Four Hours to Lockdown: The Biopolitics of Law, Life, and Death*

—Ratna Kapur**

Like a thick fog that crawls over and blurs everything in the plains lying at the foot of the Himalayas, the terror of plague had spread all over. Even children in the town shuddered to hear its name.

— 'Plague and Quarantine!' Rajinder Singh Bedi[1]

In his 1939 Urdu short story, titled 'Plague and Quarantine!', Rajinder Singh Bedi presents a dialogue between William Bhagu Khakrub, a local sanitation worker and *Dalit*, who recently converted to Christianity, and Bakshi, a doctor who works in the local hospital as well as the quarantine facility.[2] The story takes place in a small town in colonial India that has been hit by the Bubonic plague, causing contamination to spread rapidly throughout the population. It is based on the dreaded experience of quarantine during the period of the plague that began in 1896 and, within two decades, resulted in the loss of 12 million lives, as well as other subsequent epidemics in colonial India, which involved the forcible separation of infected from non-infected people. In Bedi's story, data regarding the sick, the infected, and the dead are all carefully collected, mapped, and charted to monitor and regulate the population during the period of the epidemic.

Baghu's role as a sanitation worker involves managing the epidemic locally, as well as within the quarantine space and is integral to the story. He relays information to people in the locality on hygiene management and the importance

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1 Madhu Singh, 'Quarantine (by Rajinder Singh Bedi)' (2020) 69 Orientalia Suecana 42, 43.

2 Dalit is the name given by members of the oppressed lower caste groups to themselves in the 1930s. They have emerged as a powerful political force in India.

of remaining home whilst regularly spraying *chuna* (lime powder) on the streets as part of the regime of prophylactic measures for containing the disease. He demonstrates infinite care and compassion for the patients in *konteen* (quarantine), even during death. At the same time, he remains fatalistic about the risk of getting infected through these interactions, declaring to Dr. Bakshi that: "*Death will not touch a hair on my head unless the time has come. You are such a big doctor, you have cured thousands of patients, but when my time comes, even your medicines will not help me*."[3]

In stark contrast, Dr. Bakshi is fearful of becoming contaminated by the patients in quarantine. He maintains his distance and adopts a tortuous, obsessive approach to self-hygiene: 'I washed my hands well with a carbolic soap longer than required, gargled with an antiseptic solution, and had some brandy or hot coffee which nearly burnt my intestines'.[4] Despite these rituals, he remains seized with terror, not only of getting infected but also of being quarantined. Dr. Bakshi observes Bhagu's compassion, noting that he was the one who cried for the infected as well as for those who died: 'Bhagu shed invisible tears of blood on [the patient's] death—who else would have done that?'[5] Bhagu continues this service of compassion, even after losing his wife to the plague and being reprimanded by Dr. Bakshi for neglecting her to do his work.

When the plague ends, it is Dr. Bakshi who receives accolades for his service to humanity at a felicitation ceremony presided over by the Minister for the Municipal Corporation: 'My neck was heavy with garlands, and I felt like a respectable person. I looked this way and that smugly'.[6] In addition, he receives a monetary gift for his dedication. Dr. Bakshi returns home with his head held high 'like a Lt. Colonel, decorated with garlands and a thousand rupees in [his] pocket'.[7] A faint voice greets him from the shadows: 'Babu-ji, many congratulations to you'[8] It is Bhagu.

I use Bedi's short story to weave together the way in which biopolitical power operates to further distance the already stigmatised, illegible, and invisible vulnerable subjects in times of disease and pandemic. I stitch together the text with quotes from Bedi's story, which connect the colonial past with the postcolonial present. This approach speaks to how biopolitics—rather than being a new form of governance and power—is integral to the management of populations while marking out the lives that count and those that do not. Bhagu represents those whose lives are not only further distanced by the biopolitics of COVID-19

3 Bedi (n 1) 44.
4 ibid 43.
5 ibid 45.
6 ibid 47.
7 ibid.
8 ibid.

in the contemporary moment but are also contained within the shadows of non/in-humanity where this power operates.

I. Introduction

It was heart-wrenching when Bhagu pulled the child away from his dead mother …[9]

In May 2020, a video of a small child playing with a shroud covering his dead mother at a train station in Muzaffarpur, Bihar, went viral.[10] The child's mother had died from heatstroke, hunger, and severe dehydration as she made a desperate bid to return home from Ahmedabad, a major city in the western state of Gujarat, on one of the special trains for casual workers. These trains were commissioned two months after the initial coronavirus national lockdown.

In this brief essay, I unpack the biopolitics of life and death through a specific moment in the long saga of the coronavirus pandemic—the announcement of a national lockdown for 1.3 billion Indians on the evening of 24 March 2020, with only four hours' notice prior to its enforcement.[11] In the first part, I discuss the meaning of biopolitics and the role of law. In the second part, I discuss the COVID-19 prophylactic measures implemented globally and the socially exclusionary effects that they reinforced. In the final part, I illustrate the effects of these measures in relation to different vulnerabilities in India during the immediate aftermath of the 'four hours to lockdown' announcement. I focus on *Dalits*, who belong to the lowest stratum of the entrenched caste hierarchy in India, informal workers, trans persons, and the Tablighi Jamaat, a Muslim pietist movement. There is no place for these constituencies in an India that stratifies them and categorically excludes them from access to intrinsic resources. Social policies are framed to exclude those without legal identity. The very value of a life is determined by metrics of class, caste and social acquiescence.

