

Impoverishment of Foreign Nationals in India: An Analysis

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Abstract

The paper contains three parts that examine the impoverishment of foreign nationals in India as per the capability approach propounded by Amartya Sen. The first part of the paper provides a brief look into the capability approach and why it has been used to study impoverishment of foreign nationals. Following this, specific parameters will be studied in order to show how social exclusion occurs as a result of simply being a foreign national – these parameters include skin, gender and accent. Lastly, the paper will examine Indian law and how there is a further effect of deprivation that is felt by them due to it.

Keywords: Foreign Nationals, Discrimination, India

Introduction

We live in a rapidly expanding world where interconnectivity has become a regular part of our lives. It is not uncommon to see people taking up residence in a foreign country courtesy of a shift in occupation, or to be closer to their family. Tourism, of course, is a major industry and it is a big part of the reason people travel as well. When one lives in a country that is foreign to them, there are bound to be several differences in culture, tradition and general living conditions that they may observe, and they may have to change aspects of their lifestyle to adjust to new places. However, while this initially may be difficult, it should not be difficult to the extent that an individual feels unwelcome or unwanted by the people living there. Everyone has the basic right to live a respectable life, even in a country that is alien to them. This would include basic tenets of living, like access to public and private services

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such as transport, economic and social participation in the framework of a country, a clean living environment, and access to social resources.¹ If these basic facilities are denied, it can lead to an individual feeling ostracized, which can result in social exclusion. A report published by the Department of Sociology and School for Social Policy Townsend Centre for the International Study of Poverty defined social exclusion as :-“a shorthand term for what can happen when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown.”²

Social exclusion is a dangerous phenomenon as it can lead to impoverishment of an individual. At first glance, it seems questionable to suggest that impoverishment might occur due to society neglecting an individual, despite them having a livelihood and a source of income, but it has been well established in recent times that the term ‘impoverishment’ does not merely refer to a status that is conferred upon a person due to his or her income, but is in fact a multidimensional concept that takes into account several vitiating factors that influence how an individual lives his or her life.

As early as 1995, the United Nations defined poverty in two ways: absolute and overall poverty. Overall poverty consists of not only lack of income and productive resources to ensure sustainable livelihoods, but also social discrimination and exclusion.³ A suitable method of studying the effect of overall poverty is the capability approach devised by Amartya Sen, as it goes beyond normal monetary approaches⁴ and looks at poverty from different angles. It examines poverty on an individual basis, looking deeper into how the life of an individual is. It is highly subjective and does not concern itself with average measurements of income or other such data, instead opting to focus directly on the quality of life that is achieved by a person. The capabilities method is considered superior to the income-based approach as it focuses on the experiences that a person is living through, which is something that even precise numbers and figures cannot encompass.

¹Joanna Mack, *Absolute and Overall Poverty*, 27th October, 2016, <http://www.poverty.ac.uk/definitions-poverty/absolute-and-overall-poverty>. (last accessed on 23/04/2021).

²Ruth Levitas, Christina Pantazis, Eldin Fahmy, et. al., *The Multi-Dimensional Analysis Of Social Exclusion*, (2007), https://www.researchgate.net/publication/267222796_The_Multi-Dimensional_Analysis_of_Social_Exclusion. (last accessed on 23/04/2021).

³*Supra* note 1, Id.

⁴Rashed Al Mahmud Titumir & K. M. Mustafizur Rahman, *Poverty Measurement: Comparing Different Approaches*, in R A M Titumir (ed.) MEASURING MULTIDIMENSIONALITY: STATE OF POVERTY IN BANGLADESH (2013)

Experiences cannot be discounted as they can often be far more telling of how life may be for a person as opposed to numbers and figures. One may have a sufficient amount of money but could still be in a position that would not allow him/her to lead a proper life, by virtue of ethnicity, caste or area of living⁵. One of the most important parts of any person's life is how he/she lives as a part of society, as humans are social creatures, and there is a high value placed on one's societal interactions and how they conduct themselves within a community. Sen connects social exclusion to a form of capability deprivation, saying that the lack of affinity between an individual and surroundings is a form of deprivation.⁶

In 2016 alone, 8.8 million foreign nationals came to India⁷, a country that is well known for its diversity and multitude of cultures and traditions. However, a deeper analysis into how members of other countries find India reveals uncomfortable findings about the society that prides itself on the very same multicultural image it has built over the years. While there are bound to be differences in culture from foreign nationals' country of origin and India, it should not lead to denial of societal inclusion that act to the detriment of someone's experience in the country. The goal of this paper is to examine the social exclusion and subsequent impoverishment of foreign nationals in India as per the capability approach propounded by Amartya Sen.

How we Measure Poverty: The Capability Approach

Under the capability approach, poverty is looked at in terms of how life is being lived. As such, it does not concern itself with average measurements of income or other such data; it only looks at the quality of life that is achieved by people. The capability approach has two main considerations: 'functionings' and 'capabilities'. Amartya Sen describes 'functionings' as "states of beings and doings,⁸" i.e, what any person with a dignified life should be able to do and achieve. Capabilities describe the freedom to achieve 'functionings' that enable a person to live a valuable life. If a person is denied the freedom to do what he/she needs to do to live a satisfying life, then it is capability deprivation.

As mentioned earlier, this style of measurement is more holistic than the income-based approach due to incorporation of lived experiences of people's

⁵PAUL STREETEN, THINKING ABOUT DEVELOPMENT 25(CUP: 1997).

⁶Vani K. Borooah, *Social Exclusion and Job Reservations in India*, XLV EPW 45 (2010).

⁷ Ministry of Tourism, *India Tourism Statistics At A Glance: 2017*, <http://tourism.gov.in/sites/default/files/Other/english%20India%20Tourism%20Statics%20020917.pdf> (last accessed on 23/04/2021).

⁸AMARTYA SEN, INEQUALITY RE-EXAMINED (OUP: 1992).

lives for determination of their state of well-being. Sen remarked that one could not draw a poverty line and hold everyone accountable to it without considering personal characteristics and circumstances⁹. Money is only one circumstance that can be examined,¹⁰ and according to Sen, poverty must be examined in terms of poor living and not just low income.¹¹ He claimed that instead of looking at empty wallets, what must be examined are actual impoverished lives. The cornerstone of the capability approach is how it evaluates well-being, and recognizing that issues of impoverishment extend to how people live their life is integral to that. Using this postulation, he has connected it to social exclusion, defining it as being ‘set apart’ or excluded from resources or opportunities, which can confer disadvantages.¹² It can also be understood as the denial of the effective freedom to achieve the capabilities that any person would require to live normally¹³. Social exclusion can occur through undisguised acts as well as less obvious actions, such as being looked at funnily in public or being questioned about one’s skin colour. In doing so, the image of ‘the outsider’ is created, and this could lead to deprivation of the freedom to be oneself.

