India is no stranger to the challenges of inclusion, be it in the matters of religion, caste or even labels of employment. However, in the recent years, its goals of pluralism and tolerance have come under significant strain. In the process, the concept of Indian citizenship is being challenged in unprecedented ways. In this section, CPR faculty examine several aspects of Indian society where the question of inclusion has come to the forefront or should be brought there. The section discusses how courts are struggling with the challenge of reconciling tradition with citizenship, how the constitution is grappling with protecting the Scheduled Castes and Scheduled Tribes and how sanitation workers being denied the right to safe and dignified work.
Muslim wives have finally rid of the Damocles’ sword of triple talaq, homosexual men and lesbian women are free to express their sexuality without fearing arrest, and adulterers can make the choice to commit such acts without being penalized by the Indian state. These judgments of India’s Supreme Court, particularly in the arena of religious freedom, have evoked approval from liberals who call it ‘progressive’, anger among those who value ‘tradition’ and ‘religious commandments’, and disquiet among those who wonder if balance between conflicting freedoms has indeed been achieved, and whether courts ought to be in this fray.

The issues involved are threefold: (i) how can traditional values cohere with the concept of citizenship (this question concerns the role of tradition in creating a community, and the extent to which that sense of belonging to a group or a community is an important feature of our citizenship); (ii) to what extent can a pluralist democratic polity reconcile tradition and religion with the concept of equality without losing the diversity; and (iii) whether the state ought to play the primary role in mediating these conflicts, and if so, which institution of the state should take on the responsibility.

I will discuss these issues in the context of the Sabarimala temple judgment and argue that the institutions of the state ought to be the last resort for such issues, not the first one, if we want to inculcate the values of engaged citizenship. The task of the government and the courts is to create a safe space where citizens can engage in these debates.

On 3 October 2018, a 4-1 majority of a Constitution bench of India’s Supreme Court held that the Sabarimala temple’s practice of barring the entry of women between the ages of 10 and 50 was unconstitutional. The temple authorities had
justified the exclusion of a sub-set of women from the temple as an ancient tradition. They pointed to Section 3(b) of the 1965 Kerala Hindu Places of Worship (Authorisation of Entry Act), which allows the exclusion of women at such time during which they are not by custom and usage allowed to enter a place of public worship. Hence, said the temple authority, they had the right to bar the entry of women of menstruating age into the Ayyappan temple in Sabarimala. Opponents of the practice highlighted other constitutional provisions such as Article 25(1), (freedom of worship), Article 26 (freedom of religious denominations to regulate their own practices), and Articles 14 and 15(1) (equality and non-discrimination), and Article 17 (banning untouchability).

The majority judgment said women as individuals had the right to freedom of worship (Article 25) and barring their entry contravened that right. It laid down that the Sabarimala custom did not constitute an essential practice of religion, and even if it was (as Justice Khanwilkar said), it did not matter because Sabarimala was not a separate religious denomination from Hinduism.

The sole dissent by Justice Indu Malhotra disagreed on the following grounds: that the equality provision (Article 14) did not override the right to religious freedom (Article 25), and that ‘constitutional morality in a secular polity would imply the harmonisation of the Fundamental Rights, which included the right of every individual, religious denomination, or sect, to practise their faith and belief in accordance with the tenets of their religion, irrespective of whether the practice is rational or logical’.

The Sabarimala case highlights an area where judges have often disagreed with one another. This is on the contours of the balance between the principles of equality and non-discrimination on the one hand, and protecting the freedom of faith, belief and worship guaranteed by Article 25 and Article 26, on the other. The judicial disquiet pertained to whether and how the court ought to deal with group-created traditions that conflicted with the principle of equal access. What the judges were asking in the Sabarimala judgment was this: which agency – individual citizens, the state, political parties and civil society organizations – should be the channel for creating the textured citizenship that promotes openness, tolerance and diversity?

The Sabarimala pilgrimage is like a haj for devout Hindu men who conform to strict rules of behaviour (fasting for 41 days, sleeping on the floor, wearing a mala and black clothes, and eschewing material temptations) prior to their trek to the temple of Lord Ayyappan, a celibate deity. While Hobsbawm is right in saying that traditions are invented, if tradition creates a sense of belonging, if to belong and be part
of a group also means to exclude other groups, and if in our daily lives we purposefully elect to undertake particular activities that create such communities (and exclude others from that community), then who should map these contours?