II. Biopolitics and Law

Michel Foucault, amongst others, identified biopower as consisting of 'an explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations'.[12] It supplements disciplinary power and entails the detailed management of the living population through procedures,

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[9] ibid.

[10] Rajesh Kumar Thakur, 'Video of Toddler Trying to Wake up Dead Mother at Bihar Railway Station Sparks Outrage', *The Indian Express* (Patna) 28 May 2020.

[11] Government of India, Ministry of Home Affairs, Order No 40-3/2020-DM-I(A) (24 March 2020).

[12] Michel Foucault, *The History of Sexuality: An Introduction*, vol 1 (Robert Hurley tr, Pantheon Books 1978) 140.

relations, or biological features of the population. These features include statistical analysis and data on fertility, morbidity, deaths, and birth rates. Foucault argues that populations are governed through attention to 'propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions that can cause these to vary'. They are subject to governmental interventions, regulations, discipline, and control based on this data.[13] These regulatory mechanisms include public health practices.

Biopolitics, a derivative of biopower, focuses on the population and is a technology of power that seeks 'to ensure, sustain, and multiply life, to put this life in order'.[14] Although Foucault describes this as a modern form of power, the biopolitics of the population was integral to the governance of native and black bodies, as well as lives in the context of the colonial encounter and the slave trade.[15] These forms of power continue to inform the postcolonial present. Biopolitical power brings life into the political order, simultaneously optimising the biological capacities of the population. It does this while also disciplining the human body for the state's ends, including managing and directing the conduct of individuals or groups. It is prevalent in so-called normal as well as exceptional (read pandemic) times, and the state is partly constituted by these technologies of governance. The population is subjugated to technologies of control disseminated through a host of mechanisms, including health care systems, the census, and identity cards. These mechanisms can function in ordinary and invisible ways, remaining unnoticed. In some parts of the world, they have become the very fabric of our being.

Biopolitics is about the intimate operations of power that not only govern biological life, including human behaviour and conduct, but also their effects: the lives that count as human and those which do not. In the same way, it is a regime that dictates and produces bodies that become normal and those that do not.[16] Foucault identifies sexuality and race as sites for this normalising endeavour. Sexuality provides the anchor for biopolitics as it operates "*at the juncture of the 'body' and the 'population'*".[17] Race is identified as a specific category mobilised to split the population, whereupon biopolitics functions as a purifying

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[13] ibid 139. See also Michel Foucault, *Society Must Be Defended: Lectures at the College de France, 1975–1976* (David Macey tr, Mauro Bertani and Alessandro Fontana eds, Picador 2003); Michel Foucault, *Security, Territory, and Population: Lectures at the Collège de France, 1977–1978* (Graham Burchell tr, Michel Senellart ed, Picador 2009); Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979* (Graham Burchell tr, Michel Senellart ed, Picador 2010).

[14] Foucault, *History of Sexuality* (n 12) 138. See also, Thomas Lemke, *Biopolitics: An Advanced Introduction* (Eric Frederick Trump tr, New York University Press 2011).

[15] Achille Mbembe, *Necropolitics* (Steven Corcoran tr, Duke University Press 2019); Katherine McKittrick (ed), *Sylvia Wynter: On Being Human as Praxis* (Duke University Press 2015).

[16] Michael Foucault, *Discipline and Punish: The Birth of a Prison,* (Alan Sheridan, tr, Pantheon Books 1991) 333.

[17] Foucault, *History of Sexuality* (n 12) 147.

mechanism— that is, as a technique for excluding that which is viewed as alien or as a contagion.[18] For Foucault, sexuality and racism are important sites for understanding the role of biopolitics in normalising power. For example, the Indian Supreme Court's ostensibly progressive decision extending the benefits of the One Nation One Ration (ONOR) schemes to migrant workers, which include their ability to withdraw rations across the country and not just the place of residence so as to avoid the high prices at Fair Price Shops, only reiterates the biopolitics it claims to redress. Access to ONOR requires mandatory submission of multiple identity documents, ignoring the reality that most of the workers in the unorganised sector do not have any legal identity.[19] The court held that all States are duty-bound to implement the scheme and extend the same to non-natives of the state considering the emergency. The court noted the apathy and lackadaisical attitude of the Ministry of Labour and Employment towards the functioning of various welfare schemes and the inaction regarding registering workers for such schemes. It held that the state should not boast of the effective implementation of schemes to hide the truth of their complacency.[20] Thus, while on paper, it may seem as though the marginalised groups received many protections during the pandemic, their identities were simply commodified for political gain and reduced to fake statistics. The relevance of biopolitics has been extended and analysed in relation to gender, religion, and caste categories.[21] Central to this analysis is how biopolitics—as a productive technology—delineates lives deemed to be of lesser value and thus banishes, incarcerates, excludes, kills, or otherwise diminishes them to protect specific racial, religious, and caste purities that are enabled and allowed to flourish.

