



Centre for  
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SOCIETY

SOCIAL CHANGE THROUGH PUBLIC POLICY

# Beyond Legalese

Aam Aadmi in Conversation  
with the Constitution

having solemnly resolved to constitute India into a  
SOVEREIGN, DEMOCRATIC and SECULAR REPUBLIC  
and to secure to all its citizens  
JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
and to promote  
EQUALITY of status and of opportunity;  
and to promote  
FRATERNITY among the people  
and to promote among them  
individual





## **Beyond Legalese: Aam Aadmi in Conversation with the Constitution**

A Working Paper Series

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# BEYOND LEGALESE

Aam Aadmi in Conversation with the Constitution

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PRASHANT NARANG



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## Acknowledgements

The Constitution of India? Many know it, few truly understand it, especially through the eyes of an *Aam Aadmi*—the everyday person. Two years ago, a simple realisation hit us. While legal scholars delved deep in their academic chambers, the voice of the common citizen often went unheard. In pursuit of that voice, this project was born.

Picture this: a group of trainees – Akanksha Bassi, Akash Kumar, Chythra C, Keerthana Satheesh, Nilabh Agrawal, Nongthangba Thangjam, Pallavi Singh, Satyanarayan Sharma, Shreoshi Tarapdar, Yashaswini Bahuguna, not lawyers but curious minds from fields as diverse as history, psychology, public policy and sociology, picked up constitutional questions as their capstone projects. Diving deep into the vast ocean of the constitution, they surfaced with pearls—views untainted by legal jargon.

Among them, Pallavi Singh stood tall, their spirit a guiding star. Suraj Sharma and Dikshant Gehlot also played their roles diligently, alongside others who, united in spirit, sought to understand rather than just study.

Leading this ensemble were the Research Guides— Arjun Krishnan, Ashana Mathur, Astha Pandey, Jayana Bedi and Sehar Abdullah. Their guidance was North Star ensuring every scholar found their unique path.

Our path was illuminated by experts such as Abhinav Singh, who delved into Public Choice and Spontaneous Order; Suraj Kumar, who has a rich experience of primary research and field interviews; and Mritunjay Kumar, who is a master at visual storytelling. These were the individuals who equipped and trained our cohort.

Every word in our compendium was polished to perfection, thanks to Nishtha Singhal. Further, Sanskriti Shree made sure every detail was in place. Thanks to her skillful coordination, what could have been chaos turned into a well-organised effort.

In the grand tapestry of our journey, special threads of wisdom were woven by our founder trustee, Parth J Shah, and our CEO, Amit Chandra. Their guidance was invaluable. Separately, Ravi Yadav lent his artistic expertise, providing a visual charm to our work. And amplifying our voice in the digital expanse was the skilled Policy Training and Outreach Team.

No endeavour thrives without support. To the Friedrich Naumann Foundation for Freedom, whose unwavering faith bolstered us, we owe immense gratitude. A special note of appreciation to Dr. Carsten Klein and Nupur Hasija, your steadfast belief empowered every step we took.

As we progress, we're set to take these working papers to leading journals and conferences. Beyond publication, we seek constructive critique and engagement from the academic community. And we also aim to showcase the distinct narratives we've drawn from the depths of India to a broader audience.



**Prashant Narang**  
Senior Fellow - Centre for Civil Society





## FOREWORD

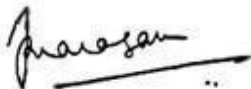
There is widespread confusion about the legitimate role of the state in India. Our constitution makers, law makers, bureaucracy and the intelligentsia have added to the confusion by taking ideological positions unsupported by evidence, logic and best practices in the world. The findings of this edition of the Researching Reality compendium appear to broadly indicate that the ordinary workforce in metropolitan India is learning from experience what works and what does not. Especially in the National Capital Region since it is the most economically vibrant region of the country.

However, the political traction for parties and governments offering Individual Short-term Welfare measures (ISWs) at the cost of fulfilling their legitimate role is an indication that these learnings have not permeated the rest of India. The rightful role of the state lies in fulfilling the collective needs, namely, rule of law, basic infrastructure and amenities, and devising a framework in which education and healthcare delivery and outcomes are satisfactory. While the government need not directly deliver education or healthcare services, it must create a framework enabling effective and affordable access. When on occasion the law makers and policy makers are inclined to do the right thing by liberalising a sector and encouraging competition and choice like in the case of agricultural laws of 2020, vigorous opposition by very vocal though local sections of farmers forced a reversal in the reform effort. We have a long way to go in making citizens realise what works and what does not through simple practical examples.

Meanwhile, the state and political system must design sensible models which enable better outcomes and facilitate an easy understanding in ordinary people about what works and what does not. The mobile telephone sector is a classic example of the right incentives in the form of competition, choice and technology infusion leading to fantastic outcomes. The efficacy of outcomes will bypass the many ideological debates in the country.

In a country with a sound educational system, the universities should be driving the kind of research undertaken by the Centre for Civil Society (CCS) compiled in this report. Such research should be conducted on a massive scale, creating a body of knowledge and shaping attitudes based on evidence. Like many other state-supported institutions, the universities have become moribund. Meaningful and productive research has become all too uncommon. We must all work together to enable universities to improve their research capabilities and serve the society better by generating new ideas.

CCS must be complimented for attempting to fill the vacuum. Research of this kind is meaningful, purposive, and constitutes a part of the solution.



**Dr. Jayaprakash Narayan**

General Secretary,

Foundation for Democratic Reforms



## Foreword

Welcome to *Beyond Legalese*, a collection of working papers that invites you on a journey through India's vibrant constitutional landscape. As we delve into the multifaceted world of the Constitution, we explore the intricate interplay between its principles and the everyday experiences of its diverse citizens.

In a nation celebrated for its democratic spirit and rich diversity, it is paramount to foster inclusivity in our discourse on constitutional matters. This collection of working papers illuminates the vital importance of embracing a wide spectrum of voices and perspectives when interpreting the Constitution. These papers emphasise the significance of non-expert voices, shining a spotlight on narratives from bustling streets, serene villages, and lively markets. They provide a comprehensive view of the Constitution in action, bridging the gap between expert analyses and the experiences of ordinary people.

Within the pages of *Beyond Legalese*, you will encounter a series of thought-provoking working papers that delve into various dimensions of India's constitutional landscape. These papers explore the dynamic world of rights within the Constitution, dissect the consequences of constitutional provisions on the agrarian sector, examine the evolving landscape of India's education sector, and critically evaluate the efficacy of urban governance, especially in the context of a rapidly growing city.

The papers within this collection aim to challenge conventional wisdom by actively seeking out underrepresented voices from different regions and communities across India. By weaving together these diverse narratives, these papers contribute not only to documenting viewpoints but also to fostering a sense of belonging and encouraging further engagement with constitutional matters. They play a crucial role in shaping a more informed, inclusive, and evolved public discourse on constitutional issues.

Centre for Civil Society has been relentlessly working towards promoting individual choice and increasing institutional accountability since 1997. This year's theme brings forth the experiences of citizens with the Constitution and encourages public discourse. It aims to bridge the gap between the views of constitutional experts and the *aam aadmi*.

In the spirit of the Constitution's commitment to "We, the People of India," let us embark on this intellectual journey, embracing the rich tapestry of perspectives that characterises our nation. Through these working papers, may we gain deeper insights into the complex and ever-evolving relationship between our Constitution and its people, ultimately enriching our understanding of India's democratic ideals and the challenges it faces.

I offer my heartfelt congratulations to the Researching Reality Team for their invaluable contribution in igniting the flames of liberty in India through their diligent and evidence-based research endeavours.



**Dr. Amit Chandra**  
CEO - Centre for Civil Society



# Introduction

The Preamble of the Constitution of India, celebrated globally, begins with the powerful phrase, “We, the People of India.” This ment signifies a collective spirit and envisions a nation bestowing upon itself a guiding structure. However, Pankaj Das—a school owner from Guwahati who joined a law school in his fifties, points out, a detailed examination reveals a curious dichotomy between the terms “We, the People” and “its citizens”. This is not just a linguistic nuance; it highlights the unique position of the Constituent Assembly.

Though “We, the People of India” appears to represent the entire population, it leans heavily towards the Constituent Assembly, a body not derived from universal suffrage. This could imply that the “We” might primarily refer to the Assembly—a prestigious group, not wholly representative of India’s vast diversity. As the Preamble progresses, the rights and values it articulates are addressed to “all its citizens”. It prompts one to ponder: Why doesn’t it read, “We, the People, secure to ourselves” these rights? Perhaps the Assembly perceived itself more as a protector of principles and rights rather than a microcosm of the nation. A sign of a paternalistic streak!

The Constituent Assembly primarily consisted of members from the Indian National Congress, representatives from princely States, and several minority factions. Larger segments of society, especially the marginalised, were not directly involved. The structure of the Assembly, which did not arise from universal suffrage, leaned more towards a centralised authority model than a pure democratic spirit.

However, examining the drafting process makes one wonder if it mirrors liberal democracy.

Despite Ambedkar’s emphasis on constitutional morality, i.e. need for Indians to foster respect and commitment to engage with the Constitution and democratic procedures, the procedure he was a part of seems at odds with this principle. The immediate demands of post-colonial nation-building may have necessitated a more centralised approach. However, the limited involvement of citizens in crafting the Constitution deserves reflection.

Although, the Constitution of India stands as a testament to the nation’s democratic ambitions, still, the origins of this revered document call for a profound introspection on the authenticity of its democratic spirit. When interpreting the Constitution, one must regard not only its contents but also the context of its inception.

Constitutional discussions typically evoke images of scholarly debates and legal settings dominated by specialists. These experts offer invaluable insights, but their narratives often overshadow those they intend to represent: the ordinary citizens. This compendium brings a fresh perspective, emphasising non-expert voices and spotlighting stories from bustling streets, serene villages, and lively markets. It presents a comprehensive view of the Constitution in action. While experts dissect Constitutional clauses, the experiences of regular citizens showcase their tangible impacts.

The compendium does not downplay expert discourse. Instead, it bridges expert interpretations and the experiences of common people. This approach resonates with Jürgen Habermas’s concept of the public sphere and Hanna Arendt’s emphasis on political action grounded in speech and interaction. The compendium, by centering on grassroots narratives, reimagines the Constitution not just as a legal framework but as a mirror reflecting the aspirations and challenges of its people.

Historical constitutional discussions, both within India and globally, have largely been steered by the elite. This compendium breaks the mould by underscoring the idea that while experts analyse the Constitution, it is the everyday citizen that lives it. By fostering this synergy between experts and the broader public, the compendium nurtures a dialogue that resonates with “We the People.”

Let us take a look at the various papers.

At the heart of Working Paper-I lies an exploration of the multifaceted term “socialist” within the context of the Constitution of India. Going beyond the mere textual confines, the paper delves deep

into the evolving interpretations and the dynamism inherent in the Constitution. The insertion of “socialist” into the Preamble, while harmonising with the Directive Principles of State Policy (DPSP), has nonetheless spurred substantial debates. This underlines the ever-evolving nature of foundational texts like the Constitution.

Central to this discourse is the dichotomy between State intentions and public perception. While State-driven welfare measures aim at wealth redistribution, poverty alleviation, and reducing income inequalities, they may not always align with the populace’s aspirations or perceived needs. This observation is pivotal, especially in the diverse socio-political landscape of India, where “socialism” assumes various shades of meaning based on historical, economic, and societal nuances.

Through qualitative interviews across diverse socio-economic strata, the paper paints a vivid picture of contemporary perspectives on State welfare. A striking revelation is the prevalent sentiment against the State’s free provision of goods and services. While freebies might seem an altruistic approach on paper, in practice, they often lead to dependencies, bureaucratic inefficiencies, and potential erosion of individual dignity.

The paper uncovers a curious paradox: trust in the State as an overarching institution coexists with deep-seated mistrust in its functionaries. Such insights hint at underlying systemic issues and the pressing need for governance reforms. Another pivotal finding is the limited public support for top-down wealth redistribution. Many respondents expressed preference for voluntary assistance, highlighting the importance of community and kinship networks in the Indian societal fabric.

The paper underscores the significance of non-State welfare mechanisms. In times of crisis, individuals, especially from lower income groups, rely more on immediate social circles like family, friends, or employers rather than the State. This brings forth pressing questions: What gaps in State welfare lead to this preference? And how can the State make its welfare mechanisms more aligned with its citizens’ actual needs?

Paper-I, thus, beckons readers to reflect on the balance between the Constitution of India’s socialist ideals and the diverse perceptions and realities on the ground. It sets the stage for a deeper understanding of the challenges and opportunities that lie in bridging the gap between policy intent and societal aspirations in the world’s largest democracy.

Working Paper-II delves into the dynamic world of rights within the Constitution of India. While our Constitution reflects global ideas about rights, it also changes based on India’s unique challenges and needs. A prime example is the demotion of the Right to Property and the rise of the Right to Education. Such changes show how our Constitution tries to stay relevant to current needs. But a key question emerges: Do people’s feelings about these rights match the Constitution’s intentions?

This paper zeroes in on the “Right to Freedom” listed under Article 19(1). This right is a fundamental promise to every Indian, ensuring basic freedoms like speech and movement. By focusing on these rights, the paper uncovers how people’s experiences might differ from what’s written in the law. A standout discovery is how much people value rights related to their daily survival. The right to own property, live where you wish, and move freely are deeply important to people. This tells us that for many, the most valued rights are those tied to basic needs and a stable life.

The paper also sheds light on how Indians understand the idea of freedom. People often describe it with words like “choice,” “safety,” and “fairness.” But when it comes to limitations or restrictions on these rights, many feel they are unclear or even unfair.

Interestingly, the study finds a twist when it comes to freedom of speech. People are strongly in favour of speaking their minds without fear. But when it comes to others enjoying the same freedom, many are cautious. This finding offers a window into the complexities of how people view rights, especially in a diverse country like India.

Working Paper-II offers a rich mix of insights. It bridges the gap between the lofty promises of the Constitution and the ground realities of its citizens. The paper paints a picture of a nation grappling with the challenge of ensuring rights for all, in a landscape filled with varied beliefs and needs. As readers dive into this exploration, they are prompted to think about the delicate balance between individual freedom and the greater good in one of the world’s most vibrant democracies.

Working Paper-III delves deep into the current shifts in India's education sector. This piece touches on a crucial question: can private institutions fulfil the right to education better than government schools? This exploration is essential in India, where education is both a promise and a right granted by the Constitution.

The paper masterfully combines theoretical discussions with the experiences of people. It gathers the voices of parents from low-income areas of Delhi, providing invaluable insights into their feelings and concerns about their children's education. This perspective is further enriched by the inclusion of opinions from teachers in government schools, painting a fuller picture of the State of education.

The paper's standout feature is its deep dive into the nuances of our Constitution regarding education. It probes whether the government's role is solely to provide education or if it can fulfil this duty by supporting private education. This exploration is pivotal, as alternative ways of offering education might better match the desires and needs of the public, leading to improved outcomes for students.

The paper hints at a core debate—who should be responsible for funding and overseeing education? The paper references past court judgments suggesting that the State's role might be to make education affordable, not to provide it directly. The narrative navigates historical debates and legal decisions, assessing the foundation for such an approach.

The research reveals several illuminating findings. Most parents, it seems, prioritise the quality of education over the institution delivering it. There's a notable inclination among parents, suggesting that private entities might manage schools, including government ones, more effectively. When it comes to choosing between free education and quality, many parents lean towards private schools, provided they can bear the costs. Concerns arise when discussing the environment in public schools, with issues ranging from student violence to damage to school property, problems that seem less prevalent in private institutions. Moreover, even when children attend regular schools, parents often find themselves relying on private tuitions, indicating a belief that these lessons supplement what might be missing from the main education system.

Paper-III offers an insightful journey through India's educational challenges and possibilities. It encourages readers to ponder the equilibrium between public and private education, pushing for a broader understanding of how to achieve quality education for all.

Working Paper-IV offers an incisive exploration into the consequences of the Ninth Schedule of the Constitution of India, emphasising its impact on the agrarian sector. The Ninth Schedule was instituted through the First Amendment in 1951, serving as a repository of laws and amendments shielded from judicial review. Intriguingly, a substantial 84% of the legislation included within this Schedule concerns agriculture, with land-reform as a dominant theme.

Originally designed to bolster land reforms and support the agrarian community, the Ninth Schedule is now perceived by many as a double-edged sword. While it aimed to prevent land concentration and promote equitable land distribution, the contemporary agricultural landscape suggests a divergence from these ideals. Drawing from a wealth of case studies from agricultural-intensive States such as Uttar Pradesh and Haryana, the paper delves deep into the on-ground realities influenced by laws within the Ninth Schedule.

Farmers, integral stakeholders in this discourse, express a desire for enhanced autonomy over their land assets. The paper cites instances where, under the umbrella of Ninth Schedule regulations, farmers faced punitive actions for seemingly innocuous activities, like clearing cattle waste from fields or constructing beyond prescribed limits on their property. Such episodes underscore a sentiment of discontent, where regulatory measures, once protective in intent, now appear restrictive.

The narrative on landholding caps presents a dichotomy. Marginal to medium landholders advocate retention of ceilings, emphasising equity and prevention of land monopolies. In contrast, another segment, spanning from small to large holders, opine that industriousness and enterprise shouldn't be penalised. The paper resonates with the latter, suggesting a link between larger landholdings and heightened productivity.

Another significant finding pertains to informal land leases. While these arrangements may appear transparent and just, the repercussions often negate these positives. Tenants, for instance, find themselves sidelined from insurance schemes earmarked for landowners.

Lastly, the restrictions governing the conversion of fertile land to non-agricultural purposes manifest in unforeseen ways. The paper highlights a paradoxical trend wherein fertile lands fetch lower prices than barren counterparts. The reason? Barren lands face fewer restrictions for non-agricultural conversions. Consequently, fertile lands are sometimes deliberately left fallow, awaiting reclassification to a status that allows for lucrative sales.

Working Paper-IV offers a rich tapestry of insights at the intersection of Constitutional provisions and their real-world ramifications. By juxtaposing historical intent against contemporary challenges, it presents a crucial discourse on the evolving dynamics of agriculture in India.

Working Paper-V illuminates the intricacies of urban governance in India, casting a spotlight on Delhi—a city anticipating a surge to nearly 39 million residents by 2030. Delhi's growing population mandates the provision of robust public services. The paper critically evaluates the efficacy of the 74th Constitution Amendment enacted in 1992, an initiative aimed at fortifying urban local bodies for improved governance and service delivery.

With a keen eye on Delhi's unique socio-political milieu, the study adopts a dual approach. It merges a meticulous legislative analysis with grassroots insights, encapsulating an investigation both academically precise and pragmatically germane. To gather a wide array of insights, the research centres on four diverse Wards in Delhi: Bindapur, Hauz Khas, Rajinder Nagar, and Krishna Nagar. Through this lens, it gauges residents' accessibility and satisfaction levels with quintessential urban services, namely electricity, water supply, garbage disposal, and road maintenance.

One pivotal revelation is the residents' increasing inclination towards non-institutional solutions, exemplified by their frequent resort to private entities for tasks like garbage collection. This trend underscores not merely a gap in service delivery but possibly a deeper, systemic inefficacy.

Varied degrees of satisfaction permeate the findings. Wards such as Hauz Khas and Rajinder Nagar display an intriguing pattern—residents often bypass official channels, opting for private contractors for services like garbage disposal and road repairs. This workaround, though effective, points to underlying governance challenges. Conversely, areas served by private electricity distribution entities, like most parts of Rajinder Nagar, record commendable service quality. Yet, outliers exist, with locales like Balmiki Colony reporting issues of bill inflation.

A salient theme emerging from the research is the residents' trust deficit in institutional mechanisms. Some funnel their grievances through Resident Welfare Associations or elected representatives, but many abstain, pointing to an embedded scepticism.

Paper-V advocates for transformative urban governance reforms. Beyond the decentralisation of power, there is a need to consider private sector collaborations, especially in arenas where traditional governance models appear to flounder. This synthesis, it suggests, might be the elixir for Delhi's urban governance challenges as it marches into a densely populated future.

India, with its vast and intricate tapestry of cultures, religions, languages, and socio-economic backgrounds, presents a challenge when it comes to representing every voice. Historically, certain groups have found themselves marginalised or excluded from mainstream discussions, including those concerning Constitutional matters. In a nation that boasts of its democratic spirit, ensuring inclusivity in the public sphere becomes paramount.

By striving to encompass a broad spectrum of voices, these working papers are not just chronicling views but actively challenging the *status quo*. When a diverse set of individuals share their interpretations and experiences related to the Constitution, it provides a panoramic view, highlighting both shared aspirations and distinct concerns.

Yet, with such ambition comes responsibility. It is crucial for the compendium to be mindful of potential biases and blind spots. Actively seeking out underrepresented voices, be they from remote regions or from marginalised communities, is essential. A farmer from a remote village in Uttar Pradesh might provide insights vastly different from an urban upper caste professional in Delhi. These narratives, when juxtaposed, paint a richer, fuller picture of India's relationship with its Constitution.

By engaging with these diverse views, these working papers also play a role in the evolution of public discourse. As more citizens see their concerns and experiences reflected in such works, it fosters a sense



of belonging and encourages further engagement with constitutional matters. The resulting discourse is not only more inclusive but also more reflective of the nation's ground realities.

These working papers stand as a testament to India's pluralism. By aiming for inclusive representation, it not only captures the multifaceted nature of India but also paves the way for a more informed, inclusive, and evolved public discourse on constitutional issues.



# Ideological Imprints

Deciphering People's  
Take on Redistribution





## Introduction

In July 2020, a petition was filed in the Supreme Court challenging the inclusion of the terms “socialist” and “secular” in the preamble of the Constitution of India via the 42nd Constitution Amendment of 1976.<sup>1</sup> The Constitution, a historic document adopted on November 26, 1949, is a testament to the principles and values that guided the Indian freedom struggle. Its preamble reflects the aspirations of a nation striving for democracy and egalitarianism. However, the petitioners claimed that in a democracy, “citizens cannot be bound to accept a particular ideology, and the application of the ideology depends on the will of the people as reflected through votes from time to time.”

The preamble is considered the “spirit and backbone” of the Constitution of India (Lahoti 2004). Across the globe, there is a growing trend of basing constitutional interpretation on the preamble, and India is no exception (Orgad 2010). In the subsequent section, we elaborate on the significance of the preamble as understood by the judiciary. While the petition, led by Subramanian Swamy, is still pending before the Supreme Court, it raises some pertinent questions. What is the spirit of the Constitution, and to what extent is it aligned with the will of the people?

Examining all the core tenets of the preamble is a substantial task, but our paper makes a modest attempt to delve deep into one that defines its socialist character. In a pivotal moment in 1976, the Constitution was amended to explicitly designate India as a “socialist” republic. This change was enacted through the 42nd Amendment during the emergency under the leadership of Indira Gandhi. The committee, led by Swaran Singh, formed to propose Amendments to the Constitution, reported that the Amendment aimed at making the “Directive Principles more comprehensive and giving them precedence over those Fundamental Rights that have been used to obstruct socio-economic reforms aimed at implementing the directive principles”.<sup>2</sup>

It appears that the Amendment aimed to reinforce the underpinnings of socialism that had always been present in the Constitution. The Directive Principles of State Policy (DPSPs), though non-justiciable, are intended to underlie the State’s obligations to its citizens and guide lawmaking. They encapsulate the principles of socialism under Articles 38, 39, 41, and 46.<sup>3</sup> These directives advocate for a society where wealth is not concentrated in the hands of a few, thereby harming the common good. They also underscore the importance of addressing economic and social inequalities and hierarchies by safeguarding the interests of the weaker sections of society. Even before the preamble was amended, the socialist spirit was intricately woven into these DPSPs at the time of adopting the Constitution. Dr. B.R. Ambedkar aptly observed that the DPSPs provide a “socialistic pattern of society.”

Why is this constitutional socialism of significance? The Constitution plays a pivotal role in delineating the boundaries of State power and establishing limits to State authority, a concept termed as constitutionalism. The DPSPs and the preamble outline the spirit with which the State must perform its functions—i.e., in the best interests its citizens, especially, the vulnerable sections of society. When enacting welfare legislation, the executive and legislature draw strength from these socialist tenets embedded in the Constitution. In the past, the judiciary, too, has invoked India’s socialist character to scrutinise the validity of executive and legislative actions.<sup>4</sup>

Belov et al. (2021), in their comparative analysis of socialist and non-socialist countries’ Constitutions, argue that it is essential to explore “the socialist legacy” of a country not only by examining the Constitutions’ literal text but also by assessing the norms the State embodies and their practical implementation. In India, the State has made significant efforts to breathe life into the DPSPs, which represent socialism “in writing,” through a range of welfare policies since gaining independence, thus embodying socialism “in action.”

