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Ever since the first issue in 1966, EPW has been India's premier journal for comment on current affairs and research in the social sciences. It succeeded *Economic Weekly* (1949–1965), which was launched and shepherded by SACHIN CHAUDHURI, who was also the founder-editor of EPW. As editor for 35 years (1969–2004) KRISHNA RAJ gave EPW the reputation it now enjoys.

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Community Networks during COVID-19

Working with communities helps to one understand and apprehend the diverse needs and complications of the vulnerable or marginalised groups. Community participation is especially necessary during these unstable times as vulnerable sections can provide correct information about the current knowledge or rumours being circulated, and various stigma or barriers that they are enduring. Also they are the most suited to work with others from their community and make collective actions. We know that the lockdown in India has hit people differently among the various socio-economic groups where the poor and marginalised sections are worse off with hunger deaths, increasing domestic violence, and so on. Among these evils, Kudumbashree, the poverty alleviation and women empowerment programme of Kerala government provides an interesting example of how community networks can help in these unprecedented and difficult times.

Kudumbashree originated in 1999 after two successful pilots ran in Alappuzha and Malappuram districts of Kerala. The primary domains of this programme are economic, social and women empowerment. This programme aims at economic empowerment by helping the women build enterprises like microfinance, collective farming, livestock farming, and many more. Kudumbashree aims at social empowerment by adopting inclusion of the vulnerable sections of the society through destitute identification, rehabilitation and various children's programmes. Some notable programmes for women empowerment include gender self-learning and elimination of violence against women.

Apart from all these, Kudumbashree coordinates various schemes of the central and state governments in the elimination of urban poverty. Kudumbashree has a three-tier structure for its women community network, with neighbourhood groups (NHGs) at the lowest level, area development societies (ADS) at the middle level, and community development societies (CDS) at the local government

level. Kudumbashree has undoubtedly become the backbone of Kerala's economic development. In 2013, the Government of India had recognised Kudumbashree as a national resource organisation (NRO) to provide technical and implementation support to other Indian states in enhancing the participation of the poor and develop community-based enterprises at the local government level. The effectiveness of this community-based initiative is such that it has expanded in 16 Indian states and two foreign countries (Uganda and Azerbaijan).

The emergence of COVID-19 has left the Indian government in a crisis with respect to whether the poor should die of the virus or hunger. This dilemma is somewhat lessened for Kerala as Kudumbashree acts as an efficient organisation in both handling the pandemic and also improving livelihood during these uncertain times. The already existing community network in Kerala helps in reducing extreme poverty arising due to the halt in economic activities. As the structure of Kudumbashree aids in reaching a substantial destitute population at the local level, this programme has become a tool for the state to carry out various schemes for minimising the adverse impacts of the pandemic. Kudumbashree is fundamental in educating the masses about government instructions regarding COVID-19. The success of the "break the chain campaign" in Kerala would not have been possible without this community network. Some of the activities to sensitise the people are: the formation of 1.9 lakh WhatsApp groups, letter to all the members of NHGs for the special care of the elderly, making of posters highlighting elderly care, and many more. One of the other advantages of this system is that Kudumbashree has already identified the vulnerable beforehand. This identification makes it easy for the government to provide help to the destitute without leakage. Some of the support provided is: grocery kits to 87 lakh families, implementation of the chief minister's "Sahayastham" loan scheme, calling 1,54,858 destitute families with 1,14,719 elderly members once in every five days, providing support to the mentally challenged students during the lockdown,

conducting various activities for the kids like online competitions, helping the quarantined people. As a social entrepreneurship venture, 27.07 lakh cotton masks have been prepared and sold through 306 tailoring units; 5,114 litres of sanitisers have been prepared and sold by 21 micro-enterprises; and some of the enterprises have also started making face shields.

At the panchayats and municipalities, 1,144 community kitchens have been started, of which 383 are budget hotels of Kudumbashree that provide meals for a meagre amount of ₹20. Kudumbashree is also working to provide food at corona-care centres, takeaway counters at the check post for drivers, producing Amrutham Nutrimix powder for children and cloth bags to distribute grocery kits. The functioning of the social entrepreneurs not only helps in reaching the masses directly, but also in indirectly generating livelihoods and a source of income for some people during this pandemic. Community counsellors of Kudumbashree are providing support to people with mental health issues arising from COVID-19 and abuse at homes during the lockdown. This structure of a community network helps in not only tackling the pandemic but also to improve the livelihood and social development during and after the pandemic.

The community support system of Kudumbashree with mass mobilisation of resources in a bottom-up approach is fundamental in reaching out to the affected people in this pandemic. This community network sets an example of how the decentralisation of power helps us to come out of an unprecedented pandemic. It provides a direction to the other Indian states to tackle these difficult times with this approach with a similar approach as required at the local level.

Diti Goswami

NEW DELHI

Child Rights and the Pandemic

More than 100 dignitaries, including Educationists, academia, social activists, teachers' unions, civil society organisations and various networks through a memorandum submitted by

the Right to Education (RTE) Forum to Prime Minister Narendra Modi urged the government to take appropriate steps to safeguard the rights of children to survival, protection, education and development during and after the COVID-19 pandemic. The memorandum recommended immediate and necessary actions to ensure that child rights are protected to stop the increase of out-of-school children, child labour and child trafficking.

The memorandum was endorsed by Campaign against Child Labour, Alliance for Right to Early Childhood Development, Wada Na Todo Abhiyan, Bharat Gyan Vigyan Samiti, National Coalition for Education India, Right to Food Campaign, Oxfam India, Save the Children, CARE India, Action Aid, Child Rights and You, Child Fund India, World Vision India, and others.

The memorandum mentioned that

extraordinary circumstances demand extraordinary measures, and every measure should be in accordance with the values and provisions of the Constitution of India. These measures must have a humane approach and provide a level playing field for all.

The memorandum, divided into three segments, urges the government to safeguard the food security of India's children by ensuring smooth implementation of home delivery of mid day meals. It further recommends that rapid testing for COVID-19 should be ramped up and made free in both government and private hospitals for everyone. The second segment shares recommendations to ensure that children are protected from the risk of violence and abuse during the lockdown and suggests measures to prevent the same.

The third section discusses the right to education of children and puts forward suggestions to ensure that no child is denied their fundamental right to education. Ambarish Rai, national convenor, RTE Forum, mentioned,

If there is too much focus on online modes of teaching, then majority of children especially from marginalised communities will be deprived of their right to education.

Keeping in mind the existing digital divide, the memorandum suggests the use of offline modes to reach children by maintaining physical distance. The memorandum further suggests that educational materials could be provided along with relief and dry food packages by the government.

Citing provisions of Section 10(2)(1) of the Disaster Management Act, 2005, the memorandum suggests that an order must be issued to place a moratorium on private schools hiking or collecting any fees until normalcy is restored.

The signatories highlight that once the situation normalises, all enrolled students, especially girls, must be tracked to ensure that no one drops out; and schools should be regularly and thoroughly sanitised and equipped with safe drinking water and adequate hygiene facilities.

The memorandum concludes by urging the government to increase investments to strengthen the public health and public education systems.

The signatories pledged to extend support in all possible ways to the government in reaching out to the unreached in this hour of crisis.

Right to Education Forum

NEW DELHI

Corrigendum

In the article "India's Food System in the Time of Covid-19" (EPW, 11 April 2020), the email address for one of the authors was incorrect and their author note should have read as:

Vaibhav Bhamoriya is an IRMA alumni currently working as faculty with IIM Kashipur.

The error has been corrected on the EPW website.

Erratum:

In the article "Lending a Voice to Baahubali" (EPW, 2 May 2020), the order of the names of authors should have been Rajlakshmi Kanjilal, P P Vijayalakshmi.

The error has been corrected on the EPW website.

The error is regretted —Ed

EPW Engage

The following articles have been published in the past week in the EPW Engage section (www.epw.in/engage).

- (1) Examining Hong Kong's Basic Law: Is there Scope for Democratic Reform? —*Gunjan Singh*
- (2) Locking Down on Rights: Surveillance and Administrative Ambiguity in the Pandemic —*Kalindi Kokal and Vidya Subramanian*
- (3) COVID-19 Crisis: Understanding the State of Economy during and after the Lockdown —*Arun Kumar*
- (4) Indian Cinema and the Bahujan Spectatorship —*Jyoti Nisha*

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Contributors are cautioned against plagiarism and excessive self-referencing. Figures, graphs and tables must be used sparingly to avoid repetition of content. All supplementary files such as figures, tables, maps, etc, must be provided in MS Office (Word/ Excel) or other editable formats, wherever possible.

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Short, analytical articles on topical and contemporary social, economic and political developments will be considered for this section.

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Living with COVID-19

The limits of lockdown are coterminous with the limits of the states' planning and its implementation.

In the fourth phase of the lockdown, one is repeatedly hearing the voices both from the government and others as well as from the World Health Organization that seem to express the inevitability of living with the virus. Such grim expression may draw its sustenance from the impending danger of people dying of hunger that may result from the lack of unemployment, should the lockdown continue in its current form. Such expression, though worrying, in an immediate sense, seeks to individualise the responsibility involving safety from the virus. Such voices would thus expect every individual to behave with utmost responsibility if the latter wants complete protection from the virus.

Living with the virus, however, flies in the face of official claims that are simultaneously made by the government to ensure the people that the country is medically as well as infrastructurally well-equipped to deal with the virus. The rising graph of the disease has led the central as well as state governments to adopt a more flexible approach involving policy moves that seem to be moving back and forth in terms of handling the crisis on an every day basis. The recent announcement of the economic package might be seen as a step forward inasmuch as it seeks to enthrone some confidence into sectors that are worst affected by the crisis. However, such an affirmative thrust appears to be loftier only in the absence of the acknowledgement of the limits that both the central as well as some state governments seem to be hiding from the public eye.

There are basically two factors that seem to help both the central as well as state governments to hide their limits that stand exposed by the pandemic. First, paradoxically, the very affirmative language of promises and prospects that is circulated by the central government through its periodically rhetorical announcements of economic package, however, fails to acknowledge the errors in the government's lockdown decisions and their implementation. For example, the error was starkly visible in the railway ministry's approach to carry the stranded labourers to their desired destinations. According to media reports, the railway authorities made the special train available only to carry the dead bodies of migrant labourers who were desperately looking for railway transport to reach their respective destinations. It is needless to say that a proactive approach of the railway authorities could have saved the lives of the 16 migrant workers who were mowed down by the goods train near Aurangabad in Maharashtra. Ironically, the death of human beings becomes

cheaper while the state becomes "kinder" to send the dead bodies to the relatives of the deceased. Human tragedy becomes the precondition for the rectification of errors. The railway authorities' delayed and tentative response to ferrying the migrants to their homes led only to the workers' growing anxieties that are culminating in chaos, which one finds at several railway stations across the country. However, the admission of errors tends to remain in the background of the affirmative language that is dished out along the passage of the successive lockdowns.

Second, liberal philanthropy, which tries to operate at different degrees and with varying capacities, has been at work during the lockdown and seems to have helped the government hide its limitations that were starkly visible, particularly in the food and grain supply chain. However, the government needs to realise that even such philanthropic efforts, though extremely necessary to minimise the immediate suffering, have their own limitations. These efforts have temporal limits, meaning these organisations would provide help as long as they are in a position to do so. Moreover, these efforts also suffer from structural limitations that seek to undercut the moral significance of generosity and beneficence, which are the crucial components of philanthropy. Structural limitations suggest that philanthropy, howsoever laudable, cannot facilitate the process of integrating the human being with social goods, such as justice, rights and dignity. Philanthropic help is not the matter of rights that one can legally claim.

Both the central and state governments should urgently realise that in the "post-COVID-19 times" they will not be able to use migration to achieve what could be termed as the "centre-periphery" model of development. Nor would these governments be able to use mass migration as a device to hide their limitations. The phenomenon of migration ceases to be the source of mitigating the limits of the states. In normal times, some governments, indeed, saw an opportunity in mass migration, which, arguably, did help these states hide their limitations, such as providing decent employment at the local level. This made these states somewhat complacent to the need for achieving even development particularly at the state level. In view of the tides of reverse migration, the states that are at the receiving end of such tides, which are likely to settle at the local level, will have to respond to people's basic needs and accommodate them within opportunity structures that will have to be created and continuously expanded and mobilised in people's favour. Given their frail

economic conditions, these states will have to be vocal in negotiating and even forcing the central government to pay due attention to the need for respectful reciprocity between the centre

and the states. The failure at both ends would then create the grounds for the common people to be vocal in demanding not just cooperative but responsive federal relationship.

Who Loves a Labour Law Ordinance?

State governments' labour law ordinances tend to barter labour rights for business interests.

The past few days have seen several Indian states—namely, Uttar Pradesh (UP), Madhya Pradesh (MP), Gujarat, Rajasthan, Haryana, Uttarakhand and Himachal Pradesh—declaring exemptions to most of their existing labour laws by promulgating ordinances or drafting new rules for a stipulated period of time. Using the nationwide lockdown due to the COVID-19 contagion as an opportunity, these state governments have claimed that the exemptions will help business and factory establishments recuperate from the losses caused by the sudden stoppage of economic activities. India currently has as many as 100 state laws and nearly 40 central laws governing various aspects of labour, ranging from resolution of industrial disputes, working conditions, social security, wages, etc, and compliance could, thus, be a deterrent for businesses/industries, goes their argument. But what is not clear at this point is why workers' fundamental rights, such as work hours and compensation, conditions of work, social security, collective bargaining, etc, must be brokered for the ease of compliance of the establishments, and their ease of doing business. And how can such a bargain give a fillip to investment for the old establishments to rebound or for new ones to come into being?

Recall that the ease of compliance rules, introduced by the labour ministry in 2017, focused exclusively on the functional aspects of rationalising and simplifying the procedures for maintaining registers under various labour legislations. The rules envisage that the reduction in the number of registers from 56 to merely five, with the new registers having 144 data fields as against the 933 filed under the previous set of registers, can potentially reduce the cost and the burden of compliance faced by the businesses. While, technically, these rules may not interfere with the legal provisions for the workers, these cannot be disentangled from the government's rationale for codifying the various labour laws under the four labour codes; the assumption being that the ease of compliance will follow from the uniformity in the central labour laws, notwithstanding that one of the major hurdles of the Indian labour laws is their non-implementation, more than their numerosity. Alternatively, it has not been uncommon amongst the business and factory establishments to dodge these laws whenever possible.

However, the "ease of doing business"—perceived as one of the drivers of business/industrial investments, in current times—is premised on the assumption of flexibility of the labour markets, among other things. And, Indian policy praxis seems to imagine this "flexibility" in terms of the contraction of various workers' rights associated with their conditions and arrangement of work, which is ostensibly referred to as labour "reforms." Ironically, such

reforms come with the denial of legal protection for (optimal) duration of work and compensation, hygiene and safety at work, job security, unionisation and collective bargaining, etc, to the workers. An example of such "reforms" is the Rajasthan government's amendments to the Industrial Disputes Act, 1947, Contract Labour Act, 1970 and the Factories Act, 1948, in 2014 to (i) do away with government's permission for retrenchment of up to 300 workers; (ii) introduce a three-year time limit for raising disputes; (iii) double the percentage of workers needed for registration as a representative union to 30%; (iv) raise the threshold of applicability of the Contract Labour Act by two and a half times to encompass companies with more than 50 workers; and (v) double the threshold of applicability of the Factories Act to premises with more than 20 workers with power and 40 without power.

Contrary to the Rajasthan government's claim (which, in 2014, was also led by the Bharatiya Janata Party) of creating 15 lakh new jobs with these interventions, the state has evidenced a burgeoning in unemployment over the last five years. According to the statistics available from the National Career Service (NCS) of the Ministry of Labour and Empowerment, the total number of jobseekers in the state, registered with the NCS, stood at 6.89 lakh as on February 2019, while the vacancies available were only about 4% of the total number of registered jobseekers. This would be even lower if the unregistered mass of unemployment is also considered. Given this scenario, one is compelled to ask: Where is the labourer in these labour reforms?

The current ordinance is no different in undermining labour interests. Not to mention its threat to constitutionalism and federalism, the ordinance "dehumanises" labour by using the hackneyed tool of "flexibility." For example, what is the justification for an ordinance seeking an extension or flexibility of working hours beyond the existing legal provisions of an eight-hour shift? Such legalities are often flouted by businesses, even without an ordinance in place. Then, does flexibility drive genuine entrepreneurship, or create a problem of adverse selection of such entrepreneurs who can manipulate the state to circumvent labour regulations?

Historically, the rigidities and complexities of the Indian labour laws have created more disincentives for investment in human capital, and less incentives for labour protection. The current ordinance will further exacerbate the situation by denying to pay the workers by their marginal revenue productivity, forcing them into inhuman work conditions, and not ensuring adequate social support. Contrary to the constitutional presumptions of "free" labour, the state is creating a reserve of "distress-driven" labour force by brazenly displaying its arbitrary power. Could there be a more opportune time for the state to thus pay back its electoral benefactors?

Journalism in the Normative Mode

The visual representation of the plight of migrant workers, who, for many days, are footslogging on the road and along the railway tracks, in a section of the media, both national and regional, may have been quite discomfiting for the state. Such reporting, in specific cases leading to frictional tension created by the police between them and television media persons, certainly undermines the autonomy of the media, but, at the same time, we might fail to notice the similarity of location and the normative difference in the roles performed by the police and the mediapersons.

Both the police and mediapersons along with health workers and sanitation workers, as front-line warriors against COVID-19, empirically share the same risky space. And yet, they get locked in an exchange, which does not open itself to a collective understanding of common normative concerns, such as treating human beings equally. The police and paramilitary forces are primarily driven by the question of law and order, while some of the mediapersons are driven by normative order based on the protection of human life with dignity. The freedom of mediapersons, in an ideal sense, gets defined standing not just in favour of law and order, but a normative order entailing justice and dignity. Its claims to normative representation are only indirect. It does not say that it is the only agency to keep the state on a moral track. It can detect the normative failure of the state by pointing out the contradictions that are inherent in the functioning of the state. Those mediapersons who consciously walk into a normative role cultivate openness that is aimed at showing factual truth, but also the conditions that inhabit such truth.

In the current scenario within which the footsloggers are precariously placed, for such migrant labourers, truth exists in brutal conditions; conditions that are physically harsh, emotionally corrosive and empirically dangerous. These conditions are physically harsh on the body of the workers who are not only dragging their body without adequate food and medical support, but pulling the living bodies of their close relatives. As reported by the media, these workers' lives on the road have become quite dangerous as hundreds of these workers are either getting injured or killed in road accidents everyday.

The implementation of the state's decision of a lockdown should demonstrate that it is the ethical responsibility of the state to treat

everyone with equal concerns for the right to live with dignity. As it is evident from the television reports, the state seems to have reduced the concern of dignity to discipline. Disciplining people may have strong reasons, but it stands on a weak moral foundation. While the state may have a reason to impose discipline, which anyway seems to be crumbling on an everyday basis, it does not seem to have any robust plan to restore dignity to the migrant workers. They are practically reduced to a subhuman level. In the process, dignity gets reduced to discipline, which is driven more by the concerns of law and order than by justice and dignity.

Ironically, one may find dignity in footslogging workers' capacity for determination to reach home. Such a sense of determination is qualitatively different from the conception of courage, as it is morally stronger than the latter, which is weak on account of it being instrumental in nature. A courageous person depends on chance or takes chances to reach the goal. In courage, there is a sense of fear and anxiety, but, at the same time, ability to overcome the risk. Arguably, the speculative market is the sphere of courage.

A strong sense of determination as demonstrated by the workers is constitutive of boldness to face difficulties without deviating from the goal. To cite just one example as provided by television reporters, the boldness was evident in one worker's determination to carry to his home his pregnant wife with a small child mounted on a wheeled toy cart; a cart that perhaps continues to be dragged along the highway by the worker towards his final destination.

Determination of these stranded workers seems to constitute a rare moral resource that seems to motivate them to fight against the confusion and frustration arguably created by the confusion of the state. As is clear from the television reports, migrant workers are seen going back and forth to the bus, railway and even police stations despite being chased away and sent back by the police. Journalists, particularly television reporters, by bringing to the public those vivid images of the workers, have cognitively empowered us to make value judgments in deciding what has failed the workers. Such sensitive reporting has also helped us refrain from romanticising workers' capacity for determination by giving it a name of suffering that necessarily undercuts the moral significance of such a capacity.

Lopallpur

FROM 50 YEARS AGO

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Fading Will

The debate in Lok Sabha on Thursday on the communal riots in Maharashtra had to be abandoned for want of a quorum. No doubt this accurately reflected the extent of the legislators' interest in the subject under discussion.

In her spirited rejoinder to the speech by the Jan Sangh leader, A B Vajpayee, the Prime Minister did declare that "we will fight it [communalism] with all the strength at our command". All evidence suggests, however, that in the last few years as communal riots have become more frequent and more depredatory, the political will to fight the menace has weakened. Even that woolly-headed institution, the National Integration Council, appears to have faded away.

At the purely administrative level, in spite of repeated exhortations for stringent action

to maintain law and order, Bhiwandi and Jalgaon followed the pattern of Ahmedabad and other places that have been recently the scenes of communal violence. From all accounts, tension had been building up in Bhiwandi for many weeks during which public meetings had been organised in the town by Jan Sangh and Shiv Sena, with the inevitable reaction among a section of the Muslims. Yet when the rioting broke out, effective intervention by police did not come before a heavy toll of life and limb had been taken.

Outsourcing the Stimulus

C P CHANDRASEKHAR

On 8 May, 45 days into the COVID-19 lockdown, the central government, through a finance ministry statement, announced that its borrowing requirement for 2020–21 had been raised to ₹12 lakh crore, as compared with the ₹7.8 lakh crore projected in the budget. As of now, starting 11 May 2020, the centre expects to be borrowing around ₹30,000 crore every week till 25 September, as compared with ₹19,000–₹21,000 crore, planned earlier. What would happen after 25 September 2020 is not clear as of now, but what is clear is that whether the central government likes it or not, all projections of the fiscal deficit have been rendered meaningless by the pandemic.

However, while declaring that this borrowing requirement revision was necessitated by the fallout of the COVID-19 pandemic, the finance ministry's statement did not make clear how much of it would be due to an increase in expenditure needed to address the pandemic and revive the economy, and how much due to the collapse in revenues that have resulted from the sudden stop in economic activity resulting from the extensive and stringent lockdown in response to the pandemic. Stalled economic activities and falling incomes erode revenues, necessitating increased borrowings to sustain even reduced expenditures.

This distinction between expenditures and revenues in explaining the planned increase in borrowings is crucial because there is a wide agreement among economists and policymakers that a second large stimulus package was overdue. In fact, as the first week of May 2020 drew to a close, an expectant nation that was awaiting a second stimulus package to counter the COVID-19-induced economic crisis had begun losing patience. It had been close to a month and a half since Finance Minister, Nirmala Sitharaman, had announced the first post-COVID-19

package, almost timed to coincide with the start of a nationwide lockdown. At ₹1.7 lakh crore, or less than 1% of the gross domestic product (GDP), the package was grossly inadequate, given the magnitude of the unfolding economic crisis that was depriving workers of their jobs, damaging livelihoods, devastating the informal sector and threatening widespread bankruptcies in the formal sector. Even conservative business leaders were demanding a package in the range of 5% of the GDP. Sitharaman's first package was also disappointing because a significant component of it involved bringing forward the already planned expenditures or releasing deferred incomes, rather than including only new expenditures.

The measly nature of the package was justified as being only the first step in a promised, extended recovery effort. But six weeks was too long a time for the launch of a second step. By then, a full-fledged package should have been in place. Explanations for this delay are not easy to find. The most generous among those advanced is the claim that the central government has been held back by fears that the stimulus spending would result in a dangerous rise in its fiscal deficit, setting off inflation and leading to an increase in public debt to unsustainable levels. However, with large food stocks and unutilised capacities present, fears of inflation were not warranted. Nor is the volume of public debt, much of which is denominated in rupees. What is true is that since heavy new taxes cannot be imposed in the middle of a crisis, the deficit would initially increase.

But, given the large stocks of foodgrain with the government, the bumper rabi crop that is currently being harvested and the massive unutilised capacity outside of agriculture, there is no real danger of inflation. If there are specific supply constraints, especially of essentials,

they can be directly addressed. As for the public debt, it could be considered unsustainable if the government cannot find the wherewithal to meet the resulting debt service commitments. It can do so, by borrowing at low rates from the Reserve Bank of India (RBI) or monetising the deficit keeping interest costs under control. And, given the high level of inequality in India, the complete absence of wealth taxes and the current low level of India's tax-to-GDP ratio, when the recovery occurs, taxes can be imposed to mobilise the resources to service the debt. On the other hand, if debt-financed expenditures are not undertaken and the recession intensifies and turns into a depression, revenues that are already collapsing will dry up, and even if the government opts for austerity in the midst of a health and economic emergency, minimal expenditures can result in a spike in the fiscal deficit-to-GDP ratio, especially given the recessionary contraction in the GDP.

Fiscal Stimulus

This explains the near consensus among economists that a large fiscal stimulus is an absolute necessity in the current context. Without such a stimulus, the humanitarian crisis would also intensify. The government will not be able to do what is necessary to mitigate the health emergency and limit the loss of lives. It will not be able to prevent starvation and support those displaced from work and the disadvantaged. It will not be able to provide the subsidies and guarantees needed to keep alive the formal small and medium enterprises and India's vast informal sector. Allowing a misplaced fiscal conservatism to override the devastating implications of such neglect can only be read as callousness that comes from the belief that people's welfare does not matter for political legitimacy.

That the government is aware of what it is doing is clear from the fact that it has not ruled out a stimulus, but has outsourced a large part of the task to the RBI and the largely public banking system. To help out the borrowers, the RBI was persuaded into allowing banks to provide

a three-month moratorium on debt service payments to their clients, leaving the decision on whether this option is exercised to the discretion of the banks. In addition, to fulfil the stimulus mandate, the central bank has resorted to the only instruments it has at its command, which are those that seek to expand credit flow and reduce the cost at which such credit is accessible. In an initiative signalling its stance, the RBI decided to cut its policy "repo" rate by 75 basis points to 4.4%, reducing the costs at which banks could access finance from the lender of last resort. It also substantially strengthened this effort through two rounds of special and "targeted" long-term repo operations (TLTROs), which allowed banks to access liquidity at the repo rate to lend to specified categories of clients.

In the first round, the RBI announced auctions of targeted repos of up to three years tenor for a total amount of up to ₹1,00,000 crore. The liquidity availed under this TLTRO 1.0 facility was to be deployed in investment grade corporate bonds, commercial paper, and non-convertible debentures over and above the outstanding level of bank investments in these instruments as on 27 March 2020. The response to this offer was encouraging. When the first auction for a total facility of ₹25,000 crore was conducted, the central bank received 18 bids for a total of ₹1.13 crore. Clearly, banks, saddled with non-performing assets (NPAs) and a highly risky environment, given the crisis, saw an opportunity in borrowing at the repo rate and lending against paper issued by creditworthy corporates. The instruments in which the funds accessed by banks from the central bank's TLTRO 1.0 facility were invested included commercial paper worth ₹26,666 crore, issued by a set of six public sector companies and 21 private sector companies, and medium- and long-term bonds worth ₹25,323 crore, issued by a set of three public sector companies and 15 private sector companies. The private sector companies accounting for a large chunk of the resources were leading firms like Reliance Industries, Housing Development Finance Corporation, Larsen and Toubro and Mahindra

and Mahindra. The TLTRO 1.0 essentially served as a means for strong companies to access cheaper credit than that available in the market, and possibly use it to retire higher cost debt on the books. Banks too, which have seen their retail lending options involving credit for buyers of homes, automobiles, and durables eroding, must have been happy to exploit this facility to lend to corporates, since the low cost of funds can be exploited to ensure reasonable spreads between the cost of capital and return on lending.

However, the "success" of TLTRO 1.0 was no indication that the easing of financing conditions would result in a revival of overall credit. The real crisis, even among businesses that want to borrow, is in troubled sectors varying from corporates that issue risky and unlisted bonds and the micro, small and medium enterprises (MSME) sector. Banks are extremely reluctant to increase exposure to sectors and large and medium firms that may potentially contribute to a sharp increase in their NPA portfolio during the course of the crisis. The chairman of the banking sector leader State Bank of India has declared that as much of 25% of the bank's ₹27,000 crore MUDRA loan portfolio, directed at small borrowers, is non-performing. So, any hope that more liquidity in the hands of the banks would increase credit flow to this sector is misplaced. Meanwhile, Franklin Templeton's announcement that it was shutting down six of its funds holding more than ₹25,000 crore of investor money, with no clear indication of how much and when investors are likely to be paid back, has created a crisis in the non-banking financial company (NBFC) space. Redemption requests are spiking as scared investors rush to exit, and there is no market for the securities that these NBFCs hold to mobilise the funds to meet these demands.

The second TLTRO round, with a corpus of ₹50,000 crore, was specifically targeted at pushing liquidity into the hands of these NBFCs. But, as compared with TLTRO 1.0, the banks borrowed only ₹12,850 crore from the RBI, which was just more than half of the ₹25,000 crore on offer in the first round. Banks were not impressed with the guidelines that lending to microfinance institutions

and mutual funds would qualify as priority sector lending and counted for realisation of that target. They were not keen on taking on the risk that lending to these institutions carries.

Risk Aversion

Aversion to risk is also reflected in the desire of banks to park funds with the RBI, accepting a low return of 3.75% as a trade-off for the safety that such deposits guarantee. To match up to the lower returns and in keeping with the RBI's move to lower interest rates, banks are pruning deposit rates. Together with a preference for cash in the middle of the lockdown and fears regarding the stability of the banks, this appears to be triggering an increase in the currency in circulation. All this implies that the strategy of using the banks as intermediaries to transmit a stimulus that does not burden the exchequer is a non-starter.

Meanwhile, under pressure from the government to lend to risky clients, public sector banks are asking the government for credit risk guarantees. While others, taking a leaf out of the initiatives launched by the US Fed for example, are demanding that the central bank should directly accept paper of different kinds from NBFCs, rather than fund the banks in the hope that they would take on the risk. Attempts to outsource the stimulus are running into multiple roadblocks. It is time that the centre, which hugely increased its powers by invoking the Disaster Management Act, on the grounds that this is needed to address the pandemic and its fallout, directly takes on the responsibility of mitigating the effects of the crisis and provides a stimulus adequate to stall and reverse the collapse of the economy.

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Significance of Testing for Identification of COVID-19

A State-level Analysis

SOURINDRA MOHAN GHOSH, IMRANA QADEER

The official and media discourse in India often focuses on the cumulative or daily detection of infected cases irrespective of the number of people tested and thus confuses the issue of disease progression. Based on the analysis of the number of infected cases identified and the number of people tested in eight states in India, it is emphasised that identification and quarantine of those who are infected slows down the spread of the disease. Mobilising resources towards the primary healthcare system for expanding contact tracing and investing in additional facilities to quarantine and treat infected patients is suggested.

As of 27 April 2020, over 3 million people worldwide have been infected with the novel coronavirus, out of which more than 0.2 million people have died, while India has identified a total of 29,451 positive cases with 939 deaths. India, on 24 March 2020, implemented a complete nationwide lockdown that has now been extended up to 17 May 2020. The global experience has shown that lockdowns may have helped gain time for preparing to handle the rush of cases needing institutional care, setting up systems for case tracking, and, above all, in mobilising resources. But, by themselves, lockdowns are not effective. In India, however, the official as well as media discourse at this time is mostly centred around the lockdown and the rate of growth in the number of infected cases in the country in addition to whether it is accelerating or slowing down and, in turn, its implications for possible lifting or relaxing or extending the ongoing lockdown. Even this debate first requires a careful examination of the trends before any inference can be drawn.

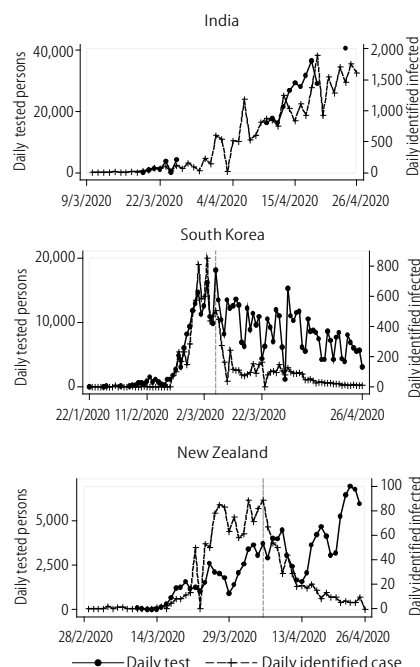
The trend of infected cases in any region must be seen in the context of the number of people tested, and this should be compared on a daily basis (Reddy 2020). In India, daily detection of infected cases closely corresponds to the number of people tested daily (Figure 1), exactly like in other countries during the relatively early phase of the disease spread. Only when there is a decline in the number of infected persons detected daily without a similar decline in daily testing, as witnessed in South Korea or New Zealand around 6 March 2020 and 6 April 2020 respectively (Figure 1), can we state that the spread of the disease is

slowing down.¹ India has not yet reached that stage. It indicates that in the coming days, more infected people will be identified as testing increases, or else, inadequate testing will result in underestimating the number of infected persons. Given the inter- and intra-state variations, it is important to assess the number of tests conducted and the corresponding cases reported in order to comment on the trend of disease progression.

Data and Method

Three types of data were observed. First, the trend of the number of infected cases identified daily over a period of time. Second, the trend of the number of people tested daily over a period of time, and third, the number of people tested for every confirmed case (testing rate). Based on the current strategy of the Indian Council of Medical Research (ICMR), which is to test the direct contacts (both symptomatic and asymptomatic) of laboratory-confirmed COVID-19 cases (ICMR 2020),² a state that has a lower number of cases may conduct a lower number of tests. Hence, it is useful to look at the testing rate that

Figure 1: Daily People Tested vs Infected Identified
India, South Korea and New Zealand (till 26 April 2020)



Source: Compiled by Johns Hopkins University, CSSE, <https://github.com/>.

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serves as an indicator of the extent of contact tracing and not the total number of tests or the number of tests per unit population as these are neither conducted at random nor conducted for the whole population.

We have analysed the data for the seven worst affected states (Maharashtra, Delhi, Gujarat, Rajasthan, Madhya Pradesh [MP], Tamil Nadu [TN] and Uttar Pradesh [UP]) up to 27 April 2020. The trends in Kerala, the state that has thus far managed to considerably slow down the spread of the disease, are used for comparison. These eight states taken together account for 81% of total number of infected cases reported from India. Among these states, the district-level data on cumulative tests conducted is available for Rajasthan and Gujarat. The test data are manually compiled over a period of time from the daily bulletins of the respective state governments.

Variations across States in Testing

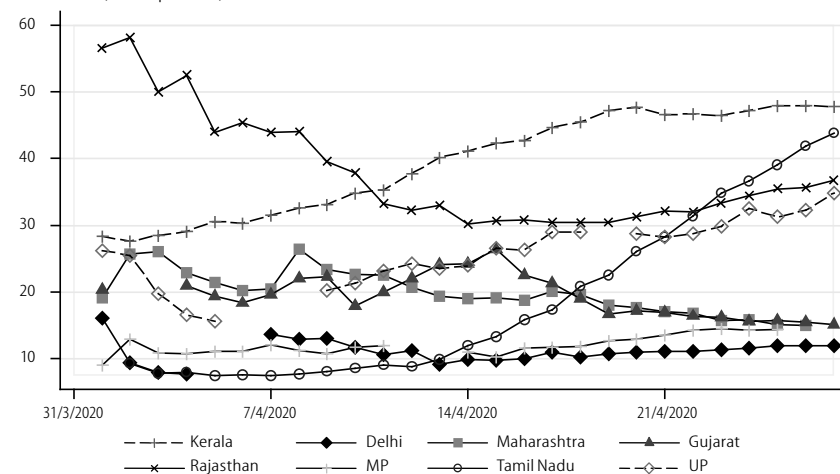
Delhi and MP have the lowest testing rates, which means they are the worst in terms of contact tracing. TN was also at the bottom till mid-April, after which its testing rate increased quite significantly. Currently, Kerala tops the list followed by TN, Rajasthan and UP. Although rate declined till the second week of April in Rajasthan, it became stable and has increased since 14 April 2020 (currently at roughly 37 people tested for each positive case) and so has that of Kerala, TN and UP (implying increased case tracking in these states over time). Maharashtra and Gujarat are gradually sliding much below the all-India average of around 22 people tested for each positive case (Figure 2).

Trends of case detection in states: In

all states (except for the later stage in Kerala), the trend of the daily numbers of COVID-19 cases closely follow the trend of the number of people tested daily (Figure 3). It implies that in all these states, except Kerala, case identification is limited by the number of tests conducted. Kerala has passed through the phase when the daily identification of positive cases increased with more testing. From 6 April 2020 onwards in Kerala, there has been an overall decline in the

Figure 2: People Tested per Positive Case (Cumulative) over Time

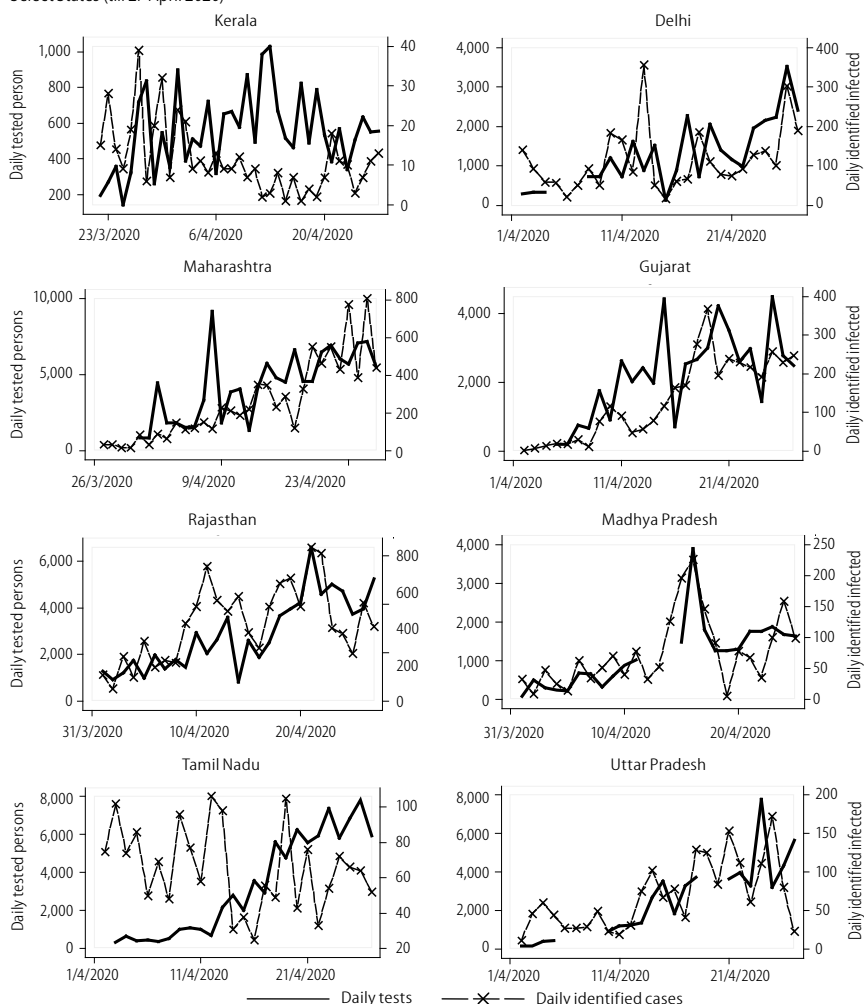
Select States (till 27 April 2020)



Source: Compiled by authors from various state health bulletins.

Figure 3: Daily People Tested vs Infected Identified

Select States (till 27 April 2020)

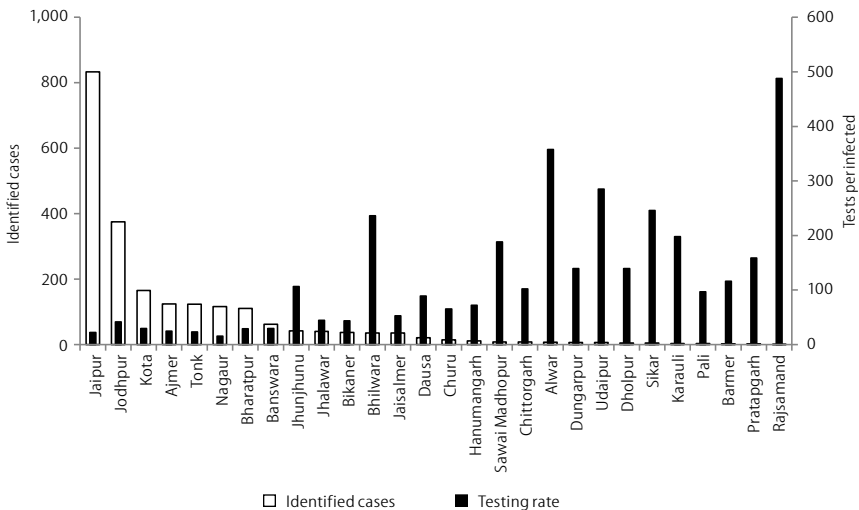


Source: Compiled by authors from various state health bulletins.

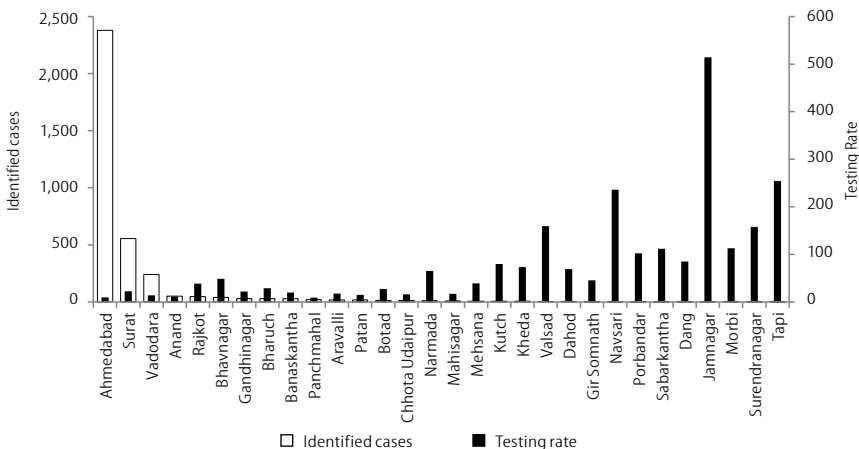
daily number of positive cases without a decline in the number of people tested (Figure 3) and an increase in case tracking (Figure 2). This indicates that the

spread of the disease is slowing down in Kerala.