The majority and minority opinions in the Sabarimala case gave different answers, and both used the concept of constitutional morality to make their argument. Justice Chandrachud (concurring with the majority ruling) linked the exclusion of women from the pilgrimage to the larger issue of patriarchy as a social institution that needed to be transformed so that women (like Dalits—and here he linked the issue to untouchability and the Indian Constitution’s mandate to deliver social justice) gained access to public spaces such as temples. Justice Indu Malhotra (dissent) said constitutional morality in a secular polity meant harmonizing other rights with the fundamental right to practise religion.

The recent triple talaq judgment too highlights the dissonance among judges in this sphere. The majority ruling said the question to be considered was whether triple talaq was legal: ‘Whether what is Quranically wrong can be legally right is the issue to be considered in this case … What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well.’ They based their judgment on the 1937 Act whose purpose ‘was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2 which include talaq’. Since no practice against the tenets of Quran was permissible under this Act, and triple talaq was antithetical to the Quran, the practice of such a mode was bad in law as well, they said. They ended with the view that ‘it is not for the Courts to direct for any legislation’.

The minority opinion (which included the Chief Justice) implied that constitutional protection was given to triple talaq, and therefore it was up to the Parliament, not the courts, to pass that law. It directed the Union of India to undertake that process taking into consideration the advances in Muslim personal law. Their stopgap arrangement ‘till such time as legislation in the matter is considered’ was ‘injuncting Muslim husbands, from pronouncing “talaq-e-biddat” as a means for severing their matrimonial relationship’.

These issues do not have easy resolutions particularly in the 21st century where technology and higher literacy have created pathways for ideas to travel globally, and where citizenship is being exercised in more vocal ways. Belonging, as British sociologists like Yuval-Davis and Mike Savage point out, is not an essential or purely discursive concept, but is socially constructed, embedded and processual; people reflexively assess whether they feel comfortable in a place in relation to their life and to their positions and roles. When you embark on a haj or a pilgrimage (for example, to Mecca or to Sabarimala), you are also choosing to be part of a community of believers of that tradition.

Traditions create social cohesion. Unlike convention, which displays a habit or routine, tradition has a significant ritual or symbolic function. Tradition imposes invariance: drums cannot replace the bugles that signal the end of the Beating the Retreat ceremony. In 1983, British historians Eric Hobsbawm and Terence Ranger edited a volume entitled The Invention of Tradition where the contributors explored examples of invented traditions in Scotland and colonial Africa, and the pageantry of monarchy in Great Britain, Victorian India and 20th century Europe. Tradition is invented for three types of reasons, they say: (a) those establishing or symbolizing social cohesion of groups; (b) those establishing or legitimizing institutions (pomp and pageantry); and (c) those whose main purpose was socialization, the inculcation of beliefs, value systems and conventions of behaviour. If Hobsbawm and Ranger are right that tradition is invented to create social cohesion, then changing tradition, as done in the Sabarimala judgment, comes at a high price.
One may argue that the Sabarimala judgment will trigger a new and more inclusive tradition and create a larger community. However, it is the court, an institution of the state, which has created this new tradition. What is the problem with that, you may ask. As philosopher Roger Scruton says,

by citizenship I mean a specific form of communal life, which is active, not passive, towards the business of government. The citizen participates in government and does not just submit to it. Although citizens recognize natural law as a moral limit, they accept that they make laws for themselves. They are not just subjects: they appoint the sovereign power and are in a sense parts of that sovereign power, bound to it by a quasi-contract which is also an existential tie. The arrangement is not necessarily democratic, but is rather founded on a relation of mutual accountability.

Mutual accountability implies that the state – that is, the legislature, executive and the judiciary – must respect a citizen’s need and ability to create a patchwork of belonging and unbelonging, as long as these do not unduly harm the rights of other citizens. There lies the problem for India’s courts.

The constitutional diktat to the Indian state to create the conditions for social justice has meant that the judiciary has become involved in assessing whether a religious practice coheres with or contradicts social justice. The concept of ‘essential practices of religion’ was coined because the court had to make a distinction between matters of religion and matters of secular activity amenable to state regulation. Here, we see the practical implications of the twin constitutional injunctions on the Indian state: to address the historical inequities meted out to Scheduled Castes and Scheduled Tribes while pursuing a vision of inter-religious bonhomie through the guarantee of religious freedom and secularism. Social justice meant that the state had to answer legal challenges to its intervention in reforming the religious practices of Hindus such as allowing entry of the lowest castes into temples and abolishing untouchability. The fulfilment of inter-religious bonhomie called for caution in dealing with the large Muslim minority who remained after the Partition, and took the form of non-intervention in the religious practices of Muslims and Christians.

