Chapter 5

Law and Justice: Exclusion in Anti–Terror Legislation

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1. Introduction

No other word has been misused more often in the 21st century than 'terrorism'. Across continents, countries have redefined many fundamental human freedoms and introduced extraordinary legislations that subvert these basic guarantees. Each time, the pressing need for a strong response to counter terrorist threat has been the alibi. India, in its own 'war against terrorism', has been no different. In this chapter, we aim to address some questions central to the passage and functioning of such anti-terror legislation in India. For instance, while the state has the power to enact laws to protect its citizens from violent attacks, has the exercise of this power been within reasonable limits, or does it constitute an unreasonable intrusion of fundamental freedoms and protections guaranteed under the Indian Constitution? What impact have these legislations had on the life and liberty of individuals arrested and prosecuted under them? Is there an equal and fair application of these laws across communities and classes in India, or is there a bias against some sections of society?

When the Constitution of India was drafted, it was one of the most progressive documents in existence, providing for a Bill of Rights and a range of fundamental freedoms, as well as a strong constitutional basis for their protection. Most importantly, Articles 21 and 22 of the Constitution provide for the Right to Life and protection against arbitrary arrest and detention, respectively. Even in cases where certain rights are not explicitly guaranteed under the Constitution—for instance, protection from torture—the Indian Supreme Court has consistently interpreted them to be implicitly protected under the Right to Life. With respect to the conduct of a police investigation or trial, two safeguards are fundamental: fairness in procedure and equal application of legal standards for all persons. There are clear normative guidelines that have evolved, often through enunciations of the Supreme Court, which make these standards objective and easy to apply across the board.

India also has binding obligations as a signatory to the Universal Declaration of Human Rights, 1948 (UDHR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR), to respect several critical human rights and fundamental freedoms—protection from 'torture' and from 'cruel, inhuman or degrading treatment or punishment',[1] the right to a 'fair and public hearing by an independent and impartial tribunal'[2] and protection from 'arbitrary arrest, detention or exile'.[3] Articles 9 and 14 of the ICCPR also lay down a range of key protections for arrested or detained persons, including providing information about the reasons for their arrest and of the charges against them, prompt presentation before a judicial authority, trial or release within a reasonable period of time, the presumption of innocence until guilt is proven and protection from forcible confessions. Adherence to such obligations under international human rights agreements is clearly enshrined within the Indian Constitution. Article 51(c) of the Directive Principles of State Policy requires that the state 'endeavour to foster respect for international law and treaty obligations',[4] while Article 253 of the Constitution also empowers Parliament to enact any legislation required to give effect to international agreements that the country is party to.[5] The Supreme Court, in a number of its judgments, has also looked at India's obligations under such international agreements as a basis for interpreting various constitutional and statutory provisions.[6]

Increasingly, however, we are witnessing the steady erosion of many such rights due to state practice, in particular through the passage of extraordinary anti-terror legislations. Most often, a utilitarian justification is used to uphold terror laws and their draconian application, which primarily relies on the simplistic 'greatest good for the greatest number' theory. But as is evidenced through emerging principles of international law, human rights and humanitarian legal principles trump utilitarian concerns. If this were not the case, it would be deemed acceptable to deny minorities their fundamental constitutional protections, and the prohibition on torture would not be absolute. The promise of justice as understood in the Rawlsian sense is that justice will be done

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only if the last man standing also receives justice.[7] Therefore, the utilitarian argument that it is acceptable to torture a terrorist because he or she might reveal important information goes against well-established human rights principles. It is, in fact, in difficult times, such as war or terrorism, that we most need to uphold these protections, as they are meant to provide a guiding set of principles for precisely these situations. It is at these times that procedural fairness assumes unprecedented importance, as certain persons, such as alleged terrorism suspects, are most likely to be excluded from this system of safeguards and not given equal access to justice.

We argue in this chapter that extraordinary anti-terror legislations, both in their design and implementation, severely restrict or deny the realization of a crucial public good—namely, fair and impartial access to justice—for a number of marginalized groups in India. By providing for a state of exception to be created within existing legal safeguards and procedures relating to the investigation and prosecution of criminal offences, anti-terror laws subvert a number of fundamental human rights, and contradict well-established principles of criminal and human rights laws. They are also extremely prone to abuse by the police and other investigative authorities, leading to their frequent misuse and misapplication, to suppress legitimate dissent and target specific communities, particularly Muslims, Adivasis and Dalits.

1.1 A Brief Overview of Anti-Terror Laws in India

The passage of the Constitution (Sixteenth Amendment) Act in 1963 authorized the central government to place reasonable restrictions on certain basic rights guaranteed in the Indian Constitution, namely the freedom of speech and expression, the right to peaceful assembly and the right to association, in the interests of the sovereignty and integrity of the country. Since then, both the central and state governments in India have enacted a number of extraordinary legislations, with the stated intention of preserving national security and combating terrorism.

At the national level, the Unlawful Activities (Prevention) Act was enacted in 1967, and has been amended a number of times since, most recently in 2012, in order to more specifically address terrorism-related offences (see box for a detailed description of the law). Other central laws enacted to counter terrorism include the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA) and the Prevention of Terrorism Act, 2002 (POTA), both of which were later repealed in the face of strong opposition to their draconian provisions. Similarly, a number of governments have enacted anti-terror laws at the state level; these include the Maharashtra Control of Organized Crime Act, 1999 (which was subsequently also made applicable to Delhi in 2002); the Karnataka Control of Organized Crime Act, 2000, the Andhra Pradesh Control of Organized Crime Act, 2001 (which was subsequently repealed); the Madhya Pradesh Special Areas Security Act, 2001, and the Chhattisgarh Special Public Security Act, 2005. Anti-terror legislation has also been proposed in Gujarat, where the Gujarat Control of Organized Crime Act has been passed by the state legislature, but is yet to receive the approval of the central government.

Such anti-terror laws include provisions that allow the police and other investigative authorities to circumvent critical existing protections and procedural safeguards guaranteed to persons accused or suspected of having committed a crime. For instance, whereas the maximum period for which a person can normally be detained without being formally charged of a crime is 90 days, anti-terror laws allow for the detention of an accused person for a much longer period, often extending up to a year. Similarly, certain confessions made to the police are admissible as evidence in court, a provision that, besides running contrary to protections guaranteed under the Indian Evidence Act of 1872, also significantly increases the possibility of the use of torture to extract false confessions from the accused. Other vital differences include the reliance on special courts and *in camera* (private) hearings for prosecution of such crimes, use of secret witnesses, the presumption of guilt in certain cases (for instance, if arms or explosives are recovered from the accused or there is evidence connecting him or her to weapons used to commit terrorist acts) and much more stringent bail norms, which effectively place the burden of proving innocence on the accused. Perhaps most worryingly, such laws

The Unlawful Activities (Prevention) Act, 1967

The Unlawful Activities (Prevention) Act, 1967, or UAPA, gives broad discretion to the central government to decide what constitutes an 'unlawful activity' or an 'unlawful association'. Amendments in 2004 adopted definitions for a 'terrorist act' and 'terrorist organization' that were similar to the then recently repealed POTA, and amendments in 2008 and 2012 further broadened these definitions. The UAPA's vague and broad definition of 'terrorist acts' is inconsistent with internationally acceptable standards, and can be interpreted to include many forms of non-violent political protest.[a] Under the 2008 amendments, a person can be detained for 90 days without filing a chargesheet, which can be extended a further 90 days by a court. Similar to POTA, section 43D (5), inserted in the 2008 amendments, authorizes courts to deny bail if it is felt that there are 'reasonable grounds for believing that the accusation against such person is prima facie true'. In another provision similar to TADA and POTA, the 2008 amendments also add a presumption of guilt if arms are recovered from the accused or there is evidence connecting him or her to weapons used to commit terrorist acts. Moreover, they add provisions for warrantless arrests, search and seizure in cases where authorities have 'reason to believe' that a person has committed, or intends to commit an offence under the act. Amendments to the UAPA in 2012 broadened the definition of a 'person' who can be held liable for a terrorist act to include even loosely formed groups of friends and acquaintances, which has the potential to criminalize mere association or interaction with a terror suspect.[b] They increased the period for which an association can be declared as unlawful from two years to five years. They also included terrorism-related offences by companies, societies or trusts, holding the person responsible for the conduct of the business at the time of the offence liable for imprisonment and fines. All of the above amendments have significant potential for misuse and for targeting innocent individuals and organizations.

Sources: a *Human Rights Watch (2010),* Back to the Future: India's 2008 Counterterrorism Laws*, New York: HRW.*

b *'Reject Amendments to UAPA — An Appeal to Members of the Rajya Sabha: JTSA',* Kafila*, 4 December 2012, http://kafila.org/2012/12/04/reject- amendments-to-uapa-an-appeal-to-members-of-the-rajya-sabha (accessed 6 May 2014).*

adopt an extremely vague interpretation of what constitutes terrorism, allowing the government broad discretion in defining a terrorist organization, and generally criminalizing even mere association or communication with suspected terrorists, or membership to an organization deemed to be a terrorist organization by the government.

For the purposes of this chapter, the misuse of the UAPA has been examined closely, since it is the principal central anti-terror legislation in the country at present. However, the mechanisms through which the UAPA has been used to subvert fundamental protections and procedural safeguards, as well as to target specific communities, are equally applicable to the various state-level anti-terror laws. In many ways, specific provisions under such state laws make them even more draconian than the UAPA. For instance, both the Maharashtra Control of Organized Crime Act and the proposed Gujarat Control of Organized Crime Act explicitly provide that confessions made before a police officer can be admissible as evidence in court. This runs counter to established principles of Indian law, which bar this practice in order to protect against the use of police torture to extract false confessions from accused persons. With the Chhattisgarh Special Public Security Act, the UAPA's definition of 'unlawful activity' has been broadened to include even an action that 'tends to interfere' with the maintenance of public order, or the functioning of administrative or legal institutions and their personnel.[8] The act also declares as unlawful any act 'of encouraging or preaching disobedience to established law and its institutions',[9] a provision that can be easily misused to suppress the right to peaceful protest, free speech and expression of persons who may share the political ideology of an unlawful organization, even if they are not a part of the organization.[10] Wherever relevant, state-specific anti-terror laws are also discussed in the following sections of the chapter.

The rest of this chapter is arranged as follows: section two examines the existing evidence around the implementation of anti-terror legislation in India, looking particularly at the widespread abuse of these laws to target specific groups or communities. Thereafter, section three discusses the key mechanisms through which such exclusion from fair and impartial access to justice has been achieved in the case of anti-terror laws. The section uses two case studies—the ban on

the Student Islamic Movement of India (SIMI), and the detention of Soni Sori, a tribal activist in Chhattisgarh—to highlight how legal and procedural safeguards have been subverted in the investigation and prosecution of these cases. Section four looks at the consequences of the misuse and misapplication of anti-terror laws on victims and their families, as well as on society at large. Finally, section five concludes with a set of recommendations to address the exclusionary impacts of anti-terror legislation in India.

2. Who Do Anti–Terror Laws Target?

There exists very little official data on the application of anti-terror laws in India, and the socio-economic background of persons charged or detained under such laws. For most anti-terror legislations, no attempt has been made by the government to collect such data. For example, in May 2013, the Ministry of Home Affairs admitted that it had no information on citizens arrested under the UAPA by the state police,[11] despite numerous reports of misapplication and misuse of the act by state police forces. The Ministry was only able to provide information on the status of 60 cases registered under the UAPA by the National Investigation Agency (NIA), established in 2009. Half of these cases were still under investigation (with no charges filed against the accused), and trials had been completed in just two cases.

The National Crime Records Bureau of India does provide regularly updated data on the status of outstanding cases under TADA, and these statistics clearly highlight the extremely slow pace of prosecuting cases registered under the sct, which was repealed almost two decades ago. By the end of 2012, 59 TADA cases, involving a total of 488 arrested persons, were still pending investigation, i.e., charges were yet to be filed against the accused in these cases. Just two persons arrested under TADA were charged in 2012, while 238 persons were released before trial during the year.[12] The record of courts in trying such cases is similarly poor: at the end of 2012, 1,791 TADA cases, involving 4,775 persons, were still pending trial. During the year, trial proceedings were completed in 28 cases, involving 524 persons, all of which ended in the acquittal of the accused.[13] The last time a case was registered under TADA was in 2002,[14] which means that all of the above mentioned cases are at least a decade old.

Despite the absence of official data, a number of unofficial sources have documented the extensive misuse of anti-terror laws, particularly in terms of their selective targeting of Muslims, Dalits, Adivasis, activists and political opponents. The lack of clarity in such laws regarding what constitutes terrorism, and their suspension of critical legal safeguards and protections, have enabled the police and other investigative agencies to arbitrarily detain, harass and even convict people under these laws. As a result, terror laws are increasingly being misused to falsely implicate innocent persons or organizations, under the guise of tackling terrorism. Between 1985, when TADA came into force, and 1994, approximately 67,000 persons were arrested, of which only 8,000 went to trial and just 725 were convicted.[15] 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.[16] 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.[17] More than 50,000 cases registered under TADA were later withdrawn after review committees found that the act has been wrongly applied in these cases.[18] With the Prevention of Terrorism Act (POTA), similar cases of misuse began to surface soon after its enactment in 2002. Jharkhand, for instance, had already arrested 202 persons (including at least one minor) under POTA by February 2003, 'a much higher number than for other states. Most of those charged under the act were Adivasis, Dalits and members of other marginalized groups.[19] In some of these cases, POTA was invoked merely on the basis of possession of Naxalite literature.[20] In Gujarat, all but one of the cases registered under the Act by the end of 2003 were against Muslims.[21] POTA was also used to target political opponents. For instance, Tamil Nadu Member of Parliament V. Gopalswamy, popularly known as Vaiko, was arrested for speeches supporting the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka.[22]

While both TADA and POTA stand repealed, several of their draconian provisions have found their way into the UAPA and various state-specific anti-terror laws, which themselves remain extremely prone to abuse. The ban of the Student Islamic Movement of India (SIMI), discussed in detail later in this chapter, illustrates how even organizations with no record of unlawful activity or terrorism can be arbitrarily designated as unlawful organizations by the government under the UAPA, based on extremely questionable evidence and with little legal recourse to reverse such decisions. Similarly, the Coordination of Democratic Rights Organizations (CDRO) has documented numerous such instances of the improper application of the UAPA to silence activists and political dissenters, and selectively target members of certain communities, particularly Muslims, Dalits and Adivasis.[23] In many of these cases, UAPA's special provisions have allowed for the arrest and prolonged detention of persons solely on the basis of their alleged association with an unlawful organization or its members, rather than any proof of their complicity in unlawful activities or terrorist acts. Similarly, the Jamia Teachers' Solidarity Association (JTSA) has documented the widespread targeting of Muslims in Delhi,[24] Karnataka[25] and Madhya Pradesh[26] under anti-terror laws. The reports detail how Muslim youth in these states have been arrested and charged with serious offences under the UAPA, based on flimsy, tampered or fabricated evidence linking them to a terrorist attack or a terrorist organization. The investigative journalism website, Gulail, has reported on the abuse of the Maharashtra Control of Organized Crime Act (MCOCA), to extract forced confessions through torture and falsely implicate 13 innocent Muslim men in the July 2006 train blasts in Mumbai.[27] A similar investigation by Gulail in Orissa found that the UAPA and other laws were being widely misused to quell dissent and target numerous activists, journalists, lawyers, students, and Adivasis. Based on its investigation, the website estimated that in 2013 there were 530 persons (about 400 of them Adivasis) in jail for what appeared to be fabricated cases.[28] In Chhattisgarh, a number of Adivasis and human rights activists, perhaps most prominently Binayak Sen, have been charged under the UAPA and the Chhattisgarh Special Public Security Act (CSPSA) for being members or sympathizers of Maoist organizations. The evidence used against the accused is typically very weak, often limited to mere possession of Maoist literature or unsubstantiated allegations of providing food, water and other supplies to members of Maoist organizations. The limited data on the CSPSA, obtained by the People's Union for Civil Liberties in 2008,[29] shows that 52 persons were being detained under the CSPSA, while a further 67 persons were declared to be absconding, including 30 'unknown' members of unlawful organizations.