The role of law in this configuration of power is extended or attenuated and more nuanced—rather than expelled from this analysis—as some have suggested.[22] In other words, biopower does not displace law—instead, it pushes law back or funnels it into a relational existence with institutional practices, statistics, data, medico-legal discourses, and the regime of identity documents.[23] Biopolitics brings to light the regulation of human behaviour and conduct that may be obscured by traditional juridical optics and also connects us to different histories, subjectivities, and experiences of governance.

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[18] Foucault, *Society Must Be Defended* (n 13) 61–62.

[19] *Bandhua Mukti Morcha v. Union of India* (2022) 13 SCC 504, 4.

[20] ibid.

[21] ibid 239–63. See, for example, Patricia Ticineto Clough and Craig Willse (eds), *Beyond Biopolitics: Essays on the Governance of Life and Death* (Duke University Press 2011); Charu Gupta, *The Gender of Caste: Representing Dalits in Print* (University of Washington Press 2016); Susan Stryker, 'Biopolitics' (2014) 1(1–2) Transgender Studies Quarterly 38.

[22] Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen tr, Stanford University Press 1998); For a response, see Peter Fitzpatrick, 'Bare Sovereignty: Homer Sacer and the Insistence of Law' in Andrew Norris (ed), *Politics, Metaphysics and Death: Essays on Giorgio Agamben's Homo Sace* (Duke University Press 2005) esp 56–59.

[23] Ben Golder and Peter Fitzpatrick, *Foucault's Law* (Routledge 2009) 22-29.

III. Covid Prophylactics

> The chart on the wall of the Chief Medical Officer's room, plotting the latest status of patients' recovery, showed the steepest rise in their average health under my care. Every day, I look for an excuse to visit the room to see the curve inching towards 100%.[24]

Biopolitics in relation to the COVID-19 pandemic exemplifies the crossing over into biological modernity.[25] There are at least two obvious ways in which biopolitical power is displayed. The first is in relation to statistics, data collection, and mapping. The pandemic witnessed a proliferation of graphs, dashboards, and maps that provided viewers with a daily staple of rates of infection, mortality, and morbidity around the globe, the most obvious example being John Hopkins University dashboards.[26]

The second, which is the focus of this essay, is the COVID-19 prophylactics that include measures of containment: working from home, masking, social distancing, self-isolating, frequent handwashing, and guidelines on the management of dead bodies.[27] These measures operated against an existing discriminatory racial, caste, religious, gender, and sexual apparatus and took their toll around the world in different constituencies. Categories were mobilised not only in ways that reproduced hierarchies between different groups but also in the different ways such groups were exposed to death. The biopolitics of COVID measures divided populations into those who were expendable and those who had to be protected and allowed to prosper. Law enforcement mechanisms served the global elites who comprise the populations interpellated in the oft-repeated and tiresome phrase, 'we're all in this together equally'; protected in their self-isolation from those cast as ungovernable subjects or regarded as prone to lawlessness.

These measures beg several important questions: Who or what is the population that is to be protected or saved? What does life mean, and whose lives count? What are the specific colonial stories embedded in these questions of who

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[24] Bedi (n 1) 45.

[25] There have been a panoply of articles, blogs, and debates engaging with Foucault's biopolitics in the context of COVID-19. See, for example, Fernando Castrillón and Thomas Marchevsky (eds), *Coronavirus, Psychoanalysis, and Philosophy: Conversations on Pandemics, Politics and Society* (Routledge 2021); Daniele Lorenzini, 'Biopolitics in the Time of Coronavirus' (2021) 47 Critical Inquiry S40.

[26] Center for Systems Science and Engineering (CSSE), 'COVID-19 Dashboard', (John Hopkins University, Coronavirus Resource Center) <https://coronavirus.jhu.edu/map.html> accessed 23 March 2021.

[27] A sub-set of these measures in India included curfews, public disclosure of the private details of quarantined individuals, and curtailing the mobility of individuals and vehicular traffic. For a detailed discussion, see Gautam Bhatia, 'Coronavirus and the Constitution: Round-up' (*Indian Constitutional Law and Philosophy*, 25 March 2021) <https://indconlawphil.wordpress.com/2021/03/25/coronavirus-and-the-constitution-round-up/> accessed 11 April 2021.

counts and who does not? Collectively, one could say that these measures can be read as framed through the lens of social and political life and death.