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1. Note that the original preamble, adopted by the Constituent Assembly in November 1949, did not include these two terms.

2. The Constitution (Forty-second Amendment) Act, 1976.

3. Article 38 directs the State to strive “to minimize income inequalities and endeavor to eliminate status inequalities” and promote the welfare of the people. Article 39 encourages the State to, among other things, ensure “that the ownership and control of the material resources of the community are distributed in a manner best serving the common good.” According to Article 41, the State, based on its economic capacity, should “make effective provisions to secure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement. . . .” Finally, Article 46 urges the State to promote the “educational and economic interests of the weaker sections of the people,” especially those belonging to Scheduled Castes and Scheduled Tribes.

4. *Randhir Singh v Union of India, 1982*; *Excel Wear v. Union of India, 1978*; *BALCO Employees Union v. Union of India, 2002*.

While scholars have meticulously documented the evolution of the State's ideology and leaders' understanding of socialism in India since independence, limited attention has been given to how individuals perceive the socialist underpinnings of welfare and wealth redistribution (Qurban 2023; Mulford 2020; Mohan 1975; More 1984; Gould 2002).

A Constitution defines and shapes the relationship between the State and its people, and an account of constitutional ideology that focuses solely on the State perspective is incomplete. The State's perception of its relationship with citizens and the formulation of laws aimed at welfare or redistribution impact the populace, whether as beneficiaries, taxpayers, or both. Do the recipients of welfare schemes genuinely benefit from them, or would they prefer to see State support in another form? Do taxpayers, who may not be beneficiaries, believe it is the best use of their money? Answers to these questions would offer insights into how people perceive the welfare State and its fundamental role in society.

This paper aims to understand how individuals from various professional and socio-economic backgrounds perceive and interpret the socialist principles within the Constitution of India. Given the ambiguity and contestation surrounding the term "socialist" on the one hand, and the consensus that DPSP reflect India's socialist ideals on the other, we analyse people's perceptions of welfare, focusing on wealth redistribution, poverty alleviation, and the reduction of income inequalities.<sup>5</sup>

We employ a qualitative research approach and interview diverse participants to achieve this. Although we work with a small sample, due to resource and time constraints, we hope that our qualitative insights will provide a glimpse of the evolving public perception of wealth redistribution and State welfare. This qualitative study serves as a precursor and guidepost for broader research aimed at comprehensively capturing public ideology.

As we reveal, there is a misalignment in how the State operationalises welfare and what people find desirable. When unpacking this question, the aim is not to aggregate preferences and suggest that the will of the majority should be upheld. We acknowledge that the Constitution acts as a guardian of individual rights and protects the interests of the minority against majority rule.

Our study aims solely to highlight how the State's welfare actions are perceived by those who are beneficiaries and those who incur the costs of such actions. Such an analysis must encourage a healthy scepticism of the ideal of redistribution.

The next section of the paper provides historical context on socialism in India, its uniqueness, and the scholarly critique surrounding its inclusion in the Constitution. The third section elaborates on the methods we adopted for gauging people's perceptions and the limitations of our approach. Finally, the fourth section analyses the insights we obtained from our interviews.

## India's Socialism—A Unique Ideological Blend

While the term "socialist" found its place in our Constitution's preamble only in 1976, the roots of socialist ideology had already taken hold, subtly but surely, during the Constitution's adoption. The question arises: why did India, upon gaining independence, embrace socialism as its governing philosophy? The answer lies in a complex web of historical factors deeply rooted in India's struggle for freedom and the pursuit of social justice.

The emphasis on social justice was one of the key inspirations for adopting socialism in post-independence India. India's struggle for independence was born out of the desire to challenge the exploitative nature of British colonial rule, which exacerbated social inequities. The oppressive colonial regime and caste-based discrimination worsened the socioeconomic disparities. Independent India aimed to eliminate socioeconomic inequalities and advance the cause of the poor (Habib 2016).

However, what distinguishes Indian socialism from its global counterparts is the specific historical context in which it emerged. During independence, India grappled with profound poverty and glaring socioeconomic inequities. In this context, most leaders felt deep sympathy for the ideals of a welfare

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5. As encoded in Articles 38, 39, 41, and 46 of the Constitution of India. Note that this study is not concerned with gauging how well people understand "socialism" as a concept or with reconciling competing points of view on socialism. Throughout the paper, socialist ideals refer to the four aspects defined here.

State that worked for the poor and supported causes like wealth redistribution. At the same time, the mixed-economy model was aimed at encouraging industrial growth and productive capital. Such an approach, it was thought, would help economically uplift the masses. Finally, given that India was recovering from violent upheavals of partition and the freedom movement, Indian leaders wanted to avoid that violent communist revolutions suffered by countries like Russia and China.

Consequently, India chose a middle path with the State closely guiding the economy to ensure that the poor benefit, but also steered clear of radical redistribution. This was a compromise for both the radical socialists and those who wanted the State to play a limited role—a compromise that both sides were willing to make (Frankel 2005).

This consensus also reflected the ideology that appealed to key Indian leaders and the masses at the time (Adhia 2013). Profit-making was often viewed with scepticism, and businessmen and industrialists were met with suspicion. The collective desire was to build a society where wealth was not concentrated in a select few's hands but distributed for the common good.

## **Indian socialism— A unique flavour**

While socialism is typically thought of as entailing the collective ownership and control of the means and modes of production, Indian socialism is characterised by a multi-faceted approach that encompasses elements of social justice, economic redistribution, welfarism and, in the early years of independence, nationalisation of industries (Kent-Carrasco 2017).

India's unique socialism is illuminated by comparing its experiences with those of other socialist countries. There is a consensus among scholars that Indian leaders sought to develop their distinct brand of socialism and make an effort to distinguish themselves from the Soviet model, particularly the violence of Stalinism (Hilger 2021; Sherman 2018). For instance, while socialist leaders in India advocated for State monopoly over industry and trade, they also aimed to avoid coercing individuals and achieve socialist goals through peaceful means.

Sherman (2018) argues that socialists in India initiated a new type of revolution that envisioned a more equal society and spiritual fulfillment as their ultimate goal, while retaining the centrality of the individual, private property, and purposeful work.

## **Dissonance between constitutionalism and socialism**

Belov et al. (2021) define the core principles that undergird socialist societies (prioritising social responsibility and collective interests) and non-socialist societies (valuing individual liberty and separation of powers). They argue that while some of these principles are incompatible, others may be combined—a process they term “transformative” or “new constitutionalism.” They cite India, Colombia, and South Africa as examples of this approach. The Constitution of India enshrines non-socialist principles such as the separation of powers and prescribes socialist development goals, such as overcoming economic poverty, in the directive principles. Another contradictory facet that Belov et al. (2021) overlook is the insertion of private property as a Fundamental Right in the Constitution of India (later relegated from this position).

While Belov et al. (2021) do not necessarily view the blending of these principles as contradictory, some scholars do. Rajagopalan (2015) posits that constitutionalism and socialism are incompatible and that this tussle existed even before the 1991 liberalisation reforms were introduced. Independent India's birth was marked by this inconsistency of being a constitutional and socialist country, and leaders like Nehru attempted to reconcile the two. On the one hand, Nehru created a Constitution that would protect the rights of individuals, especially those they were unable to exercise under colonial rule. On the other hand, he relied on central planning through institutions like the Planning Commission to overcome social and economic inequalities that plagued India. According to Rajgoapalan (2015), meeting the latter's ends would require compromising individual rights.

As noted by Tripurdaman Singh (2020), starting from the First Amendment, the government has, over time, diluted Fundamental Rights and allowed them to be trumped by State policy under DPSPs. Palkhivala (1974) and Singh (2020) also document the erosion of constitutional values over the

years. Rajagopalan (2015) argues that the key reason for this decline is that socialist institutions are “incompatible with the Constitution,”—as evidenced by the tussles between the judiciary and the executive.

However, Chakrabarty (2008) and other scholars argue that India has retained its socialist character over the years. They point out that the government’s reliance on “State-guided routes to liberalisation” rather than “market fundamentalism” in implementing the 1991 liberalisation reforms proves this socialist orientation. Dhavan (1992) and Austin (1999) assert that socialism and constitutionalism are not only in harmony but also “interdependent” and “almost synonymous.”

## What do people think?

As is evident from the analysis above, scholars have delved into the evolution of various strands of Indian socialism and their compatibility with other ideals of the Constitution. However, there has been limited focus on the evolution of public ideology.

Scholars in other countries (Europe and the United States) have endeavored to capture people’s perceptions of equality, wealth redistribution, and the welfare State (Calzada and Del Pino 2008; Jacoby 2008). Such studies in the Indian context are sparse. Aiyar (2016) and Klasen (2011) have also examined the impact of socialist policies in nations like India, China, and South Korea, with a focus on infant mortality and malnutrition. However, these studies do not comment on people’s perceptions and their ideologies.

Researchers in India have largely concentrated on the public perception of specific welfare policies instead of documenting views on the principles underlying welfare. Some scholars, such as Adhia (2013), have attempted to capture the evolving public ideology, such as sympathy for capitalism, by analysing news media, State awards, and Bollywood movies. However, this research primarily focused on the shifts that occurred in the 1970s and 1980s leading up to the 1991 reforms. Furthermore, in analyses like these, it is challenging to determine whether news media and movies reflect public perception or shape it. It is likely that media and public narratives influence each other.

To address these gaps, we conducted a qualitative study that explores how individuals from diverse professional and socio-economic backgrounds perceive redistribution and State welfare.

## Understanding People’s Views on Redistribution and Welfare

Prominent scholars such as Adam Smith, J.S. Mill, John Maynard Keynes, Deirdre McCloskey, and others have emphasised that public ideology plays a pivotal role in shaping the economic outcomes of societies. They argue that people’s principles and perceptions are at least as important as economic incentives (Adhia 2013). A change in principles and perceptions can significantly impact the economic policies that individuals endorse. Our findings demonstrate that these perceptions are, in turn, guided by the incentives created by the policies and actions of the State.

Given this, exploring how people perceive the State’s role, especially concerning equality and the promotion of economic and social well-being, becomes critical. Our interviews aimed to delve into citizens’ perceptions, aspirations, and apprehensions regarding the State’s role in providing welfare and redistributing resources.

### The growing recognition of a culture of dependence

We observed that most individuals held strong opinions about the government’s free distribution of goods and services. Most respondents argued that such support is often unhelpful and, in principle, undesirable. This sentiment was shared across income brackets, except by daily wage labourers, who had the lowest income in our sample.

Respondents provided a combination of the following four reasons for upholding this viewpoint. Firstly, they saw free goods and services as triggering a negative feedback loop where people are



not encouraged to work and become more reliant on the government for all their needs. In other words, respondents recognised the culture of dependence created by schemes offering free goods and services. They argued that it makes people lazy and less likely to take long-term care of themselves. Respondents believed that individuals could meet their needs without such assistance.

Secondly, respondents argued that they prefer dignity and opportunity over free handouts. Such respondents considered free goods and services to be humiliating and degrading.<sup>6</sup> Hobbs et. al. (1993) examined the increase in charity prompted by poor government policies in Canada. They documented similar beliefs among the recipients.<sup>7</sup>

Third, some negative perceptions of free goods and services were driven by people’s awareness of leakages, bureaucratic hurdles, and implementation failures in existing schemes. While discussing the Public Distribution System (PDS), one respondent mentioned that the food provided at ration shops is “inedible; even dogs won’t eat it” (Roosma, Oorschot, and Gelissen 2014).

Research suggests that people’s attitudes toward the welfare State and its functions are influenced by their actual experiences with State performance (Roosma, Oorschot, and Gelissen 2014). People are more likely to support publicly sponsored welfare policies when they believe that interactions with the State are efficient, fair, and reliable. This stands in stark contrast to circumstances when beliefs about inefficiency, corruption, injustice, and arbitrary decision-making are fostered through experiences (Jaeger 2009). Our interviews corroborate this phenomenon, with respondents citing the corruption and inefficiencies of State actors when justifying their lack of support for some schemes.

Finally, respondents argued that the promise of free goods and services often aligns with political incentives and is primarily a tool for the incumbent party to attract votes and stay in power. Some stated how free money is a “burden on all of us”, except the real beneficiaries—government officials. One respondent mentioned, “Freebies are a way for funds to go unaccounted for”.

This phenomenon has been theorised by scholars like Desai (1975) and Jaffrelot (2006) in different contexts. According to Desai (1975), India’s political culture has rendered the label “socialist” useful in winning elections. Similarly, Jaffrelot (2006), based on a historical analysis, finds that at the root of affirmative policies like reservations are political considerations.

In fact, some respondents pointed to a sharper insight and a deeper problem—once initiated, ending the culture of freebies becomes challenging as all subsequent political parties become tied to the promise. Who wants to be the party that ends welfare? Verma et al. (2022) also demonstrate how free handouts alter political incentives.

As we reveal in the following section, this is not to suggest that respondents do not see any need for government assistance or welfare. Most respondents considered the elimination of poverty as a worthy goal but were opposed to some of the means adopted by the government.

## **No welfare or a different form of welfare?**

It is pertinent to note that interviewees often distinguished between services such as free water, electricity, bus tickets, and cash transfers on the one hand, and free education and healthcare on the other. While some were critical of the latter, most viewed government expenditures on education and healthcare as more productive and less wasteful.

Furthermore, instead of providing support in the form of free goods and services, respondents believed that the State should focus on creating opportunities from which people can benefit. We observed that this view was most strongly held by entrepreneurs across income brackets. For instance, some street vendors whom we interviewed mentioned that, rather than charity, they would prefer the freedom to operate their businesses without government intervention. Others referred to opportunities in terms of providing robust infrastructure and enacting laws conducive to business growth.

Similarly, middle- and high-income entrepreneurs believed that immediately after independence, there was a need for an extensive State welfare system. However, in recent decades, markets and private enterprises have been able to meet most individuals’ needs. In such circumstances, the State

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6. These categories of respondents included three distinct groups.

7. Note, however, that this differs from the response to government welfare programs.

should concentrate solely on creating the “rules of the game” and supporting those struggling for basic subsistence. In particular, the State should promote competition, encourage innovation, and create an environment conducive to business prosperity. Thriving businesses will offer opportunities for everyone, regardless of their wealth or income.

Entrepreneurs expressed the strongest support for the need to get the government “out of the way”. This sentiment is likely rooted in the frustration of navigating a complex web of regulations to operate their businesses.

Interestingly, one respondent who strongly advocated similar views was a former public sector employee from the Electricity Board of Kerala.

The respondent mentioned “wherever the government steps foot, it would bring corruption. As citizens, we should make sure we force the State to have as little role as possible”.

## **Trust in the institution of the State and skepticism towards its functionaries**

The old paradigm of *mai-baap sarkar* still reigns supreme in the minds of several respondents. This tendency to view the State as the “parent and provider” is particularly strong among low-income groups (also noted by Roy (2004)). Individuals feel that the State can and will offer remedies for all economic and social problems.

During the interviews, we observed that individuals held starkly distinct views on the State as an institution and the State in practice, i.e., the workings of State functionaries.

When considering the State as an institution, people held the paternalistic view that the State knows what is best for its citizens and will enact beneficial programs for them. Throughout the course of the interview, on several occasions, interviewees mentioned how “whatever the government does is for the good of the people”, “people always complain, no matter what the government does”, “people do not realize that the government knows what is best. Sometimes, the grand plans of the State only become clear in the long term”, and finally, “the State is doing what it can, and people do not deserve more than this”.

This tendency to praise the abstract institution of the State is juxtaposed with the complaints that the respondents shared about their everyday interactions with functionaries of the State. These interactions were marred by bureaucratic red tape, corruption, mistreatment, and discrimination. Across interviewees, those who extolled the virtues of the State later also recalled instances of abuse of power or a lack of dignified treatment on the part of public officials.

This contradiction is best reconciled in the vast literature on Public Choice, highlighting our failure to view the State as composed of self-interested actors who are not necessarily guided by higher virtues or welfare interests (McLean 1987; Rowley, Schneider, and Mueller 2008; Niskanen 1998). Public choice theory applies insights from economics to political science and shows how State functionaries also aim to further their self-interest in performing their role. Failure to acknowledge this often results in people viewing the State as benevolent and always well-intentioned.

It is pertinent to note that, in some instances, appreciation for the State was also rooted in fear. We could discern from the respondents’ body language that they were reluctant to share any critical perspective on questions such as, “what are some of the challenges you see in the way the State delivers welfare?” Some of these cues included repeatedly looking at the recorder while answering such questions or, after expressing a concern, adding that “mostly, everything is fine”. Especially hesitant respondents re-confirmed whether they were being recorded.<sup>8</sup>

Finally, in some instances, respondents could not critically evaluate the State’s role due to their tendency to adhere to the status quo. We faced this challenge, especially in the “what if” questions that required hypothetical reasoning. Respondents tended to rely on “what is” rather than “what should be” when answering these questions. For instance, in questions like whether the respondents think a certain welfare scheme merits an increase in taxes, some argued that increases in taxes are inevitable regardless of the schemes.

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8. The authors made sure to respect the decision of the respondents to either not record the interview or to stop the recording when they felt uncomfortable.

## “Rich” and “poor” view each other with mutual respect

Research in other countries has highlighted how welfare recipients are often seen as incompetent (Schofield, Suomi, and Butterworth 2022). Our interviews revealed a different story. Instead of viewing the low-income population as parasitic or lazy, most high-income respondents mentioned that welfare recipients are capable and competent. These respondents argued that they only need the right opportunities to improve their condition.

Similarly, far from being antagonistic or sharing mutual antipathy, a common sentiment among the low-income respondents was that the rich became rich due to their hard work. This contrasts with the disdain that most people shared for the wealthy (particularly businessmen) pre-1980s (Adhia 2013).<sup>9</sup> Our interviews hint at a transformation in mindset, wherein the rich do not necessarily create an image of deprivation for the economically weaker sections of the population and instead serve as an inspiration to work hard and toil.

Some low-income groups expressed contempt for other individuals in their income band. These respondents argued that a lack of ambition and motivation keeps some people poor. The most common example cited was that of daily wagers who make enough for that night’s alcohol and then stop working. Limited faith in people’s desire to be productive also led most respondents to argue against cash transfers. Respondents argued that recipients of free money will likely use it for unproductive and harmful activities like drinking.

## High reliance on non-State welfare and safety nets

Literature that focuses on the need and indispensability of State-provided welfare overlooks the non-State welfare provided by individuals and civil society (Khera 2020). Our interviews also aimed to gain insights into people’s perceptions of non-State assistance. The results highlight the crucial role of civil society in providing for those in need.

Respondents across income brackets, but particularly among low-income groups, argued that assistance from friends, relatives, employers, and, in some cases, even private moneylenders is more beneficial than State assistance during emergencies. They contend that such assistance is timely, reliable, and more accessible in times of distress. Law and order were the only areas where some respondents had faith in the State’s role during an emergency.

According to the respondents, although assistance from friends, family, and employers was not always unconditional—often requiring repayment once they were out of trouble—State-provided assistance was far from cost-effective. Even services offered by the government for free, such as healthcare, were plagued by red tape and numerous bureaucratic hurdles.

Interestingly, some respondents, such as street vendors, argue that emergency-like situations in their profession are caused by State actors (police officials) who abuse their authority. By virtue of operating in public spaces, vendors frequently encounter State functionaries. The harassment of vendors in the form of undue evictions, arbitrary penalties, and seizure of goods is well-documented. In such cases, they often rely on Non-Governmental Organisations (NGOs) and support from civil society to reclaim their rights.

Some researchers argue that such non-State welfare arises when the State fails to provide for its people (Hobbs et al. 1993). In such cases, there is an increase in charitable institutions. Hobbs et al. (1993), who conducted their study in Canada, view this development as evidence of the State’s failure and find that beneficiaries of charities consider donations to be humiliating. In the Indian context too, scholars regard welfare as a duty of the State, and as a corollary, the right of an individual (Khera 2020).

Such analyses suffer from two issues. First, they pay little attention to the resource and capacity constraints of the State. Second, they undermine the bureaucratic hurdles, delays, and poor-quality that most State-sponsored welfare programs suffer from. Our findings hint at the useful role that non-State welfare plays in providing a safety net and reliable assistance for those in need. Often, these non-

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9. Our study only has limited comparability with Adhia’s work due to the varied methodological approaches. While we rely on semi-structured interviews with respondents, Adhia analyses public perception through secondary sources such as movies and news media.

State providers are either personally related to the beneficiaries or operate locally. Local context and knowledge allow the providers to better understand and respond to challenges.

## Limited support for redistribution

The final part of our questionnaire focused on eliciting people's perception of taxing the wealthy to provide for low-income populations. Except three, all respondents argued against adopting such an approach. Some stated that, as a matter of principle, taking from one and giving to another is undesirable. Here, Rajagopalan's (2015) contention on socialism and constitutionalism being incompatible reflected in our interviews most clearly.

Others rooted their opposition in more practical considerations—per them, redistribution is not feasible or achievable. Such respondents argued that it is unlikely that the benefits of redistribution will reach the intended beneficiaries owing to leakages. Yet others, argued that while the government should work on uplifting the poor, it can raise money for this in ways other than taxing the rich. For instance, one respondent suggested that the government should increase the tax on alcohol and cigarette consumption. This, they argue, is also likely to reduce the consumption of such goods.<sup>10</sup> Others, including a former government employee, argued that the State has enough resources that, if used effectively, can advance the welfare of the poor without needing to increase taxes on the rich.

Interestingly, several respondents from low-income groups voiced their opinions against taxing the rich and giving it to the poor, arguing that it is “hard-earned” money. Instead of redistribution, the government should empower the poor to climb the social ladder. However, their responses on how such empowerment can be realised remained ambiguous.

On the contrary, several respondents were in favor of and wanted to see greater voluntary assistance from those who were better off. It is worth noting that the authors did not inquire about voluntary assistance, and most respondents themselves raised this as an alternative to coerced redistribution.

Finally, we observed that middle-class salaried respondents considered themselves to be the worst victims of taxation policies. A corporate employee stated, “Businesses get tax write-offs, welfare schemes are available for the poor, but the middle class suffers.”

To contextualise our findings on redistribution and how people perceive the role of State welfare, we also gathered people's views on the State's finances. While most respondents were aware that the government's resources, often referred to as “public” money, are raised through taxation across different income brackets, some were not. Those in the latter category tended to perceive the State's resources as abundant and nearly unlimited. This perception is also reflected in their desire for increased State involvement in areas such as education, healthcare, employment, and religious activities.

We observed that awareness of the source of the Government's resources is not limited to individuals with higher levels of education or greater economic means. A few respondents from lower-income groups also demonstrated a relatively strong understanding of how welfare schemes are financed.<sup>11</sup>

In fact, two respondents who were very vocal about greater transparency in public spending belonged to low-income groups. For instance, one taxi driver mentioned, “If you increase the taxes for free education, and I contribute even 2 rupees towards it, I would want to know where my money is going and that my money is going in it.” They mentioned that the Government should conduct public consultations on how to spend its surplus and ensure people's buy-in for their plans. These respondents also believed that money is best spent locally by people who understand their conditions and circumstances.

## Conclusion

In July 2020, a petition raised questions about the Constitution of India, the values encoded in the Preamble, and whether it aligns with the nation's ethos. In responding to this question, most scholars

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10. Note that the evidence on the price elasticity of goods like alcohol and cigarettes is mixed.

11. However, respondents who were unaware of the source of the State's resources belonged to low-income groups.

tend to rely on other constitutional values, the laws enacted by the Government, and other historical developments. Another crucial element to complete this puzzle is understanding the public perspective. Our paper encourages the development of this scholarly inquiry and serves as a starting point for it.

We initiated our exploration by delving into India's distinct brand of socialism and examining some of the well-documented historical and cultural influences that have shaped it. Indian socialism is not your typical form of State control; it encompasses aspects of social justice, economic sharing, and welfarism. The Preamble and the DPSPs are considered to embody the core principles of Indian socialism. We relied on these principles to understand the goals of a socialist State.

