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Editorial Perspective

A few words for our esteemed readers ----

We bring to our readers with immense pleasure the June-September issue of 'Dialogue' with a bunch of interesting reading for you. We have continued our efforts maintain usual variety in curating topics. Our focus on young authors have continue even as a few senior authors enrich the issue. We are currently making efforts to achieve an optimal balance which we hope to achieve at the proper time, we believe that some amongst young talents selected would in course emerge as senior scholars and enrich the tradition of serious and original thinking, We request our patrons and readers to share their views as well as suggestions for improving or widening the range and reach of topics.

The current issue begins with an incisive piece on the condition of women inmates in Bihar. The piece raises reveals sensitive findings which require attention of the society at large as also the appropriate authorities of the state Government concerned. The next article raises important legal aspects relating to Assisted Reproductive Technology process that all those planning to undergo the process should be aware. The next piece discusses the arrangements to manage the Kosi River that has great environmental impact. In this context Author talks of factors like 'Policy' and 'Politics'. Problem of the pastoral

Gujjars in Jammu & Kashmir has linguistic of communication due to lack of educational facilities has been highlighted. The next article discussed a livelihood issue in the context of phenomenon of 'Employment Diversification from Farm to Non-Farm Occupations' in rural Assam. In the next piece, the author looks at the phenomena of civil dispute.

We shall meet you again in January 2025 with a new issue,

I have the pleasure of conveying on behalf of the Team of Dialogue,

Season's greetings and a joyous New Year to our patrons, reader, and well-wishers.

P C Haldar

President

Astha Bharti

Employment Diversification from Farm to Non-Farm Occupations: A Study of Rural Assam

*Amiya Sarma**

1. Introduction:

Although agriculture's contribution to India's GDP steadily declined from about 50% in 1951 to below 20% by the end of the twentieth century, the proportion of work force engaged in agriculture declined far too slowly during the same period. However, the occupational shift from farm to non-farm sector gathered momentum since the beginning of the twenty first century. Factors such as relatively lower agricultural income, shrinking employment opportunities in agriculture, growing labour force, fragmented land holding and inability of farmers to cope up with agricultural shocks have been pushing people engaged in agricultural sector to diversify to alternative occupations in other non-farm activities (Barrett, Reardon & Webb, 2001). Apart from such distress factors, some pull factors like relatively brighter prospect of income and employment opportunities have been at work to attract farm population to engage in various non-farm works. Affected by such push and pull factors, people engaged in the agricultural sector either as farmers or agricultural labourers in India are seen to diversify their livelihood activities beyond the farm sector especially during the last couple of decades (Unni, 1998). While some are diversifying within their farm activities, some others are leaving agriculture totally to join in the non-farm sector. Again, some other groups are engaging in both farm and off-farm activities simultaneously. For this group, non-farm activities are the complementary earning sources to their farm income. The 68th round report of the National Sample Survey organization (NSSO), 2014 documents decline in the proportion of

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rural workers in Indian agriculture from 81 per cent to 59 per cent in case of male workers and from 88 per cent to 75 per cent in case of female workers during 1977-78 to 2011-12. Obviously, the workers leaving agriculture has joined various non-farm activities.

The state of Assam in the rather peripheral northeast part of the country has not remained unaffected by the process. The farm sector of the state has been even more distressed and perennially affected by natural calamities like floods and erosions¹. Flood happens to be the recurrent annual hazard faced by the state continuously creating losses to farm output and uncertainty in farming practices. The extent of damage by annual floods can be imagined from the fact that nearly 54 lakh people of Assam have been affected across 30 districts in the flood of 2020 claiming 76 human lives and affecting more than 2.4 lakh hectares of agricultural land (Hindustan Times, 2020).

Concomitantly, numbers of other factors like heavy dependence on monsoon, little modernization and marginal size of land holdings have also been putting stumbling blocks in the development path of the sector. Additionally, population growth has put immense pressure on the already constrained farm sector. All these have aggravated the situation of those engaged in the agricultural sector forcing them to find some alternative income-earning activities beyond agriculture. The 68th round report of NSSO, 2014 reveals that almost 17.2 per cent of per thousand workers in Assam engaged in the farm sector has moved to non-farm sector during 1992-93 to 2011-12. This movement of farm workers to non-farm sectors is more pronounced in the economy of Assam compared to the Indian economy as a whole.

It is now quite evident that the growth of non-farm sector is extremely important to provide employment opportunities to the excess labour force engaged in the farm sector and for the overall economic transformation and development of the state economy of Assam. In this context, the present study documents the movement of workforce from farm to non-farm sector in Assam based on available NSSO data. The broad picture drawn from the NSSO reported data have been complemented with insights gathered from field investigation carried out by the author in eight villages covering four districts of Assam. One very crucial issue addressed in this study is the types of non-farm activities which are mostly adopted by the workers leaving agriculture. Again, the determinants of participation in the non-farm works by the sample households have also been analyzed applying a logistic regression model.

The present paper has been divided into five sections. A brief background and review of existing literature on transition of workforce from farm to non-farm works has been given in section 2. Section 3 describes the types and sources of the data used in the study along with a description of the methods used to analyze the data. The subsequent section discusses the results. The final section concludes the findings.

2. Conceptual Background and Review of Literature:

2.1 Non-farm Sector: Definition:

Any activity outside the farm may be termed as a non-farm activity. Hence, non-farm activities include a diverse and heterogeneous set of activities like handicrafts, mining and quarrying, household and non-household manufacturing, processing, repairing works, construction works, trade, transport and communication, community and personal services (Ranjan, 2006). Lanjouw and Lanjouw (2001) also define the non-farm sector as one which includes all economic activities except agriculture, livestock, fishing and hunting. Because of its vast heterogeneity, it is very difficult to comprehensively identify all the activities under the broad umbrella of non-farm activities. However, Fisher, Mahajan & Singha (1997) have identified 17 different activities that, according to them, constitute 80% of the non-farm activities. They have included sub-components like retail trade, education, public administration, personal services, land transport, restaurants and hotels, medical services and trading and public services under the tertiary sector and textiles, wood, pottery, food, tobacco, metal products, repairs and construction and manufacturing outside the household under the secondary sector. People are generally found to engage in these non-farm works as self employed or wage employed (Rahut, 2006).

2.2 Importance of Non-farm Sector:

The non-farm sector, particularly in the rural areas of the developing economies, was not paid much attention in the past. This is because of the vast heterogeneity of the sector and its largely unnoticed role in the broader development agendas of an economy (Lanjouw & Lanjouw, 2001). However, such perspectives have been changed now and the sector has been increasingly receiving attention as a potential

sector for absorbing growing labour force providing reasonable earning opportunities.

The importance of the emergence of a diversified non-farm sector can be realized from the fact that this sector has the capability of alleviating poverty through generation of employment opportunities with reasonable income (Misra, 2013; Zvyagintsev et al., 2007; Himanshu et al., 2011). Absorbing a significant portion of the growing rural labour force, the rural non-farm sector provides gainful employment to the rural masses thereby helping them to come out of the grip of acute poverty. Realizing the capacity of the non-farm sector in providing gainful employment and alleviating poverty, the government of India, as pointed out by Misra (2013), has undertaken various flagship programmes like Swarnajayanti Gram Swarozgar Yojana (SGSY), Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGA), Jawahar Rozgar Yojana (JRY), National Rural Livelihood Mission (NRLM), etc. to provide employment opportunities especially to the rural poor in different non-farm activities. However, the researcher pointed out that unless initiatives are taken to enhance education and skill of the rural labour force, such policies may not be effective to reduce mass poverty. Therefore, he suggested for designing and implementing education and skill development programmes through which the labour force can be made technically sound for competitively participating in different non-farm activities.

Again, development of the rural non-farm sector is observed to reduce rural-urban migration. As evidence, one may point out Taiwan's endeavour towards decentralization of industrialization that created ample employment opportunities in the rural areas. Consequently, the country envisaged less migration of people from rural to urban areas in search of livelihood (Gopalappa, 2004). Reduction in rural-urban migration reduces distortions in rural economies and minimizes the problems of congestion in the urban centres.