Daily case detection and daily tests in Maharashtra, Gujarat, Rajasthan and UP

Figure 4a: Total Identified Cases vs Testing Rate, District-wise, Rajasthan (as on 27 April 2020)

Source: Compiled by authors from state bulletins.

Figure 4b: Total Identified Cases vs Testing Rate, District-wise, Gujarat (as on 27 April 2020)

Source: Compiled by authors from state bulletins.

show an overall rising trend, with daily fluctuations. Rajasthan and UP are doing relatively better, testing around 35 and 37 persons for every positive case, respectively. The efforts of Maharashtra and Gujarat, both with testing rates of approximately 15 and declining, are not up to the mark. Daily case identification in Gujarat has declined in the last 10 days or so due to the slowdown of daily testing (Figure 3).

In Delhi and MP, daily detection of cases has not increased to the extent of the four aforementioned states. With low testing rates (around 12 and 14 respectively), we can infer that there may be a gross underestimation of the levels of infection in these two states because of inadequate testing.

TN had been quite slow to start adequate testing, for its average testing

in TN, which will become clear as more tests are done.

Intra-state Disparity

Disparity of testing also exists within the states across districts. In Rajasthan and Gujarat, we observe the pattern in that the districts with the higher number of cases have lower testing rates with a possibility of greater under-reporting in heavily affected districts (Figures 4a and 4b). On the other hand, there are some districts that have a relatively low number of detected cases as well as testing rates. It indicates a possibility that the number of positive cases in these districts, namely Tonk, Ajmer, and Nagaur in Rajasthan, and Anand, Aravalli and Panchmahal in Gujarat, might not be as low but under-reported due to low testing.

We thus see regional as well as daily variations of testing, and find that identification of positive cases is closely dependent upon testing.

Case Tracking and Quarantine

Testing the contacts of people identified as infected for possible infection and quarantining those found infected can break the chain of transmission of the disease. We test the hypothesis as to whether increased testing slows down the spread of the disease. We have used panel data of the aforementioned eight states, spanning from the period of 24 March 2020 (the onset of nationwide complete lockdown) till 27 April 2020. We assume that the daily identified cases (Case) is a function of number of people tested daily (Test) and its squared term (Test²). The squared term is introduced to see if there is any inflexion point, that is, if the nature of relation between the dependent and independent variable changes after a certain point. In notations:

$$\text{Case}_{ij} = \beta_0 + \beta_1 \text{Test}_{ij} + \text{Test}_{ij}^2$$

[for i^{th} state and j^{th} day]

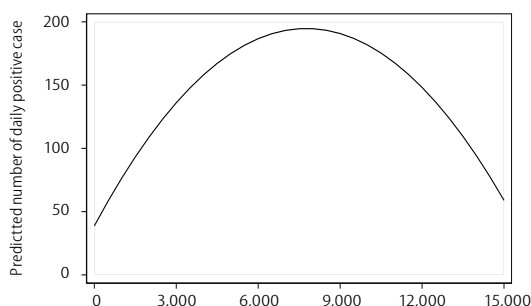
Table 1: Summary Statistics of Dependent and Independent Variable

Variable	N	Mean	Std Dev
Daily positive cases	204	105	123
Number of people tested daily	204	2,235	1,999

Table 2: Results of Panel Least Squares Regression

	Coefficients	Std Err	p-value	95% Conf	
Test	0.040	0.013	0.004	0.013	0.067
Test ²	-0.0000026	0.0000021	0.23	-0.0000068	0.0000017
Constant	38.73	14.37	0.011	9.59	67.87
Prob > F	= 0.0000		Number of observations = 204		
R-sq: within	= 0.16		Number of groups = 8		

Figure 5: Relation between Number of Positive Cases and Number of People Tested Daily



Source: Panel least squares fixed effects regression, authors' calculation.

The summary statistics of the dependent and independent variables are reported in Table 1 (p 14) and the results of the fixed effect panel least squares regression are reported in Table 2 (p 14). A fixed effect model controls for all time-invariant differences between the states, and hence, the estimated coefficients are not biased because of omitted time-invariant characteristics. We have reported Driscoll and Kraay's (1998) standard errors to produce heteroskedasticity and autocorrelation consistent standard errors, which are robust to general forms of spatial and temporal dependence.

Plotting the fitted values of daily positive cases against the number of people tested daily reveals a bell-shaped curve (Figure 5). The plausible explanation is that with increasing number of persons being tested daily, initially, the number of daily positive cases increases as case identification improves. But, as more cases are identified and quarantined, the chain of transmission is weakened and the number of daily cases gradually reduces.

For the optimal use of resources and personnel as well as for prioritising risk, it is more practical to conduct tests through tracking the contacts of confirmed positive cases and quarantining the infected. This is similar to the strategy used for vaccination to create a zone of immune contacts around a case to slow down disease transmission (Deen and Seidlein 2018; Ali et al 2016). However, the criteria of testing in India should expand. The ICMR's guidelines currently prescribe testing of only direct contacts of confirmed positive cases, which should be extended to secondary contacts as well. How much testing and quarantining

of the infected is required to bring down the daily number of positive cases can only be understood on the ground once we aggressively increase testing. If the figures from the places that have so far been able to contain the disease serve as an indication, then it is worthwhile to mention that Kerala as of now has tested 48 persons for every positive case.

Countries like South Korea, Australia and New Zealand have testing rates of 53, 67, 56 respectively, which, notwithstanding their different testing strategies, is clearly much higher than India's overall testing rate of 22.

Conclusions

Our findings from data gathered from the eight Indian states underline the importance of the relationship between case identification and number of tests done. Seen together with the cases identified daily, it helps indicate whether the system has been able to contain the disease progression. Any estimation of daily disease count trends without considering the corresponding testing-rate trend will be inaccurate by varying degrees across time and region and, hence, would be inappropriate for critical public health decisions. Hence, all the states, particularly the ones lagging behind, need to address the barriers in order to increase testing for a dependable picture of the disease spread for policy formulations.

The barriers to testing are the same as that of building infrastructural facilities, which would eventually put a cap on the numbers of infected people that can be identified, isolated and treated. The lack of primary healthcare facilities is a crucial barrier. As our results show, Kerala alone, with its strong district health services, has managed to contain the infection given its health infrastructure. Most other states lag behind and addition of activities for containment of the COVID-19 infection disrupt all other routine and emergency services (Rukmini 2020). Field workers are over-stretched and forced to perform without protective gear. The investment in the

much-needed primary healthcare system, pending for long, thus is a critical imperative and the only viable exit strategy from this complete lockdown. The lockdown itself creates obstacles, like restricted movement, non-availability of transport and materials required for testing and treating, for the states to evolve area-specific strategies for testing and containment. Yet another barrier is the low level of citizen's participation, which crucially depends on transparency, access to information, and trust. Shifting to a "people-led" campaign from the current lockdown requires building that trust, especially among the poor who are disproportionately bearing the economic cost of the lockdown. This cost might be greater than that of the disease itself. On the other hand, even a partial exit from the lockdown without the aforementioned measures may result in the rapid spread of the disease.

NOTES

- 1 Even if there are differences in the degree of testing errors across countries, this conclusion will still hold if testing errors are not drastically increasing over time.
- 2 Apart from symptomatic healthcare workers and individuals with travel history and patients with severe and acute respiratory illness.

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Density, Distancing, Informal Settlements and the Pandemic

SARANI KHATUA

Demographic density, particularly in the low-income settlements in urban India, is posing some unprecedented challenges to governance for containing the COVID-19 contagion. Through a case-based discussion of density, it is argued that the idea of containment through distancing is rather paradoxical. On the one hand it pushes for more proximation or clustering of the poor in congested urban spaces, while on the other it deepens a sense of estrangement in an already fragmented social milieu.

In recent times we have frequently come across the usage of the term “social distancing” in healthcare advisories and official mandates, as a possible precaution against the spatio-temporal diffusion of the COVID-19 contagion. The term social distancing, which is commonly used in social sciences to indicate a practice of maintaining distance between different social groups, is used with a very specific connotation in the parlance of medical sciences and/or healthcare recommendations in the context of the COVID-19 outbreak. It refers to the maintaining of a physical distance between two persons in order to prevent transmission of the virus. Notwithstanding whether or not this is the only viable choice at this hour, an emerging debate is around the interchangeable usage of the term “social” distancing for “physical” distancing that is likely to exude a sense of isolation and thereby create psychological repercussions (Gale 2020).

When Disease Follows Density

Right from its first reported outbreak in China till its spread in India since late February, the contagion has dominated the urban scenario, more precisely in the million cities experiencing much international movements. In such a context, to arrest horizontal spreading of the infection, the Indian government has implemented complete “lockdown” of the country, commencing from 25 March 2020. This kind of lockdown, though not exclusive to India, has propelled a series of reactions and questions on the practicability of implementing distancing in high density spaces.

While the last decade witnessed a higher decadal growth rate of population in the smaller urban units compared to the million cities (Census 2011), population density remains a perpetual cause of concern for governance in the latter. This concern assumes more prominence when one looks at the proportion of the

population that resides in slums and informal settlements of these cities. Let us consider the case of the Kolkata Municipal Corporation (KMC) as an example. As per the 2011 Primary Census Abstract of Slum, the slum population in the KMC constitutes about 31% of its total population. In fact, the 2011 Census data reveals that 27% of the 2,613 urban units in India reporting slums, recorded proportional slum population between 30% and 60%, while 6% of the urban units reportedly have more than 60% people living in the slums.

However, the census data do not provide information on the area occupied by the slums in these urban units. For such information the urban local bodies are possibly the only source.

Slum population density in KMC: Consolidated data on notified and recognised slums in Kolkata (also called bustees), as obtained from the KMC, provides insights into the high population density in these constricted areas. For instance, 31% of the total population in the KMC, which as per the 2011 Census data is the share of the slum population in KMC, occupies only 14% of the total area of the city or an area of 25.95 square kilometres (sq km). There are around 1,236 premises in the KMC area holding 1,460 slum pockets constituted by a total of 3,17,767 families. So, the average area available per slum pocket is around 0.02 sq km with an average of 97 hutments.

At the ward level, the scenario seems more staggering with some wards of the city municipal area reporting 90% or more of the total ward population to be constituted by slum population. The highest number of hutments in a single slum pocket in a ward is recorded at 4,410, while the highest number of families in a single slum pocket in a ward is at 8,470, much above the city-level average of 217. The average slum population density for the overall city slum area is estimated to be at 60,505 per sq km.

Slum structure and distancing: Besides demographic figures, understanding the structure of a typical slum is crucial in the discussion of density and distancing. Several small rooms within a low-roofed hutment, aligned either in a linear way or

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arranged closely around a small common space, is what is seen mostly in notified and recognised slums. The common space is used for the provision of toilets, or taps for water supply, or for carrying out various sorts of work. This condition depicts a somewhat better picture compared to those slums that are neither notified nor recognised, like the ones along the railway lines or the canal banks, and are covered through various projects. These hutments could best be described as small shacks stacked one after another with one community toilet for four to five families and common water supply facility located outside the premises.

Usually the rooms are between 7.4 and 9.3 square metres (sq m) in size, devoid of any windows, and accommodating at least five persons on an average. The narrow inner lanes, corridors and pavements within the slum neighbourhoods act as the open spaces for the inhabitants. Multiple uses of open spaces are frequent in most slums with many having a denser accommodation or other forms of overlap. For instance, the outdoor spaces are used for different forms of work during daytime, and simultaneously as community balconies by the inhabitants in the evenings to escape the congestion inside their rooms, and/or as places to sleep at night during the hot, dry seasons, etc. Irrespective of their location in the core city area or at the periphery, the neighbourhood spaces in informal settlement are auto-constructed as a space for freeing oneself from the closed overcrowding within the rooms.

There is no exception even in the case of the vertical housing that is coming up under various redevelopment and resettlement projects in the low-income neighbourhoods. To illustrate, in resettlement colonies in Kolkata, completed almost a decade back, each vertical housing is a four-storeyed building, consisting of flats, each with an average floor area of 17.65 sq m (190 sq ft) that holds one room, one bathroom and a balcony that would also be used as the kitchen space. In some areas, there is just a single room without any demarcated space for the kitchen and the bathroom is in the balcony area. The flats were allotted irrespective of the size of the family to those displaced from the banks of the Tollygunge-Panchannagram,

Keorapukur, Charial, Monikhali basin under the canal rehabilitation initiative of the Kolkata Environment Improvement Project. While these flats are formal settlements and comparatively spacious than the informal accommodations, yet overcrowding remains a persisting issue.

In the given scenario, the scope of executing physical distancing successfully in the low-income settlements is grim. Practising physical distancing behind closed doors is elusive. While the open space in a slum neighbourhood remains the only space for executing physical distancing, this is also the space for livelihoods for many of the inhabitants.

Paradox of Distancing

Distancing here creates a paradoxical situation. While it is perceived as essential for stopping the spiralling of the virus, in the congested urban settlements like the slums it actually increases the inhabitants' exposure to the contagion by forcing them to live in a condition of extreme proximity in overcrowded dwellings where the lack of basic infrastructures like water supply and drainage facilities is conspicuous.

The difference between the current circumstances and the everyday crowding of such urban spaces is that in the latter case, the same density gets dispersed across various spatio-temporal networks. When inhabitants of slums and other informal low-income settlements move out of their houses to engage themselves in wage earning opportunities, they also free themselves of the congestion of their houses. With the lockdown being imposed on the middle-class and low-income neighbourhoods alike, these two spatial categories, which would otherwise remain connected through the demand and supply of a variety of household services, are now cut off from each other. Such positioned distancing among social groups has further aggravated spatial proximity and its associated risks for those living in low-income settlements.

While overcrowding or congestion is also common in the smaller middle-class formal settlements, distancing, especially when called "social distancing," carries different meanings for different sections of the population and hence, the way to

govern it should also be different. Social scientists and psychiatrists have expressed concerns about social distancing in creating a sense of isolation, particularly during this restrictive phase. Therefore, there is a constant urge for social proximity in the time of physical distancing. In the case of slums and other low-income dense settlements, however, it is the opposite. The concern is about physical proximity in the time of social distancing.

Policy Quandary

The state is aware of the fact that though the disease did not originate in the low-income settlements, if it reaches the same, then the increase in the density of the infected will not be far behind the density of the slums themselves. As pointed out by Harvey (2020), "in any exponential growth, there is an inflexion point, beyond which the rising mass gets totally out of control." While one may argue that increased surveillance, identifying and sealing of hotspots, closing down of interstate borders, etc, by the government is for mitigating the spiralling of infection, there can also be no denying of the fact that such restrictive measures have not only made the future of thousands of labourers bleak, but also threatened their present more. Moreover, in India, the informal sector forms the base of the economy (Kanan 2020), and its crashing down would inevitably bring down the economy.

The process of restraining movement, which has culminated in the total lockdown is pushing the poor and the vulnerable sections away from the network that enables their livelihood. Social distancing and the lockdown have, in fact, magnified class differences. While this lockdown is looked at as "me time or family time" by one class, for another it has evoked fear of hunger and destitution. While there are efforts on part of the administration, non-governmental organisations, and civil society groups to provide support to the vulnerable class, neither these efforts guarantee sustainability in the long run nor do they mitigate the fear of an unpredictable future even after the country goes for a gradual relaxation. While the virus itself does not make any distinction between classes, governance for disease mitigation certainly proliferates the same.

The sudden declaration of the lockdown with four hours' notice has been followed by the repeated mass outpouring of the labourers on the streets in various Indian cities, thereby bringing to the fore two key issues. First, it exposed the criticality of population density in the Indian cities. Second, this dense mass, despite contributing significantly to the economy, remains mostly invisible. They are invisible up to the point where they are not counted as urban citizens. Their spilling over on to the roads amidst the lockdown did not merely expose their own helplessness but made them detectable to the state. The situation, in fact, is no better for the people living in the low-income urban settlements for decades, in general. For instance, slum dwellers in extended urban spaces adjacent to the KMC, like that in Howrah and North 24 Parganas,

who would commute daily to the metropolis to work either as industrial or daily wagers, face similar precarity due to the lockdown. Simultaneously, the vulnerability of these urban poor multiplies several times: first, owing to the increased risk of exposure in their congested living spaces; and second, due to the loss of livelihoods that delimits their ability to access healthcare if contaminated.

However, it would probably be too simplistic to assume social distancing as a middle-class prerogative, especially when the lockdown affects all those networks and linkages through which the economy and the society functions. While the distortion of these networks and linkages affects the population in general, those at the bottom layer of the economy are the worst affected. In this context, the pandemic

has not only thrown up unprecedented challenges for planning and governance, but will also reshape various aspects of socio-economic life, such as demographic density, social grouping, and social relations, in a way not imagined before.

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Remaking the Indian Military for Women Beyond the Babita Puniya Judgment

PRERNA DHOOP

The judgment in the Babita Puniya case illustrates the gender stereotypes, inequality and discrimination deeply embedded in the Indian military. Even when the "women's question" has been raised with respect to the army, it has been from the typical "male" standpoint.

The Supreme Court of India's decision in *The Secretary, Ministry of Defence v Babita Puniya and Others* (2020) is being widely hailed as a victory for women officers in their fight against gender discrimination as well as an enforcement of their right to equality of opportunity and equal access to appointment and engagement in the Indian Army. The division bench of the Supreme Court comprising Justice D Y Chandrachud and Justice Ajay Rastogi proclaimed in unequivocal terms:

The time has come for a realization that women officers in the Army are not adjuncts to a male dominated establishment whose presence must be "tolerated" within narrow confines. (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: para 57)

The nature of military institutions in India—both the structures and processes—are extremely masculine, having been male-dominated. So much so that it is men who have designed, constituted

and operated the "military" from their own point of view since time immemorial. Simply put, the military as we know it has always been "for, by, and of men."

The "women's question," with respect to the military, includes crucial matters pertaining to appointments, posts, service categories, cadres, remuneration and criteria for grant of Permanent Commission to Short Service Commission (SSC) officers. These matters invite limited judicial review because they constitute policy decisions and lie exclusively in the domain of executive functions as per Section 12 of the Army Act, 1950 and Article 33 of the Constitution. No wonder, the Union of India contended before the Supreme Court that restrictions on the employability of women in the army were "inescapable due to the peculiar operational compulsions of the Army."

The Women's Question

Women's position in the Indian military has been distressing with respect to the availing of the bundle of benefits, facilities, and privileges that were accessible to only men till now. Women had no pension benefits, no ex-service personnel status, no ex-service personnel contributory health benefits, no provision for re-employment, and a meagre encashment of only 90 days' leave compared to

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300 days for men. Among the 40,825 officers in the Indian Army, there are some 1,653 women officers. Further, there are about 11,500 officer vacancies in the Indian Army, with hundreds of officers being re-employed after retirement, but none of them are women (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: paras 37, 42[iv], 42[viii]). What is the cause and justification for this gross gender mismatch in the officer strength as well as the prevailing shortage of officers in the army?

With this reality before us, two questions arise. How can the typical male standards of the military be used to test the military readiness of females? How can “biological standards” be used as the sole threshold to exclude females from being inducted to the military fold? For example, as per the Ministry of Defence, the Government of India’s communication dated 25 February 2019, ssc women officers would be considered for the grant of Permanent Commission based on “their willingness, suitability, performance, medical fitness and competitive merit” (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: para 22). It is pertinent to note that these criteria are extremely subjective in nature, generally construed in light of the image of an “ideal male officer” as well as “masculine standards,” and are left to be interpreted by the male officers of the Indian Army. No wonder, women form a minuscule 4% of the total strength of commissioned officers in the army (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: para 38).

Although the women’s question is raised from a supposedly “neutral” standpoint, in reality, the presentation of the women’s question in the military, just like the institution itself, is the work product of men. The gender-blind approach of the military is quite problematic because this so-called claim of neutrality is often a cover for the typically male-oriented and discriminatory military policies and practices (Davies 2017: 223–97). Then, how do we appropriately raise and present the women’s question in the military context?

We cannot erase crucial biological differences that exist between men and

women. Also, overlooking substantive differences between men and women would be an incorrect and inappropriate approach. An express acknowledgement, open acceptance, and a careful study of the unique characteristics of women’s physiology and psychology should be the starting point. The one-size-fits-all approach cannot work effectively when it comes to the military as an institution. Rather, the prevailing circumstances, biological needs, and social vulnerabilities of women must be studied, and the military policy and practices be rethought, redesigned, and retuned accordingly, to accommodate “Her.”

Equality of opportunity does not mean invisibilising and completely ignoring differing features and unique characteristics existing among human beings. On the contrary, the concept of “substantive equality of opportunity” means to acknowledge as well as accept human beings along with their differences; embrace them all without discrimination and accommodate one and all within the institutional fold (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: paras 52–56; Davies 2017: 230). Ironically, even after a 49-week rigorous training period, same as their ssc male counterparts, female officers have been deprived of their legitimate dues solely based on their physiology (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: para 13).

Transcending Biology

At this juncture, it is pertinent to transcend the realm of biology because, by its understanding alone, we would never be able to answer the women’s question properly. As Simone De Beauvoir (1972: Chapter 1) has very aptly reasoned:

We must view the facts of biology in light of an ontological, economic, social and psychological context. The enslavement of the female to the species and the limitations of her various powers are extremely important facts; the body of woman is one of the essential elements in her situation in the world. But that body is not enough to define her as a woman; there is no true living reality except as manifested by the conscious individual through activities and in the bosom of a society.

As such, the state and society in India must realise and understand that

physiological traits described in the terminology of “weakness” and “strength” are actually representative of social conditioning and patriarchal viewpoints rather than real barriers in the achievement of human potential. Unfortunately, these notions of being male and female and the ideas of the physiological limitations of females are so deeply embedded in us that they are inextricable from our personalities, institutions, and processes. Probably, that is the reason why it has taken years for the male officer brass in the Indian Army to extend the tenure of engagement for women from five years in 1992, to 10 years in 1996, to ultimately 14 years in 2005.

The Supreme Court in the *Babita Puniya* case observed that through the grant of Permanent Commission as well as leadership roles to women in the Indian Army “except in combat roles,” the Government of India had recognised that the physiological features of a woman have no significance to equal entitlements under the Constitution.

Women’s employability in combat roles has also been the prerogative of males who do not think that women are capable of performing as well as their male counterparts in the Indian Army. No wonder women have been restricted to ancillary categories like Combat Support Arms and Service. Although 30% of all women officers in the Indian Army have been posted in combat zones—sensitive places and field areas—where they have, in the past, performed combat roles when the situation demanded, the institution fails to formally acknowledge their combat readiness and further rejects the proposal of recruiting women in combat operations (*The Secretary, Ministry of Defence v Babita Puniya and Others* 2020: para 54). The military is following an either/or approach: if steps are taken to induct women in non-traditional roles in which they were not appointed previously, then men in similar roles would be greatly disadvantaged. However, the point is that if the army can equip males to face hazards efficiently, why can it not equip women with the special skills needed to perform effectively in combat roles?

The Supreme Court, in the Babita Puniya judgment, has illustrated as many as 11 instances documenting how women officers of the Indian Army have brought laurels to the force and the nation. They have served in the United Nations Peacekeeping operations in conflict-ridden Congo and Burundi, fought terrorists in Afghanistan, transported and handled convoys in militant-prone areas in Leh, Srinagar, Udhampur and in the North East, and participated in active combat scenarios in Syria, Lebanon, Ethiopia, and Israel.

At this juncture, we must not forget that it took ssc women officers almost two decades of sheer perseverance and patience to achieve this landmark victory inside the courtroom in their fight against a male-dominated Indian Army. It would be grossly incorrect to think that the fight against male domination within the military is over with a legal pronouncement from the ivory towers of justice. The years of continuous struggle by women officers for equality of opportunity will continue outside the courts and within a male-dominated military. After all, the real gap that exists between *de jure* equality and *de facto* equality, in this case, is in the mentality of the male brass, in both the institution and its processes, which is where the change needs to happen.

Militaries around the World

It is important to study how other countries in the world have addressed the women's question pertaining to the military, particularly women in combat roles. For example, the United Kingdom (UK), the United States (US) and Australia have opened all combat roles to women without lowering entry standards or exposing them to higher and unmanageable risks by rethinking as well as rewriting the physical employment standards (PES) for military personnel and adopting effective mitigation strategies (Kamarck 2016). The "Women in Ground Close Combat Findings Paper" noted that the UK Army's physical selection standards were outdated because these standards were based on science and the military context of the 1990s, and that the armed forces equipment, doctrine, and the average weight

carried had completely changed since then (Ministry of Defence 2016a). The report acknowledged that a systematic and thorough rehaul of the entire military institution and its processes was required in order to achieve a diverse as well as a multitalented workforce and an optimal "job-person fit" and also to ensure that the standards are maintained.

As such, the "Interim Report on the Health Risks to Women in Ground Close Combat Roles" prepared by the UK's Ministry of Defence (2016b) recommended that:

- (1) New optimised Physical Employment Standards for GCC [ground close combat] roles are developed and implemented.
- (2) Optimal, progressive physical training strategies, with special consideration for upper body strength and load carriage performance, are delivered through-career for women (and men) in GCC roles.
- (3) Interventions to reduce overtraining (e.g. excessive distance running) are introduced.
- (4) Initial training is undertaken in a single sex manner.
- (5) Women in GCC roles are monitored through-career for early signs of injury and/or ill-health by an occupational physician.
- (6) Education on injury risk, ill-health, and preventative strategies is provided to all leaders and personnel.
- (7) Provision of, and access to, Mental Health First Aid is made available and strongly encouraged at Unit level.
- (8) Education on appropriate training, post-partum requirements, and dietary needs for women in GCC roles is provided in an updated 'Servicewomen's Guide'.
- (9) Research is continued to identify the causes of injuries, mental ill-health, and impaired reproductive health so that that bespoke mitigations can be developed for the UK Armed Forces population.

With these insights, it can be reasonably concluded that a people-centric approach must be adopted by the Indian state and military rather than blindly applying a male-centric approach to address the women's question in the armed forces. In May 2019, Flight Lieutenant Bhawana Kanth became the first woman fighter pilot in the Indian Airforce and in December 2019, Sub Lieutenant Shivangi became the first woman pilot in the Indian Navy (Joshi 2019; Gurung 2019).

Despite these major achievements, being treated as the "other" and "lesser" within the military fold on the basis of a subjective evaluation by male officers and

outdated male standards, being deprived of the bundle of benefits and privileges like promotions, ranks, pensions, and other facilities vis-à-vis their male counterparts is dishonourable, discriminatory, and demotivating for servicewomen. Their fight for equality within the military fold has just begun.

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Walls That Speak

Visual Background as a Window to the Social Background

MAHASHWETA BHATTACHARYA

In a time when online education is becoming prevalent, an aspect of it that needs to be discussed is that of social disparities and embarrassments made visible by video conferencing. Visual backgrounds in these conferences can be looked at as a concrete entry point into how the system displaces a large section of students from access to and equity in education.

With indefinite lockdowns and self quarantines in full swing, education today has come to be effected in unprecedented ways. The shift from classroom to a device is one that Indian academia has been trying to put off for the longest time, with many conferences organised and journals brought out to collectively address the issue of what an educational institution is and what it stands for. The debate within which I place my arguments here is well marked by the category of “digital divide” and I will only help the same dig its heels deeper into the sands of inequalities, curtains to which have been suddenly lifted by a virus.

What might appear to be a speculative leap in argumentation is substantially supplemented with descriptions gathered from over a dozen online lectures attended over platforms as safe as Google Hangouts or as treacherous as Zoom. This is long after worldwide propositions to widen the horizon of traditional anthropological methods to incorporate emergent modes of social analysis as internet ethnography. Hence, I will allow myself the liberty to make theoretically grounded propositions about a specifically internet born phenomenon, based on my own participant observations therein. I also concede that the arguments I make hold well only within the ableist discourse of the capacity to see and the case of visual impairment calls for an alternate mode of engagement.

Visual Politics

The intrusive and exclusive front camera has ceased to be a matter of mere choice and has cakewalked into the prized territories of education. This article is a peek into the visual politics of video conferencing as a necessary mode of engagement and of asserting one's

presence in the spaces of higher learning that are already marked with rugged ridges of inequality and lack of access. I take up the “background” in this new mode of visual engagement as a concrete entry point into these socioeconomic dispositions.

The visual composition of one's frame that is depicted by the front camera is defined by the self as the central subject and the backdrop is against which this subject is juxtaposed. First, the image-self needs to be curated consciously with the artificial elements of clothing, hairstyle, and make-up that add up to convey a particular mood or setting to the audience. Second, the camera angle, distance, and other technicalities feature into the composition of the image-self. Third, the body language or facial expressions feature as a communicative device within this established visual dialectical discourse. Along with these three elements that directly constitute the image-self, it is extremely crucial to theorise the space outside the contours of the self, the background that at any moment takes up more than one-third of the visual frame and forms the canvas upon which the visual performance is depicted.

I use image-self instead of just “self,” to draw attention to the critical departure in self-making that is enabled by and for the front camera. For in real life self-making, there is a process of learning that is acquired over time, through experiences and interactions. Here one is left to adjudicate the quality or merit of one's self, based on the quality of these experiences and make alterations accordingly. Thus, the conscious performance of the self, in reality, is then a product of part memory and part imagination, where a memorised self is enacted that is imagined to be the most effective in a situation.

However, there is a marked shift in the case of the virtual self, performed before the front camera that acts as a very tangible looking glass.¹ It captures and presents before us our theatrics in self-making in real time and, therefore, makes us critical spectators to our own performance (Jurgenson 2019). Not only am I acting out my best image that is

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equally learnt and memorised, but the presence of an actual image manifestation of my performance as opposed to an ambiguous imagination, makes me more conscious of my self within these theatrics.

Within this frame(work), the background is both the empty canvas that enables the visualisation of the subject, as well as the subject itself that is visible in the frame. Its ideal emptiness helps complement the abundance of the human subject in the rectangular scope of the screen and it must suffer in comparison to the master (here, the image-self) such that the subjectivity of the image-self is well-defined, autonomous and absolute. Therefore, the backdrop must, in a sense, submit to the visual authority of the subject, to help it retain its subjectivity, and never become the subject itself. However, at the same time, the background also supplements the subject in the frame. It adds to their subjectivity and the image-self, tells us things about them, and has the capacity to

distract the viewer's gaze away from the subject self.

The Background

There lies the possibility of a conflicting and competitive relationship existing between the image-self and the background. The visual background has the capacity to deliver a commentary on the social background of the individual, and tell us things about them that are beyond the artificial curation of the self. It is like that embarrassing first meeting with the friend's family where they would not shut up about childhood tales of embarrassment. The visual background, therefore, opens up as the socio-economic background of the subject and thus one feels the constant need to look for a wall that does not speak too loud or too much outside the carefully prepared script of their curated subjectivity. Thus, even before the visual conversation starts, one has to pre-empt the possible tidbits of information that might be passed on to the viewer through the composition

of image-self, camera, and background that they choose.

Herein also comes another crucial metaphor that is useful for our exercise—that of having one's back to the wall. While this commonly used metaphor in English finds adequate, if not an exact, substitute in almost every language, it is used to signify a stressful situation when one's choices or ability to act are limited. I locate similar helplessness in the establishment of a background to one's self and content that is both palatable to the viewer as well as agreeable to the discourse set up through the conference. For instance, when I talk to my closest friends I do not think much of my ambience of abandon and mess playing peek-aboo from the nooks and corners of the room, but I would certainly steer clear of such candid compositions while I am in a class conference. In such formal settings, the neutrality of walls or concealment of curtains is sought over an ample display of one's natural disposition. Any sort of exhibition demands either a

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planned curation of the items on display or confidence that the state of abandon fits the visual criteria of the meeting set-up. In more radical and rare cases, the abandon, however, may be a sign of rebellion. Here, I argue that the confidence to go candid stems from the extreme privilege of sorts. The myth of the candid composition in photography is perhaps one of the loudest proclamations of privilege in the modern technocratic era. It is representative of an abundance that looks as good carelessly scattered as painfully curated.

I will try to trace the ideas laid above in some concrete instances. I study in a public university that still houses a better demographic representation of India than any other university in the country. This means I study alongside students from all parts of India, several of whom are from the most underprivileged backgrounds. There are gradually dwindling provisions to ensure greater access and ease of education for those in need. The beauty of such an idea as a public university that has standardised deplorable dormitories and hostels, terrible non-fancy mess food against nominal fees, and availability of financial assistance, is the relative equity of the residential space.

There is only so much one can do to those dilapidated rooms of Godavari hostel that host boisterous cacophonies after dusk, which soon spills over to the dhaba downstairs before ending in the delectable egg rolls of Ganga dhaba at midnight. These are romantic visuals that any passionate/dispassionate lover of Jawaharlal Nehru University would paint while talking about the space. But what any of these paintings would lack is a spontaneous overflow of excesses and expenses. The informal system of student camaraderie, that we give little credit to, easily makes room and comfort for whoever sets foot onto the campus, from whichever rung of the society. The visual markers of clothing, I concede, have the possibility of creating barrages, but people usually steer clear of branded clothes once they discover Sarojini Nagar market and the comfort of tattered shorts.

The visual politics of the university changes drastically when the physical space is dismantled and forcefully

packed into the few inches of screen space. The ubiquitous equity of campus is replaced by the utter vulnerability of home. While the online mode of learning comes with the catchphrase of “learning from the comforts of one’s home,” it unfairly assumes the home to be the repository of comfort that is conducive to learning. It presupposes an atmosphere of calm and quiet where an individual is likely to be able to absorb all subjects with equal ease. Even if one gets across the technological hurdles of device and internet service, they are thrown open to the inescapable torture of the visual medium, the compulsion to make visible the markers of one’s background.

The visual background appears as a reflection of one’s habitus. This at once displaces a humongous section of the society from the visual equity that a campus space upholds. It throws them open to an embarrassment of an unforeseen character that goes way beyond the commonly discussed pointers of merit and means. A socio-psychological dilemma as novel as the coronavirus stands in the way of affirmative structures that otherwise ensure access to all. The situation is perhaps less unsettling in private universities which by virtue of steep slabs of fee structures, happen to be an extension of the private space one inhabits, or in other words, the university is an extension of one’s home. The visual politics of both these spaces then perform well within the structured domain of class aesthetic. What comes out naked is the social divide that public university spaces help bridge and transcend. One is constantly reminded of one’s poverty in both financial and aesthetic terms—a consideration that taints the process of education as well as peer group interaction where one’s background is suddenly thrown open to peer exhibition and scrutiny. The bid to conceal, be it visual, audible, or other sensory markers of one’s identity that are picked up by the cellular device then becomes the primary preoccupation for some students and adds to the multifarious impediments in their personal lives that they have to overcome to get educated.

This mode of interaction demands of the student, not just the efficiency to pick up bits and pieces of the lessons

manifested by the instructor, but also comes with the latent suggestion that one must learn and try to replicate an aesthetic sensibility that either the teacher puts up or that the peer group embodies. It could be a professor who chooses to situate oneself against the backdrop of an enviable personal library of first editions or a classmate who perhaps unintentionally leaves within the frame a ukulele that they took a break from to attend the class. Such visual markers of ability, in this little language game of visuals that goes on as a supplementary pedagogy, automatically lend others disabled to perform.

Aesthetics then not only defines one individual as separate from another but also by virtue of that difference that can be hierarchically organised, it becomes a prescriptive category in itself. Education thus succeeds in creating not just knowledge-based aspirations to know as much as or as well as the pedagogue, which could be the teacher or peers, but also sets high and almost dishearteningly insurmountable standards of aesthetic aspirations that go on to stand for a plethora of other things. I read these visual stimulations placed within the convenience of phone screen education as triggers that harass, torture, and cripple a student and assert inequalities that reaffirm the need for spaces like public universities that help neutralise such blatant ridges in backgrounds.

NOTE

- 1 These concepts of construction of the self borrow from the school of symbolic interactionism in sociology, most notable of which in this context are Cooley for his looking glass self and Goffman’s dramaturgical self, which find maximum relevance in this mode of visual subjectivity that I propose.

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Peasants and Their Interlocutors

Swami Sahajanand, Walter Hauser and the Kisan Sabha

MANISH THAKUR, NABANIPA BHATTACHARJEE

REVIEW ARTICLE

Few unpublished doctoral dissertations may have been cited as frequently as that of Walter Hauser titled “The Bihar Provincial Kisan Sabha 1929-1942: A Study of an Indian Peasant Movement.” For decades, this dissertation has been referred to by students of agrarian history and peasant politics, thanks to its two copies having been made available by the author at the A N Sinha Institute of Social Studies, Patna and the Nehru Memorial Museum and Library, New Delhi. The dissertation, completed in 1960 at the University of Chicago, has finally been published with a foreword by William R Pinch, an eminent historian of Indian peasants’ religio-ascetic universe and one of Hauser’s students (Hauser 2019; Pinch 1996, 2008). For Hauser, who passed away on 1 June 2019, his doctoral work heralded a lifelong scholarly commitment to the world of Bihar peasants, and more importantly to the life and legacy of one of their tallest leaders, Swami Sahajanand Saraswati. This commitment and labour of love reached fruition in the publications of edited translations of Swami’s Hindi memoir *Mera Jivan Sangharsh* in two avatars: *Culture, Vernacular Politics and the Peasants: India: 1889-1950* (Hauser and Jha 2015) and *My Life Struggle: A Translation of Swami Sahajanand Saraswati’s Mera Jivan Sangharsh* (Hauser and Jha 2018).

The former is an extensively researched volume with meticulous contextual end-notes, placing the life and activism of Swami in the context of his times and academic scholarship in general, and the latter is for the express purpose of making Swami’s memoir accessible to the wider reading public. Given that such well-produced volumes were already in existence, one fails to understand the need for yet another translation of Swami’s

Culture, Vernacular Politics, and the Peasants:

India, 1889–1950: An edited translation of Swami Sahajanand Saraswati’s *Mera Jivan Sangharsh* (My Life Struggle), Walter Hauser, Kailash Chandra Jha (translated and ed), New Delhi: Manohar Publishers, 2015; pp xlv + 708, ₹2,295.

My Life Struggle: A Translation of Swami Sahjanand Saraswati’s *Mera Jivan Sangharsh*, Walter Hauser and Kailash Chandra Jha (translator and ed), Delhi: Manohar Publishers, 2018; pp 434, ₹995.

The Bihar Provincial Kisan Sabha 1929–1942:

A Study of an Indian Peasant Movement, Walter Hauser (Foreword by William Pinch), Delhi: Manohar Publishers, 2019; pp 265, ₹1,495.

memoir by another publisher (Pradhan 2019). But then the publishing market has its own logic, and we should, in any case, appreciate the increasing salience of Swami’s work in our post-everything and decolonising times.

At a time when scholarly interest in peasant society and culture is at its ebb, it is hard to invoke the excitement that would have propelled an American historian and South Asianist like Hauser to the dusty villages and blood-stained fields of south Bihar in his enterprise of capturing the evolution of Swami as the most effective advocate for peasants, and especially over time for landless agricultural labourers. Surely, he would have been attracted by the intriguing story of a sannyasi whose religio-ascetic commitments seamlessly dovetailed into the increasingly militant peasant activism and radical agrarian politics that he spearheaded for close to two decades in the latter half of 20th-century India. William Pinch in his foreword to Hauser’s work captures some of this excitement when he writes,

[it was] a world where change was being propelled not in urban centres but in the village and countryside, and a world in which a leading proponent of that change was a man

who insistently defined himself as a *sannyasi*, a staunch representative of a brahmanical religio-ascetic tradition with deep civilization roots, a *dandi sannyasi* unabashedly proclaiming his high-caste birth but showing no hesitation in converting the same *dand*, the ritual staff, into an instrument of peasant rebelliousness and to be used on their behalf, a rare instance of instrumental use of the weight of brahmanical religious tradition to demolish structures of oppression and create radical transformation. This was tradition in the service of change. (2019: 24–25)

Indeed, there have been other instances of religious men participating in, and leading the peasant movements; Baba Ramchandra of Awadh is an oft-quoted case (Siddiqi 1978). However, Swami’s political trajectory is a unique one as he went through manifold activism of his times—social reforms through caste association, Indian national movement under Gandhian influence and peasant movements—to reach the pinnacle of his political influence as the general secretary of the All India Kisan Sabha in 1936. Subsequently, as he increasingly got enmeshed in national politics through his short-lived association with Subhas Chandra Bose’s Forward Bloc and the communists in general, he started losing influence as a peasant leader and ultimately passed away in 1950 as a man lost in political wilderness. Gail Omvedt characterises Swami’s political predicament succinctly:

Swami was in a sense a historical loser: his “external” enemy, the Congress came to power in India, his “internal foes,” the Communists, captured the All India Kisan Sabha—and their analytical framework, which characterised peasants as class-divided and at best ambivalently revolutionary and recognized only the rural proletariat as a firm ally of the working class, remains largely hegemonic today. (1996: 104)

Yet, Swami Sahajanand Saraswati holds a fascinating vantage point by the sheer act of having produced an Indian history

of a peasant struggle through his memoir. As someone who lived the history of peasant struggles and represented it to others, his life raises issues of representation of peasant politics in the academe. Not only is his memoir suffused with a certain intimacy, detailed everyday-ness of peasant struggles and ethnographic richness, but is also a source of sustained questioning of the externally fashioned conceptual categories of peasant politics and agrarian social structure.

Peasant Political Consciousness

In the 1930s, as Walter Hauser reminds us, the Bihar Provincial Kisan Sabha (hereafter the Kisan Sabha) was the most significant mass movement sharing a complex relationship with the Indian National Congress. The former helped provide an economic outlook to the latter and in the process led to attempts at radicalising both the agrarian and national politics. The militant activities of the Kisan Sabha surely paved the way for the abolition of the zamindari system after independence. Even otherwise, the Kisan Sabha had been a source of steady pressure on the Congress for radical agrarian change. Besides, the development of leftist political currents in the province, then (and later), also owe something to the influence of the Kisan Sabha. Hauser is categorical in asserting that

If there was a widespread political and agrarian consciousness, the agitations of the Kisan Sabha contributed to it. It was precisely when the leadership of the Kisan Sabha came into basic conflict with the political interests of Indian nationalism that the movement became unimportant in the province. During the period of the Congress Ministry, there were important differences in the interpretation of the peasant's role in the national movement. In fact, the Kisan Sabha maintained that it expected more and consequently demanded more during the period of the Congress ministry. How do you articulate specific class demands in a political system dominated by a party which eschewed class conflict and divisiveness that comes with it? The Congress was indeed a political movement conservative in character, and therefore the differences between it and the class demands of the Kisan Sabha were more pronounced. The divisive character of the Kisan Sabha became crucial after 1941. (2019: 188)

It is important to remember that Hauser has been a historian with an anthropological bent of mind much like

his dissertation supervisor Bernard S Cohn. Moreover, throughout his professional career, he steered clear from the Marxist debate about the lack of political consciousness among the peasantry. This lack, the Marxists argued, was due to a host of factors such as the parochial limits of peasant revolts, the divisions of caste, the immense gulf between the peasantry and the menial proletariat, and the deeply rooted authority of the zamindars. Taking issue with the Marxist historian Irfan Habib, Hauser unambiguously underlines the fully formed peasant political consciousness as evidenced in the Kisan Sabha movement.