Our qualitative interviews revealed a growing sentiment against the culture of dependence created by the free distribution of goods and services, regardless of income level. Many people believe in the dignity of self-sufficiency and view Government handouts skeptically, driven by concerns about inefficiency, corruption, and political motivations. Nevertheless, amidst these reservations, the State's role in providing free education and healthcare is acknowledged.

The paradox of trust in the institution of the State versus skepticism towards its functionaries underscores a fundamental misunderstanding—a failure to recognise the State as composed of self-interested actors. The paternalistic view of the State as benevolent often clashes with personal experiences of bureaucracy, corruption, and discrimination.

Furthermore, our research illuminates the significant role of non-State welfare in India, often surpassing the State in terms of timeliness, reliability, and accessibility during emergencies. This underscores the importance of civil society and individual assistance in the Indian context.

Perhaps the most striking revelation is the limited support for redistribution. The majority of respondents, regardless of income, resist the idea of taxing the wealthy to support the poor. Some view this as undesirable on principle, while others question the feasibility and efficacy of such measures. Instead, there is a prevailing belief that the State should empower the less fortunate.

This study provides insights into the complexities of socialism and welfare in India. It challenges preconceived notions and underlines the importance of citizens' perspectives in debates surrounding the Constitution of India. The misalignment between State policies and public perception must urge us to reconsider the ideal of redistribution and encourage a deeper reflection on the role of the welfare State in society.

## Methodology

### The approach

Given the limited scholarly attention our area of study has received, we conducted qualitative interviews employing a semi-structured questionnaire. This approach allows us to gain a comprehensive overview of people's perceptions of redistribution and welfare, as well as the factors that influence these perceptions. Qualitative research facilitates the capture of nuances, emotions, and the depth of individual experiences. Additionally, this qualitative method enables us to establish better rapport with respondents, a crucial aspect in ensuring their comfort and obtaining insights into their ideologies and beliefs.

### Research objective

Our objective was to examine how people perceive the welfare State and wealth redistribution. Some of the themes covered in our questionnaire include:

1. Identifying the need for State intervention: where do people identify the necessity for State intervention? How do they perceive its scope and priorities?
2. Challenges in the current welfare delivery system: do they encounter any challenges in the current mode of welfare delivery, and do they envision an alternative?
3. Understanding of State resources: how do people perceive the source and limitations of the State's resources?
4. Dependency on non-State assistance: to what extent do individuals rely on welfare from non-State actors, such as individuals and NGOs?

### Pilot study

To test our questionnaire, we conducted a pilot study in July with four participants. These pilot interviews were carried out in Grade G and Grade F colonies in North and West Delhi, as well as in Ballabhgarh, Haryana. The pilot study enabled us to identify questions that were either vague or ambiguous or prone to misunderstanding. We also realised that some questions had overlaps. Based on this feedback, we reworked the questions.

### Sampling method

Since we were dealing with a limited sample set, we relied on purposive sampling to better address our research questions. We selected respondents from a range of income levels and professions. This allowed us to gain insights from those who avail themselves of State welfare services (such as free rations, subsidised housing, employment guarantee schemes, etc.) and those who either do not use these services or are less likely to depend on them. Additionally, we chose respondents from various income levels to ensure that the perspectives of those with a relatively high tax burden were also represented in the study. Finally, we included a variety of professions to capture the voices of salaried individuals (both in the private and public sectors) and entrepreneurs.

### Research location and setting

In Delhi, we covered the following areas: Hauz Khas, Lajpat Nagar, Pushp Bhawan, and Madanpur Khadar. These locations were selected for logistical convenience and the socio-economic diversity of our respondent pool. For instance, Madanpur Khadar houses several low-income residents of Delhi, many of whom rely on ration shops and other government assistance. In Hauz Khas, we interacted with middle- and low-income entrepreneurs. Finally, areas like Pushp Bhawan provided us access to low-income migrant construction workers. Some of our respondents were located in other parts of the

country, such as Hyderabad and Bangalore. We conducted interviews for data collection in July and August 2023.

## **Data collection**

We employed a combination of offline and online interviews using a semi-structured questionnaire. Each interview lasted between 20 minutes and an hour. We informed all participants about the study's purpose and obtained their consent to conduct and record the interviews while ensuring anonymity. Participants were also free to withdraw their responses at any point. We did not select any respondents to whom the researchers were personally or financially related.

## **Sample characteristics**

A total of 28 respondents were interviewed, with approximately 50% falling within the low-income bracket, while the remainder consisted of a mix of middle and high-income respondents. Furthermore, we ensured a balanced representation of individuals with varying degrees of dependence on State welfare.

## **Data analysis**

After parsing and reviewing the interview transcripts, we coded the data. Based on this coding, we identified common patterns and themes to distil key insights. We also captured those responses that were markedly different from others.

## **Limitations**

It is crucial to acknowledge the limitations of our research. The small sample size and non-random selection of participants necessitate caution when generalising findings. While our study offers valuable insights, its outcomes should be interpreted within the context of these constraints.

Establishing rapport with respondents while interviewing them online proved slightly more challenging than in-person interviews. This may have affected the quality of responses in online interviews. Finally, given the sensitive nature of our discussion, some respondents may have been subject to social desirability bias.





# Rights and Ranks

## Public Pulse on Constitutional Priorities





## Introduction

Can some rights hold more significance for an individual than others? The relative importance of rights has sparked extensive legal and philosophical debates. Globally, such discussions have led to the establishment of certain inalienable human rights. These rights encompass the right to life, due process, freedom from slavery, and protection against torture (Farer 1992; United Nations 1966). The designation of some rights as inalienable and others as alienable constructs a hierarchy of rights (Weil 1983; Shelton 2006).

The Constitution of India also delineates a hierarchy of rights, marked by its distinctive nuances. It presents a four-fold classifications of rights: non-derogable, fundamental, constitutional, and legal.<sup>12</sup> Fundamental Rights are integral to the Constitution’s “basic structure”, and the legislature has limited powers to amend them.<sup>13</sup> Specifically, under Article 32, the Supreme Court has original jurisdiction to address breaches of Fundamental Rights, whereas, for other rights, it holds appellate jurisdiction. It can be argued that within this framework, constitutional rights, especially Fundamental Rights, occupy a superior position compared to legal rights (Klein 2008).

Part III of the Constitution, assuring Fundamental Rights to all citizens, has been amended several times since its adoption in 1947, altering the original hierarchy of rights. For instance, the legislature reclassified the Right to Property from a Fundamental Right to a Constitutional right.<sup>14</sup> They also elevated the Right to Education (Article 21A)—previously a component of the Directive Principles of State Policy (DPSP)—to a Fundamental Right.<sup>15</sup>

These amendments, typically proposed in the name of social justice and the welfare of marginalised sections, are crucial for actualising the right to life as guaranteed by Article 21 (Rao 2008). However, others like Palkhivala (1974) contend that such amendments signify a gradual erosion of the rule of law and individual freedoms, serving as a vehicle for advancing a statist ideology and prioritising certain rights over others (Rajagopalan 2015a).

While scholars remain divided on the issue, the key question that emerges is whether the public’s conception of “hierarchy” of rights aligns with that of the State. Is there a disconnect between them? Through qualitative interviews, this paper explores whether there are any disparities between legislative intentions and public perceptions. Our paper focuses on people’s relationship with the Right to Freedom under Article 19(1). We examine the extent to which the perceptions of Indian citizens regarding the Right to Freedom coincide with the hierarchy encoded in the Constitution.

This paper is structured into three sections. The initial section establishes the context by exploring the constitutional framework and the prevailing discourse on the hierarchy of rights. It emphasises the existing gaps in literature, particularly the scarcity of citizen-centric perspectives on understanding rights. The second section is devoted to insights gleaned from the field, exploring individuals’ comprehension of rights and limitations and their comparative valuation of different rights. In discussing these rights, we also probe the significance individuals attribute to these rights. We finally explain our methodology.

## Context of the Constitution of India

Part III of the Constitution enshrines Fundamental Rights for all citizens, encompassing the Right to Equality (Articles 14-18), the Right to Freedom (Articles 19-22), the Right against Exploitation (Articles 23-24), the Right to Freedom of Religion (Articles 25-28), Cultural and Educational Rights

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12. The difference between these rights is explained in the following sections.

13. The Basic Structure of the Constitution encompasses certain indispensable features that are immune to legislative alterations through constitutional amendments. The concept of the basic structure doctrine evolved in India during the 1960s and 1970s, culminating in the landmark case of *Kesavananda Bharati v. State of Kerala*. With the formal adoption of this doctrine, the Supreme Court of India retains the authority to scrutinise and invalidate any amendments perceived as infringing upon the basic structure. Courts delineate the elements of this structure on a case-by-case basis.

14. Right to Property was removed from Fundamental Rights (Article 19(1)(f) to legal rights (Article 300-A) by the Forty-fourth Amendment.

15. 86th Amendment shifted Articles 45 and 39(f) from the Directive Principles of State Policy (DPSPs), which are non-judicial in court to Part III, Fundamental Rights, under Article 21A.

(Articles 29-31), and the Right to Constitutional Remedies (Article 32). These rights are justiciable under Article 32, allowing aggrieved individuals to directly approach the Supreme Court of India for redress. Article 32 is thus considered a Fundamental Right in itself, serving as a protective shield for other Fundamental Rights (Rakshit 1999). Further, per Article 13, the Supreme Court has the authority to deem any law or executive order unconstitutional if it conflicts with Fundamental Rights (Rakshit 1999). However, Fundamental Rights are not absolute; the Government retains the right to impose reasonable and fair restrictions when necessary.<sup>16</sup>

In addition to Fundamental Rights, Indian citizens are endowed with legal and constitutional rights. However, the protections and original jurisdiction for appeals against infringements differ from those associated with Fundamental Rights. The Supreme Court operates under three jurisdictions: original, appellate, and advisory. It exercises original jurisdiction in matters related to infringements of Fundamental Rights under Article 32. Its appellate jurisdiction applies to all other rights, i.e., it can only review appeals against lower courts' decisions on rights other than Fundamental Rights.<sup>17</sup>

High Courts, under Article 226, have original jurisdiction to address appeals concerning constitutional and Fundamental Rights and exercise appellate jurisdiction per Article 227 over cases from lower courts or tribunals. Thus, for constitutional rights violations, aggrieved individuals must approach the High Court, while legal rights violations are first addressed in subordinate courts like District Courts.<sup>18</sup>

Constitutional and legal rights are not part of the Constitution's "basic structure", and lack the robust judicial protection against executive actions that Fundamental Rights enjoy (Singh 2006). Therefore, within India's comprehensive rights framework, Fundamental Rights command a superior standing compared to other rights.

The composition of Fundamental Rights has undergone several modifications since independence. While some rights have been elevated from DPSPs to Part III of the Constitution of India, others have been devolved from the Fundamental Rights status. Before 1978, the Right to Property (Article 19(1)(f)), now a constitutional right under Article 300A, held the status of a Fundamental Right in India. However, a series of amendments, from the First to the Forty-Forth, progressively weakened this right, rendering it more susceptible to State appropriation for public purposes (Singh 2006). Additionally, the Right to Education (Article 21A), currently a Fundamental Right, was initially part of the DPSPs under Articles 45 and 39(f).<sup>19</sup> Rajagopalan (2015) posits that the discord between socialist planning and constitutional limitations prompted numerous amendments, contributing to a decline in the rule of law and facilitating the advancement of socialist policies.

## Competing Theories on Hierarchy of Rights

The prevailing discourse on the hierarchy of rights is diverse and adopts varying frames for analysis. International legal debates often employ the concept of non-derogability to examine human rights. Non-derogable rights are immutable and must be upheld under all circumstances (Farer 1992). They encompass human rights such as the right to life, physical safety, due process, freedom from slavery, and protection against torture.

Non-derogable rights may be either absolute or non-absolute.<sup>20</sup> For instance, the prohibition of slavery is an absolute right, but the right to life is not. This distinction means that the State can impose a death sentence after presenting a valid reason and adhering to due process.

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16. The basis to impose reasonable restrictions is laid out in Article 19(2) to Article 19(6). If a right is violated, an individual can appeal in the court for the restoration of their rights. The Court typically applies the test of proportionality to assess whether the restriction/violation was justified.

17. All rights that have been conferred to the citizens and enshrined in the Constitution of India but are not under Part III of the Constitution are said to be constitutional rights. For example, Article 300A (Right to Property) is a constitutional right. Amendment to constitutional rights can be brought by amending the Constitution.

18. The laws which are passed by the State legislatures or the Parliament are the source of legal rights. They do not form a part of the Constitution and can be amended by the legislature through the ordinary law making process.

19. The socio-economic positive rights are included in Part IV of the Constitution, known as the DPSPs. These are non-justiciable rights which are not enforceable by the court.

20. Absolute rights are ones that the State cannot restrict or derogate under any circumstances, whereas non-absolute rights can be restricted by the State, after following a due process of law.

In India, non-derogability was integrated into the Constitution by amending Article 359. This Amendment fortified Articles 20 and 21 as non-derogable, ensuring that these rights remain inviolable, even during national emergencies (Tripathi 2011).<sup>21</sup>

However, the designation of certain rights as non-derogable suggests that other rights can be reasonably curtailed by the State. Weil (1983) contends that the principle of non-derogability empowers States to bifurcate norms into those of “greater” and “lesser” importance. This encourages courts to make generalised decisions favoring non-derogable rights, overlooking the specific facts or unique circumstances of a case (Klein 2008). Klein (2008) further posits that non-derogability may provide the State with a pretext to infringe upon other rights in non-emergency contexts.

The concept of non-derogable rights is deeply rooted in John Locke’s theory of natural rights (Locke 1884). He posited that individuals possess certain inalienable rights. These “natural rights” are not conferred by the State but, exist prior to its formation (Locke 1884). He asserted that the primary role of the State is to safeguard these “natural rights”, which serve as the foundation for other civil rights.

Several scholars have conceptualised the hierarchy of rights differently from Locke. While Locke’s theory of natural rights focuses predominantly on negative rights, other human rights theories encompass both positive and negative rights (Shue 1980; Bay 1982; Howard 1983).<sup>22</sup> Shue (1980) posits that the right to subsistence is a “basic right”, alongside the conventionally recognised right to physical security. Others scholars like Bay (1982) integrate Maslow’s hierarchy of needs into a socio-legal framework, creating a needs-based approach to rights. However, this approach attempts to make subjective concepts of needs and wants objective, and defines abstract qualities like human excellence as universal aspirations. The theory also presupposes “higher” needs and prescribes an ideal State of being (Fitzgerald 1985).

Existing literature either presents a case against a State-centric view of hierarchy of rights (Weil 1983; Klein 2008), or proposes hierarchical frameworks for theoretical exploration (Locke 1884; Shue 1980; Bay 1982; Howard 1983). Most studies overlook the citizen’s perspective: what rights people value and why.

A notable exception is a study that employed the Critical Incident Technique (CIT), for examining people’s valuation of rights (Montgomery 2002). However, CIT’s reliance on narratives of rights deprivation, to establish hierarchy may not account for variations in participants’ recall and interpretation (Flanagan 1954). Further, the relationship between experiences of rights deprivation and their perceived hierarchy rests on assumptions that are not clearly explained.

There is limited research exploring the hierarchy of rights from a citizen-centric viewpoint. We address this gap by conducting qualitative interviews with individuals from diverse professional and socio-economic backgrounds. We examine citizens’ perceptions of rights and assess their alignment with amendments to Fundamental Rights under Article 19(1) of the Constitution of India.<sup>23</sup>

## Findings from the Field

This section examines the data collected from the field on how people value and understand the Right to Freedom. The first subsection discusses how respondents understood the Right to Freedom and connected it with the idea of choice and autonomy. It also analyses how respondents prioritise one right over others and view restrictions for themselves versus for others differently.

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21. Article 20(1) establishes that individuals cannot be found guilty unless they contravene a law that was in effect when the alleged act was committed. Moreover, they cannot face a punishment more severe than what was authorised by the law in place at the time of the offence. Article 20(2) ensures that no person can be subjected to multiple prosecutions and punishments for the same offence. Additionally, Clause (3) of Article 20 guarantees that individuals accused of a crime cannot be forced to provide a self-incriminating testimony. The dissenting opinion of Justice Khanna in *A.D.M. Jabalpur v. S. Shukla*, 1976 is considered to be cornerstone of non-derogability in the Constitution.

22. Negative rights are those that prevent the State from doing certain actions; for example, the right to life. A positive right is one which requires the State to provide something; for example, the right to education.

23. Throughout the paper, Article 19(1) refers to all rights that were part of this Article since it was first enforced in 1950, till 2023. This includes the former Fundamental Right to Property and the Right to Form Co-operative Societies (added later via the Ninety-Seventh Amendment.)

The second subsection describes the rights which are valued most within Article 19(1). It involves a discussion on how people perceive various rights and freedoms, including property rights, freedom of speech and expression, freedom to reside anywhere in the country, and the freedom to practise any profession.

## **Rights, interests, and priorities: perspectives on individual freedom**

We began our interviews by enquiring—“What does having a right mean to you?”. In response to this, respondents used terms like autonomy, choice, liberty, equity, security, safety, and freedom. Irrespective of their backgrounds, people emphasised the importance of having the autonomy to safeguard their rights from undue State interference. In addition, respondents were also asked about their opinion on restrictions that limit their exercise of rights. Respondents used keywords like “vague”, “arbitrary”, “unclear”, and “excuses” to indicate what restriction meant for them.

However, respondents placed varying degrees of importance on different freedoms. The case study questions in part three showed that none of the respondents valued all rights equally. Some rights were given more priority than others. For some it was linked to how frequently they were exercising that right in their daily life while for others it served other interests. For example, a 24-year-old journalist vehemently opposed restrictions on freedom of expression, asserting that such restrictions were “inappropriate” and that, “even if someone expresses themselves crudely, they should still have the right to do so”. However, the same respondent agreed to the imposition of harsher restrictions on the freedom of association. Similarly, a 40-year-old member of the Resident Welfare Association (RWA) opposed restrictions on freedom to reside anywhere, arguing that tax-paying citizens of the country should not be subject to any constraints. However, they did not oppose restrictions on other rights, such as the right to form associations or assemble.

The varying degrees of value people assign to different kinds of rights indicates a link between individuals’ interests and the rights they value. If a right serves an important interest, the tolerance for restricting such a right is lower. This correlation between rights and interests has also been observed by Raz (1992). He contends that generally, what one has a right to is also something that serves one’s interest. He asserts that individual rights generally align with personal interests.

## **Balancing rights and restrictions: public and personal rights**

A recurrent theme emerged in our interviews: people are more likely to accept restrictions on other’s rights than for themselves. This was evident when respondents were asked to elaborate on the kind of restrictions they would support on other people’s exercise of rights.

Respondents provided several grounds for restricting the freedom of others. One reason cited by majority of the respondents included the importance of avoiding harm while exercising one’s rights. Harm seems to be the lowest common denominator for balancing a conflict of rights. However, the interpretations of harm varied from respondent to respondent. Respondents conflated the concepts of offensiveness, offence, and incitement of violence. They did not distinguish between hurting someone’s sentiment, threatening public order, or inciting violence.

J. S. Mill (1858) establishes a clear demarcation between what can be called “offensive” and what is an “offence”. He argues that speech may only be restricted if it directly and unequivocally violates rights; arguing that mere offence to people does not suffice as grounds for curtailing speech. In contrast to the respondents who used offensive and offence interchangeably, Mill’s stance underscores the importance of maintaining a clear distinction between these concepts. He asserts that while speech causing offence may be uncomfortable, it does not pose a direct threat to the rights or safety of others in the same way that actual violence or incitement to violence does.

Conversely, when respondents were presented with hypothetical scenarios where they would face restrictions on their rights, they displayed a markedly greater reluctance.

The biggest contrast in this regard was how differently people viewed freedom of speech and expression for themselves and for others. Respondents who had earlier supported restrictions for others on the

grounds of offensiveness, viewed this restriction differently when placed in hypothetical scenarios. They perceived restrictions as a means of curtailment of their freedom.

For example, when asked about the grounds of restrictions on freedom of speech and expression, a 35-year-old photojournalist talked about how misinformation should be avoided and how people should be careful about respecting others' freedom. However, when placed in a hypothetical scenario, wherein the authorities make it mandatory for him to get his newspaper fact-checked before publishing, he thought of this to be a form of censorship and was strictly against it. This disparity may be attributed to the "self-serving bias", a phenomenon studied by Alicke and Sedikides (2009). It refers to the tendency for individuals to interpret information and make decisions in a way that favours their self-interest.

Alternatively, it could stem from an inability to relate to abstract rights and restrictions presented in section two of the questionnaire. When restrictions are seen in the abstract and non-applicable to oneself, people are less likely to relate. Their views may change in hypothetical scenarios because they seem more concrete and real.

The comparative analysis of respondents' views on restrictions underscores the nuanced interplay between acceptance of restrictions for others as opposed to for oneself. For instance, respondents seem to be pro-speech for themselves but not as much for others. They use offensiveness, offence, and violence interchangeably when laying grounds for imposing restrictions on others. However, when talking about themselves, they propose less restrictive conditions for meeting the same end.

## Comparative Analysis of Freedoms

In this section, we delve into people's valuation of freedom and discuss the rights they value more. We have also analysed the reasons they provide for valuing a certain right. As mentioned before, people preferred to have fewer restrictions on the rights they value more.

We find that the rights that people valued more include, the Right to Property, freedom of speech and expression, the Right to Practise any Profession, and the Right to Reside in any part of the country. They valued property and considered personal ownership crucial for sustenance. Freedom of expression was viewed as an intrinsic part of a democratic system and freedom to reside anywhere was viewed as part of national identity. People also valued rights which were related to their livelihood.

### Property rights: what does property mean to people

Majority of the respondents valued their Right to Property more than other rights, such as freedom to assemble, freedom of movement, or freedom to form associations or unions. They saw other rights such as right to reside anywhere and the right to practise any profession to be connected to property. Owning property, they argued, ensured livelihood, security, and the freedom to choose where to settle, thus safeguarding individual autonomy and agency. This sentiment was observed among both propertied and non-propertied individuals.<sup>24</sup>

Individuals from diverse economic backgrounds, including a 35-year-old cab driver, a 52-year-old street busker, a 45-year-old migrant labourer, a 51-year-old Micro, Small and Medium Enterprises (MSME) owner, and a 60-year-old architect emphasised the importance of autonomy over their property and the need for it to be free from Government interference. Echoing this sentiment, a street busker shared how permissions from the State on buying or selling property should not be mandated. Per him, an individual inherently deserves autonomy over their property. Similarly, a farmer from Haryana emphasised that "property ownership is important for a meaningful life".

In line with our analysis, Howard-Hassman (2013) argues that the right to own property ensures other economic freedoms like the right to food, and the sustenance of an individual. The right to property thereby complements other rights and enables individuals to live with dignity.

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<sup>24</sup>. Property throughout the course of the interviews referred to immovable property and propertied individuals referred to those who own any kind of immovable property.

## Disconnect between the Constitution and people's perspective on property rights

Prior to 1978, people had a Fundamental Right to “acquire, hold and dispose of property” under Article 19(1)(f) of the Constitution, along with the safeguard of Article 31 which guaranteed people the Right to Fair Compensation (Singh 2006). However, the Forty-Forth Constitution Amendment in 1978 altered the status of the Right to Property by relegating it from a Fundamental Right to a constitutional right under Article 300A, and deleted Article 31 from the Constitution (Sankaranarayanan 2011; Singh 2006).

Such an erosion of the right restricts aggrieved people's ability to appeal to the Supreme Court to restore their rights. Further, it restricts the judiciary's ability to uphold the Right to Property against the State's takeover, since it does not come under the “basic structure” of the Constitution (Singh 2006). In a landmark judgment the Kerala High Court, addressing the issue of adequate compensation, said that the “various amendments in the Constitution will stand defeated if it is held that Article 300A envisions payment of adequate compensation for the deprivation of property to the owner”.<sup>25</sup> The same stance about compensation and State takeover can also be seen in Supreme Court's order in the *Jilubhai* case where it States that the judiciary cannot be used as a tool to reintroduce adequate compensation to Article 300A.<sup>26</sup> Though, there have been laws which give people the right to fair and transparent compensation, such laws also leave the definition of “public purpose” under the State purview, without judicial review (Singh 2006).<sup>27</sup> While the Right To Fair Compensation and Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 provides for safeguards like a social impact assessment and requirement of consent, it also increases the bureaucratic hurdles and compliances in the way of compensation (Wahi et al. 2017). There is also a risk of undervaluation of the property, especially for land holdings that are big (Ramanathan 2006).

