut or where a family was fortunate, as Dinesh's was, a brick house through the national housing scheme for the poor, the Indira Awas Yojana (IAY). A few households had poultry, or a goat or two. On the other hand, upper caste sections of the village domesticated cattle, cows and buffaloes, for milk, to consume or to supplement their income. All had brick houses on land that belonged to them. Even non-Musahar Dalits generally had some livestock, typically goats and pigs, which helped with consumption at home and extra income, when in need.

Discussions around capabilities revealed a similar story. All upper caste families had one or more members' with some degree of formal education, most men having received higher education, some even with professional degrees, such as law. Women, though lagging behind, were still educated, and girls in the younger generation, as much as boys, were attending school, with many going to private ones. Those going to government schools took private tuitions to supplement the

teaching there. Dalit families, on the other hand, were mostly uneducated. Kurmis, Rams, Paswans and Dhobis had children attending government schools, with many having gone on to high school and college. All communities demonstrated a strong desire to see their children educated and not suffer the fate they had due to lack of opportunities. Among the Musahars, none of the families had children who had attended school beyond Class III or Class IV.

Literacy rates for Musahars, shown in Table 9.1, are in fact at the very bottom, far below the national and even the all-Bihar level for Dalits, which is quite poor in itself. Among women, literacy was reported at a shocking 2 per cent. The inability of Musahars to benefit from education is also reflected in the dismal percentage of children in school (see Table 9.1), compared again to the relatively favourable trend among the rest of the Dalits. These figures are also skewed against girls. The chronic poverty survey found that among the Musahars the school dropout rate is almost 100 per cent.<sup>17</sup>

Other Dalit communities, as the data shows, have been making use of new opportunities—in the public and private realms—and gaining in literacy, in the process creating newer opportunities for themselves outside of traditional, mostly exploitative arrangements. On the other hand, poor education practically seals off their fate and banishes the Musahars to a life of labour and servitude. Though aware that education might be the game changer for their children, Musahar families appeared less sure of how to provide this for them. Parents spoke of economic hardships, their inability to discipline their children to adjust to the demands of formal education, and the fact that children did not seem to like school atmosphere.

### 3.2 Restricted Livelihood Opportunities

Asset and capability deprivation creates a very different set of livelihood options for Musahars, in comparison with other communities. A baseline survey of the socio-economic condition of Mahadalits across Bihar by the Mahadalit Ayog<sup>18</sup> in 2007, threw up some revealing data on the condition of the poorest sections of Dalits, highlighting the sad plight of the Musahars even among this marginalized category. The Musahars, along with the Bhuiyans in southern Bihar, make up over 20 per cent of the total Scheduled Caste population in Bihar. Data in Table 9.2 shows that an overwhelming majority of them were agricultural labourers—the highest for all Dalit groups, much higher than for Ravidas and Paswan, the other large agricultural communities—and only a few were cultivators or indeed engaged in any other profession. The Work Participation Rate among them was the highest for all Dalits in Bihar, in fact the highest among any social group nationally.<sup>19</sup> This over-representation of the Musahars among the ‘toiling masses’ goes a long way in explaining why they continue to be trapped in chronic poverty.

Research in Dumri revealed similar livelihood patterns: upper caste households were large farmers, not working on the land themselves, but employing lower caste Dalits to till the land for them. Most households also had members with salaried jobs—teachers, lawyers, clerks in government offices, and now increasingly in the private sector. This domination of the upper castes in formal employment has continued, with newer opportunities also largely cornered by them. For instance, many women from upper caste families were appointed as *shiksha mitras* (para-teachers) but none from Dalit backgrounds. Middle castes were mostly sharecroppers, having contracted

**Table 9.1 Literacy Rate and Children in School for Different Dalit Communities**

	All Dalit– India	All Dali – Bihar	Dhobi	Pasi	Dusadh	Chamar	Bhuiyan	Musahar
<b>Literacy Rate</b>	54.7	28.5	43.9	40.6	33.0	32.1	13.3	9.0
<b>Children (5–14yrs) in school</b>	–	29.4	45.6	39.4	34.1	33.7	15.1	9.8

Source: Compiled from Mahadalit Ayog (2007), *Report*, Patna: Mahadalit Ayog.

**Table 9.2 Percentage Distribution of Workers for Different Dalit Communities**

Category	All Dalit – India	All Dalit – Bihar	Chamar	Dusadh	Pasi	Dhobi	Bhuiyan	Musahar
Cultivators	20.0	7.9	7.9	10.3	12.3	14.8	6.6	2.7
Agricultural Labourers	45.6	77.6	80.2	75.9	46.5	48.1	86.8	92.5
Household Industry Workers	3.3	3.3	2.1	1.6	12.2	9.6	1.0	0.8
Other Workers	30.5	11.2	9.8	12.2	29.0	27.5	5.6	4.0

Source: Tabulated by author from Mahadalit Ayog (2007), *Report*.

land from richer farmers, or were farmer-owners themselves, working small patches, although many continued to be kept out of the land market, having to work as rickshaw pullers or as help in shops, some even as head-loaders in Muzaffarpur town. Musahars were, again, unfavourably positioned in that they all worked as seasonal labourers on farms in Dumri and on construction projects in Muzaffarpur, or they migrated to do similar work elsewhere, in Punjab or Delhi or Gujarat, with their livelihoods being highly vulnerable.

Consider Dinesh—what livelihood choices does he have today? He can be a farm hand, earning ₹50 per day on average, at best ₹100–150 at harvest time, but that opportunity only presents itself once in a while. More secure is work as construction labour, what he calls *kudali ka kaam* (‘work of the spade’), at a relatively high wage rate and with the security of finding work more regularly. But the work is harsh and demanding, and not all have the required skills. The only other option is to leave home and hearth behind, and travel to Punjab or urban metropolises, in search of agricultural or construction-related work. There is no escape from hard labour.

Pramod Manjhi, who works in a brick kiln, close to Dumri, described his harsh daily routine.

*I begin work before the break of dawn—mixing and kneading mud into fine paste, before pouring the matter into moulds, then stacking them up, nimbly, to prevent damage, and covering up the kiln before firing it. That the brick kiln sets up operations in cold months makes this difficult job all the more challenging—having to work with ice-cold mud. I rest little—it’s a 12–14 hour shift—there is little respite from the daily*

*grind, and I am usually too tired to eat well. I consume liquor just to ease the pain. The work sucks me dry (choos leta hai). But I like this job, and do it willingly for over six months a year, because the wage is good—₹00 a day—and employment is assured close to home’.*

Overall, the Musahars seem not to have escaped the traditional link to land and labour in the caste occupational distribution in village. They are involved in very arduous physical labour, mostly on agricultural farms, but also on construction sites and brick kilns, although migration is opening up more choices not available back in the village. Wage rates on farms, and especially for women, are very low.<sup>20</sup> There is a significant seasonality in work availability, with agricultural work being available only for a few months a year. When the Musahars were asked in discussions why wages on farms were so low, they told us: ‘*maliks* (meaning landowners) are unwilling to raise it, and do so only during (peak) sowing and harvest season’, when markets do not favour them. Dumri’s location by the river Gandak and the annual cycle of flooding—which keeps much of the agricultural land submerged for an extended period during the year—means that there is only one crop where work (sowing or harvesting) is available. This puts the poor at greater risk, increasing their dependence on those with land. Outside of the peak seasons then, wage rates are much below the minimum wage rate. ‘Since there is little work available, we are in no position to refuse the work’, said one respondent, adding, ‘if we protest, there will be some among us who will go and work anyway [he did not say so explicitly, but this is presumably because of desperation], so the protest breaks up. People do not want *jhanjhat* (trouble)’, and no one protests.

Work on brick kilns brings in some money but is very disabling. In some cases entire families are involved in the work, including children. This, of course, comes at the cost of future prospects for children and access to food entitlements. Work in brick kilns, or through contractors on farms in Punjab, for example, is tied in to moneylending, and therefore verges on semi-bondage. There is little savings at the end of the day. But agricultural employment, being highly vulnerable, forces Musahars to accept what they understand are adverse forms of employment, considering that dependence on moneylenders for loans to last out the lean unemployed season is high. The fact that much of the agricultural land in the area is flooded most of the year means labourers have that much less work in their own villages—‘half the year we just live without work’, said a Musahar respondent.

Crucially, related to these occupational patterns, Dalit bondage has cultural sanction, and hence has been difficult to undo. The close relationship between different castes and the specific occupations they are expected to occupy, imposed by the Hindu *jajmani* system,<sup>21</sup> has meant that the expectation, both of the upper caste population as well as Musahars themselves, in this case, is for the latter to continue to be associated with agricultural labour. Village life may be seeing real changes, and the current generation of Musahars may have the option of migrating out in search of alternatives, but dependence on *grihastas* continues to be high. This is confirmed by literature, which is unclear on whether there has been a weakening of the *jajmani* system or if it continues, perhaps in newer forms of bondage.<sup>22</sup> Behind this is the interlocking nature of deprivations, with the social and economic structure working on the political, to ensure that a breaking out of it is arduous, if not wholly impossible.

Other factors also restrict the ability of Musahars to switch to alternative forms of employment, both in agriculture and elsewhere. Ramnath Ram is a father of four and a marginal farmer who lives on the outskirts of Dumri. By Dalit standards, Ramnath has done well for himself and his family. He has some savings that he invests in cultivation—to buy seeds and fertilizer, as well as to be able to use a tractor to plough his field, measuring a decent 20 *kathas* (less than half an acre), that he has leased from Ajai Singh, the principal Bhumihar landowner in the village. His response to why other Musahars

have not been able to become sharecroppers is that landowners need assets for collateral before they can part with their land. They also need to have trust in your ability to generate a surplus for them. Musahars have neither assets that they can demonstrate to landowners nor are they accustomed to farming. Thus, even if they wanted, they would face difficulty in obtaining *bataidari*<sup>23</sup> (or even *thekedari*<sup>24</sup>) land.

Where Musahars have tried alternative forms of employment, such as selling *sattu* (gram flour), or other items for which there is a market in the village, they have found it difficult to get by. ‘We just do not have the skills for that sort of work. We are good only for labour’, they say, ‘and cannot go selling things from house to house’. Hard, arduous labour is then the core skill of the Musahar, the comparative advantage, so to speak, perhaps also core to their bondage. They have few alternative skills and capabilities for any other form of employment besides hard labour, and do not have any assets or capabilities—land or savings—to move to self-employment ventures.

### 3.3 Unsustainable Savings and Expenditure Patterns

Caste differences not only determine incomes, but also the basket and pattern of expenditure. While education, food and health were major items of spending for upper castes surveyed in the study, food and health figured as the top expenses among the middle castes. However, the insecure and precarious livelihood of the Musahars forces on them an expenditure pattern that is unsustainable. Almost all that is earned in a day is spent the same day. Across research sites, it was observed that families earned between ₹100 to ₹300 a day (although the number of days was severely limited). Yet, given the large sizes of families to support (six to eight members, counting dependent parents) and the expenditure pattern, there was little left to save for emergencies. Food costs, and sometimes healthcare, accounted for most of the expenditure, but alcohol came up repeatedly as a significant item—with people spending between ₹50 to ₹150 a day. Savings are minimal, and where possible, are more in the form of grain, saved from a previous year’s share of wages. In the absence of any savings, or the ability to spend on essential areas like nutrition and education, there is little



hope of changing this state of things, and possibly moving from being labourers to farmer–owners or petty entrepreneurs. Sons and daughters toil away as their parents do and have always done. Given that social protection schemes fail to provide a safety net, the Musahars are forever trapped in the vicious cycle of eking out a living—unable to exit poverty. Particularly disturbing is the fact that while Dalits as a whole are beginning to turn the corner, as it were, and improving their performance on human development indicators, including better access to livelihoods, it is primarily Musahars who seem stuck in enduring poverty.

Tying into this economics of poor savings is cultural belief: Musahars consider themselves *kamaake khane waale log* (people who spend away what they earn, living ‘hand to mouth’), with little urge to save for tomorrow. The assumption is that they will earn tomorrow to take care of tomorrow’s need—why bother now? In any case, there is much expenditure to be incurred. Festivals like Chhat and Holi and social events such as marriages and deaths are occasions when Musahars spend a great deal of money—much higher in percentage terms than those in the village with better incomes, and definitely higher than what their own meagre earnings could support. Why these expenditures are considered essential draws a self-fulfilling reply—‘this is what everyone does, this is what society does. If I do not spend, what will others think of me?’ It is not uncommon for Musahars to take hefty loans from moneylenders, at high rates of interest, for these expenses. This contributes to the high incidence of indebtedness, which because of the usurious interest charged by moneylenders and provision shop owners—as much as 5–10 per cent per month—results in families being trapped in debt, unable to invest what they could have saved on buying or leasing land, or starting a small business, or on education for their children.

Clearly, a poor asset base, weak capabilities, and particular social and cultural norms combine with low expectations among Musahars to create a way of life that focusses mostly on the present—with little thought to the future. Interactions with Musahars across different locations demonstrated that they were unable, even unwilling, to plan for longer than a day, spending away whatever they earned the same day. Given the precariousness of their lives, and the hopelessness of their situation,

it is not difficult to see why that is the most rational choice. Musahars, perhaps, do not see the point of investing in better education, a healthy life, a bank balance or in the future, something that comes naturally to others in less harsh situations. Further, their integration with the rest of the society is limited, something that other Dalit communities are managing to overcome, although gradually. Musahars, by and large, live as separate communities, on the outskirts of main habitations that the rest of the village—including even other Dalits—mostly avoid visiting. Being cut off from the ‘mainstream’ contributes to Musahars being unable to make use of newer opportunities, locking them into enduring exclusion.

### 3.4 Poor Human Development Outcomes

The combined impact of the aforementioned factors is extremely poor progress of Musahars on a wide range of human development indicators. With little money available to spend on food, the invariable consequence is severe malnutrition and high morbidity among Musahars. The Mahadalit Ayog study found evidence of high poverty, food insecurity and chronic under-nutrition among Musahars, often bordering on starvation.<sup>25</sup> In combination with poor sanitation and hygiene, the result is high morbidity and mortality—encephalitis, meningitis, cerebral malaria and other diseases take their toll disproportionately on the community.<sup>26</sup> The sex ratio is low at 923, even lower than the national average at 936. Contributing to and aggravating the gender imbalance is the low age of marriage, especially for girls. The proportion of Musahar and Bhuiyan girls marrying before the legal age of 18 is much higher than even the high figure for Bihar.<sup>27</sup>

It seems quite clear that a lack of awareness, and internalization of years of oppression, exploitation and extreme poverty certainly frustrates Musahars’ efforts to improve their condition. Ramnath Ram, the Dalit marginal farmer from Dumri, was asked why he spent so much of his valuable money on his children’s education—he said it would give them *buddhi* and *soch* (intellect and thinking), and perhaps give them a life that he himself never had. Ramnath, although not educated himself, is articulate, and seems aware of the world around him, including his rights and entitlements, and the

confidence to lay claim to them—something which is noticeably absent among the Musahars of Dumri.