Analysis of case law reveals that the concept of ‘essential practices’ crops up in the court on issues where the state has to regulate the secular functions of a religious group (applies to all religions), or when the state has to undertake social reform among Hindus, or when a religious practice is at odds with a constitutional directive to the state. Essential practices, in relation to Hindu custom such as untouchability and temple entry that contravened a constitutional command, were treated differently (that is, the state’s interventions were allowed) by the court compared with practices (such as excommunication among Bohras) that did not contravene a constitutional command.

The wording of the majority opinions in these recent judgments on decriminalizing homosexuality and adultery, ending the practice of divorce by triple talaq among Muslims, and ending gender discrimination suggests that these judges are trying to create a just and equal order for individual citizens (liberty, equality and fraternity) by removing the archaic practices of discrimination in group activities. The wording of the minority opinions suggests that these judges want the political arm of the state (the legislature and executive) to create such an order.

It does not help that in the past four decades, there has been a growing attempt by politicians to send contentious political issues to the courts so that they themselves do not suffer the backlash during elections. Fragmented vote banks, unstable coalitions and fractured legislatures are cited as possible reasons for such transference. The judiciary, on its part, is aware that by choosing to decide on such questions, it risks non-implementation of its judgment, and a consequent decrease of its prestige and authority.
Recently, the Bombay High Court said women could not be barred from entering the sanctum sanctorum of a Sani temple, a practice that has a 100-year-old footprint. This was after 400 women activists tried to enter the core shrine area and were stopped, and two activists approached the court through public interest litigation. Another Sani Shinganapur temple, this one in Ahmednagar, had to allow women to enter the temple premises in 2011 — women were barred before that from even stepping into the temple premises — after rationalists carried out a mass awareness campaign. It is this kind of dialogue and compromise that I am alluding to — one where state institutions play little or no role, and if they do, it is the last resort, not the first one. Otherwise, we risk creating an anodyne and sterile citizenship bereft of deliberate and articulated choices to belong or not belong to a tradition, and also of the ability to transform social practices in association or in dialogue with fellow citizens, without necessarily involving the state.

As deliberative spaces increase in an age of high connectivity and social networks involving a more literate and connected citizenry, the next government faces three challenges in this space.

1. First, it has to create enabling conditions for the concerned groups to challenge and deliberate with one another in safe spaces (virtually and in person) so that they use the representative and judicial institutions of the state as the last and not the first resort. Political representatives, that is, lawmakers, should enter the picture only after a level of consensus necessary to create a stable solution is achieved. The process of active citizenship implies that the principles for a just order are forged by each citizen through a process of contention and engagement within a safe space provided by the government.

2. Second, when state institutions are tasked with resolving such contention, the implementation of orders (for example, a judgment) ought to be carried out promptly even when the decision does not resonate with the ruling party’s stance.

3. Third, and most difficult for the new government, is how it plans to restrain its party members and other politicians from transferring contentious political questions to courts, and also to impose self-restraint in pushing through constitutional amendments by citing election manifestos.
A conspicuous feature of Indian society is the caste system, which is birth-based and hierarchical. In that system, Brahmins (priests), Kshatriyas (warriors) and Vaishyas (tradespeople) are defined as the twice-born and hence upper castes, while the Shudras (artisans) are the servile caste whose sole purpose is to serve the top three castes. The Dalits (former ‘untouchables’) are outside the caste system, hence the moniker Panchamas (the fifth caste, or the outcastes) – a group seen as not even fit to be part of the fourth, servile group, the Shudras. However, recent policy innovations aimed at bringing about inclusive growth have sought to blur these distinctions in such a way as to turn the social justice project under the Constitution of India on its head. It is one thing to assert that every group that needs the state’s support must get it, but it is altogether different to say that the highest in the caste system are as eligible for the state’s patronage as the lowest.