Equally important is Hauser's refusal to get carried away by the apocalyptic charm of subaltern historiography that held such a sway in the field of peasant studies following the publication of Ranajit Guha's 1983 work *Elementary Aspects of Peasant Insurgency in Colonial India*. That is why, unlike the subaltern scholars, Hauser could never make light of the domain of legal-political relations, and take refuge under everyday forms of peasant resistance. For him, peasant activism was, to borrow a metaphor from Radcliffe-Brown, as real as a seashell. The Kisan Sabha implied "explicit struggles on the ground and in the fields and villages of Bihar directed at realizing specific legal rights to the land and its crops, and that melded over months and years into a powerful kisan andolan, that is, peasant movement" (Hauser and Jha 2015: xxxvi).

Sure enough, the Kisan Sabha movement was limited in terms of time, area and the number of peasants directly affected. The movement mostly revolved around the tenancy rights of peasants, the price problem and the various forms of illegal exactions by the land-controlling zamindars. In matters of leadership, it was a strong movement of agitation, though it was not organised structurally as a party because of the impatient but articulate leadership that Swami Sahajanand Saraswati provided. In the words of Hauser,

He was a swami who sought change, a charismatic revolutionary. So long as he maintained that attitude within the framework of the nationalism which sustained all political activity in India during this period, the movement was effective. When he was attracted to

ideological politics of the anti-nationalist left, he and the movement he had created found little or no support among the peasants of Bihar. (2019: 189)

Scholars of the Kisan Sabha agree that in the late 1930s, and especially from 1939, Swami became increasingly involved in national political concerns. His communist associations grew in this period, and his political position on World War II as people's war (after the entry of Russia into the conflict in June 1941) through an All India Kisan Sabha resolution along with the communists, and his abstention from the Quit India movement in 1942 created unbridgeable rift between him and his supporters. Even as Swami became subsequently disenchanted with the political programme of the then mainstream left, and in 1945 parted with the communists to seek new political alignments, he miserably failed. By that time, he had already alienated both his close associates among the Congress socialists of the earlier Kisan Sabha days and his mass support.

Hauser reads Swami's ultimate failure as the outcome of a series of errors of political judgments on Swami's part. Evidently, Swami had misjudged the sentiments of the peasants of the militant agitation of the Kisan Sabha when it came to the national question. Other historical conjunctures like restrictive measures on political activities during the war, the Congress being rendered leaderless through mass arrests and the internal divisions within the Kisan Sabha, particularly between Swami and the Congress socialists over the support to the Quit India movement, contributed to the decline of the once powerful movement. By 1940, the Kisan Sabha movement effectively ceased to function in Bihar and in India. Swami himself had earlier resigned from the Bihar Congress Working Committee in January 1938 on the charges of inciting violence that the provincial Congress leaders had levelled against him.

In effect, the Kisan Sabha never regained its political vitality as a class based organisation despite its being a peasant political front of the mainstream communist party in the post-independence period. One may argue that the Kisan Sabha ideology and activities somehow

continued to inform the agrarian agitations of the Communist Party of India (CPI), and to some extent socialists of different hues, in the first few decades after independence. But any simplistic equation between the present-day Kisan Sabha and Swami's Kisan Sabha, or the characterisation of the former as the legatee of the latter, would be an exaggeration of huge proportions, the uniformity of nomenclature notwithstanding. Quite noticeably, Bihar has witnessed steady erosion of class-based politics leading to the near eclipse of an agrarian political agenda (Thakur 2013).

In any case, 1936 was the peak year for the Kisan Sabha when it urged an acceptable agrarian programme on the Congress, and with the promises and pronouncements of such a programme the Kisan Sabha extended its full support to the Congress in the election campaign. This was also the year of the internecine left-right tussle in the Congress in the wake of its Lucknow and Faizpur sessions. Be that as it may, the Kisan Sabha could formulate and articulate a set of basic and long-range demands.

The Kisan Sabha called for the abolition of the zamindari system, elimination of agrarian debt, creation of a system of peasant ownership of land, and the provision of gainful employment for the landless. Its other key demands were for fixity of tenure, rights of free transfer, protection against attachment of property and goods, abolition of all produce-rent systems, cancellation of rent arrears by at least 50% and prevention of further enhancement, full protection regarding rent receipts and illegal exactions, and the elimination of certificate powers of rent collection. One can clearly see the influence of the socialists and the clear impress of Swami on this charter of demands. Through all this, Swami emerges as the towering leader in consistent and close touch with the agrarian conditions peculiar to Bihar. And, he never shied away from forcing this understanding either on the Bihar Congress leadership or on the broader political movement of his times.

Inevitably, Swami's radical agrarian agenda and its incompatibility with the character and the policy of the Congress

lay at the root of conflicts that ultimately devoured the Kisan Sabha. These conflicts reached their crescendo during 1937–39 when the provincial Congress ministry in Bihar brought about the tenancy legislation to offer relief to the peasants. The conflicts were as much about the contents of the tenancy legislation as the manner in which it was effected (through compromise between the Congress and the leading zamindars of the day).

Given the subsequent attempts to (mis)appropriate Swami's political legacy by the sectional political leaders belonging to a range of parties, from the Bharatiya Janata Party to the Janata Dal (United) (Thakur and Bhattacharjee 2012, 2019), it needs to be emphasised that

Kisan Sabha did not have basic caste motivations throughout the period of its primary strength. It was essentially an agrarian agitation, notwithstanding the prior involvement of Sahajanand in Bhumihar causes and the occasional interjection of caste considerations during the movement ... but during the heat of the movement in the 1930s Sahajanand was a peasant agitator, not a casteist. (Hauser 2019: 110)

This point needs reiteration as there has been a tendency in some quarters to dub Swami Sahajanand Saraswati as a leader of the high-caste tenants alone. Even as most of the leaders of the Kisan Sabha

were drawn from the upper castes (primarily Bhumihars), there is ample evidence to demonstrate that the participation in militant peasant agitations cut across caste divisions. Also, the Kisan Sabha leaders fought against the zamindars who mostly belonged to the same caste of Bhumihars. And, Swami got no political breather during the Congress ministry headed by a Bhumihar simply because he was once one of their leaders for social reforms. Instead, he was castigated by the Bihar Provincial Congress essentially in his capacity as a militant peasant leader out to destroy the former's plank of social harmony and non-class based politics.

To project Swami Sahajanand Saraswati as a political icon of a particular caste (the Bhumihars) or a group of castes (generally the upper castes) is not only a grave injustice to this "organic intellectual" and leader of one of the largest peasant movements of 20th-century India but also amounts to the perpetuation of a deliberate and dangerous ignorance about the multifaceted thinking of an enviable autodidact.

Agrarian Culture of Exploitation

Students raised on the standard textbooks of peasant history and agrarian sociology may be more than surprised to learn that

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Swami Sahajanand Saraswati considered agrarian labour or rural proletariat (*khet mazdoor*) as peasants. Likewise, while the much-debated “middle-peasant thesis” in Marxist historiography saw much revolutionary potential in them because of their structural independence from the markets, Swami viewed their interface with the market as a strategy of survival rather than a genuflection to capitalist agriculture. Swami was equally open to technological inputs into agriculture while the Marxists would expend much of their political energy in transforming social relations of production in agriculture ahead of any major technological innovation.

This issue has particular Indian resonance in relation to the green revolution technology, which was held to benefit the rich peasants in the absence of the required overhauling of the social relations of production (Dhanagare 1987). Moreover, one has to merely recall the characteristic arguments of the “mode of production debate in Indian agriculture” to appreciate the differences between Swami’s understanding of the agrarian question and that of the Marxists (Patnaik 1990).

More importantly, Swami fell short of advocating for collectivisation of agriculture, *a la* communists; at most he recommended the formation of cooperative farms in the villages. Excluding zamindars, Swami consistently fought his struggles through a united front of peasant classes, including the substantive tenants whereas the rich peasant as an agrarian category has been an anathema to orthodox Marxists. For want of space, we do not go for the elaboration of the agrarian question in Marxist tradition (for a useful summary, see Bernstein 1996).

Suffice to say that for Swami, the usual Marxian distinction between peasants and farmers was redundant for the large masses of population (whose leader he was) who earned their livelihoods through land and lived in what Swami characterised as *grihastha ashram*. It is not that the latter is independent of the relations of power and dominance that categories such as caste and class embody. Our point is to underline the fact that Swami was, in essence, talking of

the entire ecosystem of rural livelihoods that revolved around land irrespective of one’s ownership status. And, such an understanding included landless agricultural labourers whose well-being was seen to be intimately linked with the overall agrarian prosperity.

At a more fundamental level, Swami could never reconcile to the idea of peasants playing second fiddle to the proletarian or nationalist revolution. His fierce advocacy of the autonomy of peasant politics, and his open repudiation of the ideology that castigated the peasantry as a “reactionary” and “conservative” force given their hunger for land, propelled him into a category of his own, notwithstanding his obstinate insistence on red flag being the flag of the Kisan Sabha.

His avowed celebration of peasant militancy sat uncomfortably with the classical Marxian characterisation of peasantry as a sack of potatoes. Likewise, the Marxian notion of rural idiocy seldom made any sense to Swami who found India’s villages as the springboard of some of the most valiant peasant struggles ever launched in Indian history. No doubt, his distinctive understanding of peasant politics turned him into something of a loner towards the fag end of his political career as his dream of a robust All India Kisan Sabha floundered on account of the internecine ideological wars during World War II.

Hauser’s two earlier edited and translated volumes of Swami’s work—*Sahajanand on Agriculture Labour and the Rural Poor* (Hauser 1994) and *Swami Sahajanand and the Peasants of Jharkhand: A View from 1941* (Hauser 1995)—do bring to our notice Swami’s nuanced understanding of the agrarian culture of exploitation that prevailed in the Indian countryside in the first half of the last century. Sadly though, his understanding of the agrarian social stratification and the place of peasants in revolutionary social transformation has failed to engage the academic attention of social science practitioners (sociologists in particular) in our country. Quite predictably, courses on agrarian social stratification in Indian universities begin with Lenin’s fivefold classification of peasantry, and through Mao’s

modified class analysis, winds up with the never-ending debate on the role of the revolutionary potential of different agrarian strata.

If only Indian students of agrarian economy and politics would have cared to read one of Swami’s most insightful political tracts, *Kranti Aur Sanyukta Morcha* (yet to be translated in English—a task that Kailash Jha can ably initiate), they would not have to wait for the Hamza Alavis of the world to help identify the most appropriate allies of the proletarian revolution in predominantly agrarian societies.

Nor could Swami ever be trusted as an ally of such political forces whose quest for social revolution made them champions of various caste associations. The leaders of the Triveni Sangh and the Bihar Dalit Varg Sangh continued to maintain a hostile attitude to Swami’s Bihar Provincial Kisan Sabha and its idiom of class politics. In fact, the Kisan Sabha was charged to have decelerated the processes of politicisation of the Dalit caste groups. So much so that Jagjivan Ram, the then tallest Dalit leader in Bihar, took the initiative to organise an independent Khet Mazdoor Sangh in 1937 to oppose the Kisan Sabha’s subsumption of agricultural labour under the category of peasants (Chaudhary and Shrikant 2005). What is generally forgotten is that it was Swami who made available a refreshingly new vocabulary of peasant rights and agrarian transformation at a time when the politics of competitive backwardness in caste terms had already started taking shape in Bihar.

In this sense, Swami played a pivotal role in the constitutive articulation of the identity of the *kisan* as a politico-economic class amidst the caste-ridden agrarian landscape of colonial India. It does not matter if his diagnoses were particularly original, or if he was simply a product of his times in his understandings and goals of peasant politics, so long as “he had both an ideology and a methodology with which to develop his ideas and inform his politics” (Robb 2007: 40). And, Swami belonged to that rare category of peasant leaders for whom no sacrifice was big enough if it came in the way of his political mobilisation of

peasant interests. After all, his steadfast allegiance to the peasant cause and an autonomous peasant organisation occasioned his steady quarrels with political formations of all ideological hues.

Production of Knowledge

At its innocuous best, one could argue that Swami's life and thought largely remained understudied, for much of his writings have been available in the Hindi language alone. But the recent publications, and the earlier ones (Hauser 1994, 1995; Hauser and Jha 2015, 2018, 2019; Pradhan 2019) render this premise suspect. Now that much of Swami's oeuvre is accessible to the English reading, and hence scholarly public, one hopes to see critical appraisal of Swami's life and legacy, and by implication of peasant politics and agrarian history.

Interestingly, the centrality of Swami to the peasant politics of the 20th century has been belatedly realised through the scholarly works of a Virginia-based historian—Walter Hauser. This opens up a host of questions about the preservation of papers, maintenance of archives and the access to such archives by scholars and researchers.

Hauser could do this much also because he had the far-sightedness of carrying the Swami papers to the University of Virginia for future preservation. As an anguished response to the allegations of possible theft of these papers by him, Hauser has on numerous occasions explained his professional intentions in writing. Now that the very same papers have been shipped back to India, and have rightfully reached the State Archives of Bihar and the refurbished Shri Sitaram Ashram at Bihta—the headquarters of Swami's Kisan Sabha movement—this unnecessary controversy should be laid to rest (Personal communication from Kailash Jha dated 18 July 2019; Jha 2019). One should also be grateful to Hauser for having earlier given and helped put together the Swami Sahajanand papers at the Nehru Memorial Museum and Library in New Delhi.

Yet, there is no denying that epistemologies of the South have been at a discount in the global academe; that the politics of global knowledge production

remains informed by the asymmetrical division of intellectual labour between the theoretical North and the empirical South. Not surprisingly then, that we come to realise the value of Swami's historic role in peasant movement only after the scholarly mediation of an American historian with the right resources, and fortunately for us in this case, the right intentions.

Some would argue that Swami Sahajanand Saraswati's works are reminiscent of the non-European intellectual traditions of knowledge by its sheer earthiness and penetrating insights into peasant life and culture. Maybe, one day students of agrarian history and politics will read Swami's work alongside *Development of Capitalism in Russia*, *Peasant Wars of the Twentieth Century* and *Peasants and Revolutions* as part of their university reading lists.

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Gender, Labour and the Constitution

INDRANI MAZUMDAR, SAUMYA UMA

Gender, Labour and the Constitution as the motif of this Review of Women's Studies emerged from discussions at the recently held 16th National Conference of the Indian Association for Women's Studies (IAWS) on the theme of "Constitutional Principles in 21st century India: Visions for Emancipation."

In times of neo-liberal hegemony, with its open advocacy of growth based on economic and social inequality, regardless of the cost to the livelihoods and well-being of the labouring majority, it is well to recall the perspective on labour in the Indian Constitution, at the moment of transition from colonial subjection to independence. It enjoined the state to secure

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women. (Article 39)

A living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, and social and cultural opportunities. (Article 43)

Just and humane conditions of work and maternity relief. (Article 42)

However, the current labour code legislations initiated by the state not only undercut existing social protections and labour rights, and severely restrict collective worker action, they also roll back some of the advances made by women workers.

The recognition of gender as an integral aspect of organisation of work, social reproduction, and social relations arising from labour, including unpaid work, is, of course, central to women's studies. Gender and labour has assumed particularly urgent relevance in the context of the extraordinary scale of decline in women's employment. An absolute fall of close to 47 million women workers in rural India (between 2004–05 and 2017–18) has not been compensated for by the pitifully small increases in urban women's employment. Within the workforce, the majority of women workers are concentrated in the most low-paid and unorganised segments, mostly denied equal wages, and large cadres of women workers have been refused recognition as workers by the government itself. Further, the unequal burden of unpaid work by women remains a sustained feature of the wage economy.

Despite such new and old adversities, the emergence of women workers as a dynamic force in several forms of worker struggles is a remarkable feature of the Indian landscape today that is sometimes left out of the frame. In a terrain of contending tendencies and paradoxes, research on gender and labour has often lagged behind developments. Bearing this in mind, the articles in this review issue aim to provide fresh insights and perspectives and new research.

Chirashree Das Gupta (p 30) argues that unpaid labour by women and caste-based modes of extraction have been subsidising the wage economy in India, further tilting the wage-surplus relationship in favour of surplus and profits. With reference

to the unfinished agenda of land reforms, she highlights the elements of compromise in constitutional emendation, and how women's constitutional rights were used against land reforms.

Suravee Nayak's (p 37) study of women's work in a coal mining town, in the context of dispossession of land and common property resources, draws on frameworks of social inclusion to argue that dispossession leads to adverse inclusion, particularly for Dalit women.

Sameena Dalwai and Aabhinav Tyagi (p 44) reflect on the lives of Dalit women in another setting—examining gender implications in anti-reservation judgments. While pointing to a judicial trend of diluting constitutionally mandated caste-based reservations, they focus on the less-written-about implications for women.

Anagha Sarpotdar (p 51) examines the operation of the law for prevention of sexual harassment at the workplace, with a rare focus on the functioning of district-level local committees for women employees in the unorganised sector. She provides an "insider" perspective on system-generated challenges, opportunities, and risks.

Saumya Uma and Aditya Kamath (p 59) examine the Maternity Benefit Act, 1961 and its 2017 amendments, contending that the lopsided approach of the act reinforces the gender norm of care work as the domain of women. They argue for a concerted role of the state to address entrenched patriarchy in employers discriminating against women.

Indrani Mazumdar and Neetha N (p 66) critique the absence of a gender perspective in the labour laws and of any labour rights perspective in anti-trafficking frameworks. They discuss the roll-back in the labour codes and criminalisation of young women's migration for work through anti-trafficking interventions.

This review issue was finalised during the lockdown due to COVID-19. Distress among workers and the tragic situation of migrants in particular were indeed made visible in the lockdown, although their gender dimensions less so. The concerns raised in this review issue address a set of more enduring questions regarding gender and labour, but they do indeed relate to underlying processes behind the scenes of labour distress as well as the open curtailment of basic worker rights and labour laws in the shadow of the pandemic.

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Social Reproduction, Constitutional Provisions and Capital Accumulation in Post-independent India

CHIRASHREE DAS GUPTA

The relationship between social reproduction and capital accumulation in independent India is delineated by arguing that social reproduction subsidises wages through unpaid labour time and thus is crucial in the extraction of additional surplus in the wage–surplus relationship that constitutes capital accumulation. This process is dependent both on constitutional provisions and existing social relations.

Every society produces to reproduce itself. Thus, production is and has to be for social reproduction. People, especially women, work to socially reproduce themselves and their kin to feed, clothe, and so on, and ensure their survival. Under capitalism, however, social production is fundamentally organised on the basis of socialisation of labour for the creation of surplus value, which is realised through the sale of commodities. A major part of this surplus value is privately appropriated as profits. The creation and distribution of value depends on the circuit of capital conceptualised as self-expanding value by Marx, whereby the value is divided between wages and surplus value (profits being a part of surplus value). It is the worker's labour power that is applied by capitalists for the creation of value. Part of the labour time of workers is used to produce value to cover the worker's socially necessary cost of living (the minimum cost of social reproduction of the worker). This is paid labour time in capitalism in the form of wages. The worker is made to expend labour time beyond this socially necessary labour time to create surplus value for the capitalist. This is pure unpaid labour time in capitalist production. Capitalism is, thus, historically specific in this construction of the wage–surplus relationship on the basis of paid and unpaid labour time. So, paid and unpaid labour together constitute the process of creation of marketable value under capitalism. On the other hand, there are many forms of activity that manifest at work but are not done directly to produce value for the market. Domestic work is the best example of such work but there are other forms too. While such work does not produce marketable value in itself, it is absolutely indispensable to the value creating process. It can take both the form of paid and unpaid work. This is the sense in which the concepts of paid and unpaid labour and paid and unpaid work are applied in this paper.

Social reproduction under capitalism is accordingly institutionalised to assist in value creation at minimum cost, keeping wages down to maximise the surplus value. This was Marx's original explanation in *Capital: Volume I* of the relationship between social reproduction and value creation in capitalism (Marx 1867). Laslett and Brenner defined social reproduction in relation to feminist theory.

Writing on the gendered division of labor, feminists use social reproduction to refer to the activities and attitudes, behaviors and emotions, responsibilities and relationships directly involved in the maintenance of life on a daily basis, and intergenerationally. Among other things, social reproduction includes how food, clothing, and shelter are made available for immediate consumption, the ways in which the care and socialization

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of children are provided, the care of the infirm and elderly, and the social organization of sexuality. Social reproduction can thus be seen to include various kinds of work—mental, manual, and emotional—aimed at providing the historically and socially, as well as biologically, defined care necessary to maintain existing life and to reproduce the next generation. And the organization of social reproduction refers to the varying institutions within which this work is performed, the varying strategies for accomplishing these tasks, and the varying ideologies that both shape and are shaped by them. (Laslett and Brenner 1989: 382–83)

Such a perspective on social reproduction seems to suggest that production itself has very little to do with social reproduction. While it focuses on some important aspects, it does not adequately theorise the historical specificities of social reproduction under capitalism. Earlier debates of the 1970s and 1980s had looked at domestic work as a systemic aspect of capitalism, which led to the demand for wages against housework (Federici 1975). But, this formulation was also argued against as it did not address the heart of the capitalist system in its subjugation of domestic work, and thus, wages for housework was argued to be not an emancipatory solution for women (Davis 1981). Unlike in previous societies, the wage–surplus relationship is at the heart of social reproduction in capitalism. This paper argues that the role of women in social reproduction in the capitalist production process subsidises specifically the wage component of the wage–surplus relationship to enable the share of the surplus to be expanded. For example, if women in the family stopped cooking, food will have to be bought from the market. This will increase the necessary cost of living for workers' families and wages will accordingly have to be increased to maintain workers in working condition. So, the unpaid work of women in social reproduction subsidises wages and keeps it low, which in turn increases the share of surplus value in the total value created in the capitalist mode of production. In this way, unpaid work of women in social reproduction is vital to the regime of capital accumulation.

In recent times, there has been a renewed interest in the social reproduction theory. In her much publicised edited volume, Bhattacharya (2018: 2) argues that “social reproduction theorists perceive the relation between labor dispensed to produce commodities and labor dispensed to produce people as part of the systemic totality of capitalism.” She proposes social reproduction theory “as a conversation between Marxism and the study of specific oppressions such as gender and race,” and “as developing a richer way of understanding how Marxism, as a body of thought, can address the relationship between theory and empirical studies of oppression” (Bhattacharya 2018: 4). However, the book falls short of delineating the role of social reproduction in capital accumulation by just confining itself to the question of who produces the worker. Nancy Fraser's chapter in the volume delineates the “social-reproductive contradictions of financialised capitalism” (Fraser 2018: 22). Despite its persuasive arguments, the focus on care as the synonym of social reproduction takes away from the rich understanding that emerged from Third World feminists about social reproduction being much more than care work for most women in the Third World (Ghosh 2009). It also moves away from the understanding that social reproduction is not just about the nature of work that it entails, but is a question about the

reproduction of the entire social system. So, this recent and deeper engagement with the link between social reproduction and capitalism also does not adequately theorise the role of social reproduction in the shaping of the wage–surplus value relationship in capital accumulation.

It may be noted that the process of social reproduction is neither teleological nor linear. Every society integrates into capitalism based on its own inheritance of social relations, which are in a state of continuous flux. This shapes the institutions of social reproduction in ways which are historically specific to each society. In this paper, we propose to delineate the specific historical and social process of reproduction that has marked post-independent India's integration into the global capitalist order.

India's integration into capitalism under the aegis of British colonialism meant that at the time of independence, India was a repository of a vast and cheap labour surplus that was created through a variety of means under the colonial modes of extraction. The drain of surplus and acute deindustrialisation led to pauperism, intense poverty, and propertylessness, which in turn contributed to the making of the vast labour surplus.

The post-independence economic and social trajectory in India not only failed to absorb this labour surplus, but also relied on existing social relations and modes of appropriation of surplus to produce and reproduce a working class that became cheaper over time. This was done through both intervention and non-intervention as policy tools. For example, the narrow definition of the worker (as someone who worked in a factory of a certain size) in various labour laws left out the majority of the informal labour force in the economy and the different types of employer–employee relationships that came with it (Das Gupta 2016). Changes in constitutional provisions related to property rights also contributed to perpetuation of the modes of extraction of surplus value. Liberalisation of the economy intensified these processes of labour cheapening through the dilution of the minimally existing labour rights paradigm to the extent that today, for every ₹10 of value produced in the formal organised sector of the economy, just 18 paise goes to labour (Annual Survey of Industries: 2016). Labour is not just cheap, it is virtually free in India.

Table 1 shows the average share of compensation of employees (which includes both wages of workers and salaries of managers, including high value chief executive officer and top management salaries) and the share of the operating surplus (a part of which accrues as profit). We find that in the private organised sector,

Table 1: Average Share of Compensation to Employees and Operating Surplus

Series Definition	Period	Average Percentage Share of Compensation to Employees	Average Percentage Share of the Operating Surplus
Private organised (1999–2000 factor income series)	1980–81 to 1992–93	55.59	44.41
Private organised (1999–2000 factor income series)	1993–94 to 1999–2000	35.02	64.98
Private organised (organised–public sector) (1999–2000 Series)	1999–2000 to 2007–08	33.21	66.79
Private organised (organised–public sector) (2004–05 Series)	2004–05 to 2011–12	30.50	69.50
Private corporations (2011–12 series)	2011–12 to 2017–18	36.48	63.52

Source: Author's calculation based on data from Central Statistical Organisation, various years.

from 1980–81 to 1992–93, the share of compensation to employees was 55.59%, while the share of the operating surplus was 44.41%. But, between 1993–94 and 1999–2000, the share of compensation to employees fell to 35.02% while the share of the operating surplus increased to 64.98%. Since then, up to 2017–18, this distributive trend has been maintained.

Given the inflated emoluments to top managers in the post-liberalisation period, the average share of compensation of employees suggests that the share of workers' wages has declined in the entire period under consideration. Thus, wage depression seems to have been the primary mode of labour cheapening in India in the last three decades.

How has this situation come to pervade the logic of capital accumulation in India? This is the fundamental question we pose in this paper. We argue that patriarchy, caste and religion, under the aegis of the state, create hierarchies of insecure citizenship and labour that combine the domains of work and labour—paid and unpaid—to reproduce more cheaper labour. Such a process, dovetailing into the competitive race to the bottom in which international finance capital through open markets relies on this cheap labour for maximum extraction of value, singularly accounts for the political economy of capital accumulation based on cheap labour as the driving force behind capitalism in India.

Our point of departure from existing theories of social reproduction on the one hand and liberal economic theory on the other is rooted in the following Marxist feminist paradigmatic premises. First, patriarchy is endogenous to the construct of the macroeconomy (Dewan 2011). The actual macroeconomic construct of patriarchy within which the social hierarchy of paid and unpaid labour operates, is very much a historical process in its social and economic specificity both in terms of time and space. Thus, the ahistorical abstraction of Homo economicus-based market systems is inadequate in its explanatory capacity either as a point of entry or as a point of departure in understanding and analysing actually existing capitalisms.

However, patriarchy is not a stand-alone institution. In India, it is shaped by caste relations in a fundamental way, and the two institutions cannot be understood in India except in relationship with each other. This is because caste sanctity is maintained through patriarchal norms, deriving from religion through the institutions of caste endogamy (prohibiting inter-caste marriages) and *gotra* exogamy (not marrying in the same *gotra*) (Ambedkar 1916). This is what gives sanctity to the family as the abode of social reproduction through the sanctity of caste. It operates at three levels. Control over women's bodies is to control their sexuality through monogamy, confinement, and caste and patriarchal segregation so as to ensure their labour time in the hierarchies of unpaid work for social reproduction.

Our analytical narrative in this paper is based on the following premises:

- (i) Capitalism, in its systemic dimension, has been dependent on both paid and unpaid labour time from its very inception.
- (ii) While it is a global system, it functions on the basis of several institutions that have both spatial and temporal specificity, as is evident from the discussion on caste. Both caste and

patriarchy mutate over time adapting to the needs of the regime of capital accumulation.

(iii) Of these, the combination of international market systems, nation states and family as a basic unit of organisation of society comprise the institutional terrain of the construction of regimes of accumulation.

(iv) The continuities and changes in the role of paid and unpaid labour in the accumulation process can only be established through the interstices of institutional hierarchies in social relations.

(v) In the Indian context, this co-constitutive rather than intersectional hierarchy for historical reasons is constituted not only by patriarchy but also caste and religion in the making of class (defined in terms of social relations in the Marxist sense rather than income status in the liberal paradigm).

(vi) By extension, these premises define the relationship between paid labour time, unpaid labour time and labour in unpaid work, and the nature and extent of the economic surplus which is appropriated as profit.

Property Rights and Constitutional Provisions

A significant aspect of the Indian national liberation struggle was the demand for land redistribution as a part of land reforms. This demand emerged with the increased participation of peasants and agricultural workers in various strands of the anti-colonial struggle. Landlessness was critically and overwhelmingly prevalent among women, Dalits, Adivasis and religious minorities. For women, landlessness assumed a different dimension from legal provisions of not recognising them as farmers, and hence, not owners of land. Thus, women cultivators fell in the category of the landless even when the family owned land. On the question of substantive land redistribution after independence, the main barrier was the power of landlords who had enough social and political power both inside Parliament and outside, but more importantly in the state legislatures.

In the Constitution adopted in 1950, Article 31 guaranteed the right to property, Article 19(g) protected the right to practise any profession, or to carry on any occupation, trade or business, and Article 15(3) provided for special provisions for women and children within the larger right to no discrimination.

On the one hand, using these constitutional provisions, landlords went to court against the different versions of the land tenure regulation acts and the abolition of the Zamindari Act, pleading protection for "their women and children" and their right to property and freedom to carry on occupation, trade and business. On the other, there were larger agitations and legal battles on the implication of the right of no discrimination both on the question of protection and affirmative action for Dalits, Adivasis and minorities.

The first amendment of the Constitution in 1951 was a response to this political situation. It listed 13 existing acts in central and state legislatures in the Ninth Schedule, which meant that these could not be challenged before the judiciary. Later, the 14th and 34th amendments added further acts on land reforms to the Ninth Schedule.

The dominant understanding of the amendment from the point of view of both jurisprudence and social theory has been

to interpret it as progressive. This has largely been based on the reading of the amendment of Article 15, which established the right of the state for taking affirmative action for Scheduled Castes (scs) and Scheduled Tribes (sts) and upheld the right to do the same for women, children, and religious and ethnic minorities. Also, Article 19 is often considered only in the singular dimension of upholding freedom of speech. What has been significantly missed in such readings is the premise of class compromise that underwrites the amendment, as evident in the continuities and changes that were constituted in the three articles and their interrelationships.

Given that land reforms were under the domain of the states rather than the centre, the first amendment qualified the right to property in the following ways:

Article 31 was qualified by the insertion of 31A, which said,

Saving of laws providing for acquisition of estates, etc—(1) Notwithstanding anything in the foregoing provisions of this Part, no law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent.

The “estate” was defined in relation to any local area to have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area, and included any *jagir*, *inam* or *muafi* or other similar grant. “Rights” was defined in relation to an estate, and included rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder or other intermediary and any rights or privileges in respect of land revenue. Hence, all social relations were encompassed in the conceptualisation of the hierarchy of “rights” in an “estate.” Thus, very little legal manoeuvring space remained to break the hierarchy of “rights” structured by class power co-constituted by patriarchy, caste and religion.

The right to property became a statutory right rather than a fundamental right through a process that was finally completed in 1955 with the fifth amendment. But, this very process also opened up the route to discretionary legislative power to uphold property rights of landlords in state legislatures. It also enabled discretionary executive power in the office of the President to veto progressive land reform legislation in cases where the powers of landlords were circumvented in the process of law-making in state legislatures.

In the first amendment, Article 19(g) was amended as follows:

Nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

It further stated that

No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions

of article 19 of the Constitution as amended by sub-section (1) of this section shall be deemed to be void, or over to have become void, on the ground only that, being a law which takes away or abridges the right conferred by sub-clause (a) of clause (1) of the said article, its operation was not saved by clause (2) of that article as originally enacted. Thus, the amendment in effect, validated all laws on occupation, trade and business that pre-dated the Constitution and left it open to both “business as usual” and legal interpretations for the judiciary. This facilitated landlords in case law using Article 15(3) and Article 19(g) to challenge any appropriation of estates or curbing of revenue rights under Article 31, thus providing a way to circumvent the ninth schedule listings. It also facilitated circumvention of tax imposition or curtailing of business operations in the interest of protecting citizens. This facilitation has continued across policy regimes up to the present period (for some examples, see AIR 1952 MAD 203, AIR 1952 Bom 16, AIR 1952 Mad 565, AIR 1951 All 674; 1967 SCR (2) 762; AIR 1964 Guj 82; 2002 (6) ALD 548).

Hence, land reforms remained an unfinished agenda, except for the minimum abolition of zamindari. The contradictions in the Constitution were thus used by landlords, and a class compromise was arrived at by the central legislature to perpetuate and institutionalise the status quo in social relations. Not only did this institutional legitimisation of the status quo lead to concentration of property, it institutionalised social inequality in all its dimensions. For example, Article 23 prohibited *begari*. But, given the amended status of Article 31 (discussed above) along with the legalisation of existing social relations under the garb of freedom through the introduction of Article 19(g), *begari* could not be institutionally stopped even after it was recognised and a separate law brought in to abolish it in 1976, namely the Bonded Labour System (Abolition) Act.

The same provisions rendered Article 38 toothless in its aim to minimise inequality of income, status and opportunities by legitimising all concrete social relations based on class, caste, patriarchy and religion. The definition of estate also made Article 39 redundant (the objective of which was equitable distribution among the community for common good) because the control of the propertied over ponds, lakes, forests, grazing lands, etc, all came under the wide definition of the estate protected by Article 31A.

Moreover, this legal framework, by being silent on the status of parallel structures of social adjudication, perpetuated those. In fact, *joru* and *jameen* as signifiers of status were legitimised. Institutions of social oppression and adjudication (for example, khap panchayats, caste panchayats, religious boards and trusts, etc) were legitimised through the combination of Article 31 and Article 19. Thus, beyond the narrow scope of limited affirmative action for identified oppressed groups, despite Article 14 of the Constitution guaranteeing equality, and despite the plethora of directive principles of state policy, by 1951, the ruling class in India had institutionalised the existing property rights and labour and social hierarchies in all its dimensions by making suitable amendments to the Constitution.

This had four implications: first, it underwrote the demand constraint in the economy and perpetuated the huge labour reserves inherited from the colonial period. A large poor populace meant that there was not enough purchasing power to create demand for commodities that could have triggered a virtuous cycle of growth. Second, it ruled out a classical capitalist transformation by ruling out a process of development through

creation and channelling of a substantive agrarian surplus into industry. The constraints on the agrarian economy due to lack of land reforms meant that the sector could not produce sufficient surplus that could be invested in building of industries as had been done in Great Britain, Germany, United States and Japan. Third, it perpetuated one of the strongest links in preserving the links between caste, gender and property relations in the hierarchy of property rights and labour organisation. Fourth, it ensured the perpetuation of labour regimes based on extra-economic coercion with legitimisation of the unpaid labour regime based on caste, religion and patriarchy.

So, class relations, in constituting the labour process, consisted of creation of economic subsistence and surplus remained/became heavily reliant on unpaid labour in production and unpaid work in social reproduction. The variety and forms of unpaid labour time in both social production and reproduction, and hence, the macroeconomy was a complex interstice of caste, religion and patriarchy. This has both spatial and temporal variations, but unpaid labour is the universal on which this labour hierarchy was institutionally constructed.

Unpaid Work and Unpaid Labour

In India, the family as the basic institution for social reproduction is shaped by religious and caste rules defining marriage and property relations, both of which fundamentally shape patriarchy (Das Gupta and Gupta 2017). On the one hand, religion-based customary law lays out the first basis of hierarchy of household labour and the gendered division of labour, which is tightly controlled by the patriarchal control over women's bodies. On the other, these features are inevitably intertwined with the hierarchies laid out by caste-based labour ordering, which manifests itself in several ways.

First, there is a very significant overlap between caste-based labour hierarchies and the valuation of labour in the market. Second, this difference in valuation derives from a distinct caste logic in the nomenclature of "skills" by the state where the notion of skill derives from Brahminical ideas of "higher labour status" associated with a hierarchy of knowledge-based on education levels, as is apparent from the nine-level classification of skills by the government in the National Classification of Occupations (NCO). This derives from the casteist distinctions between mental and manual labour that is essential to Brahminism. Domestic labour (conveniently placed outside the production boundary and, hence, not assigned a value if it is not marketed), most kinds of agricultural work, and sanitation labour are classified as "unskilled" even though these require a high degree of tacit knowledge and myriad "skills." Third, property rights structures emanating from constitutional provisions and boundaries essentially shape this status quo of vast multitudes of propertylessness intertwined with this Brahminical labour hierarchy in the market.

Caste has been studied and understood in various ways, with an emphasis on indignity, humiliation, discrimination, degradation, segregation and exclusion (Ambedkar 1916; Guru 2009; Papola 2012). But the relationship between caste and oppressive labour in capitalism has not been subjected to adequate conceptualisation. The adaptability of caste to changing economies

and social formations lies in the abilities of caste power to extract coercive labour and unpaid work according to the social context. Unpaid labour structured by caste, class and patriarchy exists in the following forms: (i) domestic labour both within and outside the production boundary, (ii) labour extracted outside the wage contract from wage labour, and (iii) within the wage-surplus relationship, as discussed before. Patriarchy and caste mutate interconnectedly and adapt to the changing needs of capitalism. These can be illustrated through three examples.

First, let us take the case of domestic labour in the case of paid work for social reproduction. In 2018, we carried out a survey of 2,000 part-time women domestic workers in South Delhi. The aim of the survey was to explore the relationship between paid and unpaid labour among domestic workers, and if, and how, caste shapes this relationship. This survey was part of a larger ongoing study on caste, patriarchy, and women's labour. We found that women domestic workers tend to be mostly from castes situated lower in the social hierarchy, with respect to the caste of the domestic employers. The paid work assigned to domestic workers is largely work related to social reproduction of the employer's families/households. Such work comes within the definition of "unskilled" labour according to the NCO. It is low paid and thus helps to reproduce the employer family or the household, as the case may be, at the lowest cost.

In most cases, less than 5% of the employer's family income is spent on the wages of domestic workers. But, apart from the low pay, domestic workers end up doing a lot of extra work that is casually asked of them, which go way beyond the tasks they have been contracted for. This can range from making tea, to watering plants, to folding clothes, to shopping for groceries and vegetables, to minding the children. None of these are separately contracted, for the oral contract is usually for cleaning (*jhadu-pochha*), cooking, washing utensils and clothes. All the other tasks accrue as extra work without any compensation. The question was why do workers do such work? The overwhelming response from the women workers was that they could not say "no" to the employer who occupied a higher social status. This higher social status is co-constituted by class and caste. Class power, in effect, structures the inequity of the oral wage contract of domestic workers, but the power to extract coercive labour emanates from caste power. The two processes cannot be separated out as the process is co-constitutive. Debt also is an effective instrument for extraction of such unpaid labour.

Now, let us turn to the explanations of wage gap for work that forms the bottom of the skills ladder and those at the top. The reporting of results from a survey on wage gaps that I did in 2019 in three public educational institutions (part of the study cited above) would be pertinent in this regard. We found that the average pay of cleaners and sanitation staff (*safai karmcharis*) was just 3% of the average pay of the faculty members. While the average monthly faculty pay was around ₹1,00,000 (rounded off to nearest ₹1,000), that of the actual pay of sanitation workers was around ₹3,000 (with a significant gender gap in wages among the sanitation workers). While contractualisation has been the usual explanation for this gap, such disparities in the valuation of labour power cannot have social sanction, without

the caste basis of the labour hierarchy based on notions of purity and pollution, and by extension, untouchability being taken into account. Moreover, similar patterns of unpaid work extraction to that of domestic labour were observed in these institutions. Sanitation workers were often asked to do odd jobs like towing furniture, serving tea, etc, tasks which were not part of their labour contract. And the same social basis of caste seemed to account for such modes of extraction. These processes singularly account for the perpetration of not just cheap labour but the cheap social reproduction of the institutions of higher learning themselves. The same would be true of corporate offices and other private and public sector institutions. In the case of the private sector, the wage gap between the top and the bottom is likely to be even higher.

The third example lies in the significant re-emergence of non-capitalist forms of labour in the fastest growing sites of accumulation in India, such as the brick kilns, garment industry, and construction sites with increasing use of family labour and bondage like *jodi* and *sumangali* labour. According to Mazumdar, Neetha and Agnihotri,

the present labour law regime's conceptual effacement of women workers' individual entitlements where *jodi* based migratory labouring units are combined with piece rate wages—as in brick kilns across the country and sugar cane harvesting in western and southern India. The significance of this issue, though noted in description, has been largely ignored in the literature ... a larger proportion of women of sc and st backgrounds are concentrated in rural based circular migration marked by contractor driven debt/advance based tying of male-female *jodi* labour. This in turn has interlocked semi-feudal bondage and semi-feudal patriarchal practices into recruitment and employment practices of a section of the developing modern industries, highlighting the primitive basis of their mode of accumulation. (2013: 62)

Similarly, *sumangali* labour has been in vogue in the export-based hosiery industries in Tiruppur. Despite laws to abolish it, this form of labour is perpetuated wherein young women and under-age girls are contracted for employment for a period of two to four years at a lumpsum of ₹20,000–₹30,000 that is supposed to cover the cost of their own marriage. Such women and girls work in slave-like conditions in which they face deprivation, illness and sexual violence. The entire purpose of this bondage is to extract pure unpaid labour time in production to maximise the surplus value accrued in such production by the employers (Ota 2014).