Globally, these prophylactic measures inflicted mass casualties—unnecessary casualties—among racial and ethnic minorities in the United Kingdom, indigenous communities in the Amazon, the African American community in the United States, and globally on women, refugees, and migrants.[28] Amongst the most heart-wrenching are the elderly and frail, who were already either isolated in care homes or chronically ill. These groups became the basket of expendables, the 'unwanted accrual' of the population or citizenry, which represented the dark side of biopolitical power.[29]

> As the families of the patients were not by their side, I often saw patients sinking into despair. Many died even before death, seeing others around them die one after the other.[30]

Prior to and during the pandemic, it fell to a disparate range of social justice movements globally to give visibility to these lives—whether in the form of climate change activists in Brazil and elsewhere, 'Black Lives Matter' and 'I Can't Breathe' movements in the US and UK; the anti-Citizenship Amendment Act student protests in India; the Rhodes must fall movements in South Africa, Oxford, and Bristol; trans and gender justice movements globally; as well as caregivers and care workers who demanded that the COVID deaths not be reduced to mere statistics.[31] All of these continued to draw attention to the everyday normative and epistemic violence experienced by each constituency, which was intensified by the COVID-19 prophylactics.

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[28] Don Bambino Geno Tai and others, 'Disproportionate Impact of COVID-19 on Racial and Ethnic Minority Groups in the United States: A 2021 Update' (2022) 9(6) J. Racial Ethn Health Disparities <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8513546/> accessed 17 October 2023; Lucinda Platt, 'Why Ethnic Minorities are Bearing the Brunt of COVID-19 (London School of Economics and Political Science, 9 November 2021) <https://www.lse.ac.uk/research/research-for-the-world/race-equity/why-ethnic-minorities-are-bearing-the-brunt-of-covid-19> accessed 19 October 2023.

[29] Arundhati Roy, 'The Pandemic is a Portal', *Financial Times* (3 April 2020) <https://amp.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> accessed 11 April 2021.

[30] Bedi (n 1) 43.

[31] Opposition to the imposition of COVID-19 measures around the world also took the form of anti-mask, anti- vaccine, and anti-lockdown protests. These were expressed with reference to the discourse of rights to autonomy and choice, as well as the right to assembly. My focus is on the different vulnerabilities that are exacerbated by COVID prophylactics deployed amongst already vulnerable groups.

IV. COVID-19 and the Differently Vulnerable Constituencies in India

> [Bhagu] said he gets up so early so that he could collect dead bodies scattered all over the marketplace and also to help out the residents of his colony, who were too scared of the epidemic to come out, by doing some odd jobs for them.[32]

In India, the differential effects of the COVID-19 measures were evident from the moment of the pronouncement of 'four hours to lockdown'. Governance of the population shifted to excessive management and control, including within the intimate sphere of everyday life through the executive branch's amassing of wide-ranging powers under a series of colonial and postcolonial laws.[33] The national lockdown imposed under the Disaster Management Act, 2005 (**DMA**) enabled the central government 'to take measures for ensuring social distancing so as to prevent the spread of COVID-19'.[34] Zoning and public health regulations from the nineteenth century were invoked to govern, divide, and manage populations in a twenty-first-century pandemic. For example, the Epidemic Diseases Act of 1897 (**EDA**) enabled states to adopt intrusive medical and sanitary measures and, controversially, seal off districts from time to time, coupled with powers under the Indian Penal Code, 1860 (**IPC**) to restrict the movement of the population.[35] The state's power, aggrandised by a panoply of legal power to deal with the disaster, included punishments for disobeying public servants and for so-called malignant acts that are likely to spread infection of any disease dangerous to life. For example, in *Alakh Alok Srivastava v. Union of India*, the court issued vague and ineffective directions for the protection of migrant workers and endorsed the right of the police to take action against them.[36] On 17 April 2020, the Labour and Employment Department of Gujarat issued a government notification exempting all factories from the provisions of the Factories Act, 1948 concerning working hours, intervals for rest, and payment of wages on the grounds of a "public emergency" under Section 5 of the Act. *In Gujarat Mazdoor Sabha v. State of Gujarat*, the court held that financial losses could not be offloaded onto the shoulders of labouring workers by denying them humane working conditions and thus quashed the notifications.[37]

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[32] Bedi (n 1) 44.

[33] These include the Disaster Management Act, 2005 (**DMA**); the Epidemic Diseases Act, 1897 (**EDA**); the Indian Penal Code, 1860 (**IPC**); and various state level Public Health Acts combined with an entire regime of COVID- specific regulations dealing with health and sanitation.

[34] Government of India, National Disaster Management Authority, Order No 1-29/2020-PP (pt II) (24 March 2020).

[35] David Arnold, *Colonizing the Body: State Medicine and Epidemic Disease in Nineteenth-Century India* (University of California Press 1993).

[36] Indian Penal Code, ss 88, 270; *Alakh Alok Srivastava v Union of India* (2021) 19 SCC 689.

[37] *Gujarat Mazdoor Sabha v State of Gujarat* (2020) 10 SCC 459.