It is noteworthy here is that the non-farm sector particularly in rural India has been predominantly participated by male workers. Participation of labour force in the non-farm activities in India has been increasing since 1970 but participation of male workers has been found higher over the years. Contrarily, participation by female workers has recently been found to decline (Coppard, 2001). This may be due to the fact that while male members have changed their

occupation to non-farm activities, the female members of the families have still been continuing with their traditional agricultural practices.

2.3 Factors influencing Participation in Non-farm Sector:

The factors affecting a household's decision to join the non-farm sector are different across studies. The study by Sharma et al. (2017) in rural Sikkim find factors like average education of the family members of the households, family size, operational holdings, availability of institutional credits and household's asset possession status to significantly influence households participation in the non-farm sector. Zvyagintsev et al. (2007) in their study in Russia find family size, number of pensioners, unemployed members in a family and education as significant factors influencing household's decision to diversify to non-farm activities.

3. Methodology:

3.1 Data:

The secondary data, used in this study, on district-wise status of employment in non-farm activities have been collected from various Statistical Handbooks of Assam and reports of NSSO. However, household level micro data regarding non-farm activities in Assam are not readily available and, therefore, such data have been collected using a multi-stage sampling from four districts of the state. At the first stage, four non-contiguous districts of Barpeta, Nalbari, Dhemaji and Karimganj have been selected. These districts have been taken on the basis of percentage of non-farm workers to total workers. While the two districts of Nalbari (65.23 per cent) and Karimganj (59.57 per cent) have percentage of non-farm workers more than the state figure of almost 51 per cent, as per Statistical Handbook, Assam, 2018, the other two districts of Barpeta (45.85 per cent) and Dhemaji (20.73 per cent) have less non-farm workers than the state figure. Moreover, while the district of Karimganj represents the Barak valley areas of the state, the other three districts represent the Brahmaputra valley areas. Having selected the four districts, one development block from each district has been selected in the second stage and two villages from each selected block have been taken in the next stage. The eight sample villages are: Daukmari and Rupakuchi from Barpeta district, Bartola No.1 and Meruattari from Nalbari district, Uttar Hatipara and Borajan Kachari from Dhemaji district and Khagail and Bazar Bond

from Karimganj district. Finally, depending on the total number of households in the sample villages, 10 to 20 per cent households have been taken randomly as the final sample units. Thus a total of 217 households constitute the sample size for the study.

3.2 Analytical Framework:

The state of employment in non-farm activities in the sample districts has been examined using simple descriptive statistics and graphs.

For analyzing the factors affecting household's decision to join non-farm sector, a Logistic regression model has been used. Application of Logistic regression model has been justified since the dependent variable, participation in non-farm activity, is a dichotomous variable taking value 1 if the household is engaged in any kind of non-farm activity or 0 otherwise.

Explanatory Factors and Variables included in the Model:

Sex of Household Head

It is hypothesized here that sex of the household head affects the household's decision to join non-farm works. NSSO report 2011-12 confirms that male workers outweigh female workers in different non-farm activities in India as well as in the economy of Assam. Hence, it is expected that male headed households would have higher likelihood to engage in non-farm sector. Here a sex dummy is used taking value 1 for male headed households and value 0 for female headed households.

Education of Household Head

Education enhances the skill and prospect of getting employment in various non-farm activities. Education also widens the information base about different non-farm activities and earning possibilities (Kumar et al., 2011). Hence, education of the household head is expected to have a positive influence on a household's decision to join in non-farm sector.

Family Size

A large family with more members in the working age group is more likely to diversify to non-farm activities. Hence, family size is expected to affect participation in non-farm works positively.

Average Age of the Family Members in Working Age group (15-64 years)

Households with more elder members in the working age of 15-64 years may not have the incentive to make a shift in occupation from farm to non-farm works. With increase in age, people may want to continue with the present occupation rather to shift or diversify to other activities. Thus, average age of the family members in working age group is expected to influence employment in non-farm sector negatively.

Per Capita Land Holding

Households with higher per capita land may earn sufficient income from farming and, hence, such households may not have much incentive to shift to non-farm works. Landless households or households with less amount of land holding are generally found to earn their livelihood by joining in some works other than farming. As such, per capita land holding is expected to have a negative association with a household's decision to join in non-farm activities (Kumar et al., 2011).

Economic Status

The economic status of the sample households has been captured here on the basis of the households' possession status of a set of consumer durables. It is hypothesized that higher the percentage of consumer durables possessed by a household, better is the economic position of that household. It is also assumed here is that better economic status of a household enhances its possibility to join in the non-farm sector.

Access to Credit

Starting a work in the non-farm sector requires some investment and, therefore, participation in non-farm sector is positively dependent on availability of credit. To check the influence of credit accessibility on non-farm participation, a dummy variable is used here taking value 1 if a sample household has availed a loan from any sources and value 0 otherwise.

Receipt of Formal Work Training

Work training enhances skill and prospect of employment in non-farm works. Therefore, a training dummy is used taking value 1 if the

members of the sample households have undergone formal work training and value 0 otherwise.

Membership of Social Organizations

Social organizations provide a wider exposure to the members thereby broadening their information base regarding prospect and opportunities of non-farm employment. Thus, families with members of different social organizations like self-help groups, non government organizations, school management committees, etc. are expected to have a higher likelihood to join the non-farm sector. To capture the influence of membership of social organization on non-farm participation, a dummy variable here is used taking value 1 if at least one member of the sample households is a member of any such organization and value 0 otherwise.

The exact model has been specified as:

$$P_i = E(Y = 1|X_i) = \frac{1}{1+e^{-(\beta_1+\beta_2X_i)}} \dots\dots\dots(1)$$

where, P_i is the probability that Y, the dependent variable, takes value 1, X_i represents the vector of independent variables stated above.

Equation (1) is the Logistic distribution function from which the odds ratios in favour of participating in non-farm sector by a household, i.e., the ratio of the probability that a sample household participates in non-farm activities to the probability that it does not, may be formulated as:

$$\frac{P_i}{1-P_i} = \frac{1+e^{(\beta_1+\beta_2X_i)}}{1+e^{-(\beta_1+\beta_2X_i)}} = e^{(\beta_1+\beta_2X_i)} \dots\dots\dots(2)$$

Taking natural log of equation (2), we get the Logit model as:

$$Z_i = \ln\left(\frac{P_i}{1-P_i}\right) = \beta_1 + \beta_2X_i \dots\dots\dots(3)$$

The sign and significance of the Maximum Likelihood estimates of the coefficients (β s) of the independent variables would indicate the influence of the respective variables on the likelihood of the households' participation in non-farm activities. A positive and significant coefficient of an independent variable indicates to a higher likelihood that the household would participate in the non-farm sector with a higher value of that variable. Contrarily, a negative and significant coefficient of an independent variable would suggest that with higher

value of that particular variable, the likelihood of the households' to participate in non-farm activities would fall, i.e., likelihood to continue with the farm sector would increase.

Table 1 provides the expected signs of these independent variables.

Table 1: Independent Variables with Expected Signs of Coefficients

Sl.Variable No.	Expected Sign of Coefficients
1. Sex of Household Head (dummy) (Male=1, Female=0)	+
2. Education of Household Head	+
3. Family Size	+
4. Average Age of the Family Members in Working Age Group	-
5. Per Capita Land Holding	-
6. Economic Status	+
7. Access to Credit(dummy) (Yes=1, No=0)	+
8. Receipt of formal work training (dummy) (Yes=1, No=0)	+
9. Membership of Social Organizations (dummy) (Yes=1, No=0)	+

4. Results and Discussion:

4.1 Farm and Non-farm Employment in Assam:

As mentioned above, Indian economy as well as the state economy of Assam has experienced a movement of farm workers to various non-farm activities. During 1993-94 to 2011-12, almost 17.2 per cent farm workers in rural Assam have moved to the non-farm sector. In case of urban Assam, although a reverse trend of movement of workers from non-farm to farm sector is visible during the same period, this trend is quite temporary and very negligible. Overall, the entire economy of Assam has witnessed a transition in its economic structure through diversification of employment from agricultural sector to other off-farm activities over the decades (see table 2).