Parts III and Part XVI are the heart and soul of the Constitution. While Part III grants to all Indians the fundamental rights akin to any other democracy, Part XVI addresses the special needs of certain sections – the Scheduled Castes and Scheduled Tribes (SC/STs) and others – who were not in a position to access their rights primarily due to the caste discrimination they suffer from. This section (from Articles 330 to 342) is based on the assumption that while the SC/STs are the victims of caste, there might be other ‘socially and educationally backward classes’ left out of development and in need of the state’s help. As the founding fathers were not sure of the identity of this latter group, they stipulated the establishment
of a commission under Article 340 to find out who these classes were and recommend measures to help them; this group came to be known as the Other Backward Classes (OBCs). While the exercise to identify those in need of help has proven to be a never-ending process, it seems to have now entered a phase of chaos.

Of late, two amendments to the Constitution (123rd and 124th amendments) have sought to effect social engineering of a problematic kind. While the 123rd’s import is that Shudras (OBCs) are as badly off as Dalits and tribals (SC/STs), the 124th equates the upper castes—Economically Backward Classes (EBCs)—with Shudras. The blurring of well-recognized social cleavages appears to extend the logic that acknowledging social divisions like caste accentuates those divisions. These two legislative innovations coupled with two other related developments, discussed below, have turned the social justice project under the Constitution on its head.

**Recent Developments**

**NCBC**

Through the 123rd amendment the government has set up the National Commission for the Backward Classes (NCBC). Its earlier avatar was a mere entity created by an Act of Parliament; the new version is ‘Constitutional’. The amendment inserted a new Article, 338(B), which falls in Part XVI. The new Article is actually a replica of Article 338 under which the National Commission for the SC/STs (NCSCST) was set up. In the early 2000s, the government bifurcated the NCSCST into two: one for the SCs under the original Article 338 and the other, Article 338A which is a replica of the former. Given the almost similar condition of these two groups and the felt need for an exclusive commission for the STs, the bifurcation was amply justified. However, the same treatment for the NCBC amounts to clubbing OBCs with the SC/STs. There are two dangers implicit in the move.

One, under Sub-clause 5(b), all three commissions are enjoined ‘to inquire into specific complaints with respect to the deprivation of rights and safeguards’ of their respective wards. It is incorrect to assume that OBCs are similar to the SC/STs to such an extent that they need similar safeguards. A logical corollary is that an ill-defined right is bound to kick off a new breed of litigation. The aim of the Constitution is to pull the SC/STs out of their low condition but the new NCBC is by default designed to push OBCs into a condition similar to the SC/STs. In other words, the ‘reform’ will end up converting OBCs into SC/STs.

Two, under Clause 8, all three commissions are given ‘the powers of a civil court trying a suit’. The original provision in the case of SC/STs is due to the fact that these two groups are systematically subjected to discrimination, intimidation and violence. Moreover, in many instances of ‘atrocities’ against these two groups, the accused happen to be the OBCs. Therefore, next time an instance of atrocity is reported wherein the OBCs are the alleged perpetrators, the NCSC or NCST will find itself pitted against NCBC.

**Quota for EBCs**

Through the 124th amendment the government introduced 10% quota in educational institutions and central government jobs for EBCs. Phase 1 of our quota system sought to help the victims of caste (the SC/STs), and phase 2 focused on those who are mere left behind in the caste system (OBCs). The current phase 3 is geared to benefit those who are at the top of the caste heap, the upper castes, who are not the victims of caste system but its perpetrators. It cannot be anybody’s case that the poor among the so-called upper castes do not deserve state patronage. Under Article 340, the founding fathers did envisage a mechanism to help the needy (‘socially and educationally backward classes’) but what they had in mind was allocation of financial resources (‘the grants that should be made for the purpose’), not setting aside quotas. Although the finer point is a lost cause, the issue deserves attention as it has the potential to make the whole social justice project unworkable.
Verdict on the SC/ST Act

Another fairly recent related development is the Supreme Court’s verdict in March 2018 wherein it sought to ‘dilute’ the SC/ST Atrocities (Prevention) Act, 1989. The Supreme Court reasoned that the misuse of the Act was so rampant that it needed to provide safeguards for those falsely accused under the Act. The ensuing controversy hinged on two opposite arguments: one holds that the atrocities suffered by the SC/STs still remain widespread, not warranting any dilution of the Act, and the other view holds that misuse of the Act is sufficiently widespread—the apex court’s position in the judgment. So far, only opinions have been flying back and forth, but the nation has no idea of the facts. Therefore, even though the matter is sub judice, there is an urgent need to revisit Part XVI, and the laws and institutions that emanated from it, along with collecting instances of use and misuse.

