



# Unfreezing unspent social special-purpose funds for the Covid-19 crisis: Critical reflections from India



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## ABSTRACT

In India, the government launched a US\$22.6 billion financial support package for the poor and marginalized as a result of Covid-19. Approximately US\$ 4.2 billion (INR 310 billion) came from a vast pile of unspent social special-purpose funds. How and why did such a large volume of funds accumulate in the first place, and why did it take a public health emergency to release them? What might be the consequences of their use under such emergency conditions – especially for our understanding of governance and accountability in social welfare provision?

This paper presents a brief analysis of two preliminary case studies of specific social special-purpose funds in India. We rely on a handful of unstructured interviews and informal discussions with subnational government officials, civil society actors, trade union representatives, and local community leaders that began in January 2020, and which were pursued virtually following the lockdown. This is bolstered by analysis of primary documents, including Comptroller and Auditor General of India (CAG) reports, relevant laws, and contemporary press coverage.

We argue that non-disbursement should be understood as an institutional matter, and not only as technical or implementation failure. Moreover, as such funds are likely to mushroom following Covid-19, our findings suggest that policymakers should focus on the institutional design, decision-making and accountability structures for the flow and distribution of Covid funds, rather than merely emphasising their collection.

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## 1. Introduction

In India, poor and vulnerable groups have suffered most from Covid-19 and the policy measures to fight it.<sup>1</sup> Thus, on 26 March 2020, the Indian government announced US\$ 22.6 billion (INR 1.7 trillion) in emergency financial support for poor and marginalized populations – an amount approaching all state spending on social safety net programs in 2016 (INR 1.87 trillion).<sup>2</sup> Approximately US

\$ 4.2 billion (INR 310 billion) were reallocated from unspent social special-purpose funds collected for the benefit of construction workers since 1996.

That these funds were available and put to good use is fortunate, but puzzling. How and why did they accumulate in the first place, and why did it take an emergency to spend them? We focus here on two funds whose unspent balances were mobilised in response to Covid-19: the “building and other construction workers’ welfare cess funds” (BOCW) mentioned above, and “district mineral foundations” (DMF), of which US\$ 3.4–4.7 billion (INR 250–350 billion) was unspent.

We rely on a handful of unstructured interviews and informal discussions with officials, civil society actors, trade unionists, and local community leaders in early-2020; bolstered by analysis of Comptroller and Auditor General of India (CAG) reports, relevant laws, and press coverage. We do not have a counterfactual case of non-mobilisation of unspent funds, for the simple reason that we are endogenous to the mobilisation of BOCW and DMF. These

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<sup>1</sup> Debraj Ray, S Subramanian and Lore Vandewalle, ‘India’s Lockdown’ (Center for Economic Policy Research 2020) 102 <[https://cepr.org/sites/default/files/policy\\_insights/PolicyInsight102.pdf](https://cepr.org/sites/default/files/policy_insights/PolicyInsight102.pdf)>.

<sup>2</sup> P Vaideyanathan Iyer, ‘Rs 1.7 Lakh Crore Covid-19 Package: Many Who Have Been Hit Still Left out, Relief Too Little’ (*The Indian Express*, 27 March 2020) <<https://indianexpress.com/article/explained/coronavirus-relief-package-nirmala-sitharaman-left-out-6333639/>> accessed 23 April 2020; World Bank, *The State of Social Safety Nets 2018* (World Bank 2018) 140.

funds were our case studies for our broader pilot project, which directly stimulated their release at the onset of the pandemic.<sup>3</sup>

## 2. Terminology and cases

“Social special purpose funds” are collected through force of law (e.g. hypothecated taxation), so monies accumulate rapidly. They are held in special purpose legal vehicles (e.g. trusts) for the welfare of specific vulnerable groups, such that the money is ring-fenced, even if unspent during a fiscal period.

The BOCW is meant to provide a range of long-term benefits, including medical care, childcare, and pensions, to largely-unorganized building sector labor. It is raised through a 1% tax on the cost of construction at large building sites, paid by the employer to the relevant regional government. The funds are administered and disbursed by BOCW “Boards”, which are appointed by respective regional governments. The Board is a “body corporate” with equal representation between the state government, employers, and workers. Funds can only be disbursed to workers who have registered with a particular Board. There are approximately 35 million registered construction workers across India (of an estimated 50 million eligible) – although many fewer have renewed their registration or kept it up to date.<sup>4</sup>

By July 2018, only 25.8% of collected funds had been spent.<sup>5</sup> The CAG criticized state governments for their failure to disburse – but with no consequences.<sup>6</sup> The Indian Supreme Court ordered the central government to spend down the funds following a trade union complaint;<sup>7</sup> but the Court's order too had little effect. Following Covid-19, and under civil society pressure, the central government demanded that Boards disburse unspent balances as direct cash transfers to construction workers.

The DMF has been collected from mining companies since 2015 for the benefit of communities affected by mining operations, by way of a 10% royalty on mining proceeds. The total unspent funds amount to INR 250 billion – 350 billion (USD 3.31 billion – 4.63 billion). Constituted as public trusts established at the district level, each DMF is supposed to have a governing body, whose legal form and composition varies across India. Following Covid-19, the central government promulgated regulations allowing local administrators to redirect 30% of the unspent balances towards pandemic relief, irrespective of whether the money is spent on mining-affected communities.

<sup>3</sup> “The Puzzle of Unspent Funds: The Institutional Architecture of Unaccountable Governance”, <<http://p3.snf.ch/project-190372>>

<sup>4</sup> Betwa Sharma, ‘Workers Starve In Lockdown As States Sit On 1000s Of Crores Collected In Their Name’ (*HuffPost India*, 16 April 2020) <[https://www.huffpost.com/entry/migrant-workers-lockdown-coronavirus\\_in\\_5e972e56c5b66c72a06310c4](https://www.huffpost.com/entry/migrant-workers-lockdown-coronavirus_in_5e972e56c5b66c72a06310c4)> accessed 23 April 2020.

<sup>5</sup> Abhivyakti Banerjee and Kashyap Raibagi, ‘Why Construction Workers Missed Government Welfare Benefits For 23 Years |’ (*IndiaSpend*, 20 April 2019) <<https://www.indiaspend.com/why-construction-workers-missed-government-welfare-benefits-for-23-years/>> accessed 23 April 2020.

<sup>6</sup> For example, the CAG report for Delhi (National Capital Territory) for financial year 2014–15 criticizes the Delhi Board for the “idling” of BOCW funds, finding its administration of the funds and registering of eligible workers to be “not acceptable”: Comptroller and Auditor General of India, ‘Report of the Comptroller and Auditor General of India on Social, General and Economic Sectors (Non-Public Sector Undertakings) for the Year Ended 31 March 2015: Government of National Capital Territory of Delhi’ (Comptroller and Auditor General of India 2016) 2 of 2016 101–102 <[https://cag.gov.in/sites/default/files/audit\\_report\\_files/Delhi\\_Non\\_PSU\\_Report\\_2\\_2016.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Delhi_Non_PSU_Report_2_2016.pdf)>. In its 2017–2018 report, the CAG notes that Delhi's BOCW fund utilization between 2009 and 2019 ranged from 0.45% to 38.42%, and a 15% worker registration rate. It again admonishes the Delhi Board, urging it to “ensure optimum utilization of these funds”: Comptroller and Auditor General of India, ‘State Finances Audit Report of the Comptroller and Auditor General of India for the Year Ended 31 March 2018: Government of National Capital Territory of Delhi’ (Comptroller and Auditor General of India 2019) 1 of 2019 10.

<sup>7</sup> *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) Versus Union of India & Ors* [2018] Supreme Court of India CONMT. PET. (C) No. 52/2013 in W.P. (C) No. 318/2006.

## 3. Why do unspent funds exist, and why could they be mobilized against Covid-19?

In India, public authorities usually enforce levies and collect funds as soon as the relevant legislation is passed. Yet it has often taken the same authorities several years to set up the relevant special-purpose vehicles, transfer the funds to them, and identify beneficiaries – never mind spend the collected money. Trusts have been set up in a little over half of the mining-affected districts in one study of four Indian states.<sup>8</sup> No DMF trusts were established in the states of Goa and Odisha by 2019 (even though DMF monies were being collected in each). Many state governments have repeatedly been criticised by the CAG for failing to transfer tens of billions INR of levied funds from government coffers to BOCW accounts.<sup>9</sup> And it was five years after setting up its BOCW board that the state of Uttarakhand registered its first construction worker.

For studies or audits of funds to gain a clear picture of how much is unspent, they not only have to study the special-purpose fund itself. They also have to trace the *flow* of money through the bureaucracy following collection. We, therefore, studied the flow of money through these funds via preliminary discussions with stakeholders, and analyses of CAG reports, laws, and local news sources. Our initial findings emphasise some legal and bureaucratic causes of non-spending:

- (i) Direct and indirect legal barriers to spending. E.g. bureaucrats have pointed to difficulties in identifying or registering people who meet the category of the targeted beneficiaries.
- (ii) The structure of bureaucratic organisation. E.g. the formation of DMF boards has slowed down in part because it is unclear which state-level and local authorities ought to be involved – mining officers, officials with a social policy mandate, the sarpanch (or community leader), etc.
- (iii) Petty legal avoidance. E.g. bureaucrats have dragged their feet in setting up DMF trusts, or officials have placed a high burden of proof onto prospective BOCW beneficiaries to ensure that officials cannot be blamed for the misappropriation of funds.<sup>10</sup>
- (iv) Gross legal avoidance. E.g., political or bureaucratic actors have used the prescriptive rules of the fund, designed to avoid misallocation or corruption, to block spending altogether (as seems to be the case in some of our initial research in Odisha, where some local politicians blocked the spending of DMF funds until election time, for maximum political gain).

The Covid-19 crisis led to sudden executive action aimed at releasing these funds. For example, the federal Minister of Mines issued a direction to regional governments to release unspent DMF funds pursuant to his emergency powers to pursue “any policy matter in the national interest”.<sup>11</sup> The federal Labour and

<sup>8</sup> Center for Science and Environment, ‘District Mineral Foundation (DMF)’ (2017) 17 <<http://www.indiaenvironmentportal.org.in/files/file/District-Mineral-Foundation-DMF-Report.pdf>> accessed 24 April 2019.

<sup>9</sup> See, for example, CAG criticisms of Chhattisgarh, Gujarat, and Madhya Pradesh over financial years 2016–2018: Comptroller and Auditor General of India, ‘Report of the Comptroller and Auditor General of India on State Finances for the Year Ended 31 March 2017: Government of Chhattisgarh’ (Comptroller and Auditor General of India 2018) 1 of 2019 46; Comptroller and Auditor General of India, ‘State Finances Audit Report of the Comptroller and Auditor General of India for the Year Ended 31 March 2018: Government of Gujarat’ (Comptroller and Auditor General of India 2019) 2 of 2019 26; Comptroller and Auditor General of India, ‘State Finances Audit Report of the Comptroller and Auditor General of India for the Year Ended 31 March 2018: Government of Madhya Pradesh’ (Comptroller and Auditor General of India 2019) 1 of 2019 47.

<sup>10</sup> Jatinder Mahal, ‘Punjab Govt Says Aadhaar a Must for Labourers to Avail Benefits’ (*Hindustan Times*, 28 February 2017) <<https://www.hindustantimes.com/punjab/punjab-govt-says-aadhaar-a-must-for-labourers-to-avail-benefits/story-pYJ-hA5HzfX2F56zCgSk7tM.html>> accessed 11 May 2020.

<sup>11</sup> Section 20A, Mines and Minerals (Development and Regulation) Act 1957.

Employment Minister enjoined state-level labour ministries to use their discretionary powers and facilitate the release of the BOCW funds (even though those ministries participate in, but do not control, the Boards that manage the funds; and in the normal course the funds could and should have been used for a range of welfare activities other than cash payments).<sup>12</sup> These executive actions overrode the legal and bureaucratic conditions above – for example, by broadening executive discretion to use the funds: the central government has authorised the District Collector to deploy DMF funds, bypassing bureaucratic bottlenecks.

We neither have the data nor the context yet to assert the *relative* importance of the causes of non-spending that we have identified. However, when combined with the ways in which they have been suspended during Covid-19, we suspect that unspent funds may in part be an *institutional* phenomenon. We make three arguments:

- (1) The social special-purpose vehicles in which these unspent funds are held are **public-private hybrid institutional forms**. These blend very different areas of law and policy – trusts, public administration, corporations, social policy – which have different institutional forms and practices. These may fit together poorly, or produce a great deal of ambiguity in terms of the types of activities they can fund, as well as when, how, for whom and whether money has to be spent. For example, DMFs are *inter alia* both an administrative instrument (established by regulation in furtherance of social policy objectives) and a trust – institutional forms with fundamentally different forms of decision-making and accountability.<sup>13</sup> For instance, when administrators sit on DMF boards, can their decisions on spending (or not) DMF funds be challenged on grounds of maladministration (for example, acting unreasonably), or of breach of trust (for example, self-dealing)? The Indian Supreme Court was unable to effectively compel the executive branch to spend BOCW funds in a timely fashion for exactly these reasons. As the apex court noted, the BOCW is governed by a multi-stakeholder Board, which “is not an administrative body, but is a body corporate”,<sup>14</sup> and thus not subject to judicial review.
- (2) Unspent funds **institutionalise the political contradictions inherent in such institutional hybridity**. Unspent funds are, by definition, the *absence* of a decision. The special-purpose vehicles of the social special-purpose funds we discuss impose no positive duty on functionaries to spend. At the same time, they prevent unspent funds from being reabsorbed into state budget lines – for example, by holding the funds on trust. These vehicles provide significant discretion to their administrators or trustees on whether or not to spend, in order to ensure that the fund’s overall policy aims are met. This is coupled to a series of restrictive provisions on expenditure designed to make it difficult to disburse the money in the name of beneficiary targeting or anti-corruption – for example, requiring construction workers in the informal sector to maintain a registration with the BOCW in order to draw on benefits. Our empirical data on whether fund administrators experience their role in this way is limited. But we observed administrators foot-dragging even when it came to establishing the relevant special-purpose vehicles that would bring the money under their control. Administrators did not seem to find it urgent to get the

money flowing. Furthermore, beneficiary groups tend to be socially vulnerable, under-resourced, and/or otherwise politically marginal. For the BOCW, until the Covid-19 crisis there have been limited efforts on the part of the Boards to actively register eligible construction workers (in spite of repeated chivvying by the CAG). It is thus unclear from where the political pressure to expend, as well as scrutiny of the mode of decision-making and delivery of funds, may come.<sup>15</sup>

- (3) The **emergency use of these funds paradoxically further entrenches these contradictions**. Take the emergency redirection of DMF funds for the general purpose of combating Covid-19. Here, the central government subsumed the interests of mining-affected communities into a narrative of the pursuit of the general good – the definition of which is left to the discretion of the District Collector, the most powerful bureaucrat at the local level. But in doing so, what of the claims of the affected communities that were the designated beneficiaries of these funds, or of their specific hardships that the DMF was meant to remedy? Does the redirection of funds also preclude mining-affected community members from holding officials to account for failing to uphold their interests?

#### 4. Analysis

The emergency use of these funds is clearly not corruption in the sense of direct (mis)appropriation for immediate private gain. Rather, we have pointed to state re-appropriation of funds for politically-pressing ends under emergency conditions. We have also observed one case of indirect appropriation: in the name of fighting Covid-19, the Odisha state government borrowed up to US\$ 1.5 billion (INR 170 billion), at a below-market interest rate, from unspent funds intended to mitigate the environmental effects of mining on local communities.<sup>16</sup>

So framed, there may be political reasons for non-spending. Social special-purpose vehicles provide political recognition to marginalised groups. Their rights and entitlements are not fully realised, but rather transformed into unspent funds that are open to future appropriation. There is also little accountability for any actor who keeps that pot unspent. As such funds are likely to mushroom following Covid-19, our findings suggest that policy-makers should focus on the institutional design and accountability structures for the flow and distribution of Covid funds, as well as their collection.<sup>17</sup>

<sup>15</sup> For a summary, see Ajit Jha, ‘COVID-19 Relief Package’ (2020) 55 Economic and Political Weekly 7.

<sup>16</sup> Meera Mohanty, ‘Odisha to Borrow Rs 12K Crore from CAMPA and OMBADC Funds’ (*The Economic Times*, 21 April 2020) <<https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/odisha-to-borrow-rs-12k-crore-from-campa-and-ombadc-funds/articleshow/75280008.cms>> accessed 25 April 2020. In our ongoing research we explore the possibility that unspent funds could be borrowed in this way under non-emergency conditions, or could even form part of a regular assessment of a state’s creditworthiness as it accesses capital markets.

<sup>17</sup> For example, the new Indian anti-Covid-19 “PM-CARES” fund received approximately US\$ 858 million (INR 65 billion) within its first week of operation. It is run out of the Prime Minister’s office, but structured as a public charitable trust that is able to receive direct philanthropic donations. On this basis, the office claims that the trust is not publicly auditable, nor do the donations have to be disclosed: Priscilla Jebaraj, ‘How Different Is the PM CARES Fund from the PM’s National Relief Fund?’ *The Hindu* (10 May 2020) <<https://www.thehindu.com/news/national/coronavirus-how-different-is-the-pm-cares-fund-from-the-pms-national-relief-fund/article31546287.ece>> accessed 11 May 2020; Vatsal Bhandari, ‘Indian Companies Are Contributing Lavishly to PM-CARES – Even amid Layoffs and Pay Cuts’ (*Scroll.in*, 9 May 2020) <<https://scroll.in/article/961383/indian-companies-are-contributing-lavishly-to-pm-cares-even-amid-layoffs-and-pay-cuts>> accessed 11 May 2020; Sunil Prabhu, ‘PM CARES Fund Won’t Be Checked By Government’s Auditor, Say Sources’ (*NDTV.com*, 24 April 2020) <<https://www.ndtv.com/india-news/coronavirus-pm-cares-fund-wont-be-checked-by-cag-say-sources-2217714>> accessed 25 April 2020.

<sup>12</sup> News Services Division, ‘Govt Issues Advisory to Transfer Funds in Accounts of Construction Workers through DBT Mode’ (*All India Radio*, 25 March 2020) <<http://newsonair.com/Main-News-Details.aspx?id=383792>> accessed 25 April 2020.

<sup>13</sup> Timothy Endicott, ‘Equity and Administrative Behaviour’ in PG Turner (ed), *Equity and Administration* (Cambridge University Press 2016).

<sup>14</sup> National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) *Versus Union of India & Ors.* (n 7) at para 30.

Such a preliminary hypothesis is open to further empirical and comparative study: it fits well within the tradition of fiscal sociology, in which state-society relationships are reconfigured through the public fisc (“[t]he budget is the skeleton of the state stripped of all misleading ideologies”);<sup>18</sup> as well as analyses of the state in times of emergency, in which those same relationships are revealed and reconfigured through the legal and institutional tools used to declare emergencies and facilitate executive action.<sup>19</sup>

### Conflict of interest

The funding sources had no involvement in this research.

Randeria sits on the board of trustees of ‘SETU: Centre for Social Knowledge and Action’, an NGO in Ahmedabad, India with whom we cooperated in the pilot research on which this project builds.

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<sup>18</sup> Joseph A Schumpeter, *The Economics and Sociology of Capitalism* (Richard Swedberg ed, Princeton University Press 1991) 100, citing Goldscheid.

<sup>19</sup> Giorgio Agamben, *The Omnibus Homo Sacer* (Stanford University Press 2017).