It is important to highlight that irregularities or biases in the investigation and prosecution of terror-related crimes are not limited to the UAPA and state level anti-terror laws. In many of the cases just discussed, their abuse has been accompanied by the application, often incorrectly, of other laws which are not specifically meant to deal with terrorism. Examples include the National Security Act, 1980, which provides for preventive detention of persons for up to 12 months, and the Arms Act, 1959 and the Explosive Substances Act, 1908, which have stringent penal provisions for persons in possession of illegal or unlicensed weapons and explosives. Preventive detention provisions under section 151 of the Code of Criminal Procedure (CrPC) have also been used by the police to arbitrarily arrest persons in the aftermath of terror attacks, without a warrant or any evidence of criminal intent. Another commonly used strategy is to charge alleged terror suspects with serious crimes under the Indian Penal Code (IPC), such as rioting, unlawful assembly, waging war against the state, murder and attempted murder, in order to decrease the possibility of securing bail. Similarly, in recent years, numerous human rights activists and political dissenters have been labelled as terrorists or terrorist sympathizers, and charged with sedition under section 124A of the IPC. Invariably, in such cases, Naxalite and other 'anti-national' literature found in their possession has been the sole basis for their prosecution under this stringent law, which carries a maximum punishment of life imprisonment. While it is outside the scope of this chapter to discuss these laws in detail, the following sections attempt to highlight examples of their abuse, wherever relevant.

3. Processes of Exclusion in the Application of Anti-Terror Law in India

One of the most poignant and compelling Hindi movies of recent times is 'Shahid', which chronicles the life of a young Muslim lawyer Shahid Azmi, who was at the forefront of the struggle for justice for innocent Muslims who were wrongfully implicated in terror cases. Shahid was himself wrongly accused and served a five-year jail sentence. After his release he studied law, and decided to make it his life's mission to protect young innocent Muslims who were wrongly arrested and prosecuted under terror laws. Despite numerous threatening calls and abuses, he courageously continued to represent and defend 'terror suspects'. Unfortunately, just before Faheem Ansari, one of the accused that he was representing in the 26/11 Mumbai terror attack case, was acquitted, Shahid was shot dead in his office in Mumbai. The acquittal of Faheem Ansari, however, once again showed to those who had murdered Shahid that his relentless struggle and legal interventions to uphold the rule of law, even at the colossal cost of his own life, did not go to waste. Shahid's thorough and meticulous legal work not only resulted in many acquittals of innocents but also highlighted the sloppy investigations and planting of evidence in terror cases.

There is growing evidence to establish that the UAPA and other anti-terror legislations, rather than assisting the state in combating terrorism, are being misused by the police and other investigative agencies to target activists, political dissidents, Muslims, Dalits and Adivasis. The systemic exclusion of these communities from critical legal safeguards and protections enshrined in the Constitution has serious repercussions not just for the affected groups but also for the legitimacy of the state as a guarantor and protector of the fundamental rights of all its citizens. Three factors have played a crucial role in facilitating such wrongful arrest, detention and prosecution of specific communities under the draconian provisions of anti-terror laws. First, there has been an active and concerted attempt by the state to criminalize all forms of dissent, including legitimate and non-violent forms of protest against its actions. Under this paradigm, anti-terror laws function as a political tool to target those perceived to be a threat to the government—Adivasis protesting large-scale displacement and loss of livelihoods due to unchecked industrialization in states like Chhattisgarh, Jharkhand and Orissa; activists, journalists and lawyers challenging the steady erosion of civil rights across the country; or organizations like SIMI.

Second, there exists a high level of communalization within key apparatuses of the government, like the police, bureaucracy and judiciary. A number of reports, including official commissions of inquiry investigating incidents of communal violence, have documented the highly biased response of the police to such incidents.[30] In almost every case, the police looked the other way as Muslims and other minorities suffered severe physical violence and destruction of property; in some instances, police personnel were found to have actively assisted the perpetrators of such violence. Lax investigation and prosecution of crimes committed against minorities during such incidents generally resulted in the acquittal of most perpetrators. Despite being the primary victims of communal violence, minorities, particularly Muslims, are disproportionately impacted by actions aimed at curtailing the violence, such as curfew, preventive arrests, house searches and police firing. Other symptoms of such communalization include the heavy over-representation of Muslims, Adivasis and Dalits within prison populations,[31] and the low share of Muslim personnel in the police force.[32] In the context of terror cases, widespread communal bias, within both investigative agencies and the judiciary, has served to facilitate the unequal application of anti-terror laws and undermine crucial checks and balances meant to prevent their abuse to target specific groups.

Last, an increasingly sensationalist and ratings-hungry news media has often been guilty of an unquestioning acceptance of claims made by the police and other agencies investigating terror cases. In most cases, the police announces that it has unravelled the conspiracy soon after a terror attack: the alleged culprits are arrested and strong evidence linking them to the attack is unearthed. This version of events is widely broadcast by media outlets, without any attempt to objectively verify these claims or question their basis. Typically, sensationalist overtones conclusively declare the alleged suspect to be a 'terrorist', with links to

banned terrorist groups.[33] However, by the time the truth starts to unfold in the courtrooms, the media is not present or interested in reporting on the problematic nature of such terror investigations—including procedural violations, fabricated evidences and the use of torture—or the acquittal of the so-called terrorists. The uncritical response to the media results in extremely limited public scrutiny of the actions of the investigative agencies and undermines another vital check on the abuse of anti-terror legislation.

The following sub-sections profile two case studies that examine how anti-terror legislation in India has led to the subversion of vital legal protections and procedural standards, to the detriment of marginalized communities, particularly Muslims and Adivasis. Information for these case studies is drawn from a wide range of available documentation on these cases, including fact-finding reports, court documents, judgments, chargesheets, newspaper reports, and primary interviews with victims and lawyers involved in these cases.

3.1 Case Study: Student Islamic Movement of India (SIMI)

Humam Siddiqui, a former member of SIMI, and himself a lawyer by profession, has been relentlessly fighting the ban under the Unlawful Activities Prevention Act (UAPA) against the Student Islamic Movement of India (SIMI), both at the UAPA Tribunal, which adjudicates on the legality of bans under this law, and the Supreme Court. Originally from Sultanpur in Uttar Pradesh, Siddiqui and his co-petitioner, Misbaullah Islam, have been continuing the legal fight without any proper resources, driven by a commitment to ensure that the ban, which to them is unfair and illegal, is finally lifted from the organization. Shahid Badr, a founder member of SIMI, had previously contested the ban against SIMI before the tribunal. They have been helped in this legal struggle by courageous and committed lawyers for whom civil liberties and procedural justice reign supreme.

Barely days after the 11 September 2001 attack in New York, the Bhartiya Janata Party (BJP)-led National Democratic Alliance (NDA) government banned the Student Islamic Movement of India (SIMI), which was, according to SIMI members, nothing but a conglomerate of young Muslim students from local and zonal chapters across various states. Established in 1977 as a student group at the Aligarh Muslim University, the membership of the group was open to young Muslim men under the age of 30. Once a member attained the age of 30 years, he would automatically retire from the organization. Like any predominantly religious organization, the increasing discrimination against Muslims in different countries, including India, was a major theme of discussion amongst SIMI members. This organization had also initiated a campaign to protest against the Babri Masjid demolition. The UAPA ban came as a major shock to the organization, which has denied from the beginning any wrongdoing and has also challenged the terror tag that has come along with the banning. The organization was first banned in 2001 under the UAPA, followed by subsequent government notifications continuing the ban in 2003, 2006, 2008, 2010 and 2012. The single High Court Judge Tribunal has upheld the ban on each such occasion, except for 2008, when Justice Gita Mittal of the Delhi High Court set aside the ban. This was then immediately challenged by the government in the Supreme Court, which stayed the setting aside of the UAPA ban against SIMI.

The tribunal judgments upholding the government ban were promptly challenged in the Supreme Court. All these appeals have been pending final hearing before the Supreme Court for many years now. This delay in the final judgment against the SIMI ban has caused immense hardship to the petitioners and young Muslim boys across India. The latter, falsely dubbed as SIMI members on the basis of nothing but their confessional statements, continue to be picked up by the police and investigative agencies and implicated wrongly in terror cases. Former members of SIMI maintain that all their membership records have been confiscated by investigating agencies, their offices sealed, and they have no way to cross-check their records to even see if an accused was a member of SIMI or not. Pertinently, SIMI maintained extensive membership records, and claims that if they were really involved in subversive activities, as claimed by the investigative agencies, they would not have recorded the names, ages and contact

details of each of their 'members and made them so easily available.

The wrongful arrests and prosecution of erstwhile SIMI members or supposed SIMI members framed in alleged terror cases would not have been possible if the dual principles of due process and fair procedure were followed by the investigating agencies. The processes through which such protections have been subverted in these cases are now discussed:

3.1.1 Procedural Lapses

The Jamia Teachers' Solidarity Organization examined the case of the Jaipur serial blasts of 2008 in which SIMI had been wrongly implicated.[34] Drawing from primary interviews, court documents and newspaper reports, the report provides some damning revelations. First, the date of surrender of the 11 members of SIMI, who were subsequently charged for the Jaipur bomb blasts, was fudged, and arrests were shown over a week after the actual illegal detention of all the accused. This period of illegal detention, at the Rajasthan Police Special Operations Group (SOG) headquarters in Jaipur, was also the time when the accused were tortured.[35] The report further describes the deep humiliation[36] and torture that continued against these so-called terror suspects, including solitary confinement, discriminatory treatment in jail, denial of clean drinking water or blankets as protection against the cold, and being kept hooded when they were taken outside their jail cells. Second, for a long time, these men were not charged with the specific offence of the Jaipur bomb blasts, but under sections 3, 10 and 17 of the UAPA, which relating holding membership and carrying out activities of a banned organization.[37]

3.1.2 Dilution of Evidentiary Standards

One of the ways in which justice is compromised is through the dilution of evidentiary standards during the trial. During the adjudication of the ban on SIMI under the UAPA by the tribunal, the prosecution has repeatedly adduced secret evidence against SIMI. In successive years, the defence has objected that secret evidence cannot be used against SIMI, as neither they nor their legal team have access to this material, and cannot defend themselves against material that is not made available to them during tribunal hearings. However, the tribunal has ruled in favour of using secret material in these proceedings, thereby violating basic principles of natural justice. The use of secret evidence was ruled upon in the Supreme Court judgment of *Jamaat-e-Islami Hind* v. *Union of India*,[38] which upheld the practice of secret evidence. However, it also evolved a procedure that should be strictly followed whenever such evidence is used against any organization.

> *What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.*[39]

Thus, although the Supreme Court upheld the non-disclosure of certain materials to the organization under scrutiny during the Tribunal proceedings, it required that any such procedure follow minimum natural justice standards. The moot question is what would be construed a minimum natural justice standard? The evidence that has been presented by the central government in defence of the SIMI ban has been so weak that the SIMI Tribunal of 2008, comprising of Justice Gita Mittal of the Delhi High Court, set aside the ban because the notification was deficient and failed to set out the grounds, which is statutorily required to ban an organization under the UAPA. The background note provided to the tribunal by the central government failed to complement the notification, and most of the allegations made in it were not supported by any deposition. In fact, the note did not present any fresh material but contained the exact grounds put forward in earlier

years. This suggests that the repeated use of secret evidence before the UAPA Tribunal is a misuse of the freedom offered to the Tribunal in this matter. Rather than serving as a means of protecting confidential sources, it has allowed the government to avoid adequate scrutiny of the evidence it has presented in support of the ban on SIMI.

Evidentiary standards have also been diluted in the individual criminal cases filed under the UAPA against SIMI members across the country. Magazines and pamphlets belonging to SIMI that were published well before it was banned in September 2001, Urdu books, Quranic literature and posters have mostly been the only so-called evidence against the accused belonging to SIMI. The District Courts have readily accepted such documents, despite their highly questionable evidentiary value. In fact, many SIMI activists have been under trial for years on the basis of nothing but a few books, pamphlets or posters that were apparently seized from their houses.

3.1.3 Use of Confessions

Under Indian criminal law, only confessional or witness statements made before a magistrate under section 164 of the CrPC are admissible as evidence during a trial. A confessional or witness statement made to the police during the process of investigation is considered inadmissible in court,[40] in order to protect against the possible use of manipulation or torture by the police to extract these statements. However, the UAPA Tribunal has allowed the prosecution to present such witness statements, as evidence to support the ban against SIMI. Moreover, the alleged SIMI members who had made these statements were not presented before the Tribunal, but officers who had recorded them appeared as witnesses, thus making their statements hearsay at best.

Similarly, in the cases against alleged SIMI members across the country, the prosecution has presented confessional statements made to the police by those undergoing trial, in which they admit to being members of SIMI. The main offences under UAPA are under section 10 and 13, for being a member of an unlawful association and for unlawful activities respectively, and such faulty evidence has often served as the primary basis for convicting the accused under the UAPA. These same illegal confessional statements have also been presented by the government before the UAPA Tribunal, as evidence to prove their case for the extension of the ban on SIMI, even though those undergoing trials in such cases have no relation to the case before the Tribunal.