Similar movement of workers is also observed in the Indian economy as a whole. Usually employed farm workers per 1000 population in both rural and urban India are found to leave agriculture to join in the non-farm sector during 1993-94 to 2011-12 (see table

2). However, this movement of workers from farm to non-farm sector is more pronounced in case of Assam than in India. This is an indication of comparatively more distressed and less attractive agricultural sector of Assam compared to the agriculture of India as a whole.

Table 2: Usually Working Persons in Non-farm Sector (per 1000 population)

	Rural		urban	
	1993-94	2011-12	1993-94	2011-12
India	216	360	877	934
Assam	208	380	970	956

Source: NSSO (1996, 2014)

Data revealed by NSSO report 2011-12 confirm that the movement of farm workers to non-farm sector is higher in case of male workers than their female counterparts both in India in general as well as in Assam in particular. While 6.2 per cent male workers of Assam are found to move from agriculture during 1999-2000 to 2011-12, this percentage for female workers is only 0.4per cent. The same figures for India are revealed to be 11.9per cent and 10.6per cent for male and female workers respectively during the same decade. This indicates to the fact that while male workers are leaving agriculture to join in non-farm activities with the expectation of better earning, the female workers are still continuing with their traditional agricultural activities.

Table 3: Percentage Distribution of Usually Working Persons in different Non-farm Activities in Assam (2011-12)

Activity	Rural	Urban
Mining & Quarrying	0.5	4.2
Manufacturing	14.5	9.9
Electricity, Gas & Water Supply	0.0	0.4
Construction	17.4	8.4
Wholesale, Retail Trade, etc.	33.7	35.4
Transport, Storage & Communication	8.7	8.1
Financial, Insurance Services	1.8	5.4
Public Administration, Community Services, etc.	23.4	28.2

Source: NSSO (2014)

Having discussed the occupational shift of workers of Assam from farm to non-farm sector, it is now imperative to examine what

are the significant non-farm activities that are absorbing the workforce leaving agriculture. Among the different non-farm activities, most of the workers find their employment in wholesale and retail trading in Assam in 2011-12. Other non-farm works to which significant numbers of workers have moved from farm sector are manufacturing, construction works, transport, storage and communication related works and activities related to public administration and community services (see table 3).

4.2 Demographic and Socio-economic Profile of the Sample Households:

The facts and figures derived from available secondary data as stated in the above sections establish that a transition of workers from farm to non-farm sector has really occurred in Assam during the last couple of decades. To examine this phenomenon at household level, a sample of 217 households from 8 villages of Assam has been taken. In the following, first a brief background of the sample households has been given and then the status of employment in different non-farm activities by the sample households has been examined. Attempt has also been made to identify the factors influencing household's decision to join in non-farm sector.

4.2.1 Demographic Profile:

As far as the age-sex composition of the population in the sample households is concerned, almost 73 per cent people in the sample households fall in the working age group of 15-64. This indicates to the huge potential of demographic dividend that the sample villages may acquire from the relatively higher working age population. Another advantage of this large percentage of working age people indicates to less dependency ratio of the households in the sample villages. It is, therefore, not surprising that the sample households are capable of diversifying their occupations in both farm and non-farm activities.

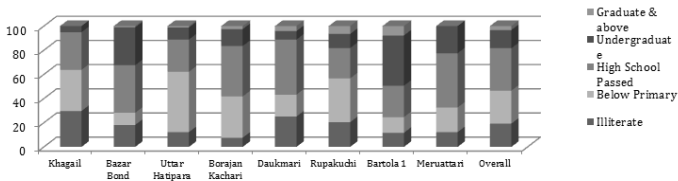
4.2.2 Socio-economic Profile:

Households belonging to the general caste dominate the entire sample where substantial representations are also visible from the other caste categories. While all the sample households of the two villages of Karimganj district belong to scheduled caste (SC), households from one village of Dhemaji district belong to scheduled tribe (ST) and

those of the two villages of Barpeta district belong to general category. Sample households in the other villages represent mix of different caste categories.

As far as the education of family members of the sample households is concerned, nearly 19per centof them are illiterate. Most of the people have education within primary to high school level. Only three per cent of the people in the sample households are with graduate degree and above level of education (see figure 1).

Figure 1: Educational Attainment of People in Sample Villages



Source: Author’s own field study

The economic situation of the sample households may be, to some extent, visualized in terms of their land holdings. Nearly 96per cent sample households are having land not exceeding onehectare (see table 4). Thus majority of the households in the sample villages belong toeconomically weaker section at least in terms of possession of land which is a common feature in most of the villages of Assam.

Table 4: Percentage Distribution of Sample Households in terms of Land Holdings

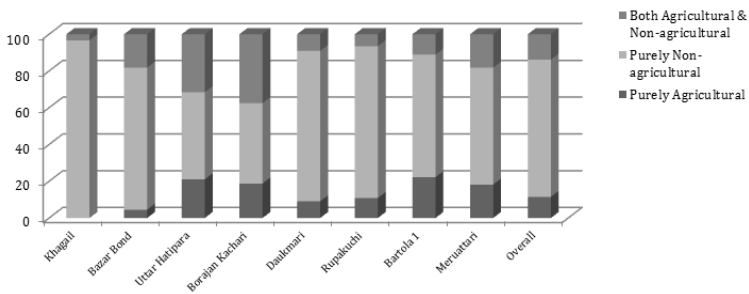
Village	0.00 – 1.00 hectare	1.01 – 2.00 hectare	2.01 – 5.00 hectare
Khagail	100.0	0.0	0.0
Bazar Bond	100.0	0.0	0.0
Uttar Hatipara	100.0	0.0	0.0
BorajanKachari	93.75	6.25	0.0
Daukmari	95.5	2.3	2.2
Rupakuchi	89.1	8.7	2.2
Bartola 1	100.0	0.0	0.0
Meruattari	95.5	4.5	0.0
Overall	95.9	3.2	0.9

Source: Author’s own field study

4.3 Non-farm Activity among Sample Households:

Most of households in the sample villages are found to engage in purely non-farm activities. Among all the sample households, almost 75per cent households are primarily dependent on non-farm activities for earning their livelihood. While only 11per cent households are engaged in purely farm activities, the remaining 14per cent are earning from both farm and non-farm occupations. This clearly indicates how intensely people are now engaged in different non-farm works even in the villages of Assam (see figure 2).

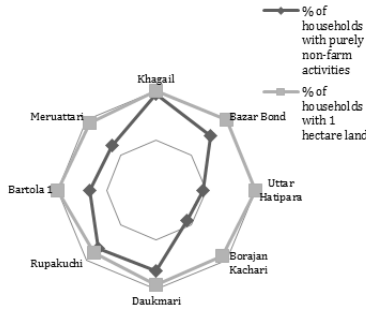
Figure 2: Sample Households by Type of Activity



Source: Author's own field study

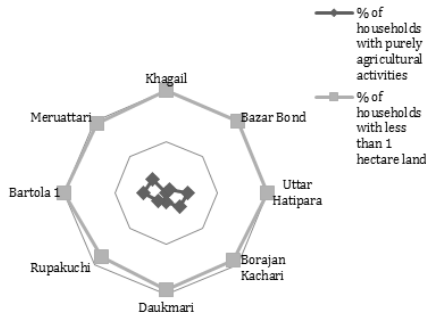
Data found in sample survey reveal the fact that households' decision to join the non-farm activities is not associated with the households' caste, religion and educational attainment of the family members. Households are rather compelled to earn from non-farm activities as more than 90per cent sample households in the sample villages except one are having marginal land holding of less than one hectare. Coupled with this, other associated problems like natural adversities and low productivity also make agricultural income less attractive. In five out of eight sample villages, percentages of people engaged in purely non-farm activities are positively associated with percentages of households with less than one hectare of land (see figure 3). In such households with land less than one hectare, percentages of households engaged in purely agricultural activities are also very less (see figure 4). It may be inferred from here that people in the sample villages are participating in the non-farm sector due to their meagre availability of land.

