

# Policy

## WATCH

Volume IX, Issue 9  
September 2020, New Delhi

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**Shri Prasanna, Advocate, Supreme Court, on behalf of LiveLaw.**

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Vice Chancellor of NALSAR University of Law and jurist on Constitutional law:

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## CONSTITUTIONAL VALUES AND DEMOCRATIC INSTITUTIONS





RAJIV GANDHI  
INSTITUTE FOR CONTEMPORARY STUDIES

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## Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) works on five themes:

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.

Under the Constitutional Values and Democratic Institutions, there are three sub-themes:

- a. Justice, Liberty, Equality and Fraternity – rights and responsibilities
- b. Affirmative Action for Disadvantaged Groups
- c. Academia, Media and Civil Society as building blocks of democracy

This issue of Policy Watch deals with all the three sub-themes listed above.

The first article is a transcript of a speech titled 'Why the Constitution Matters?' by Shri Dushyant Dave, Senior Advocate and President, Supreme Court Bar Association, which was streamed live on 22nd July 2020. It draws attention to the contemporary crisis of confidence in all the important institutions of democratic governance in our country, as envisaged in the Constitution. Readers may also like to see the Policy Watch issue of Feb 2020, in which we carried the speech of Shri Sanjay Hegde on 70 years of Citizenship and the Constitution.

The second article is on the basic foundation of the Constitution – the definition of Citizenship and the attempt to amend it through the Citizenship Amendment Bill. This article based on an interview by Nikhila Henry with a legal scholar – Prof Faizan Mustafa, Vice-Chancellor of NALSAR, Hyderabad. It first appeared in the Huffington Post in Dec 2019, when the protests against the CAA were at the peak.

The third article is about one of the rights based legislations enacted during the UPA regime – the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014: Implementation Bottlenecks and the Covid-19 Crisis. This has been written by Arnab Bose, Senior Research Associate, RGICS. It shows that the actual implementation of this progressive legislation is far behind the legislative intent, seven years after enactment. It goes into the reasons why this is so and gives some recommendations on how implementation can be improved.

The fourth article is by Vijay Nadkarni, Program Coordinator for RGICS in Chhattisgarh, who also coordinated a five state survey by RGICS, of rural residents (Niwasis) and migrant workers (Prawasis) who had returned to the native villages. The results of the survey were published in the earlier issue of Policy Watch. (See : [https://www.rgics.org/wp-content/uploads/PolicyWatch\\_Aug20.pdf](https://www.rgics.org/wp-content/uploads/PolicyWatch_Aug20.pdf)). In this article, Vijay Nadkarni looks at the policy lessons from what the migrant workers went through and suggests a number of steps by which such a situation is averted in future. We also carry a succinct power point presentation by Dr Rajesh Tandon of PRIA on a similar topic, in an online National Workshop on Labour Migration: Issues and Way Forward, held on 15th Sept 2020.

The fifth article is by Ashok Khosla, Rajesh Tandon and Vijay Mahajan, is a call to action. Drawing on the lessons of the Covid crisis, it lays out a Citizen's Agenda for 2050, three decades from now but at the same time identifies what needs be done in the next three months and the next three years. The article emphasizes the need for Civil Society institutions, including the Academia and the Media, to play a much more prominent role in rebuilding India around a different vision after the Covid crisis, taking into account both the lessons why many of our constitutional provision and institutions did not work as designed and the issue which has not been dealt in the Constitution – humans versus the environment.

We hope you enjoy reading these articles. We look forward to your feedback.

**Vijay Mahajan, Director,  
Rajiv Gandhi Institute for Contemporary Studies**



# THE CONSTITUTION OF INDIA



**Preamble.** **WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN 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 of the Nation ;

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



# Why the Constitution Matters –

Interview with Shri Dushyant Dave, Sr Advocate and President, Supreme Court Bar Association by Shri Prasanna, Advocate, Supreme Court, on behalf of LiveLaw.

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Transcribed by RGICS from the URL <https://www.youtube.com/watch?v=8302y8SsiLU>. We thank LiveLaw for permission to transcribe and use this speech in our Policy Watch issue.

**Shri Prasanna: Welcome Shri Dushyant Dave, Sr Advocate and President, Supreme Court Bar Association. You will be speaking to us today on the topic “Why the Constitution Matters?”**

**Dushyant Dave:** Good evening everybody. Thank you very much Prasanna and thank you Livelaw. It's a pleasure and privilege to be on this platform. The subjects that you have chosen, and the wide range of sub topics that you have selected is very interesting and I hope it proves to be a stimulating discussion this evening. I would therefore request, first and foremost, that you should increase the time of the Q&A to 30 minutes at least so that people can ask questions and that way we will know the views of the people, also in a much broader sense.

Why the Constitution matters and what's the role of the Bar is something which we have to really seriously introspect. What is a Constitution? Constitution is a code of conduct. Constitution is a contract amongst people. The Constitution is way of life. Take, for example - we all live in families. In every family, we have a code of conduct. It's not necessary that it should be written. But we have a code of conduct. Now we follow that code of conduct.

Likewise in society, or a nation also needs a code of conduct and if it didn't have a code of conduct, if it didn't have rules to conduct themselves, then it would be a lawless society so essentially Constitution provides the rule of law. And it provides a means to people to understand what their status in societies and for those in power to understand what their responsibilities and duties are. It's therefore Constitution is a document which is equally relevant for those governed and those governing.

This is something which we have to understand that Constitution is woven into our lives on a daily basis. We all breathe the Constitution all the time without realizing that we are actually breathing the Constitution. For example take the right to life. Now we have therefore right to a better environment or a safer environment. We would therefore expect that when my breathing becomes difficult because of polluted air, do I have a right and do I enforce that right through any mechanism including going to a court, so that we can have a better environment and the pollution levels can be reduced. Likewise, there are millions of rights which the Constitution in one form or the other provides and those rights therefore govern us.

Constitution also creates organs for the governance of the nation, like the Executive, the



Legislature and the Judiciary. Each of these organs governs us in different ways and their powers are defined under the Constitution. Their duties are defined and the checks and balance over each other, are also well defined in the Constitution. These are all done in a modern state in a modern nation, and in a modern democracy like India to ensure that the country grows to become a vibrant democracy in a vibrant nation where the Constitutional principles and Constitutional ethos constantly govern at least those who are in power in Legislature, Executive or Judiciary and of course for the citizens to understand their rights and enforce those rights all the time.

If there was no Constitution there will be no safety for anybody. Everybody will become unsafe for example take right to life. Anybody can take away your life without any established procedure of law or your liberty can be taken away without established procedure of law or your property can be taken away without giving your compensation and without following the Constitutional mandate under Article 300A. Therefore Constitution assumes extreme extremely interesting facets of our daily lives without us ordinary citizens realizing how Constitution matters.

So Constitution actually matters because it's like blood flowing in your veins. Constitution flows into your life in every which way that you can think of and dream of without actually realizing it without actually sensing it all the time but it is all-pervasive. In one form or the other, whether it is in form of rights or in duties or in form of governance.

So the Constitution therefore is really very, very crucial to a modern democracy and particularly a democracy like India where the Constitution must matter the most. The preamble of the Constitution tells us about equality and social justice. Now, these are all concepts which are so important in a society where there is a tremendous divide amongst the people and the gap between the haves and have-not has increased manifold. Constitution therefore strives at bringing about social justice and equality and equal distribution of resources. Now all that is something which really is extremely helpful for a nation to grow in a systematic way, in a responsible way and in a way where everybody is happy. Ultimately, what's the purpose of an orderly society? The purpose of an orderly society is that everybody is happy and gets that happiness which a citizen deserves. So in that sense the Constitution as extremely interesting facets.

So far as the role of the Bar is concerned, we must realize that it is only the lawyers who understand and read the Constitution. Everybody is actually expected to read, especially those in the Executive and the Legislature, are expected to read and follow the Constitution. Unfortunately in this country, very few people really in governance understand or even care to read the Constitution. As lawyers we're trained to read the Constitution. And our role therefore becomes extremely important because as lawyers, we have to constantly create awareness amongst the people, the citizens at large, as to what their rights are, and what are the responsibilities on the part of those in governance. And if those rights are violated in any manner, which they are on a daily basis, then how they can get redressal against violations of those rights.

In a country where illiteracy is so widespread in a country; where people are extremely poor; in a country which is so deeply divided on caste considerations for thousands of years; in a country where religious differences are constantly simmering and creating an unfortunate problems. In



a country like this, it's very important that the lawyers can make a Constitution or rather be rather take it to the people, so that people can understand what these rights are about. And unless we do that, the Constitution becomes a meaningless document because the people must know and everybody must live or swear by the Constitution. Everybody must understand the Constitution and respect it as they would respect their religious scriptures like the Gita or the Bible or the Quran or the Guru Granth Sahib. Likewise the Constitution must be respected and loved by citizens and for creating that respect, for creating that love, lawyers play a very, very important role. So that's one aspect of the Bar, namely educating the people.

The other is enforcement of the rights of the citizens, which is extremely serious. Because large number of citizens are deprived of their Constitutional rights, fundamental rights, other legal rights or basic human rights from time to time, and they must therefore have redressal mechanism where they can approach the court. Lawyers, therefore, have a great responsibility to defend the citizens against the arbitrariness of the State against the illegal actions which violated the rights of the citizens in any manner. So this becomes very important.

The third of course most important role that the Bar can play is to see that the three organs of the state remain within the limits of their powers. Now this is very important because although the Constitution provides checks and balance amongst the Executive, Legislature and the Judiciary. But all of these three must be checked by an outside force and that outside force can be the Media or the Bar and they must constantly therefore keep a vigil as to transgressions of the Constitutional limits by any of these organs of the state.

As and when the transgression take place by whichever entity, they must be able to discuss that, take it to the media and must put it to the nation that these are the transgressions so that some kind of a moral pressure develops and these transgressions can be controlled. Because the whole purpose of the stopping this transgression seems to see that the Constitutional principles and Constitutional morality is enforced in the country and if we are unable to enforce that strictly, which unfortunately we are not today, then it is bound to result into a very serious failure of the state and which we are witnessing in many forms today that state has failed in so many areas and citizens are left without any remedy whatsoever.

**Prasanna:** *On that note, I'm reminded of the lecture that you had given to the Supreme Court Bar Association in 2018 when you were its former President. So you had mentioned the Bar Council of India rules that that members of the Bar shall not be servile vis-a-vis the Judiciary. You had lamented that we have a lot of senior members of the Bar who are not speaking up against the transgressions of the Judiciary and not keeping the bench the check. So I wonder if that has changed over the last couple of years and what are your views on where we are right now on that count.*

**Dushyant Dave:** The Bar must speak and speak more often, of course, in a responsible and respectful way, but in an extremely persuasive and forceful way, if necessary. In fact, besides the rules under the Advocates Act which the Bar Council has very beautifully framed, the Supreme Court Bar Association's aims and objects also speak about this. But in a recent judgment from the Supreme Court written by honorable Mr Justice Arun Mishra himself in a Tamil Nadu case,



where he spoke about the responsibility and the role of the Bar. He in fact puts it so beautifully. He says that the Bar and the bench are ultimately cornerstones for democracy and the Bar has a great role to play in ensuring that democracy in this country not only survives but thrives. And he therefore calls upon the members of the Bar that they must really stand up and speak. So that's a very, very interesting judgment and I would definitely recommend to members of the Bar to read that judgment, because some of the passages of that judgment are very, very powerful.

**Prasanna:** *I'm sure many of those passages of that judgment are going to be pressed into service soon because it is a season for contempt petitions, particularly against members of the Bar as we know, but because it is a sub-judice matter I don't want to go get into the details of that matter. But we go on to the next topic that we have - on civil liberties.*

*In fact, one of the recent cases that you appeared in, one of the more celebrated judgments of late from the Supreme Court was the Anuradha Bhasin case. Where although there was no relief was granted in terms of all the telecom restrictions in the state of Jammu and Kashmir. But the ratio of the judgment apart there is a feeling among certainly several scholars that in matters of civil liberties, the Supreme Court appears to have differed logic to the Executive and what the government has to say and juxtapose with the general perception that the Supreme Court is in fact the most powerful court in the world. So how do you rationalize both of these?*

**Dushyant Dave:** Well, in theory, the Supreme Court of India is the most powerful court in the world I would agree, but in reality, I think the Supreme Court is definitely sitting back and it needs to be far more pro-active than what it has been in in many areas. In fact, not just the Supreme Court but the Judiciary in the country as such because it's not just ADM Jabalpur which has been a black spot in the history of India's post-independence Judiciary.

I think the Judiciary's role especially in 1984 riots in Delhi and 2002 riots in Gujarat has been extremely disappointing. And as we have all seen that none of the perpetrators of those riots, the political leaders or the top bureaucrats or the top police officers, who were responsible in failing I would say - I wouldn't say they were actively did it- to protect the lives of thousands of innocent men, women and children, they should have really been taken to task.

The Judiciary has developed this beautiful weapon called public interest litigation, but it is rarely used when it comes to the lives of people, especially of those who belong to the minority communities and this is a very, very, disappointing and disheartening approach on the part of the Judiciary. They had a duty and they had sufficient powers to have intervene at that point of time to at least order fiercely independent investigations and to bring to the book, those who were responsible for actions or inaction as the case may be.

For example look at the situation in Uttar Pradesh. In the last two years, almost 200 people have been "encountered" in UP. Now, it's very shocking that the Supreme Court has not taken suo moto cognizance. We are now creating this culture. This started in Maharashtra when Congress government was there when one particular police officer was known to be an encounter specialist and he was proud to be one and he was hailed as a hero and given many medals. Later



it turned out that he was actually taking money from persons to kill their opponents. So it was sad. I would say that these judiciary had a duty to stop this kind of encounters. Judges must realize that these encounters reflect a failure of the Judiciary.

Because, why is it that the police indulges in encounters and why is it that society at large approves it. It is because the Judiciary is delaying criminal cases to such an extent and ultimately when the cases are heard, the percentage of conviction in this country is just about 15%. In a country like Japan the conviction rate is 99.9%. Now there are two reasons for it, one that in Japan rarely is the wrong person brought to justice. In India, it happens all the time. So that's first reason. Secondly, the investigation is very scientific in Japan, which is not there today in India. And thirdly, the Judiciary acts very quickly.

Now we need we need Judiciary must understand that if we want people to believe in the justice delivery system, because they are fast losing their faith, then Judiciary will have to act, and it's not willing to act. See, for example, since Covid came for last three months virtually the entire Judiciary in the country is paralyzed except for so called urgent matters. Now that doesn't augur well for society at large. Because there is a responsibility to ensure that at least in cases of civil liberties, where people are in jail need bail, because what happens is that large number of people in this country face jail for any number of years and ultimately they are acquitted either by the first, second, or the third court and it has virtually ruined their lives for no reason.

Now, in a country like the United States, or in Europe, almost everybody gets bail, excepting rarest of rare cases where somebody would be denied bail on charges of terrorism or something like that. The Judiciary here does not grant bail and does not decide the cases well in time. So liberties of citizens are seriously not only challenged but virtually taken away for all those years.

Take for example, the recent riot cases in Delhi. The Judiciary needs to look at it very differently than what it has done. Far from the provocateurs being brought to justice, innocent people are being brought to justice and nobody is able to say anything about it. So it doesn't speak well for us as a nation because the Judiciary is expected and must be fiercely independent. In one sense, Judiciary is really in the status of a parent of a citizen. And as parents, they should really be extremely balanced. They should not have any side. A father or a mother would never if they have two children, they would never pick up one against the other and they would always give the same love and affection to both of them. Judiciary therefore needs to look at citizens with love and affection towards every citizen and once they do that then the whole justice delivery system will change. It's slightly skewed against certain sections of the society. It's not just the minorities, but even the underprivileged and the Dalits face a lot of problem and are not getting justice in most parts of the country, for whatever reasons.

So I would therefore appeal to the Supreme Court - because the judges of the Supreme Court of have a far broader understanding, viewpoint and a far more liberal approach - they would be well advised to take note of the prevailing situation in the country and send very powerful messages through their judgments and so that the subordinate judiciary really understands as to what is right and what is wrong. Today, that there is no guiding principle which guides the



subordinate judiciary to deliver justice fiercely independently and in terms of the Constitutional ethos and four corners of the Constitutional limitations.

So that is something which people have to be made to understand that the right to life and right to liberty is something which is so sacrosanct, it is so basic and Justice Khanna very beautifully puts it in his judgment in ADM Jabalpur in his powerful dissent, which every lawyer must read. It is that these fundamental rights are not fundamental because they've been put in Chapter 3 of the Constitution. They are fundamental because they are basic human values. And if these basic human values are not protected, who will protect them ultimately? The state is expected to protect, but then the state fails who then comes into play? The Judiciary comes into play and Judiciary has therefore to ensure that those rights are protected to the hilt and without any kind of discrimination of religion, caste or gender. They must enforce them absolutely and literally. Then alone, we can say that we are successful as a democracy and that the Constitution that has been given to us is really working for the welfare of the people.

**Prasanna: Staying on the topic of Judiciary: You've looked at some of the functional aspects, what is it that the judges can do better, and what this that we may need to know. But for a moment, if we have to focus on the structural aspects, what are the reforms that you think are necessary and urgent in our Judiciary - whether it is it the office of the CJI, is it the appointment process. Do we have more safeguards in the removal process? So what are the structural reforms that you think are urgent and necessary.**

**Dushyant Dave:** Structural reforms are very virtually impossible to bring in this country. The Judiciary, essentially by temperament, is status quo-ist and they don't want any changes to be made. So that's first thing you must understand about judges. We have excellent judges - some of them are outstanding, they are world class judges. The difficulty is that collectively they are not able to do what is expected of them. Individually, they may give good judgments. They will do absolute justice. They are very, very fine and they are very learned. But what is to be expected. What is to be done is that they must put their energy, their intellect, and their resources to get there. They must pull the judiciary out of the slumber that it is in virtually every part of the country. Somebody must guide them.

It is wrong for the Supreme Court to think that High Courts are independent and we can't guide them. It's very important for Supreme Court to have constant [interaction]. It's not enough to have one conference in a year of Chief Justices and you have some nice speeches and just forget about it. I think it would be better if the SC Judges were to interact with the High Courts on a weekly basis to talk to them as to what should be a judicial approach. What should be the administrative approach? Which are the cases which require to be dealt with early? What is it that to be done about how to work within the limited resources that the government give. How to have to better management techniques, so that the docket moves quickly. All kinds of things can be talked about amongst the judges.