The lawyers representing SIMI have argued that the government cannot use these confessional statements as evidence, since they are barred by the Indian Evidence Act from doing so at all, leave alone using them in a case or trial different from the one in which they were allegedly made. However, the UAPA Tribunal has allowed such confessional statements, as well as witness statements made to the police, based on a misinterpretation of Rule 3 of the Unlawful Activities (Prevention) Rules, 1968. According to this rule, the UAPA Tribunal has to follow the Indian Evidence Act while taking evidence against any organization 'as far as practicable'. In its interpretation of this expression in the *Jamaat-e-Islami* v. *Union of India* case,[41] the Supreme Court said that the expression was put in the rules for the special circumstances that may arise as a result of information based on secret intelligence reports, and other sources which are required to be kept confidential. Thus, the Supreme Court interpreted the rule as allowing the tribunal a certain degree of flexibility, so that it could take into consideration such information as well. The tribunal and the government have, however, used this as an excuse to do away with the Indian Evidence Act altogether, leaving itself and the tribunal free to deem whatever they do as 'procedure'.[42]

In fact, the confessions in question are patently inadmissible, and according to the lawyers representing SIMI, the tribunal's acceptance of these confessions as 'evidence' is utterly absurd and illegal. The confessions have been produced before the tribunal as annexures to the affidavits of police officers deposing before it. In most cases, the officers so deposing do not even claim that the confessions were made in their presence. Needless to say, since the makers of the alleged confessions are not before the tribunal (and nor are, in most cases, the persons before whom the 'confessions' were allegedly recorded), the 'right' to cross-examine the police officers who appended the 'confessions' as annexures to their affidavits is farcical. A ban approved or validated on such basis is equally farcical.[43]

3.1.4 Identical Pattern of Arrests and Incriminating Material

The arrests of young Muslim men by the police for alleged SIMI links show a pattern of arrests made on uncannily similar grounds: mostly they are charged for outraging religious feelings or shouting anti-government slogans outside mosques or in front of their homes, for which they are booked under the stringent UAPA. The evidence produced by the prosecution in cases against young Muslim men arrested after being dubbed SIMI activists or sympathizers is primarily based on the so called 'incriminating material' allegedly recovered from the accused. An examination of the 'incriminating material' allegedly seized by the police itself not only explains the quality of the investigations, but also exposes a deep-rooted communal mindset within the police. Urdu poetry and even verses from the Quran have been presented as incriminating material against the accused. A few examples that follow extracted from the First Information Reports (FIRs) and chargesheets filed by the police in these cases, illustrate the questionable and biased nature of such investigations.[44]

FIR 200/2008, dated 11 April 2008—Registered at Juni Police Station, Indore

In this FIR, Station House Officer (SHO) Mohan Singh Yadav says that he received information through a *mukhbir* (informer) that Mohammad Shahid alias Billi and Iqbal of Nandanvan colony, Indore, were standing near Shyam Nagar masjid and 'instigating people and doing propaganda against the government'. 'I accompanied by staff Sub Inspector Sudhir Das, constables Omprakash Solanki, Tajsingh Yadav, Pushapraj Singh Bais, Jawaharsingh Jadaun and driver Shiv Kumar arrived near the masjid,' SHO Yadav says. 'We hid ourselves and found two persons standing near the masjid. They were talking in a secret manner with three four more people standing there. I asked my accompanying staff to encircle them. When they saw police, they panicked and we arrested them'. Interestingly, SHO Yadav claims that they only arrested the two persons who were talking. 'On enquiring strictly, one fat man with dark complexion stated his name as Mohamamd Shahid, age 47 years and resident of Nandanvan colony while the other lean/slim person stated his name Iqbal, age 32 of Nandanvan colony,' he records in the FIR. The statement further notes that when asked about 'strategy', 'they told us that we are preparing the people for Jihad (crusade/ religious war). The government has not done well by arresting the leaders of our SIMI and we will take revenge from the government. We will fight the court cases of our people'. The FIR states that 'Iqbal shouted a slogan as well'. SHO Yadav further says that they recovered seven pamphlets from Shahid's pockets, while six pamphlets were recovered from Iqbal's pocket. The seizure memo reveals that the alleged pamphlets recovered from these two men were old SIMI documents and most of them were photocopies.

FIR 129/2008, dated 2 April 2008—Registered at Sadar Bazar Police Station, Indore

In the FIR, SHO J. D. Bhonsale states that he received information from a *mukhbir* that 'Mohamamd Irfan Chheepa of Juna Risala is in the community hall compound near his own house and has documents, pamphlets, literature of SIMI. He has gathered people of the vicinity and is telling them they would avenge the arrest of SIMI leaders.' The FIR also alleges that he was 'making statements against the government and talking provocative things against society and country which could raise communal passions'. After receiving the information, SHO Bhonsale says he, accompanied by Sub-Inspector Rakesh Tiwari, Assistant Sub-Inspector Bhadoriya, Head Constable Neeraj, Constables Om Narayan, Yashwant, Rajbhan, Jitendra and Lal Singh, arrived at Juna Risala community hall compound. The FIR states: 'We took cover and saw a person with physical features as stated by the informer who had gathered people and had some papers and pamphlets in his hand.' The statement also alleges he was 'talking in an excited manner' and quotes Irfan, saying he was 'telling the people that "you people should also join this organization so that we all unite and establish government of Islam and you should contribute so that we defeat the Hindustan government"'.

SHO Bhonsale says that on encircling them, 'The people who had gathered ran away in the streets' and the police could only arrest Irfan. 'On enquiry, he told us his name as Mohammad Irfan, age 32 of Juna Risala Indore. We seized pamphlets of

SIMI that he was holding in his hand,' he says. The seizure memo in this case shows an appeal in Hindi ostensibly issued by the SIMI but interestingly the Bismillah (I begin with the name of Allah) is incorrectly spelled. Besides this poster, there is a newspaper cutting of New Crescent Publishing, Mumtaz Building, Gali Qasim Jan, New Delhi advertising their new publications. SHO Bhonsale also says that Chheepa was earlier arrested by Police Station Chhoti Gwali (Chhoti Gwal Toli) Indore. 'In this regard, there was also orders from senior officers where Irfan's name had come up saying Irfan is an active member of SIMI,' the FIR states.

FIR 135/08, dated 10 April 2008—Registered at Sadar Bazar Police Station, Indore

The FIR states that the police received information through a *mukhbir* that: 'Mohammad Younis S/O Mohammad Shahid Ali Musalman, who is residing in Juna Risala, was propagating [sic] the banned organization SIMI in a secret manner near around Gafoor Khan ki Bazariya and Smrati Talkies.' The statement also alleges that he, along with others, was 'collecting donations from the people' as well as 'trying to incite the muslim community against the arrests of SIMI members. He has also been an active member of SIMI. He is also in possession of literature of SIMI, which he is trying to distribute.'

The FIR further states that the police, on arriving at Smrati Talkies, found 'a person with physical features, appearance and shape matching the description of the informer was standing in a doubtful position. We encircled him in a planned way and arrested him'. Among the 'incriminating' documents mentioned in the FIR is a news item from the Hindi newspaper *Dainik Jagaran* on the arrest of SIMI members, and an advertisement for New Crescent Publishing, New Delhi.

FIR 1106/06, dated 11 August 2006—Registered at Ghatkopar Police Station, Mumbai

In this case, an Urdu language children's monthly journal *Umang*, published by Urdu Academy, Delhi, and edited by Margoob Hyder Aabidi, was presented as incriminating evidence recovered from the accused Shabir Ahmad Masiulla of Badshah Khan Nagar, Malegaon and Nafis Ahmad Jameer Ahmad Ansari of Shivaji Nagar, Govandi, Mumbai. In fact, a Muslim officer of the Mumbai Police, Assistant Sub-Inspector Liaqat Mehboob Khan was called to translate this incriminating material. In his report, he says that '*Umang* is a magazine wherein moral lessons are printed for little children'. The police also claim to have recovered a few SIMI pamphlets that were printed before its ban in September 2001 and were seized in bulk from various SIMI offices across the country. These pamphlets, published when the organization was legal, are also presented as 'incriminating' evidence by the police.

FIR 142/08, dated April 5, 2008—Registered at Narsinghgarh Police Station, Rajgarh

The Station House Inspector at Narsinghgarh, Vikram Singh Bhadoria, states in the FIR that he had arrested the three accused, Faizal, Irfan and Shakir, on the basis of a letter from a superior, who in turn had been issued directions by the Deputy Inspector General (DIG), Intelligence in Bhopal. In this case, the police, amongst other things, claimed to have recovered an old printed pamphlet of SIMI—Babri Masjid *aur* Shirk'–which protests the demolition of the Babri mosque, and a one-pager on the fundamental principles of Islam, such as Namaz and Hajj.

3.2 Case Study: Soni Sori, Chhattisgarh[45]

In Chhattisgarh, one of the states worst affected by the Maoist insurgency, the security apparatus controls almost all aspects of daily life. This has drastic consequences for those living and working there, in particular the Adivasi population. In the fight between government forces and the Maoists, the rights and dignity of the Adivasis are frequently taken away, with many among them in prison for crimes they did not commit. At the end of 2012, National Crime Records Bureau (NCRB) reported that Chhattisgarh prisons have the highest overcrowding in prisons in the country, at an occupancy rate of 252.6 per cent. There is also a shortage of critical resources, such as prison guards to escort undertrials to hearings (due to a large number of 'high security' prisoners), no women's jails and a high number of deaths in custody in 2012.[46]

A series of Right to Information (RTI) applications filed by the Jagdalpur Legal Aid Group on the total disposed cases in the Dantewada District Sessions Court between 2005 and 2012 showed stark results in the delivery of justice. There were a high number of accused persons per case at 6.94, i.e., almost 7 persons per case; there was in marked increase over the years in the use of specific charges against the accused under the Arms Act and Offences against Public Tranquillity under the IPC; the average acquittal rate in criminal trials was very high at 95.7 per cent (i.e., a conviction rate of 4.3 per cent compared to the national average of 38.5 per cent);[47] and the longest duration of cases had increased from three years in 2005 to more than six years in 2012 (there were 15 such cases). This data presents a damning scenario of access to justice in Dantewada district.

At the time of her arrest on 12 October 2011, Soni Sori was a 36-year-old *ashram shala*[48] in-charge in Jabeli village, Kuakonda block, Dantewada district. Belonging to the Madiya adivasi community, Soni had previously fought courageously to get justice for her nephew, Lingaram Kodopi, who was picked up by the Chhattisgarh Police in August 2009, locked up, and tortured in order to become part of the anti-Naxal Special Police Officer (SPO) cadre.[49] She then supported him in studying journalism in Delhi, during which time he testified on the plight of villagers in Naxal-affected areas at the Independent People's Tribunal titled 'Land Acquisition, Resource Grab and Operation Green Hunt'.[50] Lingaram also documented atrocities committed by the police and other security forces in March 2011 in the villages of Tadmetla, Morpalli and Timmapuram in Dantewada district, into which the Supreme Court subsequently ordered a CBI inquiry.[51]

The prosecution's case was that on 8 September 2011, the police received 'secret information' that Soni and Lingaram likely worked as conduits for large sums of money being paid to Naxalites by Essar, an Indian multi-national company with mining interests in Chhattisgarh. It was alleged that they were caught in a police raid when they were in the process of receiving ₹1.5 million from an Essar contractor, B. K. Lala, at the Palnar village weekly market on 9 September 2011.[52] The police stated that while Linga was arrested on the spot, Soni escaped in the pandemonium, but was later arrested in Delhi on 4 October 2011. Prior to her arrest, Soni had exposed details to news magazine *Tehelka* about how she and her nephew were being framed in multiple cases.

In the Essar case, Soni and Linga were charged under sections 120B (conspiracy), 121 (waging war against the state) and 124A (sedition) of the Indian Penal Code, sections 17 and 40 of the Unlawful Activities Prevention Act (for raising funds for a terrorist act), and sections 8(1) and 8(2) of the Chhattisgarh Special Public Security Act (accepting money for an unlawful organization), which allow maximum sentences of life imprisonment and the death penalty. The police appeared to have acted at a fortuitous time, just days after a news story cited information about Essar paying Maoists, released by the WikiLeaks cables almost six months before.[53]

Throughout this case, key legal and procedural protections within the criminal justice system have been egregiously subverted. Some of these violations are now discussed.

3.2.1 Use of Custodial Torture

Despite pleading before the District Court at Saket, Delhi, regarding her fears of mistreatment in the custody of the Chhattisgarh police, Soni was remanded to its custody on 7 October 2011 by the Additional Chief Metropolitan Magistrate of the court. In Soni's letter to her Supreme Court advocate dated 24 January 2012,[54] she carefully describes details relating to her physical and mental torture, sexual assault and the threats made against her to force a confession at the direction of the Dantewada Superintendent of Police (SP) Ankit Garg, while in custody. Based on her account, she was intimidated, verbally abused, forced to sign some papers and make untrue statements to incriminate her and others, electrocuted through her feet, legs and clothes, stripped naked, molested, and brutally assaulted by inserting stones into her body. At one point, SP Ankit Garg said: 'You will be ashamed of yourself; you will beat your head against the walls of the jail and die of shame. You are an educated woman; you will not be able to live with this shame.'[55] A horrific attempt was made to break her both physically and mentally.[56]

Despite clear medical evidence of the torture meted out to Soni, there was no departmental

inquiry within the Chhattisgarh police following these revelations. On the contrary, SP Ankit Garg was awarded the President's Police Medal for Gallantry in January 2012 for his role in counter-insurgency operations against Naxalites in Chhattisgarh.[57]

3.2.2 Procedural Failures

Remand Procedures

By 10 October 2011, after being remanded in custody of the Chhattisgarh police, Soni was in such bad physical condition due to torture sustained in custody that she was unable to even get down from the police van and go to the courtroom to present herself to the magistrate in Dantewada. Her statement was taken by a court staffer and the magistrate remanded her to judicial custody without seeing or speaking with her. Despite the sensitivities of the case, the magistrate accepted the police's claim that she had slipped in the bathroom, hurt her head and was thus unable to be present. In a letter to her Supreme Court advocate dated 26 November 2011,[58] Soni recounts her interaction with the Dantewada magistrate. The magistrate claimed that she would have taken immediate action had she known Soni had been brutally hurt. Soni asked her why she did not call her inside the court. The Magistrate responded saying that the police had told her that she had fallen in the bathroom. Soni says that the Magistrate should have ensured that she was brought to the court, away from the policemen responsible for her condition, so that she could have given her statement elaborating the complete causes of her injuries.

Inconsistent Application of the Law

The accused from Essar, B. K. Lala and D. V. C. S. Verma, were granted bail by 4 February 2012 and 3 January 2012, respectively, on the grounds that their chargesheets had not been filed within 90 days from the filing of the FIR. Soni and Linga were not granted the same relief. After being denied bail by both the trial court and the Chhattisgarh High Court, they were finally granted bail by the Supreme Court on 7 February 2014, two years and five months from the date of their arrest.

This prolonged period in prison has had grave personal consequences for Soni's family. While Soni and Linga were both tortured in custody, Soni's husband Anil Futane suffered similar brutality after his arrest on 10 July 2010, and suffered a paralytic stroke while in custody as a result of his injuries. Though he was acquitted in all four cases against him, he died three months after his release due to the injuries sustained, while Soni was still in prison.[59] Soni's mother took ill after her arrest and died in 2012. Soni and Anil's three children, aged between seven and 13, have suffered immensely in these circumstances. Their youngest daughter, aged seven, has thalassemia, and requires blood transfusions regularly. Despite these serious mitigating circumstances coupled with a lack of evidence, Soni was repeatedly refused bail by the courts.

