

## **Indian Exclusion Report 2013-14: Chapter Summaries**

### **1. School Education**

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This chapter renews the debate around school education as a public good, exclusions from which squarely oblige the state to ensure accessible, equal and quality education for all children. It argues that, in the case of school education, the legal, moral and policy framework for a strong and unambiguous state role already exists. Yet, social and cultural practices combine with institutions and structures on the ground to prevent children belonging to marginalized groups from accessing these rights enshrined in law and policy.

Drawing on both primary and secondary data, the chapter analyzes processes of exclusion 'by the system', 'within the system' and 'through the community or family' for major marginalized groups (girls, Dalits, Adivasis, Muslims and children with disabilities). It also documents the specific vulnerabilities and concerns that result in the near complete exclusion from education for children from some highly excluded groups (street children, child workers, children in conflict areas and migrant children, among others).

Looking at the processes of exclusion 'by the system', the chapter discusses the inadequacies in government programs and policies – including under the Sarva Shiksha Abhiyan and the Right to Education Act – which do not satisfactorily address the challenges of inequity and exclusion from school education for children belonging to marginalized sections of society. Discussing exclusion 'within the system', the chapter documents the various forms of discrimination faced by children from marginalized communities in school, in terms of inadequate and poorly managed infrastructure, pedagogical and curriculum inadequacies, active discrimination against children in the classroom, etc. It further looks at the family and community-level barriers – poverty, parental illiteracy, lack of academic support at home and societal prejudices and gender bias - which prevent such children from securing an education.

The chapter argues that there are serious consequences to these varied forms of exclusion in schooling, not just for the children from marginalized groups and their families, but also for the ideas of diversity and equality in the school and society at large. It is therefore essential that the state intervene strongly to address exclusion in school education. This must involve, among other measures, changes to law and policy to make them more responsive to the needs of marginalized groups, better implementation of existing policies and strict action to protect children from discrimination in schools.

## 2. Urban housing

**Primary author:** Gautam Bhan (Indian Institute of Human Settlements)

The chapter argues that access to affordable and appropriate urban housing must be seen as a public good. This is primarily for two reasons: firstly, the economic, social, political, and developmental implications of exclusions from housing are, unlike with private goods, such as to make life with dignity impossible. Secondly, 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. At present however, exclusion from housing has taken a form where the state neither builds enough housing for the urban poor, nor does it enable them to do so by themselves.

Exclusion from urban housing is manifested in various ways, including homelessness, housing poverty (which reflects obsolete, congested and poor quality housing) and housing illegality (where tenure is insecure even though infrastructure may be adequate). The report documents the overlapping of familiar disadvantages in the housing space: gender, caste, religion, and ability. This is reflected in a wealth of official data highlighting housing poverty among socio-economically marginalized groups, particularly the poor, women, Dalits and Adivasis, and the pervasive discrimination in the housing market against these and other marginalized groups.

The chapter goes on to document the severe developmental impacts of exclusions in urban housing on the other capabilities of citizens – access to basic environmental services, health, education, economic capacities, etc. It argues that there are a myriad range of reasons for such housing exclusions. At one level, housing is not recognised as a fundamental right in India, which has a deeply political impact on the perception of the entitlements of urban citizens to housing. At another, urban housing policy has been marked by its mistaken focus and implementation failures. Policies have emphasized the involvement of private actors and developers, and have been singularly ownership-focussed, rather than supportive of rental housing. Moreover, urban planners have failed to adequately adapt and respond to the dynamics of rapid growth in urban areas, leading to a severe shortage of low-income housing. Housing exclusions have been further exacerbated by the cycles of eviction of self-built housing in slum areas and the building of peripheral resettlement colonies which are, effectively ‘planned slums’.

The chapter calls for the strong public commitment and action towards addressing urban housing exclusions, including an unambiguous framing of housing as a right and entitlement. It also argues for a reprioritizing of urban housing policies in India, in favour of upgradation and protection of existing housing, promotion of rental markets and the adoption of an ‘Intent to Reside’ approach which, instead of asking residents to prove that they deserve to be included as urban residents by surviving for years in the city, includes them from the very beginning.

### 3. 'Decent Work' in Labour Markets

**Primary Author:** Coen Kompier

This chapter traces the exclusion of India's labour force from the public good of 'decent work'. Decent work comprises employment, income and social protection. It incorporates notions of fundamental rights at work, including freedom of expression and association, and protection from exploitative labour conditions and discrimination. The chapter argues that the state must embrace three major responsibilities towards workers in the context of ensuring decent work to all citizens: employment creation, the protection of employment rights and the mobilization of a social security support system for people who are unable to secure employment.

In its present form, India's market-led growth has failed to expand the number of jobs being created for its rapidly increasing workforce. On the contrary, there has been a profound change in the discourse around labour rights, fuelled by concerns that public welfare and labour laws are harming economic growth. There have been, in parallel, a series of anti-labour judicial rulings since 2000, which reverse the tradition of pro-poor judicial activism since the 1980s. While such judgements have made labour markets more flexible, they have also led to an incremental destruction of workers' rights.

Together, these trends have resulted in rampant exclusions from decent work in the Indian economy. In large part, this has occurred due to the increasing informalization of labour markets. Official data indicates that the vast majority of workers in the country are in the informal sector, outside of a legal framework for labour protection and social security. The chapter also finds that certain sections of society are overrepresented among those consistently denied access to decent work. Their inaccessibility of decent work is not an arbitrary occurrence, but is buried in traditions of caste, class, religion and gender.

The presence of labour protection laws has also meant little under a regime where the government is either unable or unwilling to implement these laws and hold employers accountable. On the contrary, the state has further facilitated opportunities for erosion of these rights, for example, through the creation of Special Economic Zones (SEZs) where weaker labour protection regimes apply. This absence of state protection is also manifested in its poor record of implementing labour welfare measures.

The chapter argues for a fundamental overhaul in the approach towards labour protection, through an 'omnibus law' that protects all workers, irrespective of their contractual nature, sector or workplace. It also calls for, among other measures, improved scrutiny of labour contracting agencies, better enforcement of laws against worker exploitation and violence in the workplace, and measures to ensure living wages and adequate social security for all workers.

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

**Primary author:** Warisha Farasat (Centre for Equity Studies)

This chapter looks at the abridgement of a crucial public good - 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 access to justice. It rejects the utilitarian argument used often to uphold anti-terror laws, which justifies the subversion of rights in the interest of the 'greatest good for the greatest number'. On the contrary, the chapter argues that in difficult times, such as war or terrorism, procedural fairness assume unprecedented importance, as certain persons, such as alleged terrorism suspects, are most likely to be excluded from the system of safeguards and not given equal access to justice.

Whereas official data is largely silent on the application of anti-terror legislations in India, a number of unofficial sources have documented the extensive misuse of both central level anti-terror laws (like the Unlawful Activities (Prevention) Act) and those enacted at the state level (for instance, in Chhattisgarh, Maharashtra and Karnataka). In particular, such laws have been used to selective target Muslims, Adivasis, Dalits, activists and political opponents. The chapter argues that since anti-terror laws provide for a state of exception to be created within existing legal safeguards and procedures for the investigation and prosecution of criminal offences, they remain extremely prone to abuse by the police and other investigative authorities.

Using two case studies, of the UAPA ban on the Student Islamic Movement of India (SIMI) and of Soni Sori in Chhattisgarh, the chapter details the diverse ways in which such subversion of key legal and procedural safeguards occurs. This includes the denial of vital protections applicable to all arrested persons, dilution of evidentiary standards, use of forced confessions and a reliance on blatantly false and fabricated evidence. The chapter further argues that such abuse of anti-terror legislations is enabled by three vital factors: an active and concerted attempt by the state to criminalize all forms of dissent (including legitimate and non-violent forms of protest), high levels of communalization within key apparatuses of the state (like the police, bureaucracy and judiciary) and an increasingly sensationalist news media that has often been guilty of an uncritical acceptance of claims made by state authorities investigating terror cases.

The chapter discusses the serious implications of the abuse of anti-terror legislations on the people falsely accused of terror crimes and their families. In light of these, and the lack of any evidence suggesting a necessity for these laws, it calls for them to be repealed, or at the very least amended to incorporate serious safeguards against misuse. It also suggests other measures to address such exclusions from legal justice, including appropriate legal representation for terror accused, ensuring accountability within the police, and adequate compensation and rehabilitation for wrongly accused persons.

## 5. Transgenders

**Primary authors:** Shubha Chacko (Aneka) and Arvind Narrain

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.

This chapter discusses the many ways in which the transgender community has been discriminated against in India and denied elementary rights. 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 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 in theory does not criminalise sex work; but by making soliciting and running brothels illegal, sex workers are continuously vulnerable. Apart from sex work, the only other profession society permits transpeople to enter is begging, but anti-begging laws, another colonial legacy, are used to arrest and detain transgender people who solicit 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 rights as people who accept the sexual identities which biology has assigned them.

The chapter 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, while here is a group which rejects their biologically given manhood. 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 chapter, while this judgment will not change the destinies of transpeople overnight, it is enormously significant in its challenge to the binary idea of gender deeply entrenched in society. It also holds out hope for the reversal of a long history of violence and denial of basic rights endured by the transgender community.

## 6. Bonded Labourers

**Primary author:** Shikha Sethia (Centre for Equity Studies)

This chapter looks at a relatively lesser known aspect of India's large informal labour force – the extent to which these informal workers are employed 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. By one estimate, this system is the fate of about 10 per cent of India's workforce.

Labour bondage is a centuries old practice, but as the chapter highlights, it is also constantly evolving based on prevalent social and economic structures. 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.

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.

The chapter discusses at the myriad reasons due to which India's poorest and socially most vulnerable communities fall into bondage. 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. Strong state action is therefore essential for eradicating this shameful form of slavery which persists in 21<sup>st</sup> century India.

## 7. Musahars

**Primary author:** Sajjad Hassan (Centre for Equity Studies)

It is widely accepted that whatever one's measures of poverty, young people on average have better educational and economic prospects today than those of 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 still significant, improvements in their educational and economic conditions. To cite just one example, female literacy among the Musahars is an incredibly low 2 per cent (9 per cent for the community as a whole).

Drawing from research conducted with the Musahar community in Muzzafarpur district in Bihar, this chapter 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, extracting very hard labour, leaving 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 chapter argues that this failure is not due to any oversight, poor resources or bureaucratic incapacity, but rather 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 is the master.

At the same time, the chapter 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.