Our study highlighted that the altered importance given to the Right to Property along with the lower protection against inadequate compensation does not resonate with people. Our interviews suggested that people valued the Right to Property most among all rights in Article 19(1).

Regardless of whether the respondents owned property, they saw the acquisition of property by the State as a restriction on their property rights. Most regarded property as a means of safeguarding their livelihood. They did not want State interference in decisions about the sale and purchase of property. They thought it to be a “personal matter” in which the Government's role should only be limited to making such transactions smoother. This is especially in contradiction with the various State agriculture laws in India, which limit the farmer's ability to sell, buy, or lease the farmland (Miranda, Narang, and Krishnan 2022). Instead of easing the process, laws hinder such transactions.

When presented with hypotheticals, the respondents who agreed to the State acquiring their land also demanded fair compensation. Barring two outliers, none of the respondents agreed to give their land without compensation. They prioritise fair compensation based on the market value. This is a crucial finding given that almost 83% of the land acquisition challenges in the Supreme Court were based on cases where no compensation was paid by the government (Wahi et al. 2017). Such a striking contrast between what people want and are given is a telling tale of India's development story.

Some respondents were either unwilling to give their land or wanted another plot of land in exchange for theirs, arguing that land gives them sense of social and economic security. Two respondents, propertied and non-propertied mentioned that they were willing to voluntarily give their land without any compensation. They valued the idea of the “greater good” which can be generated if their land was used for developmental purposes. One of the two respondents was a religious head who owned property, and was generally altruistic, while the other respondent, who did not own property, was a professor who believed that people do not have a right to property.

Respondents saw the acquisition of property for commercial purposes such as building of a mall and developmental purposes such as, building a metro station or hospital, differently. Those who were willing to give their property for commercial purposes with compensation per the market price were also willing to give their land for developmental purposes. However, the reverse was not always true.

25. *Elizabeth Samuel Aron v. State of Kerala* (AIR 1991 Ker 162).

26. *Jilubhai Nanbhai Khachar v. State of Gujarat* (AIR 1995 SC 142).

27. In India, land acquisition is governed by The Right To Fair Compensation And Transparency in Land Acquisition, Rehabilitation And Resettlement Act, 2013. The Act repealed the The Land Acquisition Act, 1894.



Respondents who were willing to give their property for commercial purposes were fixated on the amount of compensation they would get for the acquisition. Some respondents argued that they should get compensation higher than the market price, if their land is taken for commercial purposes. One of the reasons for this could be that they considered land an integral part of their sense of social security. They either did not see commercial purpose as a part of public good or wanted profit out of the acquisition if it is commercial.

## **Interdependence of rights**

In our interviews, the reason for valuing some rights stemmed from their relationship with other rights. Some rights were considered an important source for other rights. The relationship that various types of rights share with each other has been the subject of discussion. According to Locke, the “natural rights” of life, liberty, and property form the basis for all other civil rights (Locke 1884). Friedman and Friedman (2002) also discuss the connections between political, economic, and human freedom. They contend that economic freedom creates space for the expansion of other freedoms. Bay (1982) applies Maslow’s hierarchy of needs to a socio-legal framework to conceptualise the hierarchy of rights. He makes an argument for the hierarchy of rights based on Maslow’s hierarchy of needs and understanding of the psychological makeup of the individual. According to him, the hierarchy’s foundation and top priority are rights that serve survival needs.

In assessing reasons why certain rights were considered more important than others, our interviews suggested that wherever rights were linked to livelihood, people preferred those rights over others. We found that rights that were thought to be related to providing livelihood to people were given a higher priority. For example, migrants who now lived in Delhi, after having migrated from their native place, saw movement and residence as a means to earn livelihood and hence valued them more. In another instance, a photojournalist who often travelled to capture stories also linked the movement to earning a livelihood and valued it more because of its importance to him. Some respondents also linked the right to property as a safeguard for protecting livelihood. Livelihood seemed to be an important theme that was reflected in various ways depending on the personal experience of the people.

Apart from the freedom to reside and the freedom to movement, which had indirect connections to livelihood, Article 19(1)(g) itself was also given preference as compared to other freedom among respondents. A majority expressed a strong desire for the freedom to choose their profession. While talking about the freedom to choose professions, a 62-year-old activist who was against restrictions on the practising profession mentioned how buyers and sellers share a “socio-economic” relationship with each other. Instead of curbing the right, the government should think about ways of easing such relationships. A street busker shared that “professions through which one earns livelihood can neither be restricted nor banned because they are related to livelihood”. If a profession was legal and did not cause a threat to people, respondents wanted to exercise autonomy over choosing their profession.

## **Expression and residence as India’s core democratic values**

Among the various rights within Article 19(1), freedom of speech and expression was also valued comparatively more than other rights. Respondents closely tied democratic values to the freedom to express themselves. A functioning democracy meant a space to express themselves freely. People between the ages of 19 to 64 stated that they understand freedom of expression to be the capacity to communicate one’s own ideas. Respondents saw restrictions on their freedom of expression as a breach of their freedom and were generally sceptical of authorities who deny them their freedom. Some respondents spoke of how restrictions on freedom of speech should be employed carefully. For example, the 24-year-old journalist said, “These are all derivatives of how a person perceives things...Like what I think translates to freedom would be not the same as somebody who doesn’t come from my background...even if somebody is crude in terms of expression, I do not want them to be restricted”. The idea of freedom of expression should protect the entitlement of citizens to express any political viewpoint, whether that political viewpoint be construed as hate speech or not (Brettschneider 2010). He argues that it is the role of the State to protect and promote free speech while still calling out actions publicly that are against notions of equality.

However, freedom of speech and expression arguably was also contested, in that people valued this freedom more for themselves than for others. While they were sceptical of the restrictions on their freedom of expression for themselves, the same was not true for others. They proposed various grounds for restrictions when talking about the freedom of speech and expression for others. Respondents were pro-speech for themselves but pro-restrictions for others. A detailed analysis of the same and the plausible reasoning behind it is given in the above sections.

Additionally, the freedom to reside and settle anywhere within the country was also valued and seen deeply intertwined with the ideas of diversity and nationhood. Freedom to reside anywhere in India was thought to be crucial for maintaining diversity. People's idea of nationality was heavily derived from their freedom to reside anywhere. On being asked if restrictions were placed on their freedom to reside, an MSME owner from Delhi responded by saying, "What does it mean to be a diverse country then". Another respondent, an architect from Madhya Pradesh who now resides in Delhi shared how the freedom of residence carried the idea of India, "What does it mean to be an Indian otherwise", she added. The right to reside was taken to be a core feature of being a part of India.

In essence, people value freedom of speech and expression and tied it to democratic values. However, individuals tend to prioritise this right more for themselves than for others, implying a complex dynamic. Additionally, the freedom to reside anywhere in the country was intrinsically linked with diversity and national identity, seen as a core aspect of being Indian. These insights emphasise the multifaceted nature of these rights and their central role in shaping citizens' perceptions and experiences in India.

## Conclusion

This study offers a comprehensive understanding of how individuals perceive Fundamental Rights, with a specific focus on the Right to Freedom as enshrined in the Constitution of India. It takes into consideration amendments to the Constitution and seeks to investigate whether people's perception aligns with the evolving constitutional hierarchy. We found that people's view is different from the hierarchy in the Constitution when it comes to the Right to Property. While constitutional amendments have weakened the Right to Property and the judiciary often fails to ensure people are adequately compensated in case the State acquires property, for people fair compensation is key.

People also valued the Right to Free Speech and Expression, and see it being closely tied to a lively and vibrant democracy. It plays a critical role in facilitating democratic engagement, enabling individuals to express their ideas and political perspectives.

We found a divergence in respondents' perceptions regarding restrictions for themselves versus for others. This trend was especially true for the freedom of speech and expression, wherein people were pro-speech for themselves and not as much for others. This disparity may be attributed to a "self-serving bias," which refers to the tendency of individuals to interpret information and make decisions in a way that favours their self-interest. Alternatively, it could stem from a difference in how people relate to a right and the restrictions imposed on it in abstract compared to real-life settings.

This paper highlights the interdependence of rights, particularly those concerning livelihood and property. Respondents frequently prioritise rights that directly contribute to their sustenance. This is in line with Friedman and Friedman's analysis where they argue that economic freedom gives a way to other kinds of freedom (Friedman and Friedman 2002). This exploration of hierarchy of rights under Article 19(1) furthers the ongoing scholarly examination of the hierarchy of rights and can help in making informed policy decisions.

## Methodology

To understand if the citizens' perspective aligns with the evolving constitutional perspective, we conducted mapped perceptions through in-depth qualitative interviews with 26 respondents. Each interview lasted on average between 40 and 45 minutes.

**Sampling method:** To select our sample, we employed purposive and snowball sampling. Through these methods we aimed at selecting a diverse sample with respondents from varying interests and professions.

**Characteristics of our sample:** We interviewed respondents across age groups (19-65 years old). The sample was diverse and included a Journalist, Professor, Artist, Advertiser, Singer, Activist, Street Busker, Religious cleric, Students' Union leader, RWA member, Migrant Labourer, Photojournalist, Migrants, Farmer, and an MSME owner, among others. The research study was conducted in the month of July and took place in Hauz Khas, Panchsheel, Anant Parvat, Karol Bagh, and Khan Market. A few interviews of respondents in Kerala, Chennai, and Bangalore were conducted virtually.

**Pilot:** Since citizens' perspective of hierarchy of rights is relatively understudied, we conducted several pilots to finalise the format and design of our questionnaire. Initially, we employed a Likert Scale to assess the hierarchy of rights, but such an approach did not allow us to capture the rich qualitative insights on why respondents' prefer some rights over others. Additionally, we presented respondents with both emergency and non-emergency scenarios as constraints for assessing rights and preferences. However, this failed to account for what people value under normal circumstances without the pressure of an emergency. Finally, the younger participants in our pilot struggled to relate to emergency situations. We revised our questionnaire to incorporate these insights.

**Questionnaire design:** Our questionnaire has three parts, modelled after the approach adopted by Badrinathan et al. (2021) who collected information on how the ethnic identity of an Indo-American influences their socio-political experiences. The questionnaire is divided into three parts to avoid leading questions and not have different responses feed into each other.

In the first section, we gathered the respondents' demographic information. This included information about their age, gender, occupation, education, income level, religion, property, place of residence, and association membership.<sup>28</sup> The second section captured their opinions on the significance of freedom. The respondents were asked about restrictions that they thought were reasonable to impose on other people's exercise of rights. In the third section, we presented some case studies to the respondents, placing them in hypothetical circumstances, and enquired about the kind of restrictions on their rights they would consider reasonable.

Our hypotheticals included several gradients of restrictions (from mandatory approvals to bans) and reasons (seemingly reasonable and unreasonable) that helped us understand the nature of restrictions that people find acceptable and the extent to which they value a right. The grounds of the restrictions in the case studies were based on the reasonable restrictions included in Part III of the Constitution for each freedom. The second and third sections of the questionnaire helped in drawing comparisons between different rights, while the first section helped in understanding the context of each respondent.

**Confidentiality:** We obtained formal consent from the respondents before initiating the interview. Those who preferred to not have the interview recorded could opt out. Confidentiality and anonymity was maintained for all interviewees.

**Analysis:** The interviews were transcribed using both manual and AI tools (such as Otter.ai). Post the transcription, we thematically coded all the responses.

**Limitation:** Our study is limited to understanding people's perspectives regarding Article 19(1), which prevents us from establishing a comprehensive hierarchy of rights in the Constitution. While our findings offer valuable insights into individual perceptions of rights, it's essential to recognize that these findings should be considered as a starting point for further analysis rather than conclusive evidence of an existing hierarchy.

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<sup>28</sup> For the purpose of this study, the definition of property was limited to immovable property. The General Clauses Act, 1897 Section 3(26) defines immovable property as that which "shall include land, things affixed to earth or permanently fastened to anything affixed to earth, and any benefits arising out of the land".

Given the study's limited scope, we refrain from making any claims about causality between respondents' socioeconomic status and their preferences. It's also important to note that the part of the questionnaire that assessed the valuation of property rights included questions on compensation along with the reasons for State acquisition. Our questionnaire assessed the respondent's attitude towards the acquisition of property and the compensation given for it. We adopted this approach to ensure that the rights are comparable.





# Schooled by the State

People's dive into Education  
Financing in India







## Introduction

The journey of education provision in India has been defined by debates between public and private partners. Whether K-12 education should be the sole responsibility of the State or should also involve private provisioning has divided lawmakers. Historically, non-State entities dominated the Indian education landscape. Since independence, the emphasis switched to State-led education. As India integrated into the global economy post-1990, the demand for education grew, outpacing government supply, and private institutions emerged to fill the gap (Davies 2018). Over time, policies evolved from being silent on private education to seeking its regulation. The Right to Education (RTE) Act 2009 foregrounded the State's responsibility to ensure access to education.

The RTE Act mandated private schools reserve 25% of seats for children from economically weaker and socially disadvantaged backgrounds, with the Government sharing the financial burden. It also established the concept of neighbourhood schools, ensuring access to education for children in their vicinity. The RTE Act also laid down criteria for teacher-student ratios, infrastructural standards, and instructor certifications towards improving the overall quality of education.

The number of private schools in India has grown exponentially in the past decade: seven in ten new schools since 2014 were private schools (UNESCO 2022). Recognised and unrecognised private schools have emerged as crucial contributors to realising universal education aspirations. According to the 2016 International Social Survey Programme, at 46%, India is among the countries with the lowest support for public provision of education (UNESCO 2022). Findings from our study confirm the widespread prevalence of parental preference for non-State education providers in India. We critically reviewed literature on education provision in India, studied key arguments supporting and opposing private provision, and tested them through field interviews. Recognising parents as pivotal stakeholders in primary education, we conducted interviews with parents in low-income settlements of Delhi to gather insights into the public perception of State provision versus State financing of education. We also examined the impact of the current regulatory framework on private actors.

While many scholars assert that the Constitution emphasises the State's direct management of educational institutions, this paper seeks to explore the extent to which the Constitution exclusively mandates State-led school provisioning and whether alternative interpretations allow for varied mechanisms of educational support. To comprehensively explore this question, we have structured our paper into distinct sections. The first section contextualises significant events, terms, Acts, and provisions that have shaped the evolution of education into a Fundamental Right in India. The second section includes an in-depth review of existing literature on education provision. This section is further divided into sub-themes, each centred around a key argument either supporting or opposing private provision. Within each sub-theme, we critically engage with the arguments and then present our findings to test their validity. Lastly, a distinct yet interrelated discussion examines the regulation of private actors and the intricate navigation of the current regulatory framework.

## State-Led versus State-Financed School Provisioning

Despite early recognition of the value of education, it was frequently relegated to the periphery of official priorities in the years following India's independence. Framers of the Constitution chose to primarily address education through the Directive Principles of State Policy rather than as a Fundamental Right. Their focus remained on poverty alleviation, industrial development, and social cohesion. The landmark legislation that elevated the right to education to the status of a Fundamental Right within the Constitution of India, Article 21A, was introduced in 2002 under the 86th Amendment. But what is the nature of the State's responsibility in ensuring this right?

### Constitutional view

The Constitution of India does not distinguish between “providing education” and “providing for education”. Article 41 provides that the

*“State shall, within the limitations of its economic ability and growth, provide efficient provisions for safeguarding the rights to labour, education, and public assistance in unemployment, old age, sickness, and disablement, and other circumstances of unreserved want” .*

The Article itself does not explicitly State what falls under the responsibility of the Government regarding how to guarantee this right. Article 45 makes a more stringent demand on the state to provide education to all children up to the age of 14 years “within a period of ten years,” regardless of the State’s economic conditions (Prasad 2020).

For a clearer answer, we revisited debates, discussions, and drafts in the run-up to the Constitution adopted in 1950.

The debates suggest a preference for diversity in education and opposition to a common schooling system. These words from a speech by V. S. Sarwate indicate how the Constituent Assembly underscored the pivotal role of private stakeholders in the educational sphere:

*“Anybody who has the interests of education at heart would note with sorrow that there is not sufficient private effort in the field of education. The State should encourage private enterprise and promote private schools that can make experiments and find out new methods, a new system of education. That is the desideratum and not uniformity in this way” (Constituent Assembly, 1949).*

Sarwate further noted, “There should not be any uniformity in education, as uniformity kills the individual.” H. V. Kamath argued against heavy State interference in education and supported private actors due to their efficacy: “I have in mind certain institutions in this country which are doing very good work, wholly privately run but run on efficient lines without any Government interference” (Constituent Assembly 1949).

The Constituent Assembly envisaged that private actors take over much of the burden under State financing. This was concretised by a clause in a Draft Constitution “39. Private schools organised as a substitute for public schools shall be subject to State regulations, supervision and control and shall have to satisfy educational and academic standards and follow general curricula prescribed by the State” (The Socialist Party 1948).

This clause clearly supports the notion that private schools, with due oversight, can substitute the role of public schools to satisfy the educational needs of the State, paving the way for a State financing solution. Although this draft was not finally implemented, it reflects the inspirations of the framers of the Constitution. Similarly, the Karachi Resolution of 1931 endorsed private actors for substituting the responsibilities of the public sector: “(6) All citizens have equal rights and duties in regard to wells, tanks, roads, schools and places of public resort, maintained out of State or local funds, or dedicated by private persons for the use of the general public” (“Karachi Resolution” 1931).

This resolution makes it abundantly clear that, as with other public goods, private actors can provide for the educational needs of the general public as well.

Surprisingly, despite historical endorsements, the successive five-year plans were silent on fostering private provision in India. They focused on bolstering primary education, increasing enrolment, enhancing quality, and addressing socio-economic disparities and gender imbalances but overlooked the role of private educators.

## Jurisprudence

Landmark judgments, both before and after the enactment of the RTE Act 2009, have echoed a strong Constitutional recognition of education’s importance while acknowledging private involvement. They shed light on the State’s duty to ensure education and the acceptance of private entities as collaborators, especially when governmental capacity is strained.

- *Miss Mohini Jain v State of Karnataka and Others 1992* held that every citizen has the right to education and endorsed the need for private educational institutions in India:

*“The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognised educational institutions. When the State government grants recognition to private educational institutions, it creates an agency to fulfil its obligation under the constitution.”*

- *Unni Krishnan, J.P., and Ors v. State of Andhra Pradesh and Ors. 1993* held the Right to Education as inherent in the Right to Life under Article 21; and that private educational institutions receiving State grants “have to abide by all the rules and regulations as may be framed by the Government and recognising/affiliating authorities” while those not receiving aid from the Government “may not be insisted” to charge “only that fee as is charged for similar courses in governmental institutions.”
- *The Society for Unaided Private Schools of Rajasthan v. Union of India (UOI) and Anr. 2012* upheld by majority the Constitutionality of Section 12 of the RTE Act 2009 which mandates all aided and unaided (private) schools to reserve 25% seats for students from economically weaker and socially disadvantaged backgrounds; further held that “the State may decide to provide free and compulsory education... through its own schools or through government-aided schools or through unaided private schools.”

The court cases examined above converge to offer diverse insights into the role of private institutions in India’s education. The cases illuminate the State’s duty to ensure education and the acceptance of private entities as collaborators, especially when Governmental capacity faces constraints.

## Thou Shall Provide Education: Arguments in Favour of State Provisioning

### Education is a public good

Academics argue that the Government’s role in education stems from the idea that education is a public good (Levin 1987). Some argue that education has positive externalities or spillover effects and, hence, should be supplied by the Government because the market supplies less than the socially efficient quantity. However, the assumption that private provision is inadequate is incorrect given education’s special status. According to Shaw (2010), the demand for K-12 education is so great that it is sufficiently provided. Haddock (2007) points at how, for goods like education, the demand from the “avid demanders” may be adequate to ensure provision for the larger public as well (Haddock 2007).

Further, the Government’s provision, in trying to deliver the socially efficient quantity for this merit good, is still not adequate (Misra and Ghadai 2015). Per the Ministry of Education, 4 lakh private schools catered to 46.5% students, versus 10 lakh public schools that catered to the rest (Ministry of Education 2022). Rather than asking if private provision is theoretically adequate, we should check if the State is allowing for adequate private provision or creating additional barriers. These barriers stem from the regulatory framework as well as the non-profit restriction on private schools.

We found that parents practise institutional agnosticism, i.e. they are not concerned with which stakeholder provides education, as long as the provision is up to par. They prioritise quality over any inherent need for the State to provide education. Furthermore, we found that private actors have to compensate for the inadequacies in State provision. NGOs, filling the gaps left by the public school system, have emerged as a popular choice among low-income households for providing education. A mother from Sangam Vihar, lamenting how the public school does not cater to the special needs of her child, credited a special education programme run by an NGO for her child’s progress. This undermines the perceived inadequacy of private provision propagated in the public good argument.

A significant number of the parents interviewed still believe that private actors come and go, but the reliability and longevity of the Government are unparalleled, and that the Government should manage schools. However, majority believe that private actors can effectively manage general provision and want non-State actors to manage government schools. Almost all shared that private schools were available nearby.

## Citizenship goal

Stemming from the argument for the public good, there appears to be a philosophical debate about the benefits of education in developing a “sense of moral, social, and economic responsibility as a citizen” (Grace 1989). This societal benefit claim is supported by the aim of nurturing model citizens, which is perceived as a responsibility of the State. The literature does not provide evidence as to why private institutions cannot instill the same values or why this citizenship goal results in insufficient provision by private entities.

The environment and behaviour observed in public schools do not align with the State’s definition of good citizenship. The vast majority of parents interviewed from public schools reported instances of a poor school environment, disruptive behaviour, and student violence. Teachers echoed these claims. Students damaged school property, such as fans and toilet faucets, engaged in inappropriate comments, and harassed female students and teachers. In Badarpur, a student was murdered by four older boys in a nearby government school. A parent in Hastal, shared that her child often engaged in violence and returned home with his uniform torn on several occasions. A government school teacher in Sangam Vihar revealed that a class monitor had been stabbed by a student in the schoolyard. Another teacher from a Sangam Vihar government school always wore a mask to class because students had circulated her photos and videos online without her consent. She concealed her face because she was concerned that this media could have been edited in a misleading manner.

In contrast, private school parents did not report a single instance of student violence. One public school parent sent her child to private tuition to instill morals and values and promote good behaviour. Tuitions, a supplementary privately provided educational aid, are being used to compensate for the lack of morals and values inculcated in public schools. Evidently, private entities are more successful in instilling better behaviour among students, thereby strengthening the argument for widespread private provision in education.

## Affordability of private schools

Scholars like Srivastava and Noronha (2016) highlight how private school expenses surpass those of government schools. There is a prevailing perception that private schools charge high fees (Antony 2014). The unaffordability of private schools is a major concern for parents who aspire to provide their children with a quality education through private institutions. A significant number of parents opt for government schools due to the exorbitant fees charged by private schools. As more parents seek to enrol their children in private schools, the limited supply allows existing schools to raise their fees without impacting demand. The demand for private schools is driven by various factors, including better learning outcomes, increased accessibility, an English-medium instruction, and the provision of extracurricular activities.

A very small percentage of parents who send their children to private schools find the fees to be justified. In addition to tuition fees, households incur significant out-of-pocket expenses for transportation, books, uniforms, meals, exams, private tuition, etc. During the COVID-19 lockdown, many parents struggled to pay the high fees (approximately INR 5,000) demanded by private schools for online classes. Those parents who could afford to send one of their children to a private school often chose the one that was “strong in academics”. They believed that the education their child received justified the high fees and associated expenses.

However, it is important to note that most private schools charge lower fees and cater to disadvantaged sections of the country’s population. Parents choose these low-fee private schools (LFPs) primarily for English as the medium of instruction and the perception of better learning outcomes. Despite concerns about affordability, the demand for private schools remains high. Studies indicate that LFPs in India are established not only for profit motives but also for altruistic reasons.

The regulation of fees of private schools registered as non-profit institutions jeopardises their smooth running and forces them to cut costs. The implementation of the Rajasthan Schools (Regulation of Collection of Fee) Act 2013 forced 18,000 schools in the state to reduce their already very low fees. Setting lower prices creates an entry barrier in the market, leading to a shortage in competition, encouraging fewer entrepreneurs to open schools. Destruction of the private school ecosystem would

lead many students out of school since the government schools cannot accommodate a large number of students (Antony 2014).