Lack of Action by Local Public Institutions and Public Servants

On the morning of 10 October 2011, after torture sustained during three days in the custody of the Chhattisgarh police, Soni was admitted to Dantewada District Hospital. She was unconscious at the time of arrival and the medical report recorded serious injuries, included injuries sustained due to possible electrocution, and those caused by a 'hard and blunt' object.[60] However, she was discharged in just a few hours, and taken to the District Court. In response to news reports, Ramnivas, the Additional Director General of police (anti-Naxal operation) in Chhattisgarh, made a statement that the visit to the hospital was little more than a 'routine check-up'.[61] Thereafter, in the afternoon, after being remanded to judicial custody by the magistrate, Soni was taken from the jail and admitted to Maharani Hospital in Jagdalpur. Her condition on admission included injuries to the right side of her scalp and lumbar, and she was unable to stand. Two days later, she was sent to Raipur Central Jail, from where she was referred to Bhimrao Ambedkar Medical College and Hospital. Here, no significant injury or detail was noted, and she was discharged the same night. It is alleged that the police forced the doctors to remove the intravenous drip and discharge Soni, although she was not even in a condition to walk.

On 17 October 2011, Soni was produced before the magistrate in Dantewada. In a video recording, she stated that she did not reveal details about her torture in police custody to the media or in front of the Dantewada magistrate due to threats from the

police about consequences for her family if she did so. Finally, on 20 October 2011, the Supreme Court made an order that the injuries sustained by Soni 'do not prima facie appear to be as simple as has been made out to be by the Chhattisgarh police'.[62] The court ordered that the state of Chhattisgarh admit Soni in the Nil Ratan Sarkar Medical College and Hospital, Kolkata, within one week, and that Soni be examined by a panel of doctors. Upon examination in Kolkata on 26 October 2011, the doctors found two stones in her vagina, and one in her rectum, which she asserted had been inserted during the torture meted out to her while in police custody in Dantewada. After treatment, the Supreme Court ordered that Soni be transferred to Raipur Central Jail. There, she faced a very hostile jail administration—she was not given follow-up care for injuries sustained, and her medical needs were routinely dismissed as fictional. After five months of continuous petitioning due to her worsening condition, the Supreme Court ordered her to come to the All India Institute of Medical Sciences (AIIMS) in Delhi for treatment. The order called for a board of doctors to examine her physical condition and recommend treatment for her to undergo at AIIMS itself. After being treated for vulval excoriations and scabies, she was transferred to Jagdalpur Central Jail in light of the ill-treatment suffered in Raipur Central Jail.

Up until this time, at almost every step in the aftermath of torture sustained, public authorities, including medical superintendents and heads of public hospitals, were negligent in prioritizing Soni's care despite extreme physical agony and grave consequences for her health.

3.2.3 Dilution of Evidentiary Standards

In addition to the 'nature of allegation' and 'seriousness of offence', Soni and Linga were denied bail by the High Court of Chhattisgarh based on the 'quality of evidence' against them.[63] The only connection that the police has shown between Soni, Linga and the Maoists in the Essar case is some 'secret information', which in normal circumstances is unusable in court, and cases accusing Soni and Linga of participating in Naxalite violence. At the time of the bail order in the Essar case, Soni and Linga had been acquitted in all but one of these cases, in which Soni had received bail and in which she has recently been acquitted.

In the Essar case, based on the police's own claims, there was no actual exchange of money when the 'raid' took place, which implies that Soni and Linga were in no way in the wrong. In the FIR, station-in-charge Sub-Inspector Umesh Kumar Sahu states in his report: 'After this, B. K. Lala was taking out the ₹1,500,000, which was given by the Essar company to be given to the Naxalites, from the bag to give to Linga, at which time the police surrounded them in order to catch them.'[64]

There is also great variation in the content of the statements of the police witnesses taken under section 161 of the CrPC. All original statements made one day after the incident cite that the accused were brought to the police station directly from the site of the alleged exchange, and that none of the seven policemen knew Soni from before. The supplementary statements of five out of the seven policemen, recorded two months after this, state that Soni fled from the site and that they recognized her from before.

3.2.4 Patterns of Incriminating Material

A malicious lack of imagination has been displayed in the collection of witness statements against Soni in the other cases in which she was charged. Her lawyers conducted an analysis of the chargesheets against her in two cases—Crime no. 13/10 and Crime no. 17/10, both registered at the Kuakonda police station, and found that statements appear to have been fabricated in a highly crude manner. In many places, the statements are the same, with the only significant difference being the actual description of the crime (as they are different cases), and differences in dates. The same accused are listed by the witnesses in an identical order, each testimony describes overhearing the intent to commit a crime in a similar physical context ('walking towards the jungle'), and even though the witnesses say they saw the accused persons accompanying the Naxalites two or three months ago, in each respective chargesheet they reported this on the same day and before the same Investigating Officer.

3.2.5 Use of Confessions in Police Custody

Under the UAPA, CSPSA and IPC, confessions in police custody are not admissible in a court of law. Despite this, the Chhattisgarh High Court, in its judgment on the bail plea, still implicitly allowed it by saying that it is inadmissible as evidence, but

that their witness statements under section 161 of the CrPC do contribute to implicating them as Naxalites. In rejecting their bail plea, the statement of the High Court Judge Prashant Kumar Mishra reads: 'Although statements made by the accused persons to the police, which are available in the charge sheet, may not have evidentiary value, but on a reading of these statements also, it would appear that the applicants were closely connected with the naxalites.'[65]

3.2.6 Inordinate Delays

In the Essar case, the trial has not yet commenced, and therefore no witness or evidence has been produced. Based on the analysis of Soni's legal team, it is in the best interest of Essar and its accused officials that the trial continues to be delayed. There are six cases, in addition, in which Soni is 'wanted' and shown to be 'absconding', throughout which time she was working at the *ashram shala* with perfect attendance. The cases were weak, and she was acquitted in five of the six cases in the two years she was in jail, and acquitted in the sixth case after being given bail in the Essar case. Soni finally received regular bail in the Essar case on the orders of the Supreme Court on 7 February 2014. In addition, the restriction on not entering Chhattisgarh, imposed on her and her nephew when they were given interim bail in November, was also lifted.

These processes of exclusion from justice continue to be common throughout Chhattisgarh. Soni and Linga's fight against injustice in highly adverse circumstances has highlighted the brutal action and inaction of the state in Naxal-affected areas. When Soni was released on interim bail, she expressed her concern that she has left behind many innocent Adivasi men and women, who continue to languish in prison without legal assistance and remedies.

4. Consequences of Exclusion in the Application of Anti-Terror Laws

The unfair and unequal application of anti-terror legislations and their frequent misuse to systematically target specific communities has serious consequences, at both individual and societal levels. Some of these major impacts are examined now:

4.1 Consequences for the Individual[66]

The wrongful arrest, detention and torture of innocent persons at the hands of the police and other investigative agencies continues to impact their lives, even after they have been subsequently found to be innocent and acquitted by the courts. In testimonies before a People's Tribunal in Hyderabad, organized by Anhad (Act Now for Harmony and Democracy) and the Human Rights Law Network (HRLN), victims spoke about how they were illegally abducted by police in civil uniforms and unmarked vehicles, blindfolded and driven to undisclosed locations, where they were tortured till they agreed to sign blank confession papers. Many of them testified to having serious psychological impacts from their brutal torture and prolonged detention, which often extended to many years.[67] While the focus in a terror attack is largely on the mental trauma of victims, the story of damaging and often permanent impact on the mental health of the wrongly accused and their families is rarely an issue of debate. Often, families find themselves socially ostracized and cannot turn even to their local community for support. This can take an immense emotional toll on the family, as they struggle to fight cases which drag on for years in court.

Perhaps most significantly, the tag of a terrorist continues to follow the accused persons, despite their acquittal, and prevents them from living a normal life. They continue to face harassment by the police and are frequently arrested after subsequent terror attacks, often without any evidence linking them to the incident. Their movements and communication are monitored, and even routine contact between two alleged terror suspects can lead to them being brought in for questioning. Victims of wrongful arrest and detention in terror crimes also face a particularly difficult time in their access to livelihood opportunities. Many are unable to find secure jobs after their release, or find themselves excluded from labour markets altogether, both on account of the years lost in jail and the fact that they have been tried in terror-related cases. Potential employers generally refuse jobs to terror suspects fearing unnecessary harassment and scrutiny in case they get involved

in a police case again; character certificates from the government declaring their innocence are of little help in such instances. In many cases, where the sole breadwinner in the household is in jail for years, families are reduced to destitution and extreme poverty.[68] The Peoples Union for Democratic Rights (PUDR) has documented the plight of several women in Gujarat, who, after their husbands were falsely charged and detained in connection with the 2002 burning of the Sabarmati Express, were forced to rely on the charity of family or community (through *maulvis*, for instance) to make a living. Others had to leave their homes, and some had to take up work to support young children and pay lawyers' fees.[69] Similarly, for youth whose education is interrupted by their prolonged detention, reentering the system with a 'terrorist' label proves highly challenging. Despite the havoc that false accusations and wrongful detention can wreak on the lives of innocent persons and their families, there has been almost no effort by the government to provide compensation or assistance for their rehabilitation back into society.

4.2 Consequences for Society

For society, the misuse and misapplication of anti-terror laws has equally serious consequences. The frequent and repeated abuse of such laws results in an undermining of the legal system. When legal processes are unequal and exclude critical protections and safeguards for certain communities, it is not only these communities that are affected but also the entire investigative and judicial process. It has become abundantly clear that law enforcement agencies regularly fabricate evidence and often do not pursue credible investigations to resolve terror cases. Moreover, there is insufficient scrutiny and questioning of the actions of the police and other investigative agencies at the level of the lower judiciary. Since cases take years to settle, an eventual acquittal still means that the accused has already spent years behind bars. Advocate Ashok Agarwal, who led the defence to contest the ban on SIMI in the recent UAPA tribunals, calls this phenomenon 'process as punishment'. To build strong institutions that uphold the rule of law, such exclusions need to be challenged as they damage the credibility of these institutions and adversely impact the faith of citizens in state institutions of justice.

Equally, the targeted misuse of terror laws against specific communities feeds into a larger communal division within the country. There is an increasingly strong perception among Muslims that their community is under attack, with government agencies working in tandem with communal forces and other vested interests. The crushing of legitimate dissent by Adivasis and other marginalized groups, through the misuse of the UAPA and state-specific terror laws alienates these communities further. The indifferent response of the state and its institutions to discrimination and violence perpetrated against marginalized groups—for instance, the botched investigation into attacks by Hindutva terror groups in Malegaon, Ajmer and Hyderabad, or the lack of action against police and armed forces personnel committing serious human rights violations against Adivasis in Chhattisgarh—only serves to reinforce such beliefs. The sense of victimization felt by these communities has resulted in their increasingly moving away from the social and political mainstream. In turn, such trends further increase the polarization and distrust between groups, resulting in a vicious cycle. An example of this is the increasing ghettoization of Muslims in Indian cities, as people seek out the support and security of their own community. Though such trends are partly self-imposed, societal stigmatization and marginalization play a crucial role in this process. In this sense, the misuse of anti-terror laws also has serious negative implications for the secular fabric of Indian society.

Conversely, the fake and fabricated cases slapped by law enforcement agencies, primarily on Muslim youth, have, over the years, given rise to the acceptability of a divisive and dangerous notion. Terrorism is deemed synonymous with being Muslim, and large sections of society have been strongly influenced by this communal perception. The sensationalist and one-sided media coverage of terror cases further fuels this environment of fear and suspicion around a particular community. In a sense, an entire community is stigmatized, its members labelled as criminals and terrorists. The result is reduced public scrutiny of the widespread misuse of anti-terror laws by the police and other agencies investigating terror attacks.

At a broader level, such suspicion and prejudice stifles any constructive debate around the legitimacy of anti-terror legislation and its dangerous implications for the fundamentals of Indian democracy. No major national or regional political party has opposed the subversion of constitutionally guaranteed rights and protections under such laws, or questioned the need for such unbridled powers to the police and investigating agencies, fearing it may be construed as a weak response to, or even support for, terrorism. In fact, there has been no debate at all, and all the questioning of the legitimacy and need for such draconian legislation comes from people and parties at the fringes of the larger political discourse in the country. Thus, when the latest amendments to the UAPA were passed by Parliament in 2012, there was not even a murmur of opposition from any significant political party or parliamentarian. However, the narrow and flawed understanding of India's own 'war on terror', and the need for a so-called iron fist security policy has jaundiced the view of all important political forces across party lines, and even silenced the few who, in the past, had spoken out against the legitimacy and need for anti-terror legislation.

5. Recommendations

5.1 Repealing UAPA and Other State-Specific Anti-Terror Laws

It is increasingly clear that the UAPA and other state-specific anti-terror laws are prone to severe abuse by the police and other agencies responsible for the investigation of terror crimes. Through their subversion of vital legal and procedural safeguards, these laws have allowed investigative agencies to selectively target individuals and organizations, on the basis of shoddy investigations and flimsy, often fabricated, evidence. Accused persons often languish in prison for years before they are found to be innocent and acquitted by the courts, while organizations deemed unlawful have little recourse to contest their bans. The unjust and unequal application of anti-terror laws has serious implications for the individuals and communities affected by their abuse, as well as for the broader promise of a secular and democratic India. Yet, there is no evidence suggesting that such draconian anti-terror legislations are in any way necessary for the state to prevent or solve acts of terrorism. There is therefore an urgent need for the UAPA and various state-specific terror laws to be repealed. In case such laws are not repealed, they must at the very least be amended to incorporate serious safeguards against their misuse and made consistent with constitutionally guaranteed rights and protections. Existing provisions relating to the definition of terrorists or terrorist organizations, detention of suspects, evidentiary standards, use of confessions and bail norms are a few key areas that demand close examination.

5.2 Establishing a Sound Monitoring Process for the Passage of Anti-Terror Laws

The experience with the passage and amendment of national level anti-terror legislation also demonstrates the absence of a sound mechanism to monitor this process. Though TADA and POTA were eventually repealed, amendments to the UAPA have incorporated many of their most draconian provisions, defeating the very purpose of their repeal. Similarly, existing checks on the passage of state-level anti-terror legislations are limited to central government approval for such laws, a process that is discretionary and prone to political manipulation. Therefore, measures must be instituted to ensure that future legislations are thoroughly and impartially scrutinized, so that they do not lead to similar violations of fundamental rights and protections, irrespective of the political party in power.

5.3 Ensuring Fair Investigation and Trials

At a broader level, it is important to acknowledge that better laws by themselves are insufficient. The selective targeting of specific communities in terror cases equally reflects a deep institutional bias in the investigation and prosecution of terror cases. Though the government has suggested fast track courts to prosecute such cases, this is not a permanent solution to the issue. The setting up of special courts will always be a political decision, and while this may accelerate the trial process, it does not tackle the thornier problem of the prevalent bias and prejudice against particular communities, which also extends to the judiciary,

especially the lower courts. The need therefore is to push the government to ensure fair investigation and establish a strict monitoring and review mechanism of all cases where individuals have been charged under provisions of anti-terror laws.