The lineages of power to extract coercive labour without pay derive from the power of caste status. The remnants of practices under the *jajmani* system have mutated under capitalism to extract pure unpaid work from those who are lower down in the social hierarchy, based on caste by those located above. Indignity, humiliation, discrimination, degradation, and segregation are all intrinsic to the social consensus to extract pure unpaid work. Thus, this kind of pure unpaid work, which is otherwise also cheap (and thus entails unpaid labour time in the Marxist sense), subsidises the socially necessary labour time, even in the cost of living of the employer. (These are not non-capitalist modes of accumulation because the wage–surplus relationship is still at the heart of the accumulation process. It is just that the labour extracted in such cases goes way beyond the traditional wage–surplus relationship in capitalism.)

If domestic workers unionise and charge for all the work that is done, this cost would increase, making the socially necessary

labour time to cover the cost of living higher for the families employing domestic workers. This, in turn, would mean that the wages/salaries of the income earners in the family would have to rise to compensate for the increased socially necessary cost of living. This would mean that the share of wages would rise in the macroeconomy, and correspondingly, the share of surplus value would fall. Thus, caste-based extraction of labour in social reproduction directly subsidises and reduces wage costs in the economy. This extraction of labour based on caste is a vital cog in capital accumulation through maintaining the cheap labour economy.

Workers at the bottom of the caste–patriarchy co-constitutive hierarchy thus subsidise social reproduction at various institutional levels, which add to keeping labour cheap. This is one of the significant ways in which the low wage and high surplus value proportions that drive capital accumulation in India is maintained.

This narrative, so far, indicates that the relationship between caste and patriarchy in the making of the working class is co-constitutive rather than intersectional. Intersectional theory largely works as a status signifier but does not capture the inter relations between caste and patriarchy. It also does not capture how both caste and patriarchy together constitute class relations. B R Ambedkar was the first thinker in India to argue that caste and patriarchy are co-constitutive; one cannot exist without the other. I am extending that argument to propose that both of these go into the making of class and in that sense are co-constitutive. This is different from intersectional theory from the West, in which race and patriarchy are independently constituted and then intersect. Such co-constitution combines with propertylessness and maintenance of social hierarchies that derive from legal provisions, traceable, as argued earlier, to the first amendment to the Constitution.

Lastly, this social order based on caste and patriarchy, in our opinion, cannot be understood through the conceptual framework of exclusion. The exclusion literature has largely believed that caste-based discrimination has “excluded” people from participation in the economy, and hence, “inclusion” is the way forward to ensure that people benefit from participation in the economy (Papola 2012). But our analysis so far leads us to argue that each social layer in the graded hierarchy plays a vital role in the labour-cheapening process, and that the paid and unpaid labour of the so-called excluded contributes to capital accumulation by subsidising both production and social reproduction. The people at the very bottom are vital to this process, suggesting that adverse inclusion rather than exclusion characterises the capitalist regime in India.

To sum up, feminist engagements with social reproduction have highlighted the role of women's unpaid work with a focus on care in reproducing the worker in capitalism without which production of value is impossible. However, such renderings have not sufficiently theorised how unpaid work in social reproduction shapes the wage–surplus value relationship in capitalism. We have argued that all unpaid work in social reproduction, including that of women, reduces the cost of social reproduction in the form of wages in capitalism and thus, by extension, increases the share of surplus value that

accrues as profits. However, this process in its materiality is historically specific and dependent on existing social relations.

We have shown that cheap labour as the sole basis of the accumulation regime in India is structured by unpaid work and unpaid labour in social reproduction on the basis of a graded social hierarchy of labour co-constituted by caste and patriarchy in the making of class. This social arrangement is sanctified by the state not only through constitutional changes, but also through official classification of occupations. It is being further extended by the state on a religious basis through changes in citizenship laws. All of these processes have contributed to the increasing share of surplus value in India at the cost of wages in the production process. Thus, the relationship between the wage-surplus value distribution and the methods of social reproduction reliant on unpaid work and unpaid labour co-constituted by caste, patriarchy and religion in the structuring of class relations is a significant driver of the cheap labour-based accumulation regime in India.

Insecure Citizenships

Recently, we have witnessed the ways of controlling labour on the basis of gender and caste, incorporating additional dimensions, with pogroms, lynchings, rape, as developing modes of control through a permanent threat of such violence. As argued earlier, the system defined by the relationship between state and capital works to perfection in its ability to deliver labour virtually free to India's capitalists big and small (Das Gupta 2016). More overtly, political methods of control are emerging in a situation of crisis, when mounting proportions of unemployed/underemployed labour (increasingly unable to reproduce itself) threatens to overwhelm the system. As falling wage levels, increasing precarity/volatility in employment, and agrarian crisis generate a demand constraint that threatens the realisation of surplus value and accumulation itself, demands on the state to fill the gap in social reproduction have necessarily come to the fore. It is at such a point that the state is moving to oust a section of the general citizenry from any claims on its resources. One way is by creating insecure

citizenships, using religion as a divisive marker for a new hierarchy of citizens and non-citizens.

Such a phenomenon is not, however, unique to India. Standing (2014) had argued that all over the world, a significant number of people are being turned into denizens from citizens by the whittling away of various kinds of citizenship rights. But this process in India has its own specificities in terms of the state's sanctification by law of the role of religion in determining hierarchies of insecure citizenship.

Citizenship as a concept that entailed equality, fraternity and liberty can be traced to the French Revolution where the transition from subject to citizen entailed a degree of emancipation from subjecthood. But, citizenship remained connected to property ownership in Europe and excluded by definition the proletariat, women, slaves and people of colour (Davis 1981). So, citizenship under capitalism has had a long and fraught history of being linked to property ownership. But this link was slowly severed at different points of times due to protracted democratic struggles in various nation states of women, of slaves, of people of colour, the colonised, and the working class. Universal adult franchise was one articulation of this universal notion of citizenship, but it is the range of fundamental rights that made it the bedrock of democracy.

The national liberation struggle in India led to the same achievement, that is, transitioning from graded subjecthood and privilege linked to private property and social status, to citizenship as a set of universal fundamental rights and adult franchise obtained by birth or naturalisation.

The architecture of the proposed National Register of Citizens combined with the Citizenship (Amendment) Act 2019 and the proposed National Population Register is the most systemic attempt to create insecure citizenships as a mode of being on the basis of religion, regressing on the advances made by the Constitution. Whether it will enable the state to deal with this draconian extension of cheap social reproduction is, of course, an open question. We would only point out that the crisis of cheap social reproduction is upon us, and it is spawning a new form of state and citizenship in India.

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Dispossessed Women's Work

The Case of Talcher Coalfields of Odisha

SURAVEE NAYAK

This paper examines the experiences of dispossessed women in terms of accessing work opportunities in a setting of opencast coal mining in Talcher coalfields of Odisha. Drawing its understanding from the framework of social exclusion and adverse inclusion in the discussions, it argues for the variegated experiences of women's entry into different categories of work with reference to their gender, class and caste positions.

This paper is an inquiry into the changing work opportunities for dispossessed women in the coal bearing areas of India, with reference to intersections of their gender, class and caste positions. For understanding the case of social exclusion and adverse inclusion of women into forms of work in Talcher coalfields of Odisha, it draws on two strands of literature. One that focuses on the continuing marginalisation of women, Dalits and Adivasis in the Indian context through a relational analysis and explains their social exclusion and/or adverse inclusion in different contexts. Specifically focusing on the context of state-led dispossession, the other strand of literature gives a meaningful explanation to differentiated outcomes of dispossession for heterogeneous social groups primarily through the pre-existing agrarian inequalities.

Social Exclusion, Adverse Inclusion and Gender

Gender has been crucial in determining the division of labour, distribution of land and other valued resources in the society (Kabeer 2000). Women have been found socially excluded and adversely included in different aspects of social and economic arenas through the interaction of various actors, such as the state, market and household, especially when it comes to women's labour. Across geographical locations, women have been socially excluded from land ownership, for instance, despite carrying out extensive agricultural work (Agarwal 1988; Bracking 2003). Women are subjected to capitalist exploitation through their adverse inclusion in the unpaid work of the household, subsistence production and work in the informal sector (Mies 2007). They are often excluded from the high paid and formal sector jobs and are faced with adverse circumstances such as being paid a lower wage than men (Kantor 2008; Harriss-White and Gooptu 2009). Historically, this exploitation of women's labour for capitalist accumulation is through the high concentration of women in unskilled jobs (Sen 1999), which is an unfavourable or adverse inclusion of women in work.

The framework of social exclusion and adverse inclusion has extensively engaged with the exclusions based on gender and caste and other communities such as Adivasis and minorities in the Indian context (Nathan and Xaxa 2012). However, we need to be careful about considering the group of the excluded as homogeneous (Thorat 2014) as in this case of working class women. There are poor within the poor, and some persons belonging to certain social groups are poorer than others (Thorat 2014: 49). Similarly, women are also subjected to

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other vulnerabilities based on caste, sexuality, and class which amplifies vulnerabilities and their exploitation. Working-class women are also bound to have differences, with some being more excluded than others. Caste hierarchy and gender hierarchy leads to graded subjugation of Dalit women who have been found at the bottom of unfree labour relations (Mehrotra 2017). Moreover, the structural aspects of caste and gender intersects with class and cannot be reduced to class power alone (Devika 2016). Prior to the feminist contribution to poverty studies, the poor were either assumed to be completely men or the concerns of men were thought to be identical to that of women (Kabeer 1997). On a similar note, understanding the social exclusion and adverse inclusion of working-class women requires a nuanced understanding of women as a group without committing the fallacy of assuming them to be either devoid of any caste subjugation or that the concerns/issues of women belonging to different castes are identical.

Situating Women in Dispossession

Dispossession, for us, is a process where people are deprived of not only the means of production (primarily land), but also access to common property resources, and loss of sense of belongingness through geographical movement and the deprivations in alternative forms of livelihoods. There are three forms of dispossession discussed in this paper: first, loss of agricultural land owned by the landowning households and common resources leading to loss of livelihoods; second, loss of both homestead and agricultural land owned by the landowning households leading to geographical and occupational displacement along with loss of common resources; and third, loss of access to common resources and other livelihoods for the landless.

Many scholars have pointed to the various socio-economic and environmental consequences of dispossession due to coal mining (Lahiri-Dutt 2007; Mohanty 2011; Fernandez and Bharali 2014; Garada 2013a, 2013b, 2015). Moreover, dispossession has also been found to be a gendered process of capital accumulation in various contexts. Access to land and other common property resources has been a source of self-sustenance, and enables women to contribute to their family's livelihoods. The loss of these resources also affects the social and economic status of women within the family. In particular, it leads to a reduction in women's mobility, and changes in power relations between men and women (Ahmad and Lahiri-Dutt 2006). It is to be noted that women's access to land does not imply possession of land titles or land rights by them, but rather mediation through their husbands. Common to the process of dispossession has been the exclusion of women from decision-making processes in the planning of the projects or negotiating the compensation packages. Also, lack of land rights leads to discrimination against women in compensation (Levien 2017). The recipients of compensation are mostly male members, as land title-holders. However, the implication for women's paid (productive) and unpaid (reproductive) work varies across different contexts, depending on the kind of economic activity of which they are dispossessed, and interaction of the pre-existing agrarian inequalities (the intersection of caste,

class and gender positions) with the dispossession process (Levien 2017). The interaction between exclusionary growth (in this case coal mining) and caste-based agrarian inequalities has, on average, expanded socio-economic inequalities between upper and lower castes and left most Dalits worse off in absolute terms (Agarwal and Levien 2019: 4).

Field Site and Methods

Odisha is a mineral-rich state with the highest non-coking coal reserves and more than 79 billion tonnes of total coal reserves (Coal Controller's Organisation 2019). After the formation of Coal India Limited (CIL), all coal mines in Odisha were under Central Coalfields Ltd (CCL), then South Eastern Coalfields Ltd (SECL), before the formation of Mahanadi Coalfields Ltd (MCL) in 1992. MCL has two major coal bearing areas—IB Valley coalfields and Talcher coalfields—with a high ratio of coal to non-coal strata and, thus, high quarrying potentiality (MCL 2016). Talcher coalfields, which is the field site for the present paper, is one of the four subdivisions of Angul district, located in central Odisha. Eight opencast and one underground mines presently operate in Talcher, and two more opencast mines are in the planning stage (MCL 2018).¹ Talcher area is one of the fastest growing industrial centres of India (Garada 2013a, 2013b). Historically, agriculture was the important activity of the area, spread over 3,53,360 acres. In 1981, 68.30% of the main workers were engaged as cultivators (Directorate of Economics and Statistics 1995). In 2011, Talcher had a total population of 97,968, of which 53% were male and 47% were female (Census 2011). The region majorly comprises of upper-caste Hindus and Other Backward Classes (OBCs). Around 19% are Dalits and 9% are Adivasis.

The paper is based on two rounds of fieldwork (September–December 2015 and September–December 2018). Primary fieldwork involved a survey questionnaire and semi-structured interviews across three villages, namely Arisa, Poddoo and Manda (pseudonyms)² in Talcher, Odisha, along with secondary sources. Agricultural and homestead land are acquired through the Land Acquisition (LA) Act of 1894 and Coal Bearing Areas (Acquisition and Development) (CBA) Act of 1957. A total of 809 acres of agricultural and homestead land of Arisa and Poddoo village were completely acquired during 1999–2000 and 2004–05, respectively. However, around 721 acres of agricultural land of Manda village was acquired in 1991–1992. The two important variables considered while selecting the villages were: the share of land acquired for coal mines and the total number of households displaced or affected in a village. Additionally, preference was given to those villages that have been affected for a minimum of 10 years before the study time period, so that the long-term impacts of dispossession could be analysed. A total of 195 women (aged 35 years and above) were interviewed, using snowball sampling. Of the interviewees, 13 women were upper caste (from Brahmin, Kshatriya or Karan community); 129 women were OBC, majorly from Chasa, Gauda, Kumbhara, and Teli community; three women were Adivasi from Kandha, Tanla, and Kuda community and 50 were Dalit women majorly from Pan

community.³ The major populations were from OBCs (66%), followed by Dalits (23%), then upper-caste Hindus (7%) and Adivasis (4%). Samples were accordingly drawn to make it as representative as possible. In the second phase of the fieldwork, data on worker statistics from the MCL office were collected.

Women's Work before Dispossession

Land, as a source of livelihood and an asset, determined the economic and social status of the people in the surveyed villages. Before land acquisition, both men and women used to cultivate paddy majorly. Of the 195 women interviewed, 154 belonging to landowning households were engaged in agricultural activities.⁴ The remaining 41 women were landless, belonged to the Dalit community and used to work as agricultural labourers. Land was mostly inherited and owned by joint families in these villages. All 154 women among the landed did not possess land titles and their access was mediated by their husbands.

Only nine Dalits and three Adivasi women (out of 154 women) had access to agricultural land from 10 cents to a maximum of 50 cents of land. The land owned by these Dalit and Adivasi households were not *aul jami* (fertile land), so they would work as agricultural labourers in the agricultural fields of upper castes and OBCs. On the other hand, upper-caste and OBC households would own fertile land from a minimum of 1 acre to a maximum of 15 acres, and employed agricultural labourers from Dalit and Adivasi communities in their fields.⁵

Upper-caste and OBC women belonging to landowning households had not been involved in any particular paid employment, but they were engaged in many other livelihood supporting activities. They would often think of activities related to agriculture—taking care of livestock and poultry, working on kitchen garden—as part of their household duties, as observed widely across villages in India (Hirway 2012; Abraham 2013). Out of 154 women, only 24 women identified themselves as self-employed, while 118 women (excluding 12 Dalit and Adivasi women discussed earlier) said they were engaged in domestic chores and allied activities. Upper-caste and OBC women would perform activities such as collecting food items from forest, growing vegetables in their kitchen garden, working with male counterparts on agricultural fields, making a living out of the forest products, etc. They would grow fresh fruits and vegetables in their kitchen garden. However, as mentioned earlier, few considered it as separate productive work apart from household chores because of the existing social norms.

The 41 landless Dalit women would work on the agricultural fields owned by the upper-caste and OBC households as labourers. Labourers would get rice in exchange for their labour.⁶ Their husbands would work as head loaders in the old underground mines for a few days in a week on piece-rated payment. Landless Dalits would sustain themselves by combining the rice earned through agricultural labour, cash wage from mines, and food from common property resources. Since they did not own land, Dalit women would mostly rely on common property resources, such as the forest for food, and would go for food collection every day. They did not grow much food in

the kitchen garden as they did not have enough land. They could only manage a hut for themselves by encroaching on the government land.

Impacts of Dispossession among Women in Talcher

With the appropriation of commons and agricultural land in Manda, Arisa and Poddoo villages in 1991–92, 1999–2000 and 2004–05, respectively, the women lost access to agricultural work and other allied activities that both landowning and landless women used to carry out prior to land acquisition. Besides agriculture, tending to the kitchen garden used to be a primary activity among landowning households. With loss of land, it became difficult for the women belonging to landowning households to grow vegetables of their own. Meena, a 57-year-old upper-caste woman belonging to a landowning household in Poddoo village, who lost all her agricultural and homestead land to the coal mines, describes the times before dispossession,

I used to grow many vegetables in our kitchen garden. My husband used to work in fields. For rice and vegetables, we did not have to depend on others. Now, for everything we have to depend on market. Other people grow and sell food items and we buy.

Her family had not been able to buy sufficient land for the kitchen garden primarily due to a lack of adequate monetary compensation. In many cases, people were not able to draw the compensation money due to family disputes over job compensation (Nayak 2016).

The contribution of common property resources to household's employment, income generation and asset accumulation has been intense, which public policies have failed to understand.⁷ It has been found that the commons provide large quantities of food, fodder, fuelwood, timber, grass, straw, mulch, manure, and fencing material (Jodha 1986). Along with firewood, other products like the leaves of the palm tree and wild date palm tree, locally called as *barada* and *khajuri gacha patra*, were used for construction of huts providing shelter to the households; bamboo and other wood were used for fencing. Both landless and landowning households used to collect fruits from the forest. The forest as a source of food was valuable for women from landless and landowning households; however, it was more crucial for the survival of Dalit and Adivasi communities in these villages. A typical *mahula phula* was collected by them from which they would make liquor and would extract the seed out of the *tula* (fruit) of the tree to prepare oil and sell both in the market. Dalit and Adivasi women in particular used to collect leaves from the forest to make *khali* (plate) and *choupati* (cup) for selling during festive occasions; grasses were woven into mats and baskets.

Dispossession, Social Exclusion and Compensation Policy

By depriving them of the access to the agricultural land and other common resources, dispossession had a direct impact on the women's work from landowning and landless households. Landless Dalit women are particularly excluded from being a party to the decision-making process for the approval/rejection of the coal mining project because of lack of any land

ownership. This is justified by the state, coal mines management, and the landowning households on the grounds of their inability to contribute any land for the national interest. In negotiating the compensation packages, even women of landowning households are kept out; their opinions are not sought at either the household level or by the state or the coal mines management. However, they are encouraged to participate in protests or strikes, such as blocking coal production. Participation of women in strikes has been strategic for male members of the landed households and the village leaders in putting up various demands before the state.⁸

There are two forms of compensation provided to the dispossessed in Talcher: monetary compensation and job compensation. Compensations are provided based on the quantity and quality of land owned by the households (both homestead and agricultural). Women of different castes belonging to landowning households access these compensations through their husbands who are the recipients. Often the decisions on spending the compensation money remain with the male member of the household. Landless Dalit women are altogether excluded from either monetary or job compensation due to lack of land. They feel that they are the worst off and most excluded with no means to quantify their loss of livelihoods. All the villages surveyed received their compensation as per the Odisha's Rehabilitation and Resettlement Policy of 1989 as the notification for land acquisition for these villages had been done prior to 2006 and hence, not eligible for Odisha's new Rehabilitation and Resettlement Policy of 2006, or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Odisha's Rehabilitation and Resettlement Policy of 1989 has provisions for self-employment schemes, which is hardly ever implemented for the landless households.

The compensation policy completely neglected the women, and especially the landless Dalits of surveyed villages. Though, the women of different castes belonging to landowning households had means to sustain themselves through monetary and job compensation provided to the male members of the household, landless Dalit women were the ones most vulnerable. As Meenu, a 37-year-old landless Dalit woman from Manda village, now working as a sanitation worker, says,

I earlier used to be an agricultural labourer—our entire family was. Though, I have also lost work, I am never compensated. They say we had no land titles and so we are not supposed to be compensated. When other people in the village were fighting for their employment in coal mines, nobody listened to us, we few landless Dalits pleaded to our village leaders, political leaders and mines officials to give us some job security. They promise and they forget. I don't have any work after one week. I managed this work by requesting a contractor from our village.

Agrarian Inequalities and Adverse Inclusion

There are three categories of work created for women based on the pre-existing agrarian inequalities in Talcher. All the three categories are cases of adverse inclusion of women into work. The first category is a widely found outcome in Talcher, which pushes women entirely towards reproductive work

referred to here as the process of "housewifisation" of women's labour. The second category is paid formal sector employment in the coal mines as part of the compensation package which is referred to as the process of becoming women miners (based on three exceptions where women belonging to landowning households were pushed into coal mine work). The third and the final category is where landless Dalit women are trapped between casual labour and coal collection which is referred to as moving between casual labour and coal collection.

(i) Housewifisation of women's labour: One of the major impacts of the loss of earlier livelihoods, was that women became housewives. Out of 154 women belonging to landowning households, 69% (107 women⁹ of different castes belonging to landowning households) are presently carrying out only household chores such as cleaning, cooking, and washing.¹⁰ With decrease in access to the forest, non-availability of adequate land to have a kitchen garden, and decline in livestock, women are no more engaged in various activities adding to the household income and self-sustenance. Women have moved away from access to land and other common resources, and also from the cash flows that are now in the hands of their husbands (also discussed in Lahiri-Dutt 2011). Shyama, a 55-year-old OBC woman from Arisa village, who lost both homestead and agricultural land, explains the new world of being a housewife, after 35 years of working in the agricultural field and carrying out allied activities of tending to the kitchen garden, collecting fruits, and taking care of livestock and poultry,

Earlier I used to do many things to help my husband. I used to grow vegetables, collect fruits, agriculture. Now, I only wash clothes, cook food and clean the house. If he comes drunk, I cannot say anything, after all, I live on his money.

This process of "housewifisation" (the term coined by Mies 1980) has been intensifying among rural women in Talcher coalfields with the penetration of a masculine capitalist setting as coal mines. Women are now expected to facilitate the social reproduction of the working class for the coal industry. They take care of their children's education, cook food and feed their men wash their dirty clothes full of coal dust, wash their shoes soiled with coal and mud and clean the house. Many women have admitted to instances of alcohol abuse by their husbands, which has substantially increased after getting into the coal mining job because of cash concentration in the hands of male members and the benefits of alcohol in enduring physical pain and minimising the fear of accidents in mines.

The increase in rural women's reproductive labour and the falling rates of female labour force participation have been a general pattern observed across the rural areas (Rao 2018). However, what is more striking in this context is that the interaction of the state compensation policy, the nature of the coal industry and existing social norms at the household level combined have led to an increase in the housewifisation of rural working-class women. The introduction of cash wage employment or what we can call remunerative work has led to the devaluation of women's reproductive work that is unpaid.

Hence, being a housewife is seen as a duty rather than work. The underlying social norms within the households that strongly remerged after women lost their access to land and other common resources, has affirmed housewifisation. At the same time, coal mines have successfully created labouring women in the household for the reproduction of coal mining labour without assigning any value to women's work. Though women have expressed their willingness to work in the mines, they want work not by replacing their husbands but for supplementing their husband's income. However, the new social norms of gendered division of labour have strengthened the status of men as *murabi* (head of the household) and increased women's dependence on them.

(ii) The process of becoming women miners: In the colonial period, women formed 37.5% of the coal mining workforce in India according to a survey conducted in 1924 (Simeon 1998). However, there are four reasons identified that led to the withdrawal of women from the coal mines in India. These are: the ban on women's employment in the underground coal mines in the 1920s, the use of heavy machineries in the coal mines, the neglect of women's issues and interests by the trade unions, and the gender discriminatory attitudes of by the mining companies (Lahiri-Dutt 2012). In 2017, 8.5% of the total workforce in MCL were women, that is 1,808 out of 22,127 of the total workforce. In 2018, 12.5% of women were found to be working as non-executives in Talcher coalfields alone.¹¹

The conditions under which women of different castes from landowning households are employed in the coal mines as part of the job compensation are as follows. The first is, if the husband is a regular employee in some other institution/or a contractor and the son is too young. Second, if the husband is old and/or physically unfit and the son will not enter into the working age group in the near future. In such conditions, the woman of the household is nominated for employment so that she can add to the household income for more years than the husband. Jagyaseni, a 57-year-old upper-caste woman from Poddoo village who lost both homestead and agricultural land, describes how and why she works in the mines,

My husband was 40 years old by the time I was selected for the job compensation. He could have worked only 20 years more as he would have been retired in the age of 60 and my son was only 7 years old then; so, he forced me to take up the job. I was just 30 years old at that time.

As we see in this case, the fear of unfamiliarity of coal industry work is overcome by the aim of maximising household sustenance through the job. In this case, availing 10 more years of salaried wage work than her husband was more important for her than her own desires. The third condition for women being given job compensation is, if the woman is a widow and her son is too young to be employed.

Out of 195 women interviewed, 47 women¹² were employed in MCL because of the conditions discussed earlier. Upper-caste, OBC, Dalit and Adivasi women belonging to landowning households were employed in coal mining jobs through job compensation that their husbands were not able to avail. They

are employed in canteens, offices, blasting sections and workshops only. Women of different castes working in the blasting section carry out manual handling of explosives, which the male workers refuse to do. Managers encourage women because they can control women workers better than the male workers, and women workers are more efficient in their work than the male workers (according to one of the mining supervisor). Their wages vary from ₹35,000 to ₹80,000 per month depending on their grade.¹³

Women working in offices primarily work as clerks or peons, in canteens as helpers and waitress, and in workshops as helpers. However, three Dalit women employed in the workshops have expressed that they wanted to work in offices as peons but other workers and employees were not comfortable with the Dalit women working around them, and they did not accept the food and tea served by them. Employment in the canteens was denied to Dalit women because many upper-caste and OBC men and women workers refused to eat food cooked by them. So, they accepted jobs in other departments since they did not want to lose their only source of livelihoods.

Though women workers contribute immensely to the coal industry, they are not respected as "coal miners," as they are not the direct producers of coal. Women working in canteens and offices do not enter the coal mines, and hence are technically considered as "office staff." The women who are working in the workshop and especially in the blasting section, fall under the excavation cadre; however, they too are not considered to be "miners." The mining industry is gendered and the extraction, which is considered to be hyper-masculine (Lahiri-Dutt 2011, 2015), is kept away from women as it involves the operation of heavy earth moving machines (HEMM) in the opencast mines. The men who operate the HEMM and carry out the activities of coal production are called "strikers"—locally known as "operators" and considered "coal miners," and as martyrs for the nation if they meet with a fatal accident during coal production. Therefore, though a few women belonging to landowning households are employed in the coal mines, they face enormous challenges in keeping up with their only source of livelihoods because of their gender, and in the case of Dalit women, both gender and caste amplifies their vulnerability within the industry.

Besides the challenges faced by women in their everyday labouring lives, the above discussion suggests that whenever the male member is not able to avail employment in the coal mines, the woman is employed in his place. Though dispossession has brought some flexibility at the household level for women's employment, it may not be an empowering process as their entry into paid work is conditioned by necessity imposed by the male members of the household.

(iii) Moving between casual labour and coal collection: In the processes of dispossession, the most neglected segment of households is the landless. Landless households are not eligible to claim any compensation as per the Rehabilitation and Resettlement Policy of 1989. Across different dispossession contexts, landless households have never been recognised as

project affected because of their lack of formal ownership of land and other resources and, hence, are not compensated (Parasuraman 1993). The constitutional safeguards also do not ensure compensation for landless Dalits. A total of 41 women interviewed are from landless Dalit households. They were primarily engaged as agricultural labourers. Additionally, they also used to work as cattle rearers, locally called as *halia* and cleaners at landowners' houses. With the takeover of agricultural land, they have also lost their livelihoods. Presently, they work as daily wage labourers at construction sites and as sanitation workers in upper-caste and OBC houses as well as in the offices of MCL. There is no guarantee of their job and place of work. As Braja, 44-year-old landless Dalit woman from Arisa village, says,

I was an agricultural labour with my husband. I used to get rice and vegetables in exchange of my labour. In festivals, the landowner used to give me food. We were poor then and we are poorer now. We have to buy everything from outside. With loss of land, we lost our livelihood. MCL did not compensate us because we did not have land to give them.

They are forced to collect coal with their husbands and children either from coal stock yards or from railway sidings. The collected coal is then carried by their husbands on bicycles for selling in nearby villages and motels and to local mafias. On an average, they pick up to 100 kg of coal every day, mostly in the early morning hours or in the afternoon. Collecting coal is considered an illegal activity, which is equated with coal stealing. They are caught many times by the local police, coal mines management and security guards and struggle to free themselves. However, with the loss of agricultural work and common resources, as also intensification of a cash-based economy, Dalit women are forced to continue coal collection as it has become a stable source of cash for them. The cash earned from the coal collection enables them to meet their daily food requirements and other cash-based needs. Pramodini, a 52-year-old landless Dalit woman from Poddo village, says that

Earlier we knew every day we would get work to do, either as an agricultural labour or as a cleaner or for cattle rearing but now with so many labourers in the area, there is no guarantee that we would get a job every day. The contractors sometimes suck our blood by making us sweat endlessly but pay us only ₹150–₹200 (daily wages). Do you think a six-member family can survive on that? So, I help my husband in stealing coal as well which pays us up to ₹250–₹300 per bag.

The loss of common property resources has hit landless Dalit women the hardest. Earlier, they were able to collect various food products from the forest, but now they have no

means to avail free food, and unlike landowning households, neither they nor their husbands have regular employment in coal mines—to replace free food with purchased food from markets. For their coal collection activities, they are shamed by the upper castes as thieves and are always associated with dirt.

Landless Dalit women of these surveyed villages carry out household tasks and also work as labourers for low-grade jobs. They aspire towards regular employment in the coal mines, or to become a miner's wife. They are denied recognition as being affected and dispossessed, and are socially excluded by the state policy and coal mining management. This makes the Dalit women experience an acute feeling of lack of any resources with which to negotiate, and a sense that their very existence is being denied. As Jambu, a 51-year-old landless Dalit woman from Manda village, says, "We were poor and miserable then, also we are poor and miserable now. We don't exist, nobody cares for us."

Conclusions

The variations in the changing lives of rural women as an outcome of the dispossession process, should be viewed as a result of the pre-existing agrarian inequalities shaped by caste, class and gender positions that is used by capital for constructing its division of labour. Coal mines are male-dominated capitalist settings that have created three categories of work for rural women as evident in Talcher. First, the work of "miners' wife," a process of housewifisation, which is basically their unpaid labour contributing to the social reproduction of the miners, and restricting the women to household work. Second, work in the coal mines, the process of becoming women miners, which are not the jobs of "coal miners" in a true sense, but rather the jobs that facilitate coal production. Third, moving between low-grade works such as sanitation work and other casual labour in and around coal mines and primarily, coal collection. Women belonging to landowning households (majorly upper-caste Hindus and OBCs, and a small minority of Dalits and Adivasis) are working in the first two categories. Landless Dalit women are, however, carrying out menial jobs. In all these cases, the entry of women (across the caste and class positions) into different forms of work are under unfavourable circumstances. Women were subjected to exclusion by the state's compensation policy, the gendered coal mining industry, and existing social norms. Where included, the manner of inclusion and the conditions they face are adverse. Marginalisation in the process of dispossession affects landless Dalit women, as the most vulnerable, the hardest.

NOTES

- 1 Information collected from MCL office in Talcher from September–December 2018.
- 2 The original names of the villages and the respondents have been replaced by the pseudonyms.
- 3 Some of the upper-caste Hindu communities such as Karan, Dalit communities such as Pan and Adivasi communities such as Kandha are peculiar to Odisha.
- 4 Around 13 women were upper caste, 129 women were OBC, three women were Adivasi and nine were Dalit women who belonged to landowning households.
- 5 Compiled from survey questionnaire and interviews conducted from September–December 2015.
- 6 The data presented here was collected during fieldwork using survey questionnaire from September–December 2015.
- 7 Common property resources may broadly be defined as those non-exclusive resources in which a group of households have co-equal use rights (Jodha 2001: 120).
- 8 Interviews collected from September–December 2015.
- 9 Out of 107 women, five Dalit and two Adivasi women belonging to landowning households and the rest 100 upper-caste and OBC women belonging to landowning households are housewives.
- 10 The data analysed is based on fieldwork from September–December 2018.
- 11 The data collected from MCL office and analysed is based on fieldwork from September–December 2018.

- 12 Out of 47 women, four Dalit and one Adivasi women belonging to landowning households, and the rest 42 upper-caste and OBC women belonging to landowning households are working in the coal mines through the compensation package.
- 13 As per the data collected during fieldwork from September–December 2018.

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Impact of Uttarakhand's Reservation Judgment on Women

SAMEENA DALWAI, AABHINAV TYAGI

Since the 1990s, the discourse around caste-based reservations has taken a sharp turn towards hostility, which has resulted in pushing individuals and groups obtaining reservations into marginalised corners in educational and professional spaces. The recent Supreme Court judgment about reservations in promotions in state employment in Uttarakhand reopens this legal and moral discussion about the need for caste-based quotas in employment. This paper evaluates the effects of the anti-reservation judgments with a gender lens, looking at the potential and possibilities for lower-caste women into education and employment. With the National Sample Survey Office data we consider the rate of participation of lower castes and women separately, as well as lower-caste women as a category in education and employment, and consider how they are affected at the entry point and in career progression.

Reservation is not a policy enacted by a benevolent state or a standard developed by a progressive judiciary. Rather, it is rooted firmly in the history of the Indian subcontinent and was one of the solemn principles promised to the new country during independence to mark a break from colonial rule towards self-rule. Important visions of a casteless India were spoken and written down at least as early as the 15th century by Kabir and Ravidas. A proto form of this ideal society was visible in the reform movements starting in the 19th century as Jotirao and Savitribai Phule opened schools for students of all castes and encouraging girl students, which was out of the question for Brahminical schools. In 1858, the Government of Bombay Presidency declared that all schools maintained at the sole cost of government shall be open to all classes without discrimination. In 1880, the British state set up scholarships, special schools, and other beneficial programmes for the Depressed Classes with the princely states of Mysore, Travancore, and Kolhapur following suit to reserve administrative posts for the Depressed Classes. The Madras Presidency was the first to initiate reservations in government employment, in 1921. Thus, conceived over centuries of discourse on Hindu reform and ethics, reservations were birthed out of the political movements and resolutions at the dawn of Indian democracy, and finally, out of the Constitution. The principle of reservations anchors the shared ambitions of the nation.

The Mandal Commission, established under the Janata Party government in 1979 and implemented under the leadership of V P Singh in 1990, was tasked with the purpose of identifying socially and educationally backward classes (SEBCs) in the country. The commission's existence per se brought the ancient and deep-seated fault lines of caste to the urban fore. Upper-caste anxieties over losing the strongholds of privilege in India (through education and government services, where they erstwhile had exclusive access), manifested in rage. Anti-reservation protests erupted across campuses and cases of self-immolation by students were noted. The public discourse around reservations has since been concentrated in television debates, courtrooms, university conferences, and set by the better-off students on campuses—in other words, it has been hegemonised by upper-caste Hindus. The discourse from this side has thus revolved around merit, and why merit purely must be the paramount or even the sole determinant of opportunity. It has also been about the unethical ways in which Scheduled Caste (sc) and Scheduled Tribe (st) students grab the seats of the upper castes,

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euphemised as the deserving and hard-working. In the last few decades, the arguments in legal cases seem to follow suit, and the original idea and purpose of reservations has been diluted and watered down, if not washed away through judgments of the Supreme Court and high courts.

To begin with, this paper looks at the Supreme Court judgment in *Mukesh Kumar v State of Uttarakhand* (2020) (hereinafter referred to as the Uttarakhand judgment) and few other legal decrees that forms a pattern.¹ Further, the paper moves to chart out lower-caste women's access to education and employment opportunities. Using data from the National Sample Survey Office (NSSO), we show that women form the lowest strata of Indian society experience the intersectional burden of caste and gender. Subsequently, it discusses the significance of anti-reservation trends, strengthened by the Uttarakhand judgment, on women, especially the ramifications of declining reservations on lower-caste women's chances to rise on the career ladder.

Existential Danger for Caste-based Reservations

According to the 2011 Census, the SC/ST population alone constitutes 25.2% of the total population, not including Other Backward Classes (OBCs). We now face a situation where caste-based quotas in employment, both at entry points and promotions, are in existential danger. The often-silent attack on reservations has been made on several fronts: political attacks on the nature and scope of reservations; unfavourable, landmark court decisions; attacks on students and medical residents in college campuses in training programmes, driving them to suicide; and an acceleration in anti-reservation messages consolidated over the internet.

Successive national governments in India—primarily the Indian National Congress (INC) and the Bharatiya Janta Party (BJP)—have kept their position on caste-based reservations deliberately hazy. Conceptual imports such as the creamy layer and class as the focus of reservations, plus the recent tabling of a 10% quota for economically weaker sections—can be seen as diluting the original purpose, as echoed in the Mandal Commission report, in addressing social and educational backwardness. The dilution occurs at the level of challenging and outright rejecting the need to uniquely address social exclusion. State intervention, such as improving infrastructure or providing resources to individuals in the form of learning aids, merit scholarships, etc, does not address the social barriers to the access to education and employment. These barriers include discrimination at the level of admissions as well as treatment inside institutions, along with various other embedded caste practices that we will discuss subsequently. On the other hand, such conditions do not apply to the targets for the new economically determined categories because the reasons for their exclusion can be directly addressed by the state.

If we delve into the judicial interpretations of the reservation system so far, we find that Indian courts have laid out standards pertaining to Articles 14, 15 and 16 (fundamental right to equality and non-discrimination) of the Constitution in a series of noticeably contradictory judgments. Is it a coincidence that in all the landmark decisions pertaining to caste

and reservations, the judges have almost exclusively been upper-caste men? As early as 1962, in the case of *M R Balaji v State of Mysore*,² the Court ruled for the first time that Article 15(4) (which deals with the state making special provisions for SEBCs, SCs and STs) is an “enabling provision,” meaning that “it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary” (para 39). In this case, the state of Mysore had been observing the reservation policy for SCs, STs and SEBCs, and by a government order, all those who were not of Brahmin heritage (approximately 68% of the state's population), were to be eligible for reservations. The Court here held that backwardness must be social as well as educational, and that caste alone could not be the primary indicator of privilege. This was with due consideration to non-Hindus, who supposedly do not follow the caste system, although this is often not true of Indian minorities, who are subject to the casteist norms of Hindu society despite being outside the religious order. The judgment nullified all reservation programmes based on caste lines alone.

This position has been refined and modified in several judgments, with the most recent judgment being *Mukesh Kumar v State of Uttarakhand* (2020).³ Delivered by the Supreme Court on 10 February 2020, this judgment is distinctive as the Court has asserted that reservations in jobs and promotions is the discretion of the concerned government. While it has accepted the extension of reservations to include the economically backward classes, it has simultaneously made existing provisions for reservations non-mandatory.

At the stage of hearings, the Uttarakhand government had requested the collection of data to evidence that SCs and STs were inadequately represented in state employment. Counsels defending reservations, senior advocates Colin Gonsalves and Kapil Sibal, pointed out that such data had already been collected and indeed proved the under-representation. The Court, however, went on to note that the data was not necessary if the state government decided to not enforce reservations; and that data was only relevant for a state that wishes to enforce the policy. It is then that it needs to prove through numbers, the need for reservations to anyone who might challenge it in court. This is an interesting twist of law as it creates a double standard by making credible and self-evident data redundant when there is no political will to enforce reservations, while simultaneously mandating data collection as an additional step when the state wishes to enforce reservations.

By this judgment, the Supreme Court has frittered away the opportunity to view Articles 15 and 16 as creating separate rights for special classes towards furthering substantive equality. Additionally, by stating that Article 16(4) does not create an enforceable fundamental right, the SC judgment has transformed the reservation provisions into a non-justiciable matter akin to the Directive Principles of State Policy (DPSP). It makes quotas, both in appointments and promotions, subject to the discretion of the enforcing state, whose interests may be at odds with the margins of society. This decision of the Supreme Court failed to adequately appreciate social and educational backwardness as a challenge to substantive equality embedded

so inextricably within the Constitution. The mandate to create a level playing field and to correct historic discrimination and denial of opportunities to marginalised communities is therefore turned into an act of one-sided benevolence by the executive, which it can choose to forego.

Caste and Gender in Economy and Employment

Let us contextualise the need for reservations in terms of data in this section, which would allow us to analyse the gender implications of the withering quota regime. The overall subordination of women in society contributes to their vulnerability as workers. India is ranked 108th out of 149 countries on the Global Gender Gap Index (released by the World Economic Forum in 2020). Female sc, st and obc workers emerge as the most vulnerable group within the current system due to a multiplicity of social factors along with a lack of structural reforms. According to an International Labour Organization (ILO) report based on NSSO data, there exist enormous disparities between male and female workers in terms of pay. The lowest wage gap exists between male and female urban regular workers at 22% and highest in urban casual workers at 39% (ILO 2018: 19–20). As a direct consequence of losing avenues for employment in the formal public sector, more women will be denied mobility from, or even forced into, casual labour, where they are already greater in portion than their male counterparts, as a consequence of being denied the right to work far from home. The informalisation of jobs in turn, dilutes reservations as labour protections and policies cease to apply to workers.

Capital-intensive technologies have eviscerated several avenues for self-employment across gender lines. The NSSO's employment data for rural and urban areas shows a decline in the female labour force participation rate from 42.5% in 1987–88 to 18% in 2011–12 for rural women and from 25.4% in 1987–88 to 13.4% in 2011–12 for urban women (NSSO 2011: ii–vi). The Work Participation Rate (WPR) is highest for sc and st women. This, however, does little in the way of empowerment, as the most marginalised groups, living in extreme poverty, are pushed to undertake burdensome work without the effect of increasing real autonomy (Shrivastava and Shrivastava 2010: 52–55).

The caste system creates a monopoly of knowledge and a value-gradation of labour. Even in contemporary India, caste remains intricately and importantly linked with access to education and occupation. The hostility towards lower castes aspiring to higher education is experienced tenfold by the “quota students.” Sumit Baudh recalls the call of shame when the reservation students' roll numbers were called out at the end of the class roll call in the National Law School, Bengaluru (Baudh 2015). The suicides of Dalit⁴ students from Rohith Vemula to Payal Tadavi shows a common pattern of discrimination, harassment and bullying by upper-caste students and teachers. Twenty-three Dalit students have died between 2008 and 2016 in institutions of higher education, including University of Hyderabad and All India Institute of Medical Sciences, New Delhi where all these students experienced harrowing and lacerating caste-based discrimination (Acharya 2019).

Labour under the caste system is not a choice but an obligation. Caste positionality sanctions normative categories for employment, often with severe penalties for any real or perceived breach. Shah et al (2006) surveyed untouchability across 11 states and 565 villages in 2001–02 and found that untouchability is present all over India and has survived by adapting to new socio-economic realities as well as taking on new and insidious forms. Dalits, and only Dalits, perform the least coveted occupations of removing carcasses, digging graves and clearing garbage. Deaths of *safai karmacharis*⁵ (sanitation workers) are a case in point to the hazardous nature of this work, and despite alternative technologies for waste management being available, state functionaries and private companies continue to employ, very often with jarring coercion, Dalits for the job. For instance, in November 2018, two Dalit men died being forced to clean sewage in Varanasi ahead of the Prime Minister's visit to his constituency (Manohar 2019). Human Rights Watch (2014) found that women of Bhangi or Valmiki caste remove human waste manually, and often with bare hands, from public and private dry latrines. They are paid in pittance or stale food, and if they try to leave this work, upper-caste men threaten them with violence and expulsion from the villages. In an interview with the *Guardian* in Fatehpur Sikri, Delhi, a woman of the Valmiki caste explained the coercive tactics used to maintain the divide:

Suppose I have money and open a shop, non-Valmiki people won't buy from me. Suppose I want to be a cook. Nobody will let me enter their kitchen. (Safi 2018)

In the words of Bezwada Wilson, the leader of Safai Karmachari Andolan:

It is the most undignified job, an inhuman, barbaric practice. It is worse than slavery.

Globalisation hardly amounts to a progressive erasing of the caste question. It remains the most pertinent signifier of class. Attewell and Madheswaran (2007: 4146, 4153) use data from the NSS to examine the wage gap between higher castes and scs and sts in the regular, salaried urban labour market, and estimate that these gaps have increased in the post-liberalisation era. Discrimination results in a dip of 15% in wages for the lowest castes, when compared to equally qualified others, due to entrenched bias in both the public and private sectors, but its effect is much greater in the latter. Differences in large gross earnings emerge due to occupational discrimination in the form of unequal access to jobs, rather than wage discrimination and unequal pay in the same job, per se. Newman and Jodhka (2007) explain how discrimination in recruitment in the formal sector operates through linguistic illusion and metaphor—terms like meritocracy and work ethic are often used to perpetuate this discrimination. During the recruitment process, a good family background is a subtle, but clear criterion, and is essentially caste-based. By eliciting entrants' work, income and education background, they have already been positioned on the caste ladder, and are assessed accordingly.

As per Thampi and Anand (2019), India's educated, youth and women, especially lower-caste women, are bearing the

burden of India's rising unemployment. Thampi and Anand analyse the loss of 1.1 crore jobs in India in 2018. The Labour Bureau Employment/Unemployment Survey 2015 shows that youth (15–25 years) and the educated face the highest unemployment rates. Unemployment amongst the 15–25 year olds is 12.5%, much higher than any other age group. Plus 13.8% of graduates and 12.6% of postgraduates (or higher) were unemployed—three to four times the overall unemployment rate.

Unemployment is deeply gendered: We see that graduate women faced an unemployment rate of 30.6% as opposed to 9.9% among graduate men, and women with a postgraduate degree or higher faced an unemployment rate of 23.8% compared to 8.4% among men in the same educational category. It is well-known that India's female labour force participation is low and declining. To add to that, educated women who search for jobs, and are therefore in the labour force, find it difficult to obtain one.

Unemployment is also deeply divided by caste: We find that lower castes are at an even greater disadvantage in the labour market, compared to members of the forward castes with similar levels of education. The unemployment rate for the forward caste population holding at least a graduate degree is 10.5%, while the rate is 18.7% for SCs, 15.7% for OBCs and 14.7% for STs. Educated women within the lower castes face multiple barriers in accessing jobs. The proportion of women looking for a job but unable to find one, in spite of having at least a graduate degree, is 34.3% among SCs, 32.4% among OBCs, 29% among STs and 24.3% among the forward castes—much higher than the overall average unemployment rate of 13.5% for graduate men and women together.

Thus aspiration drives women at the bottom-most rung in the caste hierarchy towards education, while gender and caste discrimination exclude them from the job market. This reinforces the need for reservations in government jobs.

Consequences of Declining Reservations

Entry into intellectual labour is a big leap for women from lower-caste backgrounds. Intellectual labour alone allows entry into the middle class—the only class that earns its livelihood through educational qualifications. This is vital since traditionally SC, ST and OBC women are predominantly engaged in manual labour. Further, while assessing social change, Dalit women can be an important group to track, as they are at the bottom of the Indian economic and political hierarchy. Within the intersections of caste, gender, and class, they are the most marginalised as a group.

This section will analyse Dalit women's educational participation and their employment opportunities in intellectual labour—by this we mean jobs in schools, colleges and universities, as well as government jobs. We will analyse three consequences of weakening caste quotas on women's labour; consequences pertaining to availability of jobs, consequences for women already employed through quota provisions, and psychological implications.

Availability of jobs: The All India Survey on Higher Education (AISHE) Report 2018–19 counted the category-wise number of teachers in universities and higher education institutions in the country and showed that out of 1,90,040 teachers, only 3,898 were SC women teachers and 1,495 ST women teachers, which is 2.83% of the total teaching posts. The total number of female teachers is 69,655, hence the SC and ST female teachers represent 7.74% of the total female teachers. This shows that not only do lower-caste women have abysmal representation in teaching jobs in general, but amongst women teachers too. These numbers therefore point to the severe disability that caste causes to lower-caste women, more so since data suggests that upper-caste women face more restrictions from their families and taboos about working outside of homes.

The real-life consequences for women from the withering away of reservations is best exemplified through the series of events that took place when the Supreme Court quashed two petitions filed by the Ministry of Human Resource Development, Government of India, and the University Grants Commission (UGC). The petitions were challenging an Allahabad High Court ruling that did away with department-wise reservations in universities. Before the department-based 13-point roster was implemented, the UGC employed an imperfect yet appreciably superior 200-point roster. The 200-point roster views all appointments made within the university (considered as a unit), subject to the fulfillment of the reservation criteria. This allowed for a more proportionate representation of people falling in backward categories although still falling much behind what can be reasonably thought of as adequate.

When the 13-point roster system was introduced following the court order, the policy dictated that appointment of every fourth vacancy within one department of the university was to be kept reserved. This meant that for all intents and purposes, smaller departments that do not release multiple vacancies at once, would not have any reserved posts—as it is difficult to create half a vacancy for the reserved category when the department has only two vacancies. This was prophesied as the beginning of the end of caste reservations in higher education. The fallout from the implementation of this system was significant. Protests and demonstrations erupted in various parts of the country and the state was forced to issue an ordinance bringing back the 200-point roster system to remove the effect of the court order.⁶

The 13-point roster debacle was followed by a Delhi University Teachers Union protest against fears from a circular issued by the university dated 28 of August 2019, jeopardising the employment of more than 4,000 ad hoc teachers (some of whom had worked with the university for more than a decade). Many protesting ad hoc staff members were joined by permanent faculty, with the unified agenda of addressing both caste and gender discrimination in the university. The teachers made demands for improved labour conditions by advocating for maternity leave and greater job security. There are several stories of women forced to work immediately after childbirth to keep their jobs, which clearly displays the University's apathetic treatment of ad hoc teachers (Das 2020). The

protests received alarmingly little mainstream attention from the media. During this period, very little of the original intellectual fervor displayed in defending caste quotas, including nuanced discussions about its need, was represented in the media consumed by the masses. An informed opinion about the issue that is cognisant of social realities is important to avoid the misattribution of other labour problems, such as unemployment and stagnating productivity, to the presence of quotas.

Reservations in promotions: Reservations in promotions is pertinent to meaningfully promise employment to those from SEBCs. Unless employees can expect to be promoted through their years of service, the idea of a career is robbed from them. Losing reserved seats and promotions in government jobs has a particularly devastating impact on women caught at the intersection of a deeply patriarchal and casteist society. Patriarchal bias encourages the unspoken rule where women have to work doubly hard (as compared to men) to prove their eligibility for promotion, both in public and private sectors. Where such patriarchal attitudes result in exclusion or creation of barriers for promotion among women, the intersection of gender with caste and class makes it all the more challenging for SC and ST women to be seen as deserving of promotions. The same social factors that prevent their entry into employment, further obstructs them from rising within the ranks. This not only limits the number of opportunities available, but also diminishes chances of career mobility.

Sabharwal et al (2020) ran a nationwide survey to find patterns of inequality in academia, through conference participation and promotion. They found that very few women and SC/ST

persons are full professors. In a context where attendance to conferences is taken as a tool to climb the ladder as well as to understand how much access an academic has to institutional resources, the survey found that more men and dominant caste academics are senior and therefore are likely to access more conferences. It found that women from SC groups are likely to be severely under-represented in both faculty representation and conference participation.

In a 2018 response to an application under the Right to Information (RTI) Act, obtained by the *Print*, startling data on the lack of representation of SCs and STs, despite quotas, was revealed. Out of 81 secretary rank officers in the central government only three were from STs and two from the SCs. There was no OBC officer at the secretary or additional secretary level. The situation is similarly grim in the higher judiciary. In a period of more than eight years, between the appointment of K G Balakrishnan in May 2010 and that of Justice B R Gavai in May 2019, not a single SC judge was elevated to the apex court. In the 24 high courts in the country, there was not a single ST chief justice in this period. The situation with women's representation is equally grim. Presently there are three sitting female judges out of the total 34 judges in the higher judiciary. By this logic of exclusion of both lower castes and women, the possibility of appointing ST women as judges in the higher judiciary is even more remote.

Both the above examples, of top secretaries and judges, show us the situation not at the entry point of a career but at the apex of careers. An administrative officer is elevated to the level of secretary after having served for multiple decades in most cases. Similarly, only after a minimum of 10 years of

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practice in the high courts/Supreme Court can an advocate be appointed as a judge. The fact that there is a dearth of SCs and STs in top administrative and judicial positions indicates that even in professions where entry of lower castes has become possible, rising on the career ladder is nearly impossible. Hence the need for reservations in promotions.

Representation of caste in administration and judiciary is important not only for individual success and rise but also for serving society better from these vital positions in government. B P Mandal says,

Cultural and social handicaps may affect competence of quota candidates. However, there is inherent value of possessing first-hand knowledge of sufferings and problems of the backward sections of society for both field-workers and policy makers at the highest levels. (Mandal 1980)

Psychological impact: Being situated at the bottom of a social hierarchy has severe emotional and psychological implications; individuals are coaxed into internalising deep down that they are indeed lowly and do not deserve success. Black feminist writers, such as Angela Davis and Tony Morrison, have discussed how young black girls grow up believing that they are ugly and that happiness and love rightfully belongs to the white girls with golden hair and blue eyes.⁷ Dalit autobiographies narrate the humiliation and hostility that children face in schools from other children and teachers, making education a psychological battle along with a financial one. High suicide rates among Dalit students in universities and professional institutions demonstrate that intellectual spaces are not hospitable to lower castes. This is not surprising, as the caste-ordained labour structure makes intellectual labour an entitlement of the upper castes and manual labour an obligation of lower castes.

How are Dalit women placed in this scenario? Aloysius et al (2011) document daily abuse and pervading physical, sexual violence from the interviews of 500 Dalit women from four states of India. Verbal abuse itself, as the book shows us, has a severe psychological impact on the Dalit women, eroding their confidence and will to live. Upper-caste men and women use abusive epithets publicly, as threats of rape and sexual assault are hurled at Dalit women in order to instill fear and gain control over their bodies and labour. Different categories of violence—verbal, physical, sexual—are not watertight and often accompany each other: for example, verbal abuse followed by, or along with, sexual or physical assault. The culture of impunity and silence has made Dalit women internalise this, so rather than reporting crimes committed by dominant castes, they accept the violence as normal or as fate, even though it degrades them as human beings (Rao 2009: 253).

We are making a case for the legal system to recognise the intersectionality of gender and caste here. Intersectionality, a term popularised by black feminists,⁸ understands discrimination at its layered worst. For those social groups or identities caught at the crossroads of many systems of oppression and exclusion, such as race, caste, class, gender, disability, and sexuality, face not just double or triple burden, but unique problems. For example, in the case of *Rogers v American*

Airlines (1981)⁹ the grooming policies forbid a black female employee to have braided hair. The court dismissed her plea of discrimination based on race and gender as the policy applied to men and women both. But the court failed to recognise that braids were unique to black women, and were irrelevant to black men or white women (Caldwell 1991). Similarly Indian courts have failed to recognise, time and again, the intersection of caste and gender that is ever present in sexual violence against Dalit women, or that, for instance, parading naked in the village is a punishment specifically reserved for Dalit women.¹⁰

Let us now consider these same Dalit women in employment where they are sitting across the same room holding similar jobs. What kind of emotions would they elicit among others who feel their natural place is somewhere else? In this environment what role does the anti-reservation agenda play? Caste antagonism seeps into all aspects of a lower-caste person's professional interactions, and it gets worse when the government and the media¹¹ collude to encourage the narrative that backward castes are the undeserving other. Lower-caste men and women who are already in government employment through reservations are made more vulnerable to taunts, harassment and structural oppression. Upward employment mobility would become all the more challenging in such an ethos. To drive home this point we visit Gopal Guru's conceptualisation of humiliation (Guru 2011). Humiliation becomes possible through norms already known and accepted to both parties. Here, even if the lower-caste individuals do not accept their normative position, they know it and must fight it. This everyday fight makes the experience of employment unpleasant if not hostile.

Here we might find a study of women's reservation in political seats insightful. Bhavnani (2009) states that women's reservation leads to increase in political participation of women in successive elections. He views the policy initiative in India that sets aside randomly chosen seats in local governments for women for one election at a time, to determine the effect of "reservations" on the chances of women winning elections after quotas have lapsed. Using data from Mumbai, he finds that the reserved seats increase the chances of a woman winning office by approximately five times, even after the seat becomes unreserved. Reservations mainly work by introducing into politics a cohort of women that are able to secure party tickets and win office after reservations lapse. It allows political parties to learn that women can win elections. This study is noteworthy in the realisation that reservations ought to be about probability, of improving the opportunities for women's participation in public life. It is not deterministic. Some measures are to be taken to allow a possibility in the future without the surety of numbers.

Lastly, we would like to visit the latest reservation judgment by the Supreme Court armed with Upendra Baxi's seminal essay wherein he surmises that taking suffering seriously is a moral duty of the courts that are supposed to deliver justice in a democracy. He states that Indian courts did fulfil this duty through the social action litigation especially in the 1980s where they became the advocates of the populations rendered

voiceless by the rule of might. In the current trying times too, we hope the highest court in the country will revisit its mandate of being the people's court (Baxi 1985).

In the absence of reservations, we are robbed of the possibility of scs and sts entering educational and work spaces, of the dream of intergenerational upward mobility that was promised by the key draftsman of our Constitution, B R Ambedkar,

and of the voices of the marginalised in the discourses about their own needs. It is then no wonder that the discourses around reservations today work to bury the achievements of these students and employees and amplify their quota or non-merit status. In this way, the feverishly debated constitutional assurance of eventual equity through the generations, is reduced to dealing with people who are liabilities.

NOTES

- 1 Due to paucity of space, this paper does not analyse judicial trends by chronologically considering all reservation judgments so far, a study we hope to undertake soon.
- 2 1963 AIR 649.
- 3 Civil Appeal No 1226 of 2020, in the Supreme Court of India.
- 4 The article uses the administrative nomenclature SC where it refers to official data and numbers, whereas the term Dalit where political consciousness of the subjects is a material factor.
- 5 The number of deaths of sanitation workers while cleaning septic tanks and sewers has risen, despite a ban on manual scavenging, with 620 cases reported since 1993, of which 88 occurred in the past three years, according to the Social Justice and Empowerment Ministry. See Nath (2019).
- 6 The Central Educational Institutions (Reservation in Teachers Cadre) Ordinance, No 13 of 2019.
- 7 Tony Morrison's, *Bluest Eye* (1970) is a story of a young girl who preys to god every night that she should wake up with blue eyes. Then maybe, she hopes, her parents will love her, her abuse will stop.
- 8 See Crenshaw (1990), Yuval-Davis (2006).
- 9 Renee Rogers, a black American woman and flight attendant, sued her employer, American Airlines, for whom she worked for 11 years, when it demanded that she not wear her hair in a cornrow style, and instead asked her to style her hair in a bun. American Airlines based their hair change requirement on their grooming policy. Renee's argument was that the policy banning her from wearing braids at work was discriminatory based on race and sex. The trial court quickly dismissed Renee's argument of sex discrimination because the grooming policy at issue applies to both men and women, in that a man with longer hair would also not be permitted to wear an all-braided hairstyle. Additionally, Renee argued that the policy was discriminatory on the basis of race because cornrows have a special significance for black American women in that they have been "historically, a fashion and style adopted by Black American women, reflective of cultural, historical essence of the Black women in American society." See, <https://libraryguides.missouri.edu/c.php?g=593919&p=4124519>.
- 10 Scholarly articles have discussed this; see Rao (1999), Teltumbde (2007), P Baxi (2014).
- 11 It is pertinent to note that English and even Hindi media lack Dalit journalists. See Ashraf (2013).

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EPWRF India Time Series Expansion of Banking Statistics Module (State-wise Data)

The Economic and Political Weekly Research Foundation (EPWRF) has added state-wise data to the existing Banking Statistics module of its online India Time Series (ITS) database.

State-wise and region-wise (north, north-east, east, central, west and south) time series data are provided for deposits, credit (sanction and utilisation), credit-deposit (CD) ratio, and number of bank offices and employees.

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Examining Local Committees under the Sexual Harassment of Women at Workplace Act

ANAGHA SARPOTDAR

One of the major milestones of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to provide a special redress mechanism for complaints in the unorganised sector. Section 7 of this act mandates the constitution of local committees by the state government. However, there remains a lack of data when it comes to understanding the functioning of the local committees. This paper examines the functioning of the local committees in general, based on the experiences of the author as an acting chairperson of the Mumbai city district local committee.

Violence against women perpetrated by men is gender-based and socially shaped. As argued by Millett (1970), in all societies, the relationship between the sexes has been based on power and is, therefore, political. It shapes in the form of domination by men over women in all areas of life. Walby (1990) defines patriarchy as a system of social structures and practices in which men dominate, oppress, and exploit women. The structural aspect of patriarchy is manifested in the hierarchical organisation of social institutions and relations, while the ideological aspect reinforces and supports inequality and subordination (Dobash and Dobash 1979). Patriarchy in the economy as a social institution becomes obvious in the form of gender bias in labour force participation¹ and sexual harassment in the workplace.

Vishaka Guidelines

The legal recourse on the issue of sexual harassment in India came only in the 1990s, though the country signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 30 July 1980 and ratified it on 9 July 1993. It was in the case of Bhanwari Devi,² a village-level worker employed with the Rajasthan state government on contract, that the Supreme Court issued Vishaka guidelines for employers in 1997 (*Vishaka Guidelines and Others v State of Rajasthan and Others* 1997). Bhanwari Devi's gang rape case brought to light the utter disregard and failure of the state government as an employer to recognise and prevent sexual harassment experienced by women while performing duties in benefit and on behalf of them.

Jaising (2004) states that the primary question in the Vishaka case was whether the state, as an employer, was responsible to protect its employees and workers. Before the Vishaka judgment, even as the sexual dimension of harassment was disabling and unspoken, it remained invisible (Kapur 2009). The writ petition filed in this case by the women's organisations was aimed at enforcing fundamental rights of working women, finding suitable methods for realisation of gender equality, preventing sexual harassment and filling the vacuum in existing legislation. It used the case as a concrete illustration of the systemic violation of rights, and then demonstrated a pattern of abuse by providing examples of five other women who experienced sexual assault while at work. The judgment filled a gap in domestic laws related to violence against women in India and upheld the constitutional rights of women by directly applying the provisions of CEDAW to enact guidelines against sexual harassment in the workplace (Sood 2006).

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In other words, the Constitution and international obligations became the basis for legislation against sexual harassment in India. The judgment drew from Articles 14 (fundamental right to equality before the law and equal protection of the laws), 15 (right to non-discrimination on grounds, including of sex), 19 (fundamental freedoms), and 21 (right to life and liberty) of the Constitution that are violated in the cases of sexual harassment. Article 14 was interpreted from the point of view of gender equality, which meant that women have a right to work with dignity, and they are to be protected from sexual harassment. Using Article 15, sexual harassment was seen as discrimination based on sex. Article 19 (1)(g), which guarantees equal opportunity to all citizens to practise any profession or carry on any occupation, trade, or business, was seen to be violated. It was observed that a climate of male domination often exists in places of employment, and sexual harassment vitiates a safe working environment for women. Read with Article 21, it implied that no person will be deprived of life or personal liberty at the workplace.

Article 42 in the Constitution, which calls upon the state to provide for just and humane conditions of work, laid the foundation for future measures and legal remedies against sexual harassment at the workplace. The Vishaka judgment recognised that sexual harassment violated the constitutional guarantee of gender equality, and women's fundamental rights to live with dignity, to personal liberty, and to carry on any occupation. Along with fundamental rights, the directive principles regarding securing just and humane conditions of work and maternity relief, and the fundamental duty imposed on all Indian citizens to renounce practices that are derogatory to the dignity of women were also referred to by the Court.

Undoubtedly, the Vishaka judgment initiated a discourse in India on sexual harassment at the workplace and benefitted women by reconfirming their right to a safe working environment.

It proposed to provide a gender-friendly atmosphere for women at work, by providing a redress mechanism within the workplace in the form of a complaints committee. It was envisaged that a committee consisting of employees and one external member would conduct hearings to address the complaints related to sexual harassment within an organisation. However, one of the major drawbacks of the Vishaka guidelines was that they failed to address sexual harassment of women prevalent in the unorganised sector (D'Souza 2005). The guidelines largely benefitted taxpaying or licenced organisations in the organised sector that follow labour laws, one of which is the legal provision related to sexual harassment (Roy Ghatak 2017). Within a few years of its coming into existence, it was a known fact that it was difficult to implement the Vishaka guidelines, which placed the onus of protecting working women from sexual harassment on the employer and focused on the internal resolution of complaints in the unorganised sector setting, as these are "enterprises whose activities are not regulated under any legal provision or do not maintain any regular accounts" (Salve 2013).

The 2013 Act for the Unorganised Sector

In the organised sector, a lack of will of the employers and insensitive functioning of the committees formed under the Vishaka guidelines remained an issue (Chaudhuri 2006; CII 2005; CFTI 2010; Dasgupta 2001; Dutta 2019; Lawyers Collective 2002; SARDI 1999). The women's movement had seen more than a decade of prolonged struggle and dialogue with the government to address low compliance to the Vishaka guidelines by employers and problems associated with the functioning of internal committees (ICs) in the organised sector, along with their limited implementation in the unorganised sector. This resulted in the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)

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Act, 2013 (hereinafter referred to as the 2013 act). The act came into force on 9 December 2013. As the title suggests, it is a gender-specific legislation for women, in recognition of unequal power relations at workplaces. This was an explicit form of affirmative action under Article 15(3) of the Constitution, which allows the state to enact special legislations for women.

Section 2 (p) of the 2013 act defines the unorganised sector as a workplace that engages less than 10 workers, while the domestic worker has been specifically defined as per Section 2 (e). Another definition that captures the essence of this sector is: the unorganised sector is one in which women do arduous work as wage earners, piece-rate workers, casual labour, paid and unpaid family labour, whose economic and social conditions are dismal (National Commission on Self Employed Women and Women in the Unorganised Sector 1988). In the present times, when there are differing statistics on employment in the unorganised sector of India—the Economic Survey of India 2018–19 puts it at 93%, and as per a NITI Aayog strategy document, it is 85% (Mohanty 2019)—it is understood that 95% of employed women are engaged in the unorganised sector (GCNI and Deloitte 2019). Further, it is found that sexual harassment of women in the unorganised sector is rampant and widespread (Datta 2012; Neeta and Mazumdar 2010; Social and Rural Research Institute 2012; Yugantar Education Society 2003).

Section 7 of the 2013 Act mandates the constitution of a local committee (LC) at the district level for addressing complaints coming from the unorganised sector. In keeping with the nature of the sector, it is important to delve into the efficacy and efficiency of the LCs. LC members are to be nominated by the district officer (DO) who is either the district collector or a deputy collector as per Section 5 of the act. In Maharashtra, deputy collectors are notified as DOs, and their activities are coordinated by the state government's Department of Women and Child Development (DWCD). Since the jurisdiction of the LC is an entire district as per Section 6(3) of the 2013 act, and it works closely with the government machinery, it yields considerable power in comparison with an IC whose powers are restricted to only the concerned organisation.

However, in the public domain, the information available is limited only to the constitution of the LCs across India, which is also skewed in nature. There is a dearth of information about their functioning (Chhibber and Mahajan 2018; Mittal 2018; PTI 2018). Against this backdrop, this paper examines the working of the LCs. It argues that the functioning of the LCs is fraught with difficulties that originate in the provisions of the act and, thus, are system generated. The paper seeks to strategically analyse the strengths, challenges, opportunities, and risks associated with the functioning of the LCs. In writing this paper, the author has drawn upon her own experience and insights gained in working as a member and chairperson of the LC of Mumbai city district.³ Due to the non-availability of research data and/or official statistics by the central government regarding the functioning of LCs, and legal restriction regarding disclosure of case-related details, the author has depended on individual experience spanning from 2015 to

early 2020, case laws, and secondary sources, including reports published in the print media.

Functioning of LCs

The strengths of an LC lie in the powers vested in it by the 2013 act. Under the 2013 act, similar to the IC in each organisation, there is an LC in each district. The LC is the principal mechanism with the power and authority equivalent to a civil court for the resolution of complaints reported from the unorganised sector. On receiving a complaint, at the request of the complainant, the LC can settle the case under Section 10 using its power of conciliation, which can prevent the complainant from being pushed into arduous inquiry procedures that might involve cross-examination and demands for production of evidence to substantiate the complaint.

Traditionally, conciliation is understood as a form of out-of-court settlement (Dixit 2019) for concluding disputes between two parties at loggerheads. Conversely, a unique feature of the 2013 act is that conciliation is a formal process recognised under the statute. It is to be carried out by the members of the LC as conciliators in the interest of the complainant on mutually agreed terms, which can range from a verbal warning to the respondent by the LC, verbal apology by the respondent to the complainant, and transfer of either of them and other such related interventions. However, if the complainant is not willing to avail the option of conciliation or if any of the terms of conciliation are violated, the case can be reopened by the LC and moved for an inquiry. For conducting an inquiry as per Section 11(3), the LC can summon any person before it, enforce their attendance, and record their statement. Additionally, the LC can demand any document from the organisation relevant to the case under inquiry. While the inquiry is pending, the LC can recommend the transfer of either the complainant or the respondent, recommend special paid leave for the complainant for a maximum period of three months, and prohibit the respondent from evaluating the performance of the complainant.

With respect to complaints reported from the private sector, the LC can recommend a penalty to the DO, who is the appointing authority of the LC. Section 13 of the 2013 act provides for the LC to recommend compensation along with penalty on grounds stated in Section 15, thereby directing the respondents to pay the sum from either their wages or a lumpsum amount. Additionally, if compensation is not paid, the LC can forward the order to the concerned DO for recovery as an arrear of land revenue. Further, in complaints registered by domestic workers, the LC can forward these to the police for registration as per provisions of the Indian Penal Code (IPC).

Such enormous powers vested in the LC indicate that it has a crucial role to play in the prevention and redressal of sexual harassment that occurs in units with less than 10 employees, self-employed professionals, and where the complaint is against an employer, irrespective of the sector. Observations of other LCs and interactions with them indicate that since the LCs are constituted by the district collector and are backed by the district administration, including the district offices of women and child departments, they are aware of the above-mentioned

powers and exercise them in various ways, which can be understood by the subsequent discussion.

Scope of Work

Sexual harassment at the workplace is unwanted sexually oriented behaviour resulting from unequal gender-based power relations and has serious consequences for the employment of women (Aggarwal 1992; MacKinnon 1979; Stanko 1988). Different reported cases (Mantri 2016; *Scroll.in* 2017; *Times of India* 2017; Vyas and Babar 2015) reveal that whenever the complaint is against a man yielding power in the organisation, there is an invariable failure to protect the career interest of the complainant, leading to their termination or resignation from service (Crasta 2017; Calamur 2017; Dutt 2016; Ganz 2015; *Hindustan Times* 2015; Joseph 2016; Sen 2015; Shukla 2015). Inaction on the part of the employers to act promptly against a powerful respondent and the disregard of such cases by the government pushes complainants to approach external agencies, such as media, police, and the courts for the redressal of their complaints (*Financial Express* 2017; Jha 2017; Kidiyoor 2014; Rai 2017).

ICs in most organisations were earlier either not existent (*Business Standard* 2013), ineffective (Barua 2015) or gave a clean chit to the respondent (Vijayraghavan and Philip 2017). In such circumstances, it is important that the inquiry is conducted by an outside body that is not reporting to the person, so that the possibility of the committee members getting pressurised is considerably less, compared to an IC comprising largely of employees. Section 6 of the 2013 act empowers the LC to conduct an inquiry when the complaint is against the employers of the organised sector. However, in none of the cases reported against persons falling in the category of "employer" was Section 6 invoked and activated. Inquiries were or are being conducted by ICs comprising employees who directly or indirectly report to the respondent (*DNA* 2017; *Scroll.in* 2017).

However, the issue arises as to who is an employer. While Section 2(g) of the 2013 act states that heads of a department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit, or officer of an appropriate government or local authority is an employer, the interpretation by courts is different. In a 2014 judgment, the Bombay High Court has ruled that respondents working in various capacities, either managerial, administrative, or supervisory, are answerable for any lapse or wrong on their part to the management. They will be considered as "employee," and not "employer" (*Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University* 2014). A major dilemma that arises for the LC is to decide whether the respondent should be considered as an employer, thereby bringing the inquiry within the purview of the LC, or should be considered an employee. In such a situation, it is the discretion of the LC to determine the scope of the inquiry, depending on the facts and circumstances of the case.

Weighing the lack of trust expressed by the complainant in the IC constituted by the employer as the key factor and thus allowing her to testify before the LC is an important decision towards safeguarding the interest of the complainant. In one of the cases dealt with by the Mumbai city LC, complainants

refused to appear before the IC formed by the parent ministry for the purpose of inquiry against the head of the institute. Instead, they chose to approach the LC, which was also supported by the LC by taking the case as per the objectives⁴ of the 2013 act. However, in 2016, the Mumbai suburb LC dismissed the complaint of sexual harassment registered by a teacher against the principal of the school. Citing *Jaya Kodate v Rashtrasant Tukdoji Maharaj Nagpur University* (2014), the LC states that the principal of the school is not an employer, and therefore, the complaint is not in the purview of the LC. The order further instructs the complainant to approach the IC of the school for grievance redressal. This has left the complainant with no further recourse but to approach the high court against the LC, which is strenuous in terms of time, money, and energy.

Procedure of Inquiry

After it is established, if the respondent fits the category of the employer, the next issue for the LC to address is the procedure to be followed for inquiry. Section 11(1) of the 2013 act states that the inquiry will be done as per the policy or service rules of the respondent. In this regard, the Department of Personnel and Training (DoPT)⁵ notification of 2015 lays down the procedure to be followed by ICs constituted in central government establishments. This can be safely relied upon by the LC as well, per the mandate of the 2013 act. This notification, based on Section 14(2) of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS rules), expects a dual role from the committee. The first is to conduct a preliminary inquiry for procuring a chargesheet from the disciplinary authority, and then holding an elaborate inquiry following service rules. While the procedure appears to be clear and precise, there are serious challenges faced by the LC.

The possibility of the LC getting coerced or manipulated is lesser as compared to an IC. The organisational dynamics known to an IC, but not to an LC, is certain to affect the inquiry in many ways. The LC may still be unable to protect witnesses from coercion, intimidation, threats, and retaliation. This was experienced by the Mumbai city LC when the witnesses refused to cooperate with the LC in a complaint against a senior government officer. The complainant was on the payroll of a vendor who did not allow the LC to write a preliminary report demanding a chargesheet against the respondent, adding to pendency as the case continues to be under discussion. The complainants have limited options. One of them has approached the high court against the government, the employer in this case.

Also, since the LC is located out of the organisation, inquiries can become difficult as the context is little known (Jose 2018). Another area of tension is between the disciplinary authority and the LC. The disciplinary authority, at times, may not cooperate with an outside body. This is particularly so in situations when the LC requests issuance of a chargesheet against an influential respondent who is at a senior position within the organisation. The 2013 act is silent on the course of action to be followed by the LC if there is no response from the disciplinary authority, or if the authority denies the need to draw up a chargesheet against the respondent as per Rule 14(3) of the

ccs rules. As per Rule 14(2), the committee is to be deemed as the inquiring authority appointed by the disciplinary authority of the respondent. The LC may be at loggerheads with a powerful government department or ministry at the state or central level. In a case before the Mumbai city LC, repeated correspondence with a central government ministry yielded no response, leading to loss of time. The LC has been exploring ways to address the issue using strategies other than litigation.

Similar challenges exist for inquiries about employees of the state government. In such contexts, the LC is compelled to follow Maharashtra State Civil Services (Discipline and Appeal) Rules, 1979 (MSCS rules). In a case before the Mumbai city LC, the LC was required to conduct the inquiry as per Rule 8 meant for imposing major penalties on the respondents found guilty of sexual harassment. For organisations falling in the private sector, the inquiry needs to be done as per procedure laid down by Section 7 of the rules under the 2013 act, which mandate inquiry in complaints of sexual harassment as per the principles of natural justice. A slightly more complex situation unfolds if the respondent does not cooperate with the LC, and this might pave the way for litigation, hampering the timeline designated by the 2013 act. This could consequently cause discomfort to the complainant. This was the situation in *Global Health Private Limited v Local Complaints Committee, District Indore and Others* (2019) wherein the respondent—the medical superintendent of Medanta Superspeciality Hospital—refused to cooperate with the LC of Indore district that was then compelled to initiate an inquiry as per the orders of the district administration, due to the absence of an IC constituted by the hospital.

Low Reporting of Complaints

Sexual harassment of women at the workplace has been consistently plagued with low reporting (Alavi 2017; CFTI 2010; Dasgupta 2001; Gole 2017; INBA and Netrika Consulting 2017; Lawyers Collective 2002; Saheli 1998; Sakshi 2001; SARDI 1999; Sharma 2014; Social and Rural Research Institute 2012; Yugantar Education Society 2003). Majority of women do not report sexual harassment for reasons such as lack of confidence in the organisation, including its redressal mechanism, low awareness about laws and procedures, the threat of professional victimisation, and fear of ridicule, stigma and embarrassment. These factors are enhanced and accentuated in the unorganised sector where there is a constant fear of losing one's livelihood and achieving rights is tenuous (Datta 2012), resulting in either low or no reporting of complaints (Jose 2020).

Since no data is available in the public domain in the form of statistics or media reporting regarding awareness sessions conducted by LCs across India, it can comfortably be assumed that awareness generation is not happening at a conspicuous scale. However, this has serious implications, as an absence of awareness generation could be the foremost reason for low or no reporting of sexual harassment. Conversely, low or zero reporting may be used to justify the passive approach taken by the LC. The 2013 act demands a broadening of its scope from being an idle body waiting to receive complaints to one that proactively undertakes prevention initiatives. Generating

awareness about the rights of women employees guaranteed by law and raising their confidence to report incidents of sexual harassment is an important component of the LC's work. This will help break the silence around the issue and enhance the reporting of sexual harassment. However, most LCs, including in Mumbai city and suburbs, have not been able to do outreach programmes due to a lack of monetary support from the central and the state governments that is mandated under Section 8 of the 2013 act.

Opportunities

It is important to note that in May 2016, there was an amendment to the 2013 act, which renamed the local complaints committee as the LC. This amendment implies that the LC is no longer conceived to be only a complaint resolving mechanism. It should work proactively at awareness generation about the rights of women employees in order to fulfil a key objective of the 2013 act in the prevention of sexual harassment. Prevention campaigns would be helpful in breaking the silence around the issue and enhance reporting of sexual harassment. Practically, the LC has the district government machinery backing it, which provides it a wide scope and reach. Compared to an IC, the LC has wide coverage, as its jurisdiction expands to the whole of the district as per Section 6(3) of the 2013 act.

It is pertinent to mention that the Mumbai city LC has drawn up a plan to build alliances with trade unions, workers' collectives, women's groups and organisations and various boards created for workers in the unorganised sector for generating awareness about its existence and on the issue of sexual harassment. However, it is at a formative stage due to lack of funds. Additionally, it is in the process of drafting recommendations to the state government for better implementation of the 2013 act. With trained social workers, lawyers and women's rights activists active in the district, the LC is in an enviable position to recommend actionable measures to the district administration. An interaction with a member of the Pune LC reveals that it, along with women's groups, has drafted a state-level policy for all LCs across the state, which is yet to be formalised.

Another possible area of intervention for the LCs is to receive complaints of sexual harassment against self-employed professionals, more specifically, in instances where the complainant is averse to registering a police complaint. In a reported complaint against a paramedic, the Mumbai city LC was able to obtain a letter of apology as a penalty for posting sexually coloured messages to a university student who sought treatment from him.

Risks

The risks can be deduced from court orders and media reports and from the gap in documenting LCs' functioning. A prominent one is with regard to the use of Section 14 under the 2013 act by the LC. Section 14(1) of the 2013 act states that if the LC concludes that the complaint was false and registered with a malicious intent, it can recommend action against the woman to the DO or the employer. The Gurugram LC used this provision and allowed a public display of its order regarding a false

complaint on a website. This order carries the LC's recommendation of issuing a written warning to the complainant. It mentions that the penalty was recommended for misleading it, on the basis of findings that there was a disparity between statements by the complainant to the LC and to the company's IC, including the length of the interval in reporting incidents of sexual harassment (*Shoneekapoor.com* 2018).

This is only one illustration that has come to public knowledge, while there is a lack of nationwide data available with respect to false complaints reported to the LCs. However, it can be stated that the arbitrary use of Section 14 by the LC, such as in the above case, without deeper thought, can discourage and frighten potential complainants from reporting incidents of sexual harassment. It is imperative for the LC to understand that complainants may not always be able to provide direct evidence in support of their complaint. Rather, it is clarified by Section 14(1) of the 2013 act that the mere inability to substantiate a complaint or provide adequate proof does not falsify the complaint. Hence, it is important for the LC as well as the IC to be clear about the thin line of distinction between the complainant's inability to prove a case and their deliberate falsity with malicious intent. Such a provision could act as a trap for the LC members if they do not understand the stealthy, private and subtle nature of sexual harassment and the hesitation on part of witnesses to depose before a formal mechanism such as the LC. Coupled with the prevailing context of low reporting of complaints, the impact of such a provision gets exacerbated.

An LC order within the jurisdiction of Delhi dismissed a complaint without inquiring into its merits, because it was lodged beyond the limitation period of three months as stipulated by Section 9(1) of the 2013 act. This order of dismissal was set aside by the Delhi High Court in 2019 (Banka 2019). While the court directed the LC to hear the complainant, the point to be noted is that Section 9(1) allows the LC to condone the delay by three months by recording reasons for the same, provided it is satisfied by the explanation submitted by the complainant for the delay in registering a complaint. The LC needs to interpret such sections in the 2013 act in a liberal manner considering ground-level issues that prevent women from reporting sexual harassment and by acknowledging the inevitable existence of hierarchy and power inequalities at a workplace, and the enormous courage it takes on the part of women to register a complaint. The LC ought not to dismiss complaints for exceeding the limitation period in a mechanical manner and, instead, delve deeper into the reasons for delayed reporting.

In another instance of mechanical treatment of complaints, an LC in Karnataka dismissed a complaint, stating that the said complaint did not fall within its jurisdiction, without citing reasons. In 2015, the Karnataka High Court set aside this order and directed the LC to issue an order recording reasons as required by Section 7 of the 2013 act, or else proceed with inquiry into the complaint (CLPR 2015). It appears that the LC was not able to issue a reasoned decision.

In addition to the mechanical treatment of complaints, the LCs sometimes overstep the limits of their legal mandate. The DO has a legal mandate to monitor the timely submission of

annual reports (Section 20), while the overall compliance is to be regulated by the appropriate government as per Section 23 of the act. In one instance, the Gurugram LC exceeded its jurisdiction by issuing notices to private sector organisations instructing them to file reports regarding compliance to the 2013 act (*BW People.in* 2018). Additionally, it appears that the Hyderabad LC dealt with a complaint from an organisation having more than 10 employees, falling within the purview of IC as per the 2013 act (*New Indian Express* 2020). These are instances of misplaced overzealousness of LCs due to a lack of understanding of the limits of their legal mandate.

Moving Forward

Working on the social and legal aspects of sexual harassment since 2005 has provided the author glimpses into struggles waged by women complainants for the realisation of their rights. These struggles are more difficult in the unorganised sector, with high casual labour that does intermittent jobs at extremely low wages or with uneconomical returns. There is a total lack of job security and social security benefits in the unorganised sector. The areas of exploitation are high, resulting in long hours, unsatisfactory work conditions, and occupational health hazards (National Commission on Self Employed Women and Women in the Unorganised Sector 1988).

The 2013 act is pertinent in this context as it is a social legislation to prevent and redress sexual harassment. Social legislations are an active process of preventing or changing the wrong course in society, with an aim to empower groups that are disadvantaged (Fairchild 1944; Gangrade 1978). The Vishaka guidelines and the 2013 act as well as their application to the unorganised sector are outcomes of a long-standing struggle by women's groups and organisations. The faulty implementation of the 2013 act in the unorganised sector will be damaging and regressive.