In an alien environment, foreign nationals could be subject to this. If they are not given the freedom to be who they are without any consequences, then they are deprived of an essential factor for living as per the capability approach. Being socially excluded can lead to further disadvantages, such as lack of participation in a group or lack of confidence and self-esteem. Recognition and acceptance by society is important, and capability deprivation can be used to study instances where people are denied freedom to live a meaningful life. In this vein, it is connected to social exclusion as when a person is denied the opportunity to be a part of a group of people and is shut out of a community, he/she is deprived of his/her capability to lead a purposeful life.

⁹Web Stories, *Amartya Sen and the Thousand Faces of Poverty*, Inter-American Development Bank, 1stJuly, 2001, <https://www.iadb.org/en/news/webstories/2001-07-01/amartya-sen-and-the-thousand-faces-of-poverty%2C9286.html> (last accessed on 23/04/2021).

¹⁰*Economic Policy Reforms: Going for Growth, 2006*, Organization for Economic Co-operation and Development, <https://www.oecd.org/social/labour/economicpolicyreformsgoingforgrowth2006.htm> (last accessed on 23/04/2021).

¹¹Amartya Sen, *Social Exclusion: Concept, Application and Scrutiny*, Asian Development Bank (2000), <https://www.adb.org/sites/default/files/publication/29778/social-exclusion.pdf> (last accessed on 23/04/2021).

¹²Ashwini Deshpande, *Exclusion and Inclusive Growth*, UNITED NATIONS DEVELOPMENT PROGRAMME, 2013.

¹³Robert Salais, *Social Exclusion and Capability, Marginalisation and Social Exclusion*, 2003, <https://halshs.archives-ouvertes.fr/halshs-00430491> (last accessed on 23/04/2021).

How are Foreign Nationals Treated in India?

When a person is seen, the first thing that is observed is the way they look, and subsequently, the way they speak. These two characteristics, if seen in a negative light, can lead to individuals being ousted from society and thus can lead to social exclusion. Therefore, they become suitable parameters to judge how foreign nationals are perceived in a society that is not their own. Due to their nationality, obvious differences in skin colour and accent, with a special consideration for gender, are important criteria that can be used to understand how foreign nationals are treated in various places.

Discrimination by Skin: Problems of African Nationals

Ancient India did not discriminate on the basis of skin color; in fact, the presence of dark toned skin was seen as a thing of beauty and was also associated with revered deities such as Lord Shiva and Lord Vishnu.¹⁴ Draupadi, the female protagonist in the Hindu epic Mahabharata, was described as dark skinned and very beautiful.¹⁵ Ancient texts also supported this notion, with the Rig Veda distinguishing people based on position at birth, not based on skin colour.¹⁶ Therefore, dark colour was never looked upon unfavorably in ancient India. However, when the British Empire arrived, they claimed that they were a superior race that was more intelligent by virtue of their whiter skin and thus were meant to rule over the inferior ‘dark coloured Indians.’¹⁷ White skin was considered superior due to being ‘easy on the eyes’ and being more indicative of someone of a high social status. Because of this, Indians were treated as little better than animals by the British, and prohibited from entering places like clubs, restaurants and educational institutions. However, fairer Indians were treated with respect and were offered high-ranking positions in the British government, which gave them a decidable advantage.¹⁸

This prejudice seems to have carried over to modern day India and is perpetrated to this day. Fairness creams are extensively advertised and

¹⁴Neha Mishra, *India and Colorism: The Finer Nuances*, 14 WASH. U. GLOBAL STUD. L. REV. 725 (2015).

¹⁵PRATAP CHANDRA ROY (TRANS.), THE MAHABHARATA 491 (1968).

¹⁶S. C. DUBE, INDIAN SOCIETY 47 (NBT: 2013).

¹⁷M. K. AGARWAL, FROM BHARAT TO INDIA, VOLUME 2: THE RAPE OF CHRYSEE 325 (iUniverse: 2012).

¹⁸H. A. Amin, *Ethnicity, Religion, Military Performance and Political Reliability—British Recruitment Policy and The Indian Army*, (2001), <http://www.defencejournal.com/2001/feb/ethnicity.htm> (last accessed on 23/04/2021).

Bollywood stars have their images digitally altered to look fairer.¹⁹ The propagation of fair coloured skin in India has caused society to view it as an essential quality in order to have worth in society,²⁰ particularly for women. Indian actresses are only regarded as beautiful or appealing if they have fair skin, and to that effect, there are very little dark skinned heroines in the Indian film industry.²¹ A survey was conducted, taking students from academic year 2014-15, with mean age of participants as 22 years²² wherein they were asked about what they consider as ‘pretty’ and whether dark skin is detrimental to how they would perceive someone. 71% of students considered ‘fair skin’ to be intrinsically related to ‘pretty’ and more than half of the males and females wished to date a person with lighter skin as opposed to a darker skin.

Looking at data it can be said that lighter skin colour is heavily related to societal acceptance,²³ and this is evident in the case of foreign nationals in India. Fair skinned foreign nationals do not get discriminated against on the basis of their skin, and are not judged immediately. However, there have been several accounts of discrimination, both overt and implied, against foreign nationals with dark skin, particularly African nationals. According to a study conducted by the United Nations in 2015, there are 4,000 African nationals in India,²⁴ and various incidents over the years suggest a narrative of continuous and aggressive attacks against them. In 2014, three African men were brutally assaulted in a metro station after allegedly misbehaving with female passengers.²⁵ In the same year, a raid was conducted on a house owned by Nigerian and Ugandan women and they were falsely accused of running a drug and prostitution ring.²⁶ In 2016, three men beat a 23-year-old

¹⁹Rajiv Singh, *Fairness Creams’ Segment Slows Down: Has the Nation Overcome Its Dark Skin Complex?*, THE ECONOMIC TIMES, 18th August, 2013, <https://economictimes.indiatimes.com/industry/cons-products/fashion/-/cosmetics/-/jewellery/fairness-creams-segment-slows-down-has-the-nation-overcome-its-dark-skin-complex/articleshow/21884199.cms> (last accessed on 23/04/2021).

²⁰*Supra* note 14, Id.

²¹Id.

²²Id.

²³Id.

²⁴Harry Stevens, *Let’s Talk about Racism: India is Open to Foreigners if They are White*, HINDUSTAN TIMES, 24th May, 2017), <https://www.hindustantimes.com/india-news/let-s-talk-about-racism-india-is-open-to-foreigners-if-they-are-white/story-EjiKF6iFgmMZqFYR3hrLI.html> (last accessed on 23/04/2021).

²⁵Robert Mackey, *Beating of African Students by Mob in India Prompts Soul-Searching on Race*, THE NEW YORK TIMES, 30th September, 2014, <https://www.nytimes.com/2014/10/01/world/asia/beatings-of-african-students-by-mob-in-india-prompts-soul-searching-on-race.html> (last accessed on 23/04/2021).

²⁶Shashank Bengali, *Cannibalism, Prostitution and other Racist Myths that Confront Africans Studying in India*, LOS ANGELES TIMES, 23rd April, 2017, <http://www.latimes.com/world/africa/la-fg-india-africans-20170423-story.html> (last accessed on 23/04/2021).

Congolese national to death.²⁷ In the same year, an attack on a Tanzanian girl occurred after she happened upon the scene of a car crash.²⁸ In 2017, 5 Nigerian students were claimed to be behind the death of a 12th standard student due to overdosing, however, according to the police report, they were arrested without any proof. Later, during a candle lit vigil for the deceased, Nigerian students were attacked inside a mall.²⁹

However, explicit acts of violence are not the only way that Africans are discriminated against. Rumors about them being drug addicts, drunkards and even cannibals are constantly spread.³⁰ African women are constantly assumed to be sex workers or prostitutes. Crowds point at them, making no attempt to hide their disdain. People pass snide remarks about them in Indian languages, calling them ‘bandar’(monkey) and ‘habshi’, and taking their photo without consent.³¹ They are even called ‘monster’ to their face.³²

Going out in public is incredibly strenuous for them and every day activities like using public transport or going to restaurants are rendered unthinkable. They attempt to hide themselves to conceal their identity,³³ even going so far as to move just to avoid conflict.³⁴ They have trouble obtaining houses to live in, as landlords refuse to let them stay or extort them for a huge fee,³⁵ and they

²⁷PTI, *Congolese Man Beaten to Death in Delhi over Auto Rickshaw Spat*, HUFFINGTON POST, 21st May, 2016, https://www.huffingtonpost.in/2016/05/22/congo-national-beaten-in-delhi_n_10089566.html (last accessed on 23/04/2021).

²⁸M. A. Deviah, *Attack on Tanzanian Girl is Mix of Racism, Road Rage and Clash of Rural Versus Urban Cultures*, FIRSTPOST, 4th February, 2016, <https://www.firstpost.com/india/attack-on-tanzanian-girl-is-a-mix-of-racism-road-rage-and-clash-of-urban-versus-rural-cultures-2611738.html> (last accessed on 23/04/2021).

²⁹Geetha Anand and Suhasini Raj, *Attacks Against African Students Rise in India, Rights Advocates Say*, THE NEW YORK TIMES, 29th March, 2017, <https://www.nytimes.com/2017/03/29/world/asia/african-students-india-mob-attacks.html> (last accessed on 23/04/2021).

³⁰*Supra* note 26, Id.

³¹Tarique Anwar, *Delhi's Everyday Racism: African Students Recount Lynch Mob Attack in Metro*, FIRSTPOST, 2nd October, 2014, <https://www.firstpost.com/living/delhis-everyday-racism-african-students-recount-lynch-mob-attack-metro-1739881.html> (last accessed on 23/04/2021).

³²Sarakshi Raj, *It's Like I Have a Disease': Citizens of African Nations Talk of the Racism They Face in India*, FIRSTPOST, 18th May, 2015, <https://www.firstpost.com/india/like-disease-citizens-african-nations-talk-racism-face-india-2249316.html> (last accessed on 23/04/2021).

³³ Id.

³⁴Hemani Bhandari, *Once a Hub, Few Africans Left in Khirki Extension*, THE HINDU, 28th March, 2017, <http://www.thehindu.com/news/cities/Delhi/once-a-hub-few-africans-left-in-khirki-extension/article17713361.ece> (last accessed on 23/04/2021).

³⁵Aletta Andre, *Being African in India: We are Seen as Demons*, AL-JAZEERA, 26th June, 2016, <https://www.aljazeera.com/indepth/features/2016/06/african-india-demons-160620101135164.html> (last accessed on 23/04/2021).

have difficulty in recovering security deposits back from landlords.³⁶ Even in places that they manage to find housing, they are made to feel unwelcome and are treated with extreme hostility in most places they go, and as a result, their daily lives are affected.

Capability deprivation occurs when people lose the freedom to live their life in a harm free way. From the lifestyle described, it is obvious that African nationals are subjected to harsh living conditions due to society being at their heels every second. They are shunned, ridiculed, and attacked, and living in fear of society prevents them from experiencing a peaceful life. The Nigerian media said that life within Greater Noida following the mall incident has become ‘a life threatening issue’.³⁷ This statement sums up the plight of African nationals as they are shut out from society and put at serious risk when they go out in public. The fact that they are unable to exist in Indian society without feeling marginalized and included means that they are deprived of the freedom to live a normal life, which amounts to impoverishment under the capability approach.

A large part of this deprivation occurs due to rumors about the practice of drug trading and other shady activities that the African nationals are said to indulge in. While it is true that some of the African nationals have been identified as drug dealers by Narcotics Control Bureau³⁸, to stereotype each and every African national as the same is problematic³⁹, as what ends up being facilitated is the assumption that an African national is a drug dealer simply on the basis of him/her being an African, which causes society to view them as the problem itself, when in reality the problem is the activity. This can only be put to rest if the distinction between the action and the person behind the action is made clear, which cannot be done in the face of rapid assumptions of people’s behavior due to their culture.

³⁶Indulekha Aravind, *Africans across India Share Their Experience of Living Here*, THE ECONOMIC TIMES, 14th February, 2016), <https://economictimes.indiatimes.com/news/politics-and-nation/africans-across-india-share-their-experience-of-living-here/articleshow/50978034.cms> (last accessed on 23/04/2021).

³⁷Anon, *Living in Noida a Life-Threatening Issue: How Nigeria Reported the Greater Noida Attack on Africans*, HINDUSTAN TIMES, 28th March, 2017, <https://www.hindustantimes.com/india-news/living-in-noida-a-life-threatening-issue-how-nigeria-reported-the-greater-noida-attack-on-africans/story-qdi19nbuClLwLFV9enkH5H.html> (last accessed on 23/04/2021).

³⁸Sandeep Unnithan, *Ruthless and Organised, Nigerians Have Become the Biggest Players in India’s Market for Hard Narcotics*, INDIA TODAY, 2nd December, 2013), <https://www.indiatoday.in/magazine/special-report/story/20131202-nigerians-drugs-narcotics-go-police-drug-trafficking-nigerian-murder-768812-1999-11-30> (last accessed on 23/04/2021).

³⁹*Supra* note 36, Id.

Another analysis of their plight is in the context of oppression as defined by Iris Young. She defines oppression as social processes through which human dignity is lost. The African nationals in India are subjected to this as stereotypes mark them out and they are not even recognized as human by society.⁴⁰ Young also talks about violence, which she describes as a systemic occurrence directed at members of a group due to their identity⁴¹. These acts are tolerated by society to such a degree that they approach legitimacy. In India, the view that dark skin is inferior to light skin has ensured that these acts continue in spite of the outrage against them. Young considers the presence of any of these faces enough to say that oppression exists; therefore the African nationals experience oppression as well, which further exacerbates the deprivation of their freedom to lead a worth while life.

Discrimination by Gender: A Woman's Plight

How women are perceived differs from place to place, and this is most apparent in foreign countries. India, however, does not have a good reputation when it comes to how it treats foreign national women. It is said to be so hostile towards them that women are often scared and hesitant to even travel to the country. Several governments have issued warnings to their citizens for travelling to India; the Swiss government issued a travel advisory about the risks,⁴² and Japan and China have told their citizens that they should avoid any non-essential trips to the country.⁴³ In 2016, there were 3,38,594 crimes against women in India, out of which 41,114 crimes were rape.⁴⁴ In the same year, the National Crime Records Bureau recorded a total of 38 counts of attempting to outrage modesty of foreign national women and 19 for rape. In 2015, the second highest statistics for crime committed against foreign nationals was assault with intent to outrage modesty (23 cases) and rape (12 cases).⁴⁵ In 2014, rape was the second highest crime against all foreign

⁴⁰IRIS YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 36 (PUP: 1990).

⁴¹Id.

⁴²Anand Chandrashekar, *Rape Cases Still Cast a Shadow on India Tourism*, SWISS INFO, 20th April, 2015, https://www.swissinfo.ch/eng/tourist-safety_rape-cases-still-cast-a-shadow-on-india-tourism/41405362 (last accessed on 23/04/2021).

⁴³Ananth Krishnan, *'If You are Female...Do Not Travel to India': Japan and China Warn Tourists to Stay Away after Bodh Gaya Attack*, DAILY MAIL, 9th January, 2015, <http://www.dailymail.co.uk/indiahome/indianews/article-2902473/If-female-not-travel-India-Japan-China-warn-tourists-stay-away-following-Bodh-Gaya-attack.html> (last accessed on 23/04/2021).

⁴⁴Priya Kapoor, *Over 30,000 Rape Cases: Only 1 in 4 Convicted*, TIMES OF INDIA, 29th July, 2018, <https://timesofindia.indiatimes.com/india/over-30000-rape-cases-only-1-in-4-convicted/articleshow/63748925.cms> (last accessed on 23/04/2021).

⁴⁵Crime in India, NATIONAL CRIME RECORDS BUREAU, (2015), <https://ncrb.gov.in/en/crime-india-year-2015> (last accessed on 23/04/2021).

nationals in India.⁴⁶

The coverage of such incidents gives an insight as to what the mentality towards foreign women is in India. There have been several incidents reported in the media about crimes against foreign national women. In 2013, a Swiss woman was assaulted and raped by locals from a village in Datia District.⁴⁷ In 2014, an 18-year-old German girl on a train reported rape to the railway police.⁴⁸ In the same year, nine men raped and assaulted a 52-year-old Danish tourist. A similar case occurred in 2016 when auto rickshaw drivers raped a German tourist and in the same year, a twenty five year old American tourist was allegedly raped and assaulted by five men in New Delhi.⁴⁹ An Irish woman was drugged, brutally raped and beheaded in a forest in 2018, in one of the most shocking cases of violence against expats the country has seen.⁵⁰ In addition to widespread media coverage, many travellers have also spoken about their experiences on travel blogs, saying that they felt insecure, threatened and marked out because of the hundreds of eyes staring at them due to their skin colour and the clothes they wore. Writers have warned about the constant threat of groping and eve teasing⁵¹ and they have cautioned women on traveling after dark unless as part of a large group. One online blogger said that she was constantly checking her driver's route on Google maps whenever they drove, and that her finger constantly hovered over her pepper spray.⁵²

The reason for such an attitude stems from a misconception that foreign women are accustomed to sexual intercourse. Sex is common in foreign cinema, and so it is assumed that foreigners are always open to it.

⁴⁶ Crime in India, NATIONAL CRIME RECORDS BUREAU, (2014), <http://www.ncrb.gov.in/StatPublications/CII/CII2014/Table%2025.2.pdf> (last accessed on 23/04/2021).

⁴⁷The Associated Press, *Six Charged With Gang Rape in India After Swiss Attacked*, CBC, 18th March, 2013, <http://www.cbc.ca/news/world/6-charged-with-gang-rape-in-india-after-swiss-attacked-1.1365501> (last accessed on 23/04/2021).

⁴⁸Anusha Soni, *Five Rape Cases Reported Recently by Foreign Nationals*, INDIA TODAY, 2nd January, 2017, <https://www.indiatoday.in/india/story/rape-case-india-delhi-american-woman-danish-2016-2015-disturbing-law-nirbhaya-359928-2016-12-28> (last accessed on 23/04/2021).

⁴⁹Id.

⁵⁰John Lockett, *Tourist who went Missing From Indian Yoga Retreat was Drugged and Beheaded*, NEWS AUSTRALIA, 5th May, 2018, <http://www.news.com.au/travel/travel-updates/incidents/tourist-who-went-missing-from-indian-yoga-retreat-was-drugged-and-beheaded/news-story/9183c74509786fb0614d6c240d95dbf9> (last accessed on 23/04/2021).

⁵¹Sharell Cook, *Is India Unsafe for Foreign Women? What You Should Know*, TRIP SAVVY, 21st November, 2018, <https://www.tripsavvy.com/is-india-unsafe-for-foreign-women-1539143> (last accessed on 23/04/2021).

⁵²Alison Karlene, *Can Females Travel India Alone?*, 16th September, 2015, <https://aroundtheworldwithalison.com/2015/09/16/can-females-travel-india-alone/> (last accessed on 23/04/2021).

This is problematic because an assumption based on a misconception and perpetuated by both social media and television has taken root in the minds of society. One such incident,⁵³ which was posted on a blog, recounted when a man with whom the author had gone to dinner with, pulled out a pack of condoms and told her that he was 'ready'. She described that she was enraged that he would assume that sexual intercourse would occur after just one meeting. On questioning him, he said he thought this is what all Americans wanted. Due to this perception, foreign women in particular have to constantly be on guard. This prevents them from living a normal life, as they have to be constantly wary of everyone around them. They cannot travel alone with peace of mind are effectively restricted to their houses when the sun sets, and take a huge risk in going out after dark. They cannot trust too many people, and must exhibit an unhealthy level of caution in public. If they have to fear for their safety and well being every single second of the day, it directly affects their daily life.

A focal point of this paper is to establish that foreign nationals suffer from capability deprivation in that the actions of society ensure that they are socially excluded. Due to the actions of society, foreign national women have to live their life in constant paranoia and caution, something that is a heavy burden in unfamiliar surroundings, where one does not know the local language well or is not surrounded by familiar faces. Travellers to a foreign country are supposed to be treated with respect and dignity, as one would treat guests at any home. However, it becomes practically impossible for them to enjoy a normal life, thus leading to a loss in what they can do, which is the very basis for capability deprivation. The poisoned mind of society prevents them from doing ordinary, everyday tasks that one would associate with normalcy, and thus, society deprives foreign national women of their capabilities.

Discrimination by Accent: Fake or Real?

At first glance, accents might not be a significant aspect of someone's identity, but they are heavy social indicators that provide an immediate insight into a person's cultural background.⁵⁴ It is essential to note that identity was not always the myriad bag it is today; earlier, it used to have a very positivistic connotation and human behavior was observed through laws and rules that

⁵³Beth Bauer, *Hippie in Heels, Dating in India: The Do's and Don'ts as a Foreign Woman*, *Hippie in Heels*, <https://hippie-inheels.com/dating-india-dos-donts-foreign-woman/> (last accessed on 23/04/2021).

⁵⁴Chuqiao Yang, *Does having a foreign accent affect men and women differently? Effect of foreign accent and gender on employment decisions and negotiations*, Worcester Polytechnic Institute (2012).

were universal in nature.⁵⁵ However, such beliefs have weathered away with the passage of time, and human behavior came to be regarded as liable to be influenced by various factors, and identity was seen as a dynamic entity.⁵⁶ Social identity theory fits right into this paradigm, as it is the analysis of factors that make up one's identity, one of which is the accent. I am a United States citizen, and while my complexion is paler than most, I appear distinctly Indian. However, I have gotten many strange looks for being brown and having an American accent.

According to the theory, members of the same group will band together and label people different from them as the out-group.⁵⁷ This is known as 'in-group bias', and when applied to accents, it takes the form of 'accent bias'. Accent bias can affect social life in a significant way, as it can lead to negative perceptions of one's identity. This is possibly due to an accent being seen as a mark of outside influence that can trigger stereotypical perceptions simply based on the accent.⁵⁸ Unlike many other forms of discrimination, however, accent bias is commonly accepted and practiced by society.⁵⁹ For instance, discrimination based on accent has previously been justified on the basis of only people who are familiar with an accent from a certain country in some capacity can be considered bona fide citizens or be allowed the same status as that of a normal citizen of the country.⁶⁰ Rosina Lippi stated in her book, *English with an Accent*, that people generally do not consider language based differentiation as discrimination because in their view, accents act as an excuse to not recognize others who are different.⁶¹ Therefore, an accent would act as a justifiable reason for discriminating against them, and it is not seen as an outright form of discrimination. Because of this, accent bias is not widely acknowledged as a tangible form of discrimination. However, it

⁵⁵Kazuaki Kumagai, *How Accent and Identity Influence Each Other: An Investigation of L2 English Speakers' Perceptions of Their Own Accents and Their Perceived Social Identities*, (Master's Thesis). Retrieved from Knowledge Repository, IUP, (2013).

⁵⁶S. K DECKERT AND C. H VICKERS, AN INTRODUCTION TO SOCIOLINGUISTICS: SOCIETY AND IDENTITY(Bloomsbury: 2011).

⁵⁷H Tajfel, M. G. Billig, R.P. Rundy and C. Flament, *Social Categorization and Intergroup Behavior*, 1 EUR. J. SOC. PSYCH. 149 (1971).

⁵⁸Yang, *Supra* note 54, Id.

⁵⁹Luana Elayne Cunha de Souza, Cicero Roberto Pereira, Leoncio Camino, et. al., *The Legitimizing Role of Accent on Discrimination Against Immigrants*, 45 (6) EUR. J. SOC. PSYCH. (2016), <https://doi.org/10.1002/ejsp.2216>

⁶⁰Sik Hung Ng, *Language-based discrimination: Blatant and Subtle Forms*,26 (2) JLSP 106 (2007).

⁶¹ROSINA LIPPI-GREEN, *ENGLISH WITH AN ACCENT: LANGUAGE, IDEOLOGY AND DISCRIMINATION IN THE UNITED STATES*, (Routledge:1997).

is a legitimate concern despite its underwhelming nature and more passive connotation.⁶²

It goes without saying that foreign nationals would have a different accent than most people in India, and because of this, they are often subject to accent bias. Most people associate different accents with notions of superiority and arrogance and that the accent is just something put on in order to sound more likeable.⁶³ Due to this perception, people with accents are often mocked and belittled, as they are perceived as snobbish myself have been on the receiving end of this, as my American accent, the result of living in the United States for 10 years of my life, has been the subject of many jokes, and there have been instances where I have been made fun of and felt like I was different because of it. When an accent is rejected, what is further being put down is the identity of the person, which extends to race, ethnicity, or national origin,⁶⁴ something that was confirmed by the Hawaiian District Court.⁶⁵ By rejecting an accent or discriminating against someone because of it, what is rejected is the speaker's identity, heritage and their national origin.⁶⁶ Accordingly, the way a person speaks could be used against him/her as a basis for making arbitrary assumptions about them.⁶⁷

People with foreign accents are separated from society, marked out because of something that they cannot control and is by all accounts, perfectly normal. Making assumptions that one person is putting up a façade can lead to denial of opportunities to advance in society out of spite, which in turn deprives them of establishing a rapport with anyone. If the actions of society effectively prevent foreign nationals with an accent from being part of the society, it leads to a loss in freedom to be a part of a community, as they would feel like they are different and separate from the rest. This is capability deprivation, as it is difficult to live in such a suppressive environment. Asking presumptuous questions and insinuating that someone is putting up a façade can lead to feelings of exclusion and solitude from society. There are reports that show that those

⁶²Karolina Hansen, Tamara Rakić, and Melanie C. Steffens, *When Actions Speak Louder Than Words: Preventing Discrimination of Nonstandard Speakers*, 33 JLS 68 (2013).

⁶³Archita Bisht, *A freak? Fake? OMG, Indian with a foreign accent!*, TIMES OF INDIA, 29th August, 2013, <https://timesofindia.indiatimes.com/life-style/spotlight/A-freak-Fake-OMG-Indian-with-a-foreign-accent/articleshow/22117684.cms> (last accessed on 23/04/2021).

⁶⁴ROSANA LIPPI-GREEN, ACCENT, STANDARD LANGUAGE IDEOLOGY, AND DISCRIMINATORY PRETEXT IN THE COURTS 23 (CUP: 2013).

⁶⁵699 F. Supp. 1429 (1987).

⁶⁶*Supra* note 61, Id.

⁶⁷*Supra* note 59, Id.

with foreign accents are singled out and segregated from the rest of society because of it.⁶⁸ In extreme cases, it could also lead to bigger problems, such as denial of employment and can even affect interactions in professional settings.⁶⁹ Therefore, accent bias is also a factor that impoverishes foreign nationals.

How does the Law Treat Foreign Nationals?

Perhaps the only other factor that has as much of an influence on the lives of a foreign national living in another country outside of the society is the law of that country. There exist special provisions that are exclusive for the citizens of a country, and while it makes sense for a legal system to place its own citizens as its highest priority, there exist certain basic human rights that need not be restricted by nationality and can be applied to all people, irrespective of their citizenship status. If a legal system bans non citizens from access to certain amenities or makes life deliberately more difficult for them, it may amount to capability deprivation and thus, impoverishment. The following part of the paper will examine if Indian law treats foreign nationals differently as compared to its citizens, and will assist in making a definitive statement as to whether it is the society of India or its laws that contribute more to impoverishment as per the capability approach.

Dual Pricing at India's Monuments

India is home to several historical monuments and they attract a great deal of attention from tourists. However, most of the notable monuments have a dual pricing system in place that requires non-citizens to pay a higher fee for entry. According to the Ancient Monuments and Archeological Sites and Remains (Amendment) Rules 2015, there must be a price difference between the entry fee for non-citizens and for citizens and SAARC country citizens,⁷⁰ For example, to gain entry into the Taj Mahal, citizens of India need only pay Rs.50, while foreign nationals must pay Rs.1100.⁷¹ The fact that there's such a huge disparity can lead foreign nationals feeling cheated out of their money, as there is no additional benefit given to them for paying a higher price; the experience remains the same. Such a high price difference make the administration seem greedy for money and that they are taking advantage of

⁶⁸J.N. Fuertes, W.H. Gottdiener, H. Martin, T. C. Gilbert and H. Giles, *A Meta Analysis of the Effects Of Speakers' Accents on Interpersonal Evaluations*, 42 (1) Eur. J. Soc. Psycho. 120(2013).

⁶⁹Rahul Chakraborty, *A Short Note on Accent bias, Social identity and Ethnocentrism*, 8(4) ALLS 57 (2017).

⁷⁰Ancient Monuments and Archeological Sites and Remains (Amendment) Rules 2015, Rule 6.

⁷¹Data obtained from: <https://www.tajmahal.gov.in/ticketing.html>

the fact that India gets a lot of visitors from other countries.

However, what truly makes the price difference problematic is the methods by which people are assumed to be foreign nationals; they are extremely arbitrary and border on disrespectful. People who are manning ticket booths look at skin colour of the customer and assume who a foreign national might be. Someone who may be an Indian citizen, but also has pale skin may be thought to be a foreigner, and the higher price will be demanded unless they can prove their Indian citizenship. In an article published in Scroll Magazine, the author wrote that a relative was asked to pay the foreign rate at Humayun's tomb because the person at the ticket counter thought she was from the Philippines. She had to show knowledge of Hindi for the lower priced ticket.⁷² When my family and I went to the Taj Mahal in 2014, since we all looked Indian, we paid the citizen rate, despite all of us being foreign nationals. This shows the arbitrariness of the system since assumptions are made primarily on skin colour. Assumptions rest on accent, clothing, and language as well. This is insulting to people who have come to see a great national treasure of India and it presents an image that as a society, we treat people who are not our own as 'different'. There is no mechanism through which the citizenship of visitors can be determined either, which is problematic,⁷³ as the discretion rests solely with the person managing the ticket booth. A common rationale for the hike in prices for foreign tourists is that the maintenance of the monuments is done through the taxes paid by the citizens of the country, and since foreigners don't pay taxes, they need to contribute. While this decision may make economic sense, the societal effect of the law cannot be overlooked due to the assumptions that run rampant when foreign nationals visit the sites.

Bail Provisions

Bail is a legal mechanism by which an accused who is charged with an offence can be released from prison upon furnishing security to the court in order to ensure his presence. The right to bail has been associated with Article 21⁷⁴ of the Constitution of India, as it is seen as a humanitarian right that should be given to everyone. The case of *State of Rajasthan v Bal Chand*⁷⁵ held that 'the normal rule is bail and not jail'. In *Rasiklal v. Kishore s/o Khanchand*

⁷²Ajaz Ashraf, *India's National Monuments Have Become Tributes to Shameful Racism*, SCROLL MAGAZINE, 29th January, 2016, <https://scroll.in/article/720916/indias-national-monuments-have-become-tributes-to-a-shameful-racism> (last accessed on 23/04/2021).

⁷³Id.

⁷⁴Babu Singh v. State of Punjab AIR 1978 SC 527.

⁷⁵1977 4 SCC 308.

Wadhvani,⁷⁶ the Supreme Court held that no discretion should be applied in granting bail, except in grave circumstances. Therefore, it follows that bail should not be denied on the basis of nationality. The High Court of Delhi has observed that while courts can impose conditions to ensure that the accused will be available for trial, it cannot be said that he/she will not be granted bail because he/she is a foreign national.⁷⁷ The common argument for not granting foreign, nationals bail is that it allows them a chance to escape justice by potentially fleeing the country. In *Sartori Livio v The State (Delhi Admin)*⁷⁸, however, the court held that such a consideration could not be a reason for denying bail. A person should not have to suffer through the extreme conditions of jail by virtue of their nationality. *Nasimjon Komlov v. Customs*⁷⁹ echoed this sentiment, saying that it would be a shame if persons were to be confined to jail merely because they are foreign nationals, a verdict that was further solidified in *Emeka Okafor v. State NCT Delhi*.⁸⁰ In 2018, the Supreme Court conclusively held in *Lachhman Das v. Resham Chand Kaler*⁸¹ that that every accused would be treated the same with respect to bail law, irrespective of their nationality. Therefore, there is no difference in the way bail law treats foreign nationals and citizens.

The right to bail goes beyond nationality and it should be available to anyone who has been detained by the police. The rationale for such a thought process is easy to see when the consequences of being detained in jail for extended periods of time is considered; it can lead to physical and psychological damage for the inmates. In most prisons, medical facilities are often denied to the prisoners,⁸² furthering the problem. In *Moti Ram and Ors v. State of Madhya Pradesh*,⁸³ the judge observed that they are subjected to conditions that are worse than that of convicted defendants. This needless detention is a blatant violation of the right to freedom of movement that every human is entitled to and reflects very poorly on the legal system.

⁷⁶AIR 2009 SC 1341.

⁷⁷Bijoylaxmi Das, *India: Bail, A Matter Of Right: Not to be Denied on the Ground of Nationality*, MONDAQ, (4th November, 2017)

⁷⁸2005 (99) ECC 545.

⁷⁹CRLM (M) No. 2038/2000.

⁸⁰2006 (1) RCR (Cr.) 104.

⁸¹AIR 2018 SC 599.

⁸²Vidya Venkat, *Chhattisgarh's Torture Cells Exposed*, THE HINDU, 20th August, 2015, <http://www.thehindu.com/news/national/chhattisgarhs-torture-cells-exposed/article7560901.ece> (last accessed on 23/04/2021).

⁸³AIR 19798 SC 1594.

Surrogacy Laws

Commercial surrogacy has been available in India since 2002 and India remains as one of the most sought after countries for those who want a surrogate child. Surrogacy in India costs less than a quarter of the price in the United States,⁸⁴ and people from all over the world flock to the country for surrogacy.

The Indian Council of Medical Research framed guidelines for surrogacy;⁸⁵ but the necessity to monitor the practice closely emerged after *Baby Manji v Union of India*,⁸⁶ where a Japanese couple commissioned a surrogate mother, but later got divorced. The single male parent was not granted custody and the woman who gave birth to her refused to raise her. The child was, instead, given a humanitarian visa and her grandmother was allowed to take care of her. Following this, the Assistive Reproduction Technology Bill was formed in 2010, but was criticized for not protecting rights of surrogate mothers. The Bill was revised twice but was never seriously considered to be a law. In 2016, the Surrogacy (Regulation) Bill, 2016 was introduced with the aim to impose a blanket ban on commercial surrogacy, while permitting altruistic surrogacy. The Bill also outlawed foreign nationals from its benefits, barring them from being surrogate parents. Later in the year, a bill was passed in the Lok Sabha,⁸⁷ further cementing the law that non-citizens would not be able to avail of surrogacy services in India.

This bill's provision is in direct contradiction with Article 14, as it is disqualifies foreign nationals from a service on the basis of their nationality.⁸⁸ It is depriving them of a freedom that should be available to them should they have need of it. The bill requires clinics to turn away foreign nationals

⁸⁴Holly Williams, *Baby Boom: Indian Women Giving Birth to US. Babies*, CBS NEWS, 10th April, 2013, <https://www.cbsnews.com/news/baby-boom-indian-women-giving-birth-to-us-babies/> (last accessed on 23/04/2021).

⁸⁵Tarishi Verma, *What are the Surrogacy Laws in India: Here is Everything You Need to Know*, INDIAN EXPRESS, 6th March, 2017, <http://indianexpress.com/article/research/karan-johar-surrogate-children-yash-roohi-what-are-the-surrogacy-in-laws-in-india-here-is-everything-you-need-to-know-4555077/> (last accessed on 23/04/2021).

⁸⁶2008 13 SCC 518.

⁸⁷Anon, *Lok Sabha Passes Bill Which Bans Commercial Surrogacy*, FINANCIAL EXPRESS, 19th December, 2018, <https://www.financialexpress.com/india-news/lok-sabha-passes-bill-which-bans-commercial-surrogacy/1419194/> (last accessed on 23/04/2021).

⁸⁸Simran Aggarwal and Lovish Garg, *The New Surrogacy Law in India Fails to Balance Regulation and Rights*, London School of Economics and Political Science Blog, 26th Nonmember, 2016, <http://blogs.lse.ac.uk/humanrights/2016/11/23/the-new-surrogacy-law-in-india-fails-to-balance-regulation-and-rights/> (last accessed on 23/04/2021).

looking for surrogate mothers. The reason for preventing the widespread allowance of surrogacy seems to trace back to India becoming somewhat of a hub for the practice, leading to unethical practices and rushed operations,⁸⁹ which pose dire consequences both for the children born and the mother undergoing the operation. However, for parents who have already started the process, there is confusion coupled with a struggle to retrieve embryos that are already within the country and unable to move out due to the ban.⁹⁰ They have no discernable way of ensuring that they can retrieve their embryos in wake of the new law.⁹¹ The new bill makes it clear that foreign nationals are not put on the same pedestal as the citizens, as they are being denied a service that could be essential in ensuring that an already messy situation does not escalate further.

Fundamental Rights

Historians and political thinkers have extensively discussed the concept of rights. Harold Laski, in his theory of rights, defines them to be “those conditions of social life without which no man can seek, in general, to be himself at his best”. He is of the opinion that the state has a very important role to play in the realization and recognition of human rights. In the broadest sense, it would suffice to say that rights are something that every human is entitled to.⁹²

There are two kinds of rights that exist to people in India. First, there are human rights that would apply to any person living in the country, irrespective of their nationality. These are the rights that cannot be taken away, and include right to life and liberty, right to equality before law, right against forced labor, and other similar essential rights that form the basis for a normal human life. India, being a signatory to the Universal Declaration of Human Rights, has ensured that every person in the country is privy to rights that are essential for a dignified existence. On the other hand there are certain rights that are only available to citizens of the country, namely those under Articles 15,16,19,29

⁸⁹*Supra* note 88, Id.

⁹⁰Rebecca Bundhun, *Foreign Couples Fight to Retrieve Embryos Trapped in India Under Surrogacy Ban*, THE NATIONAL, 28th November, 2016, <https://www.thenational.ae/world/foreign-couples-fight-to-retrieve-embryos-trapped-in-india-under-surrogacy-ban-1.187400> (last accessed on 23/04/2021).

⁹¹Tabassum Barnagarwala, *Lock on Womb Renting, Cuffs on Embryos?*, INDIAN EXPRESS, 20th October, 2016, <http://indianexpress.com/article/explained/india-surrogacy-law-return-of-embryos-bombay-high-court-3092116/> (last accessed on 23/04/2021).

⁹²Mummun Jha, *Morality, Legality and Human Rights: Gandhi and Ambedkar in a Rights Framework*, <http://www.mkgandhi.org/articles/gandhiambedkarrights.htm> (last accessed on 23/04/2021).

and 30. The Constitution is very carefully worded in terms of who gets what rights, as for these articles; they use the word ‘citizen’ in particular, meaning that foreign nationals are not entitled to the rights under those articles. In *Louis de Raedt v Union of India*,⁹³ the court held that for foreign nationals, fundamental rights only extend up to Article 21. This was reaffirmed in a recent case⁹⁴. *Hans Muler v. Superintendent, Presidency Jail, Calcutta*⁹⁵ held that only citizens were entitled to rights under Article 19. *Stelmakh Leonid Iuliia vs Secretary to the Ministry*⁹⁶ held that rights under Article 16 were not extended to foreign nationals and that said rights could only be conferred on ‘citizens’. The case of *Vincent Ferrer v District Revenue Officer*⁹⁷ held that while foreign nationals are entitled to rights under Article 14, they have no rights under Article 19(1)(d).

One of the major reasons for this is probably that the framers of the Constitution did not want to give too much power to foreigners on the back of 200 years of subjugation by the British Empire. The aim of leaving rights that affect the future of the country such as right to vote, right to speech, and right to form political parties, is to ensure that the democratic process remains in the hands of the citizens. Not all foreign nationals who come to India are looking to become residents, and giving them voting rights and a say in the governmental setup rights could change the country. For those who are residents of the country, there is a framework for them to become citizens as well, and thereby obtain fundamental rights. Under Section 6, which requires them to have been residents for 12 years, foreign nationals can become citizens.

Conclusion

As mentioned earlier, the definition of ‘impoverishment’ has far exceeded the initial mandate of merely looking at the monetary status of an individual. Such an outlook is fortuitous as by extending one’s vision to how lives are being lived, it makes for a compelling case to effect some tangible change beyond giving people more money. While it may appear that schemes such as a universal basic income will be sufficient to alleviate poverty and fix all the

⁹³AIR 1991 SC 1886.

⁹⁴J. Venkatesan, *Right to Life, Liberty Available Even to Foreign Nationals, Says Supreme Court*, THE HINDU, 20th June, 2013, <http://www.thehindu.com/news/national/right-to-life-liberty-available-even-to-foreign-nationals-says-supreme-court/article4831250.ece> (last accessed on 23/04/2021).

⁹⁵AIR 1955 SC 367.

⁹⁶2011 (2) ALL MR 653.

⁹⁷AIR 1974 AP 313.

problems that may arise in a person's life, there is one problem with such a scheme: there needs to be a way to ensure that the money spent by that person goes towards improving the quality of his/her life, which is also the core of the capability approach. Therefore, monetary solutions cannot be treated as the final step in solving poverty.

Equal attention has to be paid to how life is being lived in order to gain a holistic view on what the various problems in one's life are and how they can be fixed. For a person residing in a land that is not their own, the law of the land and its society are the two most influential factors that shape their lives. Throughout this paper, we have seen instances of the adversarial circumstances that both the law and the society of India impose on foreign nationals, however, the impact of the society is far more prevalent than that of the law, and thus it contributes heavily to social exclusion. India has always portrayed itself as a home of a multitude of cultures and traditions. Each of the states in India has their own language, cuisine, and overall identity. In this vein, the people of each state are markedly different, their idiosyncrasies and their routines being influenced by their surroundings. However, no matter where you go in India, the attitude towards foreign nationals seems to be the same, particularly with respect to the above parameters.

To prevent someone from living a life of value is a shameful act, as everybody deserves to live properly, which is difficult if foreign nationals are subject to societal jest for no other reason than who they are as people. Inequality based on skin, accents and gendered opinions run rampant throughout the land, and they have only been catalyzed by misconceptions and stereotypes that eventually lead foreign nationals to be excluded from the main framework of society. Poverty cannot simply be looked at in terms of how much money a person has. The quality of a life is just as important, if not slightly more important, for determining how a life is lived. We must endeavor to dig deeper and reflect on the processes of life rather than statistics and numbers, for at the end of the day, what matters is the life that we have been given and how we choose to live it. If other people make living life intolerable and unbearably difficult, then it affects a person far more than if it would he/she did not have money to fall back on. If someone is unable to live in society without the basic guarantee of social inclusion, then he/she is not living at all.