Figure 3: Relationship between Land Holding & Non-farm Activity



Source: Author's own field study

Figure 4: Relationship between Land Holding & Agricultural Activity

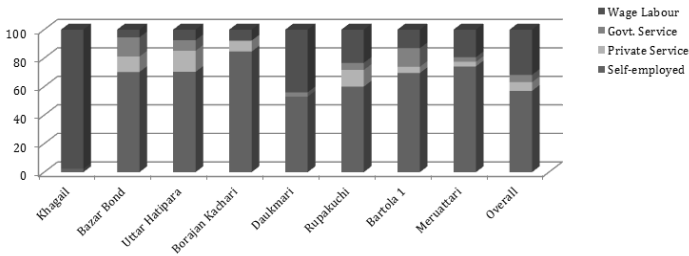


Source: Author's own field study

Among the people working in non-farm activities in the sample households, almost 57 per cent are found to engage as self employed in different ventures like petty trade and household level manufacturing. People are running small shops, tailoring activities, handicraft works under the self-employed category. Another significant part (32 per cent) is working in the non-farm sector as wage labourers. The remaining part is engaged in different private and government

sector jobs but the percentages of people engaged in such activities are very small (see figure 5).

Figure 5: Distribution of People Engaged in Non-Farm Sector by Type of Activities



Source: Author’s own field study

4.4 Factors affecting Participation in Non-farm Activities:

Many factors may affect the decisions of households to participate in non-farm works. While some households join non-farm activities as response to their economic hardships, some other join in such activities lured by the incentive of better earning in the non-farm sector (Ellis, 2000). For the sake of the present study, a set of such hardship and incentive factors have been identified and a logistic regression model has been used to see which factors are significantly persuading the sample households to associate with various non-farm activities (Factors and regression model are already detailed in section 3).

The results of the regression analysis show that households’ decision to participate in non-farm activities are significantly influenced by per capita land holdings by the sample households, economic status and access to credit facilities (see table 5). Per capita land holding has been found to negatively and significantly affect households’ decision to take part in non-farm sector. Households with less per capita land generally have to face economic hardships out of less farm income and are likely to diversify their occupation to non-farm activities. Household’s economic status has positive and significant influence on their participation in the non-farm sector. An economically better household possesses the required capacity and

incentive to join in different non-farm activities. On the other hand, economically less advantageous households may not possess the required capacity to join the non-farm sector and hence stick to agricultural practices. Another significant determinant to positively influence household's decision to engage in non-farm works is access to credit. Starting a non-farm venture generally requires initial investments and, hence, households with access to credit are likely to engage in non-farm works. On the contrary, the households which are not having access to credit facilities are willing to continue with their agricultural practices.

Table 5: Results of Logistic Regression on Participation in Non-farm Activities

Variable	Coefficient	Standard Error	Wald Statistic
Per capita Land Holding	-7.425**	2.345	10.022
Sex of Household Head (dummy)	0.244	0.829	0.046
Education of Household Head	-0.011	0.239	0.002
Family Size	0.044	0.202	0.048
Average Age of Family Members	0.011	0.035	0.097
Economic Status	3.392*	2.056	2.721
Access to Credit (Dummy)	1.655**	0.542	9.312
Receipt of Work Training (Dummy)	0.722	1.212	0.355
Membership in Social Organisation (Dummy)	-0.227	0.503	0.203
Constant	-0.191	2.125	0.008
Nagelkerke R-square	0.226		
Chi-square (df=9)	26.581**		

Data Source: Author's own field study

**&* indicate significance at 5% a 10% respectively

5. Conclusion:

Employment diversification from farm to non-farm activities has been taking place in the Indian economy and also in economy of the state of Assam. The household level micro study in eight sample villages across four districts of Assam has revealed that nearly 90 per cent sample households have either completely left agriculture to engage in various non-farm activities or diversified their livelihood to non-

farm activities while continuing with some farming. Indeed, 75 per cent of these households are engaged in purely non-farm works and rest 15 per cent are engaged in both farm and non-farm activities. This significant occupational shift is mostly because of the push factors as agricultural land holdings have progressively become smaller and the rank of the marginal farmers has swollen over the years. Minimal land holdings coupled with perennial problems like floods and erosions and almost stagnant productivity have kept agricultural income at the margin compelling people engaged in the farm sector of Assam to live at the subsistence level. Consequently, agricultural families eventually have started to get employed in different non-farm activities.

One striking feature of the non-farm engagement of workers in the sample villages is that more than 50 per cent workers have been running their own non-farm ventures and introduced themselves to be self-employed there. This indicates that a self-employment work culture has been in vogue in the state of Assam which is a positive feature for the economy. Here, the state has a role to create an ecosystem where the people coming out of the farm sector may establish themselves as successful entrepreneurs. It is obvious that participation in non-farm sector requires development of skills and it is equally true that workers develop skill through learning by doing once they are engaged in a specific activity. But this process of developing skills may take long time and, hence, the state may come forward to conduct various skill development programmes thereby enhancing skill of the workers and making them more employable and productive. To the ease of the people of Assam, the state government has already taken steps under the '*Kaushal Bikash Yojana*' to train youths on various non-farm works.

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(Footnotes)

- ²⁰⁷ River bank erosion by the two major rivers of Assam, Brahmaputra and Barak, along with their tributaries has been estimated to be more than 4.27 lakh hectares since 1950 which is approximately 7.40 per cent of the total area of the state. The average annual loss of land due to bank erosion is nearly 8000 hectare (Government of Assam, 2020)

Legal Regulation of Assisted Reproductive Technology in India: Some Reflections

Dr. Monica Chaudhary*

I. Introduction

The human desire to procreate and have one's own biological children often faces the hurdles of infertility. According to the World Health Organisation (WHO), infertility is "a disease of the male or female reproductive system defined by the failure to achieve a pregnancy after 12 months or more of regular unprotected sexual intercourse".¹ According to a recent WHO Report based on data from 1990 to 2021, "approximately one in six people have experienced infertility at some stage in their lives, globally".² In India, data from the National Family Health Survey-5 (NFHS-5, 2019-21) suggests increasing prevalence of infertility, though accurate data on the issue is not available.³

Infertility can be classified as 'functional' or 'structural'. Functional infertility relates to the biological inability to reproduce due to medical reasons like "having a low sperm count, having no viable eggs, or being unable to carry a baby to term".⁴ On the other hand, structural infertility relates to the situation of individuals like celibate men and women or same-sex couples, who cannot reproduce without the biological assistance of another party.⁵ Couples or individuals facing functional or structural infertility can use Assisted Reproductive Technology (hereinafter ART), including surrogacy, to overcome the impediments they face in reproduction. However, the growth and use of ART has also been marked by various social, moral, ethical, medical and legal conundrums throughout the world, which has necessitated legal intervention in various jurisdictions.

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India has also recently enacted two new laws- the Assisted Reproductive Technology (Regulation) Act, 2021 (hereinafter ART Act) and the Surrogacy (Regulation) Act, 2021 (hereinafter SR Act) to regulate the use of ART in India. Both the Acts came into force on January 25, 2022 and are supplemented by the Assisted Reproductive Technology (Regulation) Rules, 2022 (hereinafter ART Rules) and the Surrogacy (Regulation) Rules, 2022, respectively.

The ART Act is meant *inter alia* for “the regulation and supervision of ART clinics and banks” and to prevent misuse and to ensure “safe and ethical practice” of ART.⁶ The SR Act aims to constitute ART and Surrogacy Boards at the National and State Level and appoint “appropriate authorities for regulation of the practice and process of surrogacy”.⁷ The two Acts have to be read in conjunction.

This paper critically analyses the basic definitions and the regulatory framework under the ART Act and the SR Act. The legislative history of the two Acts is briefly traced, in order to contextualise the current legislations. Thereafter, an attempt is made to critically analyse the key provisions under the two Acts, in order to identify the lacunae that made them prone to legal challenges, immediately after they came into force.⁸ The main issues that have come up before the Courts so far, and the approach of the state towards them is also analysed, in order to understand the impact of the legislations and highlight the challenges in their effective implementation.