However, this case continues to remain an exception among many others that have turned a blind eye to the needs of marginalised groups under the garb of societal protection. In *Small Scale Industrial Manufacturers Assn. v. Union of India,* the court went so far as to hold that no right is absolute and placed the security of the banking sectors at a higher position than that of the financial reliefs promised to migrants and the poor.[38] In one case, it was argued that the detention of migrant workers and preventing them from being with their families violated their fundamental rights. The court, while refusing to entertain the petition, stated that the detention of the migrant workers could not be sustained indefinitely on the grounds that they had not been found guilty of any wrongdoing.[39] Biopolitical power undulates through this restrictive apparatus and web of interlocking decrees, regulations, and orders—inaugurated by the pronouncement of 'four hours to lockdown'—bringing into sharp relief the binaries of humanity/inhumanity and the hierarchy of life or lives. The bodies and lives of *Dalits*, casual workers, trans persons, sex workers, as well as religious and sexual minorities were amongst those rendered socially, politically, and physically invisible or expendable in the immediate aftermath of the lockdown and its accompanying prophylactic regime.[40] In some instances, even after death, death certificates were not issued to family members, depriving them of benefits, albeit limited, that they might be eligible for under various welfare schemes. Trans persons were threatened with eviction and crumbling under increased debts; the elderly were unable to afford healthcare; and tribals were denied access to amenities such as basic food and water. Interventions by some courts promised recourse, but these remained scarce and ineffective exceptions in the larger government framework.[41] These are the lives that are already perceived as embodying disease, contamination, and/or the threat of danger.

A. Labour in the Informal Sector

> Like a thick fog that crawls over and blurs everything in the plains lying at the foot of the Himalayas, the terror of plague had spread all over. Even children in the town shuddered to hear its name.[42]

The most visible of these groups was labour in the informal sector, on whom the COVID-19 pandemic had a disproportionate impact. The image of the child playing with his mother's shroud became a defining image of the effect that these measures had on this segment of the population. Their impact was

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38 *Small Scale Industrial Manufactures Assn. v Union of India* (2021) 8 SCC 511.

39 *Mallikarjuna A. v Govt. of India* 2020 SCC OnLine Kar 3398.

40 There were ad hoc interventions by different courts in an effort to alleviate the harsh impact of these measures on differently vulnerable communities. See, for example, *Mohd. Arif Jameel v Union of India* 2020 SCC OnLine Kar 442 (High Court of Karnataka).

41 ibid.

42 Bedi (n 1) 43.

not in terms of immediate contamination by the virus, which was anticipated but did not necessarily materialise, but rather in terms of instant job losses and death resulting from the complete invisibility of this group, which accompanied the 'four hours to lockdown' pronouncement. We witnessed the long march of swathes of humanity captured in media and print images, struggling to return to their homes, initially almost entirely at their own expense and through their own networks.[43] They were not only seeking to get home but also fleeing from the threat of quarantine.[44]

The plague was deadly, but the quarantine was even deadlier. In fact, people were less tormented by the plague than by the fear of the quarantine.[45]

There was no plan for those whose lives had not been recognised as lives. The social distancing measures simply aggravated an already egregious prejudice that prevails and is embedded within the existing stratified social structure. For example, the lack of adequate PPE for *Dalit* sanitation workers, whose work involved cleaning and maintaining a virus-free environment, was not a mere oversight.[46] The newly implemented social distancing measures simply heightened and enhanced upper-caste prejudice and the practice of untouchability. This led to such workers being viewed as vectors of contamination rather than protectors from the contaminant or those entitled to be protected.

> Bhagu would cover his face with his turban cloth and serve people with great devotion. His knowledge was rather limited, but he advised people, like an expert, how to protect themselves from the disease from his own experience. He would tell them to maintain general cleanliness, sprinkle lime powder and stay indoors.[47]

In addition, the national campaign for *Dalit* human rights has estimated that 90 per cent of workers in the informal economy—i.e., approximately 140 million daily wage workers— feared falling into deeper poverty as a result of the pandemic-related measures, as well as a lack of measures.[48] Biopolitics became a

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[43] Nilanjana Bhowmick, '"They Treat Us Like Stray Dogs": Migrant Workers Flee India's Cities', *National Geographic* (28 May 2020) <https://www.nationalgeographic.com/history/article/they-treat-us-like-stray-dogs-migrant-workers-flee-india-cities> accessed 25 March 2021.

[44] Geeta Pandey, 'Coronavirus in India: Migrants Running Away from Quarantine', *BBC News* (15 April 2020) <https://www.bbc.com/news/world-asia-india-52276606> accessed 25 March 2021.

[45] Bedi (n 1) 43.

[46] Shruti Jain, 'Rajasthan: Sanitation Worker Made to Pack COVID-19 Patient's Body Without PPE', *The Wire* (7 May 2020) <https://thewire.in/rights/rajasthan-sanitation-worker-covid-19-patient-body-ppe> accessed 24 October 2023; 'Lack of Protective Gear Raises Scare for Workers in Jaipur', *The Times of India* (6 April 2020) <https://timesofindia.indiatimes.com/city/jaipur/lack-of-protective-gear-raises-scare-for-workers/articleshow/75000322.cms> accessed 24 October 2023.

[47] Bedi (n 1) 44.