5.4 Fixing the Accountability of the Police

Equally, police officials must be liable to stern action in cases where evidence has been fabricated or manipulated to frame a person. At the moment, there is virtually no accountability on the part of investigative authorities responsible for such misuse. The National Commission for Minorities, in its recommendations for the Police Act,[70] has also suggested a number of important reforms that can be helpful in ensuring fairer and more equitable investigations for minorities, many of which are equally applicable for other marginalized communities. These include a substantial increase in the representation of minorities in police and paramilitary forces; better training and sensitization, particularly for lower-level police personnel, on how to handle cases involving minorities and other vulnerable groups; more humane and sophisticated methods of crowd control, violence control and intelligence gathering, restricted use of firearms; and courses on the basic tenets of various religions, the principles of human rights' and the constitutional safeguards provided for minorities; screening for communal bias among police personnel during recruitment and promotion; and greater interaction between the police force and citizens.

5.5 Ensuring Adequate Access to Legal Representation for Terror Suspects

The polarized nature of the public discourse around terrorism often compromises access to proper and competent legal representation for the accused in terror cases. While the situation is slowly changing in urban areas, most lawyers are still unwilling to defend terror suspects, fearing this will be perceived as being anti-national and hurt their legal reputation. Moreover, the threat of violence is very real for lawyers representing terror accused, many of whom have been brutally attacked by members of right wing Hindutva groups and, at times, even by fellow lawyers.[71] The judiciary must also take strict action against lawyers' unions that have passed resolutions forcing their members to boycott terror suspects and not provide them with legal representation. Similarly, access to proper legal aid for accused persons unable to afford or find a suitable lawyer is essential, but at present lawyers assigned to terror suspects are often insufficiently trained to handle such cases, or are unwilling to put up a robust defence due to the reasons discussed above. Since offences under anti-terror laws carry severe penalties, including life imprisonment and capital punishment, the lack of adequate legal representation can lead to serious miscarriages of justice: for instance, innocent persons being wrongly convicted or detained for many years, based on false or fabricated evidence.

5.6 Compensation and Rehabilitation of the Wrongly Accused

Despite the severe psychological and socio-economic consequences suffered by people who are falsely implicated in terror cases, there is at present no mechanism to provide victims with proper compensation, even after their eventual acquittal and release. International human rights law, including Article 2 of the ICCPR, lays out clear provisions for an effective remedy for individuals whose rights and freedoms are violated, regardless of whether the violations are committed by a person acting in an official capacity. An 'effective remedy' in this context is not limited to monetary compensation, and may involve a range of other compensatory measures, such as the restoration of residence, property, family life and employment, physical and psychological rehabilitation, prosecution of those responsible, official acknowledgement and apology, and guarantees of non-repetition.[72] In India however, there are no guidelines for the adequate compensation and rehabilitation for victims of abuse of anti-terror laws. Apart from a few stray instances of monetary compensation—for instance, for Muslim youth acquitted of terror crimes in Hyderabad and Jaipur, and a software engineer who was compensated for wrongful dismissal by his company after being falsely arrested in a terror case—victims have been left to fend for themselves. It is incumbent on the judicial system to powerfully intervene and institute clear mechanisms to ensure that the government provides adequate compensation for such persons,

both in terms of substantial reparations for the harm caused to them and assistance in starting their lives afresh after their release.

5.7 Increasing Public Awareness

There is an urgent need for public awareness campaigns that honestly highlight the drastic implications of the selective targeting, labelling and framing of members of specific communities in the name of fighting terror. Equally, the media must act responsibly in its reporting of terror cases, verifying claims by investigative agencies and presenting them in an objective, non-sensationalist manner. A more balanced perspective on the implications of anti-terror legislation, in terms of their subversion of fundamental freedoms and widespread abuse, is necessary to counter the state's propagation of this false notion that such laws are indispensible to India's 'war on terrorism'. This increased public awareness and scrutiny can also play a vital role in reducing bias and prejudice in the use of anti-terror laws.

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38. *Jamaat-e-Islami Hind* v. *Union of India* (1995), 1 SCC 428.

39. Emphasis added. Ibid., p. 59.

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45. We are very grateful to the Jagdalpur Legal Aid Group, which is part of the legal team currently representing Soni Sori at the Dantewada Sessions Court, for sharing relevant documents such as the FIR, chargesheet, petitions for bail and discharge, etc., as well as their own understanding and analysis of the case, with us. These inputs and documents have proved to be very helpful in the writing of this case study.

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Chapter 6

Exclusion in Planning and Budgetary Processes

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1. Introduction

While government expenditure on sectors like health, education and agriculture can be expected to benefit the entire population (including the marginalized and vulnerable sections), the development status of certain groups significantly lags behind that of other sections of the population. Dalits, Adivasis, religious minorities, women, children and persons with disabilities comprise the major marginalized or vulnerable sections of the country's population. The relatively poor development status of these groups is due to a number of reasons, including unequal social structures, discrimination, gaps and flaws in public policies, and poor implementation of government interventions.

Tracking government expenditure on different sectors like health, education, aagriculture and defence, is a straightforward process, since the union and state budget documents in India segregate the expenditure figures across sectors. However, the formats of these budget documents provide little scope for segregating expenditures for different sections of the population. Hence, a quantitative assessment of public spending on the development of any particular section of the population becomes a difficult exercise.

Since the 1970s, the Government of India has recognized the need for making a distinction between 'incidental' benefits for certain disadvantaged communities and 'direct' policy-driven benefits for these communities from public expenditure. This recognition has led to the adoption of specific planning strategies like the Special Component Plan (later renamed the Scheduled Caste Sub-Plan or SCSP) for Scheduled Castes (Dalits), the Tribal Sub-Plan (TSP) for Scheduled Tribes (Adivasis) and the Women's Component Plan (WCP). In addition, budgetary strategies like gender-responsive budgeting and the Prime Minister's 15-Point Programme for Minorities, aimed at furthering the development status of various excluded groups, have also been instituted.

In the 11th and 12th Five Year Plans of India, the union government, with its stated emphasis on 'inclusive growth', proclaimed to strive for the development of the vulnerable sections. Further, P. Chidambaram, former union finance minister, said in his 2013 Budget speech that 'owing to the plurality and diversity of India, and centuries of neglect, discrimination and deprivation, many sections of the people will be left behind if we do not pay special attention to them'.[1] Special attention to any excluded group in policy pronouncements without any concomitant prioritization in public spending is meaningless. It is therefore pertinent to make a quantitative assessment of public spending on the development of these groups, particularly in terms of determining what part of the overall public spending is earmarked for ensuring direct policy-driven benefits.

However, ensuring direct policy-driven benefits for disadvantaged sections from public expenditure is only one part of the efforts required from the government. What is more important in this context is to ensure that the development programmes and schemes that emerge out of the planning processes at different levels (such as habitation-level plans, district-level plans, state-specific Five Year Plans and the national Five Year Plan, which define public expenditure priorities in India) are responsive to the marginalized and vulnerable sections of the population.

Whether a development programme or scheme is responsive to any particular excluded group depends on whether (a) the planning process in the scheme identifies the factors underlying the development deficits of that section of the population; (b) the scheme incorporates interventions that would address the specific challenges and needs identified for the group concerned; (c) the unit costs, financial norms and operational guidelines of the scheme facilitate adequate responses to the challenges and needs identified; (d) the scheme is adequately funded in terms of budgetary resources; and (e) it is implemented properly.[2]

This chapter provides an assessment of the responsiveness of plans and budgets in India to some of the largest excluded sections of the population—Dalits, Adivasis, religious minorities, and women—in terms of to the framework just discussed. Section two discusses the broad

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contours of the fiscal policy framework prevalent in India over the last decade and its impact on promoting social inclusion. Section three discusses the specific planning and budgetary strategies adopted for the major excluded groups. This section highlights some of the lacunae common to these strategies and indicates possible corrective policy measures. Finally, section four concludes with some broad recommendations for improving the responsiveness of plans and budgets towards excluded groups in India.

2. Fiscal Policy and Social Inclusion

The fiscal policy space available to the government in India has been much less than that available in most developed countries as well as other developing countries. This limited fiscal space, among other factors, has led to low government spending on a range of public goods (education, health, drinking water and sanitation, housing, etc.) for which excluded groups are likely to be significantly dependent on public provisioning. As a result of the inadequacy of budgetary resources, public provisioning in the social sector and on social security programmes has suffered from the problems of inadequate coverage and unsatisfactory quality. There can be little doubt about the fact that the fiscal policy framework prevailing in the country has not provided enough scope for designing and implementing substantive government interventions for these groups. The following discussion elaborates on these arguments with the help of relevant data.

2.1 Limited Fiscal Policy Space in India

The overall quantum of public resources available to the government has been inadequate in comparison to several other countries. An analysis of the extent of public spending in India (see Table 6.1) shows that the combined budgetary expenditure (including the union budget and state budgets) stood at around 28 per cent of Gross Domestic Product (GDP) in 2012–13. The combined budgetary expenditure of the centre and states, as compared to the size of the country's economy (i.e., the GDP), has remained stagnant since the early 1990s.

Cross-country comparisons shown in Figure 6.1 highlight similar deficiencies in the quantum of government spending in India. For the year 2010 (2010–11 for India), total government spending as a proportion of the country's GDP was 27.2 per cent for India, while it was a much higher 39.9 per cent for Brazil and 46.3 per cent for the Organization for Economic Co-operation and Development (OECD) countries on an average. The lower level of government spending in India means that the government has much less flexibility in ensuring substantive public provisioning of public goods

Table 6.1 Magnitude of Total Budgetary Spending in India

Year	Combined Budgetary Expenditure by Union Government and State Governments (Rs. Crore)	Gross Domestic Product (GDP) at Current Market Prices (Rs. Crore)	Combined Budgetary Expenditure (% of GDP)
1990–91	155,142	569,624	27
2000–01	552,124	2,102,314	26
2004–05	824,480	3,242,209	25
2005–06	933,642	3,693,369	25
2006–07	1,086,592	4,294,706	25
2007–08	1,243,598	4,987,090	25
2008–09	1,519,081	5,630,063	27
2009–10	1,814,610	6,477,827	28
2010–11	2,105,695	7,795,314	27
2011–12 (RE)	2,463,493	8,974,947	27
2012–13 (BE)	2,822,750	10,159,884	28

RE refers to Revised Estimates and BE refers to Budget Estimates. These figures can differ from the actual final spending.

Source: Compiled by the authors from the data given in Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance.

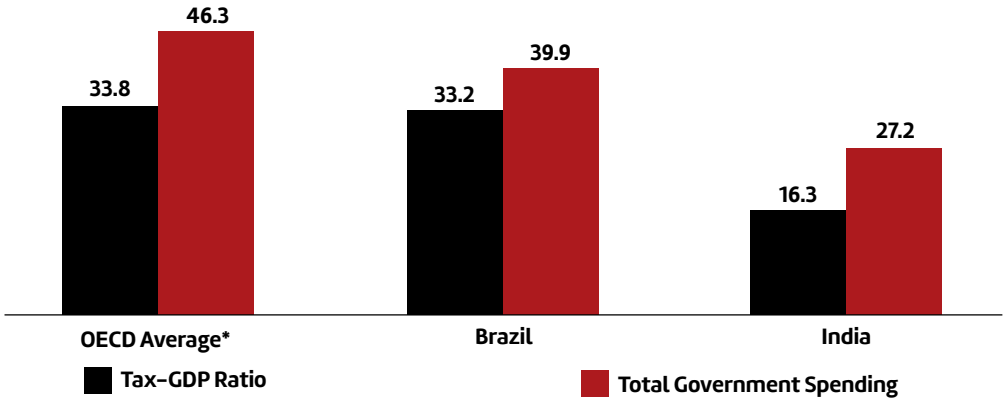
and other development interventions that are particularly relevant for the excluded sections of the population.

Since the adoption of pro-market economic reforms in India in the early 1990s, the proponents of a proactive fiscal policy for the country (which would necessarily require a stepping up of the quantum of government spending as a proportion of GDP) have gradually been shrinking into a minority. The dominant perspective on fiscal policy in India in the last few years is that ineffective use of budgetary resources is the biggest challenge in this domain and not the inadequacy of budgetary resources for the development sectors. It is true that in many sectors the available budgetary resources are not being utilized very well, and some resources als ain unspent in certain schemes. However, stu have shown that the problem of under-utilization of budgetary resources has been found mainly in development schemes and not so much in long-term, institutionalized public provisioning in the development sector.[3] These studies have also shown that staff shortages in different functions (programme management, finance and accounts, and frontline service provision) are among the principal factors causing under-utilization of budgetary resources in these schemes, a problem which is rooted in the inadequacy of resources and the unwillingness of state governments to fill such vacancies.

Hence, the inadequacy of budgetary resources for the development sector in India is a critical challenge before the country. A comparison of per capita government revenue and expenditure between India, BRICS countries excluding India (Brazil, Russia, China and South Africa) and the OECD countries, adjusted for differences in exchange rates and purchasing power between these countries, is shown in Table 6.2. This clearly shows that the level of per capita government expenditure in India falls short of the OECD average, as well as the levels in Russia, Brazil, South Africa and even China. In fact, the level of per capita government spending in China has improved considerably between 2001 and 2011, as a result of which the gap in such spending between China and India has widened substantially, from very similar levels in 2001.

As stated earlier, one of the main reasons for the limited fiscal policy space available to the

Figure 6.1 Tax–GDP Ratio and Total Government Spending (% of GDP) in 2010: India, Brazil and OECD Average



*OECD Average figure for 'Tax–GDP Ratio' is the average for all 34 member countries, while that for 'Total Government Spending as % of GDP' is the average for 32 member countries of the OECD, excluding Chile and New Zealand.

Sources: Compiled by the authors from the data given in the following publications: Organization for Economic Co-operation and Development (2014), 'Total Tax Revenue', OECD *Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; OECD (2014), 'Government Expenditures, Revenues and Deficits', *OECD Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; International Monetary Fund (2014), *World Economic Outlook—Recovery Strengthens, Remains Uneven*, Washington, DC: IMF; Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance.