II. Meaning of ART

ART includes “all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman”⁹ Thus, ART includes well known techniques like in vitro fertilization (IVF), in which “eggs are removed from a woman’s ovaries and combined with a man’s sperm in a petri-dish and the resulting embryos are then implanted in a woman’s uterus”.¹⁰ Embryos can also be frozen (cryo-preservation) for a future transfer. Artificial insemination, which involves introduction of fresh or frozen semen into the vaginal cavity, is another form of ART.¹¹ Gamete intrafallopian transfer (GIFT) which “involves placing ova and concentrated sperm in the fallopian tube” and zygote intrafallopian transfer (ZIFT) which utilises IVF and the resulting zygote is placed in the fallopian tube are other forms of ART.¹²

ART procedures sometimes involve the use of donor gametes or donated embryos. Donor gametes may be used where they are not produced by the intending parent(s) or to prevent inheritance of a genetic disease from the intending parent(s).¹³ The ART Act contains provisions relating to 'gamete donors'¹⁴ as well as 'patients' who seek treatment for infertility.¹⁵

III. Surrogacy- A Type of ART

Surrogacy is an arrangement where a woman (known as the surrogate mother) agrees to carry to term a baby for another individual or couple (known as the intending/commissioning parent/couple).¹⁶ Surrogacy is often referred to as a form of ART, though some authors also view it as a social arrangement between people, which is discussed in the context of ARTs, since surrogacy arrangements may involve use of techniques like artificial insemination or IVF.¹⁷ Surrogacy can be 'traditional' (also known as genetic) or 'gestational'.¹⁸ In traditional surrogacy, the surrogate carries and gives birth to a child that was created using her own egg, fertilised with the sperm of the intending father or a third party donor through techniques like artificial insemination.¹⁹ So, in traditional surrogacy, the surrogate mother has a genetic link to the child which can create legal, emotional and social challenges when the child has to be handed over to the intending parent(s). On the other hand, in gestational surrogacy, techniques like IVF are used to create an embryo in the laboratory, using the egg and sperm of the intending parents, or a donor's egg or sperm, and the embryo is then implanted in the uterus of the surrogate mother.²⁰ In gestational surrogacy, the surrogate does not have a genetic link with the child. The SR Act only allows gestational surrogacy.²¹ Women with no uterus, or with other health conditions that prevent them from carrying a pregnancy can beget a child by availing the services of a gestational surrogate.

A surrogacy arrangement may be 'commercial' or 'altruistic'. Commercial surrogacy involves payment, in cash or kind, for surrogacy or related services.²² On the other hand, in altruistic surrogacy, no compensation is paid to the surrogate mother, except the necessary expenses including medical expenditure and insurance coverage.²³ The SR Act allows only altruistic surrogacy.²⁴ Commercial surrogacy is not only prohibited under the Act,²⁵ but is a criminal offence punishable with a maximum prison sentence of ten years and fine up to ten lakh rupees.²⁶

IV. Legislative History of the ART Act and the SR Act

The world's first two IVF babies were born in Great Britain and India in 1978, just two months apart.²⁷ Thereafter, there was rapid growth and advancements in ART globally. In India, availability of medical expertise for ART at a lower cost and access to poor women, who were willing to be surrogate mothers in order to improve their financial condition, also spurred reproductive tourism by foreigners, especially since the 1990s. Consequently, by the first decade of the 21st Century, surrogacy in India had become a multi-billion dollar 'industry' which was legally unregulated. Simultaneously, concerns were also being raised about the exploitative practices developing the field, especially *vis-a-vis* the surrogate mother and the child born through surrogacy.²⁸

The first attempt at regulation of surrogacy in India was made in 2002, when the Indian Council of Medical Research (ICMR) stepped in and drafted "the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India" which were approved by the Ministry of Health and Family Welfare in 2005. These guidelines focused mostly on the medical fraternity involved in ARTs. Later, the ICMR also drafted the Assisted Reproductive Technology (Regulation) Bill in 2008, and reviewed and redrafted it in 2010 and 2014, but these Bills were never passed as legislations.²⁹

Around this time, some cases involving foreign nationals as commissioning parents for surrogacy in India also highlighted some complex issues regarding the impact of matrimonial discord between the commissioning parents on the surrogacy agreement³⁰ and the issue of citizenship of a child born through gestational surrogacy to an Indian surrogate mother, through use of an egg of an anonymous Indian donor, and where the commissioning parents belonged to a country where surrogacy was not legally recognised.³¹ The judgments in these cases recognised the legality of commercial surrogacy arrangements in India, in absence of any legal prohibition. However, they also highlighted the need for comprehensive legislation in the area.³²

Noticing the developments, the Law Commission of India (hereinafter LC) also examined the issue *suo moto* and gave its 228th Report on the issue in 2009.³³ The LC recognised surrogacy as a "supreme saviour" for infertile couples.³⁴ However, it recommended

that commercial surrogacy should be banned and only altruistic surrogacy should be legally permitted,³⁵ with a provision for “reimbursement of all reasonable expenses”³⁶ and “life insurance cover for the surrogate mother”³⁷ in the surrogacy contract. Other significant recommendations of the LC included the recognition of the right to privacy of the donor and the surrogate mother”,³⁸ the prohibition of sex-selective surrogacy,³⁹ the recognition of the surrogate child as the legitimate child of the commissioning parent(s), without requiring adoption or any declaration.⁴⁰ The LC opined that the complexity of the legal issues relating to surrogacy necessitated a comprehensive legislation to address them.⁴¹ The LC was further of the view that in a surrogacy agreement by a couple, at least one of the intending parent should be a donor as well, because “the bond of love and affection with a child primarily emanates from biological relationship” and reduces the chances of child-abuse.⁴² The LC emphasised the importance of a genetic link to the child even in cases where the intending parent was a single man or woman, and recommended that they should either use their own gametes in a surrogacy arrangement, or they should adopt a child instead.⁴³

Between 2012-15, the focus of various guidelines issued by the Ministries of Home Affairs and Commerce and Department of Health Research was to check the misuse of surrogacy services by foreign nationals.⁴⁴ These Guidelines initially tried to limit availability of surrogacy services in India to “heterosexual married foreign couples with a marriage subsisting for two years or more for commissioning surrogacy in India, provided they came on a medical (and not tourist) visa to India and surrogacy was recognised in their country”.⁴⁵ Thus, single individuals and same sex couples, who were foreign nationals, were excluded from commissioning surrogacy in India. In February, 2014 it was clarified that Overseas Citizen of India (OCI) or Person of Indian Origin (PIO) cardholders coming to India for commissioning surrogacy should also have been duly married for at least two years, but they did not require a separate medical visa for the same. However, on arrival in India and before commissioning surrogacy, they were required to obtain a special permission from the Foreigners Regional Registration Office (FRRO)/Foreigners Registration Office (FRO) concerned. An additional requirement was legal recognition of surrogacy in their country of residence.⁴⁶ In both these guidelines, it was specified that the surrogacy treatment could only be received at

ART clinics recognised by the ICMR and the surrogacy agreement had to be duly notarised. However, both the earlier letters were withdrawn in 2015 and it was directed that no visa/permission should be issued by the Indian Missions/posts to foreign nationals/OCIs intending to visit India for commissioning surrogacy.⁴⁷ The Ministry of Commerce also prohibited the import of human embryos, except for the purpose of research.⁴⁸

The next important step was the introduction of the Surrogacy (Regulation) Bill, 2016 (hereinafter 2016 Bill) in the Lok Sabha on November 21, 2016. The Bill was referred to a Parliamentary Standing Committee which submitted its Report on August 10, 2017 (hereinafter PSCR, 2017) which recommended that the provision for altruistic surrogacy in the 2016 Bill be replaced with “compensated surrogacy”.⁴⁹ The PSCR, 2017 also viewed the requirement that the surrogate should be a close relative of the intending parent(s) as “non-pragmatic and unworkable” with the potential to be “more exploitative than commercial surrogacy”⁵⁰ and recommended its removal to allow both related and unrelated women to be surrogates.⁵¹ Recognising the long term health risks for the surrogate mothers, the PSCR, 2017 recommended a comprehensive insurance cover for the surrogate mother for one year from the date of start of the surrogacy procedure and thereafter, “for six years from date of confirmation of pregnancy even if there is no take home baby”.⁵² The PSCR, 2017 also recommended social security insurance for the surrogate child in case of accidental death of the commissioning parents or their divorce during the surrogacy process.⁵³

The 2016 Bill limited the option of surrogacy to heterosexual married Indian couples only. The PSCR, 2017 recommended its extension to live in couples, divorced women and widows also,⁵⁴ and incorporation of provisions relating to gamete donors in the Bill.⁵⁵ Another significant recommendation in the PSCR, 2017 was that PIOs, NRIs and OCIs should be allowed to avail surrogacy services in India, but not foreigners.⁵⁶ Since surrogacy services were generally being offered at ART clinics only, the PSCR, 2017 recommended that an ART Regulation Bill should be introduced in Parliament before the Surrogacy Bill, after consulting the concerned stakeholders.⁵⁷ Despite these extensive recommendations, the 2016 Bill was passed by the

Lok Sabha on December 19, 2018 without any substantial amendments. The Bill lapsed due to the adjournment *sine die* of the Parliament session.