Similarly, in encounters with members of the Kurmi community<sup>28</sup>—all landless and toiling away as farm hands or rickshaw pullers—there was the desire to do better, and see a better life for their children. Mukesh Mahto, a rickshaw puller, though uneducated himself, was clear about the benefits of education for his children, and demonstrated his resolve to support them all the way to acquire a better life, ‘because it is the duty of parents to do so. I will work harder and longer, but I must get the money to get my children through their education’, he said. Another Kurmi person divided time between pulling a rickshaw in Muzaffarpur and sharecropping a small portion of the vast holdings of the local *math* (monastery) with the resources he had built to earn a modest return. ‘We owned land in the past but have been pauperized gradually. Today, we neither have the mind of the Pandit nor the reservation of the Dalit—we are ground in between, with our own body as our greatest asset. We toil and eat off that’, he declared. But the nature of toiling is different. There is also awareness, as well as understanding and the ability to articulate resentment and raise their voices. Mukesh and others like him are not resigned to their fate as the Musahars are.

What are the possible lessons to be learnt here? Other lower castes—Dalits as well as the middle castes—have, over time, managed to save and build resources, while they have realized the importance of and the need to make use of opportunities around them. Most members of prominent non-Musahar Dalits in Dumri, like Rams and Paswans, either had some land of their own, or were sharecroppers on lands owned by others, allowing them a share in the annual harvest. They also had some livestock that served as a source of consumption and supplementary income. These investments in sharecropping or farming lands, as well as in self-employment, are beginning to show results, in terms of more sustainable livelihood opportunities, coupled with rising incomes and savings. Better income means that families are able to send their children to school and also afford the extras needed to give them a decent education, such as better books and private tuition fees. As a consequence, education levels among many lower caste Dalits are rising. Reservations in jobs and the immediate

benefits they provide for secure livelihoods are a big boost for parents to further their children towards education. Musahars, on the other hand, do not seem to have reached the critical stage yet, where they can see a direct connection between the education their children acquire and possible secure livelihoods, nor do they have role models that will help them take the leap of faith to convert that opportunity into reality, like Rams have in Jagjiwan Ram or Paswans in Ramvilas Paswan, both important, national-level political leaders. The Musahars, so to speak, have not made it yet.

Things are, of course, changing. While the living conditions of Musahars are still quite precarious, the young, especially, no longer accept the domination of the rich and powerful. Whatever may have triggered it—democracy, new rules of the game or plain opportunities—Musahars today seem to have many more choices, and seem more willing to exercise those to challenge the old order. One Musahar group was defiant in insisting that they did not have to work for the rich at low wages. ‘They cannot do anything’, they shot back, ‘If we like, we work. If not, nobody can force us now’. Such ‘everyday forms of resistance’ by Musahars, to borrow from James Scott’s evocative work,<sup>29</sup> have a long antecedent. Literature abounds in acts of resistance by individual Musahar communities, often through acts of collective flight, such as an entire Musahar *tola* migrating en masse, and establishing refuges of their own to escape exploitation and suffering at the hands of their upper caste masters.<sup>30</sup> Gyan Prakash has described such moves as the act of *kamias* resisting the superpower of *maliks* through their flight from agricultural fields.<sup>31</sup>

#### 4. Pathways to Emancipation: State, Society and the Limits of Public Action

Arun Kumar argues that Musahars’ plight and the failure of many imaginative development schemes for their upliftment highlight the axiom that denial of development to certain groups has been an inexplicable part of India’s culture of development. He goes on to blame the role of state-driven development paradigms, led by local elites and former landlords.<sup>32</sup> Tracing Musahar misery

to their incorporation into the Hindu caste system as untouchables, from jungle dwelling hunters to unfree labour, Kumar argues that this was a result of the constant need for a secure supply of labour in the paddy fields. It is the same self-interest, to ensure a regular supply of cheap labour that, Kumar claims, has led to the ruling classes subverting the pro-poor laws they themselves adopted, for instance to redistribute land among the landless and to ensure a fair wage for labour, among others.<sup>33</sup>

Sesha Kethineni and Gail Humiston make much the same point to explain poor outcomes for Dalits as a whole. They explain 'lack of political will' as follows:

*The rising middle class may well not want any additional competition, and the wealthy, land owning upper class, which is dependent on cheap labour provided by Dalits, effectively lobbied politicians not to give priority to human rights issues, resulting in the country failing to promote human dignity or improve education among Dalits, and failing to provide economic, social, and cultural rights.*<sup>34</sup>

The failure of the development effort for Musahars, in this reading of failure of laws and schemes, is not due to any oversight, poor resources or bureaucratic incapacity—rather, it is a deliberate act by those responsible for development to deny it to Musahars (and communities like them), in an attempt to perpetuate the unequal order, where the Musahar is the servant and the upper caste person is the master.

The working of various pro-poor laws and development programmes seems to bear out the aforesaid claims. Laws such as the Minimum Wages Act, 1948; Bonded Labour System (Abolition) Act, 1976; Inter-State Migrant Workers' (Regulation of Employment and Conditions of Service) Act, 1979; and Schedules Castes and Scheduled Tribes (Abolition of Atrocities) Act, 1989, all of vital importance to Musahars and others in similar circumstances, are routinely violated. And despite a clear consensus that land rights would be the game changer, the Bihar Land Reforms Act, 1950, which seeks to redistribute surplus land among the landless, such as Musahars, has remained a

complete non-starter. Of course, there are issues of poor capacity and interagency co-ordination, resulting in weak action and excessive red tape and pervasive corruption, preventing the wholesome impact of these laws. But evidence points to plain lack of interest, verging on sabotage, among those charged with implementing the laws, which explains why little attempt is made to create awareness among labourers about laws such as those relating to minimum wages, and no action is taken against employers and labour contractors who violate them.

Similarly, there are failures in the implementation of development schemes. MGNREGS, so well suited to relieve Musahars of their livelihood pressures, works so poorly that it is of little relevance to them.<sup>35</sup> Food schemes, such as the Public Distribution System and the Integrated Child Development Scheme remain wrecked by inefficiencies and looting, with Musahars additionally vulnerable to exclusion due to the complicity of managers and frontline providers in depriving them of their benefits. Education initiatives create little value; low enrolment, and near universal dropout rates of Musahar children persist, while centres for out-of-school Dalit children (Utthan Kendras) are run badly and contribute little. Interventions under the Mahadalit Vikas Mission, specifically for Dalits, including Musahars, have belied their expectations, serving as these institutions in reality do the more educated and connected sections of Dalits. Interventions have failed also because of the failing of public service delivery, top down planning, over-centralization, opaque rules and procedures, and little accountability. Musahars continue to be excluded from participation in village level institutions—such as Gram Panchayats and user committees under various programmes, where most of the beneficiaries under development programmes are decided—due to the local power structure being monopolized by caste and class elites.

As with episodic acts of en masse flights from oppression, Musahars have, on occasion, responded to these failures and exclusions through a range of collective actions. Dismal agricultural wages in Madhubani district (₹5–8 per day) and the complete inability of the state to enforce the minimum wage law (₹7 per day at the time), led

Musahars in 1994, organized under the banner of Lok Shakti Sangathan, to mass agitation for fairer wages. Through a long process of mobilization and negotiations, this resulted in landowners being forced to raise wages to ₹15–18 per day.<sup>36</sup> But it is not only through mass agitations that Musahars have resisted dominance. They have used other forms too—self-help, such as setting up food banks and Gram Kosh in northern Bihar, as food security measures and to provide credit to Musahar families for meeting consumption needs.<sup>37</sup> Musahars have also increasingly turned to political action on the Mahadalit platform, and many Musahars have been elected to state and local assemblies, as well as appointed to high offices.<sup>38</sup> Some have also been known to join the ranks of Naxalites as an act of resistance.<sup>39</sup> But evidence of whether these forms of ‘participation’—democratic or violent—have resulted in Musahar upliftment is thin. Commentators have noted the salience of caste hierarchies and the durability of exclusions of Musahars in Naxal as well as electoral party spaces to explain poor outcomes.<sup>40</sup> A Musahar activist from East Champaran puts this in context:

*Untouchability is a deep-seated phenomenon. Even if people sit together and seem not to mind caste differences, they do not enter Dalit houses, do not eat together. The mindset does not change easily. Untouchability, and all the discrimination that comes with it is not going to disappear so easily. We will need to keep up our struggle for a long time.<sup>41</sup>*

Community initiatives, such as the one in East Champaran district of Bihar, are increasingly seeking to enable change for the Musahars. Here, a local Non-Governmental Organization, Samajik Shodh Evam Vikas Kendra (SSEVK), with support from Action Aid India, has been mobilizing Musahars’ on the issues of their rights and entitlements, ownership over land, better health and educational attainments social and justice, and against exploitation by non-Dalits, among others. The approach has been to develop Musahar voices and organizations, and to enable members to demand their rights and stand up to power and authority in that effort. The Musahar development forum, Musahar Vikas Manch (MVM), was the

outcome of this process, a community-based organization of Musahars, which, with its network of village, block and district committees, educates Musahars about their entitlements, trains members on how to access rights and engages government agencies to realize those demands. MVM started in the mid-1990s, initially with flood relief work, by partnering with the local administration to respond to health emergencies, taking up education drives and responding to food shortages with community food bank interventions. Now, at 17,000 members strong, and spread over 125 hamlets in 70 Panchayats, MVM is increasingly taking direct action against official apathy and failure to provide services to Musahars. Group meetings, rallies, protest marches and action to petition government offices help MVM reach its large network of members. The aim is to leverage their strength to put pressure on officials and elected local representatives to be accountable.

These efforts, and the approach of developing a ‘voice’ among Musahars through building community capacity to demand and obtain rights, has had a very positive impact—particularly significant given the inherent condition of destitution and subjugation of the community. Musahars in East Champaran district, through MVM, are now able to organize themselves, articulate their views and demands, ask for and access information, and acquire the self-confidence to stand up to officials and oppressive forces in the struggle for their rights. Members also have a political understanding of the larger struggles for dignity and rights, and they are forging relationships with state and regional Musahars as well as oppressed peoples’ organizations and movements. These are significant movements forward.

Since the start of 2013, these efforts at empowering Musahars have been consolidated, with MVM working with the local administration under a programme overseen by national policy bodies, in order to enable better developmental outcomes for the community. The programme entails MVM, on the one hand, working closely with the local district administration to identify Musahar needs and priorities, plan for and deliver them; and on the other hand, mobilizing and building capacities in MVM village and block committees, to put greater day-to-day pressure

on the administration to deliver on agreed plans. Programme performance is a complex phenomenon, and results are still modest—be it distribution of land, provision of wage employment under the NREGS, working of food schemes and housing support, or enforcement of minimum wage and anti-discrimination laws. Some families have obtained homestead land, families left out of IAY coverage have managed to get themselves included, and the administration is now forced to take Musahar issues seriously. Crucially, the opportunity has provided the Musahars of East Champaran, represented by MVM, a better realization of their entitlements, an understanding of the processes involved in achieving the same and the capacity and confidence to both engage with and question authority at village, district and higher levels. The year-long engagement has also mobilized the Musahars, leading to a realization among them to invest more in community capacity and forge stronger alliances with like-minded rights-based groups and networks towards better pro-poor outcomes. Laloo Manjhi, the MVM district committee president, notes that the struggle for rights and dignity is long and hard. It is only the innate strength of MVM that keeps the hope strong.

## 5. Lessons for the Greater Empowerment of Musahars

In conclusion, a number of important steps are critical in order to support improvements in the conditions of Musahars, on both the ‘supply’ and ‘demand’ sides of the equation.

On the ‘demand’ side, key areas include the following:

- Strong ‘institutions of the poor’ on the ground, on the lines of MVM, to constantly negotiate power relations with social forces and state agents, so that the interests of Musahars are upheld. MVM, by organizing Musahars, building capacity among them and mobilizing them to demand their rights and pressurize state agents to deliver, has opened up opportunities for better realization of rights and entitlements. More such institutions need to be strengthened especially at the village level, by building their capacities not only to mobilize the community but also to engage with state actors at local as

well as higher levels to negotiate a better deal for Musahars.

- Strong institutions of the poor enable effective social mobilization, which underlies all successful cases of positive change. For Musahars to transform their condition would require unprecedented social mobilization.
- This, in turn, would require serious and sustained investment in education, to create the awareness, aspiration and capacity to enable the Musahars to become agents of change.

On the ‘supply’ side:

- Given the strong resistance of powerful groups to demands for rights and entitlements by the poor, including Musahars, successful implementation of pro-poor policies would require strong state support to counter anti-poor forces and ensure provisioning of entitlements. Musahars are too vulnerable to be left to do the fighting all by themselves, given the strong anti-poor character of society and the familiar anti-poor stance that state agents themselves take when the interests of the poor conflict with those of the non-poor. State commitment—at the state, district, block and village levels—is crucial to mobilize Musahars and groups like them (to secure their rights and entitlements) and implement development programmes (like Sarva Shiksha Abhiyan).
- Equally important are the space and opportunity for Musahars to participate in local governance (Panchayats and various local level committees). Effective participation will come about with support (reservations, capacity-building) and also by Musahar organizations and all those working for them constantly engaging Panchayats and other local institutions, raising demands, asking questions and, where needed, collaborating to help deliver programmes. The participation of Musahars in these fora will be directly proportional to improved Musahar outcomes.
- In terms of interventions, human rights-based approaches and outcomes (food, social justice, education, etc.) have been seen to work better for the most excluded groups, ensuring they get at least ‘minimum’ entitlements and that those are justiciable. The challenge in the case

- of Musahars will be seeing—through use of law, advocacy and engagement with stakeholders—that these entitlements are actually delivered. Similarly, affirmative action policies and interventions that equalize opportunities and bring the excluded on par with the rest of society, improving not only assets but the returns on those assets, need to be further strengthened. Despite reservation policies and special arrangements, most benefits for Dalits are cornered by non-Musahars. The challenge is to enhance Musahar access to special arrangements, through tailor-made interventions, coaching and capacity-building.
- Sectorally, Musahars face particular disabilities in securing not only decent and sustainable livelihoods, but also housing, food and nutrition, health and sanitation, as well as security and dignity. Each requires targeted and sustained

work to enhance access to the relevant laws and schemes. This would require focussing on a wide basket of entitlements, including social security programmes, public services, security and dignity, along with collectives facilitating income-generation activities.

- Musahars face particular livelihood challenges. They also have unique skills and abilities—crafts, animal husbandry and agricultural practices among others. Successful attempts to help them graduate from hand-to-mouth existence to secure livelihoods would require investing in and developing livelihood models that leverage the strengths while addressing specific threats. The National Rural Livelihood Mission would do well to concentrate on the models adopted, for example, for bonded labour and migrant labour.

## Notes and References

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11. *Ibid.*, p. 9.
12. Kumar and Kant (2011), 'Post Conflict Face of Poverty and Society', p. 19.
13. *Ibid.*, p. 36.
14. *Ibid.*, p. 46.
15. Thirty-three in all, 20 Musahar, four Ram, two Dhobi, two Kurmi, four Bhumihar, one Kayashta.
16. One *bigha* roughly equals 2,520 sq. metres.
17. Kumar and Kant (2011), 'Post Conflict Face of Poverty and Society', p. 45.
18. Set up by the Bihar government to look into the specific problems of 'the Dalits among Dalits'. These included 18 sub-castes, later increased to 21, of the 22 that are included among the Dalit category. Only the Paswan caste is not included.
19. Mahadalit Ayog (2007), *Report*, p. 22.
20. Rs 30–60 for women; Rs 100 for men, or payment in kind (5 kg of rice for a day's work).

21. Whereby the *kamins*, the clients, usually unfree agricultural labourers from the low castes, also *mazdoors*, are tied in hereditary patron–client relationships to the *jajman*, the patron, usually landed proprietors from the upper and middle castes, also called *grihasta*, to provide free labour and other specialized services to the latter.
22. Ira Gang, Kunal Sen and Myeong Su Yun (2012), 'Is Caste Destiny? Occupational Diversification Among Dalits in Rural India', *Brooks World Poverty Institute Working Paper*, no. 162, pp. 5–6.
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28. Members of the Other Backward Classes, unlike Dalits.
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Part IV  
**Statistics on  
Exclusion  
in India**

A consistent finding across the range of public goods and excluded groups looked at in this report is the lack of reliable, timely and sufficiently disaggregated data on access to public goods and related human development outcomes. This part of the report attempts to collate relevant statistics on exclusion in India, relying almost exclusively on official sources – the National Sample Survey Organisation (NSSO), Census of India and data from government ministries and departments.

Table 1 provides basic demographic information on the major excluded groups covered in the report, namely, women, Dalits, Adivasis, Muslims and persons with disabilities. Tables 2 to 11 collate statistics relating to key public goods and human development outcomes disaggregated by the excluded groups. Tables 12 to 25 present similar data disaggregated by states and union territories (UTs). Detailed references for all of these tables are provided at the end of this section.

Looking at the tables, some of the shortcomings of currently available statistics become clearly apparent. While there is some data available for women, Dalits and Adivasis, there is extremely limited statistical data for persons with disabilities, and to a lesser extent, for Muslims and other minorities. The range of indicators available disaggregated for States and UTs is relatively better, but timely statistics for crucial public goods like health are still not available. Data for UTs is often patchy and unreliable. It is also important to note that these tables only provide information for indicators currently being tracked by the government, saying nothing about the many indicators for which data is either not collected, or is not available with sufficient level of disaggregation. Many such areas have been discussed in the different chapters of this report. Moreover, only the latest available data is presented in these tables, since comparable and disaggregated time series data is difficult to collate for many of these indicators.

Addressing the shortcomings in statistical data highlighted in this report and the tables that follow can be a useful first step in aiding efforts to reliably track exclusion of disadvantaged groups from public goods and evaluate the success of government efforts to deal with such exclusions.

**In all the tables, instances where data is either unavailable or has not been published are denoted by ‘NA’ refers to data that is unavailable or unpublished. ‘-’ refers to data that is not applicable.**

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**1. Demographic Indicators of Excluded Groups in India (Across States and Union Territories)**

	Total Population (2011)	Share of Total Population (%)										
		By Gender		By Group					By Age			
		Men	Women	Dalits	Adivasis	Muslims*	Minorities*	Persons with Disabilities	0-6 yrs	0-17 yrs	18-59 yrs	60+ yrs
India	1,210,854,977	51.5	48.5	16.6	8.6	13.4	19.5	2.2	13.6	36.7	54.4	8.6
Rural	833,748,852	51.3	48.7	18.5	11.3	NA	NA	2.2	14.6	38.9	52.0	8.8
Urban	377,106,125	51.8	48.2	12.6	2.8	NA	NA	2.2	11.5	31.8	59.6	8.1
Andhra Pradesh	84,580,777	50.2	49.8	16.4	7.0	9.2	10.9	2.7	10.8	31.3	58.0	9.8
Arunachal Pradesh	1,383,727	51.6	48.4	NA	68.8	1.9	64.5	1.9	15.3	42.6	52.7	4.6
Assam	31,205,576	51.1	48.9	7.2	12.4	30.9	35.1	1.5	14.9	38.7	54.6	6.7
Bihar	104,099,452	52.1	47.9	15.9	1.3	16.5	16.7	2.2	18.4	45.6	46.6	7.4
Chhattisgarh	25,545,198	50.2	49.8	12.8	30.6	2.0	5.3	2.4	14.3	38.2	53.9	7.8
Delhi	16,787,941	53.5	46.5	16.8	NA	11.7	18.0	1.4	12.0	33.0	60.1	6.8
Goa	1,458,545	50.7	49.3	1.7	10.2	6.8	33.7	2.3	9.9	26.2	62.4	11.2
Gujarat	60,439,692	52.1	47.9	6.7	14.8	9.1	10.8	1.8	12.9	34.6	57.1	7.9
Haryana	25,351,462	53.2	46.8	20.2	NA	5.8	11.8	2.2	13.3	36.0	55.2	8.7
Himachal Pradesh	6,864,602	50.7	49.3	25.2	5.7	2.0	4.6	2.3	11.3	31.4	58.2	10.2
Jammu & Kashmir	12,541,302	53.0	47.0	7.4	11.9	67.0	70.4	2.9	16.1	39.8	52.7	7.4
Jharkhand	32,988,134	51.3	48.7	12.1	26.2	13.8	31.3	2.3	16.3	41.9	50.6	7.1
Karnataka	61,095,297	50.7	49.3	17.1	7.0	12.2	15.9	2.2	11.7	31.7	58.8	9.5
Kerala	33,406,061	48.0	52.0	9.1	1.5	24.7	43.8	2.3	10.4	28.2	59.2	12.6
Madhya Pradesh	72,626,809	51.8	48.2	15.6	21.1	6.4	8.8	2.1	14.9	39.6	52.4	7.9
Maharashtra	112,374,333	51.8	48.2	11.8	9.4	10.6	19.5	2.6	11.9	32.1	57.6	9.9
Manipur	2,855,794	50.4	49.6	3.4	40.9	8.8	53.9	1.9	13.1	36.2	56.5	7.0
Meghalaya	2,966,889	50.3	49.7	0.6	86.1	4.3	86.4	1.5	19.2	46.5	48.6	4.7
Mizoram	1,097,206	50.6	49.4	0.1	94.4	1.1	96.4	1.4	15.4	38.5	55.2	6.3
Nagaland	1,978,502	51.8	48.2	NA	86.5	1.8	92.3	1.5	14.7	41.5	53.3	5.2
Odisha	41,974,218	50.5	49.5	17.1	22.8	2.1	5.6	3.0	12.6	34.3	55.9	9.5
Punjab	27,743,338	52.8	47.2	31.9	NA	1.6	63.0	2.4	11.1	31.5	58.0	10.3
Rajasthan	68,548,437	51.9	48.1	17.8	13.5	8.5	11.2	2.3	15.5	41.0	51.1	7.5
Sikkim	610,577	52.9	47.1	4.6	33.8	1.4	38.9	3.0	10.5	33.7	59.4	6.7
Tamil Nadu	72,147,030	50.1	49.9	20.0	1.1	5.6	11.8	1.6	10.3	28.6	60.9	10.4
Tripura	3,673,917	51.0	49.0	17.8	31.8	8.0	14.3	1.8	12.5	33.4	58.6	7.9
Uttar Pradesh	199,812,341	52.3	47.7	20.7	0.6	18.5	19.3	2.1	15.4	42.7	48.8	7.7
Uttarakhand	10,086,292	50.9	49.1	18.8	2.9	11.9	15.0	1.8	13.4	37.7	53.2	8.9
West Bengal	91,276,115	51.3	48.7	23.5	5.8	25.2	27.5	2.2	11.6	32.9	58.5	8.5
Andaman & Nicobar Islands	380,581	53.3	46.7	NA	7.5	8.2	30.5	1.7	10.7	29.5	63.7	6.7
Chandigarh	1,055,450	55.0	45.0	18.9	NA	3.9	21.4	1.4	11.3	30.7	62.9	6.4
Dadra & Nagar Haveli	343,709	56.4	43.6	1.8	52.0	3.0	6.4	1.0	14.8	36.4	59.4	4.0
Daman & Diu	243,247	61.8	38.2	2.5	6.3	7.8	10.3	0.9	11.1	27.5	67.7	4.7
Lakshadweep	64,473	51.4	48.6	NA	94.8	95.5	96.3	2.5	11.3	30.9	60.8	8.2
Puducherry	1,247,953	49.1	50.9	15.7	NA	6.1	13.2	2.4	10.6	28.7	61.5	9.7

\* Population estimates for Muslims and minorities are from Census of India 2001.

## 2. Educational Achievement and Access (Across Groups)

	2011	2009-10	2009-10		2012-13	2009-10	
	Literacy Rate-7 years and Above (%)	Literacy Rate-15 Years and Above (%)	Current Attendance Rate (%)		Drop in Enrolment from Primary to Upper Primary Level (%)	Non-Literate Households (%)	
			5-14 Yrs	15-19 Yrs		No Literate Adult Member	No Literate Adult Female Member
Overall	73.0	68.3	87.1	57.6	51.8	15.7	32.9
Men	80.9	78.6	88.2	61.5	52.2	-	-
Women	64.6	57.7	85.8	52.8	51.4	-	-
Dalits	66.1	58.5	85.2	50.7	54.4	22.4	44.2
Adivasis	59.0	55.4	81.7	46.1	58.5	27.0	46.6
Muslims	59.1*	63.7	82.3	45.3	58.9	NA	NA
Persons with Disabilities	48*	45.2#	NA	NA	63.3	NA	NA

\* From Census of India 2001.

# From NSS 58th Round (2002).

Current Attendance Rate is the percentage of persons currently attending educational institutions for a given age group.

## 3. Labour Market Participation and Employment Status (Across Groups)

	2009-10									
	Labour Force Participation Rate (%)	Worker Population Ratio (%)	Unemployment Rate (%)	Employment Status in Rural Areas (%)			Employment Status in Urban Areas (%)			
				Self-Employed	Labourer	Others	Self-Employed	Wage/Salaried	Casual Labourer	Others
Overall	40.0	39.2	2.0	47.4	40.4	12.2	34.7	39.7	13.4	12.1
Men	55.7	54.6	1.97	NA	NA	NA	NA	NA	NA	NA
Women	23.3	22.8	2.15	NA	NA	NA	NA	NA	NA	NA
Dalits	41.2	40.4	1.94	30.8	59.0	10.3	26.2	39.4	25.1	9.2
Adivasis	46.0	45.2	1.74	44.0	46.5	9.5	23.3	38.4	21.1	16.9
Muslims	33.8	33.1	2.07	46.3	40.7	13.0	45.5	30.4	15.5	8.6
Persons with Disabilities	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Labour Force Participation Rate (LFPR) is the share of the total population in the labour force.

Worker Population Ratio (WPR) is the share of the total population that is employed.

Unemployment Rate (UR) is the share of unemployed persons in the labour force.

LFPR, WPR and UR are calculated based on usual activity status of a person, considering both principal and subsidiary economic activities.

Data on employment status is at the household level.

## 4. Employment Share and Nature of Employment (Across Groups)

	2009-10							
	Employment Share (%)			Nature of Employment (% of Total Workers)				
	Agriculture	Agriculture-Related	Non-Agriculture	Informal Sector Workers	With no Written job Contract	With Temporary Employment	Not Eligible For Paid Leave	Not Eligible for Social Security
Overall	49.1	4.1	46.8	72.6	77.8	47.3	70.3	74.1
Men	45.0	2.2	52.8	72.3	78.9	46.5	70.4	73.8
Women	59.5	9.2	31.3	73.7	73.0	50.4	70.1	75.6
Dalits	NA	NA	NA	NA	NA	NA	NA	NA
Adivasis	NA	NA	NA	NA	NA	NA	NA	NA
Muslims	NA	NA	NA	NA	NA	NA	NA	NA
Persons with Disabilities	NA	NA	NA	NA	NA	NA	NA	NA

Calculations based on usual activity status of a person, considering both principal and subsidiary economic activities.

## 5. Quality of Housing and Access to Public Services (Across Groups)

	2011											
	Condition of Occupied Houses (%)			Houses With <i>kutch</i> a Construction (%)			Access to Drinking Water (%)		Access to Sanitation (%)			Access to Electricity (%)
	Dilapidated	Good	Liveable	Roof	Walls	Floor	Source Within Household Premises	Safe Drinking Water Source	Latrine Within Household Premises	Defecating in the Open	Open or No Drainage for Waste Water	
Overall	5.4	53.1	41.5	15.7	33.0	47.1	46.6	85.5	46.9	49.8	81.9	67.3
Women (Female-Headed households)	NA	NA	NA	16.0	34.4	44.4	45.0	83.8	48.3	47.4	81.8	70.2
Dalits	8.1	43.0	49.0	21.7	38.8	58.6	35.4	88.6	33.9	62.1	88.7	59.0
Adivasis	6.3	40.6	53.1	19.3	62.7	76.8	19.7	71.5	22.6	74.7	93.9	51.7
Muslims	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Persons with Disabilities	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

All data at the household level.

Houses with *kutch*a construction are those where the material used for construction is grass, thatch, bamboo, wood, mud, plastic, polythene or unburnt brick. Safe drinking water source includes tap, handpump or tubewell, situated within or outside the household premises.

## 6. Child Nutrition and Health Across Groups (Across Groups)

	2011		2005-06					Fully-Immunized Children (%)
	Sex Ratio (0-6 Years)	Child Mortality (per Thousand Live Births)		Nutritional Status of Children (%)				
		Infant Mortality Rate	Under-5 Mortality Rate	Underweight Children (Low Weight-for-age)	Stunted Children (Low Height-for-Age)	Wasted children (Low Weight-for-Height)	Anemic Children	
Overall	918	57	74	42.5	48.0	19.8	69.5	43.5
Men	-	56	70	41.9	48.1	20.5	69.0	45.3
Women	-	58	79	43.1	48.0	19.1	69.9	41.5
Dalits	933	66	88	47.9	53.9	21.0	72.2	39.7
Adivasis	957	62	96	54.5	53.9	27.6	76.8	31.3
Muslims	NA	52	70	41.8	50.3	18.4	69.7	36.3
Persons with Disabilities	NA	NA	NA	NA	NA	NA	NA	NA

Infant Mortality Rate (IMR) is the number of children per thousand live births that die before their first birthday.

Under-5 Mortality Rate (U5MR) is the number of children per thousand live births that die before their fifth birthday.

## 7. Adult Nutrition and Health (Across Groups)

	2011		2005-06				2010-12	
	Sex Ratio (overall)	Adults with Normal Body Mass Index (%)		Adults with Any Anaemia (%)		Access to Antenatal Care (%)	Institutional Deliveries (%)	Maternal Mortality Rate (per 100,000 Live Births)
		Men	Women	Men	Women			
Overall	943	56.5	51.8	24.2	55.3	-	38.7	-
Men	-	-	-	-	-	-	-	-
Women	-	-	-	-	-	-	-	-
Dalits	945	54.7	50.0	26.6	58.3	NA	32.9	NA
Adivasis	990	55.3	49.9	39.6	68.5	NA	17.7	NA
Muslims	936*	57.1	50.7	21.6	54.7	NA	33	NA
Persons with Disabilities	789	NA	NA	NA	NA	NA	NA	NA

Access to antenatal care refers to percentage of mothers who had at least three antenatal care visits for their last live birth.

Institutional deliveries refer to percentage of live births which took place in a health facility.

Maternal Mortality Rate (MMR) is the number of maternal deaths per 100,000 live births.

## 8. Crimes Against Different Groups (Across Groups)

	2012		
	Pendency Rate for Police Investigations (%)	Pendency Rate for Court Trials (%)	Conviction Rate for Court Trials (%)
All Crimes (under the Indian Penal Code)	26.1	84.6	38.5
All Crimes (under Special & Local Laws)	6.6	64.0	88.6
Women	NA	NA	NA
Dalits	26.3	83.5	23.9
Adivasis	25.4	80.9	22.5
Muslims	NA	NA	NA
Persons with Disabilities	NA	NA	NA

Pendency rate is the share of total cases pending investigation/trial at the end of the year.  
Conviction rate is the share of total trials completed during the year that resulted in a conviction.

## 9. Representation in Prison Population and Police Force

	2012		
	Prison Convict Population (%)	Prison Undertrial Population (%)	Representation in Police Force (%)
Women	3.9	4.6	5.8
Dalits	21.8	22.4	14.0
Adivasis	13.9	13.3	10.4
Muslims	17.8	21.0	6.5
Persons with Disabilities	NA	NA	NA

## 10. Availability of Assets (Across Groups)

	2009-10				2011
	Size of Landholdings (% of Rural Population)				Assetless Households (%)
	Landless	≤ 1 Hectare	1.01 – 2 Hectares	> 2 Hectares	
Overall	8.3	72.6	9.7	9.5	17.8
Men	NA	NA	NA	NA	NA
Women (Female-Headed Households)	NA	NA	NA	NA	28.7
Dalits	8.6	83.5	4.7	3.2	22.6
Adivasis	10.1	66.4	13.0	10.5	37.3
Muslims	10.4	80.4	5.5	3.7	NA
Persons with Disabilities	NA	NA	NA	NA	NA

All data is at the household level.  
Assetless households are those which have none of the following assets: radio, transistor, television, computer, telephone, mobile phone, bicycle or motorized vehicle.

## 11. Access to Government Programmes (Across Groups)

	2012-13			
	Indira Awas Yojana		Mahatma Gandhi National Rural Employment Guarantee Scheme	
	Houses Sanctioned (% of total)	Houses Completed (% of total)	Jobcards Issued (% of total)	Persondays of Work (% of Total)
Women	60.8	NA	NA	51.3
Dalits	35.4	34.7	21.2	22.2
Adivasis	18.5	17.0	13.7	17.8
Minorities	12.9	13.5	NA	NA
Persons with Disabilities	1.7	NA	NA	NA

**12. Educational Achievement and Access (Across States and UTs)**

	2011	2009-10	2009-10		2012-13	2009-10	
	Literacy Rate – 7 Years and Above (%)	Literacy Rate – 15 Years and Above (%)	Current Attendance Rate (%)		Drop in Enrolment from Primary to Upper Primary Level (%)	Non-literate Households (%)	
			5-14 Yrs	15-19 Yrs		No Literate Adult Member	No Literate Adult female Member
India	73.0	68.3	87.1	57.6	51.8	15.7	32.9
Rural	67.8	62.2	85.9	53.7	NA	19.7	40.3
Urban	84.1	83.3	91.1	68	NA	6.2	15.1
Andhra Pradesh	67.0	59.3	94.4	59.2	46.8	21.7	39.1
Arunachal Pradesh	65.4	70.1	71.5	63.3	58.0	15.3	24.7
Assam	72.2	81.5	87.6	55.3	54.3	7.3	15.2
Bihar	61.8	53.1	74.6	54.2	62.5	30.3	56.9
Chhattisgarh	70.3	69.8	88.9	73.6	44.6	17.2	32.7
Delhi	86.2	88.3	86.3	74.8	41.1	3.8	9.7
Goa	88.7	85.2	99.6	86.3	38.9	0.8	4.3
Gujarat	78.0	73.1	81.2	40.8	45.7	10.2	28.3
Haryana	75.6	71.0	91.9	64.8	45.8	9.5	29.4
Himachal Pradesh	82.8	79.4	96.5	74.4	38.6	5.8	14.6
Jammu & Kashmir	67.2	65.3	93.5	76.7	47.5	12.4	33.3
Jharkhand	66.4	56.1	77.0	56.2	57.8	29.5	51.1
Karnataka	75.4	69.1	92.9	56.3	43.9	14.7	28.5
Kerala	94.0	93.9	97.6	80.4	34.4	1.1	3.2
Madhya Pradesh	69.3	64.9	86.1	49.7	49.2	16.5	39.6
Maharashtra	82.3	79.6	94.7	67.6	42.2	7.3	18.7
Manipur	76.9	85.6	92.1	76.9	61.0	2.8	9.9
Meghalaya	74.4	94.1	91.9	68.3	61.3	0.9	2.8
Mizoram	91.3	97.2	95.3	65.5	55.3	1.6	2.7
Nagaland	79.6	91.9	97.6	85.5	56.5	0.7	3.8
Odisha	72.9	66	92.1	41.8	51.9	17.7	34.6
Punjab	75.8	72	91.8	58.2	44.8	12.9	24.2
Rajasthan	66.1	56.6	82.0	50.9	55.1	20.0	50
Sikkim	81.4	86.6	98.1	80.9	44.7	1.6	10.2
Tamil Nadu	80.1	77.3	98.5	69.8	39.3	11.8	22.3
Tripura	87.2	81.7	92.0	65.3	45.2	5.2	15.0
Uttar Pradesh	67.7	59.2	84.7	55.9	60.9	21	45.6
Uttarakhand	78.8	75.7	90.8	66.7	46.4	7.8	19.7
West Bengal	76.3	73.1	88.5	50.2	51.2	13.8	26.2
Andaman & Nicobar Islands	86.6	83.3	98.4	68.6	37.4	3.7	11.0
Chandigarh	86.0	85.7	89.0	68.7	35.7	7.2	9.9
Dadra & Nagar Haveli	76.2	65.5	68.3	23.7	38.2	13.2	32.6
Daman & Diu	87.1	94.6	92.5	70.5	45.7	1.3	5.2
Lakshadweep	91.8	87.3	100.0	80.2	24.7	0.2	4.7
Puducherry	85.8	85.3	98.7	80.9	35.7	6.4	16.2

Current Attendance Rate is the percentage of persons currently attending educational institutions for a given age group.

## 13. School and Teacher Quality (Across States and UTs)

	2011-12									
	Single Classroom Schools (% of Total)		Primary Schools with SCR > 30 (% of Total)	Upper Primary Schools with SCR > 35 (% of total)	Single teacher Schools (% of Total)		Enrolment in Single Teacher Schools (% of Total)		Primary Schools with PTR > 30 (% of Total)	Upper Primary Schools with PTR > 35 (% of Total)
	Primary Schools	All Schools			Primary Schools	All Schools	Primary Schools	All Schools		
India	9.0	5.8	37.2	30.6	11.0	8.3	6.3	3.8	40.9	31.1
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	31.1	20.7	29.0	19.2	11.7	7.8	2.9	1.5	14.0	5.8
Arunachal Pradesh	10.0	21.0	12.9	13.6	45.6	43.1	30.1	12.8	22.5	12.6
Assam	31.6	24.8	50.8	35.1	20.5	15.4	19.2	12.2	46.1	10.7
Bihar	4.7	3.2	76.2	88.9	5.3	3.6	4.1	1.9	88.4	89.0
Chhattisgarh	3.5	2.6	29.4	30.0	7.0	6.2	3.8	3.0	24.9	20.0
Delhi	0.0	0.0	63.8	35.0	0.1	0.1	0.0	0.0	62.3	32.3
Goa	21.5	14.8	16.7	17.8	33.5	23.1	7.4	2.4	12.5	15.9
Gujarat	4.7	1.8	47.9	38.7	1.9	0.8	1.0	0.2	37.7	24.2
Haryana	2.1	1.5	36.5	24.4	2.0	1.9	0.8	0.6	43.7	14.7
Himachal Pradesh	4.3	3.7	4.1	8.5	7.9	5.4	4.4	2.0	5.7	5.8
Jammu & Kashmir	19.9	11.2	10.9	10.7	14.9	7.9	11.0	2.4	7.2	5.4
Jharkhand	1.7	1.1	45.2	45.6	19.2	12.4	15.0	5.2	65.3	62.9
Karnataka	10.9	4.2	19.3	14.6	15.5	6.3	8.4	1.3	23.0	16.7
Kerala	4.2	2.3	17.0	16.4	4.4	2.3	0.7	0.2	12.2	8.7
Madhya Pradesh	4.5	3.4	32.9	31.4	16.7	14.9	12.6	9.9	47.5	43.5
Maharashtra	7.2	4.5	30.2	33.9	4.0	2.3	1.2	0.4	28.3	28.6
Manipur	2.3	1.4	15.5	14.6	15.8	10.1	11.7	3.9	21.8	17.0
Meghalaya	21.0	16.3	18.9	10.2	9.7	6.9	5.9	3.7	17.2	5.1
Mizoram	1.7	1.1	13.4	6.9	2.5	1.5	2.7	1.2	16.7	2.9
Nagaland	0.3	0.9	13.0	15.5	3.1	2.0	1.7	0.6	18.9	10.7
Odisha	7.8	5.1	33.2	30.7	12.8	7.9	8.2	4.0	39.1	28.5
Punjab	2.7	1.7	19.7	13.9	11.8	6.4	7.1	2.5	29.9	6.4
Rajasthan	4.5	2.3	25.1	19.2	31.3	15.1	25.1	6.6	39.6	25.4
Sikkim	2.1	1.2	3.8	4.4	4.9	2.8	2.3	0.5	2.2	1.5
Tamil Nadu	0.0	0.0	22.7	31.8	4.9	3.4	1.9	0.8	28.9	36.7
Tripura	5.7	3.2	26.8	35.7	3.0	1.6	2.6	0.5	14.9	13.1
Uttar Pradesh	0.8	0.8	55.1	30.7	4.5	9.0	4.3	6.6	64.1	50.4
Uttarakhand	2.7	2.0	14.3	12.4	24.0	17.4	12.4	7.0	24.7	15.0
West Bengal	13.9	12.0	49.6	58.9	3.3	3.0	1.7	1.0	38.0	29.1
Andaman & Nicobar Islands	3.2	2.3	4.0	2.3	4.8	2.8	1.2	0.3	0.6	0.0
Chandigarh	0.0	0.0	65.6	58.4	0.0	0.0	0.0	0.0	41.0	25.4
Dadra & Nagar Haveli	11.4	7.6	54.8	73.3	37.1	24.8	20.4	4.8	67.4	67.3
Daman & Diu	0.0	0.0	46.8	48.1	3.3	1.8	1.4	0.5	42.9	28.9
Lakshadweep	0.0	0.0	19.4	7.7	0.0	0.0	0.0	0.0	0.0	0.0
Puducherry	5.2	2.3	20.0	22.2	0.0	0.0	0.0	0.0	6.2	3.1

SCR is Student-Classroom Ratio and PTR is Pupil-Teacher Ratio.



**14. School and Teacher Quality (Across States and UTs)**

	2011-12										2010-11	
	Availability of Different Infrastructure Facilities in Schools (% of Total)							Contractual Teachers (% of Total)	Teachers Involved in Non-Teaching Assignments (% of Total)	Average Working Days in the Year Spent on Non-Teaching Assignments	Teachers Receiving In-Service Training (% of Total)	
	Functional Girls' toilet	Functional Boys' toilet	Drinking Water	Boundary Wall	Ramps	Library	Playground				Male	Female
India	71.1	62.9	94.1	58.2	53.4	53.9	56.1	12.2	10.1	19.0	36.1	32.0
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	34.9	17.5	85.4	57.2	19.6	62.6	57.5	12.5	28.8	15.0	37.1	27.0
Arunachal Pradesh	47.2	35.4	75.9	33.5	4.8	17.0	32.5	17.6	3.7	8.0	6.7	4.4
Assam	60.4	37.8	86.9	25.1	46.4	23.7	52.4	3.4	7.0	18.0	34.3	32.4
Bihar	51.7	44.5	93.0	52.7	57.5	34.8	32.2	0.2	9.6	8.0	30.1	31.5
Chhattisgarh	72.7	69.5	93.1	53.5	40.2	66.7	38.7	31.3	4.9	22.0	65.8	50.4
Delhi	98.3	98.1	100.0	98.3	65.4	86.1	80.1	1.5	6.3	17.0	18.4	11.5
Goa	74.5	69.9	99.4	74.8	40.0	80.5	49.6	4.2	14.7	32.0	40.3	41.5
Gujarat	97.9	93.4	100.0	89.0	82.0	62.3	74.0	7.4	13.8	21.0	86.6	72.5
Haryana	91.4	86.2	99.4	95.9	60.8	81.7	76.6	20.1	6.4	31.0	20.1	15.6
Himachal Pradesh	85.1	80.5	98.6	51.9	51.7	73.3	66.6	25.3	9.0	35.0	70.7	48.3
Jammu & Kashmir	43.3	36.0	79.6	31.1	12.5	46.1	36.3	17.2	17.5	19.0	23.5	12.8
Jharkhand	70.6	66.9	90.0	26.5	36.6	41.0	30.0	49.5	17.5	37.0	53.8	39.6
Karnataka	97.2	95.5	99.4	71.3	58.8	75.3	65.7	0.6	4.6	20.0	82.1	62.2
Kerala	70.5	68.4	98.3	81.9	54.4	66.8	66.4	3.2	29.5	35.0	52.0	44.8
Madhya Pradesh	72.0	65.1	97.7	45.0	55.1	45.1	56.7	2.8	23.0	12.0	31.3	19.5
Maharashtra	93.4	93.0	92.2	59.1	65.0	80.2	63.4	2.3	23.3	13.0	31.9	25.4
Manipur	81.2	79.8	94.5	31.0	6.7	24.8	56.9	9.1	11.6	13.0	9.3	7.9
Meghalaya	40.0	38.7	59.2	17.7	19.4	16.9	35.8	26.8	7.4	24.0	39.0	31.0
Mizoram	58.7	11.1	90.2	61.6	46.6	8.0	40.3	35.5	21.9	8.0	47.5	42.4
Nagaland	46.7	34.3	59.9	63.3	8.2	15.0	40.5	9.0	4.3	16.0	7.4	4.3
Odisha	29.4	20.2	94.7	62.4	46.2	27.7	29.7	32.4	4.4	29.0	28.6	27.5
Punjab	87.3	77.9	100.0	97.0	63.3	73.1	76.9	27.7	12.9	14.0	39.0	21.5
Rajasthan	94.9	91.0	93.7	79.7	56.9	52.9	46.3	5.8	49.1	13.0	23.2	20.1
Sikkim	73.9	51.2	95.7	28.8	5.2	22.4	61.9	9.2	0.9	17.0	2.7	1.8
Tamil Nadu	76.1	69.2	100.0	74.6	62.3	89.3	77.6	7.4	8.8	12.0	70.6	49.0
Tripura	48.6	29.2	74.9	13.8	56.3	41.1	60.3	2.0	21.4	19.0	27.3	24.2
Uttar Pradesh	73.1	61.5	97.9	62.4	73.3	61.9	78.2	22.2	28.1	14.0	10.5	11.7
Uttarakhand	64.2	55.8	95.2	81.0	43.5	43.4	56.9	7.1	10.5	18.0	55.3	45.0
West Bengal	52.5	41.5	97.6	35.6	47.7	16.8	32.3	10.2	5.6	23.0	35.8	28.3
Andaman & Nicobar Islands	81.0	79.2	96.1	48.6	22.0	65.4	57.7	13.3	6.5	12.0	27.8	24.7
Chandigarh	98.9	98.9	100.0	100.0	46.5	73.8	94.7	17.8	7.0	25.0	22.9	15.2
Dadra & Nagar Haveli	75.6	75.1	98.6	40.6	20.8	76.9	29.7	21.2	16.9	13.0	40.3	42.3
Daman & Diu	84.4	81.7	100.0	91.2	50.4	72.6	55.8	15.9	14.3	27.0	64.0	45.2
Lakshadweep	68.3	63.4	100.0	43.5	60.9	84.8	23.9	13.7	3.5	41.0	52.9	48.2
Puducherry	95.0	92.6	100.0	90.4	51.3	81.3	66.2	5.1	2.0	7.0	10.8	7.6

## 15. Labour Market Participation and Employment Status (Across States and UTs)

	2009-10									
	Labour Force Participation Rate (%)	Worker Population Ratio (%)	Unemployment Rate (%)	Employment status in rural areas (%)			Employment status in urban areas (%)			
				Self-Employed	Labourer	Others	Self-Employed	Wage/Salaried	Casual Labourer	Others
India	40.0	39.2	2.00	47.4	40.4	12.2	34.7	39.7	13.4	12.1
Rural	41.4	40.8	1.45	NA	NA	NA	NA	NA	NA	NA
Urban	36.2	35.0	3.31	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	48.3	47.6	1.45	35.0	49.6	15.5	30.1	39.8	13.8	16.3
Arunachal Pradesh	38.9	38.3	1.54	73.2	2.7	23.8	26	54.6	2.7	16.5
Assam	37.8	36.3	3.97	65.9	22.8	11.3	37.5	40.9	5.9	15.8
Bihar	28.7	28.0	2.44	47.9	41.8	10.2	49.8	16.7	10.3	23.1
Chhattisgarh	42.3	41.9	0.95	34.8	55.1	10.1	31.1	40.7	14.5	13.7
Delhi	34.0	33.1	2.65	8.0	29.6	62.3	39	50.7	0.9	9.4
Goa	35.3	33.7	4.53	21.8	17.6	60.6	22.8	61.3	6.2	9.6
Gujarat	42.9	42.4	1.17	49.5	41.0	9.4	39.5	42.6	12.2	5.7
Haryana	39.3	38.5	2.04	49.7	29.9	20.4	33.8	49.9	10.7	5.5
Himachal Pradesh	50.8	49.9	1.77	51.1	28.7	20.2	21.7	42.3	5.2	30.8
Jammu & Kashmir	42.4	41.1	3.07	57.1	18.3	24.6	39.8	43.9	8.2	8.0
Jharkhand	34.0	32.6	4.12	57	32.4	10.4	32.1	39.1	18.4	9.9
Karnataka	46.1	45.6	1.08	42.8	48.2	9.0	31.8	39.6	15.1	13.5
Kerala	40.8	37.7	7.60	32.2	43.3	24.5	28.3	28.1	25.3	18.3
Madhya Pradesh	40.7	40.3	0.98	50.5	44.0	5.5	37.8	32.5	16.2	12.9
Maharashtra	45.0	44.3	1.56	43	44.8	12.2	29.8	52.1	9.2	8.9
Manipur	36.3	34.9	3.86	76.5	4.2	19.2	55.7	29.9	2.1	12.0
Meghalaya	45.9	45.4	1.09	52.7	27.8	19.5	20.3	58.8	9.9	10.1
Mizoram	46.9	46.0	1.92	77.2	7.1	15.6	40.4	45.2	7.8	6.6
Nagaland	42.4	38.0	10.38	67.5	0.6	31.9	30.7	54.1	1.2	13.6
Odisha	41.5	40.2	3.13	48.2	35.9	16.0	31.3	38.5	14.0	16.2
Punjab	39.5	38.2	3.29	40.7	41.1	18.3	36.9	41.9	12.4	8.8
Rajasthan	41.2	40.9	0.73	64.7	27.7	7.6	40.7	35.7	11.2	12.3
Sikkim	45.5	43.7	3.96	49.3	25.1	25.6	38.6	51.3	0.2	9.8
Tamil Nadu	45.8	44.8	2.18	29.6	58.1	12.3	26.8	38.3	22.8	12.2
Tripura	42.3	37.9	10.40	46.1	38.8	15.1	34.1	34.4	11.7	19.9
Uttar Pradesh	34.0	33.5	1.47	60.7	29.4	9.8	43.5	30.2	12.7	13.5
Uttarakhand	41.5	40.7	1.93	47.4	18.3	34.3	39.4	35.8	16.2	8.6
West Bengal	39.6	38.6	2.53	40.7	50.0	9.2	38.6	37.4	12.0	12.0
Andaman & Nicobar Islands	43.5	39.9	8.28	40.3	31.2	28.4	15.8	53.2	5.1	26.0
Chandigarh	37.1	34.2	7.82	13	50.7	36.2	21.1	49.4	7.0	22.6
Dadra & Nagar Haveli	33.5	31.8	5.07	43.2	50.1	6.7	31.7	68.1	0.1	0.1
Daman & Diu	39.7	38.4	3.27	14.8	52.2	33.0	33.6	42.4	19.2	4.8
Lakshadweep	45.2	41.5	8.19	32.5	27.5	40.0	27.9	46.2	13	12.9
Puducherry	42.7	41.4	3.04	20.4	60.3	19.3	22.4	48.5	19.6	9.5

Labour Force Participation Rate (LFPR) is the share of the total population in the labour force.

Worker Population Ratio (WPR) is the share of the total population that is employed.

Unemployment Rate (UR) is the share of unemployed persons in the labour force.

LFPR, WPR and UR are calculated based on usual activity status of a person, considering both principal and subsidiary economic activities.

Data on employment status is at the household level.

**16. Employment Share and Nature of Employment (Across States and UTs)**

	2009-10							
	Employment Share (%)			Nature of employment (% of total workers)				
	Agriculture	Agriculture-Related	Non-Agriculture	Informal-Sector Workers	With No Written job Contract	With Temporary Employment	Not Eligible for Paid Leave	Not Eligible for Social Security
India	49.1	4.1	46.8	72.6	77.8	47.3	70.3	74.1
Rural	63	5	32	75.2	81.7	52.1	80.3	82.9
Urban	5.9	1.6	92.5	69.5	73.6	42	59.7	64.8
Andhra Pradesh	51.3	3.4	45.1	75.9	84.6	34.9	77	79
Arunachal Pradesh	64.8	0.9	34.3	22.7	44.2	37.2	23.5	27.6
Assam	62.7	1.4	35.9	66.9	61.9	34.6	53	56.1
Bihar	60.3	1.6	38.2	60.2	78	49.6	76.8	79
Chhattisgarh	73.8	0.3	25.9	55.8	73.5	48.2	51.1	67.9
Delhi	0	0.1	99.9	77.9	82.6	63.2	71.6	67.6
Goa	17.4	0.4	82.3	30.1	71.2	58.9	56.2	35.6
Gujarat	45.5	7.9	46.5	83.3	75.2	53.6	72.3	75.3
Haryana	31.1	13.3	55.5	74.6	82.3	52	72.1	73.5
Himachal Pradesh	54.6	5.1	40.3	48.2	66.3	24.6	66	68.9
Jammu & Kashmir	37	13	50	63.9	67.9	38.6	52.3	52.2
Jharkhand	44.2	2.2	53.6	58.5	78.2	63.6	75.5	78.2
Karnataka	53.3	2.5	44.2	74.7	81.7	39.1	64.6	73.4
Kerala	22.2	7.3	70.5	76.6	81.9	46.6	74.2	77.9
Madhya Pradesh	68	0.7	31.1	59.2	71.9	50.9	62.1	68
Maharashtra	50.2	2.2	47.6	65.8	68.2	38.9	58.6	62.9
Manipur	43.9	1.7	54.3	52.8	54.2	37.7	43.2	45.1
Meghalaya	62	0.3	37.8	48.3	69.7	20.7	53.5	57.4
Mizoram	62.7	0.5	36.9	42.7	50.3	29.6	35.7	36.3
Nagaland	62.4	1.1	36.4	42.7	23.5	19.9	28.1	29.2
Odisha	58.3	2.5	39.1	63.9	76.6	44.1	71.3	72.2
Punjab	26.1	18	55.7	78.3	82.8	58.1	70.5	76.9
Rajasthan	45.5	7.3	47.2	70.7	73.8	61	82.2	83.4
Sikkim	46.3	1.9	51.8	51.1	52.4	51.7	56.5	60
Tamil Nadu	40	4.6	55.5	76.4	83.9	43.9	74.3	76.1
Tripura	26	0.3	73.5	48.7	77.3	32.9	76.5	78
Uttar Pradesh	51.5	4.6	43.9	80.2	85.1	53	78.6	82.1
Uttarakhand	52.6	3.7	43.7	72.5	74	37.5	72.4	73.8
West Bengal	41.5	2.3	56.3	80.2	73.4	50	63.9	75.2
Andaman & Nicobar Islands	19.3	8.6	72.2	46.8	40.5	28	47.9	49.2
Chandigarh	2.4	0	97.7	50.9	84.5	49.8	49.2	57.7
Dadra & Nagar Haveli	43.4	0	56.7	45.1	53	74.1	75	42.9
Daman & Diu	28.5	20.2	51.2	59.1	98.2	10.8	57.8	56.4
Lakshadweep	12.4	24.6	62.9	52.5	44.1	44.2	43.4	49.6
Puducherry	16.1	3.3	80.8	67.8	93.9	61	59.3	59.5

Calculations based on usual activity status of a person, considering both principal and subsidiary economic activities.

## 17. Quality of Housing and Access to Public Services (Across States and UTs)

	2011											
	Condition of Occupied Houses (%)			Houses with <i>Kutcha</i> Construction (%)			Access to Drinking Water (%)		Access to Sanitation (%)			Access to Electricity (%)
	Dilapidated	Good	Liveable	Roof	Walls	Floor	Water source within Household Premises	Safe Drinking Water Source	Latrine within Household Premises	Defecating in the Open	Open or No Drainage for Waste Water	
India	5.4	53.1	41.5	15.7	33	47.1	46.6	85.5	46.9	49.8	81.9	67.3
Rural	6.5	45.9	47.6	20.6	42.7	63.3	35	82.7	30.7	67.3	94.2	55.3
Urban	2.9	68.4	28.7	5.2	12.3	12.6	71.2	91.4	81.4	12.6	55.5	92.7
Andhra Pradesh	3.5	69.7	26.8	15.6	20.8	22.0	43.2	90.5	49.6	48.0	78.5	92.2
Arunachal Pradesh	3.3	51.8	44.9	47.2	67.8	73.7	41.1	78.6	62.0	34.8	94.0	65.7
Assam	10.9	32.8	56.4	20.7	70.6	80.7	54.8	69.9	64.9	33.2	96.4	37.1
Bihar	7.4	36.1	56.6	32.2	47.4	80.5	50.1	94.0	23.1	75.8	93.3	16.4
Chhattisgarh	3.9	46.6	49.5	8.4	67.5	74.5	19	86.3	24.6	74.0	94.7	75.3
Delhi	2.8	65.8	31.4	2	2.8	2.3	78.4	95.0	89.5	3.3	40.8	99.1
Goa	1.5	76.1	22.3	1.6	13.5	16	79.7	85.7	79.7	16.4	56.3	96.9
Gujarat	1.5	67.3	31.2	2	23.7	28.3	64	90.3	57.4	40.4	62.7	90.4
Haryana	4.4	53.7	41.9	20.6	5.1	27.7	66.5	93.8	68.6	29.8	78.9	90.5
Himachal Pradesh	1.6	72.4	26.0	4.6	18.6	38.8	55.5	93.7	69.1	29.7	75.2	96.8
Jammu & Kashmir	3.9	54.1	42.0	25.8	14.0	50.0	48.2	76.8	51.2	46.1	87.5	85.1
Jharkhand	4.5	43.4	52.2	11.9	60.6	68.6	23.2	60.1	22.0	77.0	92.8	45.8
Karnataka	3.9	60.1	36.0	11.9	25.9	22	44.5	87.5	51.2	45.0	73.9	90.6
Kerala	5.3	66.3	28.4	3.4	13.7	9.8	77.7	33.5	95.2	3.8	74.8	94.4
Madhya Pradesh	4.0	52.3	43.7	10.3	53.3	70.1	23.9	78.0	28.8	70.0	90.2	67.1
Maharashtra	4.3	64.1	31.6	6.7	27.4	36.4	59.4	83.4	53.1	34.0	66.7	83.9
Manipur	4.6	54.1	41.2	17.7	75.0	80.6	16.1	45.4	89.3	8.9	96.0	68.4
Meghalaya	6.0	48.1	45.9	17	48.4	67.8	24.1	44.7	62.9	34.3	94.3	60.9
Mizoram	2.8	62.3	34.9	18.1	30	75.2	31.2	60.4	91.9	6.6	86.9	84.2
Nagaland	1.8	52.4	45.8	19.3	53.9	71.5	29.3	53.8	76.5	16.5	95.2	81.6
Orissa	8.3	29.5	62.1	34.3	53.3	62.5	22.4	75.3	22.0	76.6	95.7	43.0
Punjab	6.6	49.9	43.5	8.2	5.6	25.7	85.9	97.6	79.3	19.5	72.2	96.6
Rajasthan	3.9	51.0	45.1	14.1	25	40.1	35	78.1	35.0	64.3	89.3	67.0
Sikkim	5.4	56.5	38.0	6.8	26.5	41.9	52.6	85.3	87.2	11.3	85.4	92.5
Tamil Nadu	1.8	70.2	28.0	15.9	25.1	16.6	34.9	92.5	48.3	45.7	74.7	93.4
Tripura	5.1	54.2	40.7	12.3	80.5	79.4	37.1	67.5	86.0	11.5	96.3	68.4
Uttar Pradesh	6.6	42.8	50.6	23.8	25.3	69.8	51.9	95.1	35.7	63.0	87.2	36.8
Uttarakhand	3.4	66.8	29.7	5.1	6.7	41.1	58.3	92.2	65.8	33.1	81.0	87.0
West Bengal	11.8	40.9	47.4	14.6	47.8	59.9	38.6	92.2	58.9	38.6	90.8	54.5
Andaman & Nicobar Islands	2.2	66.5	31.3	6.2	26.7	29.7	60.6	85.5	70.1	27.5	92.6	86.1
Chandigarh	3.5	69.3	27.2	3.2	3.5	4.8	86.2	99.3	87.6	3.2	12.8	98.4
Dadra & Nagar Haveli	0.5	66.7	32.7	1.9	34.7	39	52.6	91.6	54.8	40.0	73.0	95.2
Daman & Diu	0.6	68.1	31.3	0.7	2.3	3.5	76.4	98.7	78.2	10.5	60.9	99.1
Lakshadweep	0.8	78.7	20.6	1.9	2	3.7	83.7	22.8	97.8	1.8	88.6	99.7
Puducherry	1.6	75.0	23.4	19.8	13.7	9.7	77.4	97.8	68.5	27.1	75.7	97.7

All data at the household level.

Houses with *kutcha* construction are those where the material used for construction is grass, thatch, bamboo, wood, mud, plastic, polythene or unburnt brick. Safe drinking water source includes tap, handpump or tubewell, situated within or outside the household premises.

**18. Child Nutrition and Health (Across States and UTs)**

	2011	2005-06						2012	2012-13		
	Sex Ratio (0-6 Years)	Child Mortality (Per Thousand Live Births)		Nutritional Status of Children (%)				Fully Immunized Children	Infant Mortality Rate	Under-5 Mortality Rate	Under-Weight Children (Low Weight-for-Age)
		Infant Mortality Rate	Under-5 Mortality Rate	Under Weight Children (Low Weight-for-Age)	Stunted Children (Low Height-for-Age)	Wasted children (Low Weight-for-Height)	Anemic Children				
India	918	57	74	42.5	48	19.8	69.5	43.5	42	52	33.0
Rural	923	62	82	45.6	50.7	20.7	71.5	38.6	46	58	NA
Urban	905	42	52	32.7	39.6	16.9	63	57.6	28	32	NA
Andhra Pradesh	939	54	63	32.5	42.7	12.2	70.8	46	41	43	38.7
Arunachal Pradesh	972	61	88	32.5	43.3	15.3	56.9	28.4	33	NA	5.7
Assam	962	66	85	36.4	46.5	13.7	69.6	31.4	55	75	23.6
Bihar	935	62	85	55.9	55.6	27.1	78	32.8	43	57	82.1
Chhatisgarh	969	71	90	47.1	52.9	19.5	71.2	48.7	47	55	33.2
Delhi	871	40	47	26.1	42.2	15.4	57	63.2	25	28	38.2
Goa	942	15	20	25	25.6	14.1	38.2	78.6	10	NA	19.7
Gujarat	890	50	61	44.6	51.7	18.7	69.7	45.2	38	48	27.5
Haryana	834	42	52	39.6	45.7	19.1	72.3	65.3	42	48	33.7
Himachal Pradesh	909	36	42	36.5	38.6	19.3	54.7	74.2	36	43	25.6
Jammu & Kashmir	862	45	51	25.6	35	14.8	58.6	66.7	39	43	24
Jharkhand	948	69	93	56.5	49.8	32.3	70.3	34.2	38	50	29.8
Karnataka	948	43	55	37.6	43.7	17.6	70.4	55.0	32	37	29.4
Kerala	964	15	16	22.9	24.5	15.9	44.5	75.3	12	13	25.5
Madhya Pradesh	918	70	94	60	50	35	74.1	40.3	56	73	22.5
Maharashtra	894	38	47	37	46.3	16.5	63.4	58.8	25	28	10.7
Manipur	936	30	42	22.1	35.6	9	41.1	46.8	10	NA	9.6
Meghalaya	970	45	71	48.8	55.1	30.7	64.4	32.9	49	NA	23.7
Mizoram	970	34	53	19.9	39.8	9	44.2	46.5	35	NA	23.2
Nagaland	943	38	65	25.2	38.8	13.3	NA	21.0	18	NA	0.6
Orissa	941	65	91	40.7	45	19.5	65	51.8	53	68	31.7
Punjab	846	42	52	24.9	36.7	9.2	66.4	60.1	28	34	25.6
Rajasthan	888	65	85	39.9	43.7	20.4	69.7	26.5	49	59	32.7
Sikkim	957	34	40	19.7	38.3	9.7	59.2	69.6	24	NA	3
Tamil Nadu	943	30	36	29.8	30.9	22.2	64.2	80.9	21	24	22
Tripura	957	52	59	39.6	35.7	24.6	62.9	49.7	28	NA	26.7
Uttar Pradesh	902	73	96	42.4	56.8	14.8	73.9	23.0	53	68	37.5
Uttarakhand	890	42	57	38	44.4	18.8	61.4	60.0	34	NA	16.3
West Bengal	956	48	60	38.7	44.6	16.9	61.0	64.3	32	38	27
Andaman & Nicobar Islands	968	NA	NA	NA	NA	NA	NA	NA	24	NA	11.7
Chandigarh	880	NA	NA	NA	NA	NA	NA	NA	20	NA	27.8
Dadra & Nagar Haveli	926	NA	NA	NA	NA	NA	NA	NA	33	NA	24.8
Daman and Diu	904	NA	NA	NA	NA	NA	NA	NA	22	NA	35.7
Lakshwadeep	911	NA	NA	NA	NA	NA	NA	NA	24	NA	37.5
Puducherry	967	NA	NA	NA	NA	NA	NA	NA	17	NA	32.7

Infant Mortality Rate (IMR) is the number of children per thousand live births that die before their first birthday.

Under-5 Mortality Rate (U5MR) is the number of children per thousand live births that die before their fifth birthday.

## 19. Adult Nutrition and Health (Across States and UTs)

	2011	2005-06				2010-12		
	Sex Ratio (Overall)	Adults with Normal Body Mass Index (%)		Adults with Any Anemia (%)		Access to Antenatal Care (%)	Institutional Deliveries (%)	Maternal Mortality Rate (Per 100,000 Live Births)
		Men	Women	Men	Women			
India	943	56.5	51.8	24.2	55.3	52.0	38.7	767
Rural	949	56	51.9	27.7	57.4	43.7	28.9	NA
Urban	929	57.6	51.5	17.7	50.9	74.7	67.5	NA
Andhra Pradesh	993	55.6	50.9	23.3	62.9	86.0	64.4	110
Arunachal Pradesh	938	77.6	74.8	28.0	50.6	35.5	28.5	NA
Assam	958	59.5	55.7	39.6	69.5	39.3	22.4	328
Bihar	918	58.5	50.4	34.3	67.4	17.0	19.9	219*
Chhattisgarh	991	56.6	51.0	2.07	57.5	54.2	14.3	NA
Delhi	868	67.4	58.7	17.8	44.3	75.1	58.9	NA
Goa	973	59.9	51.9	10.4	38	94.9	92.3	NA
Gujarat	919	52.6	47.0	22.2	55.3	67.5	52.7	122
Haryana	879	58.3	51.2	19.2	56.1	59.2	35.7	146
Himachal Pradesh	972	59.7	56.6	18.9	43.3	62.6	43.0	NA
Jammu & Kashmir	889	65.8	58.6	19.5	52.1	73.5	50.2	NA
Jharkhand	948	56.5	51.7	36.5	69.5	35.9	18.3	NA
Karnataka	973	55.1	49.2	19.1	51.5	79.5	64.7	144
Kerala	1084	60.6	53.9	8.0	32.8	93.6	99.3	66
Madhya Pradesh	931	54.1	50.8	25.6	56	40.7	26.2	230*
Maharashtra	929	54.6	49.3	16.8	48.4	75.9	64.6	87
Manipur	985	74.5	72.0	11.4	35.7	68.6	45.9	NA
Meghalaya	989	79.9	80.1	36.7	47.2	54.0	29.0	NA
Mizoram	976	79.4	75.0	19.4	38.6	59.3	59.8	NA
Nagaland	931	80.2	76.2	NA	NA	32.7	11.6	NA
Odisha	979	58.3	52.0	33.9	61.2	61.8	35.6	235
Punjab	895	57.2	51.2	13.6	38	74.8	51.3	155
Rajasthan	928	53.3	54.4	23.6	53.1	41.2	29.6	255
Sikkim	890	75.9	73.5	25.0	60	70.1	47.2	NA
Tamil Nadu	996	58.4	50.6	16.5	53.2	95.9	87.8	90
Tripura	960	53.5	55.9	35.5	65.1	60.0	46.9	NA
Uttar Pradesh	912	54.4	54.8	24.3	49.9	26.6	20.6	292*
Uttarakhand	963	63.7	57.2	29.2	55.2	44.9	32.6	NA
West Bengal	950	59.4	49.6	32.3	63.2	62.0	42.0	117
Andaman & Nicobar Islands	876	NA	NA	NA	NA	NA	NA	NA
Chandigarh	818	NA	NA	NA	NA	NA	NA	NA
Dadra & Nagar Haveli	774	NA	NA	NA	NA	NA	NA	NA
Daman & Diu	618	NA	NA	NA	NA	NA	NA	NA
Lakshadweep	946	NA	NA	NA	NA	NA	NA	NA
Puducherry	1037	NA	NA	NA	NA	NA	NA	NA

Access to antenatal care refers to percentage of mothers who had at least three antenatal care visits for their last live birth.

Institutional deliveries refer to live births which took place in a health facility.

Maternal Mortality Rate (MMR) is the number of maternal deaths per 100,000 live births.

Data for Bihar, Madhya Pradesh and Uttar Pradesh also includes Jharkhand, Chhattisgarh and Uttarakhand respectively.

**20. Incidence of Crimes, Pendency and Convictions (Across States and UTs)**

	2012								
	Crimes Under the Indian Penal Code					Crimes Under Special and Local Laws			
	Crime rate (Per Lakh of Population)	Violent Crime Rate (Per Lakh of Population)	Pendency Rate for Police Investigations (%)	Pendency Rate for Court Trials (%)	Conviction Rate for Court Trials (%)	Crime Rate (Per Lakh of Population)	Pendency Rate for Police Investigations (%)	Pendency Rate for Court Trials (%)	Conviction Rate for Court Trials (%)
India	196.7	22.7	26.1	84.6	38.5	301.2	6.6	64	88.6
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	224.5	14.5	27.8	68.5	29.7	64.4	10.2	23.4	87.2
Arunachal Pradesh	192.1	30.0	52.3	96.2	40.5	6.7	60.3	97.6	35.0
Assam	250	54.2	61.2	83.6	10.6	6.4	81.8	89	11.4
Bihar	147.4	30.0	21.7	90.5	15.9	13.7	33.6	90.6	27.9
Chhattisgarh	221.1	19.9	10.9	79.7	46	1069.1	0.1	15.9	98.0
Delhi	283.3	34.7	28.8	87.0	52.4	31.7	63.2	92.5	61.8
Goa	196.7	19.0	55.0	84.9	22.0	127.0	19.3	64.5	61.6
Gujarat	216.6	12.7	12.4	92.9	35.5	387.1	10.6	89.8	64.8
Haryana	240.4	26.7	19.4	74.9	31.8	114.4	6.3	50.8	78.4
Himachal Pradesh	182.6	17.0	22.4	89.8	22.9	49.1	20.2	85.7	41.8
Jammu & Kashmir	206.5	31.3	23.9	81.1	37	16.4	48.3	84.4	50.5
Jharkhand	127.8	25.2	41.1	71.5	23.2	14.0	45.6	71.9	33.7
Karnataka	222.5	28.3	26	71.2	31.5	29.5	20.2	69.4	47.4
Kerala	455.8	42.7	18.1	83.0	65.4	1009.9	2.9	68.7	95.4
Madhya Pradesh	298.8	20.7	5.2	76.2	47.7	141.7	0.3	43.3	88.0
Maharashtra	176.7	23.5	36.3	91.3	9.4	114.2	27.9	88.4	16.3
Manipur	150.3	44.6	86.7	97.3	70	60.2	91.0	96.4	46.2
Meghalaya	96.1	23.5	78.4	97.3	43.3	7.7	79.8	93.6	88.9
Mizoram	173.1	18.4	37	49.5	89.5	68.2	11.8	22.8	86.0
Nagaland	47.7	10.3	23	74.1	85.8	14.2	25.6	55.3	87.7
Orissa	164.8	28.6	29.6	91.1	11	38.8	42.1	90.3	12.1
Punjab	127.4	15.1	38.2	81.1	37.5	84.3	36.5	76.1	76.4
Rajasthan	246.9	15.6	5.6	83.1	61.3	103.4	2.7	69.6	94.3
Sikkim	84.9	17.2	36.8	80.2	38.7	33.8	0	64	50.5
Tamil Nadu	294.8	20.0	35.4	70.4	56.5	807.4	11.3	21.1	89.3
Tripura	170.6	23.5	15.3	68.9	14.9	5.6	20.4	77.7	27.9
Uttar Pradesh	96.4	16.5	13.4	82.5	52.6	791.6	0.7	48.4	96.2
Uttarakhand	87.7	14.8	14.4	75.9	76.3	1249.0	0.4	15.9	99.5
West Bengal	178.2	24.7	32	94.5	10.5	13.6	52.9	94.6	30.4
Andaman & Nicobar Islands	133.4	11.5	51.4	94.6	54.2	427.0	5.8	88.8	96.5
Chandigarh	235.4	21	23.7	80.8	50.5	95.8	22.4	50	96.4
Dadra and Nagar Haveli	84.6	13.8	40.8	91.2	10	5.6	32.5	85.9	8.0
Daman and Diu	83.9	14	35.3	81.0	13.8	4.6	60.0	80.9	0
Lakshadweep	77.9	16.9	55.8	62.6	36.9	39.0	51.5	81.4	75.0
Puducherry	291	19.2	27.8	79.6	79.9	81.4	7.4	48.5	57.7

Pendency rate is the share of total cases pending investigation/trial at the end of the year.

Conviction rate is the share of total trials completed during the year that resulted in a conviction.

**21. Prison Populations and Police Strength (Across States and UTs)**

	2012					
	Undertrials (% of Total Prison Population)	Undertrials in Prison for >2 Years (% of Total Undertrials)	Prison Occupancy Rate (% of Total Capacity)	Jail staff (% of Sanctioned Strength)	Police Force (% of Sanctioned Strength)	Number of Policemen (Per Lakh of Population)
India	66.2	10.1	112.2	66.3	77.4	138
Rural	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA
Andhra Pradesh	64.4	0.1	88.2	72.6	75.1	113
Arunachal Pradesh	94.4	7.5	126.8	87.7	89.3	764
Assam	61.6	5.8	103.7	95.3	84.3	188
Bihar	85.4	10.8	81.3	21.1	75.5	67
Chhattisgarh	59.5	10.3	252.6	44.6	78.9	174
Delhi	73.4	12.9	193.8	72.4	94.0	398
Goa	71.2	17.3	119.5	90	86.8	294
Gujarat	57.1	15.7	94.8	47.1	73.6	114
Haryana	60.5	6.2	99.9	58.7	79.2	174
Himachal Pradesh	44.5	0.7	105.5	73.7	83.8	209
Jammu & Kashmir	79	25.3	87.7	73.2	93.5	646
Jharkhand	75.2	11.4	124.5	36.8	77.9	178
Karnataka	68.1	6.8	100.3	84	77.2	120
Kerala	60	1.5	104.4	80.2	89.0	130
Madhya Pradesh	51.9	4.6	127.7	92.2	83.3	104
Maharashtra	67	8.8	99.4	77.3	88.7	162
Manipur	72.9	6.3	74.5	73.3	72.7	930
Meghalaya	86.9	15	131.3	97.9	86.3	426
Mizoram	62.3	0.9	65.1	91.4	90.9	1003
Nagaland	63.6	9.1	27.4	99.1	92.8	438
Orissa	71.8	6.2	71.4	88.8	79.8	110
Punjab	66.2	14.6	133.4	65.8	92.2	274
Rajasthan	68.1	12.1	116.6	56	92.4	108
Sikkim	62.7	6.8	114	93.5	80.0	715
Tamil Nadu	60.6	6	60.1	82.6	82.7	139
Tripura	39.1	2.1	68.2	69.6	89.1	639
Uttar Pradesh	67	13.5	169	70	49.7	89
Uttarakhand	52.7	14.8	99.2	40	81.5	178
West Bengal	68.4	10.5	100.7	72.9	76.2	98
Andaman & Nicobar Islands	32.5	28.4	101.5	87.2	90.2	820
Chandigarh	64.4	3.8	73.4	82.5	89.5	393
Dadra and Nagar Haveli	100	0	61.7	-	81.8	77
Daman and Diu	44	0	20.8	83.3	60.7	90
Lakshadweep	0	0	0	-	66.3	522
Puducherry	61.8	0	68	80.6	71.2	154



**22. Access to Government Programmes (Across States and UTs)**

	2012-13								2013-14
	National Social Assistance Programme			Indira Awas Yojana		Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS)			Rashtriya Swasthya Bima Yojana
	Old-Age Pension Beneficiaries (% of Aged Population)	Disability Pension Beneficiaries (% of Population of Persons with Disabilities)	Widow Pension Beneficiaries (% of Female Population)	Houses Sanctioned (% of Annual Target)	Houses Completed (% of Annual Target)	Households Provided Employment (% of Households Issued Jobcards)	Households Provided Employment (% of Households Demanding Employment)	Households Completing 100 Days Employment (% of Households Provided Employment)	Below Poverty Line (BPL) Families Enrolled (% Total BPL Families)
India	21.5	2.77	0.70	94.4	73.4	38.9	96.9	10.4	53.9
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	19.2	2.85	0.72	102.6	92.8	47.1	100.0	17.3	-
Arunachal Pradesh	49.0	NA	NA	22.9	19.3	68.0	81.8	2.3	-
Assam	28.8	NA	NA	98.9	56.8	30.8	99.0	0.8	52.4
Bihar	49.1	0.96	0.80	91.9	75.9	16.0	95.8	8.6	54.6
Chhattisgarh	31.7	5.41	0.93	153.3	68.3	59.8	96.6	9.3	59.2
Delhi	34.8	10.47	0.85	-	-	-	-	-	-
Goa	1.3	NA	NA	2.2	1.6	16.6	99.8	0.0	-
Gujarat	8.2	0.39	0.01	79.5	51.0	17.8	90.9	7.7	42.3
Haryana	6.7	3.08	0.38	95.4	64.3	39.4	97.3	6.8	30.7
Himachal Pradesh	13.5	0.25	0.27	103.1	100.2	44.9	94.2	7.9	71.6
Jammu & Kashmir	14.2	NA	NA	51.3	30.3	61.3	98.2	10.7	-
Jharkhand	27.0	2.25	0.77	158.9	92.9	35.4	98.9	6.1	50.8
Karnataka	21.4	4.25	0.67	147.8	102.5	24.4	90.7	7.9	-
Kerala	6.1	2.06	0.20	93.5	73.1	60.1	90.1	22.3	84.8
Madhya Pradesh	25.8	9.98	1.04	104.3	122.7	29.3	99.4	5.6	49.6
Maharashtra	10.8	0.07	0.01	103.9	85.9	22.9	98.8	14.2	-
Manipur	36.3	NA	NA	45.2	62.9	95.7	99.8	0.5	48.2
Meghalaya	36.7	3.32	0.52	104.9	42.5	71.0	99.4	15.2	40.9
Mizoram	38.4	3.59	0.16	86.5	85.9	80.4	99.5	19.5	21.7
Nagaland	45.9	4.31	0.21	0.0	0.0	97.2	99.9	13.9	20.7
Odisha	44.6	8.91	0.94	101.5	82.9	25.4	90.5	4.7	65.0
Punjab	5.8	0.60	0.12	16.1	24.8	26.0	97.1	1.6	51.6
Rajasthan	13.3	1.12	0.32	115.3	122.5	42.4	93.0	10.0	72.1
Sikkim	45.9	3.55	0.22	100.0	88.3	67.1	99.0	21.0	-
Tamil Nadu	15.3	7.26	2.16	102.4	47.7	77.4	99.4	19.1	-
Tripura	52.7	3.77	0.41	18.5	0.0	93.0	99.8	37.9	64.2
Uttar Pradesh	24.4	1.35	0.61	68.7	44.5	32.7	94.5	1.4	37.8
Uttarakhand	27.3	1.18	0.24	80.9	80.4	41.7	99.1	5.2	38.3
West Bengal	19.5	2.36	1.69	84.0	79.3	50.8	99.5	4.4	55.3
Andaman & Nicobar Islands	4.0	6.20	0.44	9.3	15.7	26.0	69.2	17.4	-
Chandigarh	5.6	NA	NA	-	-	-	-	-	61.3
Dadra & Nagar Haveli	64.0	NA	NA	0.0	0.0	0.1	50.0	0.0	-
Daman & Diu	9.8	NA	NA	1.0	1.0	-	-	-	-
Lakshadweep	14.0	NA	NA	0.0	0.0	22.0	94.3	2.2	-
Puducherry	19.6	NA	NA	0.0	0.0	61.5	99.6	0.0	34.5

Data on National Social Assistance Programme (NSAP) is up to December 2012.

## 23. Access to Government Programmes (Across States and UTs)

	2012-13							2011-12		
	Integrated Child Development Services				Mid Day Meal Scheme	Sarva Shiksha Abhiyan		National Rural Health Mission		
	Anganwadis Providing SNP (% of Sanctioned Anganwadis)	Anganwadis Providing PSE (% of Sanctioned Anganwadis)	Number of SNP Beneficiaries Per Anganwadi	Number of PSE Beneficiaries Per Anganwadi	Children Covered (% of Total Enrolment in Eligible Schools)	Enrolment in Government Managed Primary Schools (% of Total Enrolment)	Enrolment in Government Managed Upper Primary Schools (% of Total Enrolment)	Shortfall of Health Sub-Centres (% of total Requirement)	Shortfall of Primary Health Centres (% of total Requirement)	Shortfall of Community Health Centres (% of Total Requirement)
India	89.7	89.7	62.9	28.7	75.0	64.2	59.4	23	26	40
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Andhra Pradesh	94.9	92.3	51.6	20.0	81.0	52.4	57.0	*	19	44
Arunachal Pradesh	96.8	96.8	38.6	18.9	97.0	78.7	84.2	20	*	*
Assam	50.5	65.4	70.5	29.9	91.0	75.7	60.5	21	*	54
Bihar	87.2	42.8	43.7	49.3	67.0	98.0	96.6	48	40	91
Chhattisgarh	65.9	66.0	58.2	21.2	88.0	77.7	81.3	*	3	23
Delhi	97.5	97.5	83.8	35.0	63.0	59.6	64.3	51	62	100
Goa	100.0	-	46.7	-	93.0	27.5	14.0	*	*	*
Gujarat	96.2	96.2	61.8	28.3	69.0	68.6	65.2	21	19	11
Haryana	98.5	98.5	43.0	15.6	98.0	53.4	53.7	39	32	34
Himachal Pradesh	99.7	99.7	23.1	8.6	97.0	63.5	72.1	*	*	1
Jammu & Kashmir	93.5	93.5	23.8	11.2	60.0	59.1	61.4	37	13	26
Jharkhand	89.8	94.4	69.9	34.6	59.0	78.4	76.2	35	66	22
Karnataka	100.0	103.2	59.9	26.5	90.0	54.5	55.9	2	*	50
Kerala	100.0	100.3	25.8	13.4	92.0	21.6	25.6	*	*	*
Madhya Pradesh	87.3	97.4	90.4	33.2	72.0	65.1	67.3	28	42	33
Maharashtra	96.8	87.3	57.5	31.5	81.0	52.9	26.0	21	17	34
Manipur	85.1	85.1	36.3	18.3	80.0	42.8	23.4	34	15	30
Meghalaya	75.9	74.2	91.0	39.4	93.0	52.2	49.4	50	8	0
Mizoram	98.8	98.8	65.3	28.3	92.0	74.0	72.6	*	*	*
Nagaland	100.0	100.0	65.0	37.0	100.0	50.1	41.9	15	*	*
Odisha	94.9	94.2	56.7	21.6	88.0	88.0	78.8	18	6	*
Punjab	100.0	100.0	39.3	17.1	84.0	51.5	56.6	15	22	8
Rajasthan	96.4	96.2	49.9	19.0	69.0	54.8	53.4	24	34	34
Sikkim	100.0	100.0	17.6	11.9	96.0	70.8	82.6	3	*	60
Tamil Nadu	98.0	98.0	45.2	21.5	87.0	37.3	45.5	*	2	*
Tripura	99.9	99.9	30.4	15.8	73.0	86.9	90.5	20	41	64
Uttar Pradesh	99.5	103.6	100.0	44.7	54.0	53.1	42.8	34	29	60
Uttarakhand	56.8	64.3	18.5	15.6	75.0	50.5	54.3	21	27	32
West Bengal	76.2	83.3	77.1	35.0	91.0	88.1	92.6	21	58	36
Andaman & Nicobar Islands	97.9	97.9	20.5	6.5	72.0	73.9	82.6	*	*	*
Chandigarh	100.0	100.0	82.6	35.0	43.0	66.8	69.5	*	0	*
Dadra & Nagar Haveli	100.0	100.0	56.7	25.0	77.0	74.0	84.4	7	25	50
Daman & Diu	100.0	100.0	51.8	22.6	76.0	57.2	63.6	*	*	*
Lakshadweep	100.0	100.0	44.5	21.4	100.0	100.0	100.0	*	*	*
Puducherry	100.0	100.0	35.2	3.1	66.0	27.6	42.7	35	*	*

SNP is Supplementary Nutrition Programme and PSE is Pre-School Education.

\* denotes that the relevant health facility is in surplus of the total requirement

**24. Proportion of Social Sector Expenditure (Across States and UTs)**

	2012-13 (RE)					
	Social Sector Expenditure (% of Gross State Domestic Product)	Expenditure on Education (% of Gross State Domestic Product)	Expenditure on Health and Family Welfare (% of Gross State Domestic Product)	Social Sector Expenditure (% of Aggregate Disbursements)	Expenditure on Education (% of Aggregate Disbursements)	Expenditure on Health and Family Welfare (% of Aggregate Disbursements)
India	6.7	2.8	0.7	40.4	16.6	4.4
Rural	NA	NA	NA	NA	NA	NA
Urban	NA	NA	NA	NA	NA	NA
Andhra Pradesh	7.5	2.5	0.8	40.6	13.4	4.2
Arunachal Pradesh	19.6	7.4	2.8	26.9	10.1	3.8
Assam	11.9	6.4	1.2	38.4	20.5	4.0
Bihar	12.6	5.7	1.0	44.6	20.1	3.6
Chhattisgarh	12.6	4.5	1.0	51.0	18.1	4.2
Delhi	4.3	1.6	0.8	48.3	17.6	9.3
Goa	7.8	3.3	1.3	34.9	14.9	5.6
Gujarat	5.6	2.0	0.7	39.0	14.2	4.7
Haryana	5.6	2.3	0.5	40.0	16.3	3.8
Himachal Pradesh	10.2	5.1	1.5	35.5	17.9	5.2
Jammu & Kashmir	12.3	4.8	2.4	27.0	10.6	5.2
Jharkhand	10.3	3.7	0.9	44.8	16.2	4.0
Karnataka	8.2	3.1	0.8	41.1	15.5	3.9
Kerala	6.0	2.8	0.9	34.7	16.4	5.3
Madhya Pradesh	9.9	3.5	1.0	41.8	14.8	4.4
Maharashtra	5.4	2.6	0.5	43.0	20.7	3.9
Manipur	21.2	8.1	3.0	30.9	11.8	4.4
Meghalaya	17.1	6.8	2.1	41.6	16.5	5.2
Mizoram	28.6	10.8	2.8	38.0	14.4	3.7
Nagaland	17.2	7.9	2.3	28.6	13.1	3.8
Odisha	8.3	3.1	0.7	41.5	15.7	3.7
Punjab	5.7	2.8	0.9	32.6	16.1	5.3
Rajasthan	7.6	2.9	0.9	42.2	16.3	4.8
Sikkim	18.4	6.4	2.5	35.4	12.3	4.9
Tamil Nadu	6.9	2.6	0.8	38.9	14.6	4.3
Tripura	16.5	5.9	2.4	44.2	15.9	6.4
Uttar Pradesh	9.8	4.3	1.3	40.3	17.7	5.2
Uttarakhand	8.5	4.2	1.2	41.2	20.2	5.9
West Bengal	6.9	3.0	0.7	42.8	18.5	4.2
Andaman & Nicobar Islands	NA	NA	NA	NA	NA	NA
Chandigarh	NA	NA	NA	NA	NA	NA
Dadra & Nagar Haveli	NA	NA	NA	NA	NA	NA
Daman & Diu	NA	NA	NA	NA	NA	NA
Lakshadweep	NA	NA	NA	NA	NA	NA
Puducherry	8.7	3.1	1.8	39.8	14.4	8.1

RE is Revised Estimates.

Aggregate Disbursement is the sum of Revenue Expenditure, Capital Outlay, Loans and Advances, and Debt Repayments. It is used here as a close proxy for Total Expenditure at the state level.

**25. Poverty, Inequality and Availability of Assets (Across States and UTs)**

	Absolute Change in Poverty Levels from 2004-05 to 2009-10 (% Points)			Change in Inequality from 2004-05 to 2009-10 (%)		2009-10				2011
	Overall	Rural	Urban	Rural	Urban	Size of Landholdings (% of Rural Population)				Assetless Households (%)
						Landless	≤ 1 Hectare	1.01 – 2 Hectares	> 2 Hectares	
India	(7.4)	(8.2)	(4.6)	3.8	6.6	8.3	72.6	9.7	9.5	17.8
Rural	NA	NA	NA	NA	NA	NA	NA	NA	NA	22.9
Urban	NA	NA	NA	NA	NA	NA	NA	NA	NA	7
Andhra Pradesh	(8.5)	(9.5)	(5.7)	6.7	3.2	7.2	77.0	7.7	8.1	19.4
Arunachal Pradesh	(5.5)	(7.4)	1.4	22.1	40.4	26.8	26.1	18.3	28.9	30.7
Assam	3.5	3.5	4.3	20.9	9.0	7.8	60.6	20.3	11.2	23.6
Bihar	(0.9)	(0.4)	(4.3)	16.2	2.2	20.0	70.9	5.7	3.5	25.6
Chhattisgarh	(0.7)	1.0	(4.6)	(6.8)	(13.8)	21.0	55.9	14.8	8.4	27.1
Delhi	1.2	(7.9)	1.5	(11.1)	8.6	41.8	58.3	0	0	2.9
Goa	(16.2)	(16.6)	(15.3)	(18.0)	(24.6)	17.3	75.6	5.7	1.3	4.6
Gujarat	(8.6)	(12.4)	(2.2)	0.4	4.7	5.4	71.3	7.6	15.7	18.7
Haryana	(4.0)	(6.2)	0.6	(5.8)	9.5	1.8	69.8	11.5	16.8	9.4
Himachal Pradesh	(13.4)	(15.9)	8.0	8.8	34.5	5.7	83.5	7.4	3.4	8.9
Jammu & Kashmir	(3.7)	(6.0)	2.4	12.2	27.4	3.0	86.9	5.7	4.4	17.3
Jharkhand	(6.2)	(10.0)	7.3	6.5	5.2	6.3	80.3	8.3	5.0	21.0
Karnataka	(9.7)	(11.4)	(6.3)	(0.4)	4.7	8.2	67.7	12.6	11.6	14.3
Kerala	(7.6)	(8.2)	(6.3)	19.0	13.3	6.9	88.4	3.3	1.5	4.8
Madhya Pradesh	(11.9)	(11.6)	(12.2)	16.5	4.0	12.3	49.6	13.7	24.5	32.6
Maharashtra	(13.7)	(18.4)	(7.3)	(9.6)	8.6	7.9	61.5	12.4	18.2	19.0
Manipur	9.2	8.1	11.9	16.9	29.5	21.6	63	12.2	3.2	17.2
Meghalaya	1.0	1.3	(0.6)	25.0	1.2	6.1	79.2	9.9	4.8	35.8
Mizoram	5.7	8.1	3.6	16.2	7.0	26.1	63.2	9.0	1.7	19.0
Nagaland	12.1	9.3	20.7	4.6	3.7	9.0	35.7	35.2	20.1	32.3
Odisha	(20.2)	(21.6)	(11.7)	(2.8)	13.6	7.5	73.3	14.0	5.2	25.5
Punjab	(5.0)	(7.5)	(0.6)	8.4	10.8	5.0	73.6	8.8	12.7	4.4
Rajasthan	(9.6)	(9.4)	(9.8)	4.9	4.3	3.4	49.5	19.1	27.9	21.2
Sikkim	(17.8)	(16.3)	(20.9)	9.7	(19.8)	6.3	84.9	7.1	1.7	18.2
Tamil Nadu	(12.3)	(16.3)	(6.9)	(0.4)	(5.2)	2.3	89.2	5.2	3.3	5.1
Tripura	(22.6)	(24.7)	(12.5)	(3.0)	(4.0)	8.6	87.5	3.2	0.7	27.8
Uttar Pradesh	(3.2)	(3.3)	(2.4)	87.2	(5.3)	5.0	78.5	10.3	6.2	11.4
Uttarakhand	(14.7)	(20.2)		3.6	30.8	22.9	72.2	3.6	1.3	13.8
West Bengal	(7.5)	(9.4)	(2.4)	(8.7)	7.9	8.0	88.6	2.6	0.8	22.8
Andaman & Nicobar Islands	(2.6)	(3.7)	(0.5)	1.2	3.6	1.6	83.7	11.2	3.4	8.1
Chandigarh	(2.4)	(24.4)	(0.9)	26.2	9.4	8	91.9	0.1	0	2.3
Dadra & Nagar Haveli	(10.2)	(7.7)	(0.1)	(32.1)	(24.1)	5.7	63.9	29.3	1.2	24.9
Daman & Diu	24.5	31.6	18.6	37.3	9.1	0	99	1	0	7.6
Lakshadweep	0.4	21.8	(8.8)	88.0	18.2	10.8	89.2	0	0	1.9
Puducherry	(13.0)	(22.7)	(8.3)	(9.6)	25.2	0	92.7	2.5	4.9	6.2

All data is at the household level.

Numbers in parentheses are negative values, signifying a decreased in poverty and inequality levels.

Poverty and inequality calculations are based on Mixed Reference Period estimates of Monthly Per Capita Expenditure (MPCE).

Assetless households are those which have none of the following assets: radio, transistor, television, computer, telephone, mobile phone, bicycle or motorised vehicle.

## Notes and References

### Table -1 Demographic Indicators of Excluded Groups in India (Across States and Union Territories)

Sources: Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; RGI (2011), 'Table C-13: Single Year Returns by Residence and Sex', *Census of India 2011*; RGI (2011), 'Table C-20: Disabled Population by Type of Disability, Age and Sex', *Census of India 2011*.

### Table -2 Educational Achievement and Access (Across Groups)

Sources: Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; NSSO (2013), 'Employment and Unemployment Situation Among Major Religious Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI; NSSO (2003), 'Disabled Persons in India', *NSS 58<sup>th</sup> Round (2002)*, New Delhi: MoSPI; National University of Educational Planning and Administration (2013), *Elementary Education in India: Progress Towards UEE, DISE 2012-13 Flash Statistics*, New Delhi: NUEPA and MoHRD.

### Table -3 Labour Market Participation and Employment Status (Across Groups)

Sources: National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; NSSO (2013), 'Employment and Unemployment Situation Among Major Religious Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI

### Table -4 Employment Share and Nature of Employment (Across Groups)

Sources: National Sample Survey Organization (2012), 'Informal Sector and Conditions of Employment in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI

### Table -5 Quality of Housing and Access to Public Services (Across Groups)

Sources: Registrar General of India (2011), 'Houselisting and Housing Census Data', *Census of India 2011*, New Delhi: RGI

### Table -6 Child Nutrition and Health (Across Groups)

Sources: International Institute for Population Sciences and Macro International (2007), *National Family Health Survey (NFHS-3) 2005-06*, Volume I, Mumbai: IIPS; Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI.

### Table -7 Adult Nutrition and Health (Across Groups)

Sources: International Institute for Population Sciences and Macro International (2007), *National Family Health Survey (NFHS-3) 2005-06*, Volume I, Mumbai: IIPS; Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; RGI (2013), 'Special Bulletin on Maternal Mortality in India 2010-12', *Sample Registration Survey*, New Delhi: RGI.

### Table -8 Crimes Against Different Groups (Across Groups)

Sources: Government of India (2013), *Crime in India 2012 Statistics*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs; GoI (2013), *Prison Statistics India 2012*, New Delhi: NCRB, MHA.

### Table -9 Representation in Prison Population and Police Force

Sources: Government of India (2013), *Crime in India 2012 Statistics*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs; GoI (2013), *Prison Statistics India 2012*, New Delhi: NCRB, MHA.

### Table -10 Availability of Assets (Across Groups)

Sources: National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; NSSO (2013), 'Employment and Unemployment Situation Among Major Religious Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI; Registrar General of India (2011), 'Houselisting and Housing Census Data', *Census of India 2011*, New Delhi: RGI

### Table -11 Access to Government Programmes (Across Groups)

Sources: Calculations based on data from 'State Wise Physical Progress 2012-13', *Indira Awas Yojana*, <http://iay.nic.in/netiay/rural/menurep.aspx> (accessed 30 May 2014); 'R5.1.1 - Employment Generated During the Financial Year 2012-2013', *Mahatma*

*Gandhi National Rural Employment Guarantee Act*, [http://164.100.129.6/netnrega/MISreport4.aspx?fin\\_year=2013-2014&rpt=RP](http://164.100.129.6/netnrega/MISreport4.aspx?fin_year=2013-2014&rpt=RP) (accessed 30 May 2014).

**Table -12 Educational Achievement and Access (Across States and UTs)**

Sources: Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; NSSO (2013); National University of Educational Planning and Administration (2013), *Elementary Education in India: Progress Towards UEE, DISE 2012-13 Flash Statistics*, New Delhi: NUEPA and MoHRD.

**Table -13 School and Teacher Quality (Across States and UTs)**

Source: Arun C. Mehta (2013), *Elementary Education in India: Progress Towards UEE, Analytical Tables 2011-12*, New Delhi: NUEPA and MoHRD

**Table -14 School and Teacher Quality (Across States and UTs)**

Source: Arun C. Mehta (2013), *Elementary Education in India: Progress Towards UEE, Analytical Tables 2011-12*, New Delhi: NUEPA and MoHRD

**Table -15 Labour Market Participation and Employment Status (Across States and UTs)**

Sources: National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation.

**Table -16 Employment Share and Nature of Employment (Across States and UTs)**

Sources: National Sample Survey Organization (2012), 'Informal Sector and Conditions of Employment in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: MoSPI

**Table -17 Quality of Housing and Access to Public Services (Across States and UTs)**

Sources: Registrar General of India (2011), 'Houselisting and Housing Census Data', *Census of India 2011*, New Delhi: RGI

**Table -18 Child Nutrition and Health (Across States and UTs)**

Sources: International Institute for Population Sciences and Macro International (2007), *National Family Health Survey (NFHS-3) 2005-06*, Volume I, Mumbai: IIPS; Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; RGI (2013), 'SRS Bulletin', *Sample Registration Survey*, vol. 48, no. 2, New Delhi: RGI; 'Status of ICDS Scheme

as on 31-03-2013 (Physical Progress)', *Integrated Child Development Services Scheme*, <http://wcd.nic.in/icds/icdsdatatables.aspx> (accessed 30 May 2014).

**Table -19 Adult Nutrition and Health (Across States and UTs)**

Sources: International Institute for Population Sciences and Macro International (2007), *National Family Health Survey (NFHS-3) 2005-06*, Volume I, Mumbai: IIPS; Registrar General of India (2011), 'Primary Census Abstract Data', *Census of India 2011*, New Delhi: RGI; RGI (2013), 'Special Bulletin on Maternal Mortality in India 2010-12', *Sample Registration Survey*, New Delhi: RGI.

**Table -20 Incidence of Crimes, Pendency and Convictions (Across States and UTs)**

Sources: Government of India (2013), *Crime in India 2012 Statistics*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs

**Table -21 Prison Populations and Police Strength (Across States and UTs)**

Sources: Government of India (2013), *Crime in India 2012 Statistics*, New Delhi: National Crime Records Bureau, Ministry of Home Affairs; GoI (2013), *Prison Statistics India 2012*, New Delhi: NCRB, MHA.

**Table -22 Access to Government Programmes (Across States and UTs)**

Sources: Calculations based on data from Government of India (2013), *Annual Report 2012-13*, New Delhi: Ministry of Rural Development; 'State Wise Physical Progress 2012-13', *Indira Awas Yojana*, <http://iay.nic.in/netiay/rural/menurep.aspx> (accessed 30 May 2014); 'R5.1.1 - Employment Generated During the Financial Year 2012-2013', *Mahatma Gandhi National Rural Employment Guarantee Act*, [http://164.100.129.6/netnrega/MISreport4.aspx?fin\\_year=2013-2014&rpt=RP](http://164.100.129.6/netnrega/MISreport4.aspx?fin_year=2013-2014&rpt=RP) (accessed 30 May 2014); 'Enrollment of Beneficiaries', *Rashtriya Swasthya Bima Yojana*, <http://rsby.gov.in/Overview.aspx> (accessed 30 May 2014).

**Table -23 Access to Government Programmes (Across States and UTs)**

Sources: Calculations based on data from 'Status of ICDS Scheme as on 31-03-2013 (Physical Progress)', *Integrated Child Development Services Scheme*, <http://wcd.nic.in/icds/icdsdatatables.aspx> (accessed 30 May 2014); 'Annexure-1, Analysis of 4th Quarterly Progress Report of 2012-13', *Mid Day Meal Scheme*, <http://mdm.nic.in/> (accessed 30 May 2014); National University of Educational Planning and Administration (2013), *Elementary Education in India: Progress Towards UEE, DISE 2012-13 Flash Statistics*, New

Delhi: NUEPA and MoHRD; Government of India (2013), 'Rural Health Statistics in India 2012 (updated upto March 2012)', New Delhi: Statistics Division, Ministry of Health and Family Welfare.

**Table -24 Proportion of Social Sector Expenditure (Across States and UTs)**

Source: Reserve Bank of India (2014), *State Finances: A Study of Budgets of 2013-14*, Mumbai: RBI.

**Table -25 Poverty, Inequality and Availability of Assets (Across States and UTs)**

Sources: 'Press Note on Poverty Estimates, 2009-10', Planning Commission, Government of India, [http://planningcommission.nic.in/news/press\\_pov1903.pdf](http://planningcommission.nic.in/news/press_pov1903.pdf) (accessed 30 May 2014); 'Gini Coefficient of Distribution of Consumption: 1973-74 to 2009-10', Planning Commission, Government of India, <http://planningcommission.nic.in/data/datatable/0306/table%20106.pdf> (accessed 30 May 2014); National Sample Survey Organization (2012), 'Employment and Unemployment Situation Among Social Groups in India', *NSS 66<sup>th</sup> Round (2009-10)*, New Delhi: Ministry of Statistics and Programme Implementation; Registrar General of India (2011), 'Houselisting and Housing Census Data', *Census of India 2011*, New Delhi: RGI.







# India Exclusion Report 2013–14

A comprehensive, annually updated analysis on the exclusion of disadvantaged groups in India

**India Exclusion Report** is a widely collaborative effort, involving numerous institutions and individuals working with disadvantaged and marginalized communities in India. The report seeks to inform public opinion around exclusion and to influence policy making towards more inclusive and equitable governance. It is also meant to serve as a tool to support public action for the greater inclusion of excluded communities in the country.

**India Exclusion Report 2013-14** presents an in-depth review of exclusion with respect to four essential public goods—school education, urban housing, ‘decent work’ in labour markets and legal justice in relation to anti-terror legislations in India. It also discusses exclusion in budgetary and planning processes and profiles three highly excluded groups— transgenders, bonded labourers and Musahars.

**India Exclusion Report 2013-14** is prepared by Centre for Equity Studies, New Delhi, in collaboration with:

AARTH-ASTHA, New Delhi

Aneka, Bangalore

Brown University, Providence, USA

Centre for Budget and Governance Accountability, New Delhi

Centre for Social Equity and Inclusion, New Delhi

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