Table 6.2 Per Capita Government Revenues and Expenditures (US $, at Current Prices and Purchasing Power Parities): India, Other BRICS Countries and OECD Average

	General Government Revenues Per Capita		General Government Expenditures Per Capita	
	2001	2011	2001	2011
OECD Average	10,751	15,419	10,716	16,548
Russia	3,341	7,706	3,395	7,917
Brazil	2,450	4,272	2,638	4,564
South Africa	1,704	3,098	1,784	3,537
China	395	1,897	469	2,004
India	274	688	422	997

Source: Compiled from OECD (2014), 'General Government Expenditures and Revenues Per Capita', OECD Factbook 2014.

government in India is the low tax revenue collected in the country as compared to most developed countries and other developing countries. In 2010–11 the tax–GDP ratio was just 16.3 per cent for India, where as it was a much higher 33.2 per cent for Brazil and 33.8 per cent for the OECD countries on average.[4] In fact, Chidambaram said in his 2013 Budget speech that '[India's tax-GDP] ratios are one of the lowest for any large developing country and will not garner adequate resources for inclusive and sustainable development'.[5]

Despite India's low tax–GDP ratio, the government has not paid much attention to the need to raise this ratio significantly. This would require a range of measures, such as a reduction in the amount of tax revenue forgone due to a plethora of exemptions in the central government tax system, plugging loopholes in India's Double Taxation Avoidance Agreements and Tax Information Exchange Agreements with other countries, and reviving progressive taxation measures pertaining to inheritance tax, wealth tax and capital gains tax, among others. Although the government has been working on tax reforms through the Direct Taxes Code and the Goods and Services Tax, the primary purpose and benefit of these proposed reforms is bringing stability in the tax laws, as demanded by private investors, rather than a conscious effort towards stepping up the country's tax–GDP ratio.

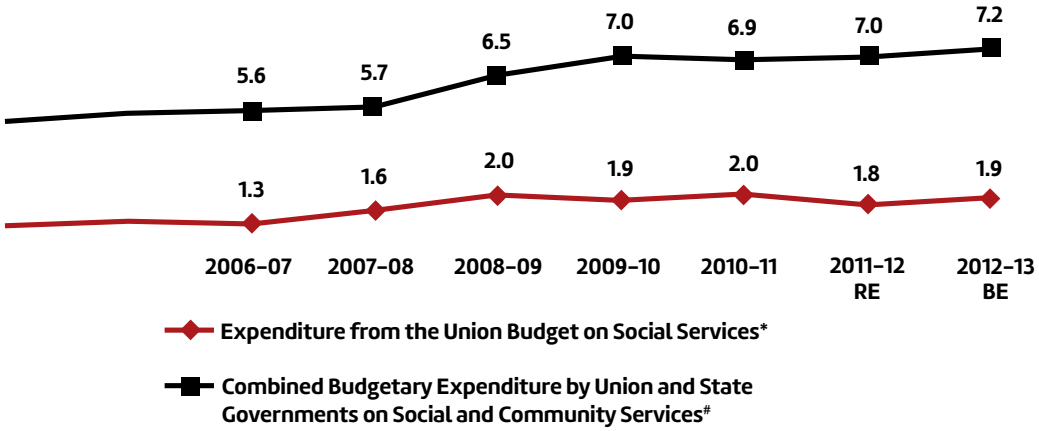
2.2 Low Public Spending on Social Sectors

In the budgetary classification followed in India, social sectors or social services (terms used interchangeably in this chapter) usually refer to sectors like education, health, nutrition, drinking water and sanitation, and housing; and social security measures meant for unorganized workers and disadvantaged persons. Public provisioning of these essential services and social security payments by the government, with adequate coverage and quality, are crucial to support the development of marginalized and vulnerable sections of the population.

However, the limited fiscal policy space available to the government and the low priority given to the social sectors in the country's overall budgetary spending have resulted in low public spending on these sectors. As shown in Figure 6.2, the total budgetary spending on social sectors in India used to be a meagre 5.3 per cent of the GDP in 2004–05; despite increases in social sector spending since then, the figure still hovers around only 7 per cent of GDP. Within this 7 per cent, the direct contribution from the union budget (excluding the direct spending from the state budgets) has been 2 per cent of the GDP at best. This level of public spending on social sectors is significantly lower than that in developed countries and also many developing countries.

For instance, India's public spending on critical sectors like health and education (as a share of the country's GDP) is significantly lower than that in Argentina, Mexico, Brazil, South Africa and China (see Figure 6.3). Equally disconcerting is the fact that India's public spending on social security payments for the poor has been negligible; the country's total public spending on social security for the poor (comprising primarily old age, widow and disability pension schemes) has been less than 0.15 per cent of GDP, even in the most recent years.

Figure 6.2 India's Budgetary Spending on Social Sectors (Percentage of GDP)

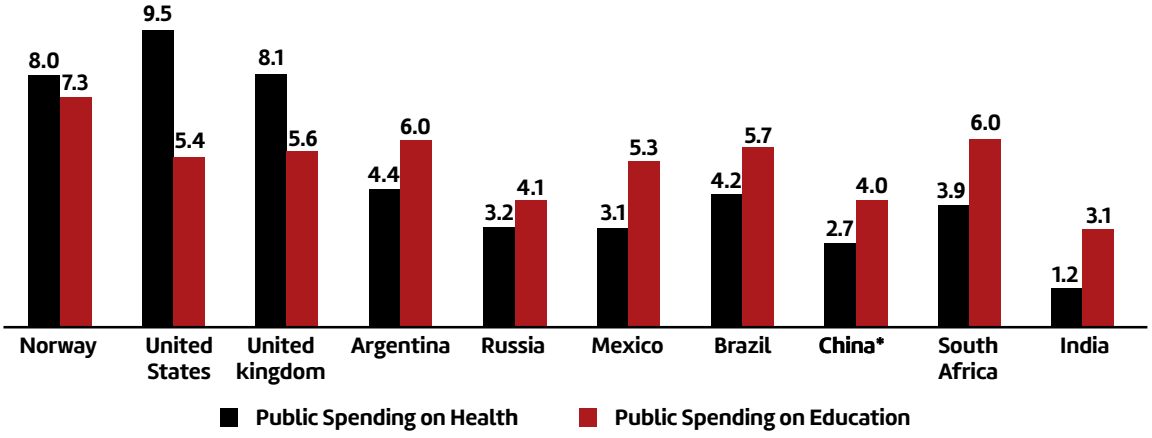


*In the union budget documents, social services include the following sectors: education, youth affairs and sports, art and culture; health and family welfare; water supply and sanitation; housing and urban development; information and broadcasting; welfare of SCs, STs and OBCs; labour and labour welfare; social welfare and nutrition; and other social services.

#In the Indian Public Finance Statistics brought out annually by the Union Ministry of Finance, social and community services include the following sectors: all sectors covered under social services as listed above, scientific services and research, and Plan spending on relief on account of natural calamities.

Sources: Compiled by the authors from Centre for Budget and Governance Accountability (2012), *Unfulfilled Promises?—Response to Union Budget 2012–13*, New Delhi: CBGA and Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance

Figure 6.3: Public Spending on Health and Education in 2010: An International Comparison (Percentage of GDP)



* Public spending on education in China is based on UNESCO data and not the source cited below.
Source: Compiled from United Nations Development Programme (2013), *Human Development Report 2013—The Rise of the South: Human Progress in a Diverse World*, New York: UNDP.

With inadequate budgetary resources for social sectors, efforts to boost human development in general, and development of disadvantaged sections in particular, have not been very effective. In fact, the persistence of development deficits in India is a problem that is rooted, among other factors, in the deficiencies in public provisioning and government interventions in the social sectors.

The inadequacy of budgetary resources for the social sectors, especially for long-term and institutionalized public provisioning, has aggravated the systemic weaknesses in social

sector programmes. This includes poor quality infrastructure (schools, hospitals, *anganwadi* centres, etc.), shortage of qualified and trained human resources for delivery of services (teachers, doctors, para-medical personnel, *anganwadi* workers, etc.), shortage of human resources for management of programmes (for monitoring, supervision, finance, etc.), and unacceptably low unit costs for provisioning of various services in these sectors.

2.2.1 Low Unit Costs of Essential Public Services[6]

In the government's mid-day meal (MDM) scheme, the conversion cost[7] per day per child (excluding the labour and administrative charges) for primary and upper primary classes is ₹3.11 and ₹4.65, respectively. A monthly honorarium of ₹1,000 is paid to cooks in this scheme. In the supplementary nutrition programme under the Integrated Child Development Services (ICDS), the cost of feeding children (six to 72 months old), severely malnourished children (six to 72 months old), and pregnant and lactating mothers is ₹4, ₹9 and ₹7 per day per person, respectively. Further, in ICDS, an *anganwadi* worker is paid ₹3,000 per month and an *anganwadi* helper is paid ₹1,500 per month, amounts that are less than the minimum wages. An instructor in the government's National Child Labour Programme (NCLP) schools receives a mere ₹4,000 per month.Para-teachers in Sarva Shiksha Abhiyan (SSA), the government's flagship primary education programme, are paid only between ₹ 3000 to ₹5000 per month— roughly one-tenth of a regular teacher's salary. An Accredited Social Health Activist (ASHA) in the National Rural Health Mission (NRHM) scheme is paid the meagre amount of ₹350 each time she accompanies a pregnant woman to deliver in a hospital.

Government staff in agencies that implement these schemes in the states are generally of the opinion that these unit costs are less than the amounts required for providing services of satisfactory quality, especially because of the persistent rise in the prices of essential commodities over the last few years.[8] In addition, the remuneration or honorarium provided to frontline staff in these schemes continues to be less than the minimum wages prevailing in most states.

2.2.2 Low Coverage and Amount of Social Security Payments

With respect to social security payments, the extent of under-funding of government schemes seems to be similarly acute. Over the last decade, the union government has not been able to increase the coverage of beneficiaries or the amount of the entitlements in such schemes, which include the Indira Gandhi National Old Age Pension Scheme (IGNOAPS), Indira Gandhi Widow Pension Scheme (IGWPS), Indira Gandhi Disability Pension Scheme (IGDPS) and National Maternity Benefit Scheme (NMBS), all of which are part of the National Social Assistance Programme (NSAP). The amount provided for pensions by the central government under the IGNOAPS is a measly ₹200 per month per beneficiary in the age group of 60 to 79 and ₹500 per month per beneficiary in the age group of 80 and acove. Many state governments contribute some amount additionally, but even with this contribution the amount of pension for the elderly is a paltry sum in most states. What is more distressing is the fact that only a small section of the elderly population is considered eligible for such pensions in most states. As of December 2012, the total number of beneficiaries under the IGNOAPS was 22.3 million, which constituted only about 21 per cent of the elderly population of the country.[9]

In view of the greater dependence of people from vulnerable groups on public provisioning in social sectors and social security programmes by the government, the inadequate coverage and unsatisfactory quality of government interventions in these domains raises serious questions about the development impact of public policies and public spending in the country for these groups. However, the problem of low public spending on social sectors is rooted in the inability and unwillingness of the government to step up the country's tax–GDP ratio through progressive policies in the domain of taxation.

3. Planning and Budgetary Strategies for Excluded Groups

Planning strategies like the SCSP for Scheduled Castes (SCs) and the TSP for Scheduled Tribes (STs) were initiated in the late 1970s. Though the

Women's Component Plan (WCP) was started much later, in 1997, the recognition of the need for such a strategy to focus on public spending on women came up in the mid-1980s. The major concern underlying the adoption of such strategies was that general public expenditure mostly provided incidental benefits to vulnerable sections and not direct policy-driven benefits. Due to a number of factors—unequal social structures, patriarchy, discrimination and gaps in public policies—people belonging to excluded groups were likely to derive fewer benefits from general public expenditure in the country than those who were better off. Hence, there was a need to provide direct policy-driven benefits to vulnerable sections by earmarking or channelizing certain minimum shares of public spending for them.

However, the formulation and implementation of planning and budgetary practices for excluded groups in India suffers from some major shortcomings. First, policy makers have often made a distinction between government services that are 'divisible' and those that are 'indivisible'. For instance, all services in which the government can identify and count individual beneficiaries (schools, scholarship schemes, immunization programmes, employment generation programmes, housing schemes, etc.) are considered divisible, while services in which the government cannot identify and count individual beneficiaries (roads and transport, power generation and supply, telecommunications, protection of law and order, etc.) are treated as indivisible. As a result of this distinction, planning and budgetary strategies for excluded groups are generally restricted to only services with divisible benefits. In fact, in 2010, the Narendra Jadhav Committee,[10] set up by the government to recommend steps for proper implementation of the SCSP and TSP, recommended that 43 ministries and departments be exempted from the implementation of the SCSP and TSP on the grounds of the indivisibility of benefits in their programmes and schemes.

Second, policy strategies for earmarking certain minimum shares of public spending for specific excluded groups have generally been restricted to plan spending, and do not cover non-plan expenditure, which is a much larger component of total government spending. The SCSP, TSP, WCP and Prime Minister's 15-Point Programme for Minorities are all confined only to plan expenditure. Gender Responsive Budgeting (GRB) or gender budgeting (which has replaced the WCP as a policy strategy focussing on women, since 2009–10) is the only strategy that applies to both plan and non-plan expenditure.

Plan expenditure refers to all budgetary spending that falls under the purview of the Planning Commission of India and state planning boards. For example, all budgetary spending on a scheme like the National Rural Health Mission, which was initiated in the 10th Five Year Plan and is completely under the purview of the Planning Commission, is treated as plan spending, irrespective of whether it is on recurring expenditure heads (like staff salaries) or on non-recurring and capital expenditure heads (like construction of health centres and procurement of ambulances). On the other hand, government spending on institutions like the All India Institute of Medical Sciences and Safdarjung Hospital in New Delhi, government medical colleges in most state capitals and the Indian Council of Medical Research are treated as non-plan spending, since the budgets for these institutions are not under the purview of the Planning Commission.

Plan expenditure, which is generally around one-third of total budgetary expenditure in the country, is meant only for social sectors like education, health, drinking water and sanitation, and economic sectors like agriculture, transport, power and telecommunications. Yet, in some development sectors, like education and health, non-plan expenditure covers almost 70 per cent of the total budget for government services.[11] Additionally, in almost every development sector, the salaries of regular government staff and the funds for the maintenance of government infrastructure are covered from non-plan budgets. Much of the long-term and institutionalized public provisioning in many development sectors, such as government hospitals and medical colleges, a large number of government schools and colleges, universities, Indian Institutes of Technology (IITs), Indian Institutes of Management (IIMs), Kendriya Vidyalayas and Navodaya Vidyalayas, is also financed from non-plan budgets. Hence, non-plan expenditure is not 'unplanned', neither is it necessarily 'non-developmental'. The distinction between plan and non-plan budgetary expenditure

only signifies the scope of interventions undertaken by the Planning Commission.

Third, and very importantly, these policy strategies for excluded groups do not appear to have influenced overall planning or budgeting in any significant way. What they have influenced most visibly is the reporting of some of the allocations and expenditures in the budget documents for various development schemes. Even this reporting has been based largely on questionable assumptions made by the government departments with regard to the share of benefits that actually accrue to people from excluded groups.

For instance, in any development scheme meant for the entire population, it can be argued that women would get about half of the total benefits. Such an assumption can be monitored for some development schemes, such as those relating to employment generation, housing, education, scholarships and social security payments, for which data on beneficiaries is easy to compile. However, for many other schemes such a claim is difficult to prove or disprove since it is extremely difficult to collate the required data for the whole country. However, even for such schemes, the government departments concerned can claim that 50 per cent of the budget benefits women, and accordingly allocate this amount as spending targeted towards women.