A similar Surrogacy (Regulation) Bill, 2019 (hereinafter SR Bill, 2019) was introduced in the 17th Lok Sabha on July 15, 2019 and passed by it on August 05, 2019. The Bill was moved before the Rajya Sabha on November 06, 2019 for consideration and was referred to the Rajya Sabha Select Committee (hereinafter RSSC) on November 21, 2019. The RSSC gave its Report on February 05, 2020,⁵⁸ in which it reiterated the recommendation that the ART Bill should be brought before the SR Bill, 2019 so that all the highly technical and medical aspects could be properly addressed in the SR Bill, 2019.⁵⁹ The RSSC also recommended that the National and State Boards constituted for regulation of surrogacy as proposed in the SR Bill, 2019 should also act as the Boards for regulation of ART.⁶⁰ Adopting a view different from PSCR, 2017, the RSSC opined that both commercial and compensatory surrogacy carried the risk of exploitation and commodification of the maternal instinct, and recommended altruistic surrogacy instead.⁶¹ After the recommendations made by the RSSC, widows and divorced women were included in the ambit of the SR Bill, 2019,⁶² which was approved by the Union Cabinet as the Surrogacy (Regulation) Bill, 2020. The Bill was passed by the Rajya Sabha on December 8, 2021 and the Lok Sabha on December 17, 2021 as the SR Act, 2021.

As recommended by the RSSC on the SR Bill 2019, before the passage of the SR Act, 2021, the ART (Regulation) Bill, 2020 was introduced in the Lok Sabha on September 14, 2020. This Bill was referred to the Department Related Parliamentary Standing Committee on Health and Family Welfare on October 3, 2020, which gave its Report on March 19, 2021⁶³ and the ART Bill was passed by the Lok Sabha and the Rajya Sabha on December 1, 2021 and December 08, 2021 respectively. Both the SR Act and the ART Act came into force on January 25, 2022.

V. Regulatory System Under the Two Acts

The ART Act and the SR Act provide for the constitution of a common National Assisted Reproductive Technology and Surrogacy Registry (hereinafter National Registry).⁶⁴ All banks and clinics providing ART services (including surrogacy) have to be registered in the National

Registry.⁶⁵ The ART banks have been made responsible for collection and storage of gametes and embryos and supply of gametes to ART clinics or their patients.⁶⁶ The banks and clinics have a legal duty to ensure that the patients and the donors who avail ART procedures are eligible and make an informed decision after proper counselling about the ART procedures and the rights of the child to be born after ART.⁶⁷

Information about the patients, donors and the procedures undertaken along with complications, if any, has to be periodically submitted by all registered banks and clinics to the National Registry.⁶⁸ All ART clinics and banks have a legal duty to maintain a record of the donors' gametes and embryos, whether used or unused and the manner in which they are used and the information relating to the patients' progress as well as the donors has to be shared with the National Registry in a time bound manner.⁶⁹ The National Registry is supposed "to act as a central database for the details of ART clinics and banks in the country including the services provided by them, their outcome and other relevant information."⁷⁰

The SR Act provides for constitution of a National Assisted Reproductive Technology and Surrogacy Board⁷¹ (hereinafter National Board) for the purpose of the SR Act and the ART Act. The National Board is meant *inter alia* to advise the Central Government on policy matters relating to the ART and to review and monitor the implementation of the two Acts.⁷² The National Registry has to provide the data to the National Board to facilitate the making of policies, guidelines and research by the Boards.⁷³

At the State Level, "State Assisted Reproductive Technology and Surrogacy Boards" have been set up to coordinate enforcement of the policies and guidelines for ART as per the recommendations, policies, and regulations of the National Board.⁷⁴

VI. Who can avail ART?

Under the ART Act, ART services can be provided to two categories of persons:

- (i) An infertile married couple (known as the "commissioning couple") with an inability to conceive after one year of unprotected coitus, or having a medical condition that prevents conception.⁷⁵ For availing ART services, the age of the wife must be between 21 and 50 years and the age of the husband must be between 21 and 55 years.⁷⁶

- (ii) 'Any woman' between 21 and 50 years of age, irrespective of marital status.⁷⁷

VII. Who can be Gamete Donors?

The ART Act permits only men between 21 to 55 years of age and women between 23 and 35 years of age to donate their sperms and eggs, respectively.⁷⁸ ART banks registered under the ART Act operate as semen and oocyte banks.⁷⁹ They screen the gamete donors for the prescribed sexually transmitted and communicable diseases,⁸⁰ and register the sperm donor and cryopreserve the semen, which may be later provided to ART clinics for fertility treatments.⁸¹ The Banks also register and screen oocyte donors.⁸² Since the retrieval of oocytes is an invasive technique with an impact on the donor's health, oocytes are retrieved in an ART clinic. A woman can donate oocytes only once in her life and not more than seven oocytes can be retrieved from one donor.⁸³ The parties seeking ART have to provide insurance coverage for a period of twelve months in favour of the oocyte donor.⁸⁴ ART clinics cannot offer to provide a child of a pre-determined sex.⁸⁵ The ART Act also provides for pre-implantation genetic testing to check for genetic diseases before the embryo implantation.⁸⁶

The ART banks have to maintain the data of all the donors and regularly update the National Registry with the same.⁸⁷ Anonymity of the donors has to be maintained by the Banks and the donors have to also sign consent forms stating that they will not contact the recipient or the child born through the donated gamete and will have no legal rights on the child.⁸⁸ The child born through ART is "deemed to be the biological child of the commissioning couple" with all legal entitlements of a naturally born child.⁸⁹ Interestingly, this section only uses the phrase 'commissioning couple' and not 'woman'. A donor relinquishes all parental rights over the child born from his or her gamete.⁹⁰ The significance of this clear enunciation of the law is highlighted in *Shailja Nitin Mishra v. Nitin Kumar Mishra*,⁹¹ a case that highlights the social, moral, ethical and emotional dilemmas that can arise due to the involvement of a close relative as a donor (or surrogate). In this case, the petitioner wife (W) and her husband (H) could not conceive naturally. So, W's sister (D) who was married and had a daughter, volunteered to be the egg donor for a child to be born through an anonymous surrogate. The egg donation and implantation was done in December 2018. Four months later, D met with an accident

in April 2019 in which she was seriously injured and her daughter and husband died, which pushed D into depression. Meanwhile, the anonymous surrogate gave birth to twin girls on August 25, 2019. After some time, D started to live with H, along with the twin daughters, who were not even two years old at the time and they slowly started recognising D as their mother. Due to some seeming marital discord between W and H, for which court proceedings were also initiated, W had to approach the Courts to get visitation rights and access to her daughters who were five years old by then. Granting W the visitation rights, pending her custody application, Milind Jadhav, J. of the Bombay High Court dismissed D's argument that as the egg donor she was the biological mother of the twins. According to the learned judge, as per the ICMR's "National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005", applicable to this case, as well as the ART and the SR Acts that had subsequently been enacted "a child born through ART is deemed to be a biological child of the commissioning couple and a gamete donor relinquishes all parental rights over the child born from his or her gamete".⁹²