[48] Priyali Sur, 'Under India's Caste System, Dalits are Considered Untouchable. The Coronavirus is Intensifying that Slur' *CNN World* (16 April 2020) <https://edition.cnn.com/2020/04/15/asia/

matter of governing mobility and immobility, which exacerbated, for example, police brutality.[49] This violence was captured in another iconic image of the lockdown, where police sprayed disinfectant on workers who broke COVID-19 protocols while attempting to walk home.[50] For the almost 10 million who formed part of the long march of humanity, home was not a block away but rather several hundreds of miles and states away.

The focus in these instances remained on behaviour, where the workers, especially *Dalits,* who have been historically perceived as the embodiment of contamination—came to be viewed during COVID-19 times through the lens of irresponsibility and contamination. The subsequent provisions for special trains and buses were born out of panic that the virus would migrate into the homes of responsible citizens.[51] The hierarchy of caste remained intact— policed, disciplined, and regulated by pre and post-lockdown regulations, which focused on managing potential threats rather than recognising and enabling the humanity of workers.

B. Trans Persons

The trans community's struggle to be conferred full humanity is ongoing despite some of its legal successes.[52] They were granted legal recognition in 2014 through the landmark judgement of *NALSA v. Union of India*, and in 2022, they sought the right to marry as a heterosexual couple under the existing marriage laws of the country.[53] Increased legibility and recognition have been among the

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india-coronavirus-lower-castes-hnk-intl/index.html> accessed 18 October 2023.

[49] Express News Service, 'Gujarat: Probe Ordered into "Police Brutality"' on Dalits During Lockdown' *Indian Express* (30 March 2020) <https://indianexpress.com/article/india/gujarat-police-brutality-on-dalits-during-lockdown-6339140/> accessed 17 October 2023.

[50] 'Migrants in India Sprayed with Disinfectant to Fight Coronavirus' *Al Jazeera*, 30 March 2020) <https://www.aljazeera.com/economy/2020/3/30/migrants-in-india-sprayed-with-disinfectant-to-fight-coronavirus#:~:text=Indian%20health%20workers%20have%20caused,countryside%20risked%20spreading%20the%20coronavirus.> accessed 25 March 2021.

[51] *Problems and Miseries of Migrant Workers, In re* 2021 SCC OnLine SC 454 (Supreme Court of India).

[52] See *National Legal Services Authority v Union of India* (2014) 5 SCC 438, (Supreme Court of India) in contrast to Transgender Persons (Protection of Rights) 2019; See Jayna Kothari, 'Trans Equality in India: Affirmation of the Right to Self-Determination of Gender,' (2020) 13(3) NUJSLR <http://nujslawreview.org/wp-content/uploads/2020/09/13-3-Kothari-Trans-Equality-in-India-Affirmation-of-the-Right-to-Self-Determination-of-Gender.pdf> accessed 24 October 2023; Vikramaditya Sahai, 'The Sexual is Political: Consent and the Transgender Persons (Protection of Rights) Act, 2019' Centre for Law & Policy Research (3 February 2020), <https://clpr.org.in/blog/the-sexual-is-political-consent-and-the-transgender-persons-protection-of-rights-act- 2019/> accessed 11 April 2021; Dipika Jain and Kimberly M Rhoten, 'Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism' (2020) 26(1) Journal of Human Values 30.

[53] *National Legal Services Authority v Union of India* (2014) 5 SCC 430; *Supriyo v Union of India* 2023 SCC OnLine SC 1348.

important outcomes of legal interventions, but these continue to be stalked by the shadows of precarity. Transpersons have been amongst the frontline workers managing infected populations and dispensing care in times of COVID-19.[54]

> I wanted to admire Bhagu's courage, but for a strong surge of emotions which stopped me from doing so. I was somewhat envious of his noble faith and meaningful life.[55]

At the same time, a majority of the community are daily wage earners whose major source of livelihood is from the streets, often through sex work and alms collection. Overall, the lockdown had a different impact on trans persons, not only in denying them a livelihood but also rendering many homeless as they lacked income to pay for basic necessities like rent and utilities. Once again, the COVID-19 prophylactics, such as social distancing, simply exacerbated vulnerability endemic to the daily lived experiences of trans persons. Pre-lockdown, social distancing was part of the 'weft and woof' of their daily lives; however, 'four hours to lockdown' resulted in an exponential distance being created. This distance was felt between gender minority communities and dominant heteronormative communities, including those regarded as legitimate sexualities.