As indicated earlier, any policy strategy for making public spending more responsive to a specific excluded group should ideally require: (a) identifying of the factors underlying the development deficits of the group concerned; (b) incorporating appropriate interventions in relevant government schemes that would address the specific challenges and needs identified; (c) ensuring that the unit costs, financial norms and operational guidelines of the schemes facilitate an adequate response; (d) ensuring that the schemes are adequately funded in terms of budgetary resources; and (e) outlining steps for proper implementation of the schemes.

However, the way in which most existing strategies for excluded groups have been adopted, all of these requirements have been neglected. The only additional effort has been towards reporting (often based on arbitrary assumptions) that certain proportions of existing budgetary expenditures on different schemes have been directed to the vulnerable groups concerned, without any actual change in the process of planning and budgeting in these schemes. Although all planning and budgetary strategies have faced this issue to varying extents, it has been most acute with the WCP and GRB, somewhat less with the SCSP, and the least with the TSP. It would not be an exaggeration to say that the country has witnessed very little proper implementation of any policy strategy for earmarking or channelizing certain minimum shares of public spending for specific excluded groups. The rest of this section discusses each of these strategies in greater detail.

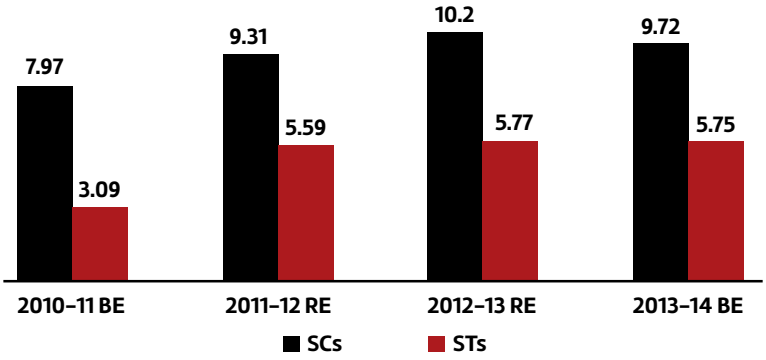
3.1 Scheduled Caste Sub-Plan (SCSP) and Tribal Sub-Plan (TSP)

The Planning Commission of India introduced the TSP in 1974 and the Special Component Plan in 1978 (later renamed the SCSP in 2006) in order to ensure direct policy-driven benefits for Adivasis (STs) and Dalits (SCs), respectively. The main objectives of the SCSP and TSP were to bring these communities on par with others in terms of development indicators, at a faster rate.

The SCSP and TSP guidelines envisaged that plan funds would be channelized for the development of SCs and STs in accordance with their proportion in the total population. These could also include outlays for area-oriented schemes that would benefit SC or ST hamlets or areas with a majority of SC or ST populations. These strategies also called for designing new and appropriate programmes and schemes relevant for the development of these communities. The SCSP and TSP funds were supposed to be non-divertible and non-lapsable, as per the guidelines. However, the union government has thus far been unable to fulfil the norm of earmarking 16 per cent for the SCSP and 8 per cent for the TSP from the total plan budget.[12]

The allocation of plan funds for SCs under the SCSP, shown in Figure 6.4, reached 9.72 per cent of the total plan allocation in the union budget of 2013–14, far short of the 16.2 per cent share stipulated under the SCSP. Similarly, trends in plan allocation for STs over the last few years show that it has not reached the stipulated 8 per cent mark; in the 2013–14 budget, it stood at 5.75 per cent.

Figure 6.4 Plan Allocation for SCs and STs
(Percentage of Total Plan Allocation by Union Government)



Excluding central assistance for state and union territory plans from the plan budget of the union government.

RE refers to Revised Estimates and BE refers to Budget Estimates. These figures can differ from the actual final spending.

Source: Centre for Budget and Governance Accountability (2013), *How Has the Dice Rolled?—Response to Union Budget 2013–14*, New Delhi: CBGA.

One of the reasons underlying such non-fulfilment of the SCSP and TSP norms is that so far there has been no legal requirement on the ministries and departments to fulfil the stipulated target; the recommendations of the Planning Commission do not have any constitutional backing. Since 2011-12, following the Narendra Jadhav committees' recommendations for proper implementation of the SCSP and TSP, only some union ministries and departments (between 25 and 28 each year) have been reporting plan expenditures earmarked for SCs or STs in their budget documents.[13]

Moreover, many ministries and departments that have been mandated to implement the SCSP or TSP do not yet have relevant data on physical benefits or services provided to these groups, or the evaluation reports on the SCSP and TSP. More importantly, the Narendra Jadhav Committee's recommendations did not address the core problem of poor implementation of the SCSP and TSP by union ministries. The reporting of expenditure under the SCSP and TSP has been more in the nature of 'retrospective budgeting', where the allocations for SCs and STs are earmarked after the budgets for the schemes have been finalized, without any special measures taken for SCs and STs during the preparation of the budget. In several schemes, the relevant nodal ministries report a certain part of their plan allocations as the proportion of funds meant for SCs or STs, even though the schemes do not target the specific issues of SCs or STs. In fact, a majority of the schemes are designed with a general approach for the entire population, and the nodal ministry merely assumes that SCs and STs would automatically benefit from them, along with other sections of the population. This defies the very purpose of having a strategy like the SCSP or TSP.

Projects meant for SCs and STs should have a beneficiary-oriented approach as far as possible and cover SC-and ST-dominated areas in projects related to infrastructure and basic amenities. It is imperative for the central government to urge its ministries to (a) identify the challenges confronted by SCs and STs in their sectors of concern; (b) identify measures that could be taken by them to address those challenges; and (c) earmark the amount of additional resources required for formulating special projects for these groups. These additional resources, devoted to the special measures for SCs and STs, should then be reported under the SCSP and TSP.

The implementation of the SCSP and TSP has been somewhat better in some states. Some have even adopted their own state-specific mechanisms to implement these strategies. For instance, the Bihar government constituted a Mahadalit Vikas Mission in 2007 to empower Dalits socially and economically. Under the mission, an initiative was taken to have special projects and earmark special funds for the overall development of the most deprived sections among Dalits. In the form of such special projects, 19 activities and schemes have been identified, covering housing, water supply

and sanitation, roads, school, health and nutrition, skill development, land and the Public Distribution System (PDS), among others. The mission has created a three-layered structure consisting of state, district and block missions, each with its own staff. The mission has been assigned responsibilities with regard to preparing plans and budgets, co-ordinating with different line departments and monitoring and evaluating different programmes and schemes covered under the Mahadalit Vikas Mission.

In 1991, the Uttar Pradesh government launched the Ambedkar Vikas Yojana to implement 11 development programmes for Dalits, which was revamped as the Ambedkar Gram Sabha Vikas Yojana in 2007 to cover Dalit-majority Gram Panchayats in the state. The scheme took up 13 major development activities pertaining to a range of sectors. A department at the state level was also created to monitor and evaluate these activities. Since 2012, however, the present Uttar Pradesh government has effectively replaced this scheme with the Samagra Gram Vikas Yojna, which covers villages based on their backwardness rather than their Dalit population.[14]

There have also been other state-specific SCSP and TSP models adopted in states like Maharashtra and Kerala, among others. The Maharashtra model requires, among other measures: (a) earmarking funds for the SCSP and TSP from the state's total annual plan outlays that are at least in proportion to their respective population shares in the state; (b) designating the social welfare and tribal welfare departments in the state as nodal departments for the formulation and implementation of the SCSP and TSP, with some autonomy in the selection of schemes and allocation of funds, and (c) entrusting these nodal departments with the responsibility of releasing allocations for development schemes for Dalits and Adivais (including those being implemented by other departments) and the authority to monitor the implementation of those schemes. Kerala has been implementing the SCSP and TSP through its decentralized model of planning and budgeting. The allocations made for SCs and STs are reflected in the budgets and annual financial statements of the state as well as local governments. Further, the SCSP and TSP funds are used to carry out development projects meant exclusively for SC and ST communities.

However, despite such encouraging practices and policy initiatives in select states, there remain a number of gaps in the implementation of SCSP and TSP in many other states. Most states have been successful in allocating plan funds for STs under the TSP in proportion to their share of the state population. However, as shown in Table 6.3, between 2009–10 and 2011–12, the total allocation for the SCSP by states was around 14.6 per cent of the annual plan, when it should ideally have been at least 16 per cent. Several states have allocated funds under the SCSP as per their respective SC population shares, but there are still states like Gujarat, Haryana, Jharkhand and Karnataka that have not been able to fulfil this requirement.

In addition to inadequate budgetary allocations, there are some glaring examples of how the SCSP and TSP funds (particularly SCSP funds) are being used for general interventions and projects that cannot be perceived as being meant specifically for the benefit of SCs or STs. For instance, the Odisha state budget for 2010–11 reported construction of jail buildings under the SCSP, with an allocation of ₹47.7 million. In the Madhya Pradesh state budget for the same year, ₹2.36 billion was allocated under the SCSP for construction of state highways, bridges and other expenses of the Public Works Department. Madhya Pradesh also allocated ₹80 million for the Satpura Thermal Power Station, ₹100 million for the Malwa Thermal Power station and ₹304.5 million for strengthening the power distribution system under the SCSP. Similar cases have been reported in states like Gujarat, Rajasthan and Delhi.[15]

Several such glaring examples have been highlighted by civil society groups, indicating that in terms of properly implementing the SCSP and TSP most states have a long way to go. An interesting development in this context has been in Andhra Pradesh, where a legislation has been enacted to make the implementation of the SCSP and TSP a legal obligation.[16] While this legislation has raised hopes among civil society groups and social activists across the country, it is yet to see actual enforcement. It is also important to note that under the previous United Progressive Alliance (UPA) government, the Ministry of Social Justice and Empowerment had drafted a similar national legislation for the SCSP.

Table 6.3 Share of SCSP in Total Plan Allocation by Major States

	Share of SC Population (2011 Census (%)	Share of SCSP in Total State Plan (%)		
		2009–10	2010–11	2011–12
Andhra Pradesh	16.4	15.7	16.7	16.8
Bihar	15.9	17.0	16.9	17.7
Chhattisgarh	12.8	11.6	11.6	11.1
Gujarat	6.7	5.5	4.5	5.5
Haryana	20.2	14.9	11.8	12.5
Jharkhand	12.1	10.4	10.3	9.6
Karnataka	17.1	16.2	12.5	12.2
Kerala	9.1	9.8	9.8	9.8
Madhya Pradesh	15.6	15.2	15.4	15.5
Maharashtra	11.8	7.4	10.2	10.1
Odisha	17.1	16.5	16.5	16.5
Punjab	31.9	28.9	28.9	28.9
Rajasthan	17.8	15.8	16.2	16.2
Tamil Nadu	20.0	15.5	19.1	21.3
Uttar Pradesh	20.7	21.1	21.3	21.3
West Bengal	23.5	23.0	23.0	23.0
All States	16.6	14.6	14.6	14.6

Source: Data from the Planning Commission cited in Standing Committee on Social Justice and Empowerment, '*Report on the Demands for Grants 2012–2013*', www.loksabha.nic.in

3.2 Programmes for Religious Minorities

As per the National Commission for Minorities Act of 1992, religious minorities in India include Muslims, Christians, Sikhs, Buddhists, Parsis and Jains. This section focuses on the issues pertaining to development programmes for the Muslim community, which comprises the largest share (more than 70 per cent) of the minority population in India. The Sachar Committee Report in 2006 also detailed the significant extent to which the Muslim community lags behind other socio-religious communities in the country, across almost all development indicators.[17]

As a follow up of the Sachar Committee's recommendations, for the first time in the 11th Plan, the government promised to address the problems of inequality, deprivation and exclusion of the minorities within the overall approach of 'faster and inclusive growth. Since 2006–07, it has initiated four key interventions for the welfare of minorities, involving education and economic empowerment, access to basic public services, strengthening of minority institutions and area development programmes. Two specific planning and budgetary strategies designed to address the development shortfalls faced by the religious minorities are the Prime Minister's 15-Point Programme and the Multi-Sectoral Development Programme (MSDP). The 15-Point programme, which had been operational since the 1980s, was revamped by the government in 2006 to bring within its ambit select flagship schemes and interventions. Currently, 11 ministries and departments report their involvement in implementing the 15-point Programme.[18] The programme envisages earmarking 15 per cent of total plan allocations and achieving physical targets under select flagship programmes for the development of minorities. Additionally, there are a few development programmes and schemes devised exclusively to directly benefit minorities, such as scholarship schemes, women's leadership programmes and *madrasa* modernization programmes. MSDP is an area development programme for improving the education, nutrition, work participation and access to basic public services in districts with a high concentration of religious minorities (termed Minority Concentrated Districts). MSDP was launched in 90 Minority Concentrated Districts (MCDs) in the 11th plan, of which 66 districts had a high concentration of Muslims.

Table 6.4 indicates that 8.4 per cent of the total union government plan budget in 2012-13 (and also about 7 per cent of the total 11th Plan funds[19]) have been earmarked for development programmes for religious minorities. One programme, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) accounted for almost 70 per cent of the total allocation meant for minorities However, with regard to the benefits of JNNURM accruing to Muslims or other minorities, the reporting system does not provide actual expenditure figures or beneficiary data for minorities separately.

In fact, under the 15-Point Programme, the reporting of expenditure under a host of important flagship schemes, including the Sarva Shiksha Abhiyan (SSA), Integrated Child Development Services (ICDS) and JNNURM, appears to be retrospective reporting only, with no effort being made to ensure that minorities benefit from these allocations No budgetary reporting mechanism exists to accurately capture the allocations being earmarked for minorities by the ministries and departments responsible for implementing these schemes.. On the other hand, budgetary allocations for programmes and schemes that benefit minority communities directly–like scholarship schemes, Indira Awas Yojana (IAY), Swarnajayanti Gram Swarojgar Yojana (SGSY), Swarnajayant Gram Swarozgar Yojana (SJSRY) and Industrial Training Institutes (ITIs)–are meagre.

At the state level, there are three different sources of financing for programmes for the development of minorities: the 15-Point Programme, MSDP and state plan interventions. With the exception of Uttar Pradesh, at present no state is implementing the 15-point Programme. In 2013, the Uttar Pradesh state government also announced that 20 per cent of plan allocations from the state budget would go towards minorities, covering 85 schemes across 30 departments. On the other hand, MSDP is currently being implemented in more than 20 states, and state governments are required to match the central government's financial contribution. A quick review of state plan documents by the authors also reveals that budgets for the state minority welfare departments (where they exist) have not exceeded

Table 6.4 Union Budget Allocations for Minorities

Scheme	2012–13 (RE)
Scheme for Providing Quality Education in *Madrasas* (SPQEM)	182.5
Infrastructure Development for Minority Institutions (IDMI)	28.4
National Rural Drinking Water Programme (NRDWP)	1,443.8
Urban Infrastructure Development Scheme for Small & Medium Towns (UIDSSMT)	2,642.2
Urban Infrastructure & Governance (UIG)	9,097.2
JNNURM–Integrated Housing Slum Development Programme (IHSDP)	2,235.8
JNNURM–Basic Service to the Urban Poor (BSUP)	7,254.8
Upgradation of Industrial Training Institutes (60 ITIs)	8.8
Swarnajayanti Shahari Rozgar Yojana (SJSRY)	30.4
Indira Awas Yojana (IAY)	1,533.6
Ministry of Minority Affairs	2,200.0
Total Budget Allocation for Minorities	26,657.6
Total Expenditure of the Union Government	14,30,825.0
Total Plan Expenditure of the Union Government	3,17,184.6
Budget Allocation for Minorities (% of Total Expenditure)	1.9
Plan Allocation for Minorities (% of Total Plan Allocation)	8.4

Figures, where not percentages, are in Rs Crore.

RE refers to Revised Estimates. These figures can differ from the actual final spending.

Source: Compiled by the authors from the data given in Government of India (2013), 'Expenditure Budget, vol. 1 and vol. 2', *Union Budget 2013–14*, New Delhi: Ministry of Finance.

₹10 billion in any state other than Uttar Pradesh. In most states, no significant state plan intervention seems to have been initiated for the development of minorities, except in terms of scholarships and support provided for *madrasas*.

At the district level, no financial or physical reporting requirements exist to evaluate the earmarking of budgetary resources for minorities in any central government schemes besides the IAY and SGSY. Even for these two schemes, field research by the Centre for Budget and Governance Accountability (CBGA) in Barabanki district in Uttar Pradesh has shown that the targeted 15 per cent financial and physical allocations for minorities (as mandated under the 15-Point Programme) have not been made.[20] Even with respect to the implementation of the MSDP, the bulk of the budgetary resources seem to be getting directed towards construction of the IAY houses, construction of AWCs, health sub-centres, ITIs and school buildings. Most of these provisions cater to the general population and are not exclusive to minorities. The perceptions gathered from district-level officials in Barabanki involved in implementing the IAY indicate a number of gaps in the implementation of the MSDP. For example, it was found that adhering to standard IAY guidelines, houses have been allotted only to people falling in the Below Poverty Line category. An assessment of 6,000 IAY beneficiaries under the MSDP in the district reveals that more than half of the total benefits have gone to non-minority communities due to the exclusion of many Muslims from the BPL list. Thus, the design flaw in making BPL status a prerequisite to be eligible for an IAY house has led to the exclusion of the Muslim community from the programme.

Another concern relates to the diversion of the benefits of the MSDP to non-minority areas, as evidenced in infrastructure projects in states like Bihar, Uttar Pradesh and Haryana. A directive by the Ministry of Minority Affairs to follow an area approach under the MSDP (wherein benefits under the programme may go to non-minority areas as well) in order to avoid social disruption is a clear instance of the design of the programme curtailing its ability to achieve the desired impact on Muslims. However, in a welcome development, in the 12th Plan, projects under the MSDP are required to be planned and implemented at the block level and not at the district level. Additionally, only villages and wards are supposed to be eligible for these projects.

3.3 Gender–Responsive Budgeting[21]

Debates pertaining to gender in the context of fiscal policy are not new in the discourse on development and public policy in India. However, research on the gender responsiveness of government budgets in the country dates back only to the late 1990s. Within half a decade of such efforts, initiated by academics, and international as well as national development organizations, the Government of India adopted gender budgeting as one of its strategies for mitigating the vulnerability of women and girl children in the country to different kinds of gender-based disadvantages.

Gender budgeting is a strategy pertaining to government finances in a country that aims to amend both budgetary policies and budgetary processes with reference to gender and its implications for the society. Taking into account the existence of patriarchy and its adverse implications for women and girl children, gender budgeting highlights that there are specific gender-based disadvantages confronting women and girl children, as compared to men and boys', due to which they might derive much fewer benefits from a government policy or intervention in any sector. In other words, an intervention designed for the entire population without any special measures to address such vulnerabilities might fail to provide adequate benefits to women. Moreover, gender budgeting also highlights that any policy, if formulated and implemented without attention to gender-based disadvantages, might even end up reinforcing some of these disadvantages in the long run.

Gender budgeting does not focus merely on ensuring a specific share for women and girl children in the fund allocations provided in the budget. However, in the approach towards gender budgeting being followed in most ministries and state government departments, there seems to be a misinterpretation that the main requirement of this strategy is to ensure that a certain minimum share is allocated to women and girls in the budgets for their programmes or schemes. This misinterpretation seems to have originated from an earlier strategy of the government, the WCP,

which required ministries and state government departments (in sectors that were perceived as divisible and 'women-related') to earmark at least 30 per cent of the plan allocations of their schemes for women.

In fact, the WCP, introduced by the Planning Commission in the 9th Five Year Plan was the first attempt in India to ensure some commitments in the budgets towards women. This was necessary as policy pronouncements for women without any related commitments in terms of budgetary resources cannot be effective. However, focussing solely on a specific share for women in the budget allocations, without making an effort to redesign programmes or schemes to address specific gender-based challenges is also unlikely to work. Moreover, asking ministries and state government departments to earmark 30 per cent of plan allocations for women also has the inherent weakness of being applicable only to some services, where the government can count its beneficiaries, leaving out a number of indivisible services. The implementation of the WCP was sluggish in state governments and almost non-existent in central ministries. Four years after the adoption of gender budgeting, the Planning Commission formally discontinued the WCP in 2009–10.

Efforts within the government, under the Ministry of Women and Child Development and supported by the Ministry of Finance, led to the introduction of a Gender Budget Statement in budget documents in 2005–06, along with a number of other measures (such as the setting up of Gender Budget Cells in various ministries, and training and capacity-building of government officials, among others). The Gender Budget Statement has drawn a lot more attention in the policy making community than other measures, perhaps because these statements are among the few sources of verifiable, quantitative information on the government's efforts in this domain, at both the central and state levels.

However, the approach towards gender budgeting in many ministries (with the exception of a few, such as the Department of Agriculture and Cooperation, and the Ministry of Science and Technology) and some states has not changed from what it was under the WCP. Many of them still see the mere reporting of fund allocations in the Gender Budget Statement as an end in itself, whereas it is actually a means to facilitate improvements in budget processes and policies in favour of women. Of the several schemes being reported in the Gender Budget Statement by the union and state governments, few seem to have been designed taking into account the actual disadvantages that women face.

As already discussed, with the exception of some schemes, where data on beneficiaries of the scheme is relatively easier to compile, the actual number of women beneficiaries is extremely difficult to quantify for many development schemes and public services. In such schemes and public services, ministries and concerned departments have been claiming that between 30 to 50 per cent of the budget benefits women. While it may sound quite arbitrary, this is what has happened in many cases of reporting under the WCP and subsequently in GRB.

The strategy of gender budgeting can work effectively when there is genuine recognition of the specific gender-based challenges confronting women, upon which the objectives, operational guidelines, financial norms and unit costs of certain schemes and programmes can be adjusted to make them more gender responsive. Moreover, in the case of the indivisible services, it is imperative for the government to formulate new interventions focussing on women. In the latter case, the share of funds provided for such women-focussed interventions may be small, but their gender relevance can certainly go a long way in addressing the issues of women.

A 2012 study by the CBGA[22] looks at the design and implementation of gender budgeting in four states: Bihar, Karnataka, Kerala and Madhya Pradesh. The study highlights that while some efforts have been made in each of these states, the one that stands out for a relatively more substantive approach to gender budgeting is Kerala. In Kerala, particularly in the years 2009–10 and 2010–11, programmes and schemes were formulated exclusively for women, across both women-related and mainstream or indivisible sectors. For instance, the Department of Public Works in Kerala has initiated a scheme to ensure that women-friendly amenities and infrastructure facilities are created in public offices. Kerala also provides sex-disaggregated data across several sectors.

4. Concluding Remarks

With regard to the responsiveness of existing planning and budgetary strategies towards excluded groups, a serious concern has been that these strategies do not appear to have influenced planning or budgeting in any significant way. Rather, what they have influenced visibly is the reporting of some allocations and expenditures in budget documents. As argued in this chapter, such reporting of allocations and expenditures has been based largely on assumptions made by the government departments with regard to the benefits accruing to people from disadvantaged sections due to the public spending on various development schemes.

In this context, there is an urgent need to redesign planning and budgetary strategies to ensure that the processes of planning and budgeting incorporate specific measures to address the needs and challenges confronting different excluded groups. Adequate budgetary resources must also be provided for all such special or additional measures. Only then should such allocations be reported in the relevant budget statements.

Moreover, as was discussed in the earlier part of the chapter, the fiscal policy space available to the government in India has been much less than in most other countries, resulting in low government spending in the social sector. As a result of inadequacy of budgetary resources, public provisioning in social sectors and social security programmes by the government seem to have suffered from the problems of inadequate coverage and unsatisfactory quality. Hence, it can be said that the fiscal policy framework prevailing in the country has not provided enough scope for designing and implementing substantive government interventions for the development of the marginalized and vulnerable sections of the population. In this regard, there is a need to increase the country's tax–GDP ratio through progressive policies in the domain of taxation to ensure adequate levels of the resources required to improve the coverage and quality of public provisioning of essential services and social security programmes, which are especially crucial for such excluded groups.

Notes and References

1. 'Budget 2013–14: Speech of P. Chidambaram, Minister of Finance', 28 February 2013, http://indiabudget.nic.in/budget2013-2014/ub2013-14/bs/bs.pdf (accessed 9 June 2014).
2. This framework for assessing the responsiveness of development programmes and schemes to any particular vulnerable section of population has evolved during the research carried out by Centre for Budget and Governance Accountability (CBGA) over the last decade. CBGA is an independent policy research and advocacy organization in New Delhi, which has been assessing union budgets as well as some state budgets and selected schemes in the country. Please refer to www.cbgaindia.org for the research outputs.
3. For instance, the *Budgeting for Change* series of reports brought out by CBGA and the United Nations Children's Emergency Fund (UNICEF) in 2011. For an overview of the series, see CBGA and UNICEF (2011), *Overview: Budgeting for Change Series, 2011*, http://www.cbgaindia.org/files/working_papers/Overview.pdf (accessed 11 June 2014).
4. Compiled by the authors from the data given in the following publications: Organization for Economic Co-operation and Development (2014), 'Total Tax Revenue', *OECD Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; OECD (2014), 'Government Expenditures, Revenues and Deficits', *OECD Factbook 2014: Economic, Environmental and Social Statistics*, Paris: OECD Publishing; International Monetary Fund (2014), *World Economic Outlook—Recovery Strengthens, Remains Uneven*, Washington, DC: IMF; Government of India (2013), *Indian Public Finance Statistics 2012–13*, New Delhi: Ministry of Finance.
5. 'Budget 2013–14: Speech of P. Chidambaram, Minister of Finance'.
6. The details in the following paragraph are compiled by the authors from the relevant programme and scheme guidelines, based on a review of the manuals for these schemes, government orders and scheme websites maintained by the respective union government ministries implementing these schemes. All information is accurate as of September 2013.

7. Conversion cost in MDM refers to the cost of converting food grains into hot cooked meals for children.

8. Based on discussions held with staff from the scheme-implementing agencies in Uttar Pradesh (Barabanki and Banda districts), Jharkhand (Palamu district) and Bihar (Champaran district) in 2013.

9. Calculations based on Census of India 2011 estimate of the country's elderly population and data on IGNOAPS beneficiaries from Government of India (2013), *Annual Report 2012-13*, New Delhi: Ministry of Rural Development.

10. Planning Commission of India (2010), *Task Force to Review Guidelines on Scheduled Caste Sub-Plan and Tribal Sub-Plan*, New Delhi: Planning Commission of India.

11. CBGA (2011), *Reclaiming Public Provisioning–Priorities for the 12th Five Year Plan*, New Delhi: CBGA.

12. These shares are in accordance with the proportion of SCs and STs in the country's total population as per the Censuses of 2001 and 2011. They exclude the central assistance for state and UT plans from the union plan budget, since that is meant to be provided to states and UTs as untied funds.

13. In the detailed budget documents of the ministries and departments, funds earmarked for SCs (through SCSP) and STs (through TSP) are required to be shown under specific budget heads–code/minor budget head 789 and code/minor budget head 796 denote spending specifically for SCs and STs respectively. While these budget heads have been present in the detailed state budget documents in many states, they were missing from the Detailed Demands for Grants (DDGs) submitted by most union government ministries until 2010–11. In a welcome measure, following the recommendations of the Narendra Jadhav Committee, select union ministries that were mandated to implement the SCSP or TSP introduced the required codes/budget heads for SCSP and TSP in their respective DDGs for 2011–12.

14. Lalmani Verma (2012), 'Akhilesh Gives Maya's Rural Scheme a New Name, Selection Yardstick', *The Indian Express*, 4 May 2014. http://archive.indianexpress.com/news/akhilesh-gives-maya-s-rural-scheme-a-new-name-selection-yardstick/945295/ (accessed 30 May 2014).

15. National Campaign on Dalit Human Rights and Centre for Budget and Governance Accountability (2012), 'Strengthening the Implementation of Special Component Plan for Scheduled Castes and Tribal Sub- Plan in the Union Government and Select States', Unpublished Report of a Study Supported by UNDP, New Delhi.

16. The Andhra Pradesh Scheduled Castes Sub-Plan and Tribal Sub-Plan (Planning, Allocation and Utilization of Financial Resources) Act, 2013.

17. See Government of India (2006), *Social, Economic and Educational Status of the Muslim Community of India*, New Delhi: Prime Minister's High Level Committee, Cabinet Secretariat, also referred to as the Sachar Committee Report.

18. These include the Ministry of Rural Development, the Ministry of Women and Child Development, Department of School Education and Literacy (under the Ministry of Human Resource Development), the Ministry of Minority Affairs, the Ministry of Housing and Urban Poverty Alleviation, the Ministry of Labour and Employment, the Ministry of Urban Development, the Ministry of Home, the Ministry of Finance and the Ministry of Personnel and Training. The schemes include the Indira Awas Yojana (IAY), Ajeevika, National Rural Drinking Water Programme (NRDWP), Integrated Child Development Services (ICDS), Sarva Shiksha Abhiyan (SSA), Kasturba Gandhi Balika Vidyalaya (KGBV), Madrasa Modernization Programme, Priority Sector Lending to Minorities, 'Swarnajayanti Gram Swarozgar Yojana (SJSRY), Urban Infrastructure and Governance (UIG), Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT), Integrated Housing and Slum Development Programme (IHSDP), Basic Services for Urban Poor (BSUP) and Industrial Training Institutes (ITIs).

19. Jawed Alam Khan (2012), *Policy Priorities for Development of Muslims in the 11th Plan: An Assessment*, New Delhi: CBGA.

20. Inputs from field visits to Barabanki district in Uttar Pradesh carried out by CBGA staff a number of times from September 2013 to April 2014.

21. This section draws substantially from an earlier publication: CBGA (2012), *Recognising Gender Biases, Rethinking Budgets: Review of Gender Responsive Budgeting in the Union Government and Select States*, New Delhi: CBGA.

22. CBGA (2012), *Recognising Gender Biases, Rethinking Budgets*.