A grim scenario can be avoided by strengthening the LCs and providing them with adequate budgetary, infrastructural and logistical support. An adequate budget is crucial for the LC to fulfil its broad mandate of working at the preventive level, proactively through awareness-raising activities. This will not only empower LCs but also motivate women to lodge complaints of sexual harassment. The government would do well to document the functioning of LCs across the country in terms of their composition, nature of complaints received, orders issued, time taken for issuing orders, and other such related aspects. Gathering quantitative as well as qualitative data with regard to LCs' functioning, and focusing both on their efficiency and efficacy, is crucial.

In conclusion, the 2013 act definitely has the potential to carry forward the process of shifting power relations at work, as initiated by the Vishaka guidelines of 1997. This can happen provided the act is implemented in its spirit in the unorganised sector. As stated by Douglas (1993), only if we are seriously committed to ending the widespread violence and injustice in society at individual, collective, and institutional levels can the structures and forces that maintain and reproduce a patriarchal system be contested and transformed.

NOTES

- 1 Female labour force participation in India has declined from 34% in 2006 to 24.8% in 2020, according to United Nations Global Compact (UNGC) India study (GCNI and Deloitte 2019).
- 2 In 1985, Bhanwari Devi was selected and trained as Saathin (woman village level worker) under the Women Development Programme by the Government of Rajasthan. In 1992, as part of the state government campaign against child marriage, Bhanwari Devi attempted to stop the marriage of a one-year-old girl in a Gujar family. Men from the community retaliated and punished her by intimidating her with sexual harassment, threats, imposing a socio-economic boycott on her family, which finally resulted in five men raping her in the presence of her husband. She faced numerous obstacles in her attempts to seek justice. Police were reluctant to record her statement or carry out an investigation, and doctors at two government health facilities refused to conduct a proper medical examination. Subsequently, the men were acquitted by the sessions court. The court said, a man could not possibly have participated in a gang rape with and in the presence of his nephew, Bhanwari Devi could be lying that she was gang-raped as her medical examination happened 52 hours after the incident and that her husband could not possibly have watched passively as his wife was being gang-raped because he had taken marriage vows which bound him to protect her. In 1992, under the collective name "Vishakha," a public interest petition was filed in the Supreme Court of India by women's organisations and groups against the State of Rajasthan, its Women and Child Welfare Department, its Department of Social Welfare, and the Union of India. The case was cited as an instance of sexual harassment in the context of work and it was said that in the absence of legislation on sexual harassment at workplace, women were left vulnerable and their rights unprotected.
- 3 The metropolis of Mumbai is divided into two districts, that is, Mumbai city and Mumbai suburbs. Consequently it has two LCs.
- 4 To provide protection against sexual harassment to women at the workplace, and for the prevention and redressal of complaints of sexual harassment.
- 5 Office Memorandum F No 11013/2/2014-Estt (A-III) of 2015, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DoPT), Government of India, North Block, New Delhi.

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Gamechanger or a Trojan Horse?

Some Reflections on the Maternity Benefit Act, 1961

SAUMYA UMA, ADITYA KAMATH

The Maternity Benefit Act, 1961, a key legislation in India that enables women to transcend the public–private dichotomy and stake their claim for productive participation in the labour force, saw major amendments in 2017. Four aspects of the amendments—increased maternity leave, maternity leave for adoption and surrogacy, provision of crèche, and paternity leave—are juxtaposed with feminist and constitutional principles as well as ground-level realities and practices. An increase in maternity benefits in law with a neglect of paternity leave and benefits is a lopsided approach that further reinforces gendered division of labour and care work as the domain of women. The social responsibility of employers is emphasised, and a deeper engagement of the state with the policy of parental benefits is advocated.

The glorification of motherhood, the intrinsic linking of women's identity to their role as mothers in the patriarchal Indian society, and the gendered role assigned to women with respect to childcare have led to family, community, and societal pressures on women. The rise of capitalism has led to a separation between economic reproduction that is remunerative (in the factories and offices) and social reproduction (care work in the private domestic sphere, often non-remunerative). This has sharpened the gendered division of labour and the public–private dichotomy, with women being confined to the more unregulated domestic sphere, performing “care” activities out of love and sentiment. As Nancy Fraser (2013) opines, the gendered separation of social reproduction from economic reproduction constitutes the principal institutional basis for the subordination of women in capitalist societies, and is a central issue for feminism. Capitalism has brought in a crisis of care, where the capacity for social reproduction is depleted due to the financialised form of capitalism.

Prior to Fraser, in response to and dissatisfied with liberal feminism and its overemphasis on rights and autonomy, some feminists such as Gilligan (1982) and Noddings (1984) have foregrounded the ethics of care and the value of connectivity. Care-focused feminists provided plans and policies for reducing women's burden of care so that they may develop themselves as fuller persons (Tong 2009: 7). In this context, the support of care work through the state and corporate entities becomes crucial. Maternity benefits are an important component of the same in the current legal framework.

This article examines the provisions of the Maternity Benefit Act, 1961 in general and the 2017 amendments to it in particular. It juxtaposes the legal amendments with feminist and constitutional principles as well as ground-level practices, and analyses their ramifications on working women. This article lays down the constitutional, legal and policy framework of workers' rights, followed by an overview of the Maternity Benefit Act, 1961. It then goes on to analyse four aspects of the 2017 amendments to the act—increase in maternity leave, maternity leave for adoption and surrogacy, provision of crèche facilities, and paternity leave—and concludes with a discussion on a possible road map for the future.

Constitutional, Legal and Policy Framework

Classical legal thought, which lasted up to World War I, focused on a sharp distinction between public and private law, freedom of contract, individualism, and legal formalism

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(Kennedy 2006: 25). Law was confined to the liberal commitment to non-intervention and the free market. The latter half of the 20th century onwards, principles of social justice and human rights came to be infused in almost all aspects of labour law. The capitalist system of production signified an unequal relationship between employers and employees, leading to subordination and exploitation of employees. The Marxist perspective amplified the urgent need to challenge and address the unequal distribution of power, wealth, and resources in order to achieve social justice for the workers. The modern idea of human rights, which emerged after World War II, led to labour movements' framing of their claims through a human rights discourse, in order to counter the economic arguments and special interest politics that were advanced by employers (Fudge 2007: 29, 35). The value of labour law lies in bringing in an equalising effect on the unequal power equations and increasing the range of workers' rights.

The Universal Declaration of Human Rights had already been adopted when the Indian Constitution was drafted. The Preamble to the Constitution refers to securing all citizens social, economic, and political justice, and equality of status and of opportunity. Recognising the enormous powers of the state, the chapter on Fundamental Rights provides individuals with rights against the state, enforceable through courts of law. These include equality before the law and equal protection under the law (Article 14), prohibition on discrimination by the state on a number of grounds, including of sex (Articles 15[1]), and equality of opportunity in matters of public employment without discrimination on grounds, including of sex (Article 16[1] and [2]). In addition, the state can make special provisions for women, presumably to counter the historic discrimination meted out to them (Article 15[3]). The Indian state is also duty-bound to protect the life and liberty of all persons, including women (Article 21). It is pertinent to note that fundamental rights are applicable only against the "state," defined broadly through constitutional jurisprudence, and not against private enterprises. On the other hand, the chapter on Directive Principles of State Policy expressly provides for equal pay for equal work (Article 39[d]); that the health and strength of workers—both men and women—are not abused (Article 39[e]); that provisions are made for ensuring just and humane conditions of work and maternity relief (Article 42); and improvement in employment opportunities and conditions of working women (Article 46). These are guiding principles that are fundamental for the state to incorporate in the laws and policies formulated by it. However, these are not justiciable through courts of law.

Labour legislations elaborate on these constitutional principles, and provide mechanisms for their implementation. Substantially, labour legislations specifically extend their application to private enterprises.

In relation to women's rights, labour legislations have focused on issues such as payment of minimum wages and timely, regular payment of wages;¹ equal pay to men and women for equal or similar work;² improving the safety, health, and welfare of women in factories and other places of

work;³ occupational health and safety including compensation for industrial accidents and occupational diseases leading to disability or death;⁴ maternity benefits, including provision of crèche facilities;⁵ provisions for adequate rest and leisure;⁶ social security;⁷ and prevention of discrimination and sexual harassment at the workplace.⁸ Specific labour legislations also address aspects of layoffs, compensation for retrenchment, unfair labour practices, unionising, collective bargaining, and resolution of labour-management disputes through labour courts and tribunals.⁹ Additionally, social legislations aim at protecting vulnerable workers, including child labour,¹⁰ bonded labour,¹¹ contract labour,¹² construction workers,¹³ and migrant workers¹⁴ from exploitative practices. Some legislations provide for rules regarding pay, leave, hours of work, intervals of rest, overtime, and ban on work in hazardous conditions.¹⁵ These legislations apply to women workers too, though not gender-specific in their contents.

In addition to the constitutional provisions and labour laws, India has ratified a number of international conventions of the United Nations that focus directly or have provisions on women's rights at the workplace.¹⁶ The International Labour Organization (ILO) also works towards setting normative standards on workers' rights through conventions and protocols, which are similarly ratified by India in order that they become applicable to India. The Maternity Protection Convention 1919 (No 3) is the earliest global standard aimed at protecting women workers' rights prior to and subsequent to childbirth. This was followed by the Maternity Protection Convention (Revised) 1952 (No 103). These are still in force for some countries. The ILO Convention No 183, the Maternity Protection Convention, 2000, is the most recent and updated standard, providing for a minimum of 14 weeks of paid maternity leave, a cash benefit (equivalent to two-thirds of the woman's previous earnings) to ensure proper health of the mother and child, and prevents a pregnant woman or nursing mother from exposure to work that can be harmful to her health and that of the child.¹⁷ The convention also provides for women to return to the same or equivalent position of work after maternity leave and to be paid at the same rate, and to be entitled to one or more breaks for breastfeeding the child. An important aspect of global standards on maternity protection is a legal guarantee of job protection to pregnant women and young mothers. The Indian government is yet to ratify any of the three conventions, though there is a continuing effort to incorporate these standards into domestic legislations. In fact, the 2017 amendments to Maternity Benefit Act that increased maternity leave from 12 weeks to 26 weeks is an improvement over the prescription of 14 weeks' maternity leave stipulated in ILO Convention No 183.

The need for childcare services has been emphasised in several national policies of India. These include the National Policy for Education, 1986, National Policy for Children, 1994, the National Policy for Empowerment of Women, 2001, and the National Plan of Action for Children, 2005. Provision of crèches was made compulsory under the National Rural Employment Guarantee Act, 2005. The Rajiv Gandhi National Crèche

Scheme for the Children of Working Mothers, formulated in 2006, made it mandatory for public and private organisations to provide young working mothers with crèche facilities and day care centres. The Indian government adopted the National Early Childhood Care and Education (ECE) Policy, 2013, focusing on early education care, keeping in mind the overall well-being and development of the child. The 2017 crèche guidelines (discussed later in this article) derive heavily from this policy.

The Maternity Benefit Act, 1961 and its 2017 amendments as they stand today must be perceived in the context of the consolidation and re-codification of its labour laws 2019 onwards, referred to as the Labour Codes. One of the four labour codes, the Code on Social Security, if and when it is enacted, will replace nine social security laws, including the Maternity Benefit Act, 1961. This code has been critiqued by trade unions for undermining workers' rights, including maternity benefits (Mohanty 2019).

It is also pertinent to note that these provisions are, in reality, applicable to a very small portion of the female workforce in India. Approximately 70% of Indian women do not work outside the home, and among the remaining women, 84% work in the unorganised sector. Among the remaining 16% women who work in the organised sector, a substantial number are engaged in informal work where the law does not apply. Consequently, Rajagopalan and Tabarrok (2019) estimate that less than 1% of all women in the labour force in India benefit from the law. Lack of awareness among women workers on their right to maternity benefits causes a further obstacle to them asserting their rights under the law. In addition, a vast majority of women employed on a daily wage basis are engaged as independent contractors and not treated as employees on the rolls. The employer, thereby, successfully misleads them into believing that they are not entitled to any benefits under this legal regime.

Amendments to Maternity Benefit Act

The emergence of the system of wage labour and casual labour facilitated the practice of hire and fire in industrial undertakings. Women workers were particularly vulnerable to such arbitrary and sudden termination of their work on the grounds of pregnancy. The 1961 act was enacted in this context. The Supreme Court explained the underlying philosophy of the act in the following words:

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled ... the employer ... must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period (*Municipal Corporation of Delhi v Female Workers* 2000, para 42).

The law provides for maternity benefits and certain other benefits, and seeks to regulate the employment of women in certain establishments for specific periods prior to and after childbirth. The law primarily applies to factories, mines, plantations, shops, and establishments that employ 10 or more persons (Section 2). Through appropriate government notifications, the provisions of the law are made applicable to other establishments or classes of establishments: commercial, industrial, agriculture, or otherwise.

Those women who have worked for 80 days in the 12 months prior to the date of delivery, and those earning more than ₹21,000 a month (and hence not eligible to maternity benefit under the Employees State Insurance Act) are eligible to claim maternity benefits under the 1961 act (Section 5B). In *Municipal Corporation of Delhi v Female Workers* (2000), the Supreme Court extended the maternity benefits under the act to female workers who were not on regular rolls, but treated as temporary workers and employed on muster rolls, on par with regular workers.

Under the act, women employees are entitled to certain monetary benefits. As per the amendments of 2017, these include leave with full wages for 26 weeks for two surviving children, and up to 12 weeks in cases where the woman has more than two children, and leave of up to 12 weeks for women adopting a child below three months and for commissioning mothers.

Additionally, women employees are entitled to non-monetary benefits that include nursing breaks, a mandatory provision of crèche facilities at the place of work in every establishment with 50 or more employees, and a time-bound right to appeal to the authority prescribed by law if the employer refuses to provide the woman with maternity benefits. Contravention of the provisions of the act entails penal consequences for the employer.

Increase in maternity leave: The 2017 amendments increased the maternity leave from 12 weeks to 26 weeks. Table 1 provides an overview of maternity leave that women workers are entitled to in selected countries around the world, indicating that India currently has one of the longest durations of fully paid maternity leave.

Many companies cite poor performance, attendance, loss of projects, overall downsizing, and inability to provide 26 weeks of paid leave as reasons to terminate employees who have declared their pregnancy. The act, however, is very clear that there can be no changes to her service conditions during her pregnancy and no dismissal for any cause, save for gross misconduct (Section 12).

Table 1: Overview of Maternity Leave in Selected Countries around the World

Country	Total Maternity Leave (in Weeks)	Effective Fully Paid Leave (Calculated in Weeks, based on Percentage of Their Former Salary)
Bulgaria	58.6	49.5
Greece	43	23.3
United Kingdom	39	12.1
India	26	26
Australia	18	7.5
Denmark	18	9.6
Canada	17	8.2
Japan	14	9.4
South Korea	12.9	10.2
United States	12	0
Portugal	6	6

Source: Warren (2018).

The cost of the extended 14 weeks of paid maternity leave is currently being borne by the employer too. Reports state that, in reality, this provision has backfired and employers have begun employing discriminatory hiring practices that adversely affect women (Sharma 2019). A survey conducted with 350 start-ups and small and medium enterprises (SMEs) observed the following:

Twenty-six percent of all respondents expressly admitted to prefer hiring male candidates as employees, while approximately 40% of the rest of the respondents claimed that they will consider the additional cost of the paid maternity leave while hiring female employees. This means that 66%, that is, two-thirds of all respondents disclose that the maternity benefit law adversely impacts their hiring against female candidates in some way. Only 22% of the respondents declared that the new maternity leave provisions won't impact their hiring decisions at all. Additionally, a whopping 35% of all respondents also revealed that they see the impact of the Act as negative on both costs and profitability. (Bhalla 2018)

It is important to note that the sample size of the survey is small, and the findings can, at best, be indicative of a trend, warranting further empirical research. However, an analysis of the findings of the survey indicates that a clear anti-women bias has crept into the actual hiring practices post 2017. The argument being made here is not that increased maternity leave has made women less employable, but that gender-discriminatory practices at the workplace that previously existed, due to the entrenched patriarchal mindset of employers, are perhaps further exacerbated in the current context.

There is reportedly a government proposal in the pipeline to reimburse the employers with costs for 14 weeks, up from the current seven weeks, costing an additional ₹400 crore to the government (Sharma 2019). While this may work to partially set off employers' increased liability towards maternity benefits, it still offers no guarantee that gender-discriminatory hiring practices against women due to the entrenched patriarchal mindset among employers would end. Thus, the government initiative addresses merely the manifestations of discrimination, without effectively addressing its root cause.

In our opinion, three possible courses of remedial action are possible, all of which involve state engagement. First, the provisions related to maternity benefits could be made mandatory responsibilities of employers (with punitive provisions for non-compliance) in the public and private, organised, and unorganised sectors. Second, enacting and implementing an anti-discrimination law is of utmost importance to prevent discriminatory practices against women at the workplace, based on and related to pregnancy and maternity, and to provide means of redress for the same. Third, incentives could be provided for employers who maintain gender diversity at the workplace. These could include tax rebates, reduction or waiver of licence fees, or other such incentives that are both monetary and non-monetary in nature.

Maternity leave to adoptive and commissioning mothers: Traditionally, the emphasis in labour legislations in India has been on childbirth through a natural (biological) process. However, in keeping with changing social needs, the judiciary

extended maternity benefits, through a beneficial interpretation of the legal provision, to adoptive mothers and commissioning mothers who obtain a child through a surrogate arrangement (*K Kalaiselvi v Chennai Port Trust* 2013). For the first time, the 2017 amendments incorporated this into the Maternity Benefit Act, and stated that a woman worker is entitled to maternity leave of up to 12 weeks when adopting a child below three months, as are commissioning mothers (in surrogate arrangements).¹⁸

There is no known rationale for entitling a woman with adoption leave only when a child of less than three months of age is adopted, except to bring about an artificial sense of parity with care of infants by biological mothers. This provision ignores the fact that all adopted children, irrespective of the age at which they are adopted, require a bonding period for physical and emotional security; adoptive mothers too warrant maternity leave irrespective of the age of the adopted child. It potentially contradicts the public policy of encouraging adoption of children of varied age groups. An urgent and insightful response to address this issue is warranted from the lawmakers through recalibration of the law.

On the issue of maternity leave for commissioning mothers, an interesting legal question arises. Is it required to provide maternity leave for the same child, to two different women—one being the biological mother and the other being the surrogate mother—when both work for the same company? The answer is in the affirmative since the act focuses predominantly on the protection of the mother's interests; the biological mother is entitled to 26 weeks as per the provisions of the act; the commissioning mother who receives the child through surrogacy is entitled to 12 weeks as per the provisions of the act, irrespective of whether they work in the same company.

It is pertinent to note that the provision on adoption leave, as in the case of the provision on increased maternity leave, is embedded within a law that focuses only on women and maternity. It ignores the father's right and need to bond with the child and vice versa, as well as the father's responsibility towards the child's care, thereby reinforcing gendered roles and that care work is the exclusive domain of women. Within this women-centric legal framework, it is impossible to question women employees' disproportionate burden of care work pertaining to the child, whether biological, adoptive, or commissioned. This highlights the limitations of a liberal framework of feminism and the contradictions within it.

Provision of crèche facilities: One of the significant aspects of the 2017 amendments to the Maternity Benefit Act, 1961 is the provision of a crèche facility in any establishment with 50 or more employees (Section 11A). It is to be noted that the provision does not specify 50 or more "female employees." Thus, even if the establishment consists of only or predominantly male employees, a crèche would need to be provided in order to enable fathers to take care of their children in the crèche. Under the Factories Act, 1948, any factory with more than 30 female workers is required to have a crèche (Section 48). Thus,

in a factory setting, if it has less than 50 workers but more than 30 female workers, it is mandatory for the factory to have a crèche.

The 2017 amendments failed to provide clarity on what the minimum standard of crèche facilities to be provided are, and who bears the cost for providing the same. This led to considerable confusion and ambiguity, which subsequently came to be addressed through the guidelines for establishment of the crèche, issued through a circular by the Ministry of Labour and Employment in November 2017.¹⁹ The circular called upon state governments to frame and notify rules and prescribe amenities and facilities that the crèche should provide. State governments were slow to rise to the challenge and issue guidelines in this regard. Till such time that states notify the same, they are guided by provisions related to crèches in various existing laws.²⁰ Such laws provide for (i) adequate accommodation; (ii) adequate light and ventilation; (iii) clean and sanitary conditions; (iv) management of the crèche by women trained in care of children and infants; and (v) provision of crèche facilities to the employees free of cost.

Recognising the need for setting normative standards for the minimum quality of crèches across the country, the Indian government issued the "National Minimum Guidelines for Setting Up and Running Crèches under Maternity Benefit Act, 2017" in November 2018.²¹ These guidelines are all-encompassing, detailed, and prescribe requirements that may be excessively difficult for small companies with a small workforce to comply with, although they have a social and legal commitment to fulfil in this regard. While most of the requirements appear to be designed keeping an urban setting and populace in mind, the rural small manufacturer or service provider will find these guidelines difficult to implement. As on date, Karnataka is the only state to have notified rules for the provision of crèches. These rules came into force on 22 August 2019. Haryana, Maharashtra and Kerala have published draft rules soliciting comments.

One issue that has arisen in recent times is the legality of the imposition of a "user fee" on the concerned employee for use of crèche facilities, and the engagement of third party service providers. The "user fee" appears to be a manner in which the employer transfers the financial burden of establishing and maintaining a crèche on to the employees. The government responded to an inquiry filed under the Right to Information Act as to which party shall bear the cost of establishing and running a crèche, by stating that the employer shall bear the cost (Khetarpal 2017). Larger companies are keen to outsource crèche facilities to third party service providers who would manage the crèche onsite or in a site close to the company's offices, and charge the employees who avail of the facility with a user fee, which may be nominal or substantial. The issue remains, as to whether or not this dilutes and compromises on the primary responsibility of employers to provide free crèche facilities, as mandated by law. In addition, larger questions loom when crèches provide a plethora of services including education, sports, and overall developmental programmes in addition to basic crèche facilities. The legislation, rules, and

policies are silent on who should pay for such services. The consensus is that any service that is additional to the legal requirements can be billed back to the employee, if the employee wishes to avail of these services.

In comparison with maternity leave, the provision on crèche facilities is gender-neutral and thereby extends institutional support for working fathers to discharge care work towards their children. This aligns more with the feminist vision of equal sharing of childcare responsibilities between the parents.

Paternity leave: As of now, paternity leave does not fall within the ambit of the 1961 act. The central government introduced a provision for the same in 1999.²² Due to this, employees in the government sector are entitled to paid paternity leave for a period of 15 days, and this leave can be availed either 15 days prior to or within six months of the birth of the child. There is no corresponding law that mandates the private sector to provide for paternity leave, thereby leaving it open to each company to formulate a policy on the same. Some bigger companies provide for paternity leave in India of their own volition, such as Facebook (17 weeks), Deloitte (16 weeks), Microsoft (12 weeks), Starbucks (12 weeks), Tata Consultancy Services (15 days), Infosys (5 days), and Oracle (5 days) (Vasquez 2020).

A glance at the trend in paternity leave around the world indicates that India fares low on the list of countries providing for paternity leave, such as Norway (112 days), Iceland (90 days), United States (84 days), Sweden (70 days), Finland (54 days), Spain (15 days), Australia (14 days), New Zealand (14 days), and Denmark (14 days) (ILO 2014).

The absence of any mention of paternity leave in the 2017 amendments leads to a wide discretion in this regard in the private sector. Coupled with a disproportionate and token 15 days' paternity leave for employees of the central government, this reinforces, through law, the patriarchal viewpoint that child care is primarily a woman's responsibility. The status quo of a "male breadwinner" and a "female homemaker" are maintained through a culture of toxic masculinity and derision in doing non-remunerative care work that is considered solely to be the women's domain. The wide disparity between maternity benefits and paternity leave in the Indian law and policy framework cannot be justified with the argument of only women workers having the biological need for healing and rest in the post-partum phase.

Feminists have long discussed the importance of paternity leave (Karr 2017: 233). The notion of paid parental leave to both parents is not a radical concept, and has been tried and tested successfully in some countries. For example, in 2000, Iceland implemented a policy that provides three months paid parental leave to each parent, and a further three months that can be divided between them at their discretion. Six years later, it had started reducing the gender wealth gap, and, at present, it is the top-ranking country for gender pay parity (World Economic Forum 2018). Norway and Sweden too have a "father's quota" of parental leave, that cannot be transferred to the mother if the father does not avail of it.

Such parental leave policy and their contribution to equal parenting have been analysed through a feminist perspective by authors such as Karr (2017), Mohdin (2015) and Baker (1997). Such policies can go a long way in arresting discrimination against women of child-bearing age at the workplace, and normalisation of paternity leave, which will eventually change the perception among employers that women workers are a financial liability.

Subsequent to the Maternity Benefit (Amendment) Act of 2017, a private member's bill titled Paternity Benefit Bill, 2017 was introduced.²³ This bill sought to provide benefits to natural, adoptive parents as well as persons acting *in loco parentis* (an adult responsible for children in the place of parents) in all sectors: public and private and organised and unorganised. These benefits included paternity leave that extended from 15 days to three months. On the one hand, the bill aims at providing the mother with much-needed support and assistance from her spouse prior to, during, and subsequent to childbirth. At the same time, it sought to emphasise equal parental benefits for mothers and fathers, based on the philosophy that childcare is the joint responsibility of both parents.

Possible Road Map for the Future

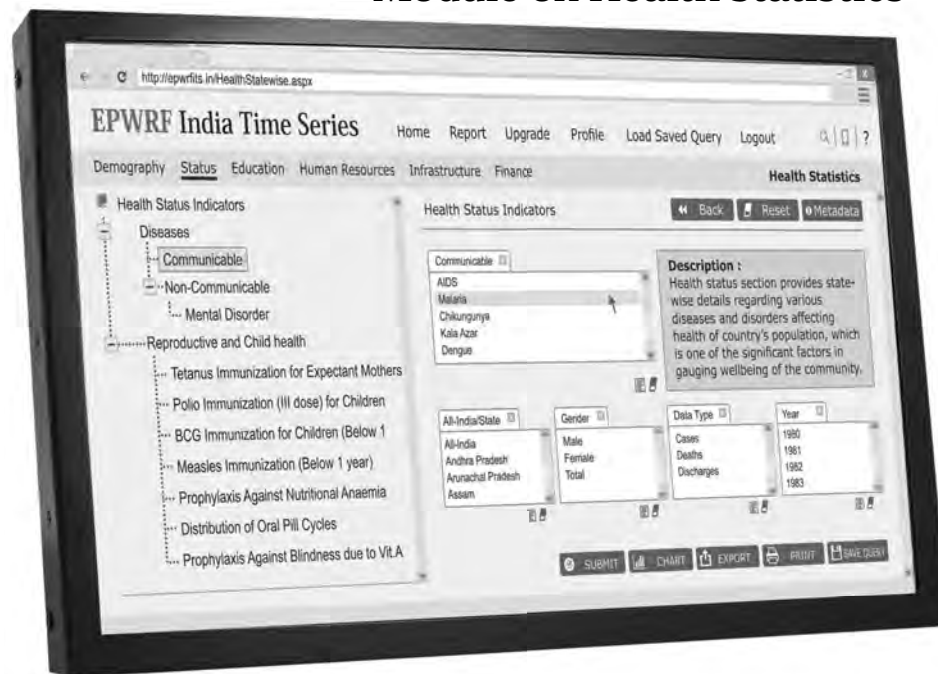
As discussed in this article, the 2017 amendments to the Maternity Benefit Act, 1961, despite their apparent benevolence, are applicable to an extremely small portion of women workers. Further, the act and the amendment to it are likely to

be superseded by a new Labour Code on social security, and need to be viewed in this context.

In their implementation, the Maternity Benefit Act, 1961 and the 2017 amendments to the same entail financial implications for the employer. In the public sector, the existence of fundamental rights that can be enforced by women workers acts as a safeguard against discrimination that the employer may practise against them. However, in private enterprises, where the fundamental rights provisions are not directly applicable, the scope exists for employers to discriminate against women workers, due to a perception that appointing women workers is burdensome. At present, no law exists to prevent pregnancy-based discrimination in private enterprises, except a provision in the 1961 act that a woman cannot be terminated due to pregnancy. In the context of a decreasing participation of the female workforce, and a patriarchal mindset surrounding women's professional work in general, such discriminatory hiring and firing practices exacerbate the detrimental impact on women workers and must be arrested. This article has suggested various remedial measures that are warranted to arrest this trend.

The patriarchal underpinnings of the public-private dichotomy and the gendered division of labour, with a disproportionate burden of care work on the woman, remain prevalent in sociocultural practices and legal norms. Child and family policies related to parental leave and benefits are imperatives for gender equality. The demand for special treatment of

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pregnant women and new mothers within a liberal framework, while benefiting a small proportion of women workers, has run the risk of reinforcing gender stereotypes and overburdening all women with the responsibility of social reproduction. Making maternity leave and benefits as the only parental benefit option fortifies notions of female domesticity and deepens the public-private divide that feminism has countered in a concerted manner for centuries. Further, these provisions discourage fathers from playing an active role as a caregiver, and deprive them of institutional support. While liberal feminism advocated for entry of women into the traditionally masculine public sphere, it failed to focus on men entering the traditionally feminine private sphere (Williams 2009: 89–90). Radical feminism, by insisting that the differences between men and women ought to be celebrated, also did not take on board the existing gender discrimination at the workplace based on perceived differences between men and women. The 1961 act and its amendments are indicative of the failings of both the approaches.

At a time of labour law reform, it is important that law keeps pace with the evolution in parenting and the transformation of a traditional, patriarchal family structure to one that is more egalitarian in nature. The gender disparity in caregiving roles urgently warrants deconstruction, so that men's and women's work, as well as family responsibilities in general and childcare in particular, are socially and legally accepted as interchangeable. Law and policy have the potential to challenge entrenched gender stereotypes and discriminatory practices, and facilitate social reform. While acknowledging that gender inequality at the workplace is multifaceted, a provision mandating employers to grant equal leave and benefits to both the parents is an important first step towards closing the gender wage gap as well as the gender wealth gap. Feminist engagements with parental benefits can form the foundation for state interventions that counter capitalist market forces. These are an imperative for achieving gender justice in the workplace.

NOTES

- 1 Payment of Wages Act 1936; Minimum Wages Act, 1948.
- 2 Equal Remuneration Act, 1976.
- 3 Factories Act, 1948; Mines Act, 1952.
- 4 Employees Compensation Act, 1923; Personal Injuries (Compensation Insurance) Act, 1963.
- 5 Maternity Benefit Act, 1961; Factories Act, 1948.
- 6 Factories Act, 1948; Mines Act, 1952.
- 7 Payment of Gratuity Act, 1972; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Payment of Bonus Act, 1955; Employees State Insurance Act, 1948.
- 8 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- 9 Industrial Disputes Act, 1947; Trade Union Act, 1926; Employment (Standing Order) Act, 1946.
- 10 Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.
- 11 Bonded Labour System (Abolition) Act, 1976.
- 12 Contract Labour (Prohibition and Regulation) Act, 1970.
- 13 Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
- 14 Interstate Migrant Workmen (Regulation of Employment) Conditions of Service Act, 1979.
- 15 Some such legislations are the Beedi and Cigar Workers' (Conditions of Employment) Act, 1966; Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employees' State Insurance Act, 1948; Factories Act, 1948; and Shops and Establishment Acts (state laws).
- 16 These include the UN Convention on the Political Rights of Women, 1953 (ratified on 1 November 1961); UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (ratified on 9 June 1993); International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (acceded to 10 April 1979); and International Covenant on Civil and Political Rights, 1966 (ICCPR) (acceded to 10 April 1979).
- 17 ILO Convention No 183 (not yet ratified by the Government of India). Earlier relevant conventions in this regard include the Maternity Protection Convention 1919 (No 3) and the Maternity Protection Convention (Revised)

1952 (No 103) and are still in force for certain countries.

- 18 Section 5(4) of the amended act reads as follows: "(4) A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be."
- 19 Circular dated 17 November 2017 issued by the Social Security Division, Ministry of Labour and Employment, Government of India.
- 20 The Factories Act, 1948, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and the Contract Labour (Regulation and Abolition) Act, 1970 provide for some guidelines with regard to establishment of crèches.
- 21 The Ministry of Women and Child Development, Government of India, issued these guidelines vide its office memorandum dated 2 November 2018.
- 22 The provision was included in the Central Civil Services (Leave) Rule 551(A) in 1999.
- 23 The bill was introduced by Rajeev Satav, Member of Parliament.

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Crossroads and Boundaries

Labour Migration, Trafficking and Gender

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The absence of a gender perspective in the labour laws and the absence of any labour rights perspective in the anti-trafficking frameworks are the twin flaws that are particularly detrimental to the interests of migrant women workers in India. A corrective course that is cognisant of both the gender structures in labour relations and the gendered employment crisis is the need of the hour, if the state's obligations under the Constitution are to be fulfilled.

Volatility in livelihoods and growing unemployment are compelling more number of women to find work by migrating. The absence of engagement with the social realities that shape women's labour relations characterising the labour laws, and an overly sexually charged cloud over anti-trafficking interventions and discourses, both are adversely affecting the migrant women workers' situation. Fundamental changes in labour laws and their replacement by four labour codes have coincided with a thrust to widen the definition of trafficking to include forced labour. Yet, the connections between the two tracks have received little attention in public debates. However, it is high time for a corrective course that is not only informed by socio-historical processes, but also takes cognisance of both the gender structures in labour relations and the gendered employment crisis, if the state's obligations under the Constitution are to be fulfilled.

Constitutional Rights and Labour Laws in India

The right to move freely and to reside and settle in any region or state in the territory of India—including for employment—is granted as part of the Right to Freedom (Article 19). Article 16, on the other hand, provides for non-discrimination in employment, on the grounds of religion, race, caste, sex, descent, or place of birth under the Right to Equality. Such rights are of course based on the presumption of migration by “free” labour, given that the Right against Exploitation (Article 23) enshrined in the Constitution explicitly prohibits human trafficking and other similar forms of forced labour.

It should be axiomatic that the spectrum of labour laws that govern wages, employment relations, and social security apply to both migrant and non-migrant workers; so also do the unique provisions for the countervailing force of collective action by workers against the inequalities of power in employment relations. As argued by Otto Kahn-Freund (1972):

The relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power. In its inception it is an act of submission, in its operation it is a condition of subordination, however much the submission and the subordination may be concealed by that indispensable figment of the legal mind known as the “contract of employment.” The main object of labour law has always been, and we venture to say will always be, to be a countervailing force to counteract the inequality of bargaining.

Such a framework is in line with the historical experience that laws and regulations in favour of labour emerged when actions by masses of workers became a threat to the prevailing

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norms of order. It is well to remember that the bedrock of rights of workers in India was established at the dawn of independence on the crest of a wave of industrial actions that had dovetailed into the freedom struggle.

While the Constituent Assembly was in session, the Factories Act 1948 set the benchmark for the regulations regarding conditions of work, namely, the Minimum Wages Act 1948 (MWA) for the statutory minimum wage for all workers, including the outworkers and employments outside factories. The Employees' State Insurance Act (ESI), 1948 provided a framework for health benefits (including maternity), and the provident fund for coal workers in 1948 followed by the Employees' Provident Fund Act (EPF), 1952 made provision for post-employment/retirement.¹ These social rights were however, not independent of the conflicts between labour and capital, given the cognisance by the Industrial Disputes Act, 1947.²

Most factory workers and other unorganised urban workers were migrants at the time, as is still the case. And yet, the prevalence of distress-driven circular or seasonal migration—producing the unfree conditions of work—is not easily dealt with by the normal structures of labour laws in India. For instance, many key labour laws become applicable only above a threshold of 10 to 20 workers, assume the availability of perennial employment, are premised on an employment contract with “free” labour, and are geared towards direct rather than contractor-mediated employer–employee relationships.

Gender and migration in labour laws: Further, a narrow outreach of labour laws has long undermined and limited its democratising force by denying a majority of workers' access to key entitlements, such as women workers. Despite the constitutional direction to the state to ensure “equal pay for equal work for both men and women” (Article 39), the Equal Remuneration Act (ERA), 1976 was enacted only after the recommendation of the Committee on the Status of Women in India (CSWI) in the 1970s. Even today, the ERA remains insubstantial in implementation (Mazumdar et al 2000).³ Feminised paid domestic work (mostly migrant) and female intensive home-based manufacturing remain bereft of the regulations for providing the minimum rights granted in the labour laws.

On the other hand, if migrant workers are segregated into a separate legal category from non-migrants, would it not weaken workers' collective bargaining, a foundational principle of labour law? The natural question as to whether migrants should be treated as a special class of workers, thus, has complexities that do not admit to simplistic answers.

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, (ISMWA) 1979 has been the only labour law in India for internal migrants. It addressed contractor-mobilised migration, where advances are paid for recruitment as a norm. It excluded intrastate migrants from its ambit and is not applied to vulnerable situations of these migrant workers who may be driven by distress, but have travelled from their homes on their own. The ISMWA shares common purpose with the Bonded Labour System

(Abolition) Act, 1976 (BSLAA) as an intervention against labour bondage in migration.⁴

The BSLAA commands an iconic status, since it illegalised bondage induced by customary relationships and debt, as well as their manifestation in imposing constraints on contract labour and interstate migrants. It thus addresses debt-based bondage and feudal caste-based systems of forced labour. It includes rehabilitation financed by the union government, and the implementing authority is the district collector/magistrate. And finally, it was given constitutional status in the Ninth Schedule. More powerful administrative structures and resources were pressed into action by the law against bonded labour in comparison to other labour laws.

The ISMWA, on the other hand, operates through the labour departments of different states for regulating the contractors who mediate migration, and was preceded by the Contract Labour (Regulation and Abolition) Act (CLRAA), 1970. The evolution of the multitiered labour contractor system, as a coercive feature of labour migration in India, has colonial roots, with historical studies aptly describing the contractors as patriarchs or labour lords (Chakravarty 1978).

In migration streams addressed by the ISMWA, the norm is of wage advances to the families well before they migrate, for the work that is usually seasonal, and where women are often recruited as part of family units rather than as individuals. Since wages are generally paid to family heads, women are effectively denied an independent wage (Agnihotri and Mazumdar 2011; Teerink 1995). This typical condition was not, however, addressed by the only law for migrant workers in India, representing a tendency to ignore women's independent identity as workers.

Despite their lineage in the Constitution, it is well to remember that both BSLAA and ISMWA were conceived under the shadow of an authoritarian emergency regime (1975–77) that repressed working-class power, but sought to gain political support by invoking socialist rhetoric.⁵ Perhaps, inevitably, both laws contained a top-down approach and did not engage with worker representation or workers' voice.⁶ While the BSLAA has not succeeded in eliminating several forms of bonded labour, the ISMWA is recognised as a most ineffectual labour law (NCEUS 2007). The ISMWA, of course, mentions equal pay “irrespective of sex,” and lists the Maternity Benefit Act as applicable, which specifies employers' liability to pay maternity benefit at the rate of the average daily wage. However, this does not work where women do not have an independently calculable wage.

Surprisingly, despite decades of legal activism on issues of bonded labour, a perspective on the specific forms of bondage of women labour migrants has remained undeveloped. No data is available on the number of women workers released from bondage, and neither is there any discussion on the calculation of independent wages for women when family units of labour are paid at piece rates. Significantly, the 1982 Supreme Court judgment that extended the definition of bonded labour to include all workers who are paid less than the statutory minimum wage, is still to be given procedural or administrative effect.⁷

Further, the BSLAA and the ISMWA have not been applied to forced-labour like conditions imposed on young women and girls working in modern industries. For example, spinning mills and some garment factories in Tamil Nadu have been recruiting young women and girls from poverty-ridden rural hinterlands, and keeping them in residence/hostels on the premises and/or under the control of factory managements/employers. The modus followed was: (i) getting girls or parents to sign bond contracts (usually for three years), (ii) designating production workers as apprentices for long periods and working night shifts (though not legal for apprentices), (iii) denying them minimum wages and exercising control over their movements even beyond the working hours, and (iv) promising a lump sum—much lower than their dues at minimum wage rates (Vaigai 2016)—at the end of the contract period. A special camouflage was the naming of such a practice as “Sumangali” (meaning the happy and blessed married woman) or “marriage assistance” (read dowry). It is significant that the laws against migrant bondage were not applied for them, even in the court cases. Perhaps the gender blindness of the laws affected even the judicial minds, particularly vis-à-vis non-traditional/industrial forms of female labour.

Anti-trafficking Law and Policy

At the other end, women were in central focus in Suppression of Immoral Trafficking in Women and Girls Act, 1956 (SITA), which was enacted in pursuance of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others that came into force in 1951. Female prostitution and brothels remained central to the renamed Immoral Trafficking (Prevention) Act (ITPA) in 1986.⁸ Legislations against trafficking, down to the Criminal Law (Amendment) Act, 2013, which gave trafficking a legal definition, appear to have always been more shaped by international conventions and protocols than by ground-level experience.

Entangled questions, repressive practices: Section 370 of the Indian Penal Code (IPC) now defines the offence of trafficking to include recruiting, transporting, harbouring, transferring, or receiving a person or persons, by using threats, force, or any other form of coercion, or by abduction, practising fraud, or deception, abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person for the purposes of exploitation. The consent of the victim is immaterial in the determination of the offence of trafficking. Exploitation is explained as any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. Such a definition draws almost word for word from the United Nation's (UN) protocol to prevent, suppress and punish trafficking in persons, especially women and children (Palermo Protocol), which was adopted in 2000, although it leaves out the parts that refer to abuse of a position of vulnerability and to forced labour (Kotiswaran 2017).

Yet, forced labour and sexual exploitation for prostitution are the two major purposes of trafficking recorded in National Crime Records Bureau (NCRB) reports, with much smaller proportions under other heads (domestic servitude, forced marriage, begging, petty crimes, etc). Forced labour accounted for more than 45% of the recorded victims of trafficking in 2016, when the total number of recorded victims of human trafficking had reached 23,117.⁹ By 2018, however, forced labour had dropped to 20% of a much smaller number of trafficking victims at 5,264.¹⁰ Unfortunately, gender disaggregated figures on trafficking are not available, but it seems that more male victims are recorded under forced labour and the majority of females under sexual exploitation.¹¹

After 2015, the NCRB reports stopped providing details of the laws under which trafficking cases were registered.¹² So, it is unclear as to which laws have been used in the cases of trafficking for the purpose of forced labour. Data on Section 370 (and 370A) is available only for 2014 and 2015 (reporting 720 and 1,021 cases, respectively). For the older laws, such as Section 366A (procurement of minor girls for illicit sex) and ITPA, the former was on a rising graph from 171 cases in 2003 to 809 in 2012, followed by an exponential jump to 3,087 by 2015. The ITPA cases, on the other hand, were 5,503 in 2003 (at 94% of all trafficking cases), but declined in numbers and share after 2005. By 2015, the ITPA accounted for just 38% of all trafficking cases in comparison to the 45% under 366A.¹³

A further decline in the number of cases under the ITPA after 2015 is most likely due to a new legislation on the anvil. An impetus to anti-trafficking interventions is visible in the aftermath of India signing the Palermo Protocol, including proposals to amend the ITPA in 2006, establishment of anti-trafficking units in most states, a special chapter on trafficking in the NCRB reports from 2007, and tabling of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 (that lapsed in 2019).

Much of this impetus is driven by international debates and goals. For example, goal 8.7 of the Sustainable Development Goals (UN 2015) calls for measures to “eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour.” The terms used are often set, as in the case of the Palermo protocol, by a few countries. Attached to the Convention against Transnational Organised Crime, the final protocol was similar to the draft presented by the United States Government (Brand 2010), for whom, arguably, the anti-trafficking thrust was not unrelated to an increasingly repressive position on immigration. Internationally honed perspectives do not always resonate with Indian circumstances, and their rhetorical consensuses need far greater critical evaluation and consideration of their ramifications in intersectional local and social spaces.

Women in India often find themselves at odds with oppressive and caste-based notions of “honour;” particularly, young women who go out to work are subjected to a degree of stigma. Public discourses, policies, and police actions around trafficking can, arguably, become instruments to further

subvert the freedoms of women. An anti-trafficking framework that is devoid of a perspective on the rights of women as workers would, in our view, inherently display such a tendency.

This is illustrated in a recent study (CWDS 2019) that described the scenario of anti-trafficking interventions in Berhampur, considered to be a conduit station for trafficking in Odisha. A child rights non-governmental organisation (NGO), working with the anti-trafficking unit of the district police, keeps a lookout for groups of girls alighting at the city bus stop. The NGO personnel then follow the girls. The girls try to escape surveillance by running into a temple or church. The NGO informs the police, who pick up the girls at the railway station or the train, hands them over to the NGO-run hostel. Frequently, "rescued" girls try to run away, while others are returned to their villages.¹⁴

A village to which two girls had been so returned, was a field site for the above study. A number of young women belonging to the numerically preponderant caste of Panos (stigmatised as "untouchable"), had been migrating from there for live-in domestic work in Mumbai, Hyderabad, and Kerala for several years. The two girls who were perceived as being trafficked were among such migrants. Villagers reported that their families had moved out because of the infamy that the news of the girls being "arrested" brought to them. Here "rescue" was perceived as "arrest." Since they were surveilled, pursued, picked up by the police, forced into the hostel and then returned to their village, such a perception is not unwarranted.¹⁵ In these villages, it was common for young women migrants to be taunted as "characterless," because they went out for work. An "arrest" could only add further social opprobrium, with negative consequences for both the girls and their families.

Aggressive curbs on these young women, have increased since paid domestic work became illegal for older teenagers. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibited the employment of adolescents in the age group of 14 to 18 years in "hazardous occupations," which included domestic work. In the tendency to conflate child labour and adolescent migration with trafficking, the need for regulating conditions of work in a key sector like domestic work is ignored.¹⁶

The reality, as evidenced in the accounts of the adolescent migrants, shows complex family dynamics spawned by poverty that development pathways have failed to eradicate. Experiences of hunger, of not having enough to eat in their childhood, or a life-changing death in the family, occurred as repetitive motifs in the stories of several interviewees, particularly those who had been child migrant workers, in the Centre for Women's Development Studies' (CWDS) study. Worsening employment opportunities in rural areas have added to the distress. Despite a range of intermediaries, there was no evidence of any organised criminal gang of traffickers, when interviewees were followed-up at the destination. Often the mediators were those who the girls felt closest to—a grandmother, an aunt, a sister, a friend, etc. Aggressive criminalisation of such situations is clearly

uncalled for, and merely becomes intimidation/harassment of young women migrating for work.¹⁷

Female Labour Migration: Contemporary Issues

Even as a strong male bias in labour migration persists, with men accounting for more than 80% of migrant labour in India, the rising numbers and proportions of women migrating for work are no less striking.¹⁸ Census figures showed a spurt in female migration for employment and business (from around 41 lakh in 2001 to 85 lakh in 2011), and an increased female share of such migrants from 12% to 16%. Census data also showed a shift in the pattern of female labour migration from predominantly rural destinations to a distinctive tilt towards urban destinations. Forty-seven percent of all women migrating for work/business were in urban areas in 2001. By 2011, migration to urban destinations had jumped to 58%.¹⁹

Such a trend is likely to have been further enhanced since 2011, with the Periodic Labour Force Survey (PLFS) data for 2017–18, showing a further dramatic fall in work participation rates (WPR) among rural women by 7 percentage points from 24.8% to 17.5%, reflecting an absolute drop by close to 25 million women workers in rural India after 2011–12 and by just short of 47 million, if 2004–05 is taken as the benchmark year.²⁰ Although the decline is notable across all social groups, it is most for women from Scheduled Caste (SC) and Scheduled Tribe (ST) categories, with the WPR of ST and SC women dropping by about 10 percentage points during 2011–12 to 2017–18.

Such a large-scale, and historically unprecedented eviction of women from the rural workforce, especially of the most oppressed castes/communities, highlights the negative impact of neo-liberalism's growth paradigm—ramping up of agrarian distress, and an employment crisis that is highly gendered.²¹ Stagnation in urban India, where female WPR are even lower, hovering between 15% and 14% across the decade of 2007–08, with just a small increase in absolute numbers, can hardly compensate. Nevertheless, the shift towards the urban in women's migration is obviously a key phenomenon of the times.²²

The macro-data sets fail in helping us understand the nature of women's employment, especially in urban areas. Of the three broad categories of regular, self-employed and casual workers, the share of regular employment among women workers in urban areas is the category that shows consistent increase for more than three decades. It rose from 28.4% in 1993–94 to 42.8% in 2011–12, and then to 52.1% by 2017–18.²³ Prima facie, it is assumed that this denotes better forms and conditions of work for women workers. However, regular work is defined only in terms of duration of employment, irrespective of wages and other conditions of work. Thus, paid domestic work and other service sector employees, who may be working continuously during the year without minimum wages and on completely insecure terms, are counted as regular workers. The actual growth of temporary and casual employment is thus not adequately captured by the macro data, especially in the case of female employment.

The occupational profile of women's employment in the PLFS 2017–18, however, gives us a useful insight into the

contemporary pattern of urban women's employment.²⁴ Manufacturing workers constituted the single largest occupation for the female workforce in urban areas (45 lakh), of which 20 lakh were textile and garment workers, and another 16.5 lakh were in food processing, tobacco products (beedi workers) and leather goods. Teachers constituted another big chunk, with those in pre-primary to secondary education numbering around 21 lakh, and another 6.5 lakh in higher education. Domestic workers were around 20 lakh, with ayahs and childcare workers constituting another 4 lakh, while 11.3 lakh were shops and salespersons, another 11 lakh were in housekeeping and restaurant services, and 10.5 lakh were clerical workers. Around 10 lakh were construction workers. A little over 5 lakh were health professionals, of which more than half were nurses. Close to 4 lakh were garbage collectors and another 4 lakh were beauticians. Some 4.5 lakh were occupied in finance, business, administrative, police, social work, etc, and a surprising 16.6 lakh were directors and chief executives.²⁵ Together, these workers constituted around 79% of the 2.19 crore urban female workforce. Further, some 20% of urban women workers were home-based (Raveendran 2019).

Based on the census migration trends, one may assume that 10% to 15% would be declared migrant labours, although many more would be migrants who gave other reasons for migration.²⁶ It is of course difficult to categorically locate proportions of migrants among these workers, but from sector-based micro-studies, we can postulate that manufacturing workers, domestic workers, other care workers, nurses, construction workers, and garbage collectors are predominantly migrants, with an overrepresentation of women from marginalised caste groups.²⁷ All other categories of workers would indeed have migrants among them, but of a lesser order, and even less would be migrants from rural areas. Significantly, PLFS 2017–18 also showed that unemployment rates were highest among urban women, having risen from 5.2% in 2011–12 to 10.8% for usual status, and from 6.7% to 12.8% according to current weekly status.

What is important is that these migrant workers have a new location in labour law. Even though relations with contractors and other intermediaries of various types are quite ubiquitous, particularly in times of rising unemployment, the nature of coercion experienced by these women workers with unimaginable levels of job insecurity, and increased cost and demands of urban living, is qualitatively different from those addressed by the BLSAA and ISMWA or the prevalent framings of forced labour. For these workers, wages and other conditions of work are critical, and in this context the ongoing restructuring of the labour laws and the labour codes assumes particular importance.

Women Workers in Labour Codes

"Labour reforms" has been the buzzword of India's labour policy since the dominance of neo-liberalism in its economic policy framework since 1991. While the centrepiece of the arguments for such reforms is that labour laws in India are too many, and too protective, creating restrictive rigidities in the operation of the market, there is also another line of argument

that finds labour laws only protecting the organised sector workers at the cost of the vast majority of unorganised and informal workers. Three decades of a policy discourse that sanctions the dismantling of the protective structures of labour laws in the name of "majority" of the workers, has shifted the balance towards the "ease of doing business" over workers' rights.

Currently, the focus of such change is on the four labour codes that are to repeal and replace some 30 labour laws. And among these codes, the one on wages has already become a law. We examine some implications of these labour codes for the women workers.

Code on wages (CoW): It defines an employee or a worker only in relation to the establishment or industry, thus precluding private households. It makes no mention of outworkers/home workers, among whom home-based beedi workers, at least, were earlier covered by the minimum wages and other regulations.²⁸ In its present form, the cow thus disentitles the increasingly feminised domestic workers, who, over the past decade or so, had successfully fought for inclusion in the minimum wage schedules under MWA in most states. Home-based beedi workers, mostly women, are similarly disentitled to minimum wages, equal remuneration, mechanisms to ensure payment of wages, and entitlement to bonus.

The cow's specific exclusion of apprentices has adverse implications for any entitlement to minimum wage for "sumangali" workers, who are designated apprentices.²⁹ Since the apprenticeship law—as amended in 2014—has (i) set the minimum age of 14 for apprenticeship in "non-hazardous" industries (including apparel and textiles), (ii) permitted employers to engage apprentices from other states and determine the hours of work, and (iii) removed imprisonment as a punishment for employer violations, its effects will be felt particularly by the extremely young interstate migrant women workers.

While the cow retains the provisions of the ERA against discrimination on the grounds of gender in pay for same or similar work, it amalgamates the advisory board for minimum wages and the ERA committee for increasing employment opportunities for women into one single board. Its stipulation that one-third of the board representatives are to be women, may be an advancement in relation to minimum wages, but reduces the 50% stipulated earlier by the ERA.

Further, the (draft) central rules of the code propose to extend the normal working hours for all workers from the eight-hour norm (as in the Factories Act) to nine hours. Equally significant is that there is no national minimum wage, and the criterion for calculation of minimum wages as laid down by the Indian Labour Conference (ILC) and Supreme Court, is not included.³⁰ Even the central government's floor wage does not provide a national floor, since the floor itself is to be different across different geographical areas.³¹

This code also gives the sanction of law to administrative restraints imposed on autonomous inspections. The replacement of surprise inspections by web-based pre-determined schedules and the reliance on self-certification of compliance by the employers have given a pro-employer tilt to the labour

administration, expressed in the changed designation of the labour inspectors to inspector-cum-facilitator.³²

As such, the cow adds neither universality, nor clarity, let alone any additional benefit, in comparison to earlier laws. Whereas, it nullifies some of the entitlements that had been acquired by women workers.³³

Occupational safety, health and working conditions code (OSHWCC): Currently, this code, pending before the parliament, amalgamates 13 labour laws, of which 11 are for particular sectors/types of establishment (including for the beedi workers), the other two being the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act (ISMWA) and the Contract Labour (Regulation and Abolition) Act (CLRAA).³⁴

This bill perhaps best illustrates the lack of wisdom in amalgamating a range of laws that address industry or sector-specific characteristics. In the range of enterprises from factories, to mines, plantations, motor transport undertakings, newspapers, beedi establishments, etc, with respect to which it defines an employee, again excludes private households. Hence, none of its regulations regarding safety, health, or working conditions (weekly and daily working hours, leave, overtime, night shifts, etc) are applicable to domestic workers or home-based workers as among the beedi workers. In fact, for the latter, the absence of an appropriate term to mean home-based work leaves it open to interpretation as to what is meant by workers working “outside” a beedi establishment/premises. Like the cow, new provisions regarding electronic modes and systems have been specifically included, and so is a special category of audiovisual workers, but women workers from the poorer classes continue to be excluded.

OSHWCC has chapters that summarise the industry-based labour laws that are being repealed. In the process, some important health stipulations in relation to crèches under the Factories Act have been dropped. Plantation managements have been given the option to transfer liabilities and the responsibility for provision of medical facilities, housing, and food supplies to the government and panchayats. Under the Plantation Labour Act, 1951, employers had these responsibilities. Strangely, while protection against rain and cold is provided for transport workers, a similar provision that existed for the plantation workers, the majority of whom are women, has been dropped. The CLRAA and ISMWA are summarised together in such a way that the provision of paying migrant workers no less than the local wage rates is left out, the liability of the principal employers is reduced, and there is silence regarding the issue of denial of wages, even at piece rates, to the migrant women working in family units.

“Special Provision Relating to Employment of Women” is the briefest chapter, which essentially sanctifies night work for women workers (after 7 pm and before 6 am), “with her consent,” and without any obligation on the part of employers to provide safe transport. Such obligations were earlier necessary for exemptions to prohibition of night work for women under various acts, and specified for working journalists.³⁵

Significantly, prevention and protection from sexual harassment finds no mention in the OSHWCC bill, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) has been kept out of the amalgamation process. While this raises a question as to why sexual harassment in the workplace is not considered a part of either occupational safety or working conditions for women workers, it draws attention to the fact that the POSH Act had also been kept out of the framework of the labour laws.

The enforcement authority under the POSH Act is the (additional) district magistrate or deputy collector; it is monitored by the ministry/department of women and child development, and no provision was made for the inclusion of any labour officer in any of its committees, let alone a female labour officer, which could have helped increase the presence of women in the labour law enforcement systems. Despite much debate on applicability of the POSH Act for unorganised women workers, its role in labour laws was never clarified. Such a subliminal tendency to segregate key workplace issues of women from the labour law framework, and/or to maintain the constituency of women workers as outside the working classes, has added to both the continued absence of gender perspectives in labour laws, and the denial of workers' entitlements to a large contingent of women workers. A corollary to such segregation is that the labour laws enforcement machinery remains gender insensitive to the detriment of the equality agenda in the labour laws.

Finally, the repetitive motif of leaving basic issues, such as limits to hours of work to “as may be notified by the appropriate government” in contrast to the strictly defined eight hours under the Factories Act, moves core rights under labour laws away from the legislative certainty to the discretion of the government (the opposite being the case when it comes to removing some rights of workers). Double wage rates for overtime in the OSHWCC means little if the normal hours of work are enhanced.

Code on social security (Coss): This code specifically includes home-based workers and domestic workers in its definition of “wage worker” as well as “unorganised worker.”³⁶ Although no actual social security schemes are specified in Coss, it lists the types of benefits for “social security organisations,” of which are the Employees' Provident Fund Organisation (EPFO), Employees' State Insurance Corporation (ESIC), National Social Security Board (NSSB) for unorganised workers, and the state level Building and Construction Workers' Welfare Boards (BCWWBs), whose administrative structures and modes of funding are delineated in the code. All schemes, under these social security organisations, have been left to “as may be framed” at the government's discretion, thereby making any changes in the existing schemes uncertain.

Considering the accumulated experience of a variety of existing schemes, some of which have been implemented centrally for more than 60 years by the EPFO and ESIC, their lack of delineation generates more uncertainties, rather than security.³⁷ Schemes with a shorter life, such as CESS funded by the BCWWB, which are still evolving, or the NSSB, which in the absence of any other fund source, had largely declared

pre-existing central social assistance schemes for the below poverty line (BPL) category citizens as schemes for the unorganised workers.³⁸ While the above social security organisations remain operative under the code, welfare funds for beedi workers that were earlier cess based, are not mentioned. Instead beedi workers are to be covered by the NSSB for unorganised workers, despite the schemes being of a lesser order than what was available under the Beedi Workers' Welfare Fund. Coss is silent about other sectoral cess-based welfare funds and organisations.³⁹ While the thresholds for the applicability of the EPF (establishments with 20 or more employees) and the ESI (10 or more employees) schemes have been retained, for the cess funded welfare schemes under the BCWWF, Coss is silent on whether the brick kiln workers would be included.⁴⁰

The chapter on maternity benefits in Coss reiterates the provision for 26 weeks' paid maternity leave by employers, and the discriminatory provision for a maximum of 12 weeks' leave for any pregnancy beyond two children, as introduced by the 2017 amendment to the Maternity Benefit Act. It also reiterates the provision of crèches with four visits a day for establishments with 50 or more workers, and all other health protective provisions from the original 1961 act. The chapter remains applicable only to organised sector—factories (minimum 10 workers with power, and 20 without), mines, plantations (minimum 10 workers), government institutions, and shops or establishments with 10 or more workers. For unorganised workers and construction workers, maternity benefits as provided by their respective boards (not employers) are in the form of cash assistance. These range from transfers conditional upon institutional delivery under the public health programme of Janani Suraksha Yojana (JSY)—₹700 for high performing and ₹1,400 for low performing states—to ₹6,000 under the 2018 Model Welfare Scheme for Construction Workers of the central government.

Considering that even the top end of these schemes (as also other public health schemes for maternity assistance such as the Pradhan Mantri Matru Vandana Yojana) is equivalent to just 22 days at wage rates under the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) in Haryana and 35 days for Bihar (MGNREGS wage rates taken as a proxy for a national floor), the absence of any criteria for calculation of maternity assistance for construction and other unorganised sector workers that could be equal to 26 or even 12 weeks of paid maternity leave, is particularly glaring.

Industrial relations code (IRC): This bill assumes a special importance for women workers.⁴¹ A dynamic and increased role being assumed by women in the trade unions, is evident not only in their increased visibility, but also their share in membership. Women's membership reached 32% of total trade union membership in 2014, which is far greater than women's share in the country's workforce, hovering between 22% and 23% between 2011–12 and 2017–18.⁴²

All trade unions, without exception, have opposed the IRC for imposing restrictions on strikes by universalising and adding to prohibitions that were earlier only applicable to public utility services.⁴³ The IRC stipulates (i) sixty days' notice and

prohibits any strike within 14 days of such notice; and (ii) no strike during the pendency of proceedings before a conciliation officer or tribunal, and within seven days after the conclusion of conciliation, and within 60 days after conclusion of proceedings before a tribunal. It additionally allows anyone to initiate direct proceedings (without requiring a reference from the conciliation machinery as earlier), so an individual can just go to a tribunal and render strikes illegal. It also redefines strikes to include mass casual leaves. In all, under such conditions, almost no strike can be legal. The IRC thus denies workers a basic right and/or mode of protest against the employer or state exploitation.

It also gives legislative sanction to fixed term employment (FTE) that had been introduced by a backdoor amendment to the rules under the Industrial Employment (Standing Orders) Act in 2018, thereby removing restrictions on easy hire and fire. FTE has particularly adverse implications for the "sumangali" workers, who have been fighting for regularisation after their peculiar fixed term contracts come to an end.

In relation to the trade unions, all of the 2001 amendments to the Trade Union Act, 1926, which were introduced as part of the neo-liberal reform's restrictive agenda for unionisation, have been incorporated in the IRC. These include: (i) the stipulation that union registration would require at least 10% of the workers in an establishment/industry or 100 members (as opposed to the original requirement of just seven workers to begin with), and (ii) restriction on the number of office bearers to half for the unions of unorganised workers and one-third for other unions. While restricting the number of whole-timers that a union may need by fiat, apart from interfering with the workers' right to elect their leaders as they see fit, these stipulations have made it increasingly difficult to register unions, particularly for the unorganised segments such as the domestic workers or home-based workers.

The IRC retains provisions that provide unions with immunity against certain forms of civil action on the grounds of breaking a contract of employment or for interfering with the trade, business, or the right of any person to dispose of his capital or labour, as well as immunity against criminal action on the grounds of criminal conspiracy, which were part of the act of 1926. But given the restriction on strikes, and sweeping powers conferred on the government to exempt any industry from the application of this code, it again means little for labour welfare.

In all, the thrust of the IRC seemingly aims at subverting a basic framework of labour laws of allowing countervailing collective force of actions of workers against the inequality that inheres in their employment relationships. From our perspective, it seems that the labour codes, on the whole, have failed to address the absence of gender sensitivity in the labour laws, and/or the gap between the lip service to gender equality and the actual ground-level experience of the women workers.

Trafficking or Migration?

Although the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 has lapsed, it is useful to look at its provisions to understand the direction in which trafficking

law and policy is headed, especially with news reports that a slightly revised bill, with a change in nomenclature from the trafficking “of” persons to the trafficking “in” persons, would be introduced soon (Pandit 2020).

The 2018 bill had provided for additional offences over and above those defined by Section 370 of the IPC under the category of “aggravated form of trafficking.” These included (i) for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion by subtle means including allegations of accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities; (ii) for the purpose of bearing a child, either naturally or through assisted reproductive techniques; (iii) by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing them to remain in exploitative condition; (iv) by administering hormones for the purpose of early sexual maturity; (v) for the purpose of marriage; (vi) by causing serious injury; (vii) offence resulting in pregnancy, or trafficking of pregnant women; (viii) by causing AIDS; (ix) for the purpose of begging; and (x) trafficking of a mentally ill person.

For such offences, a minimum imprisonment of 10 years extendable to life, was prescribed. Repeat offenders were to be imprisoned for the rest of their natural life. The bill introduced punishment of rigorous imprisonment up to five years for keeping or managing premises to be used as a place for trafficking. Unsurprisingly, even after the inclusion of forced labour in the definition of aggravated forms of trafficking, the bill made no provision for worker rights, entitlements, recovery of wage dues, or mechanisms to free workers without leaving them unemployed. It thus left the victims of trafficking to negotiate their livelihoods without access to any additional rights.

Second, along with the state and the district level committees and officers being given powers and responsibilities designed to support the penalising thrust of the bill, a National Anti-trafficking Bureau was vested with the extraordinary powers of surveillance to (i) co-ordinate and monitor surveillance and preventive efforts; (ii) facilitate surveillance, enforcement and preventive steps at source, transit and destination points; (iii) maintain co-ordination between various law enforcement agencies and NGOs and other stakeholders; and (iv) strengthen the intelligence apparatus to improve the collection, collation, analysis and dissemination of operational intelligence, etc. This is quite an extraordinary list of surveillance and intelligence activities, which implies spying on young women in their villages, while travelling in trains and buses, as well as elsewhere.

Third, in the name of “safety, care and protection of person rescued,” even when the victim was not a minor, the magistrate was vested with the power to order that the victim be placed in a rehabilitation home and also the power to reject a voluntarily made application for release by the victim. Or in other words, the victims—whether minor or adult—could be held against her will in rehabilitation homes, opening the door to criminalising the “rescued,” as already illustrated by the Odisha case where young girls are being harassed at stations,

bus stops and in trains, whereas the anti-trafficking units are being pressed into action in cases of elopement. What happens to the girls who are “rescued” when they are returned to their homes remains out of such a framework and is an area that cries for further research. Strangely, despite a lot of talk about rehabilitation, this area in the 2018 bill was considerably diluted in comparison to an earlier draft bill of 2016.

Our own field observations and other evidence at our command suggest that a criminal colour is being lent to migration by young women and girls, including those whose minor status (legally speaking) is indeed not always apparent in fact, and remains questionable in principle.⁴⁴ It is clearly not a happy situation for young girls to be followed, surveilled or picked up by police on suspicion that they are below 18 and are being trafficked. There is no actual evidence that the so-called trafficking hotspots have illegal, organised trafficking organisations at work. Rather, the hotspots seem to be pockets where labour migration streams of young women have become established, as was again evident in cwds’s Odisha study.

Already subjected to caste-based restrictions, easily stigmatised when they go out to work or socialise, and targets of public abuse for small transgressions in a deeply conservative social milieu, these young women will become additionally vulnerable to police aggression while migrating for work, if the trafficking law continues in the direction laid out in the 2018 bill. Friends and associates could all be picked up, their houses searched, etc, as could others who may have incidentally let these girls stay somewhere for a while. Migrant domestic workers (almost all from marginalised and oppressed castes/communities) who bring in others from their villages to the cities to work could also be easily labelled as traffickers and subjected to harsh imprisonment.⁴⁵

Criminal law can hardly solve a socio-economic problem aggravated by shrinking employment opportunities in the rural areas, which propel more women to migrate for work. Live-in domestic work is not a particularly good employment option, but may be the only option. The way forward is, then, to improve the conditions of work in the sector. The ILO’s convention on domestic workers (which India is yet to ratify) and the much talked about “national policy on domestic workers” may provide some direction. Notably, a comprehensive legislation on domestic work and ratification of the ILO convention are the ongoing demands of unions, which are ignored by the trafficking discourses, as well as the labour codes.

In the public debates on the 2018 trafficking bill, most of the discussion was focused on sex workers, who had emerged as an organised force on a national scale when protesting against a proposed amendment to the ITA in 2006 that sought to criminalise the customers of sex workers (Kotiswaran 2017). It focused public discussion on voluntary sex workers as the targets of trafficking law. This mobilisation, in a sense, set the default lines and arguments for the debates, and were repeated in the opposition to the 2018 bill. In our view, this has led to elision over the new targets of the bill, which was the young migrant woman worker, who is most vulnerable to sexual stigma, and therefore easily becomes identified as being trafficked.⁴⁶

It is clear from the discussion that the centrality of women in the anti-trafficking rhetoric is inevitably entangled with social and moral restrictions on women's mobility structured by caste and community restrictions, identities and hierarchies in India. They have shaped some of the particular forms of sexual controls over women in India, which includes an upper-caste ideological inheritance of social disapproval of women working outside the family fold, and prevalence of sexual suspicion and stigma being attached to those who do work outside. It has lent a sexual edge to perceptions of women's migration for work that has fed into discourses around trafficking, and vice versa. Such an edge does not seem to have ebbed with the inclusion of forced labour in definitions of human trafficking.

This being the case, it becomes all the more important to bring in an understanding of the changing political economy

of female labour migration. From a labour perspective, the most important issue to be addressed is changing the unfree terms and conditions of work, including addressing "trafficked persons" and their needs and concerns as workers. An interface between labour laws, labour rights, migration and trafficking will indeed generate new issues and questions that will not be simple or easy. What is the status of the contractor for example? The labour law framework provides for registration and regulation. Under the anti-trafficking criminal law framework, the same contractors, and particularly the small village-level mediator would be considered a criminal. It may raise difficulties, and indeed an interface between labour laws and the criminal justice system will add new questions. They will have to be addressed in more concrete and nuanced terms than is presently the case.

NOTES

- 1 It, of course, took more than a decade for a general maternity benefit law for all women workers to come about.
- 2 The Industrial Disputes (ID) Act, 1947, replaced the earlier Trade Disputes Act, 1929 introduced by the British government in response to a wave of strikes. The ID Act established a machinery for conciliation, although it also included a provision for compulsory adjudication for disputes. The Trade Union Act, 1926 was retained, which provided immunity to the trade unions against certain forms of civil and criminal action. The administrative structures of labour law enforcement also reflect this connection between dispute resolution and social rights. Although the factory inspectors are tasked with enforcing the Factories Act, the labour officers are responsible for implementing all labour laws, including those dealing with industrial disputes. And both the officials function under the Labour Commissioner.
- 3 Mazumdar et al (2000) showed that in implementing the ERA, the labour department merely checked to see whether prescribed registers are maintained while ignoring the actual inequality in wages.
- 4 Following the enactment of the ISMWA in 1979, a specific explanation was inserted in the BLSAA, which clarifies that any system of forced or partly forced labour contract by which intra-state migrant workmen are required to render labour or service a "bonded labour system."
- 5 Socialism was incorporated in the Preamble to the Constitution in 1976, during the emergency.
- 6 It may be noted that the BSLAA has no provision for trade union representation in the vigilance committees set up under the act, although there is a provision for persons belonging to the Scheduled Castes or Scheduled Tribes.
- 7 In *People's Union for Democratic Rights and Others vs Union of India and Others* [1982 II LLJ 454 SC (1982) 3 SCC 235] the definition of forced labour under BSLA was expanded to include "Any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course of action, may properly be regarded as 'force' and if labour and service is compelled as a result of such 'force' it could be 'forced labour.' The word 'force' must be construed to include not only physical or legal force but also force rising from compulsion of economic circumstances."
- 8 As per the 1950 UN Convention, key offenders were persons who, "Procures, entices or leads away, for purpose of prostitution" or "Exploits the prostitution of another person," even with consent of that person. Under Article 2, offenders

- were "any person who keeps, manages, or finances a brothel, or rents a building for the purpose of the prostitution of others." Offences under the SITA were framed according to the convention. The only changes that the ITPA introduced were enhancement of punishments, and substitution of persons for women and girls. The framework of brothels and prostitution of the SITA remained characteristic of the ITPA as well.
- 9 In comparison, the two heads of sexual exploitation for prostitution and other forms of sexual exploitation under purpose of trafficking together accounted for 33% of trafficking victims in 2016.
- 10 Sexual exploitation for prostitution and other forms of sexual exploitation under the purpose of trafficking together accounted for 37% of trafficking victims in 2018.
- 11 In 2016, males accounted for 45% of all trafficking victims, almost exactly the same as the proportion of forced labour victims.
- 12 Prior to 2016, cases were given separately for Section 366A IPC, for the ITPA, Sections 370 and 370A (together), as well as Sections 372 and 373 of the IPC. Section 366A refers to procurement of minor girl with intent of knowledge that she may be "forced or seduced to illicit intercourse." Section 370A refers to sexual exploitation of a minor trafficking victim regardless of sex. Section 372 refers to selling of minor for prostitution, and 373 to buying of minor for prostitution. Interestingly, "illicit intercourse" as explained in Section 372 "means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation." These details are important in shaping the frames of thought that go into anti-trafficking interventions.
- 13 The exponential jump in procurement of minors between 2012 and 2015, could be because of raising of the age of consent from 16 to 18 in 2013, which might also explain part of the decline in the ITPA since a number of cases earlier recorded under the ITPA, may have been pushed under 366A. The ITPA was also under pressure as an amendment had been proposed in 2006, which had come under a lot of flak, including from the Parliamentary Standing Committee to which it had been referred.
- 14 The study was based on a survey of 20 villages in Ganjam, Odisha, and repeat interviews of a

cohort of migrant women workers over a period of two years, and discussions with officials. See CWDS (2019).

- 15 In this, the "good" intentions of the NGO lose relevance.
- 16 The National Policy on Domestic Workers was drafted in 2009 and subsequently revised multiple times, is still under consideration of the central government. See comments above.
- 17 Interestingly, while the interventions discussed so far involved the anti-trafficking unit of the police, they had not led to any case being registered. In interviews with a deputy superintendent of police and his staff in charge of the anti-trafficking unit, the researchers found that the only two registered cases with the anti-trafficking unit were regarding young women who had (according to their own investigation) eloped. Far from trafficking, the cases were of runaway marriages, and the police had no evidence of any exploitative conditions.
- 18 According to Census 2011, 84% of persons migrating for work were male. A problem with the migration data, in both the National Sample Survey Office's last migration survey in 2007–08 and the 2011 Census, is that they ask only one reason for migration, although many migrant women workers may have migrated for marriage or associational reasons. However, if all women who have migrated (for marriage) are workers, and are counted as migrant workers, it would be a gross overestimation of female mobility, at least for the rural areas. With the dominant practice of village exogamy, almost all married women in rural India are counted as migrants. They may be working on family farms, but could be completely immobilised in their in-laws' village. For the methodological inability of macro-data sets to provide accurate estimates and numbers of female labour migrants, see Mazumdar et al (2013).
- 19 Urban women migrants for work/business, whose last place of residence was rural, doubled from over 11 lakh in 2001 to over 23 lakh in 2011. Although the urban women migrants with last place of residence as urban, trebled from a little over 7 lakh to close to 22 lakh, for the same period, a significant proportion would be circulating migrants in construction, with an original start in rural areas. All census figures calculated from D–5, Census 2001 and 2011.
- 20 WPR is given for Usual Status (PS+SS). See Government India, NSO, Annual Periodic Labour Force Survey (PLFS), 2017–18, Statement 10. The restructuring of the NSSO's quinquennial employment–unemployment surveys into the

- PLFS under the newly merged National Statistics Office, does create a few issues of data comparability; But whatever be the source, it is clear from the data that the WPR of women is falling at a precipitated rate.
- 21 Male WPR has also declined, but by just 2%, and in absolute numbers there is still an increase of male workers.
 - 22 The sex ratio in urban areas has also shown a rapid increase from 920 females per 1,000 males in 2005 to 965 females per 1,000 males in 2018. In contrast, the sex ratio in rural India dropped slightly from 962 females per 1,000 males in 2005 to 952 females per 1,000 males in 2018 (NSO, PLFS 2017–18). Earlier, Census 2011 had revealed an increase in urban population that exceeded the increase in rural areas (between 2001 and 2011) for the first time ever in India's history. Census data shows that this was singularly due to the movement of women towards cities and towns.
 - 23 Source: Statement 15: Summary of Findings, PLFS, 2017–18.
 - 24 All estimates for numbers of women workers in various occupations were calculated from Table (25): Percentage distribution of workers in usual status (ps+ss) by occupation group/sub-division/division, in PLFS, 2017–18.
 - 25 As per International Standard Classification of Occupations (ISCO) from which NCO is derived, directors and chief executives are supposed to head enterprises or organisations and, with the help of at least two other managers, determine and formulate policies and plan, direct and co-ordinate the general functioning of the enterprise or organisation.
 - 26 See note 18 for detailed discussion.
 - 27 Migrants are less prominent among teachers, as marked by the NSS migration data, 2007–08 as well. The NSSO has not undertaken any migration survey after 2007–08. Hence, no recent macro data is available.
 - 28 The CoW repeals (i) The Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.
 - 29 Although the Madras High Court dismissed a petition by the Tamil Nadu Spinning Mills Association challenging the sumangali workers' entitlement to minimum wages on the grounds that they were apprentices, it remains an open question as to whether that will stand now. Importantly, the apprenticeship law is not being repealed by any of the codes.
 - 30 The ILC, 1957 had set out the norms for calculation of a need-based minimum wage as (i) three consumption units for one wage earner; (ii) a minimum food requirement of 2,700 calories per adult person per day; (iii) clothing requirements at 72 yards per annum for an average working family of four; (iv) a house rent corresponding to the minimum area provided for under the Government's Industrial Housing Scheme; and (v) 20% of total minimum wage for fuel, lighting and other miscellaneous items. To this, the Supreme Court had added children's education, medical requirements, minimum recreation, including festivals/ceremonies, and contingencies such as old age and marriage as 25% of the total minimum wage.
 - 31 A commitment to a below subsistence minimum for workers became evident when the Labour Minister announced a floor level minimum daily wage of ₹178 (₹4,628 monthly) just two weeks before introducing the CoW. This was after the government-appointed committee had suggested that the national minimum wage should be ₹375 per day (₹9,750 per month), which suggests that the advisory committees for minimum wages included in CoW, may also meet the same fate.
 - 32 In the first bill, it was only facilitator, abolishing the inspector role completely. This would have been in violation of ILO Convention No 81, ratified by India in 1949.
 - 33 It may be recalled that ahead of the 2019 elections, 10 central trade unions—INTUC, AITUC, CITU, AICCTU, HMS, UTUC, TUCC, SEWA, AICCTU, and LPF—had collectively demanded a national minimum wage. Only BMS did not support this demand.
 - 34 The OSHWCC repeals the (i) Factories Act, 1948, (ii) Mines Act, 1952, (iii) Dock Workers (Safety, Health and Welfare) Act, 1986, (iv) Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, (v) Plantations Labour Act, 1951, (vi) Contract Labour (Regulation and Abolition) Act, 1970, (vii) Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979, (viii) Working Journalist and other News Paper Employees (Conditions of Service and Miscellaneous Provision) Act, 1955, (ix) Working Journalist (Fixation of rates of wages) Act, 1958, (x) The Motor Transport Workers Act, 1961, (xi) Sales Promotion Employees (Conditions of Service) Act, 1976, (xii) Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and (xiii) Cine Workers and Cinema Theatre Workers Act, 1981.
 - 35 Although the safety provision for night work by women is mentioned in the Statement of Objects and Reasons for the OSHWCC, employer liability is not mentioned.
 - 36 The COSS repeals the (i) Employees' Compensation Act, 1923, (ii) Employees' State Insurance Act, 1948, (iii) Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (iv) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, (v) Maternity Benefit Act, 1961, (vi) Payment of Gratuity Act, 1972, (vii) Cine-Workers Welfare Fund Act, 1981, (viii) Building and Other Construction Workers' Welfare Cess Act, 1996, and (ix) Unorganised Workers Social Security Act, 2008.
 - 37 Despite problems related to narrow coverage of workers, and paltry pension schemes, EPFO and ESIC have provided a model of social security that has worked well for the social security needs of the workers they cater to.
 - 38 The COSS has added two new categories of workers (gig and platform workers) to the category of unorganised workers. Gig workers in India are known to be male dominated, with women still accounting for less than 5% of the workers. For platform workers, in India women's share is less than 25%. See Berg et al (2018).
 - 39 The cess laws for beedi workers' welfare, for Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare, for cine workers welfare, for Mica Mines Labour Welfare Fund, for Limestone and Dolomite Mines Labour, were all repealed earlier to pave the way for GST.
 - 40 Backed by the ILO, many state welfare boards for construction workers had begun to include brick kiln workers in their schemes.
 - 41 The IRC repeals the (i) Trade Unions Act, 1926, (ii) Industrial Employment (Standing Orders) Act, 1946, and (iii) Industrial Disputes Act, 1947. Opposition to the IRC, 2019 has come even from the BMS, which has supported the other codes.
 - 42 Government of India, Labour Bureau statistics for women's membership in trade unions in India, 2014 (latest).
 - 43 It may be recalled that strikes were rendered illegal in export zones by giving them public utility service status under the ID Act.
 - 44 The raising of the age of consent to 18 in 2013, was opposed by most women's organisations.
 - 45 This is not to say that sexual exploitation is absent. But to make the point that its assumption without evidence is dangerous, and leads to harassment of migrant women workers.
 - 46 It may be recalled that organisations and individuals, whose main focus has been on child labour, were the strongest votaries of the 2018 bill. They had earlier, in 2016, also supported the expansive definition of hazardous industries to include domestic work, for which employment of adolescents (ages 14–18) was banned.

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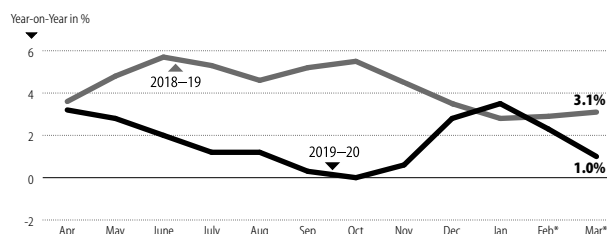
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Wholesale Price Index

The year-on-year (y-o-y) WPI inflation rate decreased to 1.0% in March 2020 from 3.0% a registered a year ago and 2.3% a month ago. The index for primary articles decreased by 3.7% compared to 4.9% reported a year ago and 6.7% a month ago. The index for food articles decreased by 4.9% compared to 5.2% recorded a year ago and 7.7% a month ago. The index for fuel and power declined by (-)1.8% against 4.6% and that for manufactured products decreased by 0.3% compared to 2.2% a year ago.

Consumer Price Index

The CPI-inflation rate increased to 5.9% in March 2020 from 2.9% registered a year ago, but was lower than 6.6% reported in February 2020. The consumer food price index rose by 8.8% against 0.3% reported a year ago, but was lower than 10.8% a month ago. The CPI-rural inflation rate stood at 6.1% and the urban inflation rate at 5.7% compared to 1.8% and 4.1%, recorded a year ago. As per Labour Bureau data, the CPI-inflation rate of agricultural labourers (CPI-AL) increased to 9.0% in March 2020 from 4.2% registered a year ago while that of industrial workers (CPI-IW) decreased to 5.5% from 7.7% reported a year ago.

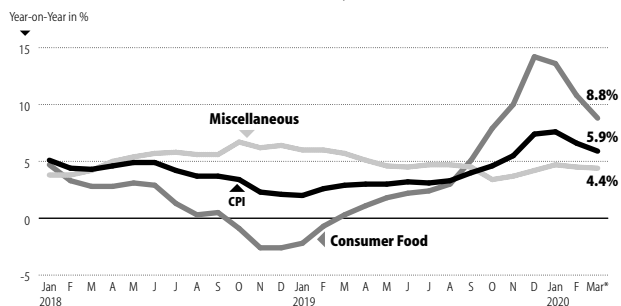
Movement of WPI Inflation April–March

* Data is provisional; Base: 2011–12 = 100.

Trends in WPI and Its Components March 2020* (%)

	Weights	Over Month	Over Year	Financial Year (Averages)		
				2017–18	2018–19	2019–20
All commodities	100	-0.9	1.0	2.7	3.1	1.0
Primary articles	22.6	-2.5	3.7	0.9	4.9	3.7
Food articles	15.3	-2.1	4.9	-0.2	5.2	4.9
Fuel and power	13.2	-3.1	-1.8	4.7	4.6	-1.8
Manufactured products	64.2	0.0	0.3	3.1	2.2	0.3

* Data is provisional; Base: 2011–12=100; Source: Ministry of Commerce and Industry.

Movement of CPI Inflation January 2018–March 2020

* Data is provisional.

Source: National Statistical Office (NSO), Ministry of Statistics and Programme Implementation, Base: 2012=100.

CPI: Rural and Urban March 2020* (%)

	Latest Month Index	Over Month	Over Year	Financial Year (Avgs)	
				2018–19	2019–20
CPI Combined	148.7	-0.3	5.9	3.4	4.3
Rural (2012=100)	149.8	-0.4	6.1	3.0	5.4
Urban (2012=100)	147.4	-0.2	5.7	3.9	4.8

CPI: Occupation-wise

	Latest Month Index	Over Month	Over Year	2018–19	2019–20
Industrial workers (2001=100)	326.0	-0.6	5.5	5.4	7.5
Agricultural labourers (1986–87=100)	1007.0	-0.3	9.0	2.1	8.0

* Provisional; Source: NSO (rural & urban); Labour Bureau (IW and AL).

Foreign Trade

The trade deficit narrowed down to \$9.8 bn in March 2020 compared to \$11.0 bn reported a year ago. Exports declined by (-)34.6% to \$21.4 bn and imports by (-)28.7% to \$31.2 bn from \$32.7 bn and \$43.7 bn, respectively. Oil imports were lower by (-)15% at \$10.0 bn and non-oil imports by (-)33.8% at \$21.2 bn from their respective values of \$11.8 bn and \$31.9 bn registered a year ago. During the financial year 2019–20, cumulative exports declined by (-)4.8% to \$314.3 bn and imports by (-)9.1% to \$467.2 bn from \$330.1 bn and \$514.1 bn, respectively.

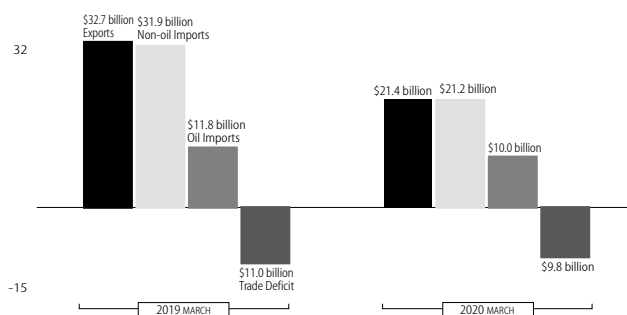
Index of Industrial Production

The y-o-y IIP growth rate declined to -16.7% in March 2020 from 2.7% reported a year ago with growth in manufacturing segment falling to -20.6% from 3.1%. Production in mining sector remained unchanged and electricity generation declined by (-)6.8% against 2.2% recorded a year ago. As per use-based classification, the growth in capital goods segment fell to -35.6% and infrastructure goods to -23.8% from their respective growth rates of -9.1% and 5.1% registered a year ago. Production of consumer durables contracted by (-)33.1% and of non-durables by (-)16.2% against -3.2% and 1.4%, respectively, reported a year ago.

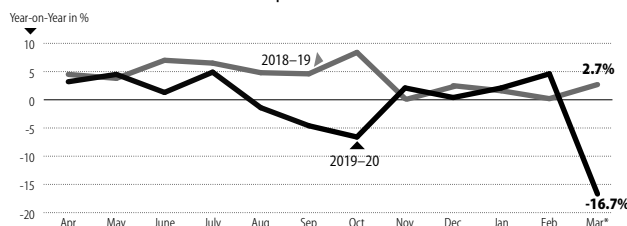
Merchandise Trade March 2020

	March 2020 (\$ bn)	Over Month (%)	Over Year (%)	April–March (2019–20 over 2018–19) (%)
Exports	21.4	-22.6	-34.6	-4.8
Imports	31.2	-16.9	-28.7	-9.1
Trade Deficit	9.8	-0.9	-11.3	-16.9

Data is provisional. Source: Ministry of Commerce and Industry.

Components of Trade March 2019 and March 2020

Oil refers to crude petroleum and petroleum products, while non-oil refers to all other commodities.

Movement of IIP Growth April–March

* March 2020 are quick estimates; Base: 2011–12=100.

Industrial Growth: Sector-wise March 2020* (%)

	Weights	Over Month	Over Year	Financial Year (Avgs)	
				2018–19	2019–20
General index	100	-10.0	-16.7	3.8	-0.7
Mining	14.4	7.5	0.0	2.9	1.7
Manufacturing	77.6	-13.9	-20.6	3.9	-1.3
Electricity	8.0	-3.0	-6.8	5.2	1.1

Industrial Growth: Use-based

	Weights	Over Month	Over Year	2018–19	2019–20
Primary goods	34.0	3.4	-3.1	3.5	0.8
Capital goods	8.2	-21.6	-35.6	2.7	-13.7
Intermediate goods	17.2	-11.1	-18.5	0.9	8.8
Infrastructure/Construction goods	12.3	-16.0	-23.8	7.3	-4.0
Consumer durables	12.8	-25.3	-33.1	5.5	-8.4
Consumer non-durables	15.3	-16.0	-16.2	4.0	0.5

* March 2020 are quick estimates; Base: 2011–12=100;

Source: NSO, Ministry of Statistics and Programme Implementation.

Comprehensive current economic statistics with regular weekly updates are available at: <http://www.epwrf.in/currentstat.aspx>.

■ India's Quarterly Estimates of Final Expenditures on GDP

₹ Crore / At 2011-12 Prices	2017-18				2018-19				2019-20		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Private final consumption expenditure	1769688 (9.3)	1750056 (5.5)	1911901 (5.3)	1948174 (7.7)	1889008 (6.7)	1903853 (8.8)	2046415 (7.0)	2068781 (6.2)	1983491 (5.0)	2010993 (5.6)	2166235 (5.9)
Government final consumption expenditure	362769 (21.6)	367882 (7.4)	319547 (10.5)	293024 (8.9)	393709 (8.5)	407780 (10.8)	341988 (7.0)	335088 (14.4)	428390 (8.8)	461585 (13.2)	382338 (11.8)
Gross fixed capital formation	958859 (0.7)	967190 (5.9)	1014300 (8.8)	1120846 (13.7)	1082670 (12.9)	1077942 (11.5)	1130201 (11.4)	1170154 (4.4)	1129470 (4.3)	1033344 (-4.1)	1071887 (-5.2)
Change in stocks	49996 (61.7)	54050 (75.8)	52497 (78.3)	59252 (79.6)	64131 (28.3)	66159 (22.4)	63999 (21.9)	70126 (18.4)	66411 (3.6)	66732 (0.9)	64668 (1.0)
Valuables	62905 (80.1)	46317 (25.0)	39512 (11.2)	43927 (1.5)	41080 (-34.7)	44629 (-3.6)	39252 (-0.7)	44773 (1.9)	49519 (20.5)	49919 (11.9)	41824 (6.6)
Net trade (Export-import)	-137041	-85422	-128661	-125231	-122238	-141491	-104580	-51925	-117247	-76415	-50489
Exports	627176 (3.9)	639543 (4.5)	646620 (4.4)	688438 (5.0)	686695 (9.5)	719352 (12.5)	748505 (15.8)	767991 (11.6)	708771 (3.2)	703973 (-2.1)	707407 (-5.5)
Less imports	764217 (21.8)	724965 (10.5)	775281 (14.1)	813669 (23.6)	808933 (5.9)	860843 (18.7)	853085 (10.0)	819916 (0.8)	826018 (2.1)	780388 (-9.3)	757896 (-11.2)
Discrepancies	69397	132000	105705	151721	10803	73679	-17242	52683	7482	61000	-11460
Gross domestic product (GDP)	3136572 (5.1)	3232072 (7.3)	3314801 (8.7)	3491715 (7.4)	3359162 (7.1)	3432553 (6.2)	3500033 (5.6)	3689678 (5.7)	3547516 (5.6)	3607157 (5.1)	3665003 (4.7)

■ India's Overall Balance of Payments (Net): Quarterly

	2018-19 (\$ mn)				2019-20 (\$ mn)			2018-19 (₹ bn)				2019-20 (₹ bn)		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q1	Q2	Q3	Q4	Q1	Q2	Q3
Current account	-15803	-19054	-17752	-4647	-14417	-6512	-1417	-1059	-2.3	-1337	-2.9	-1279	-2.7	-328
Merchandise	-45751	-50037	-49281	-35214	-46182	-38085	-34625	-3065		-3510		-3552		-2482
Invisibles	29947	30984	31529	30567	31765	31573	33208	2006		2174		2272		2154
Services	18676	20256	21678	21331	20076	20444	21880	1251		1421		1562		1503
of which: Software services	18605	19286	19895	19868	20998	21064	21455	1246		1353		1434		1400
Transfers	17031	19331	17424	16160	17964	19952	18693	1141		1356		1256		1139
of which: Private	17216	19511	17558	16317	18224	20188	18932	1153		1369		1265		1150
Income	-5760	-8603	-7573	-6925	-6275	-8822	-7364	-386		-604		-546		-488
Capital account	4787	16604	13770	19241	28208	12283	22355	321	[0.7]	1165	[2.5]	992	[12.1]	1356
of which: Foreign investment	1427	7612	5199	15856	19041	10389	17802	96		534		375		1117
Overall balance	-11338	-1868	-4296	14162	13984	5118	21601	-760	[-1.7]	-131	[-0.3]	-310	[-0.6]	998

Figures in square brackets are percentage to GDP.

■ Foreign Exchange Reserves

										Variation				
	1 May 2020	3 May 2019	31 March 2020	Over Month	Over Year	Financial Year So Far		2019-20		2015-16	2016-17	Financial Year		2019-20
Excluding gold but including revaluation effects						2019-20	2020-21	2019-20	2020-21	2015-16	2016-17	2017-18	2018-19	2019-20
₹ crore	3339425	444742	392321	3344616	4199	52420	5507	218620	25300	353270	68050	668976		
\$ mn	444742	-47530	-31240	443645	-95692	83458	79560	16297	10160	53217	-14168	56831		

■ Monetary Aggregates

₹ Crore							Variation						
	Outstanding 2020	Over Month	Over Year	Financial Year So Far		2019-20		2020-21	2017-18	Financial Year	2018-19	2019-20	
Money supply (M ₃) as on 24 April	17021793	226517 (1.3)	1643189 (10.7)	-53463 (-0.3)	221863 (1.3)	1170657 (9.2)	1469480 (10.5)	1367863.554 (8.9)					
Components													
Currency with public	2424823	82972 (3.5)	332756 (15.9)	39858 (1.9)	75107 (3.2)	495583 (39.2)	292496 (16.6)	297506.1357 (14.5)					
Demand deposits	1589870	-147789 (-8.5)	123431 (8.4)	-160073 (-9.8)	-147822 (-8.5)	86962 (6.2)	142800 (9.6)	11179.9069 (6.8)					
Time deposits	12967530	289940 (2.3)	1175093 (10.0)	70834 (0.6)	293515 (2.3)	585266 (5.8)	1026347 (9.6)	952412.2576 (8.1)					
Other deposits with RBI	39570	1393 (3.6)	11910 (43.1)	-4082 (-12.9)	1063 (2.8)	2817 (13.4)	7835 (32.8)	6765.253791 (21.3)					
Sources													
Net bank credit to government	5416196	407845 (8.1)	913226 (20.3)	114480 (2.6)	509613 (10.4)	144799 (3.8)	387091 (9.7)	518093.3091 (11.8)					
Bank credit to commercial sector	10919048	-119096 (-1.1)	692236 (6.8)	-155907 (-1.5)	-119597 (-1.1)	802225 (9.5)	1169004 (12.7)	655925.2337 (6.3)					
Net foreign exchange assets	3870102	115669 (3.1)	726768 (23.1)	72493 (2.4)	71200 (1.9)	364065 (14.2)	148546 (5.1)	728061.5038 (23.7)					
Banking sector's net non-monetary liabilities	3209867	177901 (5.9)	689445 (27.4)	84552 (3.5)	239354 (8.1)	140995 (6.8)	235395 (10.7)	534643.7117 (21.9)					
Reserve money as on 1 May	3066194	93283 (3.1)	278173 (10.0)	17540 (0.6)	36521 (1.2)	518300 (27.3)	351701 (14.5)	259192 (9.4)					
Components													
Currency in circulation	2535134	78109 (3.2)	347901 (15.9)	50462 (2.4)	87855 (3.6)	494078 (37.0)	307422 (16.8)	310508 (14.5)					
Bankers' deposits with RBI	486339	8496 (1.8)	-85834 (-15.0)	-29796 (-4.9)	-57549 (-10.6)	21405 (3.9)	36444 (6.4)	-58081 (-9.6)					
Other deposits with RBI	44722	6679 (17.6)	16106 (56.3)	-3126 (-9.8)	6215 (16.1)	2817 (13.4)	7835 (32.8)	6765 (21.3)					
Sources													
Net RBI credit to Government	1314023	226005 (20.8)	432539 (49.1)	79533 (9.9)	321831 (32.4)	-144836 (-23.3)	325987 (68.5)	190241 (23.7)					
of which: Centre	1310242	225010 (20.7)	431534 (49.1)	78235 (9.8)	320501 (32.4)	-145304 (-23.5)	326187 (68.8)	189268 (23.6)					
RBI credit to banks & commercial sector	-465023	-120297 (34.9)	-514198 (-1045.6)	-103676 (-67.8)	-264130 (131.5)	372643 (-120.5)	89478 (0.0)	-353744 (0.0)					
Net foreign exchange assets of RBI	3605611	2628 (0.1)	714621 (24.7)	42403 (1.5)	15209 (0.4)	363571 (15.2)	87806 (3.2)	741815 (26.0)					
Govt's currency liabilities to the public	26315	0 (-0.0)	404 (1.6)	23 (0.1)	0 (0.0)	572 (2.3)	235 (0.9)	427 (1.7)					
Net non-monetary liabilities of RBI	1414731	15052 (1.1)	355193 (33.5)	743 (0.1)	36389 (2.6)	73650 (8.8)	151805 (16.7)	319547 (30.2)					

■ Scheduled Commercial Banks' Indicators (₹ Crore)

(As on 24 April)							Variation						
	Outstanding 2020	Over Month	Over Year	Financial Year So Far		2019-20		2020-21	2017-18	Financial Year	2018-19	2019-20	
Aggregate deposits	13710685	139652 (1.0)	1226816 (8.8)	-89902 (-0.7)	143193 (1.1)	668390 (6.2)	1147721 (10.0)	993721 (7.9)					
Demand	1469229	-147741 (-9.1)	117507 (8.7)	-159565 (-10.6)	-147774 (-9.1)	88843 (6.9)	141004 (10.3)	105716 (7.0)					
Time	12241456	287393 (2.4)	1109309 (10.0)	69663 (0.6)	290967 (2.4)	579547 (6.1)	1006717 (10.0)	888005 (8.0)					
Cash in hand	87571	417 (0.5)	9403 (12.0)	3292 (4.4)	311 (0.4)	-1295 (-2.1)	14811 (24.7)	12384 (16.5)					
Balance with RBI	423731	-81400 (-16.1)	-99213 (-19.0)	-42763 (-7.6)	-81400 (-16.1)	16906 (3.3)	40021 (7.6)	-60576 (-10.7)					
Investments	3969871	276475 (7.5)	514360 (14.9)	74455 (2.2)	276301 (7.5)	287494 (9.5)	62602 (1.9)	312514 (9.2)					
of which: Government securities	3968578	283835 (7.7)	514247 (14.9)	75329 (2.2)	283661 (7.7)	287657 (9.5)	61595 (1.9)	305915 (9.1)					
Bank credit	10269258	-102655 (-1.0)	648312 (6.7)	-150777 (-1.5)	-101603 (-1.0)	783965 (10.0)	1146298 (13.3)	599138 (6.1)					
of which: Non-food credit	10216615	-103535 (-1.0)	638830 (6.7)	-152328 (-1.6)	-102483 (-1.0)	795906 (10.2)	1146677 (13.4)	588985 (6.1)					

■ Capital Markets

Capital Markets	Financial Year So Far												2019-20				End of Financial Year			
	8 May 2020		Month Ago		Year Ago		Trough		Peak		Trough		Peak		2017-18		2018-19		2019-20	
S&P BSE SENSEX (Base: 1978-79=100)	31643	(-16.3)	29894		37789	(7.3)	27591	33718	25981	41953	32969	(12.1)	39714.20	(12.4)	29816	(-21.8)				
S&P BSE-100 (Base: 1983-84=100)	9357	(-18.4)	8858		11469	(3.4)	8180	9951	7683	12456	10503	(11.5)	12044.07	(9.1)	8693	(-25.2)				
S&P BSE-200 (1989-90=100)	3898	(-17.9)	3694		4750	(1.3)	3416	4140	3209	5185	4433	(12.0)	4986.55	(7.1)	3614	(-25.1)				
CNX Nifty-50 (Base: 3 Nov 1995=1000)	9252	(-18.6)	8749		11359	(6.0)	8084	9860	7610	12362	10114	(11.1)	11922.80	(11.1)	8660	(-24.3)				
CNX Nifty-500	7552	(-19.1)	7161		9340	(-0.8)	6638	8013	6243	10119	8912	(12.6)	9805.05	(5.3)	7003	(-26.3)				

Figures in brackets are percentage variations over the specified or over the comparable period of the previous year. | (-) = not relevant | - = not available | NS = new series | PE = provisional estimates

■ Comprehensive current economic statistics with regular weekly updates are available at: <http://www.epwrf.in/currentstat.aspx>.

Secondary Market Transactions in Government Securities, Forex Market and Money Market—April 2020

1 Settlement Volume of Government Securities Transactions

Settlement Period	Outright	Repo
Number of Trades	Volume (₹ Cr)	Volume (₹ Cr)
April 2020	37578	779511
April 2019	58435	791580
April 2018	82698	882896
April 2017	65093	748265
April 2016	65093	748265

4 Tenor-wise Settlement Volume of Central Government Dated Securities

Year	April 2019	April 2020
2020	68192	29201 (4.42)
2021	18973	16860 (1.61)
2022	19432	22625 (3.42)
2023	22845	43048 (6.51)
2024	71125	47433 (7.17)
2025	10354	6257 (0.95)
2026	49149	10079 (1.52)
2027	20768	30229 (4.57)
2028	10478	7501 (1.13)
2029	22150	14750 (2.14)
2030	3176	2735 (0.41)
2031	7191	6004 (0.91)
2032	7249	16694 (2.52)
2033	44532	1861 (0.28)
2034	5394	905 (0.14)
2035	2202	4011 (0.61)
2036	1133	293 (0.04)
2037	0	0 (0.00)
2038	0	0 (0.00)
2039	1051	205 (0.03)
2040	113	959 (0.14)
2041	12	545 (0.08)
2042	510	1480 (0.22)
2043	87	0 (0.00)
2044	160	288 (0.04)
2045	95	1145 (0.17)
2046	526	1859 (0.28)
2047	0	0 (0.00)
2048	0	0 (0.00)
2049	177	646 (0.10)
2050	1278	0 (0.00)
2051	327	156 (0.02)
2052	0	0 (0.00)
2053	0	0 (0.00)
2054	349	745 (0.11)
2055	0	0 (0.00)
2056	0	0 (0.00)
2057	0	0 (0.00)
2058	460	0 (0.00)
2059	0	0 (0.00)
2060	2041	0 (0.00)
Total	528736	661402 (1.00)

15 Forex Settlement

Settlement Period	Cash	Tom
Trades	Value (₹ Cr)	Trades
April 2020	2256	489422
April 2019	3449	648785
April 2018	3449	648785
April 2017	3449	648785
April 2016	3449	648785

17 Forex Deal Size Analysis (%)

Settlement Period	% to Total Trades	% to Total Value
April 2020	16.44	0.87
April 2019	27.89	2.73
April 2018	10.61	14.42
April 2017	18.06	9.45
April 2016	7.12	18.06

18 Market Share—Forex (%)

Settlement Period	April 2018	April 2019	April 2020
Top 5	37.03	33.89	29.88
Top 10	60.74	54.42	53.83
Top 15	77.08	69.78	66.59
Top 20	86.73	80.22	78.76
Top 25	88.73	81.15	78.76

2 Netting Factor

a Securities	b Funds
Gross (₹ Cr)	Net (₹ Cr)
2275809	923378
2275809	923378
2275809	923378
2275809	923378
2275809	923378

5 Deal Size Analysis (%)

Settlement Period	% to Total Trades	% to Total Value
April 2020	3.88	0.34
April 2019	2.47	0.26
April 2018	2.76	0.38
April 2017	3.39	0.47
April 2016	3.39	0.47

7 Intercategory Member Turnover Activity for All Category

Category	Outright	Reverse Repo (Funds Lending)	Repo	Forward	Netting Factor (%)
Cooperative Banks	2.71	0.46	0.32	0.12	0.13
Financial Institutions	0.20	0.09	0.32	0.00	0.00
Foreign Banks	19.85	18.65	0.40	52.28	0.00
Insurance Companies	1.75	4.73	2.186	1.07	0.00
Mutual Funds	12.62	72.16	6940	7.15	0.00
Others	15.09	0.05	4.00	2.74	1.26
Primary Dealers	8.11	0.71	0.01	11.34	40.72
Private Sector Banks	30.05	2.55	0.30	27.62	27.23
Public Sector Banks	9.62	0.61	0.19	19.99	18.50
Total	100.00	100.00	100.00	100.00	100.00

10 Trading Platform Analysis of Outright Trades

Period	OTC	NDS-OM
Trades	Value (₹ Cr)	% Share
April 2020	2862	7.51
April 2019	4261	7.28
April 2018	4794	5.92
April 2017	5258	8.10
April 2016	5258	8.10

11 Type-wise Settlement Volume of Government Securities Transactions (₹ Cr)

Period	Outright	Proprietary	Constituent	Volume	Trades
April 2020	28932	628728	8646	150733	7373
April 2019	49945	665059	8490	126521	7798
April 2018	73228	750453	9470	132444	7602
April 2017	55032	624631	10061	123633	6519

3 Instrument-wise Break-up of Securities Transactions (₹ Cr)

a Outright Trades	b Repo
Central Govt Dated	State Govt Dated
528736	221087
528736	221087
528736	221087
528736	221087
528736	221087

6 Market Share of Top 'n' Securities (%)

Period	April 2020	April 2019	April 2018	April 2017
Top 5	61.09	79.24	83.96	69.20
Top 10	73.57	84.90	89.67	78.46
Top 15	79.52	88.27	92.21	83.75
Top 20	84.72	91.12	94.07	87.95

8 Market Share of Top Five Members (Category-wise) (%)

Categories	April 2020	April 2019	April 2018	April 2017
Cooperative Banks	51.97	41.79	66.83	75.41
Foreign Banks	72.11	72.73	75.41	75.41
Public Sector Banks	72.17	55.70	55.53	55.53
Private Sector Banks	78.58	83.54	84.45	84.45
Mutual Funds	55.25	53.98	55.08	55.08
Primary Dealers	91.01	89.29	91.97	91.97

9 Market Share of Top 'n' Members (%)

Period	April 2020	April 2019	April 2018	April 2017
Top 5	34.38	29.08	31.89	26.58
Top 10	48.71	45.60	48.39	42.90
Top 15	58.72	57.82	57.35	54.04
Top 20	66.40	65.82	64.34	62.13

12 Treap Trading @

Period	Trades	Value
April 2020	15839	3347778
April 2019	15506	2397559
April 2018	15506	2397559
April 2017	15506	2397559
April 2016	15506	2397559

13 Top 5 Securities—Basket Repo

Security	Value	Rate	Trades	Value	Rate
6.17% GS 2021	183	53230	316	645% GS 2029	527
7.32% GS 2024	117	36480	313	7.32% GS 2024	219
8.83% GS 2023	132	34082	318	8.83% GS 2023	94
30/03/2021 MATURING 36441TB	95	27407	307	6.18% GS 2024	262
8.83% GS 2023	72	26835	299	7.27% GS 2026	113

16 Category-wise Forex Activity—Deal Type

Category	Cash	Tom	Spot	Forward
Foreign Banks	42.53	49.73	56.06	55.35
Public Sector Banks	26.96	18.61	17.45	18.78
Private Sector Banks	30.35	31.53	26.39	25.74
Cooperative Banks	0.15	0.14	0.10	0.12
Financial Institutions	0.00	0.00	0.00	0.00

20 Forex Trading Platform: FX Clear (Amount in \$)

Period	Spot	Trades	Value
April 2020	4417	2690	260
April 2019	30693	18460	1705
April 2018	56204	39903	2958
April 2017	50347	30588	2797
April 2016	50347	30588	2797

* Call and Term Money Segment; ** Includes Small Finance and Payment Banks; @ 5 November 2018 onwards. (i) Figures in brackets are percentage to total, (ii) Tables 1 to 11 relate to Government Securities Market, (iii) Tables 12 to 14 relate to Money Market, and (iv) Tables 15 to 20 relate to Forex Market. Source: Clearing Corporation of India Limited (CCIL).

'Bois Locker Room'

Outrage and Othering

Creating and nurturing a space for open, healthy conversations about sex in our families and homes will help counter misogyny and sexual violence.

ISHA BHALLAMUDI

Last week, leaked chats from an Instagram group called "Bois Locker Room" emerged online. The group consisted of mostly upper-caste and upper-class boys from Classes 11 and 12 of the finest schools in Delhi. In the chats, they shared photos, nude images, and private conversations of underage girls without consent, objectified the girls, and gleefully discussed their fantasies of having sex with them. When they found out that the chats had been leaked online, these "Bois" began to muzzle women's outrage on social media with sexual threats. This incident has sparked a huge outrage, prompting the Delhi Police and Delhi Commission of Women to get involved. The police are shocked. Families are shocked. Netizens are shocked.

But, how legitimate is our shock when Indian families and society so consistently nurture gender-discriminatory attitudes and behaviours in children? The problem with such incident-specific outrage is that it others the boys into outliers—exceptional, horrifying monsters who are not like "the rest of us" good people, especially when the perpetrators are poor, uneducated, and not upper caste. It allows us to wash our hands off all the things we do every day to hold up rape culture in India, and to evade responsibility as a society that continues to raise millions of boys and men with sexist, violent, and entitled views about women, regardless of caste, class, or education.

It is not an accident that India is a deeply unsafe country for women. Violence against women is a serious, invisible, and unrecognised pandemic of our time. Contrary to the common view that violence and sexual assault against women is mostly committed by strangers, research shows that most of it takes place inside the home, mainly by intimate partners, but also by family and friends. Naturally, young boys pick up on these attitudes at home, where violence and misogyny are normalised as "Indian culture."

More broadly, children also get used to seeing women working constantly for their family, while often shelving their identities and individual desires, and with rarely any support or appreciation. The same is expected of young girls, with the constant impositions of hypothetical mothers-in-law's expectations and the belief that marriage and childbearing is the most important aspiration of their lives. Media, films, and pornography contribute hugely to this social insistence on reducing women to (their) sex.

Boys, though, don't face the same expectations or training, already leading to inequalities in how young men and women prioritise and think of each other. Boys also grow up seeing girls constantly policed for their attire, opinions, and looks, apparently to ensure the girls' safety. But all this does is contribute to the increasing unaccountability on the part of boys, and the growing confidence in them that girls are responsible for whatever happens to them. On their part, women and girls find it largely impossible to escape the male, sexualised gaze that is upon them at all times, and find it exhausting to adhere to unattainable standards of propriety, while always anticipating gossip, shame, punishment, and backlash for trying to be individuals in their own right.

All these attitudes are already playing out in reactions to the Bois Locker Room leak. Unsurprisingly, there are narratives that blame the victims, arguing that the (13- and 14-year-old) girls shouldn't have dressed the way they did, that they were inviting attention, and that they're overreacting because the boys "didn't actually act on their fantasies." Such arguments completely shift focus from the issue at hand: How do we ensure that boys don't grow up with such toxic and perverse attitudes, so that girls can grow up feeling safe and

confident instead of being used to manoeuvring and bearing the responsibility for lurking dangers like these secret chats?

Change begins at home. We want to confront sexual harassment, but can we even bring ourselves to say "sex" or "sexual harassment" in front of our families? How are parents to talk to young people about sex and safety when we have harboured deeply misogynistic attitudes for centuries, in the name of culture? Speaking about sex more openly would require acknowledging the vast sexual double standards in India and the inherent violence in social norms around sex. A related problem is that in colloquial vocabularies, the words for sex and sexual organs double up as swear words with obscene connotations. So naturally, there is a rigid, awkward silence around sex education within the family and in schools. Because of this uncomfortable silence, young people prefer to get their sex education from misinformed peers and pornography. This only exacerbates the normalisation of violence against women, as much of the pornography consumed by men in India (going by regional "top searches" on pornography sites) is unrealistic, often non-consensual, and degrading to women.

The problem with such incident-specific outrage is that it others the boys into outliers—exceptional, horrifying monsters who are not like "the rest of us" good people

Given the gravity of the situation, families desperately need to find the right vocabulary and the courage to provide a safe and open space for children to have conversations about sex that are not infused with shame or fear. This will break the idea of sex as a secret, violent activity that is informed by unrealistic and degrading standards. More generally, it will foster a sense of confidence, trust and support. Today, when girls are sexually harassed, they fear telling their parents because they have already learnt to expect that they will be blamed and punished, not supported.

As a response to the leaked Bois Locker Room chat, parents across the country are already warning their daughters not to put up “revealing” photos, adding to their fears and systematically chipping away at their sense of security. Presumably, the boys aren’t being told anything, at least not enough. Till the Indian family is able to gather the courage to see its own reflection in every could-be rapist, this violence is not going to stop—it is not the survivors’ problem to fix. Are we ready to collectively work towards this?

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The Birth of the Dalit Protagonist

Born as a reaction to caste violence, the figure of the Dalit protagonist has come full circle—no longer hateful, it is creative and begets life.

YOGESH MAITREYA

In 1877, Friedrich Engels wrote, “Each mental image of the world system is, and remains in actual fact, limited, objectively by the historical conditions and subjectively by the physical and mental constitution of its originator.” Close to 150 years later, this still holds true for Indian literature, where the caste system and Brahminical culture can be understood as being the objective and subjective conditions.

Whether in literature or cinema, we find that Dalit characters have almost never been centre stage, even in stories about caste oppression. Whether a Dalit character is portrayed as a victim or a fighter, is a matter of politics and the sociopolitical reality of the storyteller. In Brahminical culture, which prohibits the literary aspirations of certain castes, the caste of the storyteller is bound to play a role in their story. When a marginalised protagonist’s character is developed and shaped by a privileged upper-caste writer, from a position of

oppressive power and with no understanding of the Dalit struggle, the very meaning of “protagonist” becomes infertile, flawed, and bogus.

While developing a character, the oppressor pours a bit of themselves into the so-called marginalised protagonist, reflecting their own social experience. Thus, we are given an essentially upper-caste protagonist who plays saviour to the marginalised, and participates in the Dalit struggle, although their own privilege and social conditions do not warrant this fight. In this process, the history of the oppressed is appropriated and manipulated, and they are ousted from their own story, reduced to being mere receivers of justice. However well intentioned, it is the oppressor-protagonist (or writer) “saving” and bringing justice to the marginalised in our visual and literary imagination. This is Indian literature and cinema in a nutshell, produced by Savarnas. On the other hand, cinema and literature produced by Dalits is completely antithetical to this. In their art, we witness, for the first time, what Carl Jung called a complete “individuation” between story and storyteller—the two are not separate, not at odds; the storyteller is part of the story.

The rise of the Dalit protagonist has gone through the path of violence, in both, the social and the imaginative spheres of life. For instance, though the Dalit fight against the caste system in Maharashtra had always been bloodless and creative, the 1970s saw the rise of the angry Dalit youth. They were furious over the atrocities against Dalits in all walks of life. Socially, they were subjected to humiliation at the hands of upper castes, and were disappointed with their political leaders who had failed to bring justice to them. The times demanded a literary hero who could be another weapon in their struggle—thus was born the rude, rowdy, and fearless Dalit protagonist, who takes centre stage in the poetry of Namdeo Dhasal.

Dhasal proclaims his outright rejection of the greed that is the underlying motivation of the caste system. His imagination thrusts into the minds of readers, the new hero whom they had never recognised. The entire literary schema of his poems belongs to the rage and violence amidst which his generation penned their poems. Even in their poems, in their imaginative world, Dalit poets could not afford to remain aloof from violence, since it was impossible to conceive of the literature in which they could rise from victim to hero, without an acknowledgement of the violence. But do Dalit poets or writers need to witness explicit violence to be a protagonist in their literary imagination? The answer is in the negative. Explicit violence is a matter of social location and the conditions one lives in. Since the history of all Dalit writers is the history of being “untouched,” the cruellest violence of human society, this colours their literary imagination, which in its egalitarian pursuit takes fuming routes to reach the world they envision.

For centuries [Dalits] have lived among casteist people who did not recognise them as minds capable of creating art. Hence the provocative, not soothing, imagination in their poems

Almost 40 years after Namdeo Dhasal gave birth to the angry young hero in literature, the protagonist's rage has transformed from reactive to reflective.

If I did not have
A pen in my hand,
Then,
It would have been a chisel,
A Sitar,
A flute
Or perhaps a canvas and brush

I would have dug out
With whatever I had
This infinite clamour
From inside the mind

("If I Did Not Have a Pen in My Hand" [2010] by Nagraj Manjule,
translated from the Marathi by Yogesh Maitreya)

Yet, what has not changed is their subjective position, by which they could feel the intentions of their being, and the objectives of their becoming. They are clear, much like a hero, a warrior who knows the purpose of their every action. For centuries they have lived among casteist people who did not recognise them as minds capable of creating art. Hence, the provocative, not soothing, imagination in their poems. No longer appropriated by Savarnas in their art, they are now the creator of their own art. The idea of their rebellion now comes full circle—it is not bloody, it is creative, and it begets beautiful life.

Why do not you
Furiously bloom
Like a Gulmohar, against the conspiracy
Of the sun

("Against the Conspiracy of the Sun" [2010] by Nagraj Manjule,
translated from the Marathi by Yogesh Maitreya)

Poems like this make us think about the world of the people in whose life struggle is essential not just to live, but also to maintain the dignity that is central to human life. Instead of hatred for the enemy, there is contemplation on oppression, signalling the arrival of the Dalit protagonist in Indian literature. Those whose consciousness is shaped by privilege cannot offer an egalitarian imagination, even if "just" in literature. So, here we are, reading writers who were punished for reading and writing only a few decades ago. Although Dalits have a centuries-old history of an egalitarian imagination in their literature, it is only in the wake of the mass Buddhist conversion led by B R Ambedkar in 1956, that this legacy was resurrected. A person who has been tortured, humiliated, and despised for being born into an "untouchable" caste, is now casteless, having embraced an identity beyond caste. They have grown from victim, to rebel, to protagonist, to hero in their life, singing the song of life in its true nature, applauding the achievements of humans when they were not yet infected by the poison of caste.

You lived before the birth of the Vedas
even before the birth of the Almighty
looking at the frightening material world
pained and anxious
you raised your hands and prayed
those prayers went to make the Vedic verse,
it is you who celebrated the birth of all gods, and
named them happily
oh, the mighty humans, you named the sun
and the sun got its identity,
you named the moon
and the moon got its fame
only you gave a name to this world
and it was accepted with honour
oh, the creative, the genius humans,
you are the cause
because of you so beautiful, so lively is the world.

("You Were before the Vedas" [2004] by Baburao Bagul,
translated from the Marathi by Yogesh Maitreya)

This poem is the essence of the entirety of Dalit literature that was written in the past and that will be written in the future—the blueprint for a Dalit protagonist in literature and cinema.

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Bardo of Lockdown

As the earth seems to be resetting itself through the current global pandemic, perhaps it is a good time to be more mindful of what our "essential" needs truly are.

BADRINARAYANAN SRINIVASAN

"Sitting quietly, doing nothing, spring comes, and grass grows by itself."
—Zen poem by Matsuo Basho

In Buddhist parlance, bardo refers to an intermediate state, a liminal experience between two successive experiences. Tibetan Buddhists believe that a being's consciousness goes through a state of bardo after death and before the next rebirth. Compressed to a smaller time-cycle, this gap can also be seen to exist between one breath and the next, between one thought and the next, and so on. Every bardo, however big or small, offers a gap—a window of opportunity—to awaken once and for all, from this grand dream-like matrix that is life, with its endless cycle of birth, suffering, death and rebirth. None of us have gone through the "death experience" and lived to tell the tale. None of us can recall the terrifying stages by which the body dissolves into its constitutional elements, as described in the *Bardo Thodol* (Tibetan Book of the Dead): earth into water, water into fire, fire into air, air into space, and space into consciousness, and so on.

The elements of the earth have been in turmoil in recent times, sending us warnings. We have ignored the earth quaking, the waters flooding and fires raging. Now, with lockdowns in place everywhere due to COVID-19, space has folded itself around the world, confining us to the tight spaces of our homes, cowering from an invisible enemy, while wild animals roam free on our streets, as if to mock us. Is the earth itself going through a bardo?

Through the cacophony of news media screaming the latest morbid statistics, and predictions of wars, the capitalists are busy blaming the communists, the left in turn blaming the right. Governments are scrambling to consolidate power at any cost, using the opportunity to increase surveillance, and undermine the freedom of the individual. People have suddenly lost their sense of self and their dignity, their faces half-covered by masks, reduced to struggling for survival. An entire invisible population of humans that builds our cities and services its privileged occupants is seen hobbling along empty highways, starving, somehow trying to reach home.

As bubbles burst and economies tumble, everyone is suddenly talking “sustainability” and “virtual” as though they are our two new cure-all vaccines. Henceforth, all business, education, and everything in between, will be sustainable and online. But, is it as simple as that? How did we end up backing ourselves into this corner? How did we end up destroying our own planet, compromising our own health and immunity? Greed is not sustainable; dominance over human and natural life is not tenable. Perhaps, each of us is culpable, with our own perversely exaggerated appetites to blame.

When we are born, we are thrust from the womb into this world feeling cold and hungry. We want warmth, comfort, and milk. But as we grow older, that hunger seems to swell to monstrous proportions. No matter what we do for “fulfilment,” it is never truly, permanently satiated. We try to fill this void with friendship, pets, hobbies, love, wealth, knowledge, religion, and so on. Any satisfaction, if at all, is temporary and followed by a gnawing feeling of incompleteness: “This is not it! There’s got to be more.”

Rather than speculate on abstractions, can we turn around and look directly at the great hungry void *within* us? The one that we have been running away from, which we try to fill in vain with things promised by the nexus of the state, news media, consumerism, and advertising? The current lockdown gives us an opportunity to face ourselves and our insecurity, directly and squarely. At the core of this is a fundamental existential doubt: Do we really exist? Are we real? Unsurprisingly, ready-made answers flood in: Of course we exist, because we can see, hear, smell, taste, touch, think, and, most importantly, feel!

Can we be sure that we exist just because we can think and feel, or do we constantly indulge in thinking and feeling to confirm our own existence? Sometimes when we have nothing to do, we start thinking of the past or speculating

about the future. We fidget in our chair, stroke our hair or scratch a non-existent itch. Being alone with ourselves, doing nothing, is terrifying. We tell ourselves we are bored and quickly jump into an activity to fill that void—anything to escape the emptiness.

But, when we no longer avoid our void, and become intimate friends with it, a strange thing happens. Several of the dependencies, addictions, and emotional dramas that “define” our existence, begin to drop. A deep internal contentment grows that is not dependent on circumstances. Let us stop, be still. Boredom may well be the last and final frontier for humanity. Those who are brave enough to transcend it, will stumble upon an oasis of peace, vitality, creativity, humour, and effectiveness.

With the slowing down of the rat race and the spread of individual contentment comes a collective sense of well-being. Most of us reading this, those with roofs over our heads and food in our bellies, are surviving this lockdown period—without flying the world, driving kilometres to work, dining out in fancy restaurants, or shopping for fun in malls. We have seen what this (forced) austerity could do to revive our biosphere in such a short period. This experience should have brought home what is essential and what is non-essential in the real sense.

Every moment of bardo presents us with a choice—between ignorance and wisdom, between confusion and clarity. With the easing of lockdowns, should we go back to “business as usual” and crank up the greasy, exploitative global consumer machinery? Or should we be more mindful of all the people and the natural systems that truly nurture our genuine needs, and follow a more equitable and compassionate model of development?

[The author is deeply grateful to the Buddhist teachings of Dzongsar Khyentse Rinpoche, Chögyam Trungpa Rinpoche, Geshe Dorji Damdul, and many others for the central ideas in this article.]

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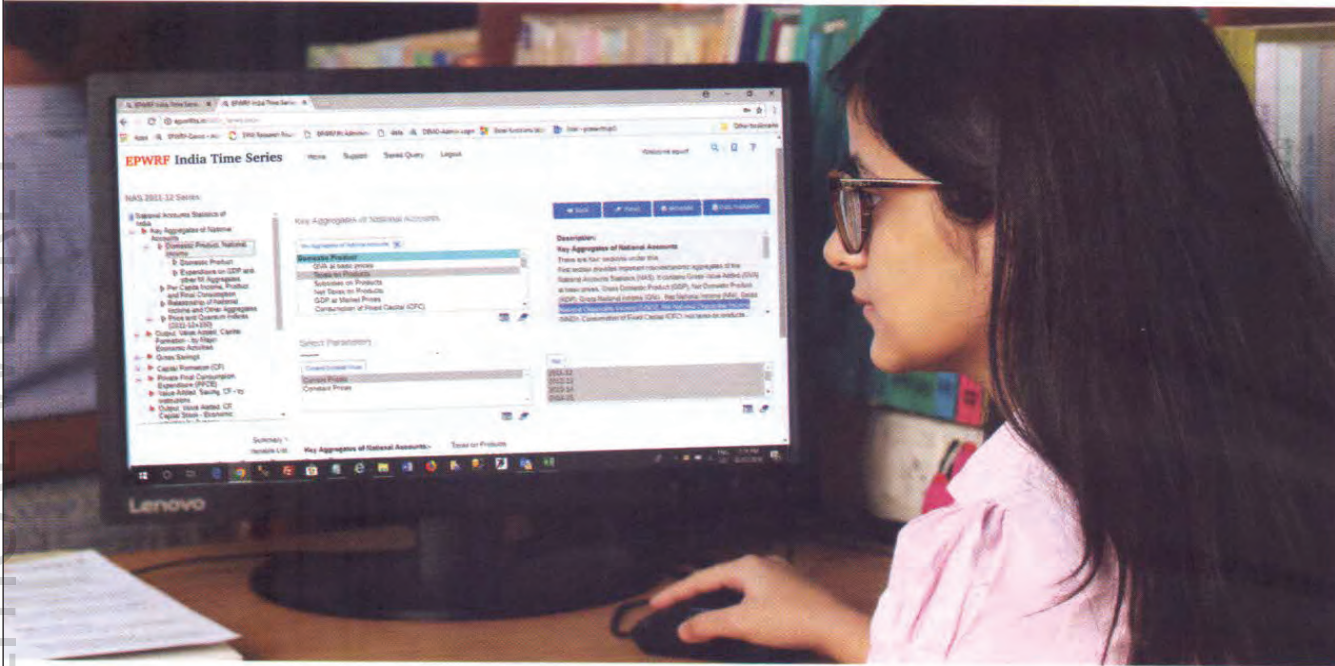
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