Spatial distancing split apart trans communities, forcing many to return home to their fem-phobic and trans-phobic families, only to be subjected to constant invasive surveillance and violence over any expression or manifestation of their gender non-conforming behaviour. Queer couples were estranged from one another, unable to enter quarantine with partners as their relationships remained socially disapproved and unacknowledged. Sex reassignment surgeries were postponed indefinitely and not recognised under public health regulations as 'essential'.[56]

The post-lockdown relief packages announced by different state governments were ad hoc, based on little data or knowledge of a community that did not feature in the calculus of the biopolitics of a state in the first place, but rather only in terms of their expendability. Quite specifically, many trans persons have no identity cards that certify their gender or even cards for accessing the public distribution scheme. Many do not have any official document that attests to

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[54] Ananya Barua, 'Once Homeless, Tamil Transwoman Blazed a Trail with Her Successful Catering Business' The Better India (9 July 2020) <https://www.thebetterindia.com/232237/COVID-19-coronavirus-lockdown- donation-free-food-trans-india-inspiring-coimbatore-ana79> accessed 11 April 2021; Intifada P Basheer, 'Meet the Only Trans-Woman Heading a Covid Vaccine Centre in India' *Outlook*, (6 March 2021) <https://www.outlookindia.com/website/story/india-news-the-pandemic-had-a-disastrous-impact-on-the-trans- community-dr-aqsa-shaikh/376293> accessed 11 April 2021.

[55] Bedi (n 1) 44.

[56] Government of India, Ministry of Home Affairs, Order No 40-3/2020-DM-I(A) (24 March 2020).

their existence. As a result, they are pushed further into indigence—unable to access public health systems, not only because the system remains fragile but also because of the stigma and prejudice that surrounds the trans body. This body is one that is already ailing: suffering with greater susceptibility to infection, living with compromised immune systems, and for whom even the possibility of a test—let alone a vaccine—remained elusive, if not altogether, unrealisable.

C. The Tablighi Jamaat

From 10–15 March 2020, thousands of members of the Tablighi Jamaat, an Islamic revivalist movement and one of the largest Muslim movements in the world, congregated at an event held at the Nizamuddin Markaz mosque in New Delhi. This group had secured official permission to hold the event. As the event proceedings wound down, the city's government announced that public gatherings would be confined to no more than fifty people in light of the emerging threat of the COVID-19 pandemic. A few days later, this announcement was followed by the 'four hours to lockdown' notification. All international flights were immediately suspended. Over 1,000 participants, Indian citizens and foreign visitors were left stranded at the Markaz as they had nowhere else to go. Panic erupted when several of the movement's participants tested positive for COVID-19, including some who had found their way back to homes in towns and villages across India.

Before the lockdown announcement, the Tablighi Jamaat was a group that barely registered in the public's imagination. The movement emerged from the Deoband School in India, which was founded near Delhi in 1867 and is tied to a reformist strand of Sufism. Post-lockdown, the Tablighi Jamaat was catapulted into the public space, and its followers were characterised as viral threats, reckless, irresponsible, and the central trigger for the spread of the virus. In this context, they were targeted as the embodiment of the virus and branded as 'corona jihad' or 'Tablighi virus'. Many were charged under provisions of the DMA, 2005, IPC, 1860, and EDA, 1897.[57] In some instances, the congregant leaders were charged with attempted murder for holding the event in the Markaz mosque in Delhi despite having secured permission beforehand. In addition, hundreds of foreign attendees were held in quarantine centres or detention centres far away from their families in other countries in appalling conditions for months without charge, even after having tested negative.

[57] This Act was introduced in 1896, under the Bombay Presidency, during the plague. It conferred extraordinary powers on the colonial government which claimed that it needed to be trusted. The subsequent segregation and confinement of various segments of the population to special camps and detention centres, as well as aggressive house-to-house inspections by the plague committees, led to a violent conflagration popularly described as the Kanpur plague riots: Anita Prakash, 'The Plague Riot in Kanpur: Perspectives on Colonial Public Health Policy' (2008) 69 Proceedings of the Indian History Congress 839.

> Quarantine is not a disease but a large space where, during airborne epidemics, sick people are by law kept away from those who are not sick in order to check the spread of the disease.
>
> Although proper arrangements for doctors and nurses were made at the quarantine facilities, patients would not get individual attention because of their large numbers.
>
> … Many times, patients died of the contamination in their surroundings.[58]

Two Tablighi congregants died in quarantine, but not from the virus. They were both diabetic and not provided with adequate food, medicine, and necessary treatment.[59]

> Amidst shivers of pain, he could only utter haltingly, "Do you know what killed him? Not plague, but quarantine, the quarantine killed him!"[60]

The persecution of the Tablighi formed part of the Hindu Right's larger ideological commitment and nationalist agenda to establish India as a Hindu Nation.[61] As part of this agenda, the Muslim is treated as either wholly subordinate to the Hindu majority or presented as an external threat to be subjugated, incarcerated, or expelled from the Indian polity. The Tablighi became the 'scapegoat' for a lockdown that harmed more than it helped, with the measures having little to do with curtailing the spread of the virus and instead producing sharp divides within the population.[62] In casting the Tablighi as the embodiment of the virus, the measures served to further stigmatise Indian citizens who are also Muslims and were already viewed as a threat, contagion, or danger.[63] The biopolitics of power enabled their confinement whilst rendering more elusive—if not

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58 Bedi (n 1) 43.

59 Letter from Zafarul Islam Khan, Chairperson, Delhi Minorities Commission to State Home Ministers and Chief Ministers (24 April 2020). The Chairperson was subsequently charged with sedition, under the IPC, 1860, for a Facebook post by the Delhi police.

