

Policy WATCH

Volume XI, Issue I
January 2022, New Delhi

Constitutional Values and Democratic Institutions

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THE CONSTITUTION OF INDIA



WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;
and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Source: <https://aishwaryasandeep.files.wordpress.com/2021/07/jpg.jpg>



RAJIV GANDHI
INSTITUTE FOR CONTEMPORARY STUDIES

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Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) is the knowledge affiliate of the Rajiv Gandhi Foundation. RGICS carries out research and analysis as well as policy advocacy on contemporary challenges facing India. RGICS currently undertakes research studies on the following five themes of general public utility including:

1. Constitutional Values and Democratic Institutions
2. Growth with Employment
3. Governance and Development
4. Environment, Natural Resources and Sustainability
5. India's Place in the World

The January 2021 issue of Policy Watch is on the theme Constitutional Values and Democratic Institutions. It begins by taking the four principles stated in the Preamble of our Constitution – Justice, Liberty, Equality and Fraternity.

In this issue we publish five articles, one each on the state of Justice, Liberty and Equality and two on Fraternity in India. All the articles are taken from authoritative reports/articles by various organisations/writers and they are gratefully acknowledged.

The first article is based on the India Justice Report, 2020, which was published by a consortium of organisations whom the Tata Trusts brought together — Centre for Social Justice, Common Cause, Commonwealth Human Rights Initiative, DAKSH, Tata Institute of Social Sciences - Prayas and Vidhi Centre for Legal Policy. Only a few charts from this detailed report are reproduced, to give the reader an idea of the status of the four pillars of justice – judiciary, police, legal aid and prisons, with inter-state comparisons.

The second article is based on the report for India by Freedom House, a non-profit, majority U.S. government funded organization in Washington, D.C., that conducts research and advocacy on democracy, political freedom, and human rights. Freedom House was founded in October 1941, and Wendell Willkie and Eleanor Roosevelt served as its first honorary chairpersons. Interestingly, India moved down from being rated as “Free” in 2019 to “Partially Free” in 2020. The reasons are explained in the report.

The next article is on Equality and it is based on Inequality Kills: India Supplement 2022, which came out only on 16th Jan 2022. It reveals that when 84 percent of households in the country suffered a decline in their income in a year marked by tremendous loss of life and livelihoods, the number of Indian billionaires grew from 102 to 142. It also states that just a one percent wealth tax on 98 richest billionaire families in India can finance Ayushman Bharat. During the pandemic (since March 2020, through to November 30th, 2021) the wealth of billionaires increased from INR 23.14 lakh crore to INR 53.16 lakh crore. More than 4.6 crore Indians meanwhile are estimated to have fallen into extreme poverty in 2020. The briefing advocates a one percent surcharge on the richest 10 percent of the Indian population to fund inequality combating measures such as higher investments in school education, universal healthcare, and social security benefits like maternity leaves, paid leaves and pension for all Indians.

The fourth article deals with Fraternity and it begins with a 2021 piece by Rajmohan Gandhi, who states that inclusion of the word fraternity in the Preamble is of historic importance and contemporary relevance. Given the prevailing environment where differences among citizens on the basis of their religion, caste, language, region, gender and other attributes are being exaggerated to the point of mutual intolerance and in some cases, even hatred, the inclusion of Fraternity as founding principle of the Constitution is indeed worth remembering.

The fifth article is a piece by two young students at the National University of Juridical Sciences, Kolkata. Given that the nation's median age is 30, and the young will have to inherit and run the nation, such as it is, we felt we should include this article by two young law students of a top national law university. Written in 2011 soon after the Nandini Sundar judgment by the Supreme Court, the article makes the point that the Supreme Court in Nandini Sundar employed the idea of fraternity in three distinct fashions: as a buffer to unchecked state power; as a mechanism to promote more inclusive economic policy in consonance with directive principles of state policy and finally to reinforce the Centre's responsibility of upholding human rights in a federal structure. In using fraternity in such a manner, the Court has elevated the idea of fraternity to a constitutional principle and located it within the idea of constitutionalism and not merely a noble declaration.

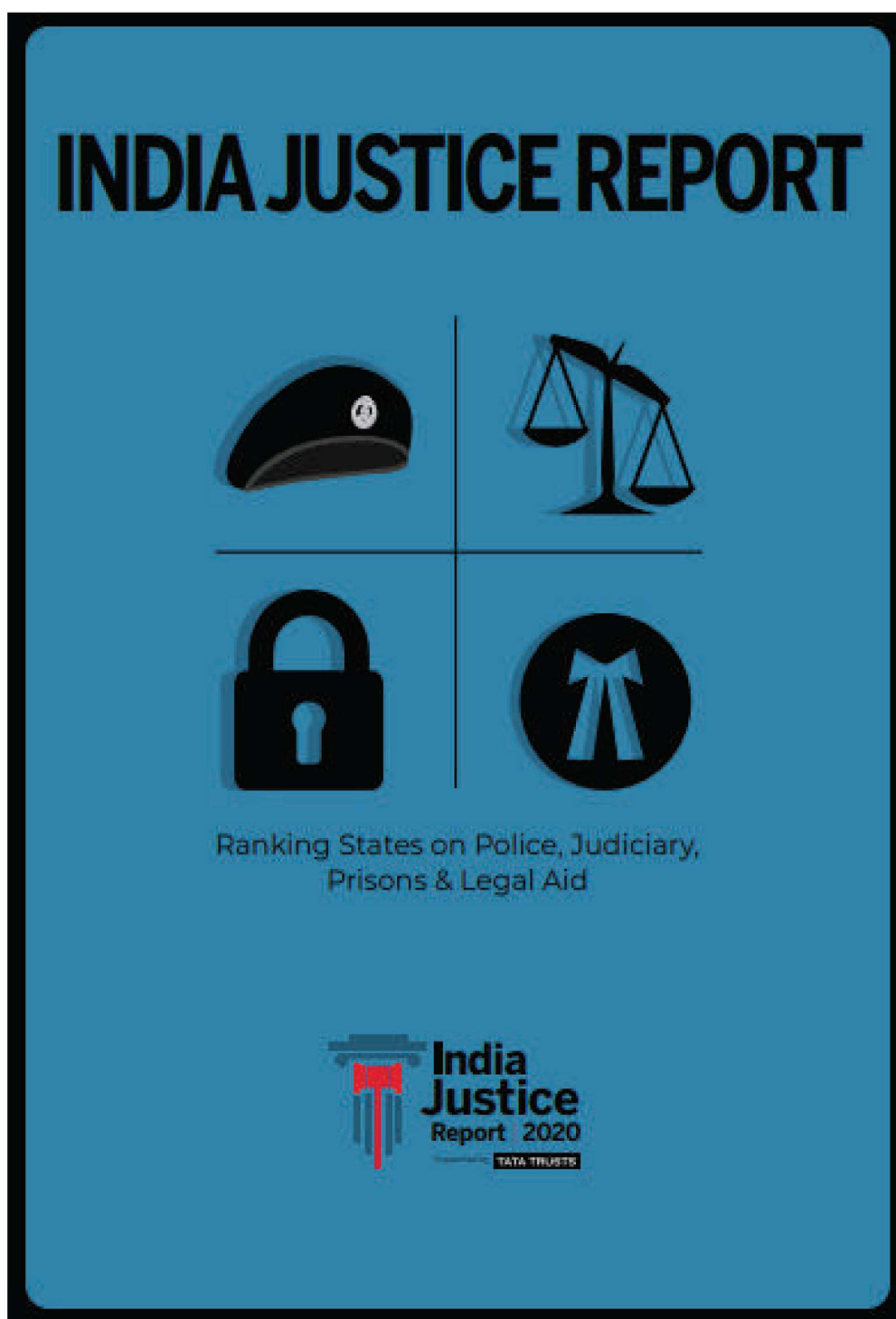
We hope this issue around the principles laid down in the Preamble of the Constitution is found useful and interesting by our readers as they celebrate the Republic Day on 26th January, 2022 during the 75th year of India's Independence.

Vijay Mahajan
Director,
Rajiv Gandhi Institute for Contemporary Studies



JUSTICE

India Justice Report, 2020: Ranking States on Police, Judiciary, Prisons and Legal Aid¹



¹ <https://www.tatatrusts.org/insights/survey-reports/india-justice-report>

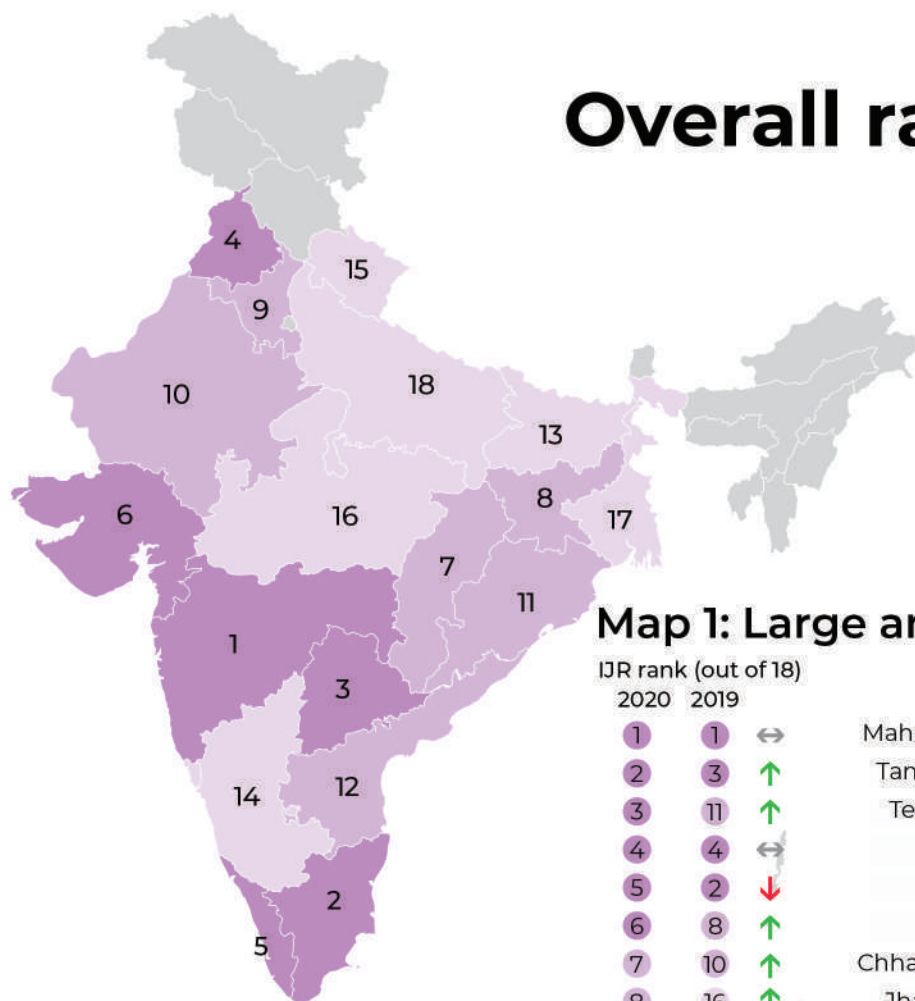
Access to justice, a public good, is important for all of us... In a unique initiative, the India Justice Report ranks individual Indian states in relation to their capacity to deliver access to justice. The Tata Trusts brought together a group of sectoral experts — Centre for Social Justice, Common Cause, Commonwealth Human Rights Initiative, DAKSH, Tata Institute of Social Sciences - Prayas and Vidhi Centre for Legal Policy — to develop a report that would measure the structural capacity of state-based instrumentalities of the justice system against their own declared mandates with a view to pinpointing areas that lend themselves to immediate solutions. The first ever ranking was published in November 2019. The second edition of the India Justice Report was all about comparisons and tracking the rise and falls in each state's structural and financial capacity to deliver justice using the latest available government figures. The ranking was based on quantitative measurements of budgets, human resources, infrastructure, workload, diversity across police, judiciary, prisons and legal aid in 18 large and medium sized states with a population of over 1 crore and 7 small states. Data for 7 Union Territories (UTs) and 4 other unranked states is also provided.

The commendable purpose of the Report is to attract the attention of the stakeholders in the system to two important areas of national concern—access to justice, and the health of our institutions responsible for justice delivery. The fulfillment of our civilizational aspirations is contingent on laws that give effect to constitutional provisions, and the law-abiding spirit of citizens of the country. Strong laws are by themselves inadequate in ensuring the welfare of the people. Collective human experience shows that every power has the intrinsic tendency towards excess and a mere majoritarian democracy, without the architecture of an inclusive society, tends towards electoral despotism. If a sizeable section of people lose faith in their governance structures and in the justice dispensation in society, a socially negative critical mass occurs, which can result in sweeping cynicism that unleashes a power of destruction. The Report, in highlighting how various actors in the justice system function, conveys a message of caution.

M.N. Venkatachaliah, Former Chief Justice of India

This second India Justice Report 2020, tracks the progress states have made in capacitating their structures to effectively deliver justice to all. It takes account of the latest statistics and situations as they existed in pre-COVID times. It records the changes in budgets, vacancy levels, diversity, workload, and infrastructure within four sub-systems of the justice system—police, judiciary, legal aid and prisons—and determines the new positions of twenty-five states in the ranking. It compares changes in relation to: other states; over the last five years and since the previous year's report. These comparators provide a measure of understanding each state's efforts and intention to improve their respective justice delivery systems, legal aid and prisons—and determines the new positions of twenty-five states in the ranking. It compares changes in relation to: other states; over the last five years and since the previous year's report. These comparators provide a measure of understanding each state's efforts and intention to improve their respective justice delivery systems.

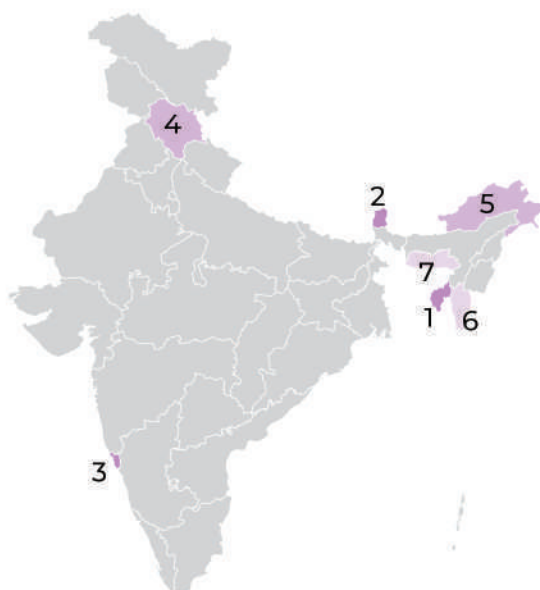
Overall ranking *



* Composite ranking across police, prisons, judiciary and legal aid

Map 1: Large and mid-sized states

IJR rank (out of 18)			State	Score (out of 10)
2020	2019			
1	1	↔	Maharashtra	5.77
2	3	↑	Tamil Nadu	5.73
3	11	↑	Telangana	5.64
4	4	↔	Punjab	5.41
5	2	↓	Kerala	5.36
6	8	↑	Gujarat	5.17
7	10	↑	Chhattisgarh	5.13
8	16	↑	Jharkhand	5.12
9	5	↓	Haryana	4.94
10	14	↑	Rajasthan	4.93
11	7	↓	Odisha	4.90
12	13	↑	Andhra Pradesh	4.81
13	17	↑	Bihar	4.65
14	6	↓	Karnataka	4.59
15	15	↔	Uttarakhand	4.48
16	9	↓	Madhya Pradesh	4.39
17	12	↓	West Bengal	3.89
18	18	↔	Uttar Pradesh	3.15



Map 2: Small states

IJR rank (out of 7)			State	Score (out of 10)
2020	2019			
1	7	↑	Tripura	4.57
2	2	↔	Sikkim	4.48
3	1	↓	Goa	4.42
4	3	↓	Himachal Pradesh	4.37
5	6	↑	Arunachal Pradesh	4.04
6	4	↓	Mizoram	3.88
7	5	↓	Meghalaya	3.11

Note: Calculated basis population size (18 large and mid-sized states have a population above 10 million, and seven small states below 10 million).

How each ranked state fared in its cluster across the 4 pillars of justice

Table 1: Rank and score for large and mid-sized states

	Overall rank (out of 18)			IJR 2020 pillar ranks (out of 18)				IJR 2020 scores (out of 10)				
	IJR 2020	IJR 2019		Police	Prisons	Judiciary	Legal aid	Overall	Police	Prisons	Judiciary	Legal aid
Maharashtra	1	1	↔	13	4	5	1	5.77	4.62	5.45	6.40	6.90
Tamil Nadu	2	3	↑	5	6	1	11	5.73	5.40	5.28	7.22	5.22
Telangana	3	11	↑	10	2	6	6	5.64	4.89	5.69	6.14	5.93
Punjab	4	4	↔	12	13	2	3	5.41	4.72	4.20	6.78	6.35
Kerala	5	2	↓	14	5	3	7	5.36	3.89	5.45	6.68	5.84
Gujarat	6	8	↑	8	10	8	9	5.17	5.14	4.63	5.56	5.39
Chhattisgarh	7	10	↑	2	11	4	15	5.13	5.63	4.58	6.56	4.11
Jharkhand	8	16	↑	6	15	9	4	5.12	5.36	3.90	5.30	6.18
Haryana	9	5	↓	9	16	7	5	4.94	4.99	3.39	5.82	6.07
Rajasthan	10	14	↑	16	1	10	13	4.93	3.75	6.32	5.27	4.71
Odisha	11	7	↓	3	9	15	8	4.90	5.59	4.67	3.91	5.64
Andhra Pradesh	12	13	↑	4	7	14	14	4.81	5.43	5.25	4.28	4.37
Bihar	13	17	↑	11	3	18	2	4.65	4.73	5.67	2.66	6.57
Karnataka	14	6	↓	1	14	12	16	4.59	5.71	4.02	4.75	4.08
Uttarakhand	15	15	↔	7	18	13	10	4.48	5.30	3.14	4.61	5.25
Madhya Pradesh	16	9	↓	18	8	11	12	4.39	3.17	4.78	5.05	4.86
West Bengal	17	12	↓	17	12	16	17	3.89	3.75	4.58	3.69	3.63
Uttar Pradesh	18	18	↔	15	17	17	18	3.15	3.80	3.24	3.16	2.54

States arranged in decreasing order of overall rank in cluster

Table 2: Rank and score for small states

	Overall rank (out of 7)			IJR 2020 pillar ranks (out of 7)				IJR 2020 scores (out of 10)				
	IJR 2020	IJR 2019		Police	Prisons	Judiciary	Legal aid	Overall	Police	Prisons	Judiciary	Legal aid
Tripura	1	7	↑	5	2	6	2	4.57	3.95	4.80	4.80	4.82
Sikkim	2	2	↔	1	6	1	3	4.48	4.89	3.45	5.84	4.10
Goa	3	1	↓	7	4	4	1	4.42	3.90	3.76	4.92	5.30
Himachal Pradesh	4	3	↓	2	1	2	6	4.37	4.51	5.10	5.14	3.07
Arunachal Pradesh	5	6	↑	4	3	5	7	4.04	3.96	4.79	4.80	2.92
Mizoram	6	4	↓	6	7	3	4	3.88	3.92	2.94	4.94	4.00
Meghalaya	7	5	↓	3	5	7	5	3.11	4.03	3.47	2.15	3.13

States arranged in decreasing order of overall rank in cluster

Note: For reasons of readability, the score is shown up to 2 decimals. While 2 or more states may show the same score in the table, one is ranked above the other on the third decimal. This happens in the following instances:

1. Police: Rajasthan above West Bengal (3.753 versus 3.748)
2. Prisons: Chhattisgarh above West Bengal (4.584 versus 4.576), Maharashtra above Kerala (5.451 versus 5.446)
3. Judiciary: Arunachal Pradesh above Tripura (4.801 versus 4.796)

Ranking diversity*

* How do the police, prisons, judiciary and legal aid score on 13 indicators? Indicators listed on Page 15.

Map 7: Large and mid-sized states

IJR rank (out of 18)

2020 2019

1	2	↑
2	3	↑
3	5	↑
4	6	↑
5	13	↑
6	8	↑
7	1	↓
8	4	↓
9	11	↑
10	17	↑
11	14	↑
12	10	↓
13	15	↑
14	7	↓
15	16	↑
16	9	↓
17	12	↓
18	18	↔

State	Score (out of 10)
Karnataka	7.07
Kerala	6.13
Odisha	6.02
Andhra Pradesh	5.83
Chhattisgarh	5.75
Gujarat	5.41
Tamil Nadu	5.15
Maharashtra	5.07
Telangana	4.50
Bihar	4.42
Haryana	4.28
Punjab	4.03
Jharkhand	3.97
Uttarakhand	3.88
Rajasthan	3.83
West Bengal	3.53
Madhya Pradesh	3.07
Uttar Pradesh	2.88

Map 8: Small states

IJR rank (out of 7)

2020 2019

1	2	↑
2	1	↓
3	6	↑
4	3	↓
5	5	↔
6	4	↓
7	7	↔

State	Score (out of 10)
Mizoram	4.18
Sikkim	4.03
Himachal Pradesh	3.90
Goa	3.58
Arunachal Pradesh	3.41
Meghalaya	3.28
Tripura	3.25

Figure 5: How long will it take for women's share in police to hit 33%?

Compared to IJR 2019, 32 states and Union Territories have improved the representation of women in their police force in IJR 2020. Even on the basis of their 5-year average, the time it would take for women's share to reach 33% has improved for 20 states and UTs.

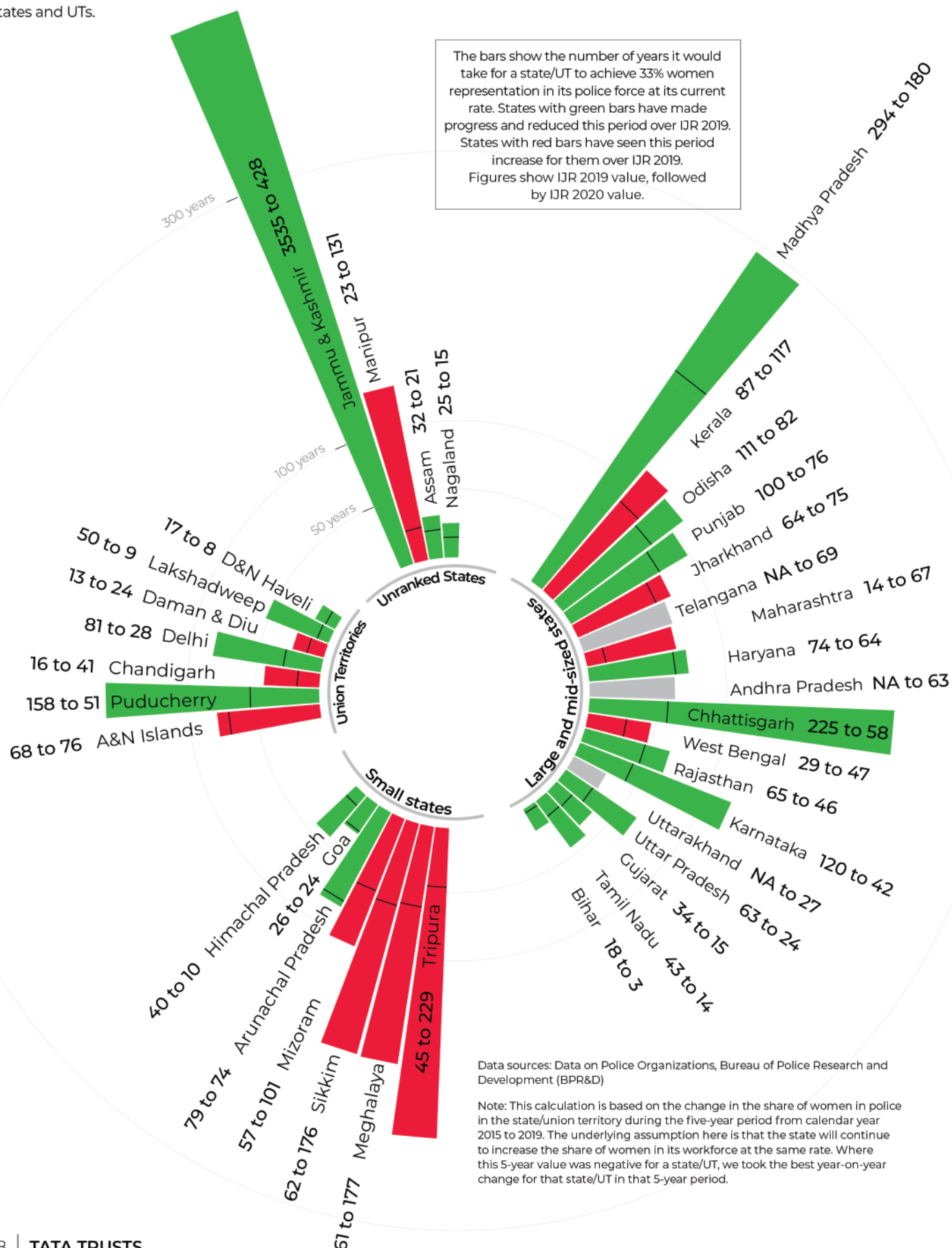
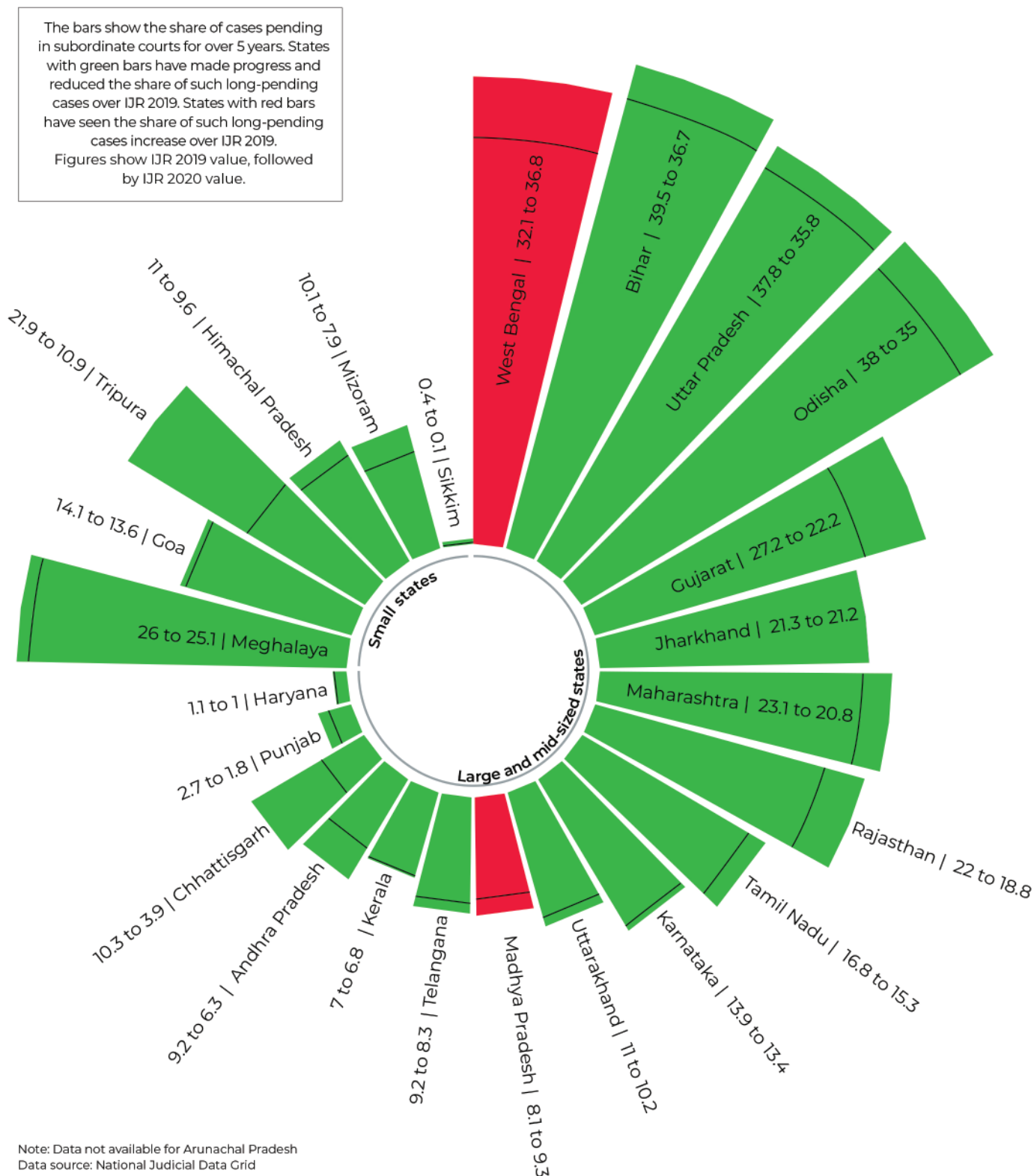


Figure 9: Comparing lower court pendency

In 21 of the 24 ranked states, cases pending in subordinate courts for above 5 years have decreased in the last 2 years. However, in 8 states, such cases still amount to over 20% of pending cases. The green and red bars signify the extent to which the share of cases pending over 5 years in subordinate courts have either reduced or increased in states, compared to IJR 2019. In West Bengal, for instance, the share of cases pending over 5 years has increased by nearly 5% to about 36.8%



Freedom in the World:

India Country Report, 2021

India ²	67/100
Political Rights	34 / 40
Civil Liberties	33 / 60

Global freedom statuses are calculated on a weighted scale. [See the methodology.](#)

Note

The numerical scores and status listed above do not reflect conditions in Indian Kashmir, which is examined in a separate report. Freedom in the World reports assess the level of political rights and civil liberties in a given geographical area, regardless of whether they are affected by the state, nonstate actors, or foreign powers. Disputed territories are sometimes assessed separately if they meet certain criteria, including boundaries that are sufficiently stable to allow year-on-year comparisons. For more information, see the report methodology and FAQ.

Status Change

India's status declined from Free to Partly Free due to a multiyear pattern in which the Hindu nationalist government and its allies have presided over rising violence and discriminatory policies affecting the Muslim population and pursued a crackdown on expressions of dissent by the media, academics, civil society groups, and protesters.

Overview

While India is a multiparty democracy, the government led by Prime Minister Narendra Modi and his Hindu nationalist Bharatiya Janata Party (BJP) has presided over discriminatory policies and increased violence affecting the Muslim population. The constitution guarantees civil liberties including freedom of expression and freedom of religion, but harassment of journalists, nongovernmental organizations (NGOs), and other government critics has increased significantly under Modi. Muslims, scheduled castes (Dalits), and scheduled tribes (Adivasis) remain economically and socially marginalized.

Key Developments in 2020

- In February, more than 50 people, mostly Muslims, were killed amid communal and protest-related violence in Delhi that followed weeks of demonstrations against discriminatory changes to the country's citizenship law.

- Authorities filed criminal charges against journalists, students, and private citizens under colonial-era sedition laws as well as the 2000 Information Technology (IT) Act in response to speech perceived as critical of the government, notably including expressions of opposition to the new citizenship legislation and discussion of the official response to the COVID-19 pandemic.
- India's internal migrant population endured significant hardships as a result of the government's pandemic-related lockdown, which was imposed in March and gradually eased beginning in May. Many migrant laborers were unable to access basic supplies and services in cities, forcing millions to travel hundreds of miles—often on foot—to their home villages. Harsh restrictions on movement were violently enforced by police and citizen vigilantes, with Muslims often scapegoated as potential spreaders of the virus.
- In September, several BJP leaders who were credibly accused of orchestrating the demolition of a historic mosque in 1992 were acquitted by a special court. Modi the previous month had signaled his support for the construction of a Hindu temple on the contested site.

Political Rights

A Electoral Process

A1 0-4 pts

Was the current head of government or other chief national authority elected through free and fair elections?

44

Executive elections and selection procedures are generally regarded as free and fair. Executive power is vested in a prime minister, typically the leader of the majority party in the Lok Sabha (House of the People), and a cabinet of ministers nominated by the prime minister. They are appointed by the president and responsible to the Lok Sabha. Narendra Modi was sworn in for a second term as prime minister after the BJP's victory in the 2019 Lok Sabha elections.

The president, who plays a largely symbolic role, is chosen for a five-year term by state and national lawmakers. Current president Ram Nath Kovind, a Dalit and a veteran BJP politician, was elected in 2017.

A2 0-4 pts

Were the current national legislative representatives elected through free and fair elections?

44

Members of the 545-seat Lok Sabha, the lower house of Parliament, are directly elected in single-member constituencies for five-year terms. Most members of the less powerful 245-seat upper house, the Rajya Sabha (Council of States), are elected by state legislatures using a proportional-representation system to serve staggered six-year terms; up to 12 members are appointed by the president.

The most recent Lok Sabha elections were held in seven phases in April and May 2019. The ruling BJP won 303 seats, giving its National Democratic Alliance coalition a stable majority of 353 seats. The opposition Indian National Congress party placed a distant second with 52 seats, for a total of 92 seats with its partners in the United Progressive Alliance. Smaller parties and independents took the remainder. Voter turnout was 67 percent. The elections were considered generally free and fair, though some violations of campaign rules were reported.

A3 0-4 pts

Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies?	44
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Elections for the central and state governments are overseen by the independent Election Commission of India. The head of the commission is appointed by the president and serves a fixed six-year term. The commission is generally respected and had been thought to function without undue political interference. In 2019, however, its impartiality and competence were called into question. The panel's decisions concerning the timing and phasing of national elections, and allegations of selective enforcement of the Model Code of Conduct, which regulates politicians' campaign behavior and techniques, suggested bias toward the ruling BJP.

B Political Pluralism and Participation

BI 0-4 pts

Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings?	44
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Political parties are generally able to form and operate without interference, and a wide variety of parties representing a range of views and interests compete in practice. However, the opaque financing of political parties—notably through electoral bonds that allow donors to obscure their identities—remains a source of concern.

B2 0-4 pts

Is there a realistic opportunity for the opposition to increase its support or gain power through elections?	44
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Different parties regularly succeed one another in government at the state and national levels. Modi and the BJP took power after the 2014 elections, ending 10 years of government by

the Congress party, and was reelected by a wide margin in the 2019 parliamentary elections. In 2020, the BJP lost regional elections in Delhi, but its coalition scored a narrow victory in state elections in Bihar.

B3 0-4 pts

Are the people's political choices free from domination by forces that are external to the political sphere, or by political forces that employ extrapolitical means?	34
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Political participation, while generally free, is hampered by insurgent violence in certain areas. Separately, some political actors have sought to inflame communal tensions with the goal of energizing their own supporters while potentially intimidating opponents.

B4 0-4 pts

Do various segments of the population (including ethnic, racial, religious, gender, LGBT+, and other relevant groups) have full political rights and electoral opportunities?	24
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Women and members of religious and ethnic minorities vote in large numbers and have opportunities to gain political representation. In 2019, for the first time, the rate of women's voting in national elections equaled that of men. Quotas for the Lok Sabha ensure that 84 and 47 seats are reserved for the so-called scheduled castes and scheduled tribes, respectively. State assemblies and local bodies feature similar quotas for these historically disadvantaged groups, as well as for women representatives. However, marginalized segments of the population continue to face practical obstacles to full political representation. Muslim candidates notably won 27 of 545 seats in the 2019 Lok Sabha elections, up from 22 previously. However, this amounted to just 5 percent of the seats in the chamber, whereas Muslims make up some 14 percent of the population.

The political rights of India's Muslims continue to be threatened. In December 2019, Parliament adopted the Citizenship Amendment Act (CAA), which grants special access to Indian citizenship to non-Muslim immigrants and refugees from neighboring Muslim-majority states. At the same time, the government moved forward with plans for the creation of a national register of citizens. Many observers believe the register's purpose is to disenfranchise Muslim voters by effectively classifying them as illegal immigrants. Importantly, Muslims disproportionately lack documentation attesting to their place of birth. Undocumented non-Muslims, meanwhile, would be eligible for citizenship through a fast-track process under the CAA.

The citizenship status of nearly two million residents of Assam remains in doubt after a citizens' register was finalized in the northeastern state in 2019. The state is home to a significant Muslim minority population, as well as many people classified as members of scheduled tribes.

Under constitutional amendments introduced by the BJP-led government in December 2019, Lok Sabha seats reserved for two appointed members representing Indians of European descent were eliminated as of January 2020, as were similarly reserved seats in some state legislatures.

C Functioning of Government

C1 0-4 pts

Do the freely elected head of government and national legislative representatives determine the policies of the government?	44
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India's elected leaders have the authority to set government policies, draft and enact legislation, and govern the country's territory in practice.

C2 0-4 pts

Are safeguards against official corruption strong and effective?	24
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Large-scale political corruption scandals have repeatedly exposed bribery and other malfeasance, but a great deal of corruption is thought to go unreported and unpunished, and the authorities have been accused of selective, partisan enforcement.

The Lokpal and Lokayuktas Act of 2014 created independent national and state bodies tasked with receiving complaints of corruption against public servants or politicians, investigating such claims, and pursuing convictions through the courts. However, the new agencies have been slow to begin operations; the first leaders of the national and a number of the state bodies were appointed in 2019.

C3 0-4 pts

Does the government operate with openness and transparency?	34
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The public generally has some access to information about government activity, but the legal framework meant to ensure transparency has been eroded in recent years. The 2014

Whistleblowers Protection Act was regarded as limited in scope, and subsequent amendments have drawn criticism for further undermining it. Millions of requests are made annually under the 2005 Right to Information (RTI) Act, and responses have been used to improve transparency and expose corrupt activities. However, most requesters do not receive the information sought, including those seeking information about core government policies, and noncompliant bureaucrats generally go unpunished. Dozens of right-to-information users and activists have been murdered since the act's introduction, and hundreds have been assaulted or harassed. In 2019, Parliament adopted amendments to the RTI Act that placed the salaries and tenures of the central and state-level information commissioners under the control of the central government, potentially exposing the commissioners to political pressure. Vacancies impede the workings of the Central Information Commission that was established by the RTI Act: 6 of its 11 positions were unfilled for most of 2020. There are concerns that the positions that have been filled are held by ruling-party loyalists

Civil Liberties

D Freedom of Expression and Belief

DI 0-4 pts

Are there free and independent media?	24
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The private media are vigorous and diverse, and investigations and scrutiny of politicians do occur. However, attacks on press freedom have escalated dramatically under the Modi government, and reporting has become significantly less ambitious in recent years. Authorities have used security, defamation, sedition, and hate speech laws, as well as contempt-of-court charges, to quiet critical voices in the media. Hindu nationalist campaigns aimed at discouraging forms of expression deemed “antinational” have exacerbated self-censorship. Online disinformation from inauthentic sources is ubiquitous in the run-up to elections. Separately, revelations of close relationships between politicians, business executives, and lobbyists, on one hand, and leading media personalities and owners of media outlets, on the other, have dented public confidence in the press.

In 2020, dozens of journalists whose reporting was critical of the government's handling of the coronavirus pandemic were arrested, and media outlets faced pressure to praise the government's response. In a March video conference with the heads of India's largest newspapers, Prime Minister Modi called on media to help prevent the spread of “pessimism, negativity, and rumor mongering,” which many perceived to be a warning not to criticize officials' management of the pandemic.

Journalists risk harassment, death threats, and physical violence in the course of their work. Such attacks are rarely punished, and some have taken place with the complicity or active participation of police. Two deadly attacks on journalists were reported in 2020, according to the Committee to Protect Journalists (CPJ). No journalists were killed in connection with their work in 2019, but five were murdered in 2018, and four in 2017.

D2 0-4 pts

Are individuals free to practice and express their religious faith or nonbelief in public and private?

24

While Hindus make up about 80 percent of the population, the Indian state is formally secular, and freedom of religion is constitutionally guaranteed. However, a number of Hindu nationalist organizations and some media outlets promote anti-Muslim views, a practice that the government of Prime Minister Modi has been accused of encouraging. Attacks against Muslims and others in connection with the alleged slaughter or mistreatment of cows, which are held to be sacred by Hindus, continued in 2020. The nonprofit group IndiaSpend documented 45 killings by cow vigilantes between 2012 and 2018. More than 120 cases of cow-related violence, including lynchings, have been reported since Modi came to power, and the BJP has faced criticism for failing to mount an adequate response.

In 2020, during the early weeks of the COVID-19 pandemic, the country's Muslims were widely and speciously blamed for spreading the coronavirus, including by ruling-party officials. Separately, in September, 32 individuals charged with orchestrating the illegal 1992 demolition of a prominent mosque in the state of Uttar Pradesh were acquitted by a special court, despite substantial evidence of their culpability. Among those exonerated were several high-profile members of the BJP. Modi had laid the foundation stone for a new Hindu temple on the site a month earlier, after a long-awaited 2019 Supreme Court judgment had permitted the construction of a temple there. The mosque had stood on the site for centuries prior to its unlawful destruction.

Legislation in several states criminalizes religious conversions that take place as a result of “force” or “allurement,” which can be broadly interpreted to prosecute proselytizers. Some states require government permission for conversion.

D3 0-4 pts

Is there academic freedom, and is the educational system free from extensive political indoctrination?

24

Academic freedom has significantly weakened in recent years, as intimidation of professors, students, and institutions over political and religious issues has increased. Members of the student wing of the Hindu nationalist organization Rashtriya Swayamsevak Sangh (RSS)—from which the ruling BJP is widely regarded to have grown—have engaged in violence on campuses across the country, including attacks on students and professors. Academics face pressure not to discuss topics deemed sensitive by the BJP government, particularly India's relations with Pakistan and conditions in Indian Kashmir.

D4 0-4 pts

Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution?

34

Personal expression and private discussion in India had long been open and free. However, colonial-era and other laws are increasingly invoked to penalize perceived criticism of the government by ordinary citizens. Activists, Muslims, and members of other marginalized communities are routinely charged with sedition for criticizing the government and its policies.

Numerous sedition cases were brought during 2020 against people who protested in opposition to the CAA, including an apparent mass criminal complaint filed by police in Jharkhand State in January against some 3,000 people who participated in such a demonstration. The same month, police brought a sedition case against a student in Karnataka for holding up a “Free Kashmir” poster. Also during the year, authorities invoked a section of the IT Act to penalize online speech, including critical discussion of the COVID-19 pandemic. In March, Kolkata police arrested a woman under the IT Act for allegedly spreading false information about a doctor contracting the virus. Similar arrests under the act in response to discussion of the pandemic were reported in Uttar Pradesh, Karnataka, Mizoram, and Rajasthan.

Several government-designed mobile applications that were introduced to help stem the spread of COVID-19 by aiding the enforcement of a strict lockdown were viewed as invasive by human rights lawyers. In some cases, private information about individuals’ health status was released without their consent.

A nationwide Central Monitoring System launched in 2013 is meant to enable authorities to intercept any digital communication in real time without judicial oversight, raising concerns about abusive surveillance practices.

Score Change: The score declined from 4 to 3 due to the frequent use of sedition and other charges in recent years to deter free speech, including discussion of a discriminatory citizenship law and the COVID-19 pandemic.

E Associational and Organizational Rights

EI 0-4 pts

Is there freedom of assembly?

24

There are legal restrictions on freedom of assembly, including a provision of the criminal procedure code that empowers authorities to restrict public gatherings and impose curfews whenever “immediate prevention or speedy remedy” is required. State and central governments have repeatedly suspended mobile and internet service to curb protests in recent years, including in 2020. Peaceful demonstrations take place regularly in practice, although the pandemic led to fewer such events being held in 2020.

The national government and some state governments used assembly bans, internet blackouts, and live ammunition between December 2019 and March 2020 to quell widespread protests against the CAA and proposals to roll out a citizens' registration process across the country. Protesters, including students and academics, were detained, denied access to legal representation, and subjected to harsh treatment. In February, more than 50 people were killed in protest-related violence in Delhi; there were reports of indiscriminate attacks against Muslims and police officers failing to respond, as well as some attacks against the police and Hindu residents. Critics alleged that the country's COVID-19 lockdown, which was imposed in March and gradually eased beginning in May, was conceived by the government in part to forestall further CAA protests and to silence dissent.

E2 0-4 pts

Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work?

24

A wide variety of NGOs operate, but some, particularly those involved in the investigation of human rights abuses, continue to face threats, legal harassment, excessive police force, and occasionally lethal violence. Under certain circumstances, the Foreign Contributions Regulation Act (FCRA) permits the federal government to deny NGOs access to foreign funding, and authorities have been accused of exploiting this power to target perceived political opponents. Since 2015, the government has deregistered nearly 15,000 associations under the FCRA. Amendments to the FCRA that were passed in 2020, without consulting civil society groups, tightened restrictions on foreign funding.

In September 2020, Amnesty International shuttered its operations in India after authorities froze its bank accounts for alleged foreign funding violations. The organization is thought to have been punished in reprisal for a series of reports that criticized the government's actions in Kashmir and the Delhi police's complicity in the February 2020 communal violence, in which Muslims were the main victims. An Amnesty International report released in June also detailed an apparent coordinated spyware campaign targeting a number of human rights activists.

Score Change: The score declined from 3 to 2 because the government enacted legislation to tighten restrictions on foreign funding for NGOs and separately froze the assets of Amnesty International, forcing it to shutter its operations in the country.

E3 0-4 pts

Is there freedom for trade unions and similar professional or labor organizations?

34

Although workers in the formal economy regularly exercise their rights to bargain collectively and strike, laws including the Essential Services Maintenance Act have enabled the government to ban certain strikes. Public employees have more limited organizing rights, and private employers are not legally obliged to recognize unions or engage in bargaining.

Mass strikes by farmers and others who objected to new government-backed agriculture laws were gaining momentum at the end of 2020; the laws, passed rapidly by Parliament in September, introduced market-based reforms that many farmers saw as a threat to their livelihoods.

F Rule of Law

FI 0-4 pts

Is there an independent judiciary?	24
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The judiciary is formally independent of the political branches of government. Judges, particularly at the Supreme Court level, have displayed autonomy and activism in response to public-interest litigation. However, lower levels of the judiciary suffer from corruption, and the courts have shown signs of increasing politicization. Several key Supreme Court rulings in recent years have been favorable to the BJP, including the 2019 decision allowing the construction of a Hindu temple on the site of a historic mosque, and the court's March 2020 decision to deny bail to a scholar and prominent critic of Modi who was charged with supporting a banned Maoist group.

Also in 2020, the president appointed a recently retired chief justice to the upper house of Parliament, a rare move that critics viewed as a threat to the constitutional separation of powers. Earlier in the year, a judge was transferred in February to a less desirable position after he issued rulings that criticized Delhi police for their failure to address communal violence and related hate speech by BJP politicians.

Score Change: The score declined from 3 to 2 because the unusual appointment of a recently retired chief justice to the upper house of Parliament, a pattern of more progovernment decisions by the Supreme Court, and the high-profile transfer of a judge after he ruled against the government's political interests all suggested a closer alignment between the judicial leadership and the ruling party.

F2 0-4 pts

Does due process prevail in civil and criminal matters?	24
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Due process rights are not consistently upheld. Citizens face substantial obstacles in the pursuit of justice, including demands for bribes and difficulty getting the police to file a First Information Report, which is necessary to trigger an investigation of an alleged crime. Corruption within the police force remains a problem. The justice system is severely backlogged and understaffed, leading to lengthy pretrial detention for suspects, many of whom remain in jail longer than the duration of any sentence they might receive if convicted. A number of security laws allow detention without charge or based on vaguely defined offenses.

F3 0-4 pts

Is there protection from the illegitimate use of physical force and freedom from war and insurgencies?

24

Torture, abuse, and rape by law enforcement and security officials have been reported. A bill intended to prevent torture remains pending. Abuses by prison staff against prisoners, particularly those belonging to marginalized groups, are common. Figures reported by the National Human Rights Commission (NHRC) suggest that 1,723 deaths occurred in judicial or police custody from January to December 2019.

Security forces battling regional insurgencies continue to be implicated in extrajudicial killings, rape, torture, kidnappings, and destruction of homes. While the criminal procedure code requires that the government approve the prosecution of security force members, approval is rarely granted, leading to impunity.

The Maoist insurgency in the east-central hills region of India continues, though the annual number of casualties linked with it has decreased significantly since a peak in 2010. Among other abuses, the rebels have allegedly imposed illegal taxes, seized food and places of shelter, and engaged in abduction and forced recruitment of children and adults. Local civilians and journalists who are perceived to be progovernment have been attacked. Tens of thousands of civilians have been displaced by the violence and live in government-run camps.

Separately, in India's seven northeastern states, more than 40 insurgent factions—seeking either greater autonomy or complete independence for their ethnic or tribal groups—continue to attack security forces and engage in intertribal violence. Such fighters have been implicated in bombings, killings, abductions, and rapes of civilians, and they operate extensive extortion networks.

F4 0-4 pts

Do laws, policies, and practices guarantee equal treatment of various segments of the population?

24

The constitution bars discrimination based on caste, and laws set aside quotas in education and government jobs for historically underprivileged scheduled tribes, Dalits, and groups categorized by the government as “other backward classes.” However, members of these populations face routine discrimination and violence, and the criminal justice system fails to provide equal protection to marginalized groups.

In parts of the country, particularly in rural areas, informal community councils issue edicts concerning social customs. Their decisions sometimes result in violence or persecution aimed at those perceived to have transgressed social norms, especially women and members of scheduled castes. Other forms of discrimination faced by women include workplace bias

and sexual harassment. Indian participation in the international #MeToo movement against sexual harassment and assault has raised awareness of the problem, but women have also endured reprisals after reporting cases.

In 2018, the Supreme Court ruled that the use of Section 377 of the Indian penal code to ban same-sex intercourse was unconstitutional. However, discrimination continues against LGBT+ people, including violence and harassment in some instances.

G Personal Autonomy and Individual Rights

G1 0-4 pts

Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education?	24
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The constitution grants citizens the right to reside and settle in any part of the territory of India. However, freedom of movement is hampered in some parts of the country by insurgent violence or communal tensions. Several states have recently enacted legislation requiring companies to reserve jobs for locals, limiting opportunities for interstate migration, although reports point to limited enforcement of the quotas thus far.

India's large internal migrant population suffered significant hardships during the early stages of the 2020 pandemic. The government imposed an excessively harsh lockdown in March that offered little assistance or security to low-paid workers, millions of whom were consequently compelled to travel from cities to their native villages for lack of employment and essential supplies; many were unable to access basic services, including transportation, and were forced to walk hundreds of miles. Also during the lockdown, which was gradually eased beginning in May, reports emerged of violent enforcement by police and civilian vigilantes, with Muslims often singled out for abuse.

Score Change: The score declined from 3 to 2 due to an excessively harsh pandemic-related lockdown that triggered the displacement of millions of low-paid migrant workers under dangerous conditions, and featured violent and discriminatory enforcement by police and civilian vigilantes.

G2 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?	34
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Although the legal framework generally supports the right to own property and engage in private business activity, property rights are somewhat tenuous for tribal groups and other marginalized communities, and members of these groups are often denied adequate resettlement opportunities and compensation when their lands are seized for development

projects. While many states have laws to prevent transfers of tribal land to nontribal groups, the practice is reportedly widespread, particularly with respect to the mining and timber industries. Muslim personal status laws and traditional Hindu practices discriminate against women in terms of property rights and inheritance.

G3 0-4 pts

Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors?	24
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Rape and other sexual abuse are serious problems, and scheduled-caste and tribal women are especially vulnerable. Mass demonstrations after the fatal gang rape of a woman on a Delhi bus in 2012 prompted the government to enact significant legal reforms, but egregious new rape cases continued to surface in 2020, and the criminal justice system has been repeatedly faulted for its poor handling of such matters.

Despite criminalization and hundreds of convictions each year, dowry demands surrounding marriage persist, sometimes resulting in violence. A 2006 law banned dowry-related harassment, widened the definition of domestic violence to include emotional or verbal abuse, and criminalized spousal sexual violence. However, reports indicate that enforcement is poor.

Muslim personal status laws and traditional Hindu practices feature gender discrimination on matters such as marriage, divorce, and child custody. A Muslim divorce custom allowing a man to unilaterally and summarily divorce his wife was criminalized in 2019. The malign neglect of female children after birth remains a concern, as does the banned use of prenatal sex-determination tests to selectively abort female fetuses.

G4 0-4 pts

Do individuals enjoy equality of opportunity and freedom from economic exploitation?	24
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The constitution bans human trafficking, and bonded labor is illegal, but estimates of the number of workers still affected by the practice range from 20 to 50 million. A 2016 law allows children below the age of 14 to engage in “home-based work,” as well as other occupations between the ages of 14 and 18. Children are not permitted to work in potentially hazardous industries, though the rule is routinely flouted. There have been reports of complicity by law enforcement officials in human trafficking.

HOW COVID DEEPENS DISTRESS, DIVIDE

Widening disparity in annual household income (₹ lakh)

	2015-16	2020-21	Change (%)
Q1 (Poorest 20%)	1.37	0.65	-52.6 ▼
Q2 (Lower middle 20%)	1.85	1.25	-32.4 ▼
Q3 (Middle 20%)	2.25	2.05	-8.9 ▼
Q4 (Upper middle 20%)	3.01	3.22	7.0 ▲
Q5 (Richest 20%)	5.26	7.31	39.0 ▲
All-India average	2.98	3.23	8.4 ▲

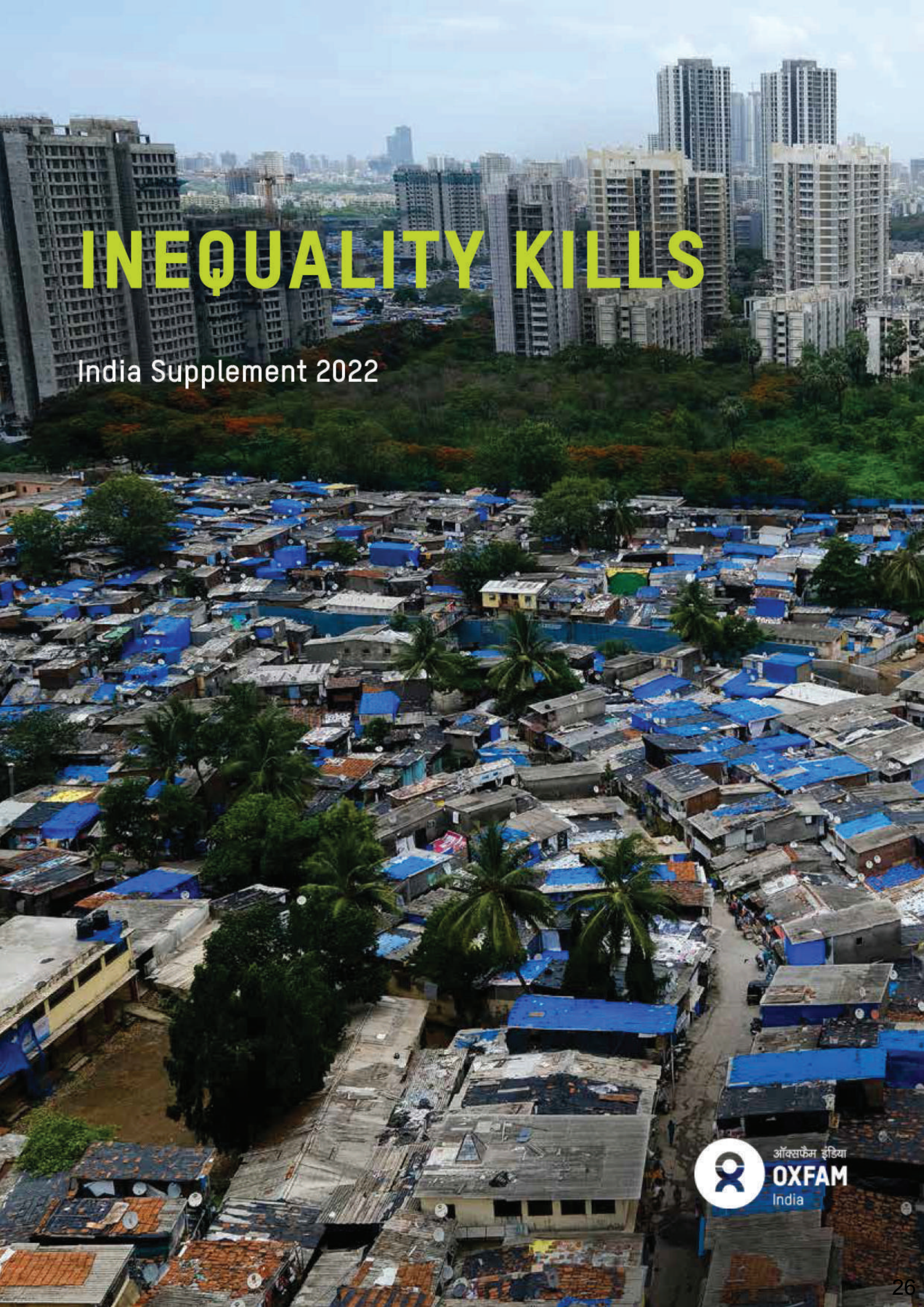
Total personal disposable

income of households (₹ bn) 83,574 99,184 18.7 ▲

*Q is quintile and is obtained by dividing population into five equal slabs of 20% each; Source: ICE 360 data

Source: <https://images.indianexpress.com/2022/01/Income.jpg>





INEQUALITY KILLS

India Supplement 2022

Inequality Kills

India Supplement 2022

EXECUTIVE SUMMARY

This brief is the India Supplement to the global Oxfam Davos report of 2022, and discusses India's governance structures that promote the accumulation of wealth by a few, while failing to provide safety nets to the rest of the population.



THE NUMBER OF INDIAN BILLIONAIRES GREW FROM 102 IN 2020 TO 142 IN 2021, THE WORST YEAR YET FOR INDIA DURING THE PANDEMIC. THIS WAS ALSO THE YEAR WHEN THE SHARE OF THE BOTTOM 50 PERCENT OF THE POPULATION IN NATIONAL WEALTH WAS A MERE 6 PERCENT.

The combined wealth of the richest hundred Indians on the Forbes list stands at more than half a trillion USD.

Meanwhile the abolition of 'wealth tax' in 2016, steep cuts in corporate taxes, and an increase in indirect taxation has removed the rich from being the primary source of tax revenue. A 2021 OECD report for G-20 countries highlighted how there's an inherent need to move beyond just improving individual taxes and looking at reformulating 'tax systems' to promote inclusive, sustainable, and equitable growth. Unfortunately, not only has the taxation policy of the Indian government been pro-rich, it has also deprived India's States of important fiscal resources—both particularly damaging in the context of the COVID-19 crisis.

The pandemic revealed how dependent Indian States are on the Union government for technical expertise

and financial support, despite a federal structure supported by India's Constitution. In spite of health being a State subject, during the pandemic year, the Centre continued to retain more resources in non-divisible pools rather than devolving them to manage the pandemic. The recent Pandora Papers investigation also highlights the loopholes that India's rich exploit to conceal their assets and evade taxes. In 2021, the Central government also allocated smaller amounts to the critical health and education sectors than ever before. The inadequate governmental expenditure on health, education and social security has gone hand-in-hand with a rise in privatisation of health and education, thus making a full and secure COVID-19 recovery out of reach for the common citizen.

It is imperative that the government revisits its primary sources of revenue generation, adopting more progressive methods of taxation and assessing its structural issues that permit such wealth accumulation by the rich. Additionally, the government should also redirect revenue towards health, education and social security, treating them as universal rights and as a means of reducing inequality, thereby avoiding the privatisation model for these sectors.

We call upon the government to recognise the unequal lives that Indian citizens live by measuring it and legislating to protect their interests. We call upon the government to redistribute India's wealth from the super-rich to generate resources for the majority by reintroducing the wealth tax and to generate revenue to invest in the education and health of future generations by imposing a temporary one percent surcharge on the rich for health and education.

INSIDE INDIA'S INEQUALITY CRISIS: A COUNTRY OF BILLIONAIRES

Today, we the undersigned millionaires, ask our governments to raise taxes on people like us. Immediately. Substantially. Permanently.....Tax us. Tax us. Tax us. It is the right choice. It is the only choice. Humanity is more important than our money.¹

These words from the 'Millionaires of Humanity' are from an open letter of a coalition of 50 millionaires across the world, urging their governments to tax them in light of the COVID-19 crisis and its impact on the global economy. Conspicuous by their absence are billionaires from India where the growing wealth- and asset-related inequalities in every sphere of life—be that access to education, health or opportunity—have now, in the global pandemic, become even more apparent than they were earlier. Profit is the bedrock of capitalism and the pandemic offers us a unique opportunity to turn away from this singular pursuit of profit to one of welfare. However, this will require courage to confront the inequalities of wealth and power that has led us to this point. In order to do that, one must recognise that the bulk of India's citizenry lack affordable healthcare, decent homes, good education for their children, and that it still suffers from decades of precarity in their livelihoods.

Since 2015, more and more of India's wealth has gone to its richest one percent.



IN 2020, INDIA'S TOP 10 PERCENT HELD CLOSE TO 45 PERCENT OF THE COUNTRY'S TOTAL NATIONAL WEALTH.

The richest 98 Indian billionaires had the same wealth (USD 657 billion) as the poorest 555 million people in India, who also constitute the poorest 40 percent. Of the 100 Indian billionaires on Forbes' list, only three were women; only one, Savitri Jindal, made it to the top 10. India had the third highest number of billionaires in the world, just behind China and the United States.² It now has more billionaires than France, Sweden and Switzerland combined, indeed there has been a 39 percent increase in the number of billionaires in India in 2021. This surge

comes at a time when India's unemployment rate was as high as 15 percent in urban areas and the healthcare system was on the brink of collapse.³

As per the Forbes billionaires report, in October 2021, the collective wealth of India's 100 richest hit a record high of USD 775 billion⁴ and more than 80 percent of these families saw an increase in their wealth as compared to 2020, approximately three-fifths of (61 percent) of these billionaires added a whopping USD 1 billion or more to their collective wealth.⁵ Meanwhile, 84 percent of households in India suffered a decline in their income in the beginning of the pandemic.⁶ That wealth inequality is growing appears to be a reality.

About one-fifth of the increase in the rise of the richest 100 families was accounted for from the increase of the wealth of a single individual and business house—the Adanis.⁷ Gautam Adani, ranked 24th globally and second in India, witnessed his net worth multiply by eight times in a span of one year; from USD 8.9 billion in 2020 to USD 50.5 billion in 2021. According to the real time data by Forbes, as of 24 November 2021, Adani's net worth stands at USD 82.2 billion.⁸ This tremendous growth in a span of eight months, during India's deadly second wave, also includes returns from Adani's newly bought Carmichael mines in Australia,⁹ and a 74 percent acquired stake in the Mumbai airport. At the same time, Mukesh Ambani's net worth doubled¹⁰ up in 2021 to USD 85.5 billion from USD 36.8 billion in 2020.¹¹

The Reserve Bank of India's forecast for India's GDP growth was projected in the range of (-)8.7 percent to (-)7.0 percent in 2020-21.¹² To make things worse, more than 120 million jobs were lost, including 92 million from the informal sector in the same year.¹³ The fact that the government's employment programme, MGNREGA, witnessed the highest number

of enrolments in 2021 is testimony to the dire need of employment and income security for India's absolutely poor.¹⁴ Studies show that there has been a substantial increase in food insecurity in the country. According to the World Food Programme,



**INDIA IS HOME TO A QUARTER
OF ALL UNDERNOURISHED
PEOPLE WORLDWIDE.¹⁵**

The 2021 FAO report on *The State of Food Security and Nutrition* in the World states that there are over 200 million undernourished people in India.¹⁶

Income and power inequality manifest themselves in unequal access to and in a reduced ability to negotiate education, health and other dimensions of well-being, for most marginalised citizens of India. In India, our system of governance perpetuates the myth

of greater expansion and profits, leading to the greater good of all. This report demonstrates that wealth and inequality of power has made the pandemic deadlier, more prolonged, and more damaging to the livelihoods of the poor than ever before and that this has been made possible systematically due to institutional structures that continue to perpetuate this inequality.

We examine three strategies that work in tandem with each other to produce unequal economic outcomes. These are: a) India's tax regime, b) a declining emphasis on social sector spending, and c) a push towards the increasing privatisation of public goods. To be sure, there are other regulatory structures that inhibit wealth and power equality in India. The three boxes in this document on Minimum Wages, The Gender Wage Gap and India's Role in the Pandora Papers highlight legislations and realities that illustrate this point well.

Box 1: India's Battle with Minimum Wage; A Win for Few and a Loss for Most

Wage employment can be sub-divided into regular/salaried and casual wage employment. The last category usually consists of workers from economically poor households, who often are also those belonging to caste or religious minorities and are also very likely to be women. While there has been an increase in regular/salaried employment, much of this work is of contractual nature, i.e., short-term or fixed-term contracts and is precarious in itself.¹⁷ In India, the main legislative instruments regulating wages are: Minimum Wages Act, 1948; Payment of Wages Act, 1936; Payment of Bonus Act, 1965; and Equal Remuneration Act, 1976.

According to the Minimum Wages Act of 1948, the purpose of seeking employment is to sell labour to earn wages so as to attain a 'decent' or 'dignified' standard of living. The wage or income that a worker obtains from his /her work is therefore, what enables him /her to achieve a fair standard of living. The Act states that one seeks a fair wage, both, to fulfil one's basic needs and to feel reassured that one receives a fair portion of the wealth that one works to generate for society. The same Act also states that society has a duty to ensure a fair wage to every worker, to ward off starvation and poverty, to promote the growth of human resources, and to ensure social justice without which, likely threats to law and order may undermine economic progress.

The Constitution of India makes it mandatory for the government to create an economic order in which every citizen finds employment and receives a 'fair wage' and in 1948, a Central Advisory Council created a Tripartite Committee on Fair Wages for this purpose. The Committee consisted of representatives of employers, employees and the government. Their task was to enquire into and report on the subject of fair wages to labour. The Committee on Fair Wages defined three different levels of wages —

of countries looking to use progressive taxation, taxing the richest to fund recovery. Countries such as Argentina have passed a one-off wealth tax on the wealthiest Argentinians which brought in around USD 2.4 billion to help address pandemic costs of the people of Argentina and were levied up to 5.25 percent on their total assets.³¹ Indeed, the IMF supports the idea of levying higher taxes on the rich to 'pay for the enormous cost of tackling the COVID-19 pandemic'.³²

A similar tax on the rich in India would go a long way in generating much-needed resources to fund essential public services like health and education, especially during the pandemic. For instance,



A 4 PERCENT WEALTH TAX ON 98 RICHEST FAMILIES IN INDIA CAN TAKE CARE OF THE MINISTRY OF HEALTH

AND FAMILY WELFARE FOR MORE THAN 2 YEARS, THE MID-DAY-MEAL PROGRAMME OF THE COUNTRY FOR 17 YEARS OR THE SAMAGRA SIKSHA ABHIYAN FOR 6 YEARS³³. SIMILARLY, ESTIMATES SUGGEST THAT A 1 PERCENT WEALTH TAX ON 98 RICHEST BILLIONAIRE FAMILIES CAN FINANCE THE AYUSHMAN BHARAT SCHEME FOR MORE THAN SEVEN YEARS OR THE DEPARTMENT OF SCHOOL EDUCATION AND LITERACY OF THE GOVERNMENT OF INDIA FOR ONE YEAR.

In another estimate, it was found that by taxing just these super-rich families only 1 percent of their wealth, India could fund its entire vaccination programme cost of INR 500 billion (USD 6.8 billion).³⁴ These asks have been backed by Indian citizens as well.³⁵

Instead, the burden of taxation in India currently rests on the shoulders of India's middle class and the poor³⁶ and not addressing the proposal for a one-time tax on the wealthy, for COVID-19 recovery, has resulted in the government using the only other available option i.e., raising funds through indirect tax revenue which penalises the poor. Even before the pandemic hit, in FY 2019-20, tax collection was lower than in previous years. The fall in tax collection was mainly on account of the cut in corporate tax rate, announced in September 2019.³⁷ The reduction of corporate taxes from 30 percent to 22 percent during the year 2019-20 (to attract foreign direct investment) has resulted in a loss of INR 1.5 lakh crore, which has contributed to the increase in India's fiscal deficit.

Box 3: India's Persistent Gender Wage Gap

Several studies point to the narrowing of India's historic gender wage gap.³⁸ However, there are as many studies that continue to document a persistent and sizeable wage differential between the genders when examined by levels of education, types of unemployment, work industries and geographies. Development economists have also used earning functions of male and female workers, decomposing wage differentials into two component parts called the 'endowment effect' in the literature reflecting innate productive capacities and the other termed as a 'discrimination effect' because its reason is unexplained.

Perhaps the most disturbing aspect of these studies is that the ostensible discrimination component is large, suggesting that women who do participate in formal labour markets simply get paid less because they are 'women'. In 2008, economists Madheswaran and Khasnabis³⁹ found that discrimination was widening for salaried women and in 2014 Duraisamy and Duraisamy⁴⁰ found that wage differentials between the genders varied widely, depending on the work type chosen — reinforcing the social norm that some professions are indeed still considered to be the domain of men alone.

Deshpande in 2015⁴¹ demonstrated that the gender wage gap also varies widely by education, with women in higher education and earning quintiles occupying managerial positions being able to better recognise wage discrimination. In 2011, Belser and Rani,⁴² found that the lower end of the labour market wage distribution consists of mostly women and recently Deshpande in 2021⁴³ found that many women have simply gone on to self-select themselves out of the labour market altogether.

During the financial year 2020-21, taxes from goods and services halved in the June quarter compared to the same period last year, income tax collections fell 36 percent and corporate taxes came in 23 percent lower.⁴⁴ On the non-tax receipts front, the proceeds from disinvestment in 2020-21 have fallen far short of the estimated target of INR 2.1 lakh crore, which was more than three times the disinvestment proceeds of 2019-20. Put together, these statistics show that the pandemic weakened the capacity of the government to generate revenue from both tax and non-tax sources. How did the government then raise revenue during the pandemic period? Data demonstrates that the Gross Tax Revenue (GTR) during the first eight months of 2020-21 was INR 10.26 lakh crore, 42 percent of annual estimation, 12.6 percent lower when compared to the same period of the previous year. This decline was a result of the reduction in all direct taxes and major indirect taxes, except excise duty. In particular, the shortfall in direct tax collection contributed to 92 percent of the shortfall in GTR.⁴⁵

The shortfall in direct tax was compensated through an increase in the share of indirect tax. In FY21, the share of income tax (23.2 percent) in the GTR exceeded the contribution from corporate tax (22.6 percent). The Central Goods and Services Tax (C-GST) also contributed a similar share (22.5 percent). The contribution from union excise duties rose sharply from 12 percent to 19.2 percent compensating for the loss in share from corporate tax which fell sharply from 27.7 percent to 22.6 percent.⁴⁶ The Centre earned nearly INR 8.02 lakh crore from taxes on petrol and diesel during the last three fiscal years, of which more than INR 3.71 lakh crore was collected in FY21 alone.⁴⁷ This compensating of revenue through an increase in union excise duties on petrol and diesel (together called excise) resulted in a rise of the prices of essential commodities such as foodgrains and vegetables⁴⁸ which affected the poor much more than they do the wealthy.

Table 1: Changes in Receipts – A Comparison of Prior Years

YEARS	INCOME TAX	CORPORATE TAX	GST	EXCISE DUTY
2019-20	4.10	-16.08	2.96	3.64
2020-21	-6.95	-19.91	-13.97	50.76
2021-22	22.71	22.65	22.31	-7.20

Source: Authors' calculations using Union Budget data

Excessive reliance on revenues from the GST risks increasing inequality in the future.⁴⁹ Data shows that GST collection in the current fiscal year (April 2021-March'22) post the COVID-19 outbreak increased

the most amongst all sources.⁵⁰ However, increases in indirect taxes have not been solely brought upon by the pandemic; the last four years, for instance, have seen a whole spate of cesses and charges for everyone.

Table 2: Direct and Indirect Taxes (% Of Gross Tax Revenue)

YEARS	INCOME TAX	CORPORATE TAX	GST	CUSTOMS DUTY	EXCISE DUTY
2018-19	22	32	28	6	11
2019-20	24	28	30	5	12
2020-21	24	23	27	6	19
2021-22	25	25	28	6	15

Source: Authors' calculations using Union Budget data

THE SHARE OF INDIRECT TAXES INCREASED BY UP TO 50 PERCENT OF THE GTR IN FY 2019, AS OPPOSED TO 43 PERCENT IN FY 2011.

The combined share of customs and excise duties and value-added tax reached an all-time high of 10.5 percent of GDP during 2016-17, with the previous high of 10.1 percent in 1987-88. This high was following a three-year-long steady increase in customs or excise duty on commonly used goods, such as petroleum products, metals and sugar, automobiles and consumer durables. These increases coincided with a steady increase in Service Tax to 18 percent in 2017 (under GST) from 12.4 percent in 2014.

Not only were indirect taxes used to fund India's COVID-19 recovery, the Centre delegated its responsibilities under the Disaster Management Act, 2005 to State governments. Unfortunately, India's State governments were not in a position to deal with the situation without the necessary infrastructure, both human and physical, and adequate financial resources. Data shows that Union government policies were, and continue to be, structurally so designed as to undermine India's State-led federal structure by creating a dependency on the Central government for technical expertise and financial support.⁵¹ In spite of health being a State subject, the Centre retained more resources in non-divisible pools⁵² rather than devolving them to manage the pandemic.

Table 3: Share of Central Tax in Non-Divisible Pool (%)

YEARS	SHARE OF CENTRAL TAX IN NON-DIVISIBLE POOL (%)
2018-19	15.2
2019-20	9.8
2020-21(BE)	15.3
2020-21(RE)	23.5
2021-22(BE)	20.2

Source: Budget In The Time Of Pandemic – An Analysis Of Budget 2021-22 by CBGA

The increase in the resources in the non-divisible pool during 2020-21 (RE) is on account of two cesses levied on fuel i.e., Special Additional Duty of Excise on Motor Spirit, and Road and Infrastructure Cess. Collection from these sources, as stated earlier, grew from INR 1.66 lakh crore in the Budget Estimate (BE) to INR 3 lakh crore in the Revised Estimate (RE), which is also due to the increase in duty announced on fuel mid-year, post the budget.

In 2021-22 budget, the government announced a new cess in the form of an Agriculture Infrastructure and Development Cess. The collection from health cess was estimated to be INR 800 crore in 2021-22. While cesses and surcharges add to the Union government's resources, these do not strengthen States' finances,⁵³ given the fact that the benefits of these fiscal increases are more politically determined than by what decentralisation demands.

DEPRIORITIZING SOCIAL SPENDING

The responsibility of the government towards reducing inequality does not end at ensuring equitable modes of revenue generation. It is critical to ensure that the revenue generated is used for the collective public good. Thus, revenue must be redirected towards the social sectors of health, education and social security. Additionally, these funds ought to be spent equitably and services must be delivered in a manner that addresses existing social, economic, gender and other inequalities within society. Doing this is the joint responsibility of Central and State governments.

Given the federal nature of the Indian state, State governments are crucial to the enactment and implementation of social welfare laws in India,

particularly in the areas of skill creation, mobilisation and preservation.⁵⁴ It is also partly owing to this situation that there exists a huge variation in the social investment trajectory of the country. However, India is not the only country in the world to have a federated structure; other countries manage to implement social security regimes, ensuring a basic uniformity in entitlements for all citizens with the support of their respective central governments. In India too, the role of the Central government has been paramount, especially in terms of budgetary allocations to 'social welfare', controlled by the Central government through the declaration of the annual Union budget. Unfortunately, the outlays for the social sector have not been prioritised.

HEALTH

The chronic neglect of the healthcare system in India is clear when one looks at the poor budgetary allocations to the sector made by successive governments.



OTHER MIDDLE-INCOME COUNTRIES (MICS) LIKE BRAZIL (9.51), CHINA (5.35), RUSSIA (5.32) AND SOUTH AFRICA (8.25) HAVE ALLOCATIONS MUCH HIGHER THAN INDIA (3.54).⁵⁵

This consistently poor spending on health has also created gross inequalities in the healthcare system that have been described in past Oxfam India reports.⁵⁶ Unsurprisingly, the poor state of public-funded healthcare in the country has pushed the majority of the population to resort to the private sector to obtain healthcare.

THE LIFE EXPECTANCY OF A DALIT WOMAN IS APPROXIMATELY 15 YEARS LESS THAN THAT OF AN UPPER CASTE WOMAN.⁵⁷ ADDITIONALLY, RESEARCH SUGGESTS THAT RELATIVE TO HIGHER-CASTE HINDUS, ADIVASI LIFE EXPECTANCY IS MORE THAN FOUR YEARS LOWER, MUSLIM LIFE EXPECTANCY IS ABOUT ONE YEAR LOWER, AND DALIT LIFE EXPECTANCY IS MORE THAN THREE YEARS LOWER; ECONOMIC STATUS EXPLAINS LESS THAN HALF OF THESE GAPS.⁵⁸

While Universal Health Care (UHC) has been acknowledged globally as critical for ensuring citizens' wellbeing, India's public health system has languished. As per the Rural Health Statistics 2019, there is a shortfall of 43,736 sub-centres (23 percent), 8,764 Primary Health Centres (28 percent) and 2,865 Community Health Centres (37 percent) across the country. The Economic Survey 2020-21 suggests that the current out-of-pocket expenditure (OOPE) in India, which is at 60 percent of all health expenditure, can be reduced to 30 percent by increasing health expenditure to 2.5-3 percent of the GDP. Unfortunately, in addition to the meagre allocation, even the existing public

funds for health have been invested specifically in secondary and tertiary care, and not in delivering true Primary Care (PC), this is despite the fact that experts acknowledge that primary care is the cornerstone of achieving equitable delivery and access to quality healthcare by all.⁵⁹ While healthcare of its citizens has suffered, India has become a medical destination for curative healthcare (for lifestyle diseases, for instance) with world-class care and drugs at a price significantly lower than in developed countries.

Research suggests that higher investment in healthcare and education could have reduced the spread of COVID-19.⁶⁰ We also know that the experience of the pandemic has been unequal. A survey by Oxfam India highlighted that the experience of vaccination was unequal; 80 percent people believed that it is more difficult for a daily wage worker to get the vaccine as compared to a salaried, middle-class person.⁶¹ While patients turned to private hospitals

DURING THE SECOND WAVE OF THE PANDEMIC, ANOTHER OXFAM INDIA RAPID SURVEY FOUND THAT MIDDLE CLASS CITIZENS SPENT UP TO INR 400,000 PER DAY FOR HOSPITALISATION AT PRIVATE HOSPITALS.⁶²

EDUCATION

Education is critical in the fight against inequality; increased spending on education has been identified by the International Monetary Fund (IMF) and Organisation for Economic Co-operation and Development (OECD) to be a vital part of a package of policies critical to tackling inequality.⁶³ Globally, countries with higher mean years of schooling tend to have lower income inequality,⁶⁴ although the picture is complicated with a range of other factors. An IMF cross-country analysis found that spending on education is 'always inequality reducing'.⁶⁵ However, education systems often risk reproducing inequality prevalent in society. In India, the median number of years of education girls from the poorest families receive is zero, compared to 9.1 years for girls from the richest families.⁶⁶

Despite this recognition of the value of spending on education, India's governmental expenditure on education has stagnated, remaining around 3 percent of GDP between 2014-15 to 2018-19,⁶⁷ against the historic target of 6 percent of GDP.



OTHER MICS LIKE BRAZIL (6.1), RUSSIA (4.7), AND SOUTH AFRICA (6.8) ALLOCATE FAR MORE IN COMPARISON.⁶⁸

Amidst the pandemic, when there was need for increased investment to help all students continue their education in the face of mass school closures, India saw a 6 percent cut in allocation to the education sector.⁶⁹

Even before the pandemic hit, India's education system was grossly unequal. While higher education is closely linked to social mobility, only 7.9 percent of the population above 15 years of age held a graduate degree in 2017-18.⁷⁰ The probability of having a middle and secondary public school remains lower in villages with a majority of Scheduled Caste (SC) and Scheduled Tribe (ST) communities, despite the progress made under *Sarva Shiksha Abhiyan* to cover the entire country by building new schools, especially in areas inhabited by SC and ST communities.⁷¹ While 25.5 percent of schools across India comply with school-related minimum norms (such as those related to enrolment and infrastructure) as per the RTE Act, this pattern is extremely unequal varying from 63.6 percent in Punjab to 1.3 percent in Meghalaya⁷².

The COVID-19 outbreak increased education inequities in the country by closing schools and shifting education to digital platforms while making the learning process rely more than ever on families, rather than on teachers. This has hit India's marginalised communities hardest. The pandemic has not only pushed vulnerable sections into poverty, but has also disproportionately affected girls, making them more vulnerable to child marriage, early pregnancy and gender-based violence.

A study published by Road Scholarz found that



**ONLY 4 PERCENT OF
RURAL SC/ST STUDENTS
WERE ABLE TO STUDY
ONLINE ON A REGULAR
BASIS DURING THE
PANDEMIC**

compared to 15 percent of other rural children; 43 percent of SC/ST students were not able to study at all, as opposed to only 25 percent of dominant caste

students.⁷³ India's Annual Status of Education Report (ASER) 2020 survey showed that children of families with education up to the 10th standard are almost twice as likely to have access to a smartphone for instruction and to receive family support for learning; those from poor families were left without access to effective modes of education delivery.⁷⁴

The pandemic also saw many children pushed out of school and into child labour. A study by Aide et Action on the impact of the pandemic found that 50 percent of migrant children were engaged in work to help their parents and 67 percent accompany their parents on worksites.⁷⁵

BETWEEN JUNE AND OCTOBER 2020, CHILD MARRIAGES REPORTEDLY INCREASED BY MORE THAN 33 PERCENT

compared to the same period in 2019.⁷⁶ On the contrary, wealthier parents who have been able to help their children with online learning, have been able to send their children back to school without any interruption.

While the expansion of the schooling net was responsible for enhanced enrolments, this figure could be at risk. The UDISE data for 2019-20 shows a decline of over 43,292 schools from 2018-19.⁷⁷ This could be at least partly attributed to the ongoing policy of school mergers/consolidation, but there is no official explanation from the government about this trend. School mergers continued even during the course of the pandemic. The Madhya Pradesh government proposed the merger of schools which risked shutting down 90 percent of government schools.⁷⁸ Closures and mergers of schools have hit India's poor and marginalised communities hardest. India's target of 6 percent expenditure on education (as percentage of GDP) is, thus, important to achieve to reduce the inequities in education that have been exacerbated by the pandemic.

SOCIAL SECURITY

Expenditure on social security schemes for workers⁷⁹ (under the Ministry of Labour and Employment) and the centrally sponsored scheme of National Social Assistance Programme⁸⁰ is abysmally low at 0.6 percent of total union expenditure in 2021-22, or INR 20,574 crore, a decline from 1.5 percent of total expenditure from previous year⁸¹. These schemes cover the workforce in the organised and unorganised sector, as well as widows, persons with disability and the elderly. Reviewing budgetary allocations towards social security for these segments of India's population in particular is important because, the allocations clearly reflect the commitment of the government to assist the vulnerable.

The pandemic also saw a stated focus on the 'gig economy' and its workers,⁸² leading to an announcement in the 2021-22 budget suggesting the extension of social security in the form of ESIC and other safety nets. The budget mentioned the registration of informal labour, including migrant labour, and their inclusion in a database suggesting that this step would help in formulating policies for health, housing, upskilling, insurance, credit and food schemes;⁸³ a year later, little seems to have moved on this front. The *e-Shram* portal, which aims to register all such migrant and gig workers had only been able to register 24 percent of such workers in three months, due to barriers of Aadhar and low awareness of benefits⁸⁴ and it remains unclear what purpose it will serve in real material terms, without changes in laws that bring such workers under the ambit of social security schemes. The push for registration and creation of ID

cards of migrant workers to access social security, has also failed to provide any material benefit to the working class. This is because digitisation does not solve larger problems of the wage regime and social security.⁸⁵

Oxfam India's rapid survey in the cities of Delhi, Mumbai, Pune and Bangalore in 2021 found that awareness and access of informal sector workers⁸⁶ on government schemes of food security, health, etc., was extremely low.⁸⁷ Awareness of PDS among respondents was at 66 percent, but



**ONE-THIRD OF THE
RESPONDENTS WITH A RATION
CARD WERE UNABLE TO BUY
RATION AT A PDS OUTLET.**

Only eight percent had heard of Ayushman Bharat and just one percent had a health card. Additionally, the awareness of labour codes was close to zero. While none of the respondents had heard of the Social Security Code,⁸⁸ less than one percent had heard of the Wage code.⁸⁹ To those who are not only unaware of existing labour rights but are continuously denied access, awareness generation can prove to be a stepping stone towards improving access.

Inadequate expenditure on health, education and social security go hand-in-hand with the rise in privatisation of the provision of essential goods, thus increasing inequality in the country. We explore this in detail in the next section.

PRIVATISATION OF PUBLIC GOODS

The manner in which a government provides public goods such as education, health, social safety, food and drinking water has a profound impact on its citizens' quality of life. When a government delivers top-quality education, provides healthcare, food

and drinking water, builds roads and other systems of transportations among others, it ensures that all its citizens (including the vulnerable) have access to what is necessary to guarantee a reasonable quality of life for all.

Only the state can deliver such a service that benefits everyone and this can only be sustained through public finance. Kallhoff writes:

*[if] available at all, [such services] will be available to all citizens and not to a selected group alone. Due to this structure, public goods strengthen social inclusion and a sense of solidarity. In particular, public goods have immediate anti-segregational effects... a joint commitment to make collective achievements available to each citizen.*⁹⁰

In contrast, relying on private actors to deliver essential services, risks undermining social cohesion and equal access. Viewed this way, privatisation is, in fact, a key driver of economic inequality. This section will focus on privatisation of two public goods—education and health—which should have been the obligation of the government to provide to all.

GETTING AN EXPENSIVE EDUCATION

Article 21A of the Constitution makes it the responsibility of the state to deliver education. Article 46 encourages the state to adopt educational, economic and welfare policies to protect weaker sections, particularly Scheduled Castes (SC) and Scheduled Tribes (ST) from social injustice and exploitation. However, despite this commitment, India has seen a rapid growth of private education.

The strong foothold of the private sector in education is apparent when we look at the numbers. In tertiary education, private institutions are almost twice that of government institutions, making subsidised public higher education a relative rarity in India.⁹¹ In the case of higher education, public-funded education sees only 32 percent enrolment whereas its private counterparts see 68 percent enrolment.⁹²

THE PROPORTION OF INDIA'S CHILDREN ATTENDING A GOVERNMENT SCHOOL HAS NOW DECLINED TO 45 PERCENT; THIS NUMBER IS 85 PERCENT IN THE USA, 90 PERCENT IN ENGLAND, AND 95 PERCENT IN JAPAN.⁹³

While government schools are frequently vilified for their poor quality, there are various issues in the functioning of private schools that are not adequately problematised. Private schools are

increasingly characterised by arbitrary fee hikes and gross overcharging, leading to huge out of pocket expenditure for parents. According to a study,



SENDING A CHILD TO A PRIVATE SCHOOL IS APPROXIMATELY NINE TIMES THE COST OF A GOVERNMENT SCHOOL,

including all indirect costs associated with schooling, such as buying books and transportation.⁹⁴ The costs associated with private schools lead to exclusion of the most disadvantaged groups from its ambit.

Increasing evidence shows that not only is the quality of private schooling suspect⁹⁵ but that it also leads to exclusion of Dalits, Adivasis and girls. A study in Uttar Pradesh showed that in the richest quintile, the likelihood of a child attending Low-Fee Private (LFP) Schools is 10.7 percent that for a poorest child.⁹⁶ Further, research shows that LFP schools are likely to be established in areas where good public infrastructure already exists, which defeats the argument that private schooling has increased access.⁹⁷

Further, the lack of regulation means that 17 percent of rural students enrolled in private schools are studying in unrecognised institutions (NSS 71st Round)⁹⁸. An array of instances of financial irregularities in private institutions have been reported which involves misuse of subsidies provided by the government as well as cases of land capture. Unqualified teachers, lack of a decent teacher wage and poor, unsafe, learning environments are also issues that continue to plague private schools, particularly LFP schools that constitute the largest growing segment of private schools in the country. While some States such as UP and Bihar have fee regulations for private schools, there is a need for a comprehensive, regulatory framework that covers all aspects of functioning of private schools.

Despite this, 'the haste with which several successive governments have been seeking to privatise education demonstrates that private interests are interfering with social welfare. The net result of privatisation in education will end up making education a commodity rather than a tool to eliminate social privilege.'⁹⁹ More recently, the National Education Policy (NEP), 2020 continues this trend by encouraging States to incentivise private/philanthropic activity in education, developing Public-Private Partnership (PPP) policies at State level and proposes a 'light but tight regulatory' structure, but it remains unclear what this specifically will mean.¹⁰⁰

Many of the challenges with respect to private education have come to the forefront during the pandemic. Oxfam India's survey on private schools in 2020 found that in the midst of the pandemic, 40 percent of private schools hiked their fees. In the 2021 survey, 52 percent of the parent's reported paying hiked fees for the AY 2021-22 and 35 percent children couldn't continue their education over non-payment of fees. The survey also found that 38 percent parents had to pay illegal charges as capitation fees at the time of admission and 57 percent parents had to pay additional charges that were not part of the declared official break-up of fees. Moreover, the survey shows that parents spend a substantial part of their household income (15 percent and above) on private school fees.

In fact, students have been turning away from private schools re-enrolling in government schools. This has reduced the enrolment of children in rural private schools from 32.5 percent in 2018 to 24.4 percent in 2021 among children aged 6-14, while that in rural government schools has increased to 70 percent.¹⁰¹ According to one report, 'the shift in enrolment pattern makes it amply clear that public sector education institutions are important not only because they help people absorb economic shocks but also because they ensure steady availability of a basic service like education even during exigencies'.¹⁰²

In higher education, the University Grants Commission (UGC) has also taken steps to ease the entry of private players into the public higher education system. The Human Resource Development Ministry (HRD), granted autonomy to 60 educational institutions inciting protests in 2018; a decision which was called an 'ill-conceived decision' by teachers and students alike. In this list were leading universities such as the Jawaharlal Nehru University (JNU), Aligarh Muslim University (AMU) and Banaras Hindu University (BHU) among other State and deemed universities.

Indian universities are already reeling under paucity of funds, asking universities to generate their own funds (autonomous and no longer entitled to government funding) will naturally lead to the yielding of academicians and departments to the interests of industry. In India, privatised public universities are expected to become progressively more focussed on revenue generation which would have clear implications on the fee-structure. Protests across universities and institutions against fee hikes have already spread through Indian academia. In late 2019, JNU was in the news when students and teachers came out to the streets to oppose its fee hike. The fee hike will nearly double the annual fee for JNU students living in hostels from the current INR 27,600-32,000 annually up to INR 55,000-61,000.¹⁰³ The fee hike will reportedly impact 40 percent of its economically vulnerable students.

The state of schools as well as higher education reveals that the private delivery of education is exclusionary and fails to be sustainable. A continued

rise in the cost of private education will impact the poor and the marginalised, who will have to succumb to high-interest education loans or forego their aspirations. This unequal access between the haves

and the have-nots to quality education will deepen the already existing inequalities in opportunities with long-lasting impact of unequal outcomes of employment and livelihood.

RECEIVING HIGH COST HEALTHCARE

Publicly funded primary healthcare is rooted in the idea that everyone has the right to access free, good quality primary health care, irrespective of their ability to pay. Doing so is critical to ensure every citizen has access to the healthcare in a manner that also addresses the social, economic and other barriers that prevent the realisation of good health. Research has shown that the growth of the private health sector in low- and middle-income countries risks undermining universality by disproportionately serving higher income groups and providing low quality healthcare with lower efficiency but higher costs. It is also found to frequently violate medical standards of practice and record poorer patient outcomes, although it has an edge in terms of timeliness and providing a hospitable environment to patients.¹⁰⁴ This is particularly significant in a country like India, where 27.5 percent of the population lives below the poverty line.¹⁰⁵

Since the 1990s, the dependence of Indians on private healthcare has risen sharply.

IN 1986-87, NEARLY 40 PERCENT URBAN POPULATION WAS DEPENDENT ON PRIVATE HEALTHCARE, WHICH ROSE TO 68 PERCENT IN 2014.

This also shows a corresponding three-fold increase in the OOPe of households with people spending INR 3,561 per hospitalisation in 1995-96, to INR 18,268 in 2014.¹⁰⁶ More recently,



OOPe DROVE 55 MILLION¹⁰⁷ INDIANS INTO POVERTY IN 2017.

Data from the National Sample Survey (NSS) (2017-18) shows that OOPe in private hospitals is almost six times of that in public hospitals for inpatient care, and two or three times higher for outpatient care.¹⁰⁸

Reliance on private medical care risks the exclusion of socially marginalised groups from accessing healthcare, thereby exacerbating existing health inequalities. A healthcare sector, driven by market considerations, influences consumer choice and creates demand according to profitability for the providers, thus excluding those with poorer purchasing power such as those who constitute India's marginalised groups. To make matters worse, health is increasingly being viewed as an area of investment with good returns for the private sector. The Indian health industry is expected to touch USD 372 billion by 2022.¹⁰⁹

The country has also seen an exponential rise in government-financed health insurance schemes. This is based on the belief that the private sector has already gained a strong foothold which leads to the government's desire to increasing 'public funding for the purchase of private healthcare, implemented through health insurance companies'.¹¹⁰ As of 2020, there were eight operational central insurances in the country, and 49 State-specific insurances in India.¹¹¹ The main drive of these schemes is to reduce the OOPe on healthcare and to achieve Universal Health Coverage as opposed to Universal Health Care (UHC).

Ayushman Bharat is undoubtedly the largest health insurance scheme in the world, with an insurance cover up to INR 500,000 per family per year, for secondary and tertiary care in hospitals. Its target beneficiaries

are BPL households. Despite being publicised as the largest health insurance scheme across the globe, the Confederation of Indian Industry (CII) and Boston Consulting Group (BCG) reports that only 25 percent of the beneficiaries eligible have so far enrolled themselves under the scheme. The report states,

‘IN THE LOW INCOME SEGMENTS, 66 PERCENT OF THE RESPONDENTS ELIGIBLE UNDER PMJAY HAVEN’T ENROLLED THEMSELVES DUE TO LOW AWARENESS WHILE IN HIGH-INCOME SEGMENTS, AWARENESS IS PARTICULARLY LOW IN TIER-2 CITIES, WITH ONLY 41 PERCENT PARTICIPANTS AWARE ABOUT HEALTH INSURANCE’.¹¹²

Moreover, the Government Funded Health Insurance Scheme (GFHS), with its limited coverage of inpatient care, is ineffective in reducing OOPe, which is largely incurred from out-patient care.¹¹³ This is particularly true for ‘the relatively larger population of poor and other economically vulnerable (second poorest quintile and middle class) sections [who] bear a high burden of health spending on account of outpatient care’, particularly drugs.¹¹⁴ Moreover, in rural and hard to reach areas where access to healthcare infrastructure is itself a concern, insurance has little to offer.

The impact of the privatisation of healthcare and the inadequate prioritisation of the government in strengthening the public healthcare system became visible during the pandemic too. The failure to regulate resulted in massive profiteering by many private health establishments. The rates of health services and facilities for COVID-19 increased manifold, making it difficult for even the middle-class to afford. For instance, Max Healthcare in Delhi set the cost for an ICU bed with ventilator at INR 72,500 a day excluding medicines and consumables. The raging rates forced the government to cap the rates of COVID-19 tests and treatments during the second wave of the pandemic in April 2021. Despite the capping of prices for private hospitals across the country, treatment at a private hospital still remained unaffordable for the poor and uninsured, leading to catastrophic OOPe and debts.



THE COST OF TREATMENT OF COVID-19 AT A SUPER-SPECIALTY PRIVATE HOSPITAL CAN GO UP TO 83 TIMES THE MONTHLY INCOME OF THE 13 CRORE PEOPLE IN INDIA LIVING IN EXTREME POVERTY AND 31 TIMES THE AVERAGE MONTHLY INCOME OF AN INDIAN CITIZEN.¹¹⁵

Economists at State Bank of India (SBI) believe that healthcare expenditure will rise to form 11 percent of Private Consumption Expenditure (PCE) from the current 5 percent as a result of COVID-19.¹¹⁶ Such increase in health expenditure will disproportionately impact the poor and the middle class.

The rich already have world-class healthcare at their disposal in India, considering the public funds for health that have been invested specifically in secondary and tertiary care as opposed to Primary Care (PC). In order to maximise profits, private hospitals in India have worked very hard to attract foreign patients. This move comes with rigorous governmental backing through fiscal and policy incentives, as NHP (2002) writes: ‘to capitalise on the comparative cost advantage... in the secondary and tertiary sector, the policy will encourage the supply of services to patients of foreign origin on payment. The rendering of such services on payment in foreign exchange will be treated as ‘deemed exports’ and will be made eligible for all fiscal incentives extended to export earning.’

As such, the private health sector in India has emerged as a medical destination for curative healthcare with world-class care and drugs at a price significantly lower than in developed countries. The government’s focus on ‘a heavily medicalised and high-tech curative medical interventions’ has derailed the goal to make quality and affordable public healthcare accessible to all, irrespective of their ability to pay.¹¹⁷

WAY FORWARD

The growing inequality in the country with the wealthiest 10 percent amassing 45 percent of the national wealth, while the poor struggle for access of health, education and social security calls for specific policy responses to tackle the issue. Given the above, Oxfam India believes, the following measures should be implemented:



RECOGNISE INEQUALITY IS REAL AND AGREE TO MEASURE IT. India needs to better track policy impact by improving mechanisms for its measurement. There is an immediate requirement to start disaggregating more public statistics by income and introduce regular collection of data on income and wealth inequality, while ensuring that this data is made freely available in the public domain. At least two surveys should be conducted over a ten-year period, using a reasonably comparable methodology capturing income and wealth inequalities.



REDISTRIBUTE INDIA'S WEALTH FROM THE SUPER-RICH TO GENERATE RESOURCES FOR THE MAJORITY: It is time for India to reintroduce a wealth tax to generate much-needed resources to fund the recovery from the pandemic. Tax compliance by wealthy individuals must also be drastically improved, instead of imposing indirect taxes on India's poor and middle class. Evidence¹¹⁸ shows that the threat of an audit shows the most pronounced effect on compliance and can be complemented by shaming tax evaders or by the imposition of penalties, and should take precedence over a reduction in direct tax rates which has ambiguous effects on compliance and adverse effects on revenue.



GENERATE REVENUE TO INVEST IN THE EDUCATION AND HEALTH OF FUTURE GENERATIONS: A temporary 1 percent surcharge on the richest 10 percent population could help raise an additional INR 8.7 lakh crore, which could be utilised to increase the education and health budget. The primary outcome of the pandemic must be a quality, publicly funded and publicly delivered healthcare system that works for all and not just the rich. A secondary outcome should be an education system which addresses the needs of everyone, not just those privileged to attend elite private schools or have access to digital technology. There is also an urgent need to improve medical infrastructure by implementing India's patent rights charter (PRC), standardising diagnostic procedures, building rural clinics and developing streamlined health IT systems in tandem with adopting a family-health approach, making greater investments in healthcare and training and paying frontline healthcare workers adequately.



ENACT AND ENFORCE STATUTORY SOCIAL SECURITY PROVISIONS FOR INFORMAL SECTOR WORKERS: While the government is recognising gig economy workers, it also needs to focus on laying the legal groundwork of basic social sector protections for 93 percent of India's workforce.



CHANGE THE RULES AND SHIFT THE POWER IN THE ECONOMY AND SOCIETY. It is time to reverse social and economic policies that have contributed to the poor development outcomes for India's marginalised communities. It is time to reverse privatisation and commercialisation of public services, address jobless growth and bring back stronger social protection measures for India's informal sector workers.

Inclusion of the word fraternity in Preamble is of historic importance and contemporary relevance³

In any case, what the world's present condition needs, namely bonding between humans, may be more important than the alphabet letters that make up "fraternity".

Rajmohan Gandhi | October 22, 2020



Two months ago, Harsh Mander wrote in The India Forum of the significance of the word “fraternity” in our Constitution’s [Preamble](#). Reading the article nudged me to explore the story behind that word’s inclusion.

Scholars have long noted a few milestones in the history of India’s constitution-making. A major one was the 1931 “Fundamental Rights” resolution of the [Indian National Congress](#). Meeting

in Karachi under the presidentship of Sardar Vallabhbhai Patel, the Congress resolved that “any [future] constitution should include fundamental rights of the people such as freedom of association and combination, freedom of speech and press, freedom of conscience and the free profession and practice of religion”.

Furthermore, the resolution added, such a constitution should prohibit discrimination against persons of any “religion, caste or creed in regard to public employment, office of power, and the exercise of any trade or calling” and should rule out any “civic bar on account of sex”.

It should assure “equal rights to all citizens of access to and use of public roads, public wells and all other places of public resort”. Also, the state was required, under the proposed constitution, to observe “religious neutrality”.

There is evidence that close collaboration between Gandhi and Jawaharlal Nehru produced the text of this consequential resolution, which Gandhi moved in Karachi in 1931. But it had the approval also of Patel and of everyone else who counted.

Subhas Chandra Bose, for example, played an active part at the Karachi session. Also present was Khan Abdul Ghaffar Khan and, we must assume, Abul Kalam Azad. Definitely present, too, in Karachi were the passionate spirits of Bhagat Singh, Sukhdev and Rajguru, who had been hanged a few days earlier in Lahore.

The “constitution” resolution, as this Karachi resolution may also be called, was thus adopted during a landmark moment in our journey towards independence.

Another milestone on the journey to the Constitution was Ambedkar’s powerful 1936 text, *Annihilation of Caste*, where he wrote: “What is your ideal society if you do not want caste, is a question that is bound to be asked of you. If you ask me, my ideal would be a society based on liberty, equality, and fraternity. And why not?”

In history’s light, it is thus Ambedkar who injects “fraternity” into India’s constitutional conversation.

Seven months before Independence, in January 1947, the Constituent Assembly passed its “Objectives Resolution”, which had been discussed from November 1946. This resolution declared: “All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms — of speech, expression, belief, faith, worship, vocation, association and action...”

While these words bear a clear resemblance to the Preamble to come, they do not include the word “fraternity”.

Two weeks after Independence, on August 29, 1947, the Constituent Assembly appointed a Drafting Committee, with Ambedkar, the Law Minister in free India’s first cabinet, as chairman. A Draft Constitution prepared by this Drafting Committee was the basis for the Constituent Assembly’s deliberations on the Constitution.

The volumes entitled *The Framing of India’s Constitution: Select Documents*, edited by B

Shiva Rao and available online, contain much information about the Drafting Committee's work. Page 484 of Volume III of this series shows the word "fraternity" in the draft preamble for the first time, while providing minutes of the Drafting Committee's meeting of February 6, 1948. This date suggests that the inclusion of "fraternity" may have been connected to the assassination of Mahatma Gandhi, which had occurred a week earlier.

Such a conclusion is strengthened by a letter that Ambedkar, writing as the Drafting Committee's chairman, addressed on February 21, 1948, to Babu Rajendra Prasad, president of the Constituent Assembly. In this letter, Ambedkar said:

"The [Drafting] Committee has added a clause about fraternity in the preamble, although it does not occur in the Objectives Resolution. The committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasised by special mention in the preamble." (p. 510 of *The Framing Of India's Constitution: Select Documents*, Vol. III, edited by B. Shiva Rao (Digital Library of India Item 2015.278539)).

If available, any record of discussions within the Drafting Committee that led to the inclusion of "fraternity" in the eventual Preamble might throw additional light on the inference that Gandhi may have contributed posthumously to it. Nearly two years later, in his famous speech of November 25, 1949, to the Constituent Assembly, Ambedkar would say: "Without fraternity, equality and liberty will be no deeper than coats of paint."

As Mander has pointed out, the Hindi for fraternity, *bandhuta*, sounds more inclusive than male-centred "fraternity". In any case, what the world's present condition needs, namely bonding between humans, may be more important than the alphabet letters that make up "fraternity".

This article first appeared in the print edition of the Indian Express on October 22, 2020 under the title "The answer is fraternity". The writer teaches at the University of Illinois at Urbana-Champaign.



Fraternity and the Constitution: A Promising Beginning In Nandini Sundar vs. State Of Chhattisgarh

Smaran Shetty & Tanaya Sanyal⁴

Fraternity as an ideological concept finds its birth in the French Revolution, as well as an express mention in the Preamble to the Indian Constitution. Despite this clear constitutional space, little has been said or done in its furtherance. This paper seeks to account for the development of fraternity from both a historical and judicial perspective. In looking towards the history of the French Revolution and the Supreme Court's treatment of the same, we intend to provide some clarity as to the true purpose and meaning of fraternity. In analyzing the history of the Preamble and its legal status, the authors seek to understand how courts employ the Preamble as a mechanism to interpret the Constitution. This paper concludes that the decision of the Supreme Court in Nandini Sundar v. State of Chhattisgarh⁵, is a remarkable improvement in the judicial use of fraternity, and presents certain compelling prospects for the use of the Preamble in the process of constitutional adjudication.

I. INTRODUCTION

Fraternity is indicative of a common bond or a feeling of unity between people or communities acting either within the private or public sphere.² A fraternal bond is one that does not relate to the shared use of goods but rather a shared feeling that is intrinsic to the existence and functioning of the agents themselves.³ As an ideological concept, fraternity emerged during the French Revolution, against a totalitarian and absolutist monarch and was accompanied by claims of 'liberty and equality'. Jurists have argued that the non-existence of fraternity would render the other two concepts meaningless, or worse, unfettered in their application. Liberty without fraternity, for instance, would bestow upon individuals unlimited powers to pursue individual aspirations, without regard to community sentiments and considerations. Equality without fraternity is characterized as a 'barbaric' equality, as individuals would have no consideration for the standing of other disadvantaged persons.

The idea of fraternity finds mention in the Preamble to the Indian Constitution, where "...fraternity assuring the dignity of the individual and the unity and integrity of the Nation" is declared to be a constitutional goal.⁶ Despite such a central reliance on the idea of fraternity in the Constitution, both courts and scholars have rarely engaged with the concept of fraternity. In doing so the judiciary has neglected a substantial and meaningful aspect of the Preamble. This paper aims to remedy this deficit by providing a historical and judicial account

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⁵ 1 (2011) 7 SCC 547 ('Nandini Sundar').

of the idea of fraternity. In Part II, we seek to provide a historical account of the evolution of the idea of fraternity during the turbulence of the French Revolution. In discussing the social and political milieu of French society, we conclude that the idea of fraternity arose in response to an inert monarchy, and that the idea of fraternal bonds was perceived as a means of exercising individual rights. In Part III, we undertake a judicial and historical account of the Preamble, and discuss primarily, the framing, legal status and interpretative value of the Preamble. Judicial decisions reveal an interesting dichotomy, between both a cautious as well as a liberal use of the Preamble in the interpretation of the Constitution. In Part IV, we discuss Supreme Court decisions that engage with the principle of fraternity. In doing so, we conclude that judicial engagement has been limited, and has resulted in minimal constitutional significance of the idea of fraternity. In Part V, we detail the various contexts in which the Supreme Court employed the idea of fraternity in *Nandini Sundar*. We conclude that by using fraternity in a varied sense, the Court has made significant progress in the conceptualization and understanding of fraternity

In doing so the judiciary has neglected a substantial and meaningful aspect of the Preamble. This paper aims to remedy this deficit by providing a historical and judicial account of the idea of fraternity. In Part II, we seek to provide a historical account of the evolution of the idea of fraternity during the turbulence of the French Revolution. In discussing the social and political milieu of French society, we conclude that the idea of fraternity arose in response to an inert monarchy, and that the idea of fraternal bonds was perceived as a means of exercising individual rights. In Part III, we undertake a judicial and historical account of the Preamble, and discuss primarily, the framing, legal status and interpretative value of the Preamble. Judicial decisions reveal an interesting dichotomy, between both a cautious as well as a liberal use of the Preamble in the interpretation of the Constitution. In Part IV, we discuss Supreme Court decisions that engage with the principle of fraternity. In doing so, we conclude that judicial engagement has been limited, and has resulted in minimal constitutional significance of the idea of fraternity. In Part V, we detail the various contexts in which the Supreme Court employed the idea of fraternity in *Nandini Sundar*.

III. THE PREAMBLE AND THE JUDICIARY

To fully comprehend the judicial treatment of the Preamble to the Indian Constitution, it is first necessary to understand the history behind its formulation. In looking towards the history of the Preamble, we not only seek to provide a brief historical account, but also endeavour to elucidate the aims and objectives of the Preamble, as is apparent from the drafting history..... The third or the Descriptive Part of the Preamble is also useful in elucidating the manner in which the objectives can be achieved. It comprises a set of promises that the framers intended to guarantee to the citizens such as liberty, equality and fraternity among others.

4. Fraternity and the Preamble: The ideals contained in the Preamble have been harmoniously constructed in order to realize the aims and objectives in the Preamble. The incorporation of fraternity in the descriptive clause is a useful example to illustrate the manner in which the Preamble reflects the needs of the people. As has been mentioned earlier, fraternity did not appear in the Resolution but was later incorporated as a means

to promote 'fraternal concord and goodwill' in the nation. After several amendments to the clause, its current form pursues two goals: promoting 'dignity of the individual' and 'unity and integrity of the nation'. The Preamble assures the dignity of a person before ensuring the unity of the nation, thereby emphasizing that the nation can be united only if the State has guaranteed individual dignity.⁸⁶ Scholars, however, have been sceptical regarding the inclusion of the idea of fraternity within the Constitution.

H.M. Seervai has argued that a fair and just executive can promote the idea of fraternity far better, than a constitutional mandate. Seervai also argues that the concept of fraternity is a moral and political ideal that has no relevance in understanding and interpreting the Constitution.⁸⁸ Additionally, he posits that the ideals of the Preamble themselves are ambiguous and without a proper understanding these ideals prove useless in the constitutional scheme. Seervai raises two distinct criticisms, both of which require separate consideration. First, he raises the pertinent question of whether the Constitution is competent to make a promise of fraternity when the executive through its policy would be able to have a more definite impact on fraternal relations. We agree that the executive branch of the government is in a more competent position to ensure friendly relations between communities but this does not automatically eliminate the role of the Constitution.

The judiciary, through a constitutional mandate, would then not act as the primary guarantor of fraternity but would scrutinize those policies which are potentially divisive and have adverse impacts on fraternal relations. It would then be highly simplistic to assume that merely because the executive is competent to promote fraternity, that the executive will undertake this responsibility faithfully, without any digression. To the extent that the judiciary must supplement the obligation of fraternity of the executive, we respectfully disagree with the view of Seervai. This view also finds support in the envisioned scheme of the Constitution where each organ of the state is to act as a check on the other.⁹⁰ An objection is also raised that the ideal of fraternity is vague in itself and therefore cannot prove useful in interpreting other provisions of the Constitution.

We submit that having regard to the historical context to the introduction of fraternity, and the sentiments of the drafters, there is substantial clarity as to the role of fraternity within the Indian Constitution. In particular, the sentiments of Dr. B.R. Ambedkar prove useful in providing ample clarity as to the need and function of fraternity. Dr. Ambedkar was of the view that owing to the socially tense situation due to religious, linguistic and caste based differences, the constitution should strive towards the creation of unity amongst citizens. Dr. Ambedkar also saw the promise of fraternity as a means of improving relations between different castes and religious communities. Additionally, it has been argued that a certain degree of ambiguity is desirable in perambulatory principles, as it allows for judicial craft making the Constitution suit the needs of a changing social order.

IV. JUDICIAL RESPONSE AND THE IDEA OF FRATERNITY

The ideal of fraternity, clearly contained within the Preamble, has seldom been used by the Supreme Court in arriving at its decisions. In the discussion to follow, we seek to throw light

on the cases that use the principle of fraternity in the judicial process. In doing so, the authors do not simply intend to provide a factual account of the Court's tryst with fraternity, but intend instead to expose certain patterns that emerge from the cases which are discussed.

A. FRATERNITY AND AFFIRMATIVE ACTION

The first and most extensive discussion on fraternity took place in *Indira Sawhney v. Union of India*. The question that arose for determination in *Indira Sawhney* related to the constitutional validity of two governmental office memoranda that implemented the recommendations of the Mandal Commission. In reaching its conclusion, fraternity was used by the Court in two distinct, yet related fashions: to defend the practice of reservations under the Constitution on the basis of fraternity, and also to warn of its effects on fraternal relations when undertaken in an unguided manner. The idea of fraternity was used to justify the constitutional practice of reservation for backward classes to bring about progress for marginalized sections of society.

The use of fraternity, in this context is interesting, as the justification for affirmative action is not based in the conventional theory of substantive equality, but rather, the assurance of fraternity is seen as a means to achieve equality. The Court's attention in deciding the merit of reservation then is not focused on the end, but the constitutional means through which that end may be guaranteed. In approving the practice of reservation within the constitutional scheme, however, the Court provided certain qualifications. It asserted that reservation was merely a means to achieve an egalitarian society as contemplated under the Constitution and thus is transient in nature. Reservation accordingly is a temporary concept that must be conditional and specific in its application.

The Court was also mindful of the adverse impact that reservation could pose on the relationships between various social groups and thereby undermine the promise of fraternity. The discussion of fraternity in *Indira Sawhney* is also refreshing to the extent that it explores the conceptual linkages between fraternity and equality. The Court observed that where inequality persists unity between several social groups cannot exist. Accordingly, the Court reasoned that so long as inequality or lack of equal access to opportunity existed, unity of the nation would remain a distant dream thereby additionally hindering the promise of fraternity. In *Shri Raghunathrao Ganpatrao v. Union of India*, the Court used the principle of fraternity to reject an argument that the erstwhile princes formed a separate class under the Constitution and were therefore entitled to special privileges. In abolishing privy purses, the Court, adverted to the sentiments of Dr. B.R. Ambedkar regarding the inclusion of fraternity within the Constitution.

In agreeing with Dr. B.R. Ambedkar, the Court noted that, in a country such as India, with several disruptive forces, such as religion, caste and language, the idea of fraternity is imperative to ensure the unity of the nation through a shared feeling of common brotherhood. In *Ganpatrao* the Court perceived the privileges of the Princely class as a threat to this common brotherhood as the unequal treatment of the Royal class did not have any constitutional basis. In *AIIMS Students' Union v. AIIMS*, the Supreme Court held that reservation for post-graduate students in AIIMS was not supported by the Constitution and was accordingly

obnoxious. In drawing upon the logic of *Indira Sawhney*, the Court perceived such reservation as having no constitutional basis and therefore militated against the idea of fraternity. The Court stated that the Preamble assured to every citizen the idea of fraternity as a means to achieve national unity and dignity. This assurance of fraternity would, however, be substantially undermined by reservation which is incompatible with the Constitution or any of its values.

In *Indian Medical Association v. Union of India* multiple petitions were filed challenging exemptions granted under a legislation that authorized a private non-aided educational institution to only admit wards of army personnel. The notification under the impugned Act empowered the college to deny education to backward classes. The petitioners' challenge was based on Art. 15(5) to the extent that it violated the basic structure of the Constitution by interfering with private unaided educational institutions. The constitutionality of the impugned provision was ascertained by subjecting it to several tests. One of the determining factors was whether the provision fulfilled the constitutional commitment of good governance by adhering to the directive principles of state policy and promoting fraternity among the citizens. In this regard, the Court emphasized the need for providing widespread access to education as greater access to education would promote the ideal of fraternity. A connection was also drawn between equality and fraternity in the given manner: in the absence of substantive equality or equality of means to access resources, various social groups could never achieve the requisite dignity necessary for the promotion of fraternity. The Court accordingly perceived this restrictive admission policy as a barrier to achieving fraternity.

B. FRATERNITY AND SECULARISM

In *S.R. Bommai v. Union of India*, amongst the several conclusions the Court arrived at, it declared that the principle of secularism was an essential feature of the basic structure of the Constitution. In arriving at that conclusion, the Court employed the principle of fraternity in a variety of contexts to assert that the ideal of fraternity is a pre-cursor to the attainment of secularism. The Court explained that the inclusion of secular ideals in constitutional provisions was not a product of mere chance but was consciously deliberated upon by the framers in response to the religious foundations of Pakistan. In substantiating this claim, the Court stated that India was historically a country where religious tolerance and a culture of fraternity existed, and the inclusion of secular provisions was accordingly a natural one.

The Court also established that “secularism is the bastion to build fraternity”, and therefore asserted that secular practice and thinking between diverse religious groups, would aid in the fraternal relations between those communities. The outcome of such religious tolerance would have a double impact on fraternity: it would ensure both the unity of the nation through peaceful interaction and the dignity of each citizen. The Court also viewed the principle of fraternity as a means of achieving the promise of social revolution that is implicit in the constitutional text. In this regard, the Court perceives a certain ideological sequence. The Constitution first strives towards the promotion of secular ideals that would ensure fraternal relations. This culture of fraternity would then in turn aid in the establishment and sustenance of an egalitarian order which according to the judges was the ultimate goal of the framers.

In the context of the foregoing reasoning, it is clear that the Court had no hesitation in asserting that religious tolerance and fraternal relations are basic postulates in the envisaged constitutional scheme. In analyzing the judicial decisions that actually deal with the idea of fraternity, it is clear that the judiciary has made scant use of the idea of fraternity. In the few instances where the court has engaged with the concept, such engagement has been limited. In light of this practice, two observations merit further consideration.

In the cases discussed above, the idea of fraternity is discussed by the Court by way of its obiter. Although such remarks prove useful in ascertaining the undercurrents of the judicial decision making process, they have little significance on the final verdict of the Court. Even in those cases where the principle of fraternity is located within the actual ratio of the case, it is used not as a means at arriving at the decision of the Court, but rather as a means of justifying an already concluded decision. For instance, in *AIIMS*, the Court arrived at the conclusion that reservation for in-house students was unconstitutional independent of the idea of fraternity. The jurisprudence that underlies Art. 15 was used as the basis of the decision. The idea of fraternity was instead only used as a means of justifying this decision by outlining the adverse impacts unguided reservation could pose to the promise of fraternity. Second, when courts have adverted to the principle of fraternity, they have done so in connection with other constitutional goals and values. For instance, in *Indira Sawhney*, the Court employed the idea of fraternity in connection with the aspiration towards social and economic equality.

In *Bommai*, the Court employed the idea of fraternity in relation to secularism. In these cases, the idea of fraternity has no independent constitutional significance, but rather an associational value in relation to other, more widely and clearly used constitutional principles. Although these concepts do have a clear constitutional nexus with each other, it is regrettable that the judiciary has been unable and often unwilling to develop an independent discussion around the constitutional significance of the idea of fraternity. In this regard the decision in *Ganpatrao* is commendable, for its recognition of the drafting history and the compelling need of the inclusion of fraternity in the Indian context.

V. NANDINI SUNDAR AND ITS USE OF FRATERNITY

The decision in *Nandini Sundar* arose out of a writ petition challenging the practice of appointing Special Police Officers ('SPOs') to constitute a private militia (*Salwa Judum*), the purpose of which was to control Maoist activities in the Chhattisgarh. The petitioners challenged certain provisions of the Chhattisgarh Police Act, on the basis of Arts. 14 and 21 of the Constitution. The Court held that §9 of the Chhattisgarh Police Act, which provided for the appointment of SPOs was violative of Arts. 14 and 21 of the Constitution. The judgment of the Supreme Court in *Nandini Sundar* has to an extent had a polarizing effect on scholarly opinion. Some commentators have appreciated the decision for the Court's commitment to human rights and constitutionalism and the language of the judgment that allows no room for the government to evade responsibility. Critics of the judgment, however, have raised serious questions relating to the Court's extensive discussion of economic policy and its impact on governance and human rights. Larger questions regarding the effect of the judgment on the Government's anti-Naxal operations are also being asked. Reports have also emerged that

the government has filed a review petition before the Supreme Court against the decision of Nandini Sundar.

Although each of these questions merit serious academic consideration, we confine our analysis of Nandini Sundar to the extent that it actively engages with the constitutional principle of fraternity. The Court in Nandini Sundar employed the idea of fraternity in three distinct fashions: as a buffer to unchecked state power; as a mechanism to promote more inclusive economic policy in consonance with directive principles of state policy and finally to reinforce the Centre's responsibility of upholding human rights in a federal structure. The primary characterization of fraternity was perceived as a means to check uncontrolled state power that was inconsistent with the constitutional vision of a responsible State.

The judges clearly stated that governmental policies that disempower and dehumanize its citizenry, are against the constitutional vision which mandates that power must vest in the State for the welfare of all. The constitutional vision of welfare must be achieved, according to the judges, through the assurance of dignity and the promotion of fraternity. The judges further added that when state power is not exercised in a responsible manner, then there is an inevitable breach of Arts. 14 and 21. In using fraternity in such a manner, the Court has elevated the idea of fraternity to a constitutional principle and located it within the idea of constitutionalism and not merely a noble declaration. In drawing a clear link between unchecked state power and Arts. 14 and 21, the Court has created a nexus between the threat to fraternity and a consequent breach of fundamental rights. In doing so, the Court has brought the principle of fraternity in the Preamble and the fundamental rights under Part III closer together.

The Court also employed the principle of fraternity as a means to advocate a more equitable and inclusive economic policy of the Government. The judges stated that it was the responsibility of the Government to ensure the security and integrity of the nation by means which were within the four corners of the Constitution. One of many ways to achieve a unified nation, where a culture of fraternity flourished would be to ensure that the economic policy of the Government did not give rise to "disaffection and dissatisfaction" from its citizens. The justification for such an opinion, the judges held, was evident from Part IV of the Constitution. The Court further went on to qualify its sentiments by stating that only when social, political and economic justice was ensured, would the constitutional promise of fraternity be realized. The Court stated in unambiguous terms that the State would not be able to promote fraternity, so long as it pursued a predatory form of capitalism that was inconsistent with the idea of directive principles of state policy.

The Court also used the principle of fraternity as a means to remind the Centre of its responsibility in protecting fundamental rights. The Court expressed its displeasure that the Central Government was aware of the practice of appointment of SPOs in Chattisgarh and was also involved in the reimbursement of such individuals. In response to an argument that law and order is a state subject and hence the Centre could not interfere, the Court asserted that despite the federal structure India is committed to the Central Government has an obligation to protect fundamental rights and ensure fraternity. The use of fraternity in this manner is indicative that the idea of fraternity not only binds all the organs of the State, but also binds all levels of the state to certain constitutional limitations.

VI. CONCLUSION

The use of fraternity in *Nandini Sundar* is significant as it is a marked departure from previous patterns of judicial treatment of fraternity. In locating the principle of fraternity within the ratio of the decision, and in developing a clear link between fraternity, fundamental rights and directive principles of state policy, the Court has contributed substantially to its constitutional significance. The fact that the Court equates respect for fraternity as an aspect of constitutionalism is refreshing and is likely to contribute to its further development. The most interesting development will, however, have to be the clear link established between the promise of fraternity within the Preamble and Part III and IV of the Constitution. It is here that the principle of fraternity would prove useful in the interpretation of the constitution.

Fraternity as a principle arose in response to an absolutist monarch and was perceived as a socially desirable mechanism through which individuals, by means of a corporate existence, could demand individual entitlements. The importance of fraternity, in both a historical and a legal sense, would then be in the recognition of the importance of a group's identity, as well as the fundamental rights of the persons constituting such groups. In recognizing a group, and the need for friendly relations between multiple groups, both the executive and the judiciary in particular, would be taking cognizance of the principle of fraternity and, would then be looking at the rights contained in Part III of the Constitution in a new light. These developments pose interesting prospects for the interpretation of the Constitution and merit serious academic attention in the future.





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