Written, informed consent of all the parties is required for ART procedures under the Act.⁹³ Donor gametes and embryos can be stored for a maximum of 10 years after which they can be allowed to perish or be donated to a research organisation with the consent of the involved parties.⁹⁴ However, for cancer patients undergoing treatment, the gametes can be preserved for over 10 years with permission from the National Board.⁹⁵

The ART Act lays down ethical guidelines that do not permit placing of more than three oocytes or embryos in the uterus of a woman during the treatment cycle, or treatment of a woman with gametes or embryos derived from more than one man or woman during any one treatment cycle or mixing of semen from two individuals for the ART procedures, or splitting of embryos for twinning to increase the number of available embryos.⁹⁶ The Banks cannot supply gametes of a single donor to more than one commissioning couple.⁹⁷

VIII. Who can avail surrogacy?

Under the SR Act, surrogacy services can be availed of by the following two categories of persons:

- (i) A legally married heterosexual couple of Indian origin (known as "intending couple")⁹⁸ with "a medical indication

necessitating gestational surrogacy”.⁹⁹ For the intending couple, the age of the wife should be between 23 to 50 years and the age of the husband should be between 26 to 55 years.¹⁰⁰ If the couple already has a surviving child—whether biological, adopted or born through surrogacy, they cannot avail surrogacy services, unless such child suffers from mental or physical disability, or a life threatening disorder or incurable fatal illness.¹⁰¹

- (ii) A widowed or divorced Indian woman (known as “intending woman”) between the age of 35 to 45 years.¹⁰²

The SR Act prescribes multiple certificates to be procured by the intending couple/ woman availing surrogacy. The intending couple/ woman is required to produce a ‘certificate of essentiality’ issued by the appropriate authority on the basis of certification by the District Medical Board that they have a medical condition necessitating surrogacy,¹⁰³ a Magistrate’s Court order concerning the parentage and custody of the child to be born through surrogacy, which shall be the birth affidavit of the surrogate child¹⁰⁴ and provision of insurance cover for the surrogate mother for a period of thirty-six months covering postpartum delivery complications.¹⁰⁵

The intending couple has to also procure a ‘certificate of eligibility’ from the appropriate authority certifying that they are married, within the prescribed age group on the date of certification and do not have any surviving child.¹⁰⁶ The intending couple or the intending woman also need to obtain a certificate of recommendation from the Board for availing gestational surrogacy.¹⁰⁷ A child born through surrogacy is deemed to be a biological child of the intending couple/woman and will have all legal rights accordingly.¹⁰⁸

IX. Who can be a surrogate?

A surrogate mother (or an egg donor for surrogacy) can only be an ever-married woman, having at least one biological child of her own and between the age of 25 to 35 years on the day of implantation.¹⁰⁹ The surrogate need not be genetically related to the intending woman/ couple.¹¹⁰ The intending couple/woman has to approach the appropriate authority with a woman willing to act as surrogate mother.¹¹¹ The SR Act does not allow traditional surrogacy, so the surrogate mother cannot provide her own ova.¹¹² A woman can act as a surrogate only once in her lifetime.¹¹³ The surrogate should be medically and

psychologically fit for surrogacy procedures.¹¹⁴ A surrogate mother needs an eligibility certificate issued by the appropriate authority on the basis of fulfilling the aforesaid conditions.¹¹⁵

X. Challenges in Implementation of the Laws Commercial v. Altruistic Surrogacy

Commercial surrogacy is prohibited and punishable under the SR Act, as mentioned earlier and the permitted altruistic model only allows incurring of medical and insurance related expenditure by the commissioning parent(s).¹¹⁶ Thus, there is no legal duty on the intending parent(s) to bear expenditure relating to nutritious diet, psychological and legal counselling, loss of earnings, post-natal medical and psychological care and child care support or crèche support for surrogate mother's biological children, during the treatment, gestation and postpartum period. The ban on commercial surrogacy has been challenged in the Supreme Court as unconstitutional.¹¹⁷

Allowing only altruistic surrogacy is in consonance with the recommendations of the 228th Report of the LC and the RSSC Report on the 2019 Bill. However, in doing so, the SR Act ignores the note of caution sounded in the PSCR, 2017 which had recommended 'compensatory surrogacy' instead of 'altruistic surrogacy' and opined that "economic opportunities available to surrogates through surrogacy services should not be dismissed in a paternalistic manner".¹¹⁸ The PSC, 2017 had viewed "permitting women to provide reproductive labour for free to another person but preventing them from being paid for their reproductive labour" as "grossly unfair and arbitrary".¹¹⁹ Furthermore, the insurance cover recommended for the surrogate under the SR Act is much less comprehensive than what was recommended by the PSCR, 2017 and the recommendation regarding social security insurance for the surrogate child in case of accidental death or divorce of the intending parents during the process of surrogacy has also been ignored.¹²⁰

The altruistic model of surrogacy has been criticised as being akin to 'forced labour' which is prohibited under Article 23 of the Constitution of India.¹²¹ A pure altruistic drive may also be an unreasonable expectation in the current socio-economic environment. The altruistic model is also likely to put immense social and emotional

pressure on close female relatives, who may also be coerced into such surrogacy agreements, without any compensation for likely loss of livelihood, as well as the emotional and physical strain of surrogacy. The structural and social inequalities within the patriarchal family structures are not often conducive for women being able to resist such pressures, without running the risk of such denial taking a toll on their familial life. Therefore the idealised altruistic model may in fact become sometimes “even more exploitative than compensated surrogacy”.¹²² The altruistic model is also criticised on the ground that it “assumes the women’s inherent role to give birth but it denies women the capacity to earn wages for this work”.¹²³ With the increasing number of nuclear families and working women, the chances of getting an altruistic surrogate, who is most likely to be a relative or family member, may be negligible. With infertility being strongly linked to social stigma and ridicule in India, the intending couple may not want to divulge details of their fertility issues to close family members and potential altruistic surrogates,¹²⁴ The altruistic model harps on noble intentions and kindness, but can in practice turn out to be an exploitative arrangement where the commissioning couple gets a child, the medical service providers are paid for the treatment rendered and it’s only the surrogate who gets nothing.¹²⁵ Therefore, the altruistic model can be critiqued as paternalistic, based more on moralistic assumptions¹²⁶ and “far removed from the ground realities”.¹²⁷

The supporters of legalisation of commercial surrogacy view compensation paid to the surrogate as recompense for likely loss of wages during the gestational period and also as a legitimate means for many surrogates to improve their financial status and meet the crucial needs of their family like education of children, construction of homes, medical treatment of family members etc. They recommend that the focus should be on an effective legal regime for protection of rights of the surrogate and prevent their exploitation.¹²⁸

On the other hand, supporters of the ban on commercial surrogacy call it unethical, exploitative and amounting to commodification of women’s bodies and children and argue that most of the surrogates are from impoverished backgrounds and act as surrogates only due to economic necessity.¹²⁹ They recommend education and skill enhancement as a solution for empowerment instead.¹³⁰ This approach has an underlying assumption that the surrogate is driven only by circumstantial compulsions and lacks decisional autonomy.¹³¹

An apprehension has been expressed that the blanket ban on commercial surrogacy can lead to such procedures being done clandestinely, without adequate protection to the rights of the surrogate mother and child.¹³² It runs the risk of driving the practice underground with a real possibility of inter-country trafficking of potential surrogate mothers to safe surrogacy havens for monetary returns.¹³³ Thus, the ban may actually be against the stated object of the law or preventing the exploitation of the surrogates and may amount to “throwing away the baby with the bath water”.¹³⁴ It has also been argued that the ban is violative of the surrogate’s fundamental rights under Article 19 (1) (g) and Article 21 of the Constitution of India, as surrogacy may be her only source of income and the ban affects her livelihood.¹³⁵ It also raises fundamental questions about excessive state control. A more pragmatic alternative may be to allow commercial surrogacy with strict regulatory control by a special agency that can be set up to hand hold, guide and to protect the rights of all parties from the time of entering into the agreement till a reasonable time after the delivery of the baby.