The Bar should be involved in that process in an extremely positive way and I have no doubt Bar will have a lot of suggestions to make. But this kind of an approach of an all-India commonality



of mind or meeting of mind has not taken place at all. And that's one of the reasons why the subordinate judiciary, which is really the back one of the Judiciary is unguided. Subordinate judiciary has outstanding judges and they do tremendous hard work with extremely poor conditions of working. But they need guidance. They need support. And both must come from the Supreme Court and the High Court constantly. Then they can work better.

You have almost something like 40 million cases pending in subordinate courts today that doesn't augur well. It's not just civil liberty which is important today - citizens' private rights are also extremely important. Somebody's probably farm has gone, somebody's house is gone, somebody's job is gone, somebody's pension is gone and likewise the disputes that citizens have with the government which is the biggest litigant, because today government is omnipresent. So there are many disputes between citizens and government.

Even if there is a dispute as to payment of GST from a trader. The government has demanded an exorbitant sum from the trader. The court expects him to deposit that today. The trader deposits it. Now you are not going to decide this case for five or ten years, he would have economically died. Therefore, there are many ways where the judiciary needs to have some kind of an approach, which will really go a long way to improving the functioning, the performance and the outcome of their verdicts. Then alone perhaps we can say that the administration of justice has been well, so,

With so many good judges it's not difficult. It's just the initiative that is to be taken. I don't know who will should do. That's a big problem. I have many a times in the past discussed with the Honorable Chief Justices as to why they don't constitute some kind of a committee to give them a report about this kind of internal reforms without structural reforms but I have never seen a positive response in the last 30 years that I've been in Supreme Court. So it's difficult for us to be [optimistic]. We have to wait and watch what happens.

**Prasanna: Moving on from the Judiciary because the Constitution is much more than that to just the judiciary and its functioning. I also want to dwell on secularism as a value. Where does the Republic stand in terms of secularism as a value, particularly in the backdrop of the CAA, the protests that have followed, the cases that have followed and the riots that have followed. Where do we stand?**

**Dushyant Dave:** See people have seriously misunderstood secularism in fact now it's become a word which is being condemned by a lot of people. But secularism is nothing but respect for each other. Ultimately, basic principle of human life is respect for others. And that basic principle is to be found in our Constitution. Under our Constitution, the word secularism was inserted in the preamble much later. But the original Constitution is founded on the principle of secularism and the protection of the minorities in Articles 26 to 30 is really something which is founded on that principle.

The Constitutional framers were extremely conscious that we must protect the culture, heritage and the religious beliefs of the small group of people who are not going to be the majority in the country and they will be minority. The minority in that sense was on the basis of the size of the population and not on the basis merely on religion. It is seriously misunderstood. So the

Constitutional framers wanted these small group of people who did not profess the religion of the majority to be protected at any cost. And that is why they gives as various measures.

Now so far as secularism is concerned it can everything cannot come from the written document. It has to come from the mindset we have to learn to respect each other. We have to learn to love each other as citizens and unless and until we do, that it is very difficult for us to have genuine secularism. In addition, because there is so much of a distrust amongst us about certain communities, which is extremely unfortunate, especially for educated people. One of the things that that educated people must understand is that Constitution creates equality everybody is expected to be equal and that equality is not just on paper that equality is in everything and you can't therefore treat a group of people separately except so far as the cultural and religious beliefs are concerned, which are protected.

In fact Dr Ambedkar was so worried about this aspect of the minority community the Muslims. He was extremely worried. He had said prophetically, something very important, on the last day of the constituent assembly debates. He said that I am criticized for these provisions in the Constitution to protect the minorities. But let me tell the diehards, that those Muslims who had a choice to go to Pakistan have gone. But those Muslims who have remained in India have decided to remain in India despite that choice to go to Pakistan. And he says that therefore they have placed their faith in the hands of the majority. And the majority, therefore, is expected to really take positive steps to ensure that this minority which has remained back becomes part and parcel of the society. And he warns that minority is an explosive force and if they are not well treated, then it will result into serious issues for the nation. Now that is the warning which Dr Ambedkar gave on 25th November 1949.

Sardar Patel, one of the greatest leaders of this country... had warned more than once during Constituent Assembly debates and said - you the majority must make minority feel comfortable. You must make them feel at home, you must look after them. And if you don't look after them, the consequences are serious. Now secularism therefore is very, very interesting. Ultimately you cannot, you cannot dictate the personal beliefs of anybody. You cannot dictate the personal clothes of anybody or personal habits of anybody. Everybody has a right in society, so long as the decency and morality are not violated.

Now, this is where we are seriously today at a crossroad. We are looking at a group of people and, trying to condemn them for their beliefs for the way they live, the way they were clothes etc. which doesn't really augur well for us as a democracy. We have 5,000 years of history and our religion, the religion of the majority - I am a Hindu myself - Hinduism has survived for 5000 years the onslaughts by everybody. Jainism came and went away, Christianity came, and Islam came. And in these numbers flourished. And the reason why does flourished over centuries, thousands of years is because it was willing to encompass every other belief and still move forward.

So I feel that today we are becoming more and more shallow in our approach towards religion. We are not really understanding the true tenets of Hinduism and trying to belittle other religions. We don't have to see the weaker points of the other religions. We have to see the stronger points of every religion and follow it. And I think the Judiciary as a great role to ensure that the



secularism, that is, the existence of the minorities in every form is protected by it against the onslaught of the majority. And this is something which needs a very serious pro-active approach on the part of the judges and I hope and trust that judges will do so as widely and as strongly as they can.

**Prasanna:** *We have unwittingly come back to the Judiciary at the centerpiece of all this. I want to dwell on that a little bit more. On the role of the court as a counter majoritarian institution. And where do you think that our Supreme Court as it currently stands, where do you think it fits? And related to that, are there other structural issues, for example, we have only three minority judges now in our Supreme Court with nearly 30 judges. Do you think we may me to alter our appointments process? What is your view on the collegium system? In fact there is another audience question as well on the collegium system, what is your view on that as opposed to NJAC and if there is an NJAC, what in your mind is an ideal NJAC?*

**Dushyant Dave:** So let me answer your last question first. I am against the collegium system. And the reason is simple. It was conceived with great ideas. And one of the most important ideas was that to bring the best from amongst those available. That's the word that Justice Verma uses in his powerful majority opinion in the second judges case. Judges who have tremendous character they are completely free from political interference and who can stand up and protect the Constitution to the hilt. Now unfortunately over the years, there have been serious disappointments in the elevation of judges and the whole process is very seriously skewed today where we are not able to get the best from amongst those available.

We are only following seniority rule and which is really very, very detrimental to the development of the Judiciary. We need judges who can really develop jurisprudence, who can really develop a law which becomes of universal application and a law which commands universal respect. So that's something very important for judges to understand that if they lay down law which doesn't meet the approval of the people and does not command respect then it has failed. So I feel that collegium system definitely has failed.

To my mind there are very serious question marks about many of judges' integrity. Although majority of them are extremely clean but still many judges with questionable integrity of crept in and there have been serious question marks on her own, but that happens in the system. But I would say on the aspect of selecting the best intellectuals with great qualities, that is not really happening and this seniority system is they not helped us at all.

I have seen when I started practice in 1978 in Gujarat High Court, we had I think 12 judges and I would say all 12 were outstanding. They were so fiercely independent and their own lifestyle was completely of so pure, and it was amazing to see what level of those judges were and they were getting salary in those days of Rs 1800 to 2000 but yet their own character was impeccable and but that does unfortunately at the level it has certainly deduce I'm not happy about the collegium system for one simple reason that we are unable to criticize the appointments. If the in NJAC were to make the appointments, at least we will have right to go there and tell them that the candidate that you are selecting is wrong for the following reasons.

Today the collegium doesn't want to hear anybody. On more than one occasion, I have personally intervened with the collegium to tell them that a particular judge should not be elevated in high court or Supreme Court, and yet they have been elevated and I've never even been communicated a response to my letter of which was based on facts, not on imagination. So in the collegium system, it is completely opaque and we don't know what happens behind their closed-doors and what other considerations which weigh with the honorable collegium members to elevate judges to the High Court or Supreme Court.

But if it was NJAC, it would be transparent and at least we would have a right to question, besides giving material and to criticize the appointments now that something yes of course very difficult to choose between the two systems because the Executive today has become such that it is not expected to select the best. So, one would hope that NJAC would be constituted of fiercely independent people and therefore those fiercely independent people will put all their minds together and do something. But the problem is that in this country I think we have lost a lot of ground in the last three or four decades and it is therefore very difficult for us to find men and women of sterling qualities who can take this country out of the problems that are in the appointment of judges or in every other field. So public life has certainly suffered immensely.

So far as the protection of secularism is concerned, I would say that Judiciary is fairly balanced. I would not say that Judiciary does not in fact [protect the minorities]. Time and again I've seen judges coming to the rescue of people, but, but judges need much more, much more proactive approach when it comes to treatment of minority by the Executive and by the majoritarian community. And to that extent they should have more healing touch than what they had so far. So that is definitely that would go a long way in the healing the wounds that minorities feel in the country.

**Prasanna: What do you think about reservations of the Judiciary and judicial appointments?**

**Dushyant Dave:** Well, I am in favor of reservations. Period. We have had caste system over 5,000 years and you can't wish it away in 75 years. Even today, in every case we let that you go. You'll find our system is so strongly entrenched that the underprivileged and the Dalits are not able to walk shoulder to shoulder with people of the higher caste society. So, therefore, the disadvantage with which the Dalits and others are born and brought up on are very difficult for us to really imagine. We can't really go into their mental framework to understand what kind of challenges that they face what we kind of treatment they are confronted with and what kind of mindset that they constantly have on account of these considerations. So I feel that reservation is extremely good reservation must be there and reservation should be properly implemented and I feel that it would be. Although I'm very clear that on religious or reservation grounds, we should not make appointments to higher Judiciary. It should be only on the basis of excellence, but I have no doubt that there are a large number of candidates available from either the religious minorities or from the vulnerable sections of the society or the Dalit communities who are outstanding and who must be considered for appointment to the higher judiciary and they should be considered. So to that extent I do feel that they are being ignored over a couple a few decades. And that is not a good sign. So you don't have to compromise quality, you don't have



to compromise competence, but you can still give effective representations to these people and that should be done.

Equally women must have representation because India is almost what about 48% plus population of and we have just about three honorable judges in the Supreme Court. So I think women should be given representation because they're they are outstanding lawyers. There are so many of them who deserve to be considered. So I think the judicial system must be representative and if it becomes representative on excellence basis not on compromising quality. On excellence bases, if you make it representative then the justice delivery automatically changes because the injustices suffered by the vulnerable sections of the society be it women, Dalits or the minorities, these judges then can appreciate the problems. And can fine-tune the justice which is being meted out to them. So to that extent I would say it will have serious positive impact on administration of justice.

**Prasanna:** *So we do this, we can now go to the questions and so I'm curating some of the questions that have come in from our viewers here. The kind of melds with one of the questions that I left out as well, so I take this first. This is particularly [to you] as the president of the SCBA. The courts have all effectively shut down for most causes except for the most urgent causes as you indicated earlier. How far suspension of these rights, the right to access justice should be permissible to stretch given the idea of our Constitution. How far access to justice may be labored with urgency.*

**Dushyant Dave:** See I personally feel that it is not right for Judiciary to have gone into a lot. Because to me right to justice is right to life. And therefore, that right cannot be suspended even for a day. Nobody is suggesting that judges lives is cheap and therefore they should die or that the court staff should take unnecessary risk and they should all be open to Covid 19. No, that's not the situation. We love our judges, we love our court staff, and we wish them long life and good health, but. Keeping that in mind, I think it went. Every segment of society has opened up the government itself has lifted the lockdown. There is no reason for Judiciary to continue to have this lockdown and to have these farcical video hearings. I think, to that extent, the judges and particularly the Supreme Court has done great disservice to the nation and because Supreme Court has done it every High Court and every subordinate court is also refusing to really open up.

I feel that the physical hearings must restart forthwith. In fact yesterday only we had a joint meeting of the Executive Committee of the Supreme Court Bar Association and the Supreme Court on Record Association ...and we had very positive and fruitful discussion for about 1.5 hours on Zoom and we unanimously agreed that the physical hearings must as start as soon as possible and they must start, of course, with strict conditions so that we can protect, not only the lives of the members of the Bar, but also the court staff and all other stakeholders. But unless we do that we are doing, great, great harm to administration of justice. No country in the world has shut down.

What is really sad is that two of the most important checks in our Constitution, the Parliament and the Judiciary, both have virtually shut down, leaving the Executive a complete free hand. Now

this is well there is serious issue. Because the Executive actions during this Covid 19 - whether right or wrong I'm not going into that - but must be subject to test by the Parliament and by the Judiciary.

One of the reasons why Dr Ambedkar justified parliamentary democracy over the presidential form of democracy was that there will be daily testing of the Executive, of the government on the floor of the parliament. Now you have shut down Parliament for four months, you've virtually shut down the every court performance and the High Courts and the Supreme Court are the ultimate protectors of the fundamental rights of citizens. So it's not good. It doesn't speak well for us as a nation that this is happen and I would really I would I would appeal to the Honorable Chief Justice of India and his colleagues in the Supreme Court with folded hands that they should really immediately start physical hearings. They should sit down with the Bar. They have refused to talk to us for four months. They should sit down with the bot to take to decide as to what kind of precautions should be taken and then restart today they have said that they have appointed a committee of seven judges and in four weeks, they will decide.

Now why did they wait for four months to constitute a committee of seven judges? It's sad they even though they should have done it on 23rd March, so that we would have had the entire system in place. So I've said this is nothing but just an act to defer the ultimate. Apparently there must there may be some fear amongst the judges but then everybody has to take the risk. I have said no publicly that millions of safai karamcharis have been working every day across every street in India for what. And they are the most vulnerable to Covid 19. The policemen, the doctors, and the nurses, you name them, the people have been working so why should they, why should the Judiciary decide upon itself. We are service providers. We cannot do this, it's sad that judges have done this, but in any other country through that this would have been unacceptable. So I feel in the Indian context judges at a greater responsibility and I would have expected much greater majority on the part of the judges to have looked at the entire exercise. I think it's sad I only can say that.

**Prasanna:** *It is interesting you mentioned the court as a service providing entity. There is a general feeling certainly among litigants that the court is designed such that it is very court oriented and not very litigant oriented in several of its processes in several of its procedures and all of that. Is that true in your experience or has there been a change over the year? Is it still viewed as an authority which is oriented towards itself rather than litigant oriented.*

**Dushyant Dave:** There is no doubt about the fact that our judicial system follows these British form without really following the changes that the British themselves have made. And none of the single biggest problems of our Judiciary is that it is too procedurally driven. And because of that insistence on procedure, yes injustice is being done. So that is something where judges need to be much more relaxed. They need to be much more liberal, much more broad-minded to give relief because you must understand, and I no doubt judges understand this well enough that there is tremendous injustice in our society, either it is at the hands of the government to citizens or it is at the hands of the rich and the powerful to the others. So there is tremendous injustice.



We are a highly litigious society because, those who can do drag the other person to what are strong enough to sustain the court system for a long, long time, but the person who was dragged by them is unable to sustain it. And that creates a very serious problem because financially you can't fight it. The legal aid system is in complete chaos where it doesn't engage the best of the lawyers to defend these people and he generally all these legal aid matters you find in court, virtually every one of them is filed after the time has expired and virtually everyone gets dismissed because the representation is not good. When I sit in court, many a times I see counsels saying it's only a legal aid brief. That's not the way to do it.

The time has come that government must and the judges must revamp the legal aid system so that the best of the people are briefed for a common man who is unable to defend himself because he doesn't have the resources. He comes to legal aid because he is unable to get private lawyers. So you can't then thrust upon any lawyer. I am not making any comment on in no lawyers all that I am saying is that we need excellence even in legal aid services and to that extent I think judges owe a great duty because the legal aid is entirely virtually controlled by the judges in the country and they need to sit and seriously introspect about it.

**Prasanna: Moving on, there are several questions about the NJAC. ...So one thing that is interesting is - What is your opinion on prominent jurists or academics being appointed as a Supreme Court judge even somebody with virtually no practice.**

**Dushyant Dave:** I think [they] must be appointed because one of the things that Supreme Court is lacking today that you see in the judgments being delivered these days which are hardly judgments is the absence of intellectualism. There are some outstanding judges who are great intellectuals but by and large the High Courts and the Supreme Court over the last two decades are not giving [ ] judgments. You read the judgment of the Supreme Court in the '50s, '60s, '70s, even '80s, early '90s right up to Chandrachud, Bhagwati, Krishna Iyer, Tulzapurkar, or Chinappa Reddy. They really gave fantastic judgments which were really laying down law in an extremely beautiful sense. Take for example anticipatory bail judgment C... case I wouldn't the kind of approach that Chief Justice Chandrachud has in that and how beautifully he expounds it, is something which people must understand, and that's, that's something which is missing today in last few year,

See the United States, for example, it's a misnomer in India only that only lawyers are supposed to know the law and they are always I think they are always sought after for opinions even by a civil society, and by politicians and bureaucrats, you go to America or Europe, you'll find that the best of the opinions are given by law professors. And these are the professors who are highly respected you'll see anywhere, whether you see CNN, whether you see BBC or whether you see anywhere else or you read top magazines Economist, Time magazine or any other magazine the opinions of these professors are so highly respected.

We have to create therefore that kind of a situation where we respect these kind of people. Take for example Professor Upendra Baxi that was a man like them had come to the Supreme Court in its heyday he would have contributed immensely to the development Buffalo. So they're like Professor Madhava Menon outstanding, and the Vice Chancellor of NALSAR, I forget his name. He is also outstanding.

There are many such people across the spectrum who are so good, that the institution will benefit with their thoughts, with their level of intellectualism and law can never remain static. Law is a constantly expanding process. And that law must be expanded to sub-serve human kind. You cannot sub serve it with old ideas, with antiquated ideas and borrowed ideas. So you have to do it with fresh ideas and for that I would say that Jurists must be must be involved must be considered and must be appointed, and I'm not at all worried whether they have even single days' experience as a lawyer or not.

**Prasanna:** *Then are a few questions that on topics that we've not covered so far or discussed but they relate to contemporary political developments, and therefore I thought these are interesting and we can take one of them. Is whether the Constitution places too much faith on the institutions of the Governor and speaker who are by definition party appointees?*

**Dushyant Dave:** No, there is no doubt about the fact that over the years and they started with the Congress government, so one can't blame the present BJP government alone. But the kind of people that we have appointed in the Office of the Governor is sometimes pathetic. We have seen governors who have conducted misconduct themselves so badly that one is even ashamed to talk about it, it's not an office, which is to be filled up by retired politicians or even retired chief justices. It is an office which must be filled with fiercely independent people who really can be a kind of guide to a whole state. They must be role models and they must be in a position to be to take extremely independent [stands].

Because ultimately a governor is a representative of the President in a state and as a representative of the President, the Governor must ensure that the state functions within the limitations of the Constitution. These state government and the state conducts itself in a proper way, so to that extent, has a great role to play, although it's a passive role, it's not an active role. He's merely a Constitutional head of a state but he can certainly can certainly guide in a brilliant way and that is what it should be - the Governor's position.

In the good old days the Governors were absolutely amazing. We had when I was young in Gujarat we had Mr Mehdi Nawaz Jung as the Governor. He was a role model. We had Mr BK Nehru who has Governor when I started practicing and what an amazing people live their own content was absolutely unbelievable. The way, did their level of intellectualism was very high, the way they conducted, the way they guided, the way they spoke. The governors they spoke they spoke with a message to people as also to the politicians and it was a very subtle message that we are watching you, so please make sure that you don't make mistakes. Now that is something which is seriously missing in our Governors and Speakers and we, as a result of that, there is constant violation of the Constitution on a daily basis as we see all the time and it. It is something which is not good for us as a nation.

**Prasanna:** *The next one interestingly links criminalization of politics to custodial violence and police atrocities that we've seen in recent times. Given that be moved in the past 30 years from lamenting the criminalization of politics to almost celebrating it, is there a case now to isolate the police from the Executive under some Constitutional mechanism? So this is another structural suggestion by someone.*



**Dushyant Dave:** It's a good question, but you must remember that every Constitutional authority that we have created today has not remained away from the political influence. So whether it is the Judiciary, whether it is the CAG, you name the Constitutional functionary, and we are unable to find fiercely independent institutions. All institutions have suffered over the years, under the onslaught of the politicians and which is sad because the whole purpose of creating these Constitutional bodies was to keep check on the Executive, namely the political Executive and which has not really worked well. Mrs Gandhi started that kind of an onslaught on the institutions, and that has continued even under the present Prime Minister and which is not healthy because Prime Minister Modi in fact can provide a system which can be so good for generations to come where he can be remembered but it's not happened. Well, it's not happening and which makes one wonder. I've been as to why a powerful Prime Minister like him or Mrs Gandhi would not leave behind a legacy of strong Constitutional checks and balances, so that the democracy is nourished and nurtured in a proper way.

So police reforms in this country are very difficult for two reasons. One, the recruitment of the constabulary over the years as is seriously mired in controversies of corruption. We know how these constables are being recruited across the states in the country. Secondly, the nexus between the politicians, the criminals and the police is a matter to be seriously worried about, and I don't think we can wish it away overnight, it requires a very serious introspection and it's only a person like Mrs Gandhi or Mr Modi, who could have really tried to dynamite that nexus but sadly both don't seem to have really done.

We find that even in the present Parliament, there are large number of honorable Members of Parliament who are having criminal cases behind them. And in the assemblies it's very common across the country. Irrespective of political party. It has nothing to do with the party. Every political party is encouraging the criminals. So it's, it's something which is which is which doesn't augur well for us as a democracy and I think we are leaving behind for future generations in nation full of problems and problems alone. I don't know whether they have anything to really hope for in the future.

**Prasanna:** One of the questions is on the Bombay High Court having refused to recognize lawyers as essential services and how the Bombay High Court has disallowed their travel by suburban local train services for emergency workers. This I had not really read about it, I have not really followed this but if that is the case and I'm sure there are some like that Bill now is not to be censured at least early on during the lockdown period so that was that something that you agreed with what that something at the Bar generally agreed with.

**Dushyant Dave:** And with great respect to the Bombay High Court, but I don't think it has taken the view correctly. You may not call a lawyer providing an essential service. But a lawyer is part and parcel of the administration of justice, which is an essential service, which is a fundamental service. The basic structure of the Constitution is Judiciary and justice delivery. Now if you interpret in that sense, you can't isolate the lawyers saying that lawyers will not be allowed to go and yet the system will be treated as basic or fundamental to the functioning of the Constitutional system because without lawyer you can't. So I think, it is a very narrow view

which Bombay High Court has taken and I hope the Supreme Court will reconsider that view because lawyers should be allowed to go.

I remember Chief Justice PD Desai who was then judge of the Gujarat High Court and riots and taken place way back and as a result, the city of Ahmedabad was in lockdown. I was a young assistant government pleader and somebody mentioned to him in the morning at 11 o'clock that lawyers are unable to come from the old part of the city because of the curfew. He called me and you said that you please tell the Commissioner of Police that if any lawyer is prevented from coming to the court I will initiate contempt proceedings. Now that's the level of love that judges had. PD Desai is my role model. He became chief justice of Calcutta and Bombay High Court and refused to come to the Supreme Court when he was invited by Chief Justice Venkatachaliah. His heart used to throb for justice. And this is one example.

Another example. I remember there was a common municipal playground where you state police said during the riots pitched a tent and occupied it and the children just telephoned the high court to say that our playground is taken away and he called me and he said I want this tent to be removed within one hour. So we had to do it and the whole administration knew who PD Desai was, and they never ever made the mistake of not following his directions because the power of contempt that he wielded in the right way was so beautiful. And if you genuinely believe that Judiciary must be respected and respect must be commanded by the Judiciary by exercising this power to that since singularly missing the judges are just refusing to take any contempt initiative against the Executive while they are quite willing to take against the citizens so it doesn't speak well because the authority of the Judiciary is diluted. On the concept I would say that lawyers are providing essential service in an overall structure of the system.

**Prasanna: And a few more on the structural questions of Judiciary this one that is asking, well, what are your views on the establishment of a National Court of Appeal and separating the Constitutional court. So it is basically to break up the Supreme Court.**

**Dushyant Dave:** No, I don't think I'm against any kind of National Court of Appeal. Frankly, time has come for us to realize the greatest damage that we have done to this country is tribunalization of administration of justice. We have taken away from the High Courts, powers under every Act and conferred on these tribunals which are law to themselves. These tribunals are so unsatisfactory. They are totally inefficient they are manned by incompetent people and the allegations of corruptions are very serious. And therefore, I am very much against these kind of creating additional [tribunals]. What we need, we can easily answer the problems that we have by appointing the best people in the subordinate Judiciary, in the High Court and the Supreme Court.

If you have the best people giving the judgment, the Supreme Court and the High Court knows that the judgment given by these subordinate judges must be good judgments. They are well written. We know that their integrity is unimpeachable. We would therefore not interfere. Likewise when High Court gives the judgment, the Supreme Court must know that these judges are giving judgments which are not only sound in law are well considered on facts, but they are

by judges were impeccable in character. Why should we therefore interfere with their view? Even if they have taken a particular view.

So this system has to be inbuilt to reject this kind of multi-layer appeals that we have and every case appeal need not be filed and even you filed in the Supreme Court and if filed, need not be entertained. So what is really happening today is that the Supreme Court is too liberal in considering cases and therefore bad cases are getting in sometimes that I think is not getting so I think a national liability is not the answer unsaid is to strengthen the existing legal system by many people of absolute competence and excellence and unimpeachable integrity and that's a process which is very difficult for us to achieve.

**Prasanna:** *And another one, to put you on the spot as the Bar President, what are your views on the establishment of different benches perhaps in South India and Eastern India.*

**Dushyant Dave:** No, I don't think it would be good for the Supreme Court to be split like that. Even within the same building the judges are not following the judgments of their brother judges. So if you have these benches in other cities they would perhaps start ignoring the other court altogether. Yes, what we need is to the litigant the cost is very heavy, therefore, we may need to really improvise the legal aid system in a much better way so that litigants who cannot approach the Supreme Court because of cost considerations are really taken care of. Otherwise, I don't see why we should have any other bench in there of the Supreme Court anywhere I am against even the benches of the High Courts in states. In fact, they should not create so we need benches. They should have only one seat and that's the end of the matter.

**Prasanna:** *Thank you very much sir. We'll close with one must still question that I keep dismissing but that that question seems to be seems to keep popping up. Why did you personally choose to remain in law practice as against joining the Judiciary? I think you might not have expected the question here but please go ahead.*

**Dushyant Dave:** So is, I must tell you that it is not difficult to answer. My father was a judge of the High Court. He was a district judge directly appointed and became High Court judge said it was not when you tried to it. But I have grown up in a family when I have seen that we had serious financial hardships at home. I have seen days in the last week of every month my father would not even have money to buy rations or petrol for the car to go to the High Court and in those days there was no government car he would not even call for a high court car. He would rather walk down or go in a 3-wheeler. I have seen very difficult times, throughout my college career. I had an allowance of 30 rupees per month.

I was very clear that you can contribute as much as a judge as you can contribute as a lawyer and I when I think back over my 42 years of practice I do feel that I have not disappointed myself about my contribution to the society and to the nation generally. I'm quite happy about it and I have been able to provide good life to my children, my wife and myself, which is what I really wanted to. I was offered to be a High Court judge by Chief Justice Venkatachaliah and I was very young 37 or 38 or 39. They were very keen but I told Chief Justice Venkatachaliah that I don't have the temperament to be a judge. I have a short fuse temperament and it's not good for



person like me to be a judge. I'm much better on this side of the Bar than becoming a judge and I have not regretted it, honestly.

**Prasanna:** *Thank you very much sir. For this very enlightening discussion with your characteristic candor and forthrightness. I'm sure our viewer and audiences have also enjoyed it as much as I did. Thank you very much once again for spending the time to talk to us.*

**Dushyant Dave:** Thank you Prasanna. Thank you Livelaw. Thanks to all the participants.

# Interview with Faizan Mustafa

Vice Chancellor of NALSAR University of Law and jurist on Constitutional law

Nikhila Henry in the Huffington Post<sup>1</sup>



Source: Hindustan Times via Getty Images

HYDERABAD, Telangana — The Citizenship Amendment Bill violates India’s “constitutional vision” Faizan Mustafa, Vice Chancellor of NALSAR University of Law and jurist on Constitutional law, said in an interview.

On Dec 11, 2019, the Rajya Sabha passed the controversial bill, which offers a path to Indian citizenship to persecuted refugees from Pakistan, Bangladesh and Afghanistan from practically all religious groups except Muslims. The law was passed in the backdrop of the Bharatiya Janata Party (BJP)-led government’s proposal to implement a National Register of Citizens, potentially putting in motion a two-step process where millions of Indians would be forced to prove their citizenship — and Muslims left out the process would have little legal redress.

<sup>1</sup> [https://www.huffingtonpost.in/entry/citizenship-amendment-bill-why-hindus-must-also-fear-it\\_in\\_5df1b3b5e4b06a50a2e9e06f](https://www.huffingtonpost.in/entry/citizenship-amendment-bill-why-hindus-must-also-fear-it_in_5df1b3b5e4b06a50a2e9e06f)  
Posted on 12th Dec 2019 Accessed on 17th Sep 2020

The bill was passed amidst the bitter objections of India's opposition parties.

Yet even Hindus left out of the NRC will be affected, Mustafa explains, as they will first have to admit they aren't Indian citizens, and then somehow prove they were original inhabitants of one of the three countries covered by the bill.

Edited excerpts from the interview.

**The opposition has referred to the Citizenship (Amendment) Bill-2019 as “unconstitutional” and “anti-constitutional”. As a constitutional law expert do you think the opposition is right?**

Our constitutional vision is not like that of Israel which goes by the theory of “law of returns” that stipulates that the country is the natural home for all Jews. Our constitution has not assigned the country to any religious group. India is a natural home for people of all religions and for citizenship we have not prescribed any religious criteria. Hence, adding a religious test to citizenship when there is no such test in the Constitutional provisions goes against the constitutional vision of the Indian constitution.

Most importantly, the bill is incompatible with the ideals of secularism. Even though the word secular was inserted in the year 1976, the Supreme Court in Kesavananda Bharati Vs State of Kerala judgment, 1973 had observed that secularism is part of the basic structure of the constitution (The judgment reads, “every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same.

The basic structure may be said to consist of the following features: (1) Supremacy of the Constitution; (2) Republican and Democratic form of Government; (3) Secular character of the Constitution; (4) Separation of powers between the legislature, the executive and the judiciary; (5) Federal character of the Constitution). The constitution does not uphold any religious text, everybody has the freedom of religion, and to hold official positions one does not have to follow any particular religion. So, to say that the Constitution was not originally secular and that it was made secular only in 1976 is wrong.

Also, by assigning automatic disqualification on the basis of religion to a particular religious group, it denies socio-economic and political justice which is inscribed in the preamble of the Constitution. It also goes against the freedom of belief, faith and worship which is incorporated in the preamble.

So CAB strikes at the very root of our republic and violates our Constitutional vision. It is the very betrayal of our republic because our republic is founded on the principles of justice, equality and on principles of liberty.

**As per Home Minister Amit Shah, Article 14 of the Constitution, which deals with equality, allows classification. Can the CAB stand the scrutiny of “reasonable classification”?**

Article 14 is the fundamental core of the Constitutional law and it not just confines to citizens but also non-citizens because the words used in the Article are, “any person”. But, I agree with the honourable Home Minister that Article 14 permits classification. However, the



classification has to satisfy three tests—reasonability, rational object and non-arbitrariness. The CAB fails all the tests, miserably.

The classification is not reasonable because it is not based on intelligible differentia. Meaning, there should be an intelligible difference between whom/what you exclude from the law and whom/what you include. According to the CAB (and the Home Minister) “persecution” in Pakistan, Bangladesh and Afghanistan is the precondition for citizenship. But followers of any religion including Islam can be persecuted in “regressive”, “undemocratic” countries. It is not completely true that only religious minorities are persecuted in these countries because people can be persecuted for political reasons or for being liberal or atheists too.

Author Taslima Nasreen of Bangladesh is an example. And if, (as the Home Minister said) CAB is about protecting persecuted religious minorities in the three countries, then as per intelligible differentia, it cannot exclude persecuted Muslim minorities including Ahmediyas Muslims or Shia Muslims of these countries. Going by the same reason, CAB cannot restrict itself to just three countries of the neighbourhood because persecuted religious minorities exist in countries including Bhutan (Christians), Srilanka (Hindus) and Myanmar (Rohingya Muslims) as well. So the classification is not reasonable.

The classification also does not have a rational object because the Supreme Court says that rational object should be a just object and should not be arbitrary. This brings into question the cutoff date for availing citizenship as per the bill—December 31, 2014. How and why did the government decide that “religious persecution” ended on this date? Did the three countries which are listed become secular and progressive after this date? Did they amend their Constitution after this date? So that cutoff date itself proves that the government’s action is neither rational nor just. Meaning, there is no rational object.

CAB is arbitrary also because it does not include all religious minorities and all countries in the neighbourhood. It is arbitrary because one of the countries, Afghanistan which is included in the list of countries was not formed by partitioning India. It is also not clear why other countries I mentioned earlier were excluded and Afghanistan included. Besides, as per the Indian Constitution rules religion, sex of a person and place of birth, cannot be grounds for reasonable classification. These are prohibited grounds.

So in essence, CAB is a class legislation and not a reasonable classification because it mandates that an entire class is out of its purview. CAB is essentially saying that people who are Muslims are out of its ambit and hence it is a class legislation.

### **Does this also mean that there are inherent contradictions in the bill?**

There are inherent contradictions in the whole argument around the bill. Apart from the fact that the bill does not include all persecuted minorities, all persecuted people or all neighbouring countries, it also has blatant contradictions like two kinds of treatment for “persecuted religious minorities” from the three selected countries depending on which part of India they take refuge in.

For instance, a persecuted person can take refuge in any part of the country because people under persecution go to the nearest place of escape when they are driven out of their homes.

But if such a person reaches some states or some areas in Northeast India, they will not be considered for citizenship because CAB is not applicable there (Exemptions include places in Assam, Meghalaya, Mizoram or Tripura which are included in the Sixth Schedule of the Constitution that ensures tribal autonomy and protected areas in Arunachal Pradesh, Nagaland and Mizoram which fall under 'The inter line' as notified in the Bengal Eastern Frontier Regulation of 1873 where outsiders can enter, travel or stay only with an Inner Line Permit). How can that central reason or the fact of persecution (based on which citizenship is given) change when someone is in Kohima instead of New Delhi?

The other part is that the ruling Bharatiya Janata Party has contradicted itself and its promises. In 2016, BJP said that they will honour the Assam accord which had set March 24, 1971, as the cutoff (for migrants from other countries to avail citizenship). Besides, Sarbananda Sonowal and Hemanta Biswa Sarma have also argued in the Supreme Court that July 19, 1948, should be considered as the cutoff date for according citizenship in Assam. These two dates were violated in the CAB and the cutoff date was brought to December 31, 2014. And now we have Assam up in flames because they do not want the new cut-off date, among other reasons.

### **How are the Indian Muslims going to be affected by the CAB?**

India as a country had rejected two-nation theory (one country for Hindus and the other for Muslims). As the country rejected this theory, Muslims in India had also rejected it, even though they could have opted to move to Pakistan. They stayed because they thought the country will not take into account religion for any political reason or while passing laws. It is this trust which Indian Muslims had in the Indian Constitution that was betrayed by the CAB which includes religious test as a criterion for classification of citizenship.

The CAB if linked to the National Register of Citizens will bring in more chaos. When it implemented NRC in Assam, the government presumed that 'illegal' Muslim migrants from Bangladesh and Pakistan will be excluded in large numbers. But in reality, this number turned out to be less and it was found that migration from Pakistan was near nil and that from Bangladesh was less than expected. It seems like the only way to exclude Muslims was to bring in religious classification which is arbitrary in nature.

### **Does the CAB at least benefit immigrants from other religions?**

What is worse is that this bill is going to hurt even the Hindus or other communities. If the idea was to help people who were excluded from NRC Assam because there were discrepancies in the records, then even that cause stands defeated now. That is because the initial claim of such people was that they should be included in NRC because they are essentially Indian. Going by this claim, they had attended foreigners tribunals and had made representations. Now, with the CAB stressing on "persecuted religious minorities" from three countries, they will have to prove that they are from those countries. How can this same group of people (who once claimed to be Indian) now claim that they are from a foreign country? How will they be able to prove that they are citizens of those countries now? How can a person born in Guwahati, be the person be of any religion, be able to prove that they are originally a "persecuted minority citizen" of another country?

**According to you, CAB is against the Constitutional vision and betrays the Indian Muslims, even as it fails to benefit any group of people of any religion. Can you say, how a government with honest intentions to support persecuted people or even minorities of neighbouring countries could have done it, without violating the structure of the Constitution or excluding any particular religious group?**

I am happy that our government cares for the persecuted people but it cannot be selective in its care. Each persecuted person, who is persecuted either by religion, political opinion or any other reason could have been given shelter in India if all were given Indian citizenship without any exemptions. And this could have been unanimously passed in the parliament.

To achieve this all that the government had to do was to remove the “ineligible” criteria in the Citizenship Act-1955, which prevents “illegal” migrants from taking citizenship. All “illegal” migrants could have been given citizenship provided they spend a stipulated period of time of residence in the country. All that the government had to do was either delete the word “illegal” or include “all persecuted people” in the list.

**In its given form, can the CAB if it becomes a law be challenged in the Supreme Court?**

It can be challenged, but the government will be in an advantageous position because the court presumes the Constitutionality of the Law. So the burden of proof will not be on the government but on the petitioner who challenges it. Also, since such matters eventually get referred to the constitution bench, it will not be quickly decided upon.

But it is true that the Constitutional structure cannot be changed by even by an amendment of the constitution and CAB is only an ordinary law. The government cannot change the basic structure using an ordinary law.

**Can the Supreme Court strike the amendment down?**

I cannot predict the outcome of the judgment. But the Supreme Court, to save the Constitution, can take a bold stand and stay straight away that this is unconstitutional. If the Court does not stay this right away, it will become fait accompli (fact or done deal) by the time they pronounce on it. If the Court does not state it right away, the nationwide NRC can be implemented right away.







# Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014: Implementation Bottlenecks and the Covid-19 Crisis

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## I. Introduction

Street vending as a profession has been in existence in India since time immemorial. A street vendor is broadly defined as a person who offers goods or services for sale to the public without having a permanent built up structure. Street vendors may be stationary by occupying space on the pavements or other public/private areas, or may be mobile in the sense that they move from place to place carrying their wares on push carts or in cycles or baskets on their heads, or may sell their wares in moving buses or trains. According to official estimates currently there are around 18 lakh street vendors in the country, with 14 lakh being registered<sup>1</sup>. However, there are huge discrepancies in the actual numbers, with the National Hawker Federation putting the figure at more than 4 crore<sup>2</sup>. Urban vending is not only a source of employment but provides affordable services to the majority of urban population. However, in spite of the important role played by the vendors in the economy, historically they have been considered as unlawful entities and have been subjected to continuous harassment by Police and civic authorities.

This conflict between civic authorities and street vendors has its roots in 19th century colonial India. In the second half of the 19th century the colonial regime started seeing hawking as an obstruction and a threat to public order<sup>3</sup>. At the time many Municipal regulations were introduced to deal with the perceived breakdown of urban order associated with industrialisation, migration and social and communal riots<sup>4</sup>. The introduction of these regulations represented a redefinition of the legal status of public space and the outside became a public space under the jurisdiction of the colonial state. This new demarcation between public and private had the effect of depriving the working classes and removing their access from the collective use of public spaces<sup>5</sup>. This notion continued post-independence and vendors were continued to be seen as encroachers by the state.

The rising contestation over public space in post independent India ultimately led to a number of litigations and street vending emerged as a major policy issue in the 1980s. In a 1985 ruling by the Bombay High Court, in the case of *Bombay Hawkers Union v Bombay Municipal Corporation*<sup>6</sup>,

<sup>1</sup> <https://thewire.in/labour/street-hawkers-lockdown>

<sup>2</sup> <http://nationalhawkerfederation.com/>

<sup>3</sup> Anjaria J.S. 2016. *The Slow Boil*. Stanford, Stanford University Press.

<sup>4</sup> Kidambi P. 2007. *The Making of an Indian Metropolis. Colonial Governance and Public Culture in Bombay, 1890-1920*. Aldershot, Ashgate.

<sup>5</sup> Anderson M. 1992. *Public Nuisance and Private Purpose: Policed Environments in British India, 1860-1947*. SOAS Law Department Working Papers, July (1).

<sup>6</sup> (1985) 3 SCC 528.

for the first time the courts upheld the right of livelihood street vendors, and sought to legitimise vendors through licensing, and creating hawking and non-hawking zones. The ruling determined that the municipal corporation should find space for street vendors to trade. Subsequently, in 1985 the Supreme Court also held the right to livelihood to be an integral part of the right to life in *Olga Tellis v. Bombay Municipal Corp*<sup>7</sup>. As per the judgement:

*Eviction of the petitioners from their dwellings would result in deprivation of their livelihoods. The right under article 21 is the right to livelihood, because no person can live without the means of living i.e. the means of livelihood...there is a close nexus between life and means of livelihood and as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed an integral component of life.*

Thereafter, in 1989, in the case of *Sodan Singh vs. NDMC*<sup>8</sup>, the Supreme Court again held that street vendors had a right to carry on their business and the same can't be sacrificed for the peoples' superficial right to use streets. The court ordered that the vendors be given the right to trade with reasonable restrictions, and observed that inaction on the part of the government with regard to street vendors would amount to negating the fundamental rights of citizens. The following is an extract from the judgement:

*Street Trading being a fundamental right has to be made available to the citizens subject to Article 19(6) of the Constitution. It is within the domain of the State to make any law imposing reasonable restrictions in the interest of general public. This can be done by an enactment on the same lines as in England or by any other law permissible under Article 19(6) of the Constitution. In spite of repeated suggestions by this Court nothing has been done in this respect. Since a citizen has no right to choose a particular place in any street for trading, it is for the State to designate the streets and earmark the places from where street trading can be done. Inaction on the part of the State would result in negating the fundamental right of the citizens. It is expected that the State will do the needful in this respect within a reasonable time failing which it would be left to the courts to protect the rights of the citizens.*

These landmark cases, along with a number of others, laid the ground for the rights of street vendors, and the courts continued to give guidelines to be followed by civic authorities till proper legislation could be brought into force.

In the 1990s India entered the liberalization era and there was exponential growth in urbanization and related issues. India's big cities started confronting problems similar to many cities worldwide such as congestion, lack of formal job opportunities and growing informal economies. As in other countries, the drive to achieve world class cities led to large-scale evictions of street vendors and many small organizations of street vendors emerged in protest of these evictions<sup>9</sup>. At the time, globalization and urbanization had exacerbated city-level conflicts between vendors and local authorities across the world and street vendors began to organize internationally<sup>10</sup>. In November 1995, representatives of street vendors from 11 cities across the world held the inaugural meeting of the International Alliance of Street Vendors in Bellagio, Italy<sup>11</sup>. The Bellagio International Declaration of Street Vendors, signed by representatives at that meeting, envisaged the formulation of a National Policy for hawkers and vendors to improve their standard of living by giving them a legal status through licensing, promotion

<sup>7</sup> (1985) 3 SCC 545.

<sup>8</sup> (1989) 4 SCC 155.

<sup>9</sup> [https://www.wiego.org/sites/default/files/publications/files/Sinha\\_WIEGO\\_PB2.pdf](https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf)

<sup>10</sup> Ibid

<sup>11</sup> Ibid



of self-regulation, access to legal system and credit facilities etc<sup>12</sup>. Following the Bellagio Conference, in September 1998, the National Association of Street Vendors of India (NASVI) was formed to bring the struggles of street vendors to the national stage<sup>13</sup>. Over the years NASVI along with NGOs such as SEWA, National Hawkers Federation, Nidan, Manushi etc. have played a critical role in creating an enabling environment for the promotion of street vendors' rights in India.

Post the Bellagio declaration, although India was a signatory, it was only in 2001 with considerable pressure from civil society groups such as NASVI and Sewa that the Government took the initiative of forming a Task Force to look into the issues and come up with a suitable policy<sup>14</sup>. This effort culminated in a National Policy that was introduced in 2004. The policy largely conformed to the Bellagio Declaration and also the various Supreme Court orders in this regard<sup>15</sup>. However the main weakness of the 2004 policy statement was that it was only a guideline, and there was no mechanism to ensure implementation by the state and municipal governments<sup>16</sup>. As a result the implementation was patchy. In the same year the National Commission for Enterprises in the Unorganized Sector (NCEUS) was set up by the government to assess the problems faced by small enterprises. The NCEUS consulted with NASVI and other NGOs working with street vendors who expressed concern over the lack of implementation. Following from these consultations the NCEUS published a report in 2006 giving specific recommendations for policy implementation<sup>17</sup>. Based on the 2006 report the 2004 guidelines were later updated in 2009 to include modifications to improve implementation<sup>18</sup>. After the revised 2009 guidelines were published, the cause of street vendors was taken up by the National Advisory Committee.

The NAC consultations were followed by a 2010 Supreme Court ruling which called on the government to enact a law on street vending and reinforced the need for state and local governments to implement binding laws based on the National Policy<sup>19</sup>. This judgement culminated in the drafting of the Street Vendors' bill in 2012, which involved extensive dialogue between NASVI and the Ministry of Housing and Urban Poverty Alleviation. However, at one point in 2013 the drafting process stalled due to a petition in the Supreme Court for the "protection of public spaces" in the 2013 case of Maharashtra Ekta Hawkers Union & Anr. v. Municipal Corporation, Greater Mumbai & Ors<sup>20</sup>. But the SC once again came in support of the street vendors gave detailed guidelines for the implementation of the 2009 policy. Thereafter, the Bill was passed in both houses by February 2014 and became the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. This Act was drafted with the legislative intent of protecting the livelihood rights of street vendors under Article 19 of the Constitution, as well as regulating street vending.

The Street Vendors Act acknowledges the integral role played by street vendors in the urban ecosystem. Further, the act mandates local bodies under the state governments to carry out surveys and identify street vendors, set up participatory town vending committees comprising all stakeholders (street vendor associations, resident welfare associations, municipal officials), and create dedicated vending zones to accommodate the street vendors<sup>21</sup>. The Act now governs over all matters in regards to the rights and duties of the street vendors in India. It also provides for confiscation of goods that are being sold by street vendors to be cataloged properly<sup>22</sup>. The 2014 Act was widely seen as a major success for NASVI, which after nearly ten years of lobbying was actively involved in drafting the legislation. The Act also represents a significant innovation in mechanisms to regulate the informal sector.

<sup>12</sup> <https://ccs.in/sites/default/files/research/research-property-rights-of-street-vendors.pdf>

<sup>13</sup> <http://nasvinet.org/newsite/about-nasvi/#:~:text=US%20%2F%20About%20NASVI-,About%20NASVI,Societies%20Registration%20Act%20of%201860.>

<sup>14</sup> [https://www.wiego.org/sites/default/files/publications/files/Sinha\\_WIEGO\\_PB2.pdf](https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf)

<sup>15</sup> & <sup>16</sup> Ibid

<sup>17</sup> <https://ruralindiaonline.org/library/resource/national-policy-on-urban-street-vendors-report-recommendations/>

<sup>18</sup> Government of India. (2009) National policy on street vendors. New Delhi: Ministry of Housing and Poverty Alleviation.

<sup>19</sup> (2010) 10 SCC 715.

<sup>20</sup> (2014) 1 SCC 490.

<sup>21</sup> Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

<sup>22</sup> Ibid

## 2. Status of Implementation

The Street Vendors (Protection of Livelihood and Regulation of Street Vending), 2014 is unanimously considered a progressive social policy aimed at protecting the livelihoods of street vendors. The Act has mandated state governments to prepare the rules for its implementation. In addition to the rules, the state governments are also required to frame a scheme for street vendors after due consultations with the local authority and the Town Vending Committee (TVC)<sup>23</sup>. The Scheme consists of 28 items broadly related to the following activities: survey of street vendors, providing certificate of vending, forming relocation or eviction rules, functioning of TVC, principles for restriction-free, restricted or no-vending zones, time-sharing, holding capacity of each zone, and relocation<sup>24</sup>. However, many studies and reports have pointed out that there is an uneven implementation of the Act cross the country, with some states having constituted TVCs without conducting surveys and registration of vendors, some states which are attempting to draft Rules and Schemes without consulting vendors and organisations working with street vendors and thus subverting the very spirit of the Act, and in some cities where evictions of street vendors are taking place on a daily basis in contravention of the Act and the Supreme Courts orders.

The 2019 report by the Centre for Civil Society had identified 11 steps that were required to be undertaken by states to implement the Act<sup>25</sup>. Further, it had pointed that no state has implemented all of them yet, and Tamil Nadu, Mizoram, Chandigarh and Rajasthan had progressed the most. The main highlights of the study:

- Only 26 states had notified the rules whereas, four states namely, Arunachal Pradesh, Karnataka, Telangana and Nagaland had not notified the rules
- Section 38 of the Act requires state governments to frame and notify a scheme within 6 months from May 2014. However, till January 2019 only 19 states had notified the scheme, whereas 11 states including Arunachal Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Manipur, Nagaland, Puducherry, Sikkim and West Bengal were yet to notify the scheme.
- Only Four states including Assam, Madhya Pradesh, Uttarakhand and Punjab, had formed the Grievance Redressal Committees as mandated by section 20.
- Only 14 states namely Andhra Pradesh, Bihar, Chandigarh, Goa, Gujarat, Haryana, Kerala, Meghalaya, Mizoram, Puducherry, Punjab, Rajasthan, Telangana and Tripura had formed TVCs in all their towns. Further, only 33% of the 7,263 towns had formed the Town Vending Committees as required by section 22(1). And only 58% of TVCs had the requisite vendor representation of 40%
- 98% of TVCs formed had completed vendor enumeration as required by section 3. Further, the following eight states, Arunachal Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Manipur, and Puducherry had enumerated vendors without a scheme.
- 50% of TVCs had issued identity cards to the identified vendors. Five states, namely Arunachal Pradesh, Gujarat, Kerala, Manipur and Puducherry had distributed identity cards without a scheme.
- Section 21 mandates the local authority to frame a street vending plan based on recommendations

<sup>23</sup> Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

<sup>24</sup> Ibid

<sup>25</sup> CCS, January 2019. Progress Report: Implementing the Street Vendors Act 2014. New Delhi.

from the TVC. The vending zones are to be earmarked based on these plans. However, only 20% of the TVCs had published vending plans. The following 5 states: Madhya Pradesh, Maharashtra, Meghalaya, Nagaland and Punjab have demarcated vending zones without a vending plan.

- Only 31% of the TVCs formed had published a street vendor charter as required by section 26. These belong to the following seven states namely Bihar, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Rajasthan and Tamil Nadu.

## Progress in Eight States

### i. Maharashtra

The Government of Maharashtra notified the Rules in August 2016. Section 22 of these rules vests powers in the Municipal Commissioners and the State Government to overrule TVC proposals<sup>26</sup>. By allowing the Municipal Corporation and the State Government to veto TVC decisions, participatory governance has been diluted. Further, the Rules miss out providing clarity on issues such as defining grounds for the removal of the TVC members, which are similar to the removal of a redressal committee member<sup>27</sup>. The state has also not formulated a statutory scheme as per the Street Vendors Act, 2014. Even though the State Government formulated a scheme in 2017, the Court refused to regard it as a legitimate scheme<sup>28</sup>. Six years have passed since enactment of the central law and planning for a second survey has also not been completed. Though a survey was done in Mumbai, it did not comply with the 2014 Act<sup>29</sup>.

### ii. Uttar Pradesh

The Uttar Pradesh Rules were notified on 10 May 2017. However, the Rules lack provisions on important TVC functions, details about proceedings of TVC meetings, qualifications of non-official members, and removal of TVC members<sup>30</sup>. The process of election of street vendors to the TVC is also not clearly laid out. In addition under the rules some arbitrary powers have been given to officials<sup>31</sup>. As per the latest report<sup>32</sup>, TVCs have been created in Banaras, Meerut, Ghaziabad, Moradabad, Kanpur, Firozabad, Aligarh, and Bareilly. The Meerut Municipal Corporation and the Moradabad Municipal Corporation have completed their surveys. A total of 18,500 vendors were identified in Meerut, and 8,500 were identified in Moradabad. Moradabad has also started its work on creating vending and no vending zones. In Noida, the vending zone has been formed in the sector 18 market.

### iii. Delhi

In Delhi, the initial Rules were notified on 7 January 2016 and the Scheme was notified on 7 January 2016, but at the time Delhi high court put stay on the Scheme<sup>33</sup>. Thereafter, the amended rules and schemes were notified again in January 2018. As per the amendments instead of the earlier proposed 71 TVCs the government had decided to form around 25 TVCs. By September 2018 the government had formed 27 TVCs, but a large number of them did not have the requisite number of street vendors as members as mandated in the Act<sup>34</sup>.

Finally, by September 2019 the government set up 28 TVCs each having 30 members, including 12 from among street vendors and the rest from civic agencies, traffic police and market and

<sup>26</sup> Whenever the proposal is passed in Town Vending Committee on majority of votes or voice of vote as the case may be; and if, it is not in consonance with the Mumbai Municipal Corporation Act (III of 1888), Maharashtra Municipal Corporation Act (LIX of 1949), the Maharashtra Regional and Town Planning Act, 1966, Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 or any other Law for the time being in force, the Act and the Rules and Schemes, Bylaws prepared under the Act; or any other law for the time being in force, the Municipal Commissioner or the Chief Officer, as the case may be, may reject such proposal.

<sup>27</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-I.pdf>

<sup>28</sup> Azad Hawkers Union v. Union of India MANU/MH/2574/2017

<sup>29</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.30)

<sup>30</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-I.pdf>

<sup>31</sup> & <sup>33</sup> Ibid

<sup>32</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.34)

<sup>34</sup> <https://www.hindustantimes.com/opinion/about-time-we-made-space-for-street-vendors-in-delhi/story-Dh9ahwCdIMGHoWNLxFaZ0O.html>

residents welfare association<sup>35</sup>. Currently, the Delhi Rules are quite comprehensive; however, there are certain areas where they lack clarity such as the lack of well-defined parameters in case of removal of TVC members, the provision for non harassment of vendors and the duties of the local authority<sup>36</sup>.

#### iv. Bihar

In Bihar state rules have been notified, but a major contention with the Rules is regarding the mode of selection of street vendors in the TVC, which is through selection and not election<sup>37</sup>. Further, the TVC meets once every three months, with quorum one-third of TVC strength, which goes against the rational norm of two-third. In the state NASVI had been given the responsibility of implementing the Act in 42 Urban Local Bodies (ULBs)<sup>38</sup>. As per NASVI, TVCs have been formed in all of these 42 ULBs. Further, a biometric survey has been completed in all 42 ULBs and 55,635 vendors have been identified.

Additionally, 306 vending zones have been identified, 943 street vendors from different ULBs have been given training under the NULM component, and 40122 Vendors are being linked with social security schemes such as PMJJBY, APY, PMJDY, PMJSBY pension schemes, and Housing for all. NASVI has also helped 14,103 street vendors in opening of bank accounts, loan linkages (SEP), Mudra loan, etc.

#### v. Karnataka

In Karnataka, Rules were drafted in May 2016, and only a draft scheme was formed<sup>39</sup>. TVCs have been formed only in Mysore and Mangalore<sup>40</sup>. The Karnataka High Court in June 2019 pulled up the state government, questioning why it had not implemented the Act in the last five years<sup>41</sup>. In October 2019, the state government submitted to the Karnataka High Court that the TVCs would be formed across the state within four months<sup>42</sup>.

#### vi. Rajasthan

In Rajasthan both rules and schemes have been formed. The rules were notified in February 2016<sup>43</sup>. While the rules are quite comprehensive there are a few gaps that need to be addressed such as the minimum age of vending, lack of provision for empanelling an expert, manner of documenting minutes and resources required by the TVC<sup>44</sup>. Further, TVCs have been formed in Jaipur, Jodhpur, Kota, Jaisalmer, Barmer and Bikaner<sup>45</sup>. Survey has been completed in 3 cities i.e. Jodhpur, Mt Abu and Kota, and vending zones have been identified in Jodhpur.

#### vii. Andhra Pradesh

The Andhra Pradesh Rules were notified on 31 March 2017<sup>46</sup>. Currently, there is one major contention in the rules with respect to the purpose of 'protection' of street vendors. Section 3(5) of the rules, which is also present in section 28 of the main Act, states 'If any street vendor, who indulges in vending activities without a certificate of vending ... he shall be liable to a penalty for each such offence which shall extend up to rupees two thousand only'. The problem with such provisions is that it may lead to exploitation of vendors, especially since the process of issuing certificates is slow<sup>47</sup>. In Andhra TVCs have been constituted in all the towns<sup>48</sup>. Further,

<sup>35</sup> <https://timesofindia.indiatimes.com/city/delhi/street-vendors-in-city-to-finally-get-legal-tag/articleshow/71284096.cms>

<sup>36</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-1.pdf>

<sup>37, 44 & 47</sup> Ibid

<sup>38</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)

<sup>39</sup> <https://www.newindianexpress.com/cities/bengaluru/2019/jun/11/explain-delay-in-forming-street-vendor-rules-karnataka-hc-1988708.html>

[forming-street-vendor-rules-karnataka-hc-1988708.html](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)

<sup>40</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)

<sup>41</sup> <https://www.newindianexpress.com/cities/bengaluru/2019/jun/11/explain-delay-in-forming-street-vendor-rules-karnataka-hc-1988708.html>

<sup>42</sup> <https://www.deccanherald.com/state/karnataka-gets-four-months-to-form-town-vending-panels-767515.html>

<sup>43</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-1.pdf>

<sup>45</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)

<sup>46</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-1.pdf>

<sup>48</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20\(ULBs\)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by%20major%20(ULBs)%20of%20Bihar&text=In%20Bihar%2C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)



surveys have been completed in 15 Districts namely, Vishakhapatnam, GVMC, Krishna, Vijayawada, Anathapur, West Godavari, East Godavari, Vijaynagaram, Kadapa, Kurnool, Guntur, Nellur, Prakasham, Srikakulamb and Chittoor, where 61,092 street vendors have been identified and 30,478 vendors have received ID cards<sup>49</sup>. Vizag has also prepared the vending plans and created the vending and non-vending zones. The vending plan created in Vizag is a fully digitalized plan, the first of its kind in India<sup>50</sup>.

### viii. Tamil Nadu

The Tamil Nadu Rules and schemes were notified on 2 November 2015<sup>51</sup>. However, the Rules lack certain provisions such as the removal of TVC members, crucial TVC functions such as social security schemes, awareness regarding legal rights, quorum for TVC meetings, and manner for filling vacancies<sup>52</sup>. The TVCs were constituted in 10 cities but the meetings were not regular. As of 2018, Greater Chennai Corporation had conducted a biometric survey of 27,195 vendors in Chennai, and 20,783 had collected ID cards. Further, 14 out of 15 vending zones had been created<sup>53</sup>.

## 3. Major Bottlenecks

### 3.1 Discrepancy in the Number of Vendors

There is conflicting data on the number of street vendors in Indian cities<sup>54</sup>. As per the recent figures quoted by Mr. Hardeep Singh Puri, MoS, MoHUA, the current figure is at 1.8 million with 1.3 million having valid identity cards<sup>55</sup>. As per the NSSO data the urban population with vending as their occupation has grown from 1.03 million in 1983 to 1.61 million in 2011-12.

Some other studies have estimated that street vendors constitute approximately 2% of the population of a metropolis<sup>56</sup>. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 puts forth a figure of a maximum of 2.5 percent of a city's population as street vendors. According to the 2011 census the urban population at the time was around 377 million which would make the number of vendors at a little more than 9 million. Considering the growth rate the current figure would be around 10 million vendors<sup>57</sup>. However, according to the Shaktiman Ghosh, the head of the National Hawker Federation, the figure is around 4 crore<sup>58</sup>. These figures suggest a huge variation. Having reliable data is necessary for issuing id cards as well as for land use planning to decide on the vending zones etc. As per the provisions of the Act, the TVC is responsible for enumerating the vendors through surveys. The delay in formation of TVCs, and when formed in conducting surveys, has become a major roadblock. Since effectiveness of implementation of the Act begins with having correct estimates this is a cause for major concern.

### 3.2 Problems in Formation of Town Vending Committees

The Act requires formation of TVCs through elections and only street vendors with valid ids can vote in these elections. However, the problem is that these ids have to be issued by the TVC through periodic surveys of vendors in the first place. This creates an inherent problem in the formation of TVCs. To overcome this some states have created provisional Town Vending Committees with nomination or elections based on outdated official lists<sup>59</sup>. However, it is not clear how states will transition from provisional to final. The initial TVCs

<sup>49</sup> Ibid

<sup>50</sup> <https://economictimes.indiatimes.com/industry/banking/finance/banking/visa-digitises-major-government-service-payments-in-andhra-pradesh-to-make-vizag-a-less-cash-city/articleshow/61006507.cms?from=mdr>

<sup>51</sup> [http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by,major%20\(ULBs\)%20of%20Bihar.&text=In%20Bihar%20C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.](http://nasvinet.org/newsite/progress-in-the-implementation-of-the-street-vendors-act-2014-2/#:~:text=NASVI%20has%20been%20entrusted%20by,major%20(ULBs)%20of%20Bihar.&text=In%20Bihar%20C%20NASVI%20has%20completed,vending%20zones%20have%20been%20identified.)

<sup>52</sup> <http://yuvaindia.org/wp-content/uploads/2017/03/Street-Vendors-Study-1.pdf>

<sup>53</sup> <https://timesofindia.indiatimes.com/city/chennai/vending-committees-constituted-but-will-that-free-up-pavements/articleshow/66778361.cms>

<https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

<sup>54</sup> <https://timesofindia.indiatimes.com/india/let-identified-vendors-sell-essentials-centre/articleshow/74975732.cms>

<sup>55</sup> [https://www.prsindia.org/sites/default/files/bill\\_files/bill82\\_2006123082\\_National\\_Policy\\_for\\_Urban\\_Street\\_Vendors.pdf](https://www.prsindia.org/sites/default/files/bill_files/bill82_2006123082_National_Policy_for_Urban_Street_Vendors.pdf)

<sup>56</sup> <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

<sup>57</sup> <https://thewire.in/labour/street-hawkers-lockdown>

<sup>58</sup> <http://www.asianstudies.org/wp-content/uploads/Anand-Narang-Shah-Sabharwal.pdf>

that have been formed also have an under representation of vendors. The law mandates 40 percent representation of street vendors in the TVCs. A 2019 CCS study<sup>60</sup> has shown that in 756 TVCs in fourteen states, which account for 30 percent of all TVCs, there is no vendor representation.

### 3.3 Continued Eviction

Despite the Act street vendors continue to be seen as encroachers on public land and continue to be evicted across the country<sup>61</sup>. In 2019 there were a number of eviction drives in Delhi in places such as Karol Bagh, Connaught Place etc. Around 58,000 vendors were evicted in Mumbai between August and October 2017 as reported by the Hindustan Times. In Indore, about 200 vendors were evicted and moved 2 kilometres away to a spot where getting customers became difficult.

### 3.4 Extortion and Harassment

Across the country street vendors are often required to pay bribes to avoid harassment from public authorities. This is in gross violation of the primary objective of the Act which is to provide a safe and harassment free environment. A 2017 study on various spatial market zones in Delhi found that harassment by authorities included confiscation of goods, discriminate fines as well as physical violence in some cases<sup>62</sup>. A 2015 study by the Center for Civil Society in 8 market zones in Delhi, reported that an average annual loss by vendors was Rs 1,76,238 on account of paying bribes, penalties, affidavit charges and costs incurred due to damaged goods during evictions<sup>63</sup>. This amounted to 30% of their annual income.

### 3.5 Bar on Other Livelihood Sources

Section 5 of the Act mandates that in order to be eligible for a street vending certificate a vendor cannot have any other means of livelihood except street vending. This provision puts an unnecessary bar on any additional sources of income.

### 3.6 Failure of Urban Planning

The Act requires alignment of state planning laws to vending needs. Vendors need to be located in spots where customers can be found easily, but this needs to be achieved without impeding pedestrians, moving traffic and any other city activity. Therefore, street vending needs to be a planned activity and needs to be written into the urban planning laws. However, little has been done in practice to achieve this<sup>64</sup>. The Smart City Mission which envisions building over 100 smart cities in the country has also done little to include the interest of vendors<sup>65</sup>. There are many cities such as Delhi, Patna, Ranchi and Indore where vendors have been evicted under the guise of Smart City projects.

## 4. Impact of Covid-19 Lockdown

The whole country has come to a standstill because of the coronavirus epidemic, which has badly impacted businesses, work, and most importantly, the lives of the people. The economic threat has particularly affected the unorganised sector that constitutes the majority of the population in the country. According to the report of the Economic Survey released in 2019, the unorganised sector accounts for 93 per cent of the total workforce of the country<sup>66</sup>. While this sector has a big hand in running the country's economy, there is no concrete provision to protect it. Amongst them are the

<sup>60</sup> CCS, January 2019. Progress Report: Implementing the Street Vendors Act 2014. New Delhi.

<sup>61</sup> <https://thewire.in/urban/street-vendors-hawkers-elections>

<sup>62</sup> <https://thewire.in/economy/street-vendors-act-implementation-gaps>

<sup>63</sup> <https://peoplesdispatch.org/2019/11/15/indian-street-vendors-mobilize-to-demand-protections/>

<sup>64</sup> <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

<sup>65</sup> <https://thewire.in/urban/street-vendors-hawkers-elections>

<sup>66</sup> <https://www.newindianexpress.com/opinions/2020/may/30/what-is-it-that-ails-our-informal-sector-2149869.html#:~:text=The%20Economic%20Survey%20of%202018,85%25%20of%20all%20workers.%E2%80%9D>

largest segment of the self employed, men and women who personify the true entrepreneurial spirit of India, the street vendors, hawkers and itinerant sellers.

The hawkers are the backbone of the cities with each cluster of vendors in Kolkata, Delhi, Mumbai, Bengaluru, Chennai and in tier two and three cities catering to different kinds of buyers, from the relatively rich to the absolute poor. The National Federation of Hawkers estimate 4 crore people engaged in the business of selling on the streets, in the metros, in small towns, in rural hubs across India<sup>67</sup>. Further, their estimates suggest that 50% of the street vendors sell food, 35% of the fruits and vegetables sold in urban areas and in far-flung, remote rural corners are sold by vendors and around 20% of vendors sell clothes, plastic goods, unbranded crockery, cutlery and household goods. The turnover of this parallel economy is estimated to be around Rs 80 crore per day<sup>68</sup>, where, at an average every vendor supports 3 others either as workers or partners.

This lockdown has also meant that the informal sector production lines have shut down as the hawkers have gone off the streets. This includes thousands of cottage, tiny, small and medium enterprises that produced goods for the street markets, as well as women's self-help groups that produced pickles, papads, home made confectionary etc., who are without work because there is no off-take.

Recognising that street vendors are entrepreneurs and should have rights, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act of 2014 was legislated to turn a vulnerable existence into an established model of doing business. The role of street vendors in every urban area as a model for creating livelihoods was made permanent. However, due to the lack of implementation of the Act coupled with the ripple effect of the pandemic, their current situation is extremely precarious. Without proper support to sustain street vendors through this lockdown and the precautions that must follow a gradual roll back, urban distress will become difficult to manage.

#### **4.1 Status of Vendors in Some Major Cities**

##### **i. Delhi**

There are nearly two lakh street vendors in Delhi, and around 25,000-30,000 street food vendors which are registered with the government<sup>69</sup>. The lockdown has had a grave impact on the city's vendors as a majority lost their source of income. A study of women vendors in Delhi by the Institute of Social Studies Trust found that the women vendors had completely lost their livelihoods, with 97.14% of the respondents reporting that they had been adversely affected by the lockdown<sup>70</sup>. With only essential services allowed during the lockdown, a large number of them also turned to selling vegetable and fruits to sustain their families. Many vendors in reported a drastic decrease in income even after the lockdown opened. Further, most of the savings of street vendors had dried up and many were pushed into debt at high interest rates.

##### **ii. Chennai**

According to data compiled by Greater Chennai Corporation during the COVID-19 pandemic, 7,965 street vendors, who had been selling essential commodities such as vegetables and fruits, have stopped their business during the lockdown<sup>71</sup>. Officials have tracked 23,154 street vendors, who had identity cards, and at least 7,965 street vendors were not at their vending zones in various parts of the city. It was found that as many as 2,509 vendors were temporarily out of station, 1,849 had left the city permanently, whereas, 2,947 vendors were not reachable.

<sup>67</sup> <https://indianexpress.com/article/business/coronavirus-kolkata-lockdown-hawkers-association-6364899/>

<sup>68</sup> <https://thewire.in/labour/street-hawkers-lockdown>

<sup>69</sup> <https://www.hindustantimes.com/delhi-news/coronavirus-update-delhi-s-street-food-vendors-turn-to-selling-vegetables-amid-lockdown/story-YZRpVlJbfnMuOnGUwvUc3M.html>

<sup>70</sup> [http://www.isstindia.org/publications/1590050642\\_pub\\_ISST\\_-\\_Women\\_Street\\_Vendors.pdf](http://www.isstindia.org/publications/1590050642_pub_ISST_-_Women_Street_Vendors.pdf)

<sup>71</sup> <https://www.thehindu.com/news/cities/chennai/covid-19-leaves-street-vendors-in-distress/article31884289.ece>

### iii. Bengaluru

With all the major street vendor markets being closed, lakhs of vendors in Bengaluru have been impacted due to the lockdown. Over 90% have not been able to carry out their livelihood. Some have been allowed to sell fruits and vegetables, but they are very few in number. The Bengaluru Jilla Beedhi Vyapari Sanghatanegala Okkuta had made a representation to the BBMP demanding that they take some initiatives to protect the street vendors in the city<sup>72</sup>. The demands included being allowed to vend, being provided with a one-time grant of Rs. 25,000 and provision of dry ration kit among other things. Subsequently, the officials had asked street vendors to submit an application with their details. However, BBMP had promised grants only to vendors with ID cards with the majority being excluded.

### iv. Kolkata

Kolkata has around 16 lakh street vendors, and a majority of them were struggling to earn their livelihood during the lockdown<sup>73</sup>. Out of the 16 lakh hawkers only five percent who are local residents of Kolkata were able to do some business following the limited exemption provided by the government. But more than 95% were rural migrants who were unable to earn a living due to difficulty in traveling owing to restrictions on public transport. Additionally, most do not have any savings to restart their businesses even after the lockdown.

## 4.2 Some Key Concerns

### 4.2.1 Inefficacy of Relief Package

The post lockdown urban landscape in India will be largely shaped by how the street vending activity emerges in the cities. They have been recognized as a particularly vulnerable group by the central government and one of the first measures of the 'Atma Nirbhar Bharat' package on 14th May was directed towards them. As part of the package<sup>74</sup>, the Central Government announced a Rs 5000 crore special credit facility for street vendors keeping in view the adverse impact on their livelihood. This was part of the 2nd leg of the Rs 20 lakh crore economic stimulus and is aimed at benefiting around 50 lakh vendors. Each vendor will be provided the initial working capital of Rs. 10000 in the form of a credit. However, it has not yet been worked out how the loan application process will work and which institutions will be involved.

**Table 2: Sources of Start-up Capital used by Street Vendors**

Source of Capital	Frequency	Percentage (%)
Personal Savings	574	57.4
Money Lenders	328	32.8
Loans or Gifts from Friends or Relatives	245	24.5
Credit from a Micro Finance Institution	82	8.2
Credit from a Bank (Nationalized/Private/Co-operative)	28	2.8
Other Sources	44	4.4
<b>Total Cases</b>	<b>1000</b>	<b>100</b>

Source: IIHS Bangalore Street Vendors Survey 2018

<sup>72</sup> <https://bengaluru.citizenmatters.in/bengaluru-covid-19-lockdown-street-vendors-demand-relief-grant-offer-community-kitchens-44534>

<sup>73</sup> <https://www.deccanherald.com/national/east-and-northeast/coronavirus-16-lakh-hawkers-in-bengal-face-uncertain-future-as-lockdown-continues-825310.html>

<sup>74</sup> <https://www.newindianexpress.com/business/2020/may/14/covid-19-relief-package-street-vendors-look-for-cash-transfers-say-they-have-no-confidence-to-borrow-2143430.html>



The efficacy of the loan is also under question and received criticism from the hawkers' association and trade union bodies who are seeking benefits like direct cash transfer<sup>75</sup>. In a 2018 city wide survey in Bangalore of 1000 street vendors conducted by the Indian Institute of Human Settlements, it was found that vendors often have a limited and reluctant engagement with formal financial institutions<sup>76</sup>.

According to the survey, 10% of the respondents had previously applied for a bank loan and 28% did not even have a bank account. Further, the survey showed that less than 1% food vendors had previously accessed any government financial support scheme for starting their business. While 61% of the respondents were confident that the banks were willing to give loans, very few actually applied for these loans. Their main concern was a lack of knowledge about the process, documentation requirements, provision of collateral and even the fear of being unable to repay the loan which was holding them back.

On the sources of capital of vendors as shown in Table 2, the survey reported that 57% used their personal savings. This finding suggests that in the current lockdown most of the vendors would have run out of their savings and would need additional capital to restart their businesses and to sustain it in the coming uncertain months, which would come at a considerable financial risk.

Amongst other sources of finance, some vendors were found to take loans or received monetary gifts from friends and relatives to start their businesses, which is less viable now as most people would have shortage of cash. A large section of vendors, around 33% were found to be dependent on money lenders who charge very high interest rates. In the current situation this may increase the debt burden. Further, around 8.2% dependent on micro finance institutions and only 2.8% actually accessed formal banks to start their respective businesses.

The survey also reported on the incomes of street vendors. It found that the average monthly profit of food street vendors was about Rs 13,000, and for over half the vendors, income from their food vending businesses constituted over 90% or more of their total household income. This also indicates how the lockdown would have resulted in most of the families of street vendors across the country losing almost all their household income over the last two months.

This survey shows that while the Rs 5,000 crore relief package for street vendors is a start to helping hawkers re-establish their businesses, financial relief in the form of only credit is insufficient and unlikely to help a majority of vendors. Most of the vendors who have lost their livelihoods are in urgent need of direct cash rather than any credit scheme.

#### 4.2.2 Discrepancy in Numbers may lead to Exclusion

The recent credit package of Rs. 5000 crore announced by the central government on 14th May is supposed to benefit 50 lakh street vendors, where each vendor will receive

<sup>75</sup> <https://www.newsclick.in/Delhi-Street-Vendors-Face-Debt-Trap-Absence-Government-Relief>

<sup>76</sup> <https://www.deccanherald.com/opinion/coronavirus-lockdown-why-rs-5000-crore-credit-facility-for-street-vendors-may-fall-short-842796.html>

a loan of Rs. 10000 to help restart their business. This has been named as the Prime Minister Street Vendors Atmanirbhar Nidhi (PM SVA Nidhi). The Scheme is available for beneficiaries belonging to only those States/UTs which have notified Rules and Scheme under Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. As on 30 July 2020, 335862 loan applications had been received and 42,385 had been sanctioned.<sup>77</sup>

However, as has been noted earlier, there is a huge discrepancy in the number of street vendors. As per the recent figures quoted by Mr. Hardeep Singh Puri, MoS, MoHUA, the figure stands at 18 lakh with 13 lakh vendors having valid identity cards. On the other hand the the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 puts forth a figure of a maximum of 2.5 percent of a city's population as street vendors. Considering the 2011 census, when the Urban population was 377 million, 2.5% would be a little more than 9 million and after adjusting for population growth it would come to 10 million or 1 crore vendors<sup>78</sup>. The National Hawker Federation has noted an even higher figure of 4 crore<sup>79</sup>. These figures suggest a huge variation. Even if one considers the figure of 1 crore, this would mean that a large number of vendors would end up being excluded from the credit facility. Further, it has also not yet been decided how the loan application process would function. If valid vendor identification cards become necessary to avail the benefit it may lead to further exclusion.

#### 4.2.3 Impact on Women Vendors

According to some estimates there are roughly 4 crore street vendors in India with women forming around 30% of this population. These women are mostly found in weekly haats and in street or footpath stalls, or helping their families in the back-end work. Given the pre existing inequalities in the informal workforce the current lockdown also has had a severe impact on women, including women street vendors. A recent study<sup>80</sup> by the Institute of Social Studies Trust has attempted to capture the impact of the lockdown on the women informal workers in Delhi. This has been done through studying 5 different sectors including domestic work, home based work, construction work, waste picking and street vending. The main findings of this study were as follows:

- 97.14% of the respondents had been adversely affected by the lockdown
- The women vendors working in weekly haats or street side stalls had completely lost their livelihoods
- 54% of respondents had taken loan to help them sustain during lockdown and 37.1% were finding it difficult to repay the loans. 65% respondents were depending on personal savings.
- 6% of the respondents attributed the income drop to mobility restraints or due to police patrolling which had a much greater impact on women
- Around 60% respondents shared lack of support from family members in sharing household chores and child care. A further 30% said that support was provided by other family members

<sup>77</sup> <https://pmsvanidhi.mohua.gov.in/> accessed at 11:30 am on 30th July 2020.

<sup>78</sup> <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

<sup>79</sup> <https://thewire.in/labour/street-hawkers-lockdown>

<sup>80</sup> [http://www.isstindia.org/publications/1590050642\\_pub\\_ISST\\_-\\_Women\\_Street\\_Vendors.pdf](http://www.isstindia.org/publications/1590050642_pub_ISST_-_Women_Street_Vendors.pdf)

- Many women were not able to explore alternative employment options as they had young children who needed care
- Vendors selling through carts have been harassed by RWAs and colonies are not allowing their entry
- 5.7% expressed concern over payment of house rent which would continue post lockdown

#### 4.2.4 Impact of Regulation Post Lockdown

After the lockdown is gradually pulled back, considering the physical distancing norms, regulation of street vendors will need to be done. This would mean that the density of vendors would come down drastically. Vendors who are displaced by physical distancing regulations would have to either relocate, or they would simply go out of business. Implementing physical distancing, while ensuring a minimal loss of livelihoods, would be a huge challenge for governments, municipal corporations and nagar panchayats. This problem will be further accentuated due to the poor implementation of the Street Vendors Act 2014, and would create the environment for further harassment of street vendors by the police and government officials alike. The reduction of vendors in urban areas could mean that access to fresh vegetables, fish, chicken and eggs will be seriously curtailed. This could create opportunities for a huge expansion in e-commerce and home delivery services. This will result in further loss of livelihoods and incomes of the small vendors. Further this may also make it difficult to access cheaper food etc for the urban poor. Consequently, the poor may be further marginalised as they mostly buy in small quantities from street vendors, based on their daily earnings.

## 5. Recommendations

### 5.1 Recommendations for the Covid Crisis

- Loans by themselves are not going to be that beneficial for vendors who are in a cash crunch. A direct cash transfer of Rs 7000 per month, as suggested by some of the top economists must be considered for all informal sector workers including vendors for at least the next 3 months, with the possibility of extension as per the situation. Funds can also be released from the urban livelihoods mission.
- Pradhan Mantri MUDRA Yojana (PMMY) was a scheme launched in 2015 for providing loans up to Rs 10 lakh to non-corporate, non-farm small/micro enterprises. Interest-free loans and provision of MUDRA loans with subsidies should be considered for hawkers.
- Since a large number of hawkers may be excluded, the direct cash transfer should be a general cash transfer for the bottom 80% of the population. This is also a good time to constitute the Town Vending Committees (TVC) mandated under the Street Vendors Act 2014. TVCs act as representatives of street vendor groups and could play an important role in facilitating the delivery of the credit scheme. A state-wise committee with representatives from various vendors' associations also needs to be formed.

- iv. The creation of dedicated vending zones in cities has been a long-pending demand. It should have been done after the Street Vendors Act was passed in 2014, but it is even more important now as social distancing has to be ensured. Civic agencies have to devise a mechanism to ensure social distancing to ensure maximum vendors can be incorporated. The mandated 2.5% land area of cities for dedicated vending zones may need to be temporarily increased once lockdown is lifted.
- v. Post lockdown before opening up of businesses, all street vendors need to be given training on physical distancing and hygiene measures. The training needs to be based on guidelines prepared by the Food Safety and Standards Authority of India (FSSAI) for food businesses during the Covid-19 pandemic. This has already started happening in places like Delhi and needs to be extended to all vendors.
- vi. The exposure of street vendors to health vulnerabilities is high given that they work in the open market place with poor hygienic conditions. Street vendors need to be given health insurance to preserve their rights of a dignified livelihood.
- vii. It is important to push for the proper implementation of the Street Vendors Act 2014 and the need for licensing post the lockdown, so that their livelihoods can be secured.

## **5.2 Some General Recommendations**

- viii. Proper surveys of vendors need to be conducted within a short time period to ensure reliable data.
- ix. Any bar on street vendors on having additional livelihood sources should be removed.
- x. A clear time limit should be mandated for providing vending certificates to reduce harassment by authorities.
- xi. The eviction by local authorities should be done only after compliance with the TVC. A notice period should be given to street vendors before eviction.
- xii. Any violation of the Act through extortion, illegitimate harassment or eviction must be severely penalized to ensure deterrence and accountability within the system.
- xiii. All TVCs need to ensure the mandated 40% representation of street vendors is adhered to.
- xiv. The roads around transportation terminals, hospitals, government offices, business centres and similar places, which find a large number of people entering and exiting these spots, should be allotted for vending activities. This would require balancing vending, pedestrian and vehicular mobility, and hygiene. To achieve this, vending needs to be made a planned activity incorporated into urban planning.



## 6. Conclusion

Street vendor associations have been demanding implementation of the Street Vendors Act for a long time now. The 2019 Centre for Civil Society report shows that no state has implemented all of them yet. To efficiently respond to the current COVID-19 pandemic, every state needs to notify certain rules and schemes under the Act. It is important to ensure the formation of TVCs under each local authority for different areas of the state. The TVCs can play an active role in ensuring proper identification of vendors and ensuring disbursement of the relief packages. To this end the states that have previously formed the TVCs face an obvious advantage as it is easier for them to identify, contact and support vendors, and even utilise their services to ensure a continuous supply of essential goods. In the long run implementing all the provisions of the Act has benefits going beyond the current Covid-19 crisis. Ensuring proper legal recognition of vendors can provide them with much needed socio economic security and prevent their continuous harassment. It can also ensure that the urban poor have access to cheaper goods and allow local bodies to increase their own revenue by collecting taxes through proper channels.

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# Should Reverse Migration lead to Reversal of Policy Priorities

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The COVID-19 pandemic and the lockdown and other measures taken to counter it have delivered a severe blow to our economy. The sudden loss of livelihoods for many people has caused untold misery, especially for those working in the unorganised and informal sectors including the migrant workers. Many businesses had to face sudden closure and many of those which could attempt re-starting their operations are facing difficulties due to the losses incurred, the drying up of liquidity and the steep fall in demand. Business enterprises in certain sectors may not witness return to normalcy of operations for a long time to come.

The attention of policy makers, experts and leaders in various fields was first drawn, rightly, to controlling the spread of the pandemic; ensuring provision of medical facilities; administering the various measures under the lockdown and delivering relief in various forms to the needy segments of the population. While most of these would continue to be important, the focus should now shift to bringing back the economy to life. The priority now should be to ensure, to the extent possible, that people are able to carry out their economic activities in the same manner as were being carried out prior to the breaking out of the pandemic.

While this undoubtedly has to be one of the most important objectives, the impact of the pandemic has also provided scope for us to consider if we should aim for the same pattern of economic and social life as earlier. We are at a stage where we need to initiate some re-thinking of our social norms and behaviour patterns, our concerns and priorities, our economic and social sector policies as also our values. In our efforts to bring back economic and social life to normalcy, we should not lose sight of the need for the evolution of a vision for the society we would like to have post-COVID and to draw a roadmap toward the realisation of our vision. There is a need to try for a consensus on certain aspects of our society touching the spheres of economy, public health, education, governance as well as societal norms.

What are the major areas where some rethinking could be beneficial? Is it possible to revisit our some of our priorities in the economic and social sphere? What changes do we try to bring about in the practices followed by people so that we together move to a healthier society?

An enduring memory of the times of the pandemic would be the plight of the returning migrants. The images of families and groups of migrant workers walking back home in the blazing sun, carrying their meagre belongings with them, managing without food and without shelter would continue to remind us collectively of the unequal ways of our society. More distressing is the realisation about



the absence of any livelihood opportunities staring at the migrants when they finally reach their destinations. Did we all these days continue to ignore the human aspect of development while we were busy rushing to achieve our goals of growth rates of the economy?

## **The outcomes of policies of the past**

Do we wish to continue with the same pattern of development which has led to this grossly unequal structure of our economy? Do we need to reverse some of the policies we have been following more or less consistently over the last few decades? To answer this question, we need to first look at the outcomes, intended or otherwise, of our economic policies over the last several decades which stand out as the most striking and enduring outcomes with high impact. It needs to be mentioned that these outcomes have been observed more or less consistently over the decades, notwithstanding the changes in governing dispensations, ideologies of the times or policy objectives professed to be adopted.

### **1. Unequal development between regions**

The unequal development is not just between states or larger regions such as the eastern region vis-à-vis southern and western regions. Even within states, we observe an absence of balanced development. No doubt, there has been all-round progress on many fronts in all regions of the country since independence. However, the disparities between regions widened due to the unequal pace of development. A vicious cycle of could be said to be observed where development in one region expanded the scope for further development in the same region with the underdeveloped regions lagging behind due to their limited development. Factors of production such as enterprise, labour and capital moved towards the developed areas due to the existing ecosystem.

### **2. Disparities between urban and rural areas as well as between occupations**

In spite of all the talk of India living in villages, all the rhetoric of rural development etc., the fact is that urban areas have developed further since independence and the conditions in rural areas have worsened. No doubt, infrastructure may have improved in rural areas along with facilities for health, education etc. as compared to the situation a few decades ago. However, the neglect of rural areas led to absence of opportunities for livelihoods, advancement of education, personal growth etc. which sapped the rural areas of their vitality. Certain occupations gained in prominence and earning potential. Similarly, employment in the formal sector provided security and reasonable levels of remuneration while the informal sector, whether urban or rural, remained uncared for without security of work, adequacy of remuneration or acceptable level of working conditions.

### **3. Under-utilisation of the countrywide potential of agriculture**

The country took a great leap forward in food security during the Green Revolution by adopting high yielding varieties, promoting irrigation and spreading the use of chemical fertilisers as well as pesticides. However, the success of these measures was somehow restricted to a few regions which resulted in furthering the skewed development between regions. Moreover, the limitations and adverse impact of this approach is being felt in the recent times with worsening ground water levels, effects of chemical fertilisers on soil resurgence and the health hazards due to increasing use of pesticides. While these concerns need to be addressed, there is an urgent need to revive agriculture

as a viable occupation. The approach of successive governments has been to provide subsidies, free or cheap water and energy, provide interest subvention and frequent loan waivers and other forms of support. The sector has been starved of the benefits of what it needs most - investment of capital, comprehensive policy reforms and empowerment of human capital. The most ambitious set of policy reforms ever taken in 1991-92 and later years ignored the needs of the agricultural sector. We partly opened up the sector to international competition and made our policies compliant with WTO norms without first energising the sector and unshackling the various restrictions by introducing domestic reforms. The only comprehensive set of policy measures taken were perhaps during the Green Revolution in late sixties after which the sector has not seen much significant policy initiatives other than granting subsidies. The irony is that for decades all governments and political parties have been proclaiming their commitment for the kisan and the rural vote is said to be a major vote bank!

#### **4. Gradual erosion in the status of manufacturing as provider of employment**

There was a period when it was thought that manufacturing is the answer to the problem of unemployment and to the development of a region. Large industries were promoted in the public sector including in relatively underdeveloped areas. For the private sector, however, in the initial years there were restrictions on growth due to licensing and various other measures of control. Over the years, manufacturing lost its potential to be the engine of development for various reasons such as excessive government control, restrictive laws, protection to trade unions, difficulties in manufacturing for exports, malpractices by promoters etc. The liberalisation of 1991-92 should have given a boost to manufacturing. However, this was witnessed only in a few sectors and regions. There was no impetus for overall growth in manufacturing. In fact, in certain sectors such as textiles, we have witnessed a fall in our position amongst exporting countries with smaller and so called less developed countries taking over. Had manufacturing grown at a greater pace, it could have provided employment in large numbers and the growing demand for labour could have improved the lot of the workers to some extent.

#### **5. Focus on Gross Domestic Product to the neglect of equality and human development**

One of the major objectives of economic development, perhaps the most important one, has to be human development. We seem to have lost sight of this objective. Not just the policy discourse of government but also the talk by captains of business, stock exchange pundits, investors, analysts, media and other commentators seems to be focussed on the growth of Gross Domestic Product (GDP) to the exclusion of other measures of development including our rank in per capita income. There is no concern in policy corridors of the growing inequality in the economy. A matter of greater concern is the total neglect of indicators of human development. While taking pride over the ranking of our country in the biggest economies, there is total disregard of the low ranking of being the 139th country in Human Development Index. Though the focus on GDP is strictly not an outcome of the policies followed over the years, it is indicative of our preferences which have developed over the years and the neglect of public health and public education since the early days on the path of development.

## **6. A result of all of the above – creation of two economies in the society**

The various policies pursued over the decades have resulted in a division in the society; in fact, in the creation of two economies – one more forward-looking, modernised, better integrated with the world, assuring a decent standard of living and provision of good education and health to its denizens and the other acting as a colony of service providers and workers for the first world with difficulties in accessing not just the amenities of modern urban life but basic rights such as education and health and decent livelihoods. One economy is characterised by relatively higher incomes, better purchasing power along with production and supply of high-value, high-margin goods and services. While the high value and high margins generates higher income, this in turn pushes up the demand for high value products with a rise in incomes of all those engaged in the production and marketing. However, the high margin which leads to this cycle is possible in the first place because of the existence of an economy of service providers and labourers who earn a low income and subsist on low value goods with sub-human standards of living.

The disparities between the two worlds are further accentuated by the better access the first world has to the global economy and the tradability of what they have on offer. The second world has limited access to the global market and the only way they can access it is through physical migration to the few countries which have demand for their services. This existence of two disparate economies could very well be termed as the central malady of the economic policies and values of our society. A combined impact of the policies which led to these outcomes is the need for a resident of Jaunpur in U.P. to migrate to Mumbai to drive an autorickshaw or for a villager from Odisha to travel to Surat to work in the textile unit. A system where a person has to travel a distance of over a thousand kilometres or more to offer his labour to produce goods and services, some of which would be directly or indirectly consumed back home in his state, is not just an irrational system; it is economically unsound, socially iniquitous and environmentally destructive.

### **The path we could take**

Post pandemic, the central question then is not whether the migrant workers would get their employment back or whether the developed states would get the much-needed services of the workers. The central question is whether we should revert back to the same model of development which has led to these iniquities and absurdities in development.

What are the possible policy responses to correct the imbalance least to some extent, if not fully? An attempt is made in the following sections to find some answers.

### **I. Primacy in the immediate term to providing livelihoods opportunities over growth in GDP**

In the modern capitalistic world (including the economies not considered to be capitalist but which adopt certain values of the capitalist modes of production), the primacy is to efficiency, productivity and return on capital. Provision of employment is not a primary objective, especially if it conflicts with profitability. The adoption of large industries over small and cottage industries advocated by Gandhian economics or the increasing automation in industry and services in the recent times are testimony to this priority to productivity goals. One of the arguments in support of this approach

is that an overall improvement in productivity would lead to higher overall growth leading to higher output and employment.

Whatever the merits or demerits of this approach, the need of the hour is to urgently provide opportunities for livelihoods to those who have lost their work. The various measures to be taken for meeting this objective could include some measures which in normal times be seen as less efficient use of capital and other resources. To give an example, production in small manufacturing units is considered to be less efficient than that in large units which are supposed to enjoy economies of scale. Similarly, import substitution is considered an inefficient mode of production if we do not possess comparative advantage in the production of a commodity. While these prescriptions could be valid in normal times, we need to commence economic activities at the earliest even if some of the initiatives result in a less efficient use of resources to some extent.

## **2. Virtuous cycle of local/regional demand catered to by local/regional supply**

The plight of the migrant workers would continue to be deplorable as long as the supply of their services exceeds the demand. The attempt should be to create demand for their services in their region or state, if not exactly in their district. Increased economic activity in the regions of the migrant workers would lead to higher demand for their services leading to higher incomes in the local economy. The starting of a virtuous cycle of demand for local products leading to higher incomes for local people has to be tried for. Once the economy of a region achieves a certain level of momentum, not many efforts are then needed to keep it moving except providing support in sorting out any problems which could have arisen. Some of the possible ways of achieving a virtuous cycle of this kind are indicated in the following suggestions.

## **3. Re-energising agriculture as a provider of livelihoods**

It is an intriguing feature that the rich alluvial plains of northern and eastern India with abundant water resources in many areas have not seen a revival of agriculture even to the extent to which some of the relatively water deficient states in the southern and western regions have achieved. It is often repeatedly said that the next green revolution would be in the eastern region. Admittedly, there is also some improvement seen in the agricultural sector in these regions. However, the pace of change is tardy and inadequate to generate the needed outcome. Another often repeated statement is about Indian agriculture producing for exports. However, no concerted and planned effort seems to have been undertaken.

Much has been said about what needs to be done for Indian agriculture. It may be worthwhile to recapitulate some of the points especially from the point of view of reviving agriculture in the regions which are home to most of the migrants:

- a. Encourage sustainable agriculture by organic and climate resilient methods of farming
- b. Introduce diversity in produce especially millets, fruit and vegetables, pulses and oilseeds etc. and encourage shift from foodgrains by eliminating skewed preferences in the procurement prices whose existing pattern is a remnant of the days of food shortages experienced five decades ago



- c. Expose farmers to export markets and provide linkages so that they could produce as per the requirements of export markets in terms of kind of produce, quality etc.
- d. Encourage exports of agricultural produce by various measures including the three measures mentioned in the foregoing suggestions
- e. Water conservation measures, flood control, steps to check soil erosion etc. so that two to three crops could be taken in a year and the need to migrate after monsoons in search of work is addressed
- f. Animal husbandry, especially dairy, to be promoted on a large scale along with setting up of dairy processing units
- g. Set up processing units preferably by collectives but not exclusively through them
- h. Bring about land reforms, security of tenure, lending for tenant farmers etc.

While these measures have been mentioned often, the key at present would be to take up measures which could be implemented immediately. With the advent of monsoons, the work of water conservation measures could be taken up immediately under the employment yojanas and schemes, existing and announced recently. It may be too late now to encourage change in cropping pattern but it could be tried during the rabi season. Vegetable cultivation on a large scale could, however, be promoted as these are short duration crops and arrangements for bulk transport and marketing could be done by government agencies. Promotion of dairy could also be taken up immediately by grant of loans for purchase of animals and immediate steps to start primary milk processing besides arrangements for storage and transport.

While planning for revival of agriculture with the express intent of providing work to the migrant returnees, it has to be borne in mind that most of the young migrants who have worked for long in urban centres would not be interested in or suited for work related to farming. For such migrants, jobs such as transporters for produce, selling at wholesale and retail outlets, managing warehouses or custom hiring centres, accounting etc. for farmer collectives, supervising loading and transport could be some of the jobs which could be suitable. Some of them could also undertake repairs to equipment etc.

#### **4. Setting up of small manufacturing and processing units with centralised marketing support and quality control**

The experience with setting up small units has not been very encouraging so far in India and especially so in the home states of migrants. At the same time, a one-time push could be given to setting up small manufacturing or agricultural produce processing units. The success of such initiatives depends on various factors including the availability of some of the following:

- a. existence of an eco-system and infrastructural facilities; facilities for repairs and maintenance, transport and other services such as packaging etc. which could be provided in a cluster-based approach
- b. Entrepreneurial spirit in the target population which quite a few persons in the population

could be presumed to be possessing including many migrant returnees and which could be developed in many others, though over a period of time. A suggestion is also contained in the succeeding points for introducing entrepreneurs from outside.

- c. Provision of finance and marketing support which have to be provided through a centralised support agency.

The state governments and other agencies would have to identify a few sectors which could be selected for focussed efforts. Small processing units for agricultural produce could be set up at various centres under a central organisation. The central organisation has to provide support in areas such as quality control, training, marketing and finance besides the initial support in setting up the unit. The central agency could be two-tiered with the district level managing quality control etc. and the apex level could promote a common brand after ensuring strict quality control and adherence to regulations. Procurement of raw material could either be centralised or left to the local units depending on the type of produce and its availability, the need for standardised material etc. and an element of flexibility has to be built in for procurement. It would be easier for the centralised agency as compared to the local units to avail of credit facilities from banks etc.

An element of flexibility in the pattern of ownership of the centralised agencies as well as the local units could be introduced and various combinations could be tried out. The apex central agency could preferably be a joint venture of government agencies and private parties. The local units could be independent units and could be owned and run either by individuals, private firms or collectives of villagers etc. A private company could also be entrusted with the ownership and running of the centralised agency with the local units, owned by collectives or individuals, acting as ancillaries to the central agency. For manufacturing units, the government would have to identify few focus sectors such as electronics manufacturing, textiles, FMCG products etc. and preferably adopt a cluster approach so that the building up of an eco-system is facilitated.

### **5. Promote a different type of reverse migration – of entrepreneurs to less developed regions**

As mentioned earlier, a pre-requisite of promoting is the existence of entrepreneurship. As entrepreneurship skills could be developed or honed only in a few individuals in a short period of time, a solution could be to invite entrepreneurs from outside to set up units in the state. Thus, instead of labour migrating to other states, the entrepreneurs would be encouraged to migrate to the state and set up units. Financial and other incentives would have to be provided to the entrepreneurs. In the past, various schemes of capital subsidies, tax holidays, rebates etc. have been tried out for promoting industrialisation in backward regions in many states. The experience with such schemes has not always been happy. There were cases of misutilisation of subsidy, closure of units after receipt of subsidy etc. In order to minimise such possibilities, a major part of the incentives should be result based and paid after the successful achievement of certain parameters within a given time period. A small part of the incentives could be released at the stage of commencement of production. As far as possible, the incentive should not be based on investment in plant and machinery etc., as this could lead to misrepresentation by the entrepreneur and misuse of discretion by the government officials. The incentives could be based on figures of sales as per GST records and /or provision of

employment to the local population.

There is also no reason why large industries cannot be set up in these states. Two of the major requirements for large industries, which perhaps were not available in these states earlier - good quality infrastructure, especially a good road network and / or rail network and the availability of a fairly capable workman staff – are now available in a fairly good measure. The government would have to invite industrialists and offer incentives for setting up industrial plants.

## **6. Develop diversified and modernised services sector**

The services sector would play a major role in the creation of a virtuous cycle of local demand and local supply. Some of the services which are costlier in urban areas and therefore appear to be out of reach of the rural population could be provided at lesser cost in rural areas due to the lower cost of real estate and lower overheads. Setting up of restaurants, gymnasiums, amusement parks with costs affordable to rural consumers are a few examples. Beauty parlours are now quite common in most areas. Mobile repairing, repairs to motorbikes and consumer durables, services of electricians, masons etc. would be on the rise. Besides these services, there is a great scope to expand the network of digitalised services including financial services as Business Correspondent outlets for banks, insurance services, rural data centres and business processing services etc.

A general complaint voiced is that the economic activity in the home states of migrants is low due to lack of availability of credit. It is overlooked that the low level of economic activity could also be the reason for the low level of disbursement of credit. Like all other services, credit flows where demand exists. With rising economic activity, the level of credit would also increase providing further scope for employment in the financial services sector. Regional entertainment such as Bhojpuri cinema and TV channels could be offered incentives as the entertainment industry has a good potential for job creation. However, this may have to wait till the restrictions on account of the pandemic are relaxed.

## **7. Entrepreneurial hubs for education and health services**

Education and health services are today provided either by the government or by private players. While the quality of government provided services is perceived to be low, the private services are costly. An alternative would be to have combination of the two. Setting up of private schools under a partnership scheme could be encouraged. The schools would have to follow the state curriculum and the performance of the students would be judged annually by an independent agency. Based on satisfactory performance, the school would be provided a subsidy which is supposed to be a compensation for the low fees charged by the school to needy students. A strict watch would also be kept on the fees and other charges recovered by the school from the students. Other combinations of public private partnership could be tried out in education and health. These could expand the coverage without the government having to reach out to the entire population eligible for such services. Promotion of such schools and training outfits could also be provider of employment while helping meet a public goal.

## **8. Alternative approach to skills training and utilisation of skills – generate demand and train**

One of the approaches to utilising the skills of the returned migrants would be to map their skills

and accordingly offer placement to them in a particular location or in a particular sector. While this is a useful approach, it is also relevant to realise that the migrant workers are highly versatile. It is not necessary that the returnee has to be offered a job in the same sector where he has acquired skills. There is reason to believe that a returned migrant, having once acquired a skill, would easily acquire another skill. If this is accepted, an alternative approach would be to develop industries and services for which good demand exists. The skills required by the sector could then be taught to the migrant returnees as per the demand of the industry.

### **9. Decongest some of the large urban centres in the country**

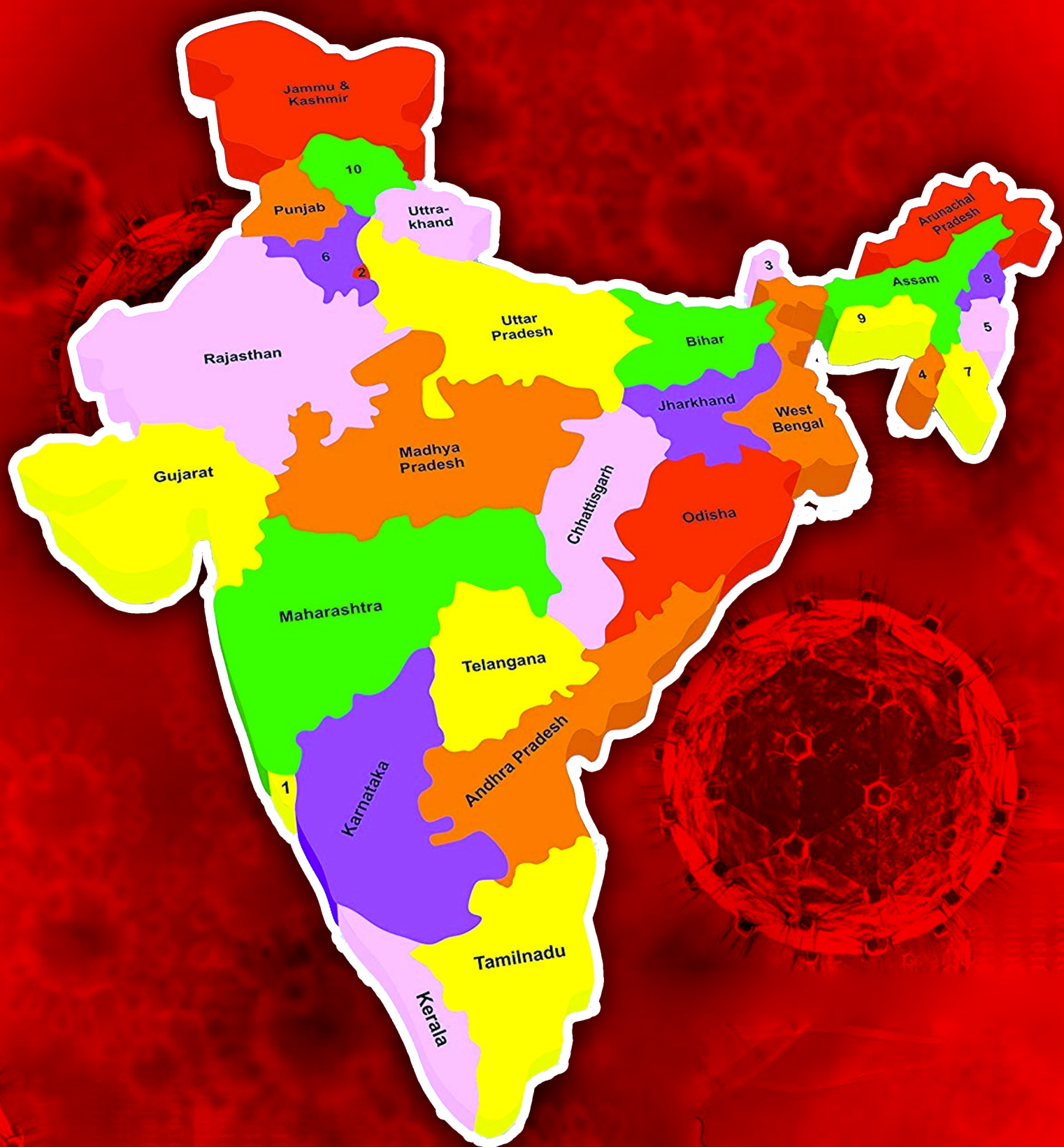
If livelihoods are generated for the returned migrants in their home states, a situation may arise where the states where they used to work may face a shortage of skilled workers. While the problem would exist for the states like Punjab or Kerala where the labour is needed for agriculture and plantation activities, for urban areas a possible solution could lie in the very situation created by the lockdown and also the flight of the migrants. Most urban centres would now be operating at a level lower than that seen earlier and the demand would also be partially affected due to the migration of labour as also the restrictions due to the lockdown.

This presents a scope for de-congesting some of the urban centres even if it would mean a lower level of economic activity than earlier. The de-congestion may provide an opportunity to address some of the problems of transport and housing in these cities. In the process of evening out the disparities in development, certain geographical areas may also witness a reduction in economic activity, which need not necessarily be an adverse development if the growth was supported only through inflow of migrants and resulted in overcrowding.

### **10. Address social reasons for migration**

It should be noted that the reasons of migration are not always economic. There could also be social issues such as caste hierarchy, absence of climate of free expression etc. A great deal of status is also attached in some place to ownership of land and those who are landless may prefer to migrate to urban centres. While it is difficult to address these issues in the short term, the social factors need to be kept in mind while discussing the issues related to migration.





# Citizens' Agenda 2050

## For Rebuilding a New India

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Ashok Khosla | Vijay Mahajan | Rajesh Tandon

### I The Founding Vision of India

Building a New India after 2050 is the short name we give to the most urgent task of our time. It is 70 years after the formal adoption of the Constitution and its underlying vision, based on the values stated in the preamble – Justice, Liberty, Equality and Fraternity – to be achieved through a sovereign, socialist, secular, democratic republic. It is clearly time to evaluate whether these aspirations expressed in the preamble of the nation's Constitution have been met and, if they have not been realised significantly, to design a future that will be able to help the country achieve them.

It is no one's case that India has made no progress over these decades. On the contrary, there are manifestly many more citizens of our country who live longer, healthier, better educated and more productive lives than ever before. More than doubling of the life expectancy from 32 to 69 years is just one outstanding example. We can be proud that some among our fellow citizens are capable of competing in the spheres of business, finance, science, medicine, engineering, information technology and many other domains, even some sports, with the very best in the world. And we have built up an enviable infrastructure, production capacity, institutional framework and economy.

At the same time, we continue to have more hungry, undernourished and mal-nourished, frequently sick, illiterate, jobless, poor and marginalised people than any other country in the world. The opening resolve of the Constitution does not seem to have adequately transformed the lives of these huge numbers of our fellow citizens. They got left out of the mainstream economy and survive beyond the edges of regular society, continuing basically to be "sub-citizens. The first job of all of us, those in politics and Government, those in industry and business, and those in civil society institutions, including the academia and the media, is to bring these several hundred millions of people up to full citizenship, with decent lives and livelihoods for themselves and a better life for their children.

The country adopted a socialist mixed economy model in its first four decades, and moved to a "liberalised, privatised and globalised" model after 1991. Both delivered many good things for part of the citizenry, but neither could address pervasive poverty and massive destruction of the environment and depletion of natural resources, as also the community social capital that existed before these models were implemented. The evident structural flaws in the nation's economic systems and governance institutions that Covid-19 exposed should make it hard for anyone to justify going back to Business as Before. The pandemic presents us with a rare opportunity to embrace development pathways that are more suited to fulfilling India's founding vision, duly contemporised and updated.

## 2 The Gap between the Vision and the Prevailing Situation

The pandemic and the lockdown have laid bare the inadequacy of the predominantly state-led model of development with state controlling the commanding heights, in the name of providing welfare to the poor, practiced from 1951 to 1991; as well of the primarily market-led model of development as growth first, equity later and environment sustainability last, practiced from 1991 to 2019. Thus neither the Sarkar as the dominant organising force, nor the Bazaar as the growth vector, has led to Sarvodaya, leave alone Antyodaya – it is time for Samaj to step in as the third pillar. Our key argument is that the current problems are so complex that their resolution requires a tri-sector collaboration.

The intent of the Constitution and its subsequent articulation in policies and laws was to bring about a fundamental socio-economic transformation in India by an act of political empowerment through universal adult franchise. But the Constitution put the State at the helm of the transformational role and gave little scope for individuals, or associations of individuals, to participate in realising the vision of India embodied in the Constitution. Indeed, even local governments were, for a long time, marginal and largely dysfunctional.

For much of India's first half century, governance was almost entirely top-down – decisions and money flowed mainly from the Centre to the State and from the State to the District. The 73rd and 74th Amendments to the Constitution created, in 1993, local bodies capable of responding to the aspirations of local communities, though they are still to come of age.

The reforms of 1991 lifted the place of private market institutions in the economy, ceding several roles of the State to market institutions through liberalisation, privatisation and globalisation. In the process, the ambitious, hungry for growth private corporate sector adopted a number of practices which harmed several segments of society, such as tribals, whose habitats were taken over for mining, industrial or infrastructure purposes, while the tribals were displaced without any recompense for their habitat or livelihoods. Workers lost in terms of wage share of value added, most of which went to service capital. Technological changes enabled companies to displace labour, break up unions and avoid social security benefits. Many industries also harmed the environment through untreated pollution, and many others exploited consumers through monopolistic practices. In 28 years since reforms, the private corporate sector and market institutions became dominant in national affairs.

In contrast, the place of civil society institutions was steadily diminished. Though the right to association was enshrined as a Fundamental Right under Article 19 (c) of the Constitution, in practice it was increasingly curtailed by a succession of laws. The registration law is from the colonial-era, enacted to keep the voices and actions of the people under check. To this, successive Indian governments added further control through Income Tax and Foreign Contribution laws. We need a radical review of these laws to ensure Civil Society Institutions can play a coequal role in nation building and socio-economic progress.

## 3 Values and Principles for Rebuilding a New India

Let us rebuild India based on the founding vision, the experience gained so far, the people's contemporary realities, and the unfolding opportunities and threats. There is now an emerging consensus that people and planet, citizens and ecology need to become co-drivers of progress. These

are BIG issues involving BIG conflicting demands among BIG players and interests. They will require BIG compromises and trade-offs. And these in turn will necessarily need new mindsets and attitudes, listed below:

- i. **“Putting the Liberty and Dignity of the Individual First”**, irrespective of caste, creed, religion, ethnic, gender, financial or other status as a non-negotiable element of the social compact. In current idiom: “Fundamental Rights”. In the Mahatma’s language: “Swaraj”.
- ii. **“Putting Politics into Civic Action and vice versa”** – Politics is not party or electoral affairs but influencing the political economy of our nation to ensure equity, fairness and justice for all segments of society. In current idiom: “Active Citizenship”. In the Mahatma’s language: “Satyagraha”.
- iii. **“Putting the Last First”**. We need to rededicate our commitment to creating such a society through focussed attention and affirmative action to ensure that SCs, STs, OBCs and minorities, and within these, the poor, the women, the aged and the youth are our prime focus. In current idiom: “Inclusion”. In the Mahatma’s language: “Antyodaya”.
- iv. **“Putting the Local at the Top in Decision-making”** through commitment to building up small and community-based economies. Likewise, the principle of subsidiarity – that problems should be solved at as local a level as appropriate, rather than centralising authority and resources. In current terminology: “Subsidiarity, Bottom-Up”. In the Mahatma’s words: “Gram Swaraj”. Local skills and ability to do things will have to be valued more as we build local economies.
- v. **“Putting the Future at par with the Present”** to ensure that the nation’s enormous endowments – people, institutions, natural resources and cultural heritage -- are enhanced rather than destroyed, and the assets we leave as our legacy for our children is at least as good as the inheritance we got from our parents. In current idiom: “Sustainability or Resilience”. In the Mahatma’s language: “Trusteeship”.
- vi. **“Putting Human and Natural capital at no less a level than financial and physical capital”** in our development choices and investments so that we evolve a sane and resilient pathway to a better future for ALL. In current idiom: “People-centric, Eco-friendly Solutions”. In the Mahatma’s language: “Buniyadi Taleem, Aparigraha”.
- vii. **“Putting Need above Greed”**, to ensure that the demands placed by people on other people and by people on nature do not destroy society or ecology. In current idiom: “Conservation of Resources”. Paraphrasing the Mahatma: “Asteya, Aswada”.
- viii. **“Putting Responsibilities on a par with Rights”**. Long denied our rights, the Constitution emphasised these, putting responsibilities in the form of “Fundamental Duties” in Article 51-A only under the 42nd Amendment in 1976. In current idiom: “Social Responsibility, Duty”. In the Mahatma’s language: “Dharma”.
- ix. **“Putting Technology at the Service of All People”**, not just the rich. In current idiom: “Innovation for the Masses, Appropriate Technology”. The Mahatma exemplified this



with Khadi and Gramodyog (village industries).

- x. **“Putting Resolution of Internal Conflicts and Conflict with Our Neighbours on Top Priority”** and redeploying the enormous amount spent on defence and internal security to address the problems of livelihoods and the environment. In the Mahatma’s words “Ahimsa”.
- xi. **“Putting Global Alliances into Play When Appropriate”** – for example in problems of cross-border trafficking, refugees, climate change, and lately, pandemics.

## 4 Challenges in Realising These Values and Principles

The above vision of the future faces some critical challenges. We summarise these and suggest how they could be addressed through new institutional frameworks that bring together a mix of policies, laws and regulations, norms, and the means to enforce them.

- i. **Difficulty in Switching to Sustainable Lifestyles:** Current life-styles have become unsustainable. The system of production and consumption of goods and services has now to be altered dramatically to re-direct policies and investments towards sustainable economic activity. New societal consensus around values of conserving our ecological resources and operational norms (such as Reduce, Reuse and Recycle) to practice them would need to be built. India’s youth can be valuable allies for this.
- ii. **Dependence on and Subservience to the State:** A vast majority of us have become dependent on the government for subsidies, and have also become subservient in face of pervasive state control. We have lost faith in our individual and collective capacity to drive change. Horizontal relationships amongst people and their local associations have been displaced by vertical relationship of each individual vis-a-vis the state. This is not right, as citizens have rights and obligations towards each other first. The values of justice, liberty, equality, fraternity and sustainability have to be first protected and promoted by and amongst citizens! Change will entail re-constructing the notion of active citizenship and a sense of community amongst us, especially with those who have been marginalised through caste, religion, gender, region, language and age.
- iii. **Attitude of Controlling rather than Enabling:** Inherited from colonial attitudes and policies, most of the interactions between governments and the people, and particularly people’s organisations, is based on prohibitions and penalties for transgressing them, rather than rewards for innovation and performance. Instead government should be responsible for enabling businesses, civil society organisations and community associations to take collaborative initiatives and pursue innovative solutions.
- iv. **Inadequacy of Local Institutions and Civil Society Institutions (CSIs):** Indigenous local institutions based on family, tribe, caste and religion have declined in importance, even as these cleavages are being used for political mobilisation. Newer local institutions have not emerged or matured to serve the range of human needs across all segments. For example, Gram Sabhas, Zilla Parishads and Municipalities, are still used as the last link in the patronage distribution chain, rather than as the first rung in the ladder of representation

and empowerment. The same is true for Cooperatives, school management and town vendor committees. Outside the state system, CSIs are often inadequate in building the capacity of local institutions, or playing a significant watchdog or alternative building role as they often lack the resources and talent required to do so.

- v. **Attitude of State and Market Institutions towards CSIs:** Today, a majority of CSIs, including the most iconic ones, feel significant antagonism from government towards their work and under constant threat of ever-new legal or regulatory measures and cumbersome, never-ending procedures designed to prevent them from doing anything useful. Likewise, market institutions see them as anti-growth irritants or at best low-cost service providers for tasks dealing with poor communities. The need to rebuild post Covid is the apt moment for engaging assertively and meaningfully with State and Market Institutions. This will have to be done at different levels of political leaders and officials, on the one hand, and regulators, financial sector players, large corporates and their associations nationally and internationally, on the other.

## 5 Civil Society Institutions to Lead the Citizens' Agenda 2050

How tenuous is the social contract and the Constitutional promises, became evident in the Covid crisis, but it was eroding over decades earlier. Institutions established to realise the constitutional vision have not proved to be robust. Thus we urgently need to fix the institutional mechanisms that will ensure realisation of the values in the Constitution. Who will lead this process? CSIs are uniquely qualified to do so. We should not forget that the independence movement was an aggregation of local civil society efforts. Like elected leaders, but unlike administrators and businesspersons, we have our ears closest to the people and their problems. CSIs have been the pioneers who, in the face of considerable resistance, have got the BIG issues onto the political agenda and into government policy: human rights, community development, poverty alleviation, gender empowerment, local self-government, appropriate technology, the right to education, the right to information, employment guarantee, environmental protection, financial inclusion, and so on. None of these were addressed by market institutions, and the State took these up after decades of grassroots work and advocacy by CSIs. And the best of CSIs have remained independent of both the state and the market institutions, and even held them to account.

Civil society normally includes citizens' associations, often registered as non-political, non-profit organisations. But we need to conceive Civil Society more broadly today. CSIs comprise a wider spectrum of institutions that are concerned with "social purpose" and "the causes of the less powerful". Merely being non-profit does not qualify an entity to be a CSI, if it is just a service provider to a government or a CSR program. On the other hand, in our definition of CSIs, we would like to include:

- Social movements, set up for a particular cause or for a broader purpose, for advocating, lobbying, influencing discourses and policies in the interest of a better future for all.
- Those entities whose output is more in the intellectual realm and innovation domain: the Think Tanks, research institutions, innovation labs and others with data, analysis and advocacy capability who can build knowledge to support sustainable development initiatives.

- The free-thinking academic institutions for critical thinking and enabling discourse and dissemination on alternative solution to socio-economic problems
- The independent media, of which some are left from the older ones and many new ones have emerged, particularly on digital platforms
- Cooperatives—producers, agricultural, consumers, credit, etc. – who provide democratic economic models for small producers and consumers to coalesce together with shared aims and interests.
- Labour unions, workers associations, farmers’ organisations, self-help group federations, street vendors’ groups, resident welfare associations, and professional associations.
- Philanthropies, which generally use profits made by business and Social Enterprises, who address social issues employing business-like methods and are structured as for-profit entities, are possible allies or affiliates of CSIs.
- International alliances on various themes where issues need such collaborative action.

Addressing the challenges outlined in the previous section need to be the foremost tasks for the CSI community. The wider coalition of institutions listed above and the networks of such associations should have a leading role to play in rebuilding the new India. This partly stems out of the fact that they are neither driven by the power motive of state institutions, nor the profit motive of market institutions. CSIs work towards a positive normative vision: that of widespread, equitable social welfare, which is in sustainable harmony with nature and based on participatory democracy, accountable institutions and individual liberty.

For all of the above to be possible, CSIs, their networks and coalitions need to enhance various capacities – Intellectual, Organisational and Material – and need to also hold themselves more accountable to each other and to “We the People”. These capacities can only be strengthened, and the role of civil society can only be played effectively, if an enabling eco-system of regulations, policies and investments is put in place, which derives its inspiration from recognising the unique and critical roles of CSIs in rebuilding new India.

While we may continue to protect our current space by ensuring that the existing regulatory framework does not become even more restrictive, we should aim for CSIs’ role to be formally supported by appropriate measures by governments and by the sector itself. Thus an enabling legislative framework is urgently needed, to replace the current regulatory framework. The characteristics and provisions of such a framework should at least be:

- i. Enacting legislation that both enables and specifies expectations and regulations for the sector to be able to maximise the positive and constructive contribution it can make to society; and while doing so, resisting any regressive attempts at enhancing State control. One way to achieve this is to establish transparent criteria for approvals, with time limits and written explanations for rejections
- ii. Establishing formal and informal mechanisms for effective, constructive and value-adding partnerships among the major sectors, i.e., government, business and civil society. This will

enable addressing today's complex problems, which are beyond the capacity of just the state or market institutions to address and require the community connect and innovative approaches that CSIs can bring

- iii. Creating a one-window Ombudsperson for ensuring that conflicts among the different sectors can be resolved expeditiously and rationally. The present situation where the government is both the perpetrator, the prosecutor and the judge cannot be accepted.
- iv. Helping strengthen the Sector's mechanisms and capacity for self-regulation to ensure integrity, transparency, and accountability. The CSI sector has been increasingly vulnerable to the actions of many of its members which cause disrepute and take away trust from the sector as whole.
- v. Setting up mechanisms to ensure that the most valuable and result producing CSIs have a reasonably secure access to funds to ensure their resilience and continuity of operations, even at times of economic uncertainty. The income-generating activities of CSIs should be protected from taxation or adverse action, as long as the net income is demonstrably used for social causes and public purpose;
- vi. Encouraging the youth, particularly those with University or professional education to work for at least a few years, in CSIs to ensure that they get a good understanding of the people's problems, and can carry this empathy with them in any sector they later work in – government, corporate or civil society.
- vii. Eventually, to constitutionally acknowledge CSIs as key actors in nation-building and social and economic progress. The article 19 - I (c) already states the right of citizens to form associations is a fundamental right. This can be strengthened by inserting a new Part IX-C by amending the Constitution, as was done for Panchayats when the 73rd Amendment inserted Part IX, for Municipalities when the 74th Amendment inserted Part IX-A, and for Cooperatives when the 97th Amendment inserted Part IX-B.

## 6 The Citizens' Agenda 2050

Now we move to answering the question – how do we bring about the desired changes in the institutional mechanisms so that the founding vision of India can be realised. How would this structural, systemic and transformational change come about? And who will mobilise for it? This is a generational task and will take several decades. Yet we have to begin acting NOW. So laid out below is the agenda for action at three time horizons – three months, three years and three decades.

### 6.1 Three Months' Agenda (Oct - Dec 2020)

- a. Establish a core group to work on developing the Agenda2050 and acting on it.
- b. Establish a working group on immediate "defence of the sector" issues, such as the proposed changes in Income Tax, Foreign Contribution and CSR related regulations.
- c. Establish a broad alliance of civil society actors, far beyond the NGO fraternity, to include
  - people's movements,
  - faith-based groups,
  - trade unions,



- cooperatives,
- producers' organisations,
- trade and industry associations,
- professional associations
- free-thinking academia
- independent media
- artists' and cultural groups
- other forms of citizen's associations

For this, we will have to reach out to leading individuals and bridgehead/nodal organisations among each of these groups. In the process, the Agenda2050 may have to be modified.

- d. Issue this Agenda2050 document in various languages to trigger wider discussion both at the level of values, principles and vision on the one hand, and strategy, structure, financing and the organisational mechanisms.
- e. Seek commitments of time, funds, infrastructure and moral support from a wide range of individuals and organisations towards realising the Agenda2050
- f. Set up multiple nodes, each capable of independent existence (with a mission, programs, funding, staff, etc.) and independent action, but working in a coordinated manner. In this sense, we mimic the structure of the Internet, where each node is self-sufficient in itself but enormously multiplies its efficacy by being interconnected. Even if one node stops functioning, the internet continues to work, because of multiple ways of interconnectivity. This is a radically different structure than the hierarchical Sun-surrounded-by planets-surrounded-by-moons structure often followed so far.

## 6.2 Three Year Agenda (2020-2022)

- a. Accepting the Gandhian precept "Be the change you want to see", the core group members commit themselves to live by the values that we espouse including moving to lower consumption lifestyles, engaging in non-party political action when necessary, collaborating with state and market institutions while sticking to our principles, etc.
- b. Establish a ground level dialogue with leaders of widespread peoples' structures such as Self-Help Groups, Farmers' Producer Organisations, Handloom and Handicraft Associations, Construction Workers Informal Unions, Vendors and Hawkers Unions, ASHA and Anganwadi workers' unions, Teachers' Associations. Etc. to understand what their issues are and what solutions do they suggest for better functioning of the institutions they work with.
- c. Establish a high level dialogue with Industry, Business and Financial Sector leaders to both impress upon them the need for inclusive, responsible and sustainable corporate behaviour and to hear their side of issues in terms of what comes in the way of their wealth generating instincts. Establish a joint front for policy advocacy with the government, which is both pro-growth and pro-dignified employment. As a part of this activity, establish norms for CSR funding so that it becomes truly more developmental for the country.

- d. Mobilise local community and outside financial resources, to ensure independence of CSIs and citizen groups from state and market institutions. One way to enforce this is to limit the expenditure of the organisation to no more than a one to one match of resources so mobilised with resources from state and market institutions.
- e. Establish Citizens' Action for Collaborative Transformation - Citizens ACT Forums - for each and every Constitutional, Statutory or otherwise significant Institution. Each Citizens ACT Forum would have members who are independent and have expertise in those respective areas. They would analyse institutional outcomes and establish a dialogue with the respective institutions to provide feedback and suggestions for improvement. As many of the transformations will need changes in citizens' behaviours (such as paying taxes, changing consumption patterns, and accepting diversity of views and lifestyles), the Forums mobilise wider public support. The Citizens ACT Forums would not hesitate from calling out regressive or dysfunctional steps by the State or Market institutions or indeed by CSIs. Thus they would act as countervailing forces to each other while collaborating with each other.
- f. Mobilise and train a large number of volunteers and workers, especially from among the Youth and Women, as well as the disadvantaged segments – Dalits, Tribals, Minorities, the Disabled and the Elderly. Instead of an hierarchal cadre, a set of intersecting circles would be established, with individuals opting for multiple memberships.

### 6.3 Three Decade Agenda (2020-2050)

Establishing new values and principles is a long term agenda, sometimes requiring a whole generation. This kind of transformation can only be brought about through the leadership of CSIs, working in collaboration with the State and Market institutions. "We the People" will need to be mobilised to begin to develop a consensus on emerging principles and priorities outlined in previous sections. That discourse needs fertile ground of 'civic space'....for conversations, dialogues, debates, confrontations, conscientization, all following the value premises and principles mentioned earlier. It is unlikely that either the State or the corporate sector will kindle or promote this discourse. Thus the lead will have to be taken by CSIs undertaking the following transformational tasks

- Inculcating these values in the younger generation through formal and informal education and activities like sports, community service and local problem solving.
- Public education and capacity building of the masses, to ensure that local institutions- self-help groups, school management committees, rogi kalyan samitis, town vending committees, farmers' groups, artisans guilds, gram sabhas, resident welfare associations, etc., all work effectively. These are the building blocks of democracy as well as a functioning institutional framework.
- Supporting institutional development and reform as needed, including evangelising behavioural change among citizens – from simple things like segregating recyclable and compostable solid waste at source, to paying utility bills and taxes. Similarly, community action to promote local problem solving will be encouraged, from taking care of the disabled and the elderly in small localities, to cooperating with the police in crime prevention, to tree planting and water

harvesting.

- Playing a watchdog role, all the way from monitoring the performance of civic services, schools, hospitals to monitoring whether elected representatives are trying to fulfil pre-election promises, and otherwise playing their role effectively. Putting politics into civic action will be practiced here, holding regular dialogues with various political party representatives and letting them know the pulse of the people.
- Calling out any violations of fundamental rights and constitutional guarantees, particularly when those effect the liberty and dignity of the individual. This would be done at increasing level of intensity in ever growing circles of concern, if necessary eventually to seek alliances at the regional, national and international levels.
- Constantly examining whether society is progressing along a path which is based on the values of justice, liberty, equality, fraternity and sustainability, and taking corrective action through citizen participation when we diverge significantly.

***We invite you join us in this purposeful journey so that a new India is built by 2050.***



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