60 Bedi (n 1) 45.

61 Ratna Kapur, 'Race-Making, Religion and Rights in the Postcolony: Un-masking the Pathogen in Assembling the Hindu Nation' (2022) 18(4) International Journal of Law in Context 499.

62 *Konan Kodio Ganstone v State of Maharashtra* 2020 SCC OnLine Bom 877: (2020) 3 AIR Bom R (Cri) 90 (Bombay High Court).

63 The persecution of the Tablighi should be understood within the context of the student protests that erupted across the country, prior to the COVID-19 pandemic and national lockdown, against a slew of legal measures introduced by the central government to relegate Muslims in India to the status of second-class citizens. See Abhinav Chandrachud, 'Secularism and the Citizenship Amendment Act' (2020) 4(2) Indian Law Review 138; Mihika Poddar, 'The Citizenship (Amendment) Bill, 2016: International Law on Religion-Based Discrimination and Naturalisation Law' (2018) 2(1) Indian Law Review 108.

impossible—the possibility of social justice for this already stigmatised, alienated constituency.

A year on, dozens of foreigners were still awaiting trial and over a hundred were struggling to return home. The majority of foreigners, desperate to leave India, entered into plea bargains which included a ten-year ban on returning to India. Those who chose to stay and face trial were all acquitted. The prophylactic measures applied to the Indian population relied upon the prevailing hierarchies of lives—measured in part by religion—to produce and multiply vulnerability as a means of governance and, in the process, to turn a population on itself.

D. Death: The Corpse

> Because of the large number of deaths, last rites could only be performed according to the special rules of the quarantine. This meant that hundreds of corpses were dragged into a huge heap like dogs' carcasses and set on fire with petrol, without any religious rites. …
>
> The quarantine led to so many deaths because as soon as the symptoms of the disease appeared, the relatives of the afflicted tried to hide them for fear of being forcibly taken away. The doctors had to inform the authorities about those infected, so people refused to see a doctor. That a household was infected by plague was known only when a dead body left the house amidst heart-rending cries and wails.[64]

Managing the dead was reorganised by COVID-19 prophylactic measures, where closure and grief were differently allocated.[65] Guidelines to manage death and last rites did not manage the fear and stigma that continued to haunt the COVID corpse and those who attended to them. Families refused to collect bodies and perform the last rites, partly due to fear of contracting the disease and experiencing social ostracism. The lack of adequate land to bury the deceased affected Muslims and other communities who intern their dead, thus producing social and community divides. Blanket cremations of dead bodies in some areas, regardless of religious or community affiliations, further polarised communities and populations. Those handling and managing corpses for funerals were attacked and further stigmatised.

This regime for regulating and managing the dead requires a life that is recognised as one and is therefore deserving of dignity in death. Yet, there are those whose lives have never been regarded as lives and, when lost, remain ungrievable.

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[64] Bedi (n 1) 43.

[65] Government of India, Ministry of Health and Family Welfare, 'COVID-19: Guidelines on Dead Body Management' (15 March 2020) <https://www.mohfw.gov.in/pdf/1584423700568_COVID19GuidelinesonDeadbodymanagement.pdf> accessed 12 April 2021.

As Butler states, the differential allocation of grief 'decides what kind of subject is and must be grieved, and which kind of subject must not'.[66] This allocation, in turn, produces and maintains an understanding of who is normatively human and asks, 'What counts as a liveable life and a grievable death?'[67]

V. Conclusion

This essay lays bare the structural and epistemic violence that functions through the iniquitous social stratifications reinforced by COVID-19 measures. During the course of the pandemic, these prophylactics were normalised as appropriate for regulating human behaviour but also, as discussed, for dividing a population against itself. In the process, they obscured or rendered invisible the stratifications that they upheld. For those who are socially and politically excluded, the customary class privileges of social distancing, the expense of masking, and the near impossibility of social isolation exposed how the biopolitics of life and death rendered some lives as expendable or completely invisible, and others as worthy of saving.

Unmasked by the COVID-19 prophylactics and the biopolitical regime that enables them, these problems cannot be solved by improved methods of population census, data collection, more efficient categorisation, or by catering to different constituencies. When biopolitics is already infected by the inhuman, then the question remains: How are those who have never been recognised as human in the first place to be recuperated within this frame? This concern is one of those challenging questions in which we are all implicated, in which our own humanities are at stake as social distancing, self-isolation, and handwashing functioned to extend the gap between those recognised as legible, human and worth saving, and those who either had to justify their humanness or remain uncounted.

> As he congratulated me, Bhagu kept his old broom on the top of a filthy tank nearby and removed his turban cloth to show his face. I was stunned.
>
> "Oh, it's you. Bhagu Bhai!" I could hardly speak. "The world may not know you, Bhagu, but don't worry, I know you. Your Jesus knows you. … May God bless you!"[68]

[66] Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso 2004) xiv.
[67] ibid xiv–xv.
[68] Bedi (n 1) 47.