Money without Motive

Separate budgetary allocations for the betterment of SC/STs are classified under two heads: the Scheduled Caste Sub-Plan and the Tribal Sub-Plan. The logic behind these plans is that the government must allocate resources for the welfare of these two groups and the percentage of those allocations must be in proportion to their population in the country. However, the allocations are split vertically and horizontally, resulting in the extraordinary situation of some departments receiving large amounts (sometimes hundreds of crores) under these plans with no or insufficient guidelines on how to spend the money. In the past, the Planning Commission was the nodal agency for this head but it didn’t do a great job. Although the NITI Ayog is now the nodal agency, it has expressed its inability to discharge this duty. Therefore, no agency or ministry is bothered about a large chunk of budgeted amount (in the range of one-fourth of the national budget). For example, this year a few scientific and agricultural research institutions suddenly woke up less than a month before the closure of financial year to the fact that they needed to spend money on the welfare of SC/STs.

Broad Policy Direction

The government must revisit Part XVI of the Constitution with the aim of according its social justice project the dignity it deserves. Moreover, the recent toxic accretions would, if not removed, erode the whole mechanism. For example, in the context of reservations in educational institutions and quotas in government jobs, the OBCs are equated with the SC/STs. It will be a small step to extend the logic to political representation for the OBCs in the Lok Sabha and state assemblies. Therefore, the government must:

• Rephrase Article 338B through an amendment so as to redefine the aims and objectives of the NCBC. OBCs are truly in need of state support in terms of improving their educational and social standing, but equating them with the Dalits will push them artificially into the ranks of the latter. It will not serve the nation to increase the number of Dalits.

• Re-categorize OBCs and EBCs as a single group under Article 340, since the EBCs among the upper castes are ‘educationally backward classes’ and the OBCs are both ‘socially and educationally backward classes’. A way to solve the caste problem is to put in place policies that will eventually reduce the number(s) of its victims. And clubbing OBCs and EBCs will be the first step in that endeavour.

• Appoint a statutory study group to examine the working of the 1989 SC/ST Atrocities Act to assess the extent of the Act’s misuse and whether the misuse warrants remedial measures. Every Act/legislation is liable to be misused, but we must ascertain the degree of that misuse to introduce remedial measures to protect the innocent.

• Create a nodal agency to determine how the thousands of crores of rupees allocated under the SCSP and TSP are to be spent. This is an extremely sensitive area as it has the potential to create disaffection against SC/ST employees who are meant to be the beneficiaries of these schemes.
India’s continued focus on sanitation has resulted in increasing toilet coverage and disposal infrastructure: the Swachh Bharat Mission has reported an increase in toilet coverage from less than 40% to above 98% in the period from 2014 to 2019, while the total capacity of disposal infrastructure has increased from more than 4716 MLD (CPCB 2013) to 6190 MLD. This effort is, however, undermined by the continued persistence of manual scavenging and unsafe sanitation work. It is estimated that five million people in India are engaged in sanitation work (that is, work relating to the cleaning and management of toilets and human excreta), of which two million are likely to be engaged in ‘high-risk’ work such as cleaning sewers and septic tanks. Moreover, much of this sanitation work is performed in degrading and demeaning conditions, and for low wages and in insecure working conditions. These poor conditions reflect the continued indifference of the society at large, and an incomplete understanding on the policy side of what the sanitation challenge consists of. Crucially, workers (and the families of sanitation workers) remain trapped in circumstances in which they have to keep performing unsafe and humiliating sanitation work, in spite of the heavy price they have to pay for it. This is India’s foremost sanitation challenge; addressing this issue in a comprehensive manner should be the cornerstone of India’s next sanitation policy.
The term ‘manual scavenging’ in Indian law refers to the practice of manually carrying human excreta. In the historical context, this refers to the practice of removing excreta from dry latrines and railway lines—practices that were prohibited by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, and sought to be eliminated through government investments in pour-flush toilets and rehabilitation schemes. The proliferation of modern sanitation technologies brought, in addition, new forms of manual scavenging work, which include manual and unsafe cleaning of drains, sewer lines, septic tanks and latrine pits. A new law in 2013—the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013—covered this work too, and mandated a list of safety equipment to be provided in cases where manual entry into underground sewerage infrastructure was unavoidable. Needless to say, both old and new forms of manual scavenging work persist. In this note, we consider the issues and challenges of sanitation workers who deal with human excreta, and in the maintenance and management of sanitation infrastructure.

Sanitation workers bear the multiple stigma of offensive and unclean work, low wages and a highly dangerous form of employment that results in long-term health impairment and an unacceptably high chance of accidental death. Sanitation work in India has a long association with caste-based oppression. Almost all the sanitation workers who deal with human excreta are from certain Dalit castes and communities. Such work can also be extremely dangerous: excreta contained in enclosed spaces create a mix of poisonous gases (methane, hydrogen sulphide, carbon monoxide, sulphur dioxide, ammonia, nitrogen dioxide and traces of carbon monoxide) that can result in loss of consciousness and death. Safai Karamchari Andolan has recorded close to 2000 sanitation worker deaths, but experts believe that actual figures could be even higher if a complete count was possible.

High-risk sanitation work is also increasingly informalized. From recent reports of sanitation worker deaths, and our engagements with sanitation worker networks, we learn that the deceased workers often had no institutional relationship with the owner of the infrastructure, but were hired either by contractors responsible for infrastructure maintenance or on-the-spot for a specific job.3

Incomplete Policy and Strategy Thus Far

India’s policy attention to sanitation workers is heavily oriented towards rehabilitation of manual scavengers (by training them for alternative income generation), and some limited forms of compensation and welfare support (as mandated by the Supreme Court). And yet, the schemes for compensation and welfare have been severely underperforming.4 The findings of an ongoing study are that families of sanitation workers are unable to get meaningful training or financial support for alternative employment from government programmes designed for this purpose.

And yet, how does this square up with the high levels of investment in sanitation? India’s faulty metrics count toilets constructed, sewage pipelines laid, and treatment facilities constructed, but pay little attention to safety standards in design and maintenance. We have also ignored the service networks and workers who are expected to maintain this infrastructure. As a result, deaths of sanitation workers are being reported even from new and sophisticated treatment infrastructure—whether government-owned sewage networks, Sewage Treatment Plants, or on-site facilities owned by high-end hotels, malls and residential societies. On the other hand, more than half of India’s toilet users rely on septic tanks and leach pits for their waste disposal,5 but little attention is paid to safe design and maintenance norms for these tanks and pits. There is, for example, no technical reason why cleaning of household containment tanks should require manual entry—as the de-sludging of tanks
is a relatively simple mechanical operation—and yet, deaths of workers during septic tank cleaning is reported with sickening regularity. It is even more ironic that many of these deaths are reported from India’s highly developed and urbanized towns and cities, where safer waste management practices could have easily been put in place.

India’s policy framework supports our selective inattention to sanitation work. While sanitation programmes and policy consider the question of sanitation work as an after-thought, if at all, issues of safety and dignity of the workers are left to a different ministry. All of the public investments and policy frameworks for sanitation are made by urban and rural development ministries, who keep no track of the impact these investments and policies have on sanitation workers. The Ministry of Social Justice and Empowerment, which has no hand in planning and investments of sanitation infrastructure, is responsible for counting and identifying manual scavengers; it is allocated funds to provide for a few compensation, rehabilitation and welfare measures.

On the institutional side, there is a confusing mix of public and private roles: public authorities consider themselves responsible only for drainage and sewerage, leaving residents who use septic tanks and leach pits much to their own devices. And on their part, drains and sewers owned by the public authorities are often of poor technical specification. Mixing of storm water, sewage, debris, silt and solid waste further compromises the functioning of these drains and sewers, resulting in frequent blockages that require human intervention. On-site sanitation users meanwhile understand little of their on-site infrastructure, and usually rely on low-end informal cleaning services. This inattention is no doubt not accidental, but made possible by our collective social disregard for the lives of sanitation workers.

On the legal side too, municipal and environmental laws cover the sanitation and wastewater disposal—making no reference to sanitation work—whereas a different legal framework applies to manual scavenging. These latter laws address only the ‘employer’ of manual scavengers, but not the owner of unsafe infrastructure (except to the extent that they cover dry latrines). Moreover, in actual practice the laws become relevant only in case of the death of manual scavengers, and even then we do not know of a case of successful criminal prosecution under these laws. At present, no legal responsibility rests on owners of infrastructure—whether public agencies or private owners of septic tanks, pits and on-site treatment facilities—to ensure safe design and operations of their infrastructure. The legal responsibility for deaths, when they occur, is also easily passed on to intermediary contractors, especially when the owner is a public agency, corporate body or residential society.

**What the Government Needs to Do**

We suggest a new paradigm in which safe and dignified sanitation work is placed at the front and made the organizing principle around which the definition of ‘safe sanitation’ is rearticulated for future sanitation programmes. We also need to recognize that undoing several centuries of caste oppression and decades of policy neglect is not going to be an entirely technocratic exercise, but will require an actionable commitment from the government to eliminate all forms of demeaning and unsafe sanitation work.

Supporting the families of sanitation workers in transitioning out of manual scavenging and unsafe sanitation work is critical to this promise. Community activists stress that it is crucial for families to move out of sanitation work altogether, in order to escape the social stigma and caste
identification that comes with sanitation work. For this it is not enough to offer small loans to make sanitation workers self-employed entrepreneurs, as current government programmes do, but to make comprehensive provisions for income security, dignity and education. Providing salaried employment or income-generating assets could help replace the lost income from manual scavenging work far more effectively than self-employment schemes, especially considering that sanitation workers tend to have no prior entrepreneurial exposure or business networks.

The problem of sanitation work itself is no less important, and for that, the voice of sanitation workers is crucial. Sanitation workers associations could be organized at city and state levels, and such sanitation workers’ groups must have a role in the formulation of sanitation policy, and in the planning and design of infrastructure. Sanitation workers groups also need to be involved in the implementation of welfare schemes, and in negotiating fair and dignified working conditions applicable to both public and private employers.

On the part of the government, the eradication of manual scavenging should be made a primary responsibility of local governments. They should be held responsible for: (i) ensuring the complete elimination of all forms of manual scavenging and unsafe sanitation work within their jurisdictional limits, and (ii) providing jobs, income support and welfare measures to help families break out of the cycle of manual scavenging and unsafe sanitation work.

To reflect this shift in paradigm in legal terms, we suggest that the same agency (ideally the local government) that is responsible for ensuring the elimination of manual scavenging and unsafe sanitation work is also funded to design and build its sanitation infrastructure. Much of this infrastructure is currently being designed, financed and built without focus on appropriate design features for its safe operation and keeping local conditions in mind. The local government (or other single-point agency) should also be responsible for ensuring that organized and mechanized sanitation services are available to replace low-grade and risky services in which the safety risk is borne by the workers themselves.

We also need clear legal recognition that the owners of infrastructure – whether local government, housing communities or individual residents – are responsible for ensuring that their infrastructure can be cleaned and maintained without putting workers into direct contact with excreta, or in unsafe conditions. This is especially important considering India’s heavy reliance on on-site sanitation infrastructure, septic tanks and leach pits, but also for on-site treatment facilities for real estate developments.

National and state governments need to take charge of the policy shift, to ensure that local governments given the responsibility for delivery of infrastructure and services are also made legally and institutionally responsible for ensuring the complete elimination of manual scavenging and unsafe sanitation work. National and state governments also need to set up technical standards for safety in each element of sanitation infrastructure. In addition, they should see that local governments have the staff, capacity and funds to bring about this change. Finally, they should announce clear safety related targets and progressively monitor the transformation of the sanitation infrastructure and services to incorporate safety elements in partnership with representatives from sanitation workers’ groups and associations.
END NOTES

1. CPCB, 2017.


3. There is no systematic evidence of the nature of employment of sanitation workers. In recent sanitation worker deaths in a sewage pumping station in Jahangirpuri owned by the Delhi Jal Board, in a private gated community in Moti Nagar, and in a Taj Vivanta hotel near Khan Market, all in Delhi, the workers were engaged on a monthly basis by contractors responsible for maintaining the infrastructure. On the other hand, workers who died cleaning sanitation infrastructure in Lajpat Nagar, Dabri and Lok Nayak Hospital were freelance workers who were hired for a job-fee for a specific assignment. (Sources: multiple newspaper reports, interviews).


5. Toilet waste could be disposed through a sewer network of closed, specially designed pipes that carry toilet waste along with other wastewater to treatment facilities. It could also be managed through on-site solutions – by evacuating it from household septic tanks or leach pits from time to time (de-sludging operations) and carrying it in specially designed trucks to treatment facilities, or using various technologies that provide on-site treatment. It is also often handled suboptimally, through open drains and water channels, or through a mix of sewage pipes, open drains and on-site containment systems.