## Private Schools are Not Accessible

Academics raise concerns about equity in the absence of Government provisioning. Private unaided schools, particularly in rural India, are only accessible to families from a “higher strata”, contingent on household income, caste, and parents’ education, creating far-reaching disparities and a dualism in education provision and progression (Srivastava and Noronha 2016). Private providers may be reluctant to serve certain demographics, especially in more remote settings (Lewin 2007).

This sentiment assumes that all private providers will cater to all students. However, the Indian market is highly fragmented, and competition could enhance outcomes within each fragment. Equity concerns may diminish in a less barrier-ridden regulatory climate in India that promotes education entrepreneurs, instead of limiting choice (Miranda, Narang, and Krishnan 2022). Moreover, Government financial support must provide sufficient incentives to make rural settings conducive to establishing private schools. The question of whether the State’s regulatory framework hinders low-capital entrepreneurs from opening schools, typically in lower-income areas, remains.

We found that many parents chose private schools for their greater admissions accessibility. Private schools will admit you “as long as you have the money,” they claimed. They lamented the heaps of documents, stringent age requirements, and red tape that come with accessing public education, particularly for uneducated parents with low income. They struggle to obtain accurate and comprehensive government documentation. One parent shared how her child’s documents were riddled with errors. Furthermore, public schools are rigid about the age at which a child may start education and, unlike private schools, do not align with parental preferences on this matter. Some public schools were more challenging to gain admission to than others. One parent shared that a government school in Sangam Vihar conducted a lottery to admit students. Other parents shared that government schools kept their children out of English medium sections if they did not study at the “right” school until fifth grade. Private schools did seem accessible, at least until a young age. Most senders to public schools had an inherent pattern of first sending their child to private schools until about fifth grade before transferring them over. In terms of proximity, government schools seemed more conveniently accessible, but almost all parents confirmed that they had access to a private school in the vicinity.

In order to create access for low-income households to otherwise unaffordable, higher-end private schools, the State implemented the 25% reservation in the RTE Act. Schools in their own segment of the market were largely accessible. The reservation policy aimed to provide these parents access to schools that would otherwise be financially out of their reach. Parents in the relatively higher income brackets seemed to have greater access to the RTE Act. Many of the lowest-income households we interviewed (earning less than INR 10,000 per month) did not have access to an RTE reservation for their child. Most of the RTE senders were better placed (over INR 30,000 per month). The widespread perception regarding the inaccessibility of private schools stems from here. Accessibility for low-income households is curtailed by soft barriers as they require a strong community standing, beneficial contacts, and persistence to navigate the existing bureaucracies. This is part of what attracts parents to low-fee private schools (LFPs) (Gurney 2018). This exposes the reality of reservation as counterintuitive to the intended purpose of improving access.

Even if parents are able to overcome all the barriers, the grassroots reality of being part of the 25% echoes drawbacks at every stage. Students experience social and institutional marginalisation and discrimination. One parent shared that her child was previously not allowed to sit at the front of the class because he was under the RTE quota. When the parent approached the teacher regarding the same, she singled out the student and blamed him for disturbances in the class. Most parents had similar experiences. Their children were labelled as the “mischievous ones” and were often disproportionately called out for behavior-related concerns because they were from the RTE quota. The school’s administration questions the practical ramifications of disregarding merit and admission standards under the reservation, which leads to “disturbances” for other students. The State must either act to dismiss these sentiments at their source or address them in the provisions of the RTE Act.

## Inequalities in private education

Academics consider education to be a public good that should not be eroded by the commodification driven by choice. They advocate for students from all segments of society to study together, as this uniformity enhances the quality of schools. The idea of school choice is antithetical to the concept of “free and compulsory education” (Tilak 2007). Common schools or neighbourhood systems are seen as the solution (Sadgopal 2010).

We asked low-income parents whether they believed that teachers should also send their children to the same schools as their own. They maintained that, even for those subscribing to free government education, individual choice should be a priority. Instead of common school systems, variety and abundant school choice through private provision found favour with them.

We also asked teachers whether a law should mandate all government officials to send their children to government schools. Most commented that they would be willing to forgo individual choice for the benefits this system would bring to the larger public education system. The political capital of those in power would ensure improvements in the public schools. Some favoured preserving parental choice, arguing that the State should not intrude on their right to choose the school. Teachers’ support for common schools does not imply a rejection of choice but rather a call for improving an otherwise dysfunctional State system. If the State system were as effective as private actors, teachers would not have the same motivation to forgo their right to choose.

## Teacher rights and standards

Due to cost-cutting, teacher qualifications, training, and salaries in LFP schools in India leave much to be desired. Many teachers with undergraduate degrees or Class X or XII certificates lack formal teaching qualifications. Only 1.1% of teachers in private schools in India have received any in-service training (Shrivastava 2010). This raises questions about the quality of education provided to the students (Shrivastava 2010; Orgad 2010). There seems to be an acceptance of less-skilled teachers as appropriate alternatives for expanding education to disadvantaged children (Nambissan 2010).

Despite these questionable practices and the low qualifications of teachers, parents still express satisfaction with private schools. They report that teachers pay attention to the children, help them learn and understand, conduct regular tests, and engage in parent-teacher interactions. One parent added that teachers employ play-based learning methods to engage children in the lessons. However, another mentioned feeling burdened with responsibility for the child’s studies since she had to teach numbers and alphabets to the child herself.

Most parents of public school students claim they have concerns about teacher accountability in these schools. They are concerned about the pupil-teacher ratio in government schools. Some mentioned that the children were given no homework and that the teacher asked them to enroll their child in a tuition class. The respondents expressed their desire for the subjects to be taught in English and for the establishment of computer labs for the benefit of the children. Even though English was, to some extent, a medium of instruction in government schools, it did not necessarily translate into the children learning properly. Regular oversight from the principal, the need to hire good teachers, and reducing the teachers’ workload from non-teaching duties to allow them to pay more attention to teaching were some of the suggestions given by parents to increase teacher accountability.

## Thou Shall Provide for Education: Arguments in Favor of State Financing

### School choice

Härmä (2009) argues that parents currently lean towards private schools despite their slight unaffordability, but they would ideally prefer a well-functioning government system instead. Lahoti and Mukhopadhyay (2019) argue that parental preference for private schools is based on misperceptions

and market-based tactics used by private schools, whereas public schools may empirically be comparable or even better than private schools. Parents prefer government schools even in their current form but are often compelled to send their children to private schools due to proximity and faith-based learning practices (Mousumi and Kusakabe 2017).

However, school choice may not be primarily driven by proximity and faith-based learning factors but rather by parents' concerns for the quality of education their children receive. Information asymmetry between parental expectations and school realities exists in both public and private education (Ferreya and Liang 2012). Structural solutions to improve information dispersion are needed in both mediums so that parents can make more informed decisions. Parents place more emphasis on quality rather than the type of school they send their children to. The above finding is crucial in considering whether policy should focus on improving public education or explore State financing of private operations.

Several government school parents admitted that they would send their children to a private school if finances were not a consideration. They believe that private schools offer superior and better education than government schools. They added that the curriculum taught in private schools is relatively more comprehensive. It helps build a strong foundation, and more attention is paid to high learning standards. They are not compelled but wish to send their children to private schools, but are unable to do so due to financial constraints. Some had to shift their child from a private school to a government school due to financial constraints. The gap left by expensive private schools and underperforming public schools in India is filled by LFP schools. They act as the middle ground for many low-income households that cannot afford expensive private schools and do not want to compromise on the quality of education in low-quality public schools. In a hypothetical scenario, when parents were offered a grant of INR 2,500 to finance their child's education, most parents chose to send their children to private schools over public schools. Although, several parents noted that INR 2,500 would not cover fee hike and other expenses of private education, they were willing to bear the rest of the costs themselves.

The vast majority of public schools in India still predominantly use regional languages of instruction, whereas private schools claim or attempt to use English, which is the reason for parental preference. Furthermore, teacher accountability, which holds greater importance in choosing a school, is significantly better in private schools despite the teachers being less qualified (Rakshmita and Jashmin 2018). Private school teachers are more accountable due to concerns over job security (Dixon and Tooley 2005). Parents stated that with private schools, their children can begin learning at an early age as these schools admit two-and-a-half-year-olds. They consider private schools a better choice than government schools for providing high-quality education to young children. Additionally, the *de facto* average pupil-teacher ratio reported from private schools (1:40) is much better than that in government schools (1:90). Parents believe this helps students receive more attention, better care, and allows teachers to be more adept at understanding the individual needs of the children. Interestingly, one of the parents asserted that their child, who performed well academically in a private school, experienced a decline in performance when transferred to a public school.

A parent commented how Sangam Vihar was “not a good place” for educating a child in a government school. Parents of young children voiced concern for their “child's safety”, which led to sending them to nearby government schools. The parents would send their children to any school, as far as the school was nearby and would solve the proximity issue.

## Public provision is dysfunctional

Government spending on elementary education has increased considerably over the last few decades. However, this increased spending has not translated into improved learning outcomes (Pritchett and Aiyar 2014). Learning levels have been declining since the introduction of the RTE Act. A study by Banerjee et al. (2011) demonstrated that colourfully designed teaching and learning materials in reading and mathematics had no impact on the learning achievements of rural Indian students. Härmä (2009), identified a common sentiment among parents: “With the government, there is no incentive.” The consequences of such a state of government schools led to an increase in dropouts from these schools between 2014-15 and 2016-17 (Praja Foundation 2019).

Many parents shared concerns about learning levels and apathy in government schools. They noted that many children could not even write their names after four or five years in a government school.

Parents also expressed concerns about grievance redressal mechanisms in government schools. They reported that parent-teacher meetings (PTM) in government schools were infrequent compared to private schools, often occurring only once or twice a year. Grievance responses from government schools included comments such as “We have too many children” or “Your child is weak.” Parents said they often felt dismissed by teachers with statements like, “We will look into this,” and “If you want to complain to us, you should teach your child yourself first.” There were also mentions of a divide between parents and teachers, with comments like “An uneducated person cannot present a grievance to an educated teacher.” Furthermore, parents raised concerns and suggested improvements, such as hygiene, clean drinking water, and proper infrastructure, including benches and classrooms.

An overwhelming majority of both private and public school parents enrolled their children in private tuition classes, believing that these classes offered a more effective learning experience compared to schools. These extra classes were embraced in various settings. Parents were satisfied with the cost of these classes, reflecting a perceived good return on investment. This highlights parents’ preference for private providers in delivering higher-quality education. The overall tendency to choose tuition suggests how private actors are filling the gap left by public provision.

## **Competition and innovation**

Competition between public schools and private schools with State financing would address equity concerns while promoting competition within public provision, thus improving public outcomes (Coulson 1999). Studies, such as the one by Levin (1987), criticise the effectiveness of private actors when comparing their overall performance, primarily due to the different types of students served by the public schools. However, these studies overlook the long-term impacts of competition. Competition will promote efficiency between actors due to market forces that make these actors compete for the finite pool of capital, leading to efficient outcomes in the long run (Shah and Shah 2017).

Bhatty (2022) build a case for a strong State system to facilitate meaningful non-State participation, making coexistence of public and private players necessary. The State must proactively support the entry of private actors for this competition to emerge. This will begin with the State infrastructure setup that incentivises private schools to emerge (Pal 2010).

## **Efficiency of private provision**

There is an efficiency argument for private provision, particularly with cost differentials. The accounting cost efficiency losses in public versus private schools make up 0.2% of India’s GDP, while economic costs, estimating differences in learning outcomes, create efficiency losses of about 2.8% (Pritchett and Aiyar 2014). Bhatty et al. (2015) caveat cost comparisons by drawing attention to the highly paid public school teachers, who are, in fact, administrative employees that carry out non-teaching tasks such as election duty and census enumeration. Additionally, the academically weaker and rural demographics that government schools educate are more expensive to educate at large.

The second consideration is learning outcome differentials. In their initial study, Muralidharan and Sundaraman (2011) cite results from their Andhra Pradesh voucher experiment to show some discernible advantages of private learning. Other scholars like Tooley (2016) have also highlighted the learning outcome advantages for the fee-paying private school children.

There is presently no framework that historically compares the two providers in cost, and we look forward to this in future research. When we asked parents about a hypothetical question regarding allocating an INR 2,500 grant in a world where government schools also had fees, most preferred private provision. They believe they can get a greater output on the same expenditure from a private school compared to a government school, supporting notions of cost efficiency. Further, a majority of parents confirmed that they find the private school their child attends offers value for money. On the other hand, public school parents believed that the State is spending enough, but it is all getting “eaten up” in transit rather than reaching their children. Thus, public school parents are dissatisfied with cost efficiency.



## A Functional Public-Private Partnership in Education Provision

The primary issue with the implementation of a privately-dominated education system appears to be the lack of government oversight and ownership over the private actors and their methods. The so-called self-financing or unaided institutions have their own rules and regulations and are the least regulated by, and least accountable to, the government (Tilak 2011). For this reason, academics consider LFPs to be of poor quality, especially in more remote, low-income parts of the country. Endow (2019) states that, apart from poor educational outcomes, additional hidden costs borne by these children include many hours spent in unhygienic surroundings, limited or no access to sports activities, and essentially missing out on holistic development. However, under a stratified schooling system, this tension of accountability between private actors and government senders is to be quelled by a functional regulatory framework that holds private players accountable (Mehendale and Mukhopadhyay 2018).

The RTE Act aims to provide such a framework through its very strict set of guidelines and directives towards private actors. Unfortunately, this appears to be having the opposite of the intended effect. Initially, the long list of amenities and high-capital requirements created unsustainable pressures for LFPs. This ended up, through the State's regressive course of action, creating a perverse incentive for private actors to not even pursue State registration. The private actors are so far outside the State's supervision that, in many instances, the schools are not even meeting basic requirements. The State bears responsibility for this lack of accountability from private actors.

In our field interviews, we encountered a parent of a differently-abled child. She shared how the current system hurts parents like her the most. This is because private schools, including the one her child attended, were able to receive licenses through manipulation or corruption in the dysfunctional regulatory framework despite not having a ramp for her wheelchair-bound son. This goes to show how the laws were so strict for private actors that the State has completely alienated itself from them. The State is not even able to ensure basic facilities like ramps for differently abled children. This speaks to the failures of the State in enforcing standards of equity through its overly ambitious goal-based governance. A drastic change in the regulatory climate is necessary for any real conversations surrounding a functional public-private partnership in education provision.

## Conclusion

Although the findings suggest a varied stance among parents, a definite preference for private services emerges when financial considerations are not taken into account. This highlights openness to government financing, emphasising the need to explore such options. Nonetheless, public provision continues to play an important role in ensuring access to education for all. The inconsistency in delivering promised advantages has created a trust gap among citizens, both in terms of obtaining periodic public financial benefits and trusting private actors within this framework.

Surprisingly, the majority of parents support the continuation of State provision. The tendency to transfer children to public schools after a few years in the private sphere reflects a pragmatic attitude, with parents selecting each system based on their individual circumstances. Yet, the disparity in quality across public schools highlights the difficulties in drawing broad conclusions. The disparate experiences recounted by parents based on their preferred public school underscore the need for caution. The key inhibition for State provision traditionalists surrounds the need for equity and availability in education. More research is needed to determine whether the existing tight regulatory framework exacerbates perceived inadequacy in low-capital private schools or is intrinsic to any instance of private provisioning.

In essence, the role of the State in education in India is still a source of complexity and dispute. This study underscores the importance of a balanced strategy that takes into account both parental preferences and the critical safety net offered by public service. As education influences the nation's future, ongoing research and careful policy considerations are required to ensure equal and effective educational opportunities for all early learners.

## Methodology

Our primary research involved conducting semi-structured interviews with 56 parents across four sites in Delhi: Hastal (West Delhi), Sangam Vihar (South Delhi), Baljeet Nagar (Central Delhi), and Badarpur (South-East Delhi). Employing a combination of purposive and snowball sampling, we selected parents based on their monthly household income (ensuring representation from low-income households) and the age of their enrolled children. Initially, we approached *Anganwadis* in the sites and expanded our sample through snowballing. We posed questions to the parents regarding their experiences and satisfaction with the schools their children attend, their perspectives on the morals and values instilled in their children through schools, the affordability and accessibility of these schools, their thoughts on private provision, discrimination, and the State's responsibility, among other topics. Additionally, we interviewed seven government school teachers to corroborate specific findings and gain insights from their perspective.





# Between Land and Legislation

Voices from UP and Haryana  
on the Ninth Schedule





## Introduction

The First Constitution (Amendment) Act, 1951, created the Ninth Schedule. The statutes in this Schedule receive immunity from judicial review. The first set of laws added to the Schedule related to land reform, limits on the right to property, and the subsequent abolition of *zamindari* and other intermediary systems.

The Ninth Schedule allows the Parliament and state legislatures to pass laws that are immune from judicial review, unless they violate the “basic structure” of the Constitution of India.<sup>29</sup> Ninth Schedule laws limit individual rights and prevent judicial review for relief. The executive has been granted considerable discretionary power, evident in phrases such as “actions taken in good faith”, “measures deemed necessary”, and “use of force as required”. There is a palpable lack of clarity on rights and liabilities in these laws.

The Ninth Schedule has expanded from 13 statutes in 1951, to 282 in 2023. Of the laws in the Schedule, 84% pertain to agriculture. We assessed the implications of immunity from judicial review for such laws, specifically those concerning the Right to Property in agrarian land.

Presented as tools for land reform and aimed at reducing inequality, the Ninth Schedule statutes undermine the independence of farmers, bypass their Fundamental Rights, and preclude options for legal recourse. The unintended consequences of legislation shielded from judicial review have introduced distortions in the agrarian economy. These distortions are intricately tied to issues of welfare of farmers on one hand, and agricultural productivity on the other. The most significant negative impact on agricultural productivity stems from land reform legislation, specifically land ceiling and tenancy restrictions. Not recognising farmers as entrepreneurs, such paternalistic policy measures have trapped farmers in a cycle of low income and productivity.

For rectifying issues created by the Ninth Schedule statutes and their enactment since 1951, the literature recommends two courses of action (Rajagopalan 2021; Sharma and Malik 2019; Cagliarini and Rush 2011; Rawal and Bansal 2021). The first advocates for deregulating the industry, gradually phasing out subsidies, and consolidating land to harness economies of scale. This approach benefited other sectors of the economy following the 1991 economic reforms. The second suggests renewed reforms in tenancy and redistribution to tackle rural poverty and inequality. This is simply a continuation of the current policy and would require frequent adjustment and change (Rajagopalan 2023). Therefore, deregulating and liberalising the sector appears to be more viable.

## Ground Reality of Land Reforms in Uttar Pradesh and Haryana

Uttar Pradesh (UP) and Haryana, through Ninth Schedule laws, have implemented land ceiling, tenancy reform, restrictions on the sale of agricultural land, and the abolition of intermediaries. Amendments have been made to: Haryana Ceiling on Land Holdings Act, 1972; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951; and Uttar Pradesh Imposition of Ceilings on Land Holdings Act, 1960.

We conducted a qualitative study to unearth the realities of land ownership and tenancy in UP and Haryana. In the past, such an exploration has only been done through quantitative data. Our research is centred on case studies from agriculture-dependent villages in these two states and attempts to answer the following questions:

1. How have the Ninth Schedule laws concerning agrarian land in UP and Haryana affected tenants, farmers, and landowners, especially in terms of landholdings and agricultural productivity?
2. How do tenants, farmers, and landowners perceive their rights and the limitations imposed by the Ninth Schedule laws? What are the prevalent views on land ceiling and tenancy restrictions?

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29. The provision for judicial review on a case-by-case basis to assess the violation of the “basic structure” of the Constitution was introduced in the *Kesavananda Bharati v. State of Kerala (1973)* case.

3. What informal and adaptive strategies have stakeholders developed in response to the Ninth Schedule laws?
4. How do these adaptations impact their access to resources and inform dispute resolution in the absence of formal mechanisms?

We conducted Focus Group Discussions (FGD) and semi-structured interviews with 58 respondents across four villages in Haryana and three in UP, to understand farmer awareness and perceptions, and document local practices.

## Reforms: Rationales versus Results

While tenancy is largely legal in Haryana, it is highly restricted in UP. This provides insights into the varied evolution of informal legal systems in the two states. In Haryana, there are no prohibitions on leasing, except for a provision that allows tenants who have farmed the same plot for six consecutive years the right to purchase it from the landowner. In UP, leasing is restricted to groups identified as *asamis* (tenant class) and a few other exceptions sanctioned by the Government.<sup>30</sup>

The intention behind such provisions was to safeguard the rights of landless tenants, a historically significant group. Thus, tenants' rights were prioritised over landowners' property rights. However, these restrictions have not yielded the hoped-for benefits. Similar short-term informal leasing systems are prevalent across caste groups in both states, irrespective of their historical tenancy or land ownership status. Both states impose restrictions on Scheduled Caste (SC) and Scheduled Tribe (ST) farmers, preventing them from freely selling their land to non-SC and non-ST individuals. Empirical data suggests that this has disadvantaged them, compelling them to sell their land below market rates during personal or familial crises.

The ceiling limits on landholdings in Haryana are nearly double those in UP and compensation offered to landowners is also higher in Haryana. Property owners did not always receive full payment for their land, they were often paid in installments. The interest rates provided by state governments to landowners receiving instalments seem to align with India's inflation rate when these laws were enacted. In Haryana, the interest on instalment payments was 5%, compared to 3.5% in UP. Thus, individuals were not only divested of their property but also did not receive full payment immediately. Instead, they received payments at a fixed rate, and likely missed out on better returns elsewhere.

Analysing the Agricultural Census data for the identified *tehsils* and districts from 1995-96 to 2015-16, we discern only small changes in the average sizes of operational holdings across all landholding categories (from marginal to large).<sup>31</sup>

In absolute terms, there has been a marked increase in marginal and small holdings, with large holdings constituting only a minor portion of the total agrarian land. Large holdings, especially those surpassing ceiling limits, are primarily vested in institutions in UP and are either jointly owned, or owned by institutions in Haryana.

Over the past two decades, for which census data is available, Haryana has witnessed an increase in the average size of medium and large holdings, while the average size has remained stable for marginal, small, and semi-medium holdings. This could be attributed to the rise in leased areas and the gradual exit of small and marginal farmers from the sector. In UP, the average size of landholdings has remained consistent for marginal, small, semi-medium, and medium categories but has decreased for large landholdings.

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30. Government lessees; Lessors who are disabled persons, mentally retarded, physically infirm, widow/unmarried woman, minors, those serving in the military, navy, or air force, those in detention or prison.

31. Marginal (<0.5 to 1.0 ha); small (1.0 - 2.0 ha); semi-medium (2.0 - 4.0 ha); medium (4.0 - 10.0 ha); large (10.0 to > 20.0 ha).



## Taking Stock in Uttar Pradesh: Three Villages from Three Tehsils

### A village in Bulandshahr tehsil

This village, with a predominantly Brahmin population, is situated near the developed areas of Greater Noida extension. The majority of landholders have inherited their land ancestrally, which has been fragmented over time. Farmers expressed hope for another round of *chakbandi* or *bandobasti*, a service previously provided by the government to consolidate fragmented landholdings into *chakhs* (blocks) and allocate portions of the land to create tracks for carts and tractors, as well as for drainage. The last such consolidation occurred in 1984.

Some semi-medium and medium farmers lease out their land as their families have diversified into other professions. Livestock rearing is common among these farmers. Except for one medium farmer, the rest were unaware of the legally mandated ceiling limit on land ownership. All farmers expressed strong support for such limits to prevent concentration of land among a few affluent individuals which, they argued, could lead to disparities in agricultural production and market dynamics. They believe that wealthy farmers, capable of purchasing more land, would be willing to pay a premium, thereby driving up land prices.

Many landowners lease additional land since they believe their plots are not economically viable. The village also has a high proportion of small and marginal holdings. This has resulted in diminished farm productivity and income. Consequently, there is minimal dependence on daily wage labor, and farmers spend considerable time moving between plots. Notably, farmers here felt that ownership does not correlate with productivity, possibly because many landowners also lease land. They claim to care for leased land as diligently as they would for their own.

The prevalent leasing system here, known as *lagaan*, has its roots in older sharecropping arrangements. Cash payments for one-year farming rights are determined after a competitive open bidding system at the beginning of the year, and is secured by informal verbal agreements. One farmer with a semi-medium holding commented, “*Is system mein competition hai. Agar vo mujhse zyada paise dega toh lagaan use mil jayegi. Vo phir zyada kaam karke apne paise nikalega*”. (There is competition in this system. If he offers more money than me, he will secure the lease and will work harder to recoup his investment). This underscores a value system that prioritises fairness, ensuring that those who value the land most secure the right to cultivate it.

However, to prevent encroachment and loss of ownership, landowners typically lease their land to the same tenant for only 1-2 years. This can negatively impact the tenant’s profitability.

Farmers expressed their dissatisfaction with the way their freedom to use their own agricultural land has been curtailed significantly by laws. For instance, they mentioned the prevalence of heavy fines for attempting to remove their soil or cattle waste from their agricultural land. They are required to obtain permission from the land authorities to do so. They also mentioned instances of houses being demolished without notice because they exceeded permissible residential construction limits.

Another shared concern among farmers is that government aid goes directly to landowners, bypassing the tenants. None of the respondents wished to pursue farming, nor did they want it for their descendants. As one respondent put it, “*Ye ghate ka sauda hai. Ye majboori ke kaaran kar rahe hain bas. Ham aur kahan jayenge?*” (This is a losing proposition. We are in it out of sheer necessity. Where else can we turn?)

Most farmers supported the freedom to sell land for agricultural purposes but wanted restrictions on the sale of agricultural land for non-agricultural uses, whether polluting (e.g., factories, industrial complexes) or non-polluting (e.g., residential developments). They advocated for the preservation of agricultural land because of the cultural and historic value associated with it. There is a growing concern among farmers about losing their land to upcoming extension projects from Greater Noida, especially as portions of the village’s fertile land have become *banjar* (uncultivable) over time.

## A village in Khair tehsil

The farmers in this village are predominantly from the *Jatt* community. A significant proportion of land is owned by farmers. Landholdings range from semi-medium to large. There is a combination of landowners who lease out their land and tenant farmers who are either landless or lease land themselves. We observed that medium to large landowners, who have alternative income sources, often lease out a portion of their land while also engaging in farming themselves with the help of daily-wage labourers.

The tenant farmers we surveyed lease holdings varying from semi-medium to medium. Recently, the land that was previously used for agriculture has been acquired by the state government for the Jewar Airport project. Consequently, farmers who lost their land are migrating to neighbouring agricultural villages, as they believe farming is the sole profession they are skilled in.

Marginal and small farmers, both tenants and landlords, lacked knowledge about ceiling limits. Large farmers were aware. While marginal and small farmers supported ceiling limits, medium to large landowners vehemently opposed them. The former believe that ceilings ensure equitable land distribution and prevent a few dominant farmers from monopolising land. The latter feel penalised by these limits, arguing that their extensive holdings were acquired over generations through hard work and enterprise. These efforts, they thought, should be rewarded, not restricted.

The prevalent tenancy system in this region is *lagaan*, mirroring other UP villages. However, a unique stipulation requires prospective tenants to pay the lease amount six months in advance. Some tenants opined that land ownership does not necessarily influence productivity, as they tend to lease land with equal diligence. Others felt that one-year leases restrict them from cultivating crops with longer growth cycles, such as sugarcane which yields more in its second year. However, since most landowners prefer leasing to acquaintances and family, tenancy terms are often flexible, allowing tenants to cultivate the same plot over several years. Those with less social power and fewer connections in that village would likely struggle in such a system.

We found that Government compensation for crop failures or natural calamity-induced damages is infrequent and minimal. Typically, this aid is credited to landowners and is rarely shared with tenants. This disparity can be attributed to the informal contract system, which lacks grievance redressal mechanisms.

While marginal to medium farmers advocated for preserving agricultural land exclusively for farming, some large-scale farmers expressed interest in leasing to non-farmers, on stringent terms that safeguarded their interests. These farmers also expressed a desire to acquire more land but were constrained by ceiling limits, especially when considering the combined holdings of their adult family members. Most of the surveyed farmers hoped their descendants would diversify from farming but still retain their land assets.

All farmers expressed concerns about the inevitable and counterproductive fragmentation of holdings across generations, which increases commuting, supervision, and management costs. The majority of individuals we interviewed had inherited their land. It is worth noting that since the initiation of the Jewar Airport project, there has been a significant decline in the buying and selling of agricultural land for agricultural purposes. Instead, respondents flagged rising speculative trade in agricultural land, i.e., buying land with the sole intent of selling it for a higher price rather than using it for agriculture.

Farmers in the village have intricate perspectives on agricultural land sales, likely shaped by their experiences. Following the announcement of the Jewar Airport project, numerous landowners began selling their plots to agricultural companies or speculating on their land value, anticipating inevitable acquisitions at set circle rates. All farmers concurred that they should have the autonomy to sell their land for agricultural endeavors, but opinions diverged regarding sale for non-agricultural purposes. Some argued that selling their land before the acquisition began would have fetched them higher prices than the compensation received at circle rates when they were made to part with their land forcefully.

## A village in Shikarpur tehsil

The majority of the farmers in this village possess semi-medium to medium-sized holdings, with a few larger farmers approaching the ceiling limits. The village boasts a well-developed irrigation system and an efficient cooperative society that provides subsidised inputs and implements for its member farmers. This village is unique in that it is the only one where government compensation for crop damage is disbursed to landowners promptly, the majority of whom share this aid with their tenants.

Farmers here are aware of the ceiling limits, but both medium and large farmers do not support these restrictions, deeming them outdated. They argue that those who possess the capability and work ethic to manage larger holdings should be entitled to do so. This sentiment is echoed by small and semi-medium farmers too.

While these ceiling limits have resulted in inter-generational land fragmentation, the farmers are of the opinion that *chakhbandi* should be conducted regularly to consolidate these fragments. One farmer, whose son serves as a *chakhbandi patwari* (a government official who maintains land ownership records), opined that this practice is more detrimental than beneficial, as it often results in a portion of the farmers' land being appropriated, leaving marginal and small farmers at a disadvantage.

The tenancy system in this village is intricate and varied, encompassing landless tenants, landowners who lease out their land, and landowners who lease in. The *lagaan* system is prevalent here with minor variations. The relationship between tenants and landowners is characterised by camaraderie or kinship, leading to relatively lenient tenancy terms. For example, the lease amount can be paid in instalments at a mutually agreed rate of interest.

Unlike other villages in UP, numerous tenants here have cultivated the same plot of land for several consecutive years. However, leases are still renewed annually, while other terms remain unchanged. So farmers do not grow crops with multi-year cycles since there is still a high degree of uncertainty. While tenancy appears to be a mutually advantageous arrangement for both tenants and landowners, the informality of the system does hinder some of the potential gains from trade.

Farmers in this village are reluctant to forsake agriculture and their agricultural land, viewing it as a symbol of ancestral pride and a dependable safety net during challenging times. They hope future generations will have the freedom to decide whether to pursue this vocation. While they deeply value the legacy and security their land offers, they also recognise the evolving aspirations of the younger generation. Unlike their counterparts in other villages, they champion the right to sell land for both agricultural and non-agricultural uses. Their willingness to sell land for non-agricultural uses underscores their desire for progress and economic diversification, even if it means moving away from traditional farming practices. The village and its vicinity are yet to witness the establishment of factories or industries. However, farmers are optimistic that non-agricultural development will create job opportunities for the younger generation. This duality reflects a delicate balance between preserving the past and embracing the future. They contend that potential land degradation or pollution from factories should be addressed through government regulations targeting the polluters, rather than restricting farmers' right to sell their land.

This village, and neighbouring ones, are witnessing an influx of farmers displaced by the Jewar Airport project, leading to an increase in the prices of agricultural land in the region. This may explain their views about selling land for non-agricultural purposes.

## Taking Stock in Haryana: Four Villages in Karnal Tehsil

The villages have a diverse population comprising *Jatt*, *Rod Maratha*, and *Rajput* communities. The majority of landowners possess medium-sized holdings inherited from ancestors. The irrigation system is well-developed, and most plots are equipped with tube wells. Some farmers own holdings that approach or exceed the ceiling limits. Most farmers cultivate their land with the assistance of daily wage labor and tenancy is uncommon. Moreover, with the establishment of factories adjacent to the villages, local labor is gravitating towards factory work, leaving the demanding farm tasks to cheaper labour from Eastern UP and Bihar.

The Ninth Schedule laws in Haryana relate solely to ceilings. Although the law stipulates various ceiling limits, the only limit familiar to some farmers here pertains to irrigated land yielding at least one crop, i.e., 10.9 hectares.<sup>32</sup> Most landowners and tenants remain oblivious to the ceiling limits, with the exception of some medium and large farmers.

Several large farmers, whose families own land well beyond these limits, find them objectionable, as do many semi-medium and medium farmers. Such farmers mentioned that they split the land above ceiling limits between family members while retaining effective control of these lands. They find these limits unfair. Multiple respondents asked why such limits are not imposed on industries or the private properties of Members of Parliament (MPs) and Members of Legislative Assembly (MLAs). They resent the Government for hindering growth in their profession through excessive regulations. While we did not engage with any marginal holders in this *tehsil*, all small and some semi-medium farmers support ceiling limits to prevent land monopolisation.

The prevalent leasing system here is *theka*, wherein tenants verbally agree with and make lump-sum cash payments to landowners upfront for farming rights that last a year. This system emerged in the early 2000s, supplanting the previously dominant practice of sharecropping or *bataidaari*. Nowadays, most landowners lease to acquaintances and relatives, trusting them to maintain the land. This trust promotes the cultivation of crops with longer gestation periods, which are also more lucrative. Unlike in other surveyed *tehsils*, landowners here often share a portion or all of the Government aid they receive with tenants.<sup>33</sup> Many of the surveyed farmers stated that not sharing the compensation would be dishonourable. Additionally, some land overseen by the village committee is leased out via competitive open bidding each June. Thus, where tenancy is legal, the Government can offer opportunities to landless farmers.

Landowners deem ownership crucial for productivity as it promotes judicious use of inputs like fertilisers, which influence soil quality in the medium to long term; and spurs investment in efficient permanent assets. Unlike their counterparts in UP, farmers in Karnal passionately wish for future generations to continue in the agriculture sector and have no desire to leave the sector themselves. They believe the local education system does not equip their children for well-paying jobs in other industries. Additionally, they regard agricultural land as a symbol of pride and dedication. However, one must be mindful of the potential survivorship bias that may underlie these views.

Many landowners in this *tehsil* and neighbouring areas have sold their land for non-agricultural purposes, primarily factories. Pollution from these units has adversely affected farmers on neighbouring plots, turning them against the sale of agricultural land for non-agricultural purposes. Local farmer unions have successfully secured compensation for affected farmers. Nonetheless, all respondents desire complete autonomy to sell or lease their land for agricultural uses.

Agricultural land-related trade restrictions in this region have created perverse incentives. Landowners deliberately let *upjaau zameen* (fertile land) lie fallow for over three years, allowing it to be legally reclassified as *banjar zameen* (uncultivable land) and sold for non-agricultural purposes. Thus, cultivable land is, on paper, transformed into uncultivable land, which garners a higher sale price for the seller. Individuals act in their best interest, but in an inefficient and roundabout manner.

## Lessons from the Land: Insights from Farmers

The Ninth Schedule laws directly correlate with the current challenges of farmers, such as the proliferation of small and marginal holdings, widespread landlessness, the loss of agricultural land to expanding urban centers, and farmers' economic vulnerability. Farmers desire greater autonomy to exercise their ownership rights. The majority of respondents view ceilings and tenancy restrictions as outdated and believe that reforms are necessary.

We observed that the actual practices often deviate from the stipulated laws, as individuals devise strategies to improve their circumstances. This is evident in the widespread adoption of year-long cash-

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32. As per Haryana Ceiling on Landholdings Act, 1972, maximum permissible area is set at 7.25 ha for land under assured irrigation yielding at least two crops a year, 10.9 ha for land under assured irrigation yielding at least one crop a year, and 21.8 ha for all other types of land (including orchards).

33. This refers to Government aid received in case of crop failure, damage due to natural calamities, etc.

paid-upfront leases, typically resulting from competitive open bidding at the start of each year. This is despite such leases being formally prohibited in UP. Only minor variations are observed, largely influenced by the degree of trust between the contracting parties. Such informality leads to limited access to credit and insurance markets for tenants, thereby increasing their dependence on informal borrowing and occasionally compelling them to sell small portions of their land. There are no official mechanisms for resolving disputes related to tenancy contracts, which are verbally agreed upon.

## **Farmers want more freedom to effectively exercise ownership**

Across all villages surveyed, farmers demanded the freedom to use their agricultural land assets as they desire. They shared instances of heavy fines being imposed on them when they attempted to remove their cattle's waste from fields, due to a prohibition on removing soil. Parts of some farmers' houses were demolished without notice because they exceeded the permissible construction area on agricultural land. Meanwhile, the Government's forceful acquisition of thousands of acres of land at circle rates, was seen as astoundingly unfair.

Most farmers in Shikarpur and Khair desired the freedom to sell their land, even for non-agricultural purposes. They believed that restrictions, if any, should target the factory or industrial plant to ensure it does not pollute or negatively impact the productivity of other plots. They perceive these restrictions as arising from an anti-farmer and pro-industry bias held by the Union and state Governments. Our findings suggest that restrictions intended to protect farmers are leading them to seek costly and inefficient alternatives.

In all the villages, under normal circumstances, we observed that agricultural land is not seen as a speculative asset. Rather, it represents a legacy that most families wish to retain, being the sole asset they can pass on to their descendants. Such land is typically sold only during family emergencies. Farmers desire a streamlined process similar to the convenience enjoyed by actors in other professions. Without such a process, we observe the emergence of perverse incentives, such as the “*banjar* land” phenomenon in the villages in Haryana and Khair. Farmers in all the surveyed villages expressed concern regarding the laws preventing SC and ST individuals from selling their land.

## **Views on landholding size and tenancy restrictions are polarised**

Marginal to medium landholding farmers favour the size restrictions and believe that removing them would result in the concentration of land in the hands of a few. Conversely, small to large landholding farmers contend that if an enterprising farming family has diligently amassed a significant holding over generations, their efforts should not be penalised. We argue that, given the positive correlation between landholding size and productivity, policies should support rather than inhibit such endeavours. One farmer with a semi-medium holding in UP remarked, “*Zamindari todne ke liye adhikam seema jayaz hogi par aaj aise kanoon ki koi zaroorat nahi hai. Ye bas mehenati kisaan ko saza de raha hai.*” (The ceiling limit might have been justifiable to dismantle the *zamindari* system, but no such legislation is required today. It merely penalises the industrious farmer.)

Interestingly, short-term leasing contracts with similar terms have naturally arisen in both Haryana and UP, even though the legal framework governing tenancy in UP is notably restrictive. In the face of formal regulations, individuals have resorted to informal agreements to sustain their livelihoods, minimising transaction costs over generations. However, these informal contracting mechanisms have other costs and challenges. Moreover, the legislation is so detached from contemporary realities that none of the respondents were aware of its existence.

## **Farmers find inter-generational fragmentation inevitable and a drag on productivity**

All respondents found fragmentation to be an inevitable consequence of agricultural land assets being passed down across generations. As fragments become scattered throughout the village over time and decrease in size, they become highly inefficient to work with and manage. Consequently, there

is a demand for *chakhbandi* or *bandobasti*. This consolidation last occurred in Karnal in the 1970s, in Shikapur in 2008, in Khair in 1962, and in Bulandshahr in 1984.

Such periodic consolidation of land fragments could enhance productivity. However, this benefits farmers only when their holdings are substantial. Small and marginal farmers often face a net loss as portions of their land also get allocated for other purposes. We posit that farmers view this as the sole solution to the challenges posed to productivity by inter-generational fragmentation.

Another feasible method for landowners to generate income from their holdings is by leasing land to agricultural companies, an approach farmers expressed a willingness for. This approach allows them to seek alternative employment opportunities while potentially increasing the productivity of their land through the adoption of technologically advanced tools and cost-effective practices.

## Short-term leases are beneficial but should be formalised

The surveyed farmers follow an informal, verbal-contract-based, short-term leasing system and vouch for it as the optimal tenancy arrangement. However, this system has both costs and benefits associated with it. The bidding for the *lagaan* is competitive and transparent, and farmers regard it as a just arrangement since the tenant farmer who values the land most secures the rights to cultivate it. Further, there is often a relaxation in the tenancy terms, such as allowing the payment of *lagaan* in installments and retaining the same plot for consecutive years.

However, tenants rarely benefit from the insurance that the Government allocates to the landowners. This is largely because of the informality of these agreements, which means they need to depend on the largesse of the landlord. Formal, recognised agreements would change this. Moreover, the rigid year-long tenancy hinders multiple cropping, the cultivation of profitable crops with extended gestation periods, and the employment of capital-intensive techniques. In scenarios where landowners favour leasing to relatives and acquaintances, not all prospective tenants get an equal opportunity.

The rise of short-term leasing is an economically driven, and mutually advantageous system for generating consistent revenue from a low-yield venture. In instances where farmers' families lack diversified income sources, agriculture remains the sole means of income through *lagaan/theke* (for landowners) and annual sales proceeds (for tenants). Even though profitable crops with longer gestation cycles are deemed desirable, they are impractical considering the short term of nature of tenancy and the requirement of upfront payment, which may not be viable given the tenants' immediate cash availability.

Overall, the *lagaan* and *theke* leasing systems enhance productivity, as individuals keen to cultivate a particular plot aim to maximise their returns beyond the initial payment to the landowner. Thus, any prohibition of tenancy would be against the best interests of the stakeholders and the overall productivity in the agricultural sector.

Some areas of reform that the farmers pointed at include: redirection of government aid and relief towards tenants rather than landowners, timely disbursements, grievance resolution under the *Kisan Credit Card* and *Kisan Samman Nidhi* schemes, and a reduction in input costs. They are of the opinion that such measures would significantly mitigate the inherent risks of their profession. Furthermore, they emphasised the apathy and antagonism of the *patwaris*, *tehsildars*, and other lower-tier bureaucrats to whom they turn in times of hardship. We contend that seeking solutions beyond governmental actors is crucial in this context.

## Conversion laws hurt farmers and the agricultural sector

While conversion was not included in the restrictions imposed by the Ninth Schedule laws on farmers, this issue is closely linked to the sale of agricultural land and the farmers' perceptions of their freedom. The fact that agricultural land is generally not treated as a speculative asset may be attributed to the extent to which an effective market price for land has not been established in the region.

In cases where agricultural land is situated close to urban centers, where land markets are well-developed, the reservation prices of landowners might closely align with the prevailing market prices.

Conversely, in areas more distant from urban centers and development projects, land markets are sparse due to laws that have previously impeded discovery.

We discovered that the prices of fertile agricultural land, specifically irrigated land yielding two crops annually in the villages of Haryana and Shikarpur, are lower compared to the prices of barren land. Consequently, laws restricting conversion to non-agricultural uses have stifled the market for agricultural land and created perverse incentives, as evidenced by the “*banjar* land” phenomenon in these villages. Moreover, in instances where tracts of land have been converted for such purposes, we did not observe any enhancement in the overall infrastructure of the villages. Respondents attributed such developments to the MLAs elected from these regions. This development also leads to an increase in non-agricultural land prices, potentially intensifying perverse incentives for farmer-landowners.

Farmers in Shikarpur and Khair insisted that they should have the liberty to sell their land for any purpose, contending that this freedom is intrinsic to their property rights. They advocated for restrictions on land purchasers rather than sellers. Thus, the argument in favour of conversion stems from an assertion of one’s right to sell property without State interference. Conversely, farmers opposing the conversion of agricultural land argue that fertile land is a national asset. Therefore, any restrictions on its conversion should be inviolable and more rigorously enforced. One farmer in Shikarpur opined that, if not regulated, all fertile land would be depleted within a few decades since farmers face challenges in profiting from their ventures and often resort to selling their land during crises. Hence, there is a tension between permitting farmers to sell their property to the highest bidders, which frequently involves conversion, and regarding fertile agricultural land as a national asset.

## Conclusion

The Ninth Schedule laws have had a detrimental effect on stakeholders in agriculture. Through a qualitative study, we underscore the challenges posed by small and marginal landholdings resulting from inter-generational fragmentation, the emergence of counterproductive incentives in markets for agricultural land due to laws restricting sales for non-agricultural purposes, and the organic evolution of informal leasing in Haryana and UP, irrespective of the legal framework.

Moreover, the divergence between law and reality on crucial matters such as tenancy underscores the need to reconsider the law, if not re-evaluate the foundational assumptions upon which it is based.

The unfortunate state of the agricultural sector is best captured in what one of our respondents shared:

*“Kheti toh ab bas ghaate ka sauda hai, lekin kisaan ke baare mein kaun sach mein sochta hai? Hamein na toh kuch alaggyan hai, naa hi kuch dusri yogyataayein hain. Ham iss tarah kaam karke mar jayenge, lekin kam se kam hamare vansh ko toh zameen milni rahegi, jis par ham mehnat karte hain.”*  
(Farming is now merely a loss-making venture, but who truly considers the farmer? We possess neither alternative knowledge nor capabilities. We will persist in this manner and perish, but at least our progeny should inherit the land we labour upon.)

## Research Design and Methodology

We examined the impact of the following legislations: the Haryana Ceiling on Landholdings Act, 1972; the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951; and the Uttar Pradesh Imposition of Ceilings on Landholdings Act, 1960, as amended up to 2023. We identified three primary themes for investigation: ceiling restrictions, tenancy limitations, and constraints on the sale of agricultural land. We pursued a subsequent logical inquiry, although not part of the Ninth Schedule laws, i.e., the constraints on converting agricultural land for non-agricultural purposes upon sale.

We employed a combination of Focus Group Discussions (FGD) and semi-structured interviews with 58 respondents across four villages in Haryana and three in UP to understand farmer awareness, perceptions, and their local practices. We selected villages where the *tehsil* level ownership patterns, operational landholdings, and other land patterns were similar to the state-level averages based on agricultural census data. The predominant crops cultivated include non-food crops, oil seeds, sugar crops, and food grains. We targeted individuals potentially affected by the Ninth Schedule laws. All participants were either landowners, tenants, or both, from these villages. The researchers lacked prior knowledge of the farmers' landholdings or their tenancy durations.

FGDs explored stakeholders' perspectives on the implications and necessity of Ninth Schedule laws. Apart from this we conducted individual interviews to gather data on inter-generational landholding fragmentation and leasing contracts, focusing on either a single farmer or a family unit. The objectives were to determine awareness of the laws, prevailing local practices, and perceptions of these regulations.

We obtained informed verbal consent from all participants, ensured confidentiality by limiting data access exclusively to the researchers, and upheld the participants' right to withdraw from the study. Identifiers at the village level were removed to maintain the confidentiality of the locations where trends and patterns were observed within the states.

Given our non-random approach, the findings from our study are not generalisable beyond the surveyed districts. We did not collect data on the caste identities of tenants or landowners, which could be crucial in understanding historical tenancy and ownership patterns. Any related information was informally acquired through our local contacts.

Some of the FGD participants in the surveyed villages were recruited via snowball sampling, potentially leading to unrepresentative views of the broader stakeholder groups. Due to the elusive nature of the *patwari*, data on changing ownership patterns and village plot sizes could not be verified. To address this, we cross-referenced claims made by landowners and tenants in separate interviews and consulted village elders to comprehend historical trends.







# Capital Conversations

Delhiites on Urban  
Governance and Its Reach





## Introduction

Urban India today has nearly 500 million inhabitants. It has witnessed a faster year-on-year growth rate compared to rural areas from 2018 to 2021 (Rathore 2023).<sup>34</sup> People are moving to cities because they are growing economic hubs. This shift makes it imperative for cities to ensure efficient service delivery: well-planned infrastructure, access to electricity, clean water and air, and well-maintained roads and parks.

In the last few decades, governments worldwide have attempted to bring reforms to enhance citizens' experience with public services. Private sector principles of strategic management and planning are being seen as key approaches for improving the performance of public services. Many reforms have been influenced by the principles of New Public Management (NPM) and reflected in initiatives like the "reinventing government" movement in the United States (Andrews 2009). Government policies in many countries have also shifted from centralised decision-making to decentralised planning.

In India, the Constitution (Seventy-Fourth Amendment) Act (the 74th Amendment Act or the Amendment Act), 1992 gave Constitutional recognition to Urban Local Bodies (ULBs) as an independent third tier of the government, and mandated the transfer of city-level planning, roles, and functions to ULBs. The objective of the Amendment Act was to create self-governing local bodies in India. The Twelfth Schedule added through this Amendment, outlines 18 functions that should be devolved to local bodies, including urban planning, roads and bridges, water supply and sanitation, solid waste management, and registration of births and deaths. Part IX A, also inserted in the Constitution through the Amendment Act, mandated state legislatures to amend their municipal laws to transfer functions to ULBs.

These reforms were aimed at empowering local governments to provide public services and bring them closer to citizens. However, research suggests that the 74th Amendment led to an incomplete transfer of powers to the ULBs. Only political functions (such as election of Councillors, appointment of Mayor, etc.) were devolved at the local level, while the decisions related to funding and finance remained with the Union or state Governments (Faguet and Shami 2021). Variations exist in how the Amendment Act has been put into practice (Chakraborty, Chakraborty, and Mukherjee 2016). This can be attributed to several reasons such as ambiguous guidelines on ULB design, insufficient funding, and the expansive discretion granted to states in determining the devolution of functions to local governments through the Amendment Act. While most states have established city-level institutions as mandated by the Amendment Act, the decisions relating to administration and planning continue to remain centralised (at the State-level). For instance, apart from the 18 functions listed in the Twelfth Schedule, the Act leaves it to the state governments to delegate additional functions to these bodies. Further, it does not specify the sources of funds for these functions. Consequently, in many states, these institutions have played a largely superficial role in performing the functions.

Delhi is the largest Union Territory with a population of 32 million people (Census of India). By 2030, it is projected to touch 39 million and become the world's most populous city, surpassing Tokyo (World Economic Forum 2020). The capital city of India has been given a unique classification of the National Capital Territory (NCT) as per Article 239AA of the Constitution. It is a Union Territory (controlled through central administration) with a Legislative Assembly and Council of Ministers. While the residents of Delhi elect their representatives, the Union Government gets the final say over all legislative matters. It continues to be governed through centralised governance structures, unlike any other Indian city, against the theoretical and statutory idea of federalism (Sahoo 2018).

To understand how public service delivery systems are managed in Delhi, it is important to understand the role played by different levels of government as per law and in practice. Literature suggests that the decentralisation model proposed by the 74th Constitution Amendment Act and the Municipal Corporation of Delhi Act, 1957 (MCD Act) has led to overlaps in governance structures due to limited clarity on roles and responsibilities, impacting effective public service delivery in Delhi.

In this paper, we discuss some of the best practices for efficient public service delivery and review how these laws fare on these standards. Through qualitative interviews with various stakeholders (residents of Delhi, public and private service providers, and elected representatives), the paper also examines

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34. The rural population increased from 903.13 million in 2018 to 909.38 million in 2021. The urban population increased from 465.87 million in 2018 to 498.18 million in 2021.

the implementation of laws by focusing on the delivery of four basic services – electricity, water supply, garbage collection, and road maintenance.

## What are the Internationally Accepted Best Practices for Public Service Delivery?

In this section, we look at the literature on two models used for improving the consumer experience with public services, how decentralisation has been used to improve service delivery mechanisms, and the merits of the decentralised versus centralised approach. Following this, we briefly discuss the literature on decentralisation reforms introduced in India and Delhi.

### Citizens as consumers

Citizens who receive public services are essentially consumers, engaging with the government to meet their needs. “Exit” and “Voice” are concepts introduced by Hirschman to evaluate on how consumers respond to declining performance in the production of goods and services (Hirschman 1980).

In this framework, citizens (as consumers of public services) possess two strategies to influence services: Voice involves providing feedback and engaging with providers, while Exit entails seeking alternatives. This duality fosters accountability, compelling service providers to respond to citizen concerns and maintain transparency (Paul 1991). Additionally, the threat of “Exit” encourages providers to improve efficiency, innovate, and adopt a customer-centric approach, as they must compete for users. This theory establishes a feedback loop, driving public service agencies to be more responsive, innovative, and efficient in delivering services.

Another model that emphasises bringing governance closer to citizens for an improved service delivery experience is the NPM. It is an administrative approach that aims to improve public service delivery and enhance governance outcomes by applying management principles from the private sector to the public sector. It focuses on incentivisation, competition, and disaggregation of services.

NPM’s core elements include performance-related pay, marketisation, and outsourcing (Pollitt 1990; Hood 1995). The principles of NPM relax the constraints of the conventional model to facilitate greater innovation and adaptability. It entails granting increased autonomy to local managers, and empowering them to exercise their discretion and expertise in decision-making processes. This has contributed to increased efficiency, accountability, and innovation in public administration (Pffiffer 2004).

Along with appreciation, NPM principles have also been subject to many criticisms. Linda Kaboolian argues that NPM is centralised decision-making through decentralised management and undermines public sector ethics by focusing on measurable performance as in the case of the private sector (Kaboolian, n.d.). Pollitt suggests that applying private sector practices to the public sector can be chaotic due to the distinct political and social dimensions of the public sector (Pollitt 1990). NPM’s market-oriented approach and experience from countries like the US do not align with the limited market experience and underdeveloped infrastructure in many developing countries. In fact, some argue that it can even add to corruption (Sarker 2006; Barberis 2002).

### Decentralisation as a means to improve public service delivery

Decentralisation has garnered significant attention as a strategy for enhancing the delivery of public goods and services, particularly as reforms in public service delivery have taken centre stage in policy discussions. Many countries are shifting from centralised to decentralised models for delivering local services due to dissatisfaction with centrally designed mechanisms (Bank 2003). Decentralisation is nested in the principle of subsidiarity—i.e., the government should limit their involvement to tasks that people cannot efficiently carry out at a more intermediate or local level. For the most efficient provisioning of public goods and services, government activities should be located closest to the citizens, i.e., at a local level (Ahmad et al. 2005).

The widespread interest in decentralisation can partly be attributed to its adoption by individuals from diverse political backgrounds, spanning both ends of the ideological spectrum (Bardhan 2002). This includes free-market economists who call for reducing the authority of large centralised governments, as well as socialist thinkers who are critical of both market-driven policies and State control, advocating instead for the transfer of power to local self-governing communities.

To ensure the efficient execution of government initiatives, it is crucial to grant independence to local administrations or service providers that possess a deeper understanding of local needs (Hayek 2018). Oliver E. Williamson emphasised the importance of decentralisation as a means to reduce transaction costs. According to him, not all services are best provided by the government, and not all are best provided by markets (Williamson 1981; Williamson 1999).

The results of decentralisation efforts vary—they depend on various factors such as the execution and implementation of fiscal, administrative, regulatory, and market mechanisms. The incentives of political actors and service providers can also significantly shape the provisioning of public services. Incentives are stronger if the level of accountability is higher. Lack of clarity regarding the responsibilities of different levels of government results in weaker accountability and diminished incentives to improve service quality (Ahmad et al. 2005).

In India, the government is omnipresent in the service delivery system. It provides services ranging from basic necessities like water, electricity, health, education, and road maintenance, to others like issuing licences, AADHAR cards, and other government documents. However, it has not always resulted into efficient delivery (Peters et al. 2002).

## A Brief History of Decentralisation Reforms in India

Ideas of decentralised governance, limited role of the Union Government, and village self-governance were often advocated by Gandhi. However, Ambedkar argued that villages were rife with caste discrimination and self-governance models would only entrust unchecked authorities with dominant groups. Even during the drafting of the Constitution of India, believers of Gandhian ideas debated on the inclusion of decentralised *panchayats*. R K Shidhwa (President of the All India Local Bodies Association), in the 1947 Constituent Assembly Debates, talked about the need for adequate funding of local bodies and highlighted their role as the cornerstone of India's economic well-being. Dr Ambedkar, however, firmly asserted that such issues should be within the purview of individual states, emphasising that decentralised governance at the local level would only widen caste-based discrimination.

To accommodate the desires of those advocating for decentralised and direct democracy, Article 40 (a Directive Principle under Part IV) was incorporated, urging states to establish village *panchayats*. However, there was not much discussion about the inclusion of similar provisions on municipal bodies.

Post-independence, the early attempts at decentralisation came through the Five Year Plans. However, given Nehru's and Mahalanobis' focus on Soviet-styled centralised five-year planning, substantial implementation of decentralised reforms at the district level commenced only in the 1970s. This involved breaking state plans into district plans. Even after this, the district planners primarily played consultative and supervisory roles, with district plans still crafted at the state level and executed by department heads within the respective states (Mukarji 1993).

In 1977, with the Janata Party coming to power, there was a shift away from the centralised approach of the Emergency period. They initiated planning at the block and district levels, emphasising decentralisation in both planning and implementation. Although the Janata government was short-lived, the concept of decentralised planning persisted. Upon its return to power in 1980, the Congress party continued to promote decentralisation, appointing working groups to advance area-based sub-State planning. However, more focus was on rural decentralisation and devolving responsibilities to *panchayats*. Most of the urban decentralisation reforms came as an afterthought.

In 1989, the 65th Constitution Amendment Bill, also known as the Nagarpalika Bill, was introduced by Rajiv Gandhi's government but was not passed in the Rajya Sabha and lapsed. A revised Nagarpalika Bill was presented by the National Front Government in 1990 but that also lapsed with the dissolution of the Lok Sabha. Ultimately, the modified Municipalities Bill introduced in September 1991 under P

V Narasimha Rao's government was enacted as the 74th Constitution Amendment Act, 1992 (effective from June 1, 1993).

The objective of the Amendment Act was to make ULBs self-governing institutions and to place them on a firmer footing within the framework of the Constitution.<sup>35</sup> It incorporated provisions in the Constitution to:

- *Decentralise authority:* The Amendment Act introduced a three-tiered system for municipal bodies in India: *Nagar Panchayats*, for transitional areas; Municipal Councils, for smaller urban regions; and Municipal Corporations, for larger cities.<sup>36</sup> ULBs were granted a five-year term.<sup>37</sup>
- *Conduct elections at the local level:* State Election Commissions were made responsible for overseeing municipal elections.<sup>38</sup> All legislative matters related to election were delegated to state legislatures. In case of supersession, ULBs would have a right to be heard. If a decision to dissolve the elected body was made, it had to be reconstituted within six months.
- *Establish local committees:* Wards Committees for larger municipalities (with populations over 300,000) and District Planning Committees for planning purposes became mandatory.<sup>39</sup> In metropolitan areas (with a population of over a million), the Act mandated the creation of Metropolitan Planning Committees.<sup>40</sup>
- *Provide financial oversight:* The Act mandated every state to establish a State Finance Commission tasked with reviewing the financial health of ULBs and making recommendations to improve their fiscal stability.<sup>41</sup> The Act does not confer any decision-making powers to the Commission. The key responsibility of the Commission is to evaluate the financial status of ULBs and propose strategies for strengthening municipal finances.

## Decentralisation Model in Delhi

Delhi has a complex and fragmented system. Multiple governments and parastatal bodies (government bodies created through statutes) of the Union, state, and local governments exist in Delhi (Wahi et al. 2017).<sup>42</sup> After the ratification of the 74th Amendment Act, some city-level responsibilities were assigned to the Municipal Corporation of Delhi (MCD), the Delhi Cantonment Board, and the New Delhi Municipal Council (created in 1994).<sup>43</sup> This effectively transformed Delhi into a multi-municipality city, necessitating the establishment of Ward Committees and Metropolitan Planning Committees for town planning. However, many services continue to be managed by higher levels of government. For example, town planning in Delhi is managed by the Delhi Development Authority (DDA), a parastatal body under the Ministry of Housing and Urban Affairs.

The structure of MCD has transformed over the years. Established in 1862, it evolved into a prominent municipal authority through an Act of Parliament in 1958. It was trifurcated into separate corporations in 2011 – North Delhi Municipal Corporation, East Delhi Municipal Corporation, and South Delhi Municipal Corporation (Press Trust of India 2022). This division aimed to address the challenges posed by Delhi's growing population, and improve governance and service delivery by assigning smaller regions to individual commissioners. However, it was also perceived as an attempt to reduce the influence of local representatives, particularly in areas where the BJP had a strong political presence during Sheila Dikshit's government (TNN 2011).

Recently, in 2022, the Delhi Municipal Corporation (Amendment) Act led to the reunification of the MCD. The Union Government cited various reasons for introducing the Amendment, such as addressing the financial disparity between the three Corporations, rectifying unequal resource distribution, resolving wage disputes, and managing employee strikes. There were speculations that

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35. Statement of Objects and Reasons, The Constitution (Seventy-fourth) Amendment Act, 1992.

36. Article 243Q

37. Article 243U

38. Article 243ZA

39. Articles 243S and 243ZB

40. Article 243ZE

41. Article 243Y

42. A parastatal body is a company or organisation which is owned by a country's government (can be constituted through a statute) and has some political power.

43. The New Delhi Municipal Council Act, 1994.



this time again, the change in structure was driven by political motivations aimed at diminishing the powers of the AAP government in Delhi (TNN 2011).

## Discussion and Analysis of Laws Governing Decentralisation in Delhi

In Delhi, the primary legislation for local governance is the MCD Act, 1957 enacted by the Parliament of India. Any amendment to the Act can only be introduced by the Union Government. This contradicts the fundamental principles of federalism and separation of power enshrined in the Constitution. Lack of clarity in the interpretation of Articles 239 (which says that Delhi, being a Union Territory, will be centrally managed) and 239AA (which gave Delhi a special status of NCT), significantly tilts the balance of power in favour of the Union Government. This has also led to ambiguity in roles and power sharing, leading to multiple disputes.

Many other legislations like the Delhi Jal Board Act, 1998 (DJB Act), and Delhi Development Authority Act, 1957 (DDA Act) govern different parastatal bodies constituted by the Union or state governments. The multiplicity of statutory bodies created through Acts has led to overlaps and confusion among authorities and citizens, and resulted in poor service delivery.

The 74th Amendment mandated the formation of Wards as the smallest administrative units for areas with a population of three lakhs or more. Delhi has 250 wards with an average population of around 60,000 per ward. This raises concerns about the representation ratio and presents a form of centralised decentralisation. Ramesh Ramanathan compares the 73rd and 74th amendments enacted in 1992 and explains how they created local self-government units in both rural and urban areas. However, urban decentralisation due to its design has limited citizen participation and lags behind, leading to a governance vacuum. This has resulted in poor service delivery for urban residents (Ramanathan 2006).

There are no Ward Committees in Delhi, instead, there are Zone Committees and only Councillors from constituting Wards are members of these Zone Committees. There is no representation from citizens, RWAs, civil society organisations, or NGOs in these Committees. The MCD Act lacks clear guidelines for the formation, powers, and functions of Ward Committees, with only Ward Councillors participating in Zone Committee meetings. Unlike Delhi, in Kerala, each Ward Committee covers only one Ward, including councillors, RWA members, and civil society members, and holds regular meetings (Mathur and Society 2006).

The MCD Act has a non-binding provision for the formation of *ad hoc* committees, special committees, and Ward Committees as needed (Section 40, MCD Act). It does not provide clarity on the roles, functions, and members of any committee. It has no guidance for House Meetings, which are regular meetings of Councillors led by the Mayor.

However, some Committees have been constituted by the Councillors and MCD to make decisions on planning, fund allocation, etc. One such Committee is the Standing Committee which makes decisions on allocation of funds to different departments for carrying out public service delivery. It is reconstituted after every election. During our interview with a former Standing Committee member, we found that no Committees have been reconstituted since the last local elections in Delhi in 2022 and many decisions related to allocation of budget and planning are pending. The MCD Act fails to address the complexities.

## With Great Power Comes a Great Power Struggle

As discussed, most services in Delhi are centrally planned and managed. The Union Government makes decisions on the allocation of budget and service provisioning to central, state, or local bodies. In other states of India, planning and administration are solely the responsibility of the state governments. Cities like Hyderabad, Mumbai, and Kolkata, have municipal laws enacted by the state legislatures, devolving mandatory functions to municipal bodies. In Hyderabad and Mumbai,

## A brief timeline of the evolution of the Municipal Corporation of Delhi\*

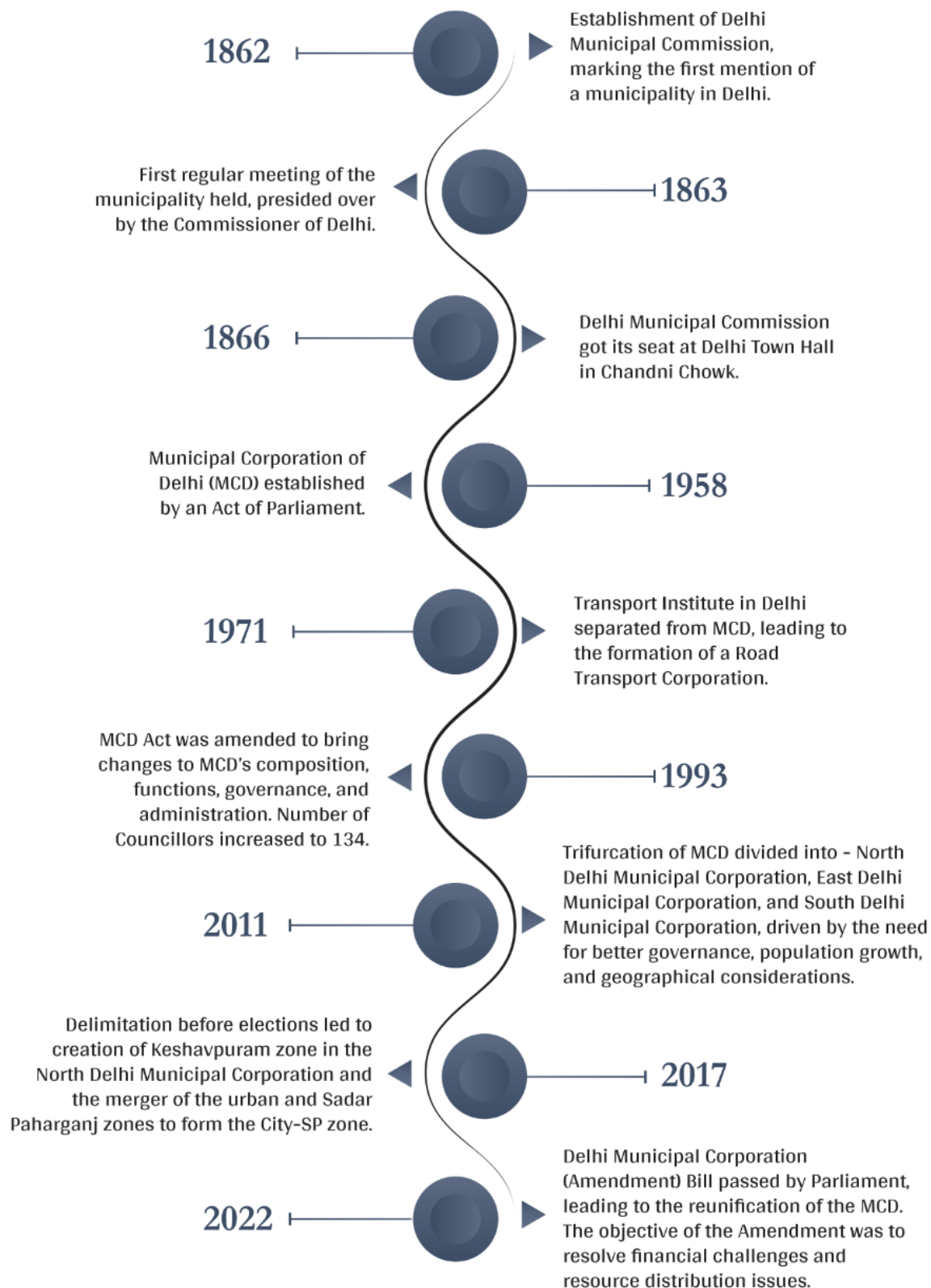


Figure 5.1: Evolution of the Municipal Corporation of Delhi

municipal governments have involved private actors in service provision (like for electricity distribution in Mumbai and water supply in Hyderabad) (Ghosh et al. 2009) .

*Janaagraha*, an NGO based out of Bangalore, proposed the formation of Area Sabhas as the smallest unit of administration (similar to *gram sabhas* in villages), operating at a level below the Ward. Each *Area Sabha* would cover the jurisdiction of a few polling booths, and all registered voters in these booths would become members of the *Area Sabha*, electing their representatives to the Ward Committee (Sivaramakrishnan 2006).

In Delhi, a similar structure was proposed by the AAP government in 2015, called *Mohalla Sabhas* through the Delhi Nagar Swaraj Bill, 2014. The plan aimed to increase participation in governance and provide untied funds to the *Sabhas* for various community needs. However, the Bill was not passed. While some elected representatives informally run groups akin to *Mohalla Sabha* (through weekly in-person meetings, WhatsApp groups, etc.), the formal *Mohalla Sabha*, which was intended to be a statutory body, was never approved by the Union Government.

On occasions, when these disputes on the control over administration in Delhi reached the Supreme Court, it resulted in varied opinions. In *NDMC v. State of Punjab* (1996), the Court held that State Governors must follow the advice of their Council of Ministers, as per Article 163 of the Constitution of India. The Governor/Administrator could use their own judgment only when explicitly allowed by the Constitution, otherwise, they are bound by the advice given.

There was a deviation from this view in 2018 in the case of *Bir Singh vs Delhi Jal Board and Others*. A five-judge bench of the Supreme Court of India established that services in Union Territories are considered services of the Union, implying that services like the Andaman Nicobar Island Civil Services (DANICS), Delhi Administrative Subordinate Services (DASS) cadres, government teachers, and government doctors in Delhi are categorised as Union services. The recruitment regulations of these services were formulated with the approval of the Lieutenant Governor, acting on behalf of the President.

Since 2014, different political parties have been in power at the Union and in Delhi (legislative assembly and local government) (Pathak 2023). Due to the overlapping administrative structure of Delhi, there have been several instances of logjams which have affected the management of public services. All administrative appointments in government departments are controlled by the Union Government in Delhi. Even in bodies like the Delhi Jal Board (DJB), which were created under state legislation, the appointments are made by the Union Government. In the case of *NCT of Delhi v. Lieutenant Governor* (2023), a five-judge Constitution Bench ruled in favour of the Delhi government, granting the local government the authority over civil servants in the NCT of Delhi while highlighting the importance of a federal governance structure. However, within a week, the Union Government issued an Ordinance that curtailed the Delhi government's legislative power regarding services. It also established the National Capital Civil Service Authority (the Authority), comprising of Union Government appointees and the Chief Minister of Delhi. The Authority's decisions would need approval from the Lieutenant Governor, who possesses the authority to override them. In response, the Government of NCT of Delhi filed a Writ Petition with the Supreme Court on June 26, 2023, challenging the Ordinance.

The debate over complete statehood for Delhi has been ongoing since independence and has remained a part of every political party's manifesto. However, no Union Government, even when they had control over Delhi, has granted complete statehood to the city.

## How do these legislations impact service delivery?

The 74th Constitution Amendment and the MCD Act, which aimed to enhance citizens' experiences with governance and public services, introduced decentralisation in principle but fell short of devolving actual decision-making power to local governments. For instance, urban planning in Delhi falls under the purview of the DDA, a body under the Ministry of Housing and Urban Affairs at the Union level. The Metropolitan Planning Committee, as mandated by the 74th Constitution Amendment, was never established at the local level in Delhi.

In 2015, the Delhi Urban Shelter Improvement Board (Amendment) Act of 2015 was passed by the Legislative Assembly to extend the deadline for rehabilitating slums, shifting it from March 31, 2002, to January 1, 2006. The objective was to incorporate the slum clusters that had emerged since 2002 into urban planning. However, this initiative was rejected by the Union Government (Zuberi 2021).

Water supply, electricity, and some other basic services continue to be managed by higher levels of government, with only a few administrative functions devolved to the ULBs, limiting their true autonomy. The effectiveness of any decentralisation efforts depends significantly on the accountability of authorities. When there is confusion about which level of government is responsible for specific functions, accountability weakens, leading to reduced incentives for service improvement. This situation is apparent in Delhi, where the governments often shift blame back and forth, creating uncertainty about who should be held accountable (The Hindu 2023).

## How are Residents' Experiences with Public Service Delivery?

To understand how four services – electricity, water supply, garbage collection, and roads are managed on the ground, we conducted interviews with 53 residents, 12 members of RWAs, and 6 elected representatives. We also reached out to 15 government officials, but only one of them agreed for the interview. In this section, we discuss the experience shared by residents for each of the four services.

### Electricity

#### Who provides the service?

Delhi's electricity distribution model involves both government and private entities. The Delhi Vidyut Board (DVB) is a state government entity, established in 1998 as a successor of Delhi Electric Supply Undertaking (DESU). State electricity boards were established under the Indian Electricity (Supply) Act, 1998. Most states in India have monopolies in electricity supply by the state government except for Mumbai, Kolkata, and Ahmedabad. In Mumbai, Brihanmumbai Municipal Corporation (BMC) is responsible for the electricity distribution in the island city. Electricity is not explicitly mentioned in the 18 functions in the Twelfth Schedule (Ghosh et al. 2009).

DVB later split into six companies in 2002. Three of these have remained government undertakings: the Delhi Power Supply Company Limited (DPCL), a holding company; Indraprastha Power Generation Company Limited (referred to as Genco), the power generation company; and the Delhi Transco Limited (referred to as Transco), the power transmission company. The other three companies, private distribution companies (discoms), handle distribution. 50% ownership was auctioned to discoms, resulting in joint ventures: Tata Power Delhi Distribution Limited (TPDDL) for North Delhi, BSES Rajdhani Power Limited (BRPL) for South Delhi, and BSES Yamuna Power Limited (BYPL) for East Delhi. The remaining 50% ownership in these distribution companies is retained by the Government of NCT of Delhi. Additionally, the Delhi Electricity Regulatory Commission (DERC) regulates electricity tariffs in Delhi (Mukhopadhyay et al. 2022).

Privatisation of electricity in Delhi has not fully resulted in the intended impacts. This is perhaps because the privatisation was just perfunctory. The State monopoly in distribution was transferred to private monopolies. These monopolies were created in spite of a study carried out by an expert group, headed by Montek Singh Ahluwalia, which found that the only way to lower prices is to introduce competition. The reason for the low energy prices in Mumbai is that the existing private players supply power to parts of the same market (Stamminger 2002). But this is not the case in Delhi. The few existing private players distribute solely to specific parts of the city thus have monopolies in those areas.

This model of a combination of public funding and independent sector provisioning, however, has resulted in a better experience as compared to the earlier model. Literature also suggests that prior to privatisation, the DVB faced a lot of issues. It faced huge losses along with an alarming financial position due to an inefficient billing system (Stamminger 2010). A quasi-market scenario, as the NPM model illustrates, helps to allocate resources (Raghavan and Society 2004).

## What kind of issues did respondents face?

Residents in all areas except Balmiki Colony were satisfied with electricity supply. Respondents receiving services from BSES shared that power cuts are rare and that they receive advance notice with reasons (through SMS) if there is a power cut. The response and redressal of complaints by the BSES was also very quick and efficient. But, Balmiki Colony residents complained of inflated electricity bills all round the year. They pointed out that it was due to the automation of electric supply after 2002. Before 2002, their meter were regularly checked and maintained. A respondent who has been a resident of Balmiki Colony for over 40 years shared that they started receiving inflated bills after 2003, when automated meters were installed in the locality. Some reports suggested that Discoms have implemented provisional billing methods, citing the inability to physically verify meter readings, resulting in either billing consumers based on the previous year's monthly consumption for the same months or sending combined bills covering multiple months. This results in variations (Mishra 2020).

Most respondents ranked electricity higher than other services. As discussed by McKinsey & Company on customer experience with the public sector, the reason for higher satisfaction levels could be in comparative to how other services are managed, how electricity was previously managed, or some mix of both (D'Emidio et al. 2019). Hirshman also discusses how monopolies disrupt both voice and exit options (Hirschman 1980). In the case of electricity consumption in Delhi, there is no exit option as consumers do not have a choice in obtaining electricity services from different providers. There is no competition in electricity distribution, leaving consumers to rely on the existing system. Thus, residents who face challenges with the service have no option but to continue with the same service provider.

## Garbage collection

### Who provides the service?

An MCD garbage van collects garbage from most localities. In areas where the MCD vans cannot operate due to narrow lanes, *Safai Karamcharis* are employed by the MCD to collect garbage from every household. MCD dumping sites also exist in all localities.

### What kind of issues did respondents face?

Residents' satisfaction with the quality of service varied across areas largely because public service delivery is supplemented by private garbage collectors. The reliance on these collectors varies across localities. Residents pay them some amount ranging from INR 100 to INR 300 per month. Residents in Hauz Khas (Block B and G) were satisfied due to their reliance on private collectors, despite irregular MCD van schedules. However, residents in Krishna Nagar, who depended solely on MCD collection trucks, expressed dissatisfaction due to irregularity of garbage collection.

Residents of Arjun Nagar also complained of irregular MCD van schedules, with vans visiting once every two to three days. In Balmiki Colony, residents faced issues due to irregular collection by *Safai Karamcharis*. We spoke to a *Safai Karamchari* who mentioned that they often skip their duties to protest against non-payment or delayed payment of salaries by the MCD. Most residents from Bindapur, Krishna Nagar, Prajapat Nagar, and Balmiki Colony shared that they dump the garbage in the nearest dumping site themselves if the *Safai Karamcharis* do not come to collect the garbage. Residents of Bindapur and Balmiki Colony also complained about infrequent cleaning of landfills and dumping sites.

The major concern in all four Wards was the irregular arrival of the MCD van. Respondents from West Extension Area (Rajinder Nagar) and Hauz Khas shared that they had no complaints with the garbage collection system as they had employed private collectors who provided regular door to door collection services. They were satisfied with their services. Respondents from other areas who did not rely on any alternatives were highly dissatisfied. A respondent from Prajapat Nagar shared that even after complaining to the MCD multiple times, there has been no improvement.

Unlike electricity supply, in case of garbage collection, alternatives were easily available and many respondents adopted the exit option likely because the transaction costs of exiting were much less than voicing their concerns via a lengthy and uncertain redressal process (Hirschman 1980).

## **Roads**

### **Who provides the service?**

In Delhi, road management is a shared responsibility between the MCD and the Public Works Department (PWD)—a department under the state government responsible for construction and planning. The division of duties between them is based on the width of roads; PWD handles roads wider than 60 feet, while the rest are managed by the MCD. The 74th Amendment explicitly mentions roads and bridges as one of the functions to be decentralised.

### **What kind of issues did respondents face?**

Most residents were dissatisfied with the condition of roads. The nature of complaints included irregular maintenance, long intervals between upkeep, and uncertainty about future maintenance cycles. Gated societies' residents (in West Extension Area (Rajinder Nagar) and Hauz Khas) reported that despite regular maintenance, the conditions of the road remained poor, especially during the monsoon season. Prajapat Nagar residents shared that roads in their area had not been repaired in 25 years.

Bindapur residents raised concerns about roads being dug up several times in the last year by DJB for laying pipelines, without subsequent maintenance. This led to the conversion of two-way roads into one-way roads. Residents from Rajinder Nagar's Western Extension Area shared that waterlogging during monsoons is a common occurrence, yet the MCD does not carry out any maintenance work. Last year, after some residents met with accidents, all residents decided to engage a private contractor to fill the potholes and carry out maintenance work. Arjun Nagar residents complained of waterlogging on roads due to closed drainages. They raised a complain with the MCD but, no action was taken. Roads in these areas were not being cleaned regularly, so some residents cleaned the roads themselves while others paid extra money to their househelps to periodically clean the roads outside their house.

David Beito (2002), in *The Voluntary City*, discusses the model of private self-governing enclaves (privately managed streets, sewers, and other urban infrastructure) in St. Louis (Missouri, United States), where residents had a significant say in how their communities were run. The enclaves operated under market incentives, and allowed for greater flexibility and responsiveness to residents' needs. Developers had an incentive to provide high-quality infrastructure and services to attract residents and maintain property values. Market competition ensured accountability.

The NPM model also suggests that public works are led efficiently when run on a competition-based model, where multiple providers offer the same service. The lack of competition might be one of the reasons for the poor management of roads in Delhi (Raghavan and Society 2004). Untimely and poor road maintenance prompted individuals to take matters in their own hands, opting to construct or repair the roads themselves rather than relying solely on voicing their concerns. This demonstrates how people resort to exit strategies where they have an option (Hirschman 1980).

## **Water supply**

### **Who provides the service?**

Water is supplied in Delhi by DJB pipelines and borewells. DJB was established under a legislation passed by the state legislature of Delhi, the Delhi Jal Board Act of 1998.

## **What kind of issues did respondents face?**

The quality of water supply differed depending on the location. Residents of West Extension Area (Rajinder Nagar) and Hauz Khas Block E and G were generally satisfied with their water supply and water quality, as they had installed storage tanks and water filters in their homes. However, residents in Gautam Nagar and Prajapat Nagar reported intermittent water supply but with advance notice from the DJB. The residents shared that they bought water cans, or availed the services of private water tankers when there was no water supply.

Meanwhile, respondents from Balmiki Colony, Arjun Nagar, and Bindapur shared that they experienced frequent supply disruptions without prior notice. They also encountered issues such as poor water quality, low water pressure, and irregular supply. Bindapur residents shared that they received malodorous water during the monsoon season, and eventually discovered that sewage lines were contaminating the water. The residents had to purchase water cans to access clean drinking water.

Literature suggests that the concerns over water scarcity and poor quality of water supply have been around for almost two decades now. This inadequacy is mainly due to the inequitable distribution and leakage of the supply pipes (Daga 2010). In the early 2000s, there were efforts to privatise water supply in Delhi to overcome these issues. However, an investigation led by Arvind Kejriwal and the NGO Parivartan in 2005 led to a public campaign against the idea, thwarting DJB's privatisation project (Sirari and Society 2006). Similarly, in the early 2010s, the efforts to privatise water supply to improve water quality were met with resistance from activists who argued that water is an essential good and must not be "commodified". They formed the "Water Privatisation-Commercialization Resistance Committee" to demand the immediate withdrawal of tariffs imposed by the DJB since 2010 and to ensure that the Government of NCT of Delhi continues to be solely responsible for supplying water.

In 2020, due to rising complaints with water supply and sewer services, suggestions were made to the Government of NCT of Delhi to privatise the management and supply of water. However, Chief Minister, Arvind Kejriwal made a public statement that the government will not privatise water supply in Delhi (Water Privatization-Commercialization Resistance Committee, n.d.).

The poor quality of water, issues with sewer lines, and intermittent supply continue to remain major issues for residents in Delhi (P. Singh 2023). When similar issues surfaced in Chennai, the water supply was privatised. Chennai Metro Water Supply and Sewage (CMWSS) contracted out the supply to private players. This resulted in quick completion of works and redressal of concerns (Raghavan and Society 2004). Perhaps, cities like Chennai present a model that Delhi can learn from.

## **Response on feedback and grievance redressal**

A good grievance redressal system can be an effective method for transparent citizen-government interaction, and increase accountability and participation (Praja.Org 2020). But this is missing on the ground. OECD (2019), in their guidelines on best practices for effective decentralisation, highlights the need to explicitly define the responsibilities of different levels of the government for improving service delivery. But, neither the centrally legislated parent laws such as the MCD Act and the Electricity (Supply) Act of 1948, nor the DJB Act, legislated by the state, provide specific guidelines on public consultations or grievance redressal.

The MCD Act had constituted the Appellate Tribunal, MCD, under Section 347-A of the MCD Act for hearing appeals only for issues related to Section 343 or matters listed in Section 347-B. The Tribunal functions independently as a statutory body. According to the information available on the Tribunal's website, currently, approximately 80% of the appeals pending before the Tribunal pertain to matters related to demolition and sealing proceedings initiated by different Municipal Authorities in Delhi.

For electricity, the Electricity Supply Act, 1948 drafted to empower state governments in India to establish a 'Grid System' for coordinated regional electricity development, does not refer to consumer experience. The Delhi Electricity Act of 2003 in section 42 (5) makes it mandatory for each distribution licensee to establish a consumer grievance redressal forum within six months from the appointed date or date of licence issuance.

The DJB Act is mostly silent on grievance redressal, except in the case of issues raised by owners for work done by a licensed plumber under Section 35.<sup>44</sup>

When we spoke to respondents about the grievance redressal process for the four services discussed above, most respondents had no clarity on the appropriate forum to reach out to, except in the case of electricity supply. They preferred raising their issues in their RWAs or directly with elected representatives. In case of grievances related to water supply, most residents either call the helpline number provided by the DJB or reach out to the local Jal Board offices in their areas. Those living in areas with active RWAs report their issues to the members. Some respondents shared that the complaints that could not be resolved by the local Jal Board were taken to elected representatives. A similar process was adopted for raising complaints regarding services provided by the MCD. Last year, the MCD came up with a mobile application for registering complaints, but respondents were unaware of the existence of such an application.

The MCD or DJB have no clear digitised mechanism through which complaints can be tracked and no time limit for resolution of service-specific complaints. Lack of clarity in legislation and practice has led to low accountability. Many respondents avoid complaining because they do not know who to contact, some fear bureaucratic hurdles, and lack trust in existing institutions. Such beliefs are critical as trust in the government hinges on accountability, transparency, and responsiveness, all of which are often lacking (Beshi and Kaur 2019).

For issues with electricity supply, most respondents shared that they contact the concerned discoms' offices through the phone numbers provided on their bills. Some BSES users shared that they reach out to toll-free numbers provided on the BSES website to register complaints. Apart from that there is also a mechanism to register and track complaints online on the websites of all discoms. Only in a few cases there arose a need to contact the elected representative.

Some RWA members shared that residents in their societies frequently raise complaints with them and provide feedback on the quality of services delivered. These members address the complaints by redirecting issues to the MCD or relevant authorities through various means such as e-mails, online portals, written complaints, or in-person meetings with officials. Residents in areas without RWAs directly reached out to the concerned departments or their elected representatives. For instance, residents of Bindapur and Rajinder Nagar shared that they mostly reach out to their elected representatives on a helpline number circulated by their offices. In Hauz Khas, the MLA and Councilor were part of a WhatsApp group called "Mohalla Sabha 35", where citizens could post their issues and they would respond. Residents from Balmiki Colony and Prajapat Nagar shared that they visit the concerned government offices to get their issues resolved.

All elected representatives we interviewed shared that citizens frequently contact them through WhatsApp groups, personal numbers, or in-person visits. However, the effectiveness of this method varied. Some Councillors and MLAs shared that they take the issues to the respective departments but on many occasions, action is taken depending on which political party is in power at the ULB level, or under whose authority the parastatal body falls.

## Discussion and Conclusion

Our interviews highlight the coexistence of public and private actors in delivering essential services in Delhi. Wherever there is a gap in the management of essential public services such as roads, garbage collection, security services, etc., the private sector has stepped up and taken on roles traditionally handled by the public sector in India. While these private systems appear to work well for those who can afford them, lack of competition among private players can result in issues such as high costs and unequal provision of services. These issues can only be resolved if the current legislations and policies make way for innovation in how public services like zoning, water, electricity, waste disposal, and roads, are controlled and managed.

While efforts to privatise services like electricity have improved the quality and efficiency of the service, they have also raised concerns about the emergence of private monopolies. The lack of competition

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44. Section 35 (3) says that the Jal Board may make regulations for hearing and disposing off complaints raised by owners or occupiers related to work done by licensed plumbers.



limits consumer choice, and accountability of service providers. It is essential to deregulate the provisioning of public services and explore models that introduces healthy competition and ensures affordable access to services for all residents.

Further, to improve the residents' experience with public service delivery, there is a need for greater clarity in the allocation of responsibilities among different levels of government (OECD 2019). The existing legislative framework should explicitly define roles and functions in the provision of services. Establishing clear guidelines for public consultations and grievance redressal is essential to bridge the gap between citizens and government agencies. By enabling models that encourage competition, the Constitution and legislation can pave the way for a dynamic, accountable, and responsive approach to governance and service delivery.

## Methodology Note

Our research explores how the Constitution, through the 74th Amendment and MCD Act, has designed the model of management of public services in Delhi. The paper is divided into two parts:

- A *de jure* component where analyse literature on existing models of service delivery, and examine judgments and laws.
- A *de facto* component to understand the perspective of citizens on public service delivery in Delhi.

We conducted qualitative interviews with 53 residents, 12 RWA members, 6 elected representatives, and 1 public official. We selected four Wards with diverse Circle Rates (A-H) across different regions: South Delhi, East Delhi, West Delhi, and Central North Delhi. However, due to resource limitations, we could only choose one Ward from each region.

Given the limited time and resources, we adopted convenience, purposive, and snowball sampling for selecting the respondents. In our pilots, conducted in Munirka and Malviya Nagar, 12 residents shared their experiences with services that they used daily. For analysing the quality of public service delivery, we picked four services of the ones shared by respondents during the pilot—roads, water, electricity, and garbage collection. These services were also picked because they adopt different models for delivery and are frequently used by citizens. The questionnaire was revised to explore the experiences of residents with these four services and different models.

We encountered challenges in securing interviews with government officials and elected representatives but managed to include valuable insights from some of these stakeholders.

We obtained formal consent from the interviewees and respected their right to withdraw responses at any time. All responses were anonymised and kept confidential.

The responses collected through interviews provide valuable qualitative insights into residents' preferences for service delivery models in Delhi. However, the scope of this study is limited due to the relatively small sample size. The results cannot be generalised across the entire population in Delhi.





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# Authors

# Researching Reality 2023

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## Researching Reality Scholars

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### **Akanksha Bassi**

Akanksha is pursuing her Master's in Economics from Gokhale Institute of Politics and Economics. She is committed to bridging the gap between sociologists and economists by emphasising the role of social structures and culture in rational human action. She aspires to leverage this understanding to contribute positively to society.

Beyond her academic pursuits, she finds catharsis in writing and passionately engages in various hobbies. These include cooking, gardening, reading, watching movies, and everything about Harry Potter.

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### **Akash Kumar**

Akash is a recent graduate from the University of Delhi with a major in Political Science. He is interested in the intersection between politics, governance, and public policy.

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### **Chythra C**

Chythra is currently studying Economics at Gokhale Institute of Politics and Economics, Pune. She is interested in learning various economic models and their practical applications, particularly in policy spheres. She is interested in exploring the dynamic interplay between economic theories and real-world scenarios, actively seeking innovative solutions to complex socio-economic challenges.

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### **Keerthana Satheesh**

Keerthana is currently pursuing an undergraduate degree in Economics at Gokhale Institute of Politics and Economics, Pune. She is passionate about Social Sciences and is always willing to listen and learn. As an aspiring researcher, she is driven to effect meaningful change in the policy-making sphere.

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### **Nilabh Agrawal**

Nilabh Agrawal is a second year student in the Bachelors of International Economics program at the University of British Columbia, Vancouver. He has a keen interest in Economics, particularly in areas of Development Economics such as education inequality, as well as intergenerational mobility. This translates into his passion for debate, research, and social work.





### **Nongthangba Thangjam**

Nongthangba is a graduate student currently pursuing a Master's degree in Economics. His academic pursuits are complemented by a strong passion for research and writing. With an empathetic outlook on life, he possesses an insatiable curiosity to engage with and absorb the different narratives individuals have to offer. Beyond his academic endeavours, he is often seen exploring the depths of the internet, as he believes that learning is a lifelong journey.

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### **Pallavi Singh**

Pallavi is currently pursuing a Master's in Public Policy and Governance at Azim Premji University, Bangalore. They are interested in questions and discussions surrounding rights, freedom, equality, and dignity.

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### **Satyanarayan Sharma**

Satya is currently a student of International Relations at FLAME University, Pune. He is a history fanatic and a sports maniac at heart. He is interested in public policy.

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### **Shreoshi Tarapdar**

Shreoshi Tarapdar is currently an undergraduate student of Political Science at Miranda House. Her interests are analysing and understanding the feminist view, political economy, public policy, and governance. She loves painting, reading books, and watching movies.

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### **Yashaswini Bahuguna**

Yashaswini is a final year student pursuing B.A. (Honours) Sociology from Miranda House, University of Delhi. Her academic interests include the study of marginality and exclusion, community development, and policy sociology. She has been actively involved in community development projects and volunteered extensively with social work foundations across India. In the future, she aspires to be a researcher - policymaker.

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## Research Guides

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### Arjun Krishnan

Arjun Krishnan is a researcher at Centre for Civil Society. Since 2020, he has worked on issues pertaining to Agriculture, Property Rights, Education, and Street Vendors. He has a Bachelor's degree in Political Science from Ashoka University and a Masters degree in Political and Legal Theory from Warwick University



### Astha Pandey

Astha is a Research Associate at Centre for Civil Society. She has an undergraduate degree in Humanities and Law from Maharashtra National Law University, Nagpur. In 2019, she received the Consortium of National Law Universities Scholarship for academic excellence. As an undergraduate student, she published with Penn Undergraduate Law Journal and The Governance Post.



### Jayana Bedi

Jayana Bedi is a researcher at Centre for Civil Society. She pursued her Bachelors in Sociology from Miranda House, Delhi University. For the last four years, Jayana has been working on the issue of vendor livelihoods, education governance, and quality of laws. She has authored several reports and papers that critically analyse laws and institutions using varied research methodologies and theoretical frames. She is a strong supporter of freedom and choice.



### Sehar Abdullah

Sehar is a Research Associate at Centre for Civil Society, currently working on Education. She mainly works on preparing State Regulatory Profiles, which act as report cards on how Indian states perform in providing quality education. She is a Young India Fellow '22. She has done her Political Science Honors from Motilal Nehru College, University of Delhi.

Sehar enjoys reading fiction which oddly helps her to make sense of realities and in her free time. She likes to write, collect quotes, and unwind theories.

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## Principal Investigator

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### Prashant Narang

Prashant Narang, Ph.D, is the Senior Fellow of Research and Policy Training at Centre for Civil Society. Once an Assistant Professor of Constitutional Law at the University of Delhi, he excels in legislative drafting and qualitative research. He earned his doctorate from Jawaharlal Nehru University, where he delved into India's constitutional freedom related to business and trade. With a keen interest in the rule of law, Austrian economics, and the art of critical thinking.

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## Researching Reality Program Coordinator

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### Sanskriti Shree

Sanskriti Shree is a Project Manager at Centre for Civil Society. Her contributions include leading the designing and execution of initiatives at the intersection of public policy and advocacy in the fields of livelihood and governance. She was previously a Child Rights Fellow at Delhi Commission for Protection of Child Rights (DCPCR) and Gandhi Fellow in the Aspirational Districts Transformation program at Piramal Foundation. She holds an honours in Political Science from University of Delhi and her unwavering commitment to bridge the gap between policy and execution drives her journey towards holistic development, where she continuously reshapes possibilities through research, strategic thinking, and advocacy.

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## Contributors

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### Dikshant Gehlot

Dikshant Gehlot is a passionate aspiring Dalit scholar and researcher with a Master's in Political Science from JNU. His academic journey has fueled his commitment to addressing gender inequality and Dalits' economic empowerment in the South Asian context. Dikshant's extensive experience in volunteer work and internships reflects his dedication to promoting legal awareness, gender-related issues, and urban governance in India. He aspires to be an academic.



### Suraj Sharma

Suraj is a second-year law student at the University of Delhi's Faculty of Law, and holds a bachelor's degree in Political Science from PGDAV College. His areas of expertise encompass public policy and cyber law. He enjoys crafting imaginative cartoon illustrations.

“ As a former Researching Reality participant from 2021, it is inspiring to see the continued success of CCS in producing relevant and thought-provoking insights on pertinent issues. This year’s compendium testifies to the program’s commitment to combining academic insights with real-world research data. The learnings from the process of ideating, researching and collating as part of the program have certainly helped in making me a sharper and more critical researcher in the work I continue to do. ”

**- M Amaan Asim, RR 2021 Participant,  
Currently a Senior Researcher at the AICC Research Department**

“ My time as an RR scholar enhanced my skills and exposed me to new and valuable concepts. It supremely improved my conversational, research, and analytical abilities, boosting my confidence for presentations and interviews. In my view, the RR2023 compendium plays a vital role in promoting a more inclusive and reflective democracy in India. It highlights the significance of incorporating non-expert voices and grassroots perspectives in constitutional discussions. ”

**- Vrinda Jain, Final Year Student,  
Economics and Finance, Ashoka University**

“ The ‘Researching Reality’ program was a pivotal experience, honing my research skills and providing first-hand insight into the impact of laws on people’s lives. The current research theme extends this principle, further emphasizing the on-ground application of Constitutional principles. This research would provide us with an insight on the perception of the people with regards to the protections provided by the Constitution. The findings of the paper can help bridge the gap between the two. ”

**- Aditya Krishna Srivastava  
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