The Age Conundrum-Restrictive Age Groups for Intending Parents and Donors

The SR Act and the ART Act have to be read in conjunction. However, they specify different age brackets for couples and single women availing treatment under them, which has been challenged as arbitrary and unconstitutional.¹³⁶ The minimum age of 23 for the wife and 26 for availing surrogacy operates on the presumption that surrogacy can be availed only after five years of marriage, since the official legal age for marriage is pegged at 18 for women and 21 for men. Thus, even couples with one partner having incurable congenital or medical conditions like an absent uterus or ovaries will also have to wait to reach the prescribed age group, before they can avail surrogacy services. Furthermore, the law does not address the possibility of one spouse being within the prescribed age bracket and the other out of it, for example, where the wife is older and is 35 years of age and the husband being younger is 25 years of age at the time of marriage, and they want to avail surrogacy immediately upon such marriage, due to medical reasons.

A similar situation came up before the Karnataka High Court in *H. Siddaraju v. Union of India*,¹³⁷ where a writ petition was filed by

a couple, where the wife's age was 45 years, but the husband was 57 years old and outside the prescribed age bracket for surrogacy. They lost their son, who had completed his MBBS course, in a road accident on December 13, 2022, that is after the SR Act and the ART Act had come into force. They wanted to avail surrogacy, due to the likely delay of minimum three years in adopting a child and had a willing egg donor and a surrogate. They questioned the validity of section 2(1)(zg) and section 4(iii)(c)(I) of the SR Act. Though the Court refused to strike down the impugned provisions, since petitions challenging various provisions of the SR Act were already pending before the Supreme Court, a single judge Bench of M. Nagaprasanna, J. opined that "ironing out the creases" of legal provisions without disturbing their content is permissible exercise of judicial review, as the extant situation may not have been envisaged by the legislators when the SR Act was made.¹³⁸ For such ironing out, the learned judge evolved a triple test theory, and held that the father had to scale the triple tests' wall for being held eligible to become a father by surrogacy. The tests prescribed by the learned Judge were:

- (i) Genetic Test: to assess the health of the intending father's sperm, since the quality of sperm is medically known to typically decline in men over the age of 35 to 40 years. This was required to ensure that the child is not born with a disorder or infirmity.¹³⁹
- (ii) Physical Test : to assess whether the couple has the physical capacity to manage the child, and are not too infirm to handle the child.¹⁴⁰
- (iii) Economic Test: The intending couple must be economically sound, so that the child is not led to penury immediately after birth. To assess the economic suitability, both the spouses were asked to file affidavits regarding their assets and liabilities before the Board/appropriate authority.¹⁴¹

The Court clarified that the directions were being issued in the peculiar circumstances of the instant case and it is up to the legislature to ponder over the issue and correct the law, as the SR Act does not give any discretion to the authorities under the Act to consider specific situations and issue eligibility certificate to the intending couples¹⁴² The Court directed that the Authority under sections 35 and 36 of the SR Act to consider granting of eligibility certificate to the couple, after subjecting the intending father to the triple test.

In a similar case, the Delhi High Court had taken the view that the SR Act is based on science and permitting “overage couples” to avail surrogacy might have serious consequences on the child.¹⁴³ The upper age limit has also been challenged in the Supreme Court and the case is pending.¹⁴⁴

Another age related conundrum in the two laws is that whereas ART services are available to ‘any woman’ above the age of 21 years to 50 years, surrogacy services can only be availed of by a widowed or divorced woman between the age of 35 to 45 years, which is again arbitrary, and discriminatory and under challenge.

Use of Donor Gametes

Surrogacy can be availed under the SR Act by an intending couple, when there is a medical condition necessitating gestational surrogacy.¹⁴⁵ Rule 14 of the SR Rules specifies that such medical conditions include absence of a uterus, or a uterine abnormality, inability to conceive despite multiple IVF cycles, or recurrent pregnancy loss or any illness that makes it impossible for the woman to carry the child to term herself. Despite such a clear legal mandate, the Union Government vide notification dated March 14, 2023 amended Form 2 (Consent of the Surrogate Mother and Agreement for Surrogacy) read with Rule 7 of the SR Rules to disallow use of donor gametes in a surrogacy arrangement and provided that both the gametes should come from the intending couple.¹⁴⁶ Before the impugned notification, egg of the intending mother or a donor could be used to fertilise the sperm from the intending father. Moreover, the impugned notification amended Form 2 of the SR Rules to provide that widowed or divorced women had to use their own eggs, along with donor sperm, for a surrogacy arrangement.

The amendment to the form was challenged by a woman suffering from “Mayer Rokitansky Kuster Howser (MRKH) Syndrome” which leads to absence of uterus and/or ovaries.¹⁴⁷ Medical Board records confirmed her medical condition. The petitioner had started the surrogacy process in December 2022, that is, before the impugned notification came into effect on March 14, 2023. She contended that the amended Rule cannot be given a retrospective effect to take away her right to motherhood. The Union of India justified the bar on donor gametes on the grounds that the decision was taken after due consideration by experts of the National Board in order to ensure a

genetic link with both the intending parents and to minimise the risk of rejection or abandonment of the child due to the lack of such a link,¹⁴⁸ and was in accordance with the definition of intending couple, surrogate mother and the provisions of section 4(ii)(a) which regulate surrogacy and surrogacy procedures.¹⁴⁹ Staying the amendment in Form 2, the Supreme Court referred to the women centric provisions of Rule 14, and observed that they relate to the medical or congenital condition of the intending woman/wife that necessitates surrogacy, and do not refer to the man/husband at all.¹⁵⁰ The Court held when the wife cannot produce an egg due an absent uterus, the intending couple would necessarily have to utilise a donor's egg, else Rule 14 which is a part of section 2(r) cannot be given effect at all, and will be contrary to the scheme of the SR Act which permits surrogacy subject to fulfilment of certain conditions.¹⁵¹ Staying the operation of the law, the Court noted that in context of Rule 14(a), the genetic link will be provided by the father's sperm and donor oocytes can be used.¹⁵² However, in the context of a widow or divorcee who avails surrogacy, the genetic link for surrogacy has to be provided through her oocytes, and donor's sperm may be used, which is in consonance with Paragraph d(ii) of the amended Rules.¹⁵³ After this relief, many other women from across India with similar problems also approached the Supreme Court.¹⁵⁴ In course of the hearings, the Supreme Court questioned the purpose of the impugned notification which seemed to defeat the purpose of the SR Act, and compelled filing of writ petitions by intending women.¹⁵⁵ Pursuant to the Court's observation, the Government reconsidered and amended the SR Rules again, vide a notification of the Ministry of Health and Family Welfare dated February 21, 2024, allowing married couples to use donor egg or sperm for surrogacy, subject to certification by the District Medical Board that either spouse had a medical condition necessitating the use of donor gamete for surrogacy. However, under the amended Rules, at least one gamete for the child to be born through surrogacy must come from the intending couple.¹⁵⁶

Even before the issue of the notification dated February 21, 2024, the Karnataka High Court had allowed twelve couples to opt for surrogacy through donor female gametes, holding that the new requirement of disallowing use of a donor gamete for intending couples for surrogacy was blatantly contrary to law, and allowing the consent form to control the Act or the Rules, would be akin to "permitting the

tail to wag the dog”.¹⁵⁷ However, the High Court refrained from declaring the amendment illegal, as the issue was still pending before the Supreme Court.¹⁵⁸

A similar exemption from the impugned notification dated March 14, 2023 was granted by the Bombay High Court in *XYZ v. Union of India*,¹⁵⁹ to an intending couple where the wife suffered from rare genetic abnormality that was likely to be inherited by the foetus. However, the Delhi High Court declined to entertain a petition filed by an Indian origin couple living in Canada, challenging the ban on donor surrogacy, stating the petitioners based in Canada cannot run an industry in India. The Court was of the view an unchecked surrogacy industry could grow into a billion dollar business in India.¹⁶⁰

The notification dated February 21, 2024, is beneficial for couples with medical complications. But, the option of surrogacy is now not available to couples where both cannot contribute their gametes due to some medical condition. Moreover, the new amendment is not applicable to widowed or divorced women who want to avail surrogacy services. They have to use their own eggs and donor sperm for availing surrogacy.¹⁶¹

The exclusion of single women from availing surrogