

# Chapter 1

## Introduction



© Stuart Freedman/ActionAid

*Harsh Mander • Gitanjali Prasad*

## A Conceptual Framework for Exclusion

---

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

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

### Public Goods

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

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

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

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

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

---

Harsh Mander is director of the Centre for Equity Studies (CES). Gitanjali Prasad is a researcher at CES. Primary and corresponding author: Harsh Mander, [manderharsh@gmail.com](mailto:manderharsh@gmail.com).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Exclusion and the Role of the State

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

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

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

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

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

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

## Exclusion from Public Goods

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

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

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

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

### School Education

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

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

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

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

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

### Urban Housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2. Who is Being Excluded?

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

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

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

### School Education

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



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

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

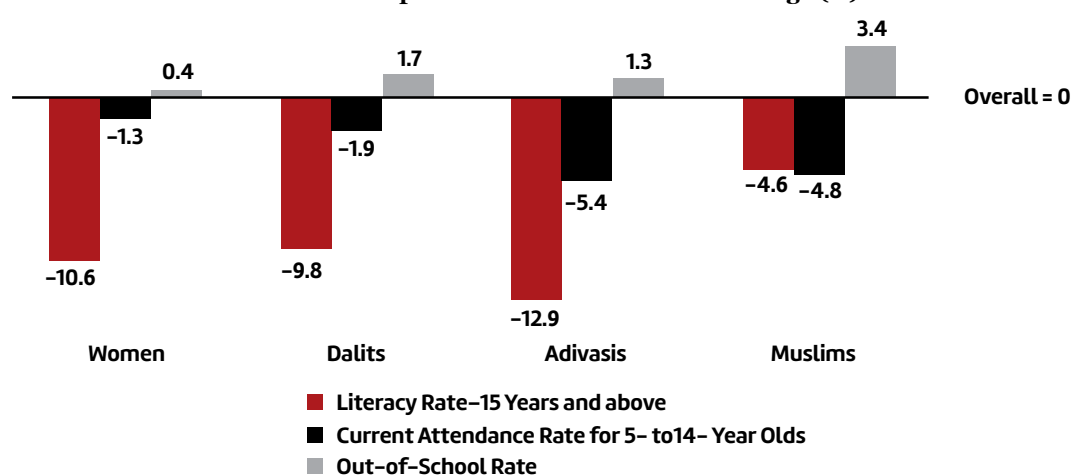
marginalized households, including Dalit, Adivasi, Muslim and female-headed households, and households with persons with disabilities, such groups are particularly vulnerable to the impacts of poverty on educational exclusion

### Urban Housing

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

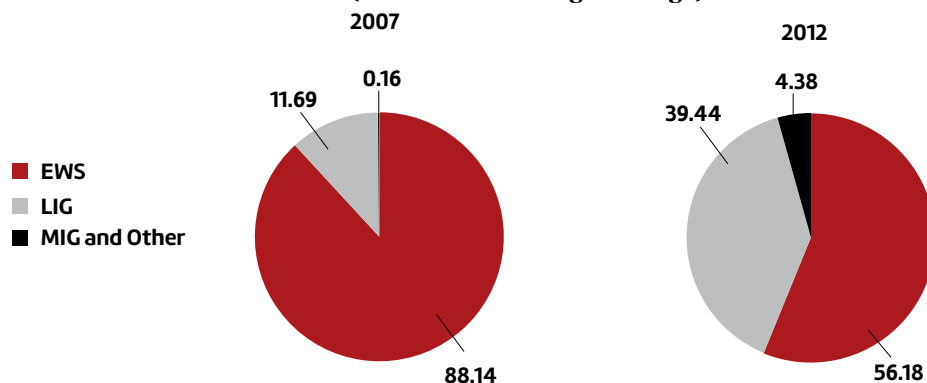
The major housing shortage in India, according to the Kundu Committee, encompasses those living in housing conditions that are defined as ‘housing poverty’, households living in unacceptable dwelling units or in ‘unacceptable physical and

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



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

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



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

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

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

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

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

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

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

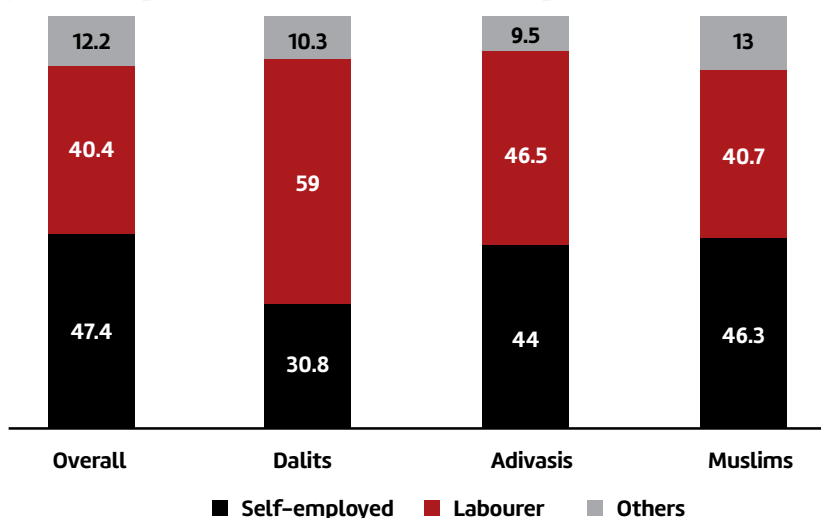
Official data estimates that around 400 million workers in India are employed in the informal sector.<sup>29</sup> Without the availability of formal employment, the solution for workers lies either in opting for self-employment or becoming a casual labourer. In fact, the vast majority of jobs created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

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

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

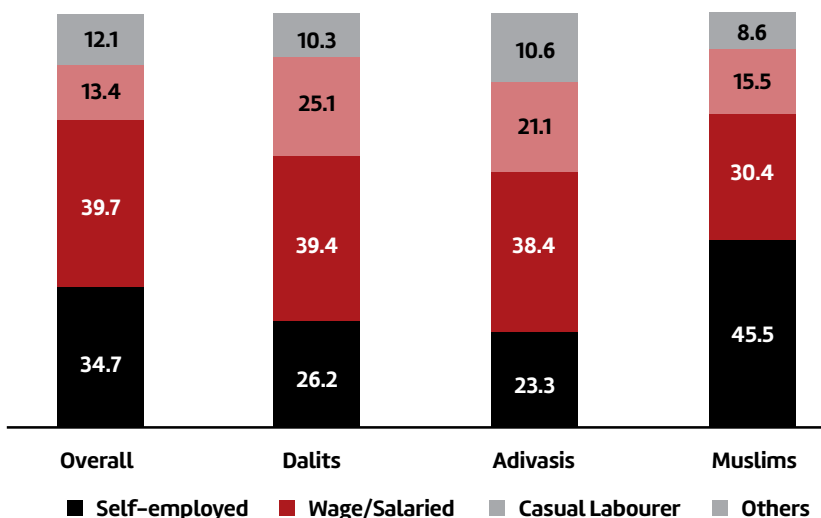
Figures 1.3 and 1.4 show, there is a preponderance of Dalits in casual labour. In 2009–10, 59 per cent of SCs in rural areas were engaged as agricultural or non-agricultural labourers, compared to an overall average of 40.4 per cent; in urban areas too, 25.1 per cent of SCs worked as casual labour, as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

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



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

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



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

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

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

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

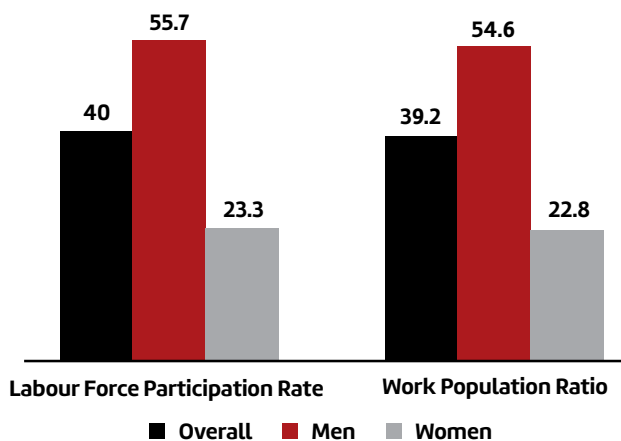
pay gap also exists between men and women, in both the formal and informal sectors.<sup>35</sup> These and other exclusionary practices largely coincide with general discriminatory attitudes and practices towards women, as well as their lower social status, leaving them highly vulnerable to exploitation,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

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

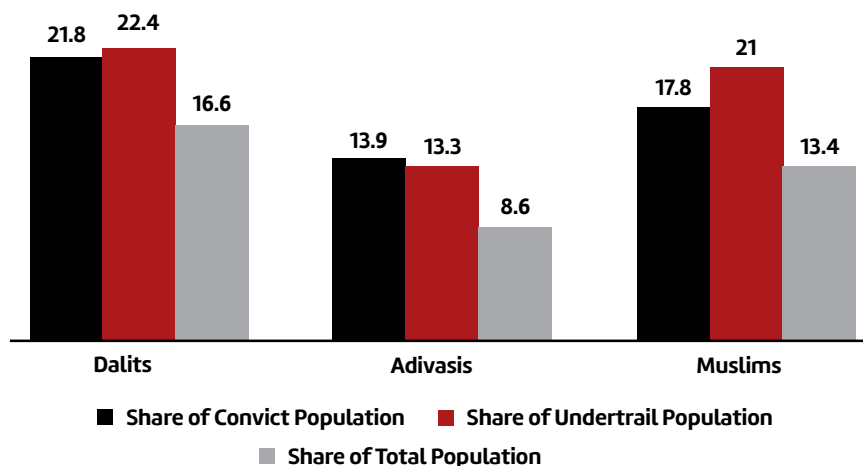
One of the clearest indicators of the exclusionary nature of law and justice in India is the significant overrepresentation of marginalized groups like Dalits, Adivasis and Muslims in prison population, particularly of undertrial prisoners who are yet to be convicted for their alleged crime (see Figure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

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

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



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

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

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

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

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

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

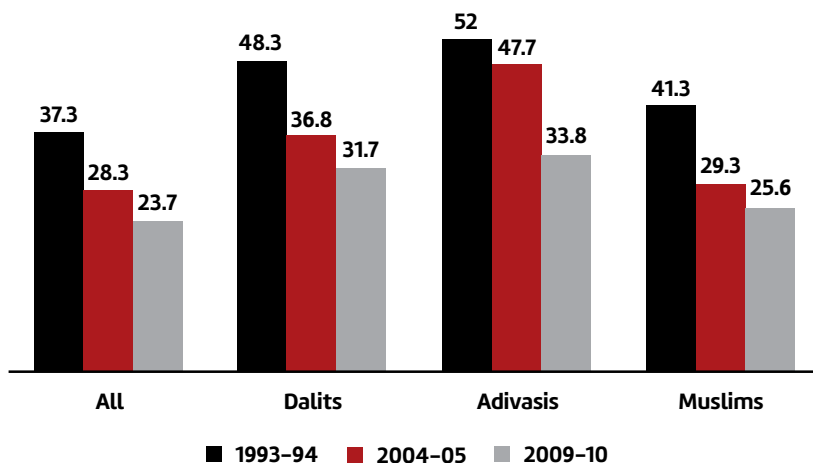
### The Role of Poverty

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

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

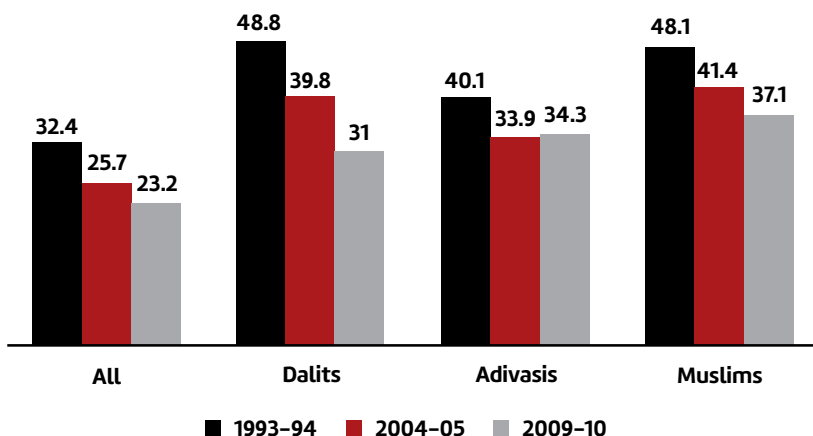
Though India’s poverty has declined over time, Figures 1.7 and 1.8 show that this has not been a uniform process. There is evidence to suggest that

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



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

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



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

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

### 3. Processes of Exclusion

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

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

#### 3.1 Faulty Design of Law and Policy

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

##### *School Education*

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

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

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

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

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

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

### Urban Housing

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

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

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

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

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

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

### Decent Work in Labour Markets

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



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

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

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

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

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

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

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

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

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

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

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

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

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

#### School Education

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

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

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

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

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

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

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

### **Urban Housing**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### School Education

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

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

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

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

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

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

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

### Urban Housing

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

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

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

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

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

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

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

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

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

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

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

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

### **School Education**

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

### **Urban Housing**

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

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

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

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

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

## 4. Key Consequences of Exclusion

The report finds that the consequences of denial and discrimination in relation to all the public goods under scrutiny in the report are to further deepen and embed the poverty, exploitation and very low social power of vulnerable populations.

Importantly, exclusion from one public good reflects, produces and reproduces exclusion from other public goods, and further entrenches the social and economic disadvantages of marginalized persons. For example, exclusion from schooling reduces chances of securing decent housing and decent work. Exclusion from decent housing—and the unending ‘cycles of eviction and relocation—make the possibilities of finding regular schooling and decent work much harder. Without decent work, it is hard for households to secure good education and decent legalized housing. And for all of these groups, if they happen to be trapped on the wrong side of the law—especially if charged with terror crimes—the chances of finding decent work, a house to rent or a good school for their children reduce precipitously.

### School Education

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

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

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

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

### Urban Housing

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **5. Recommendations**

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

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

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

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

### School Education

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

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

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

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

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

### Urban Housing

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

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

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

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

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

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

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

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

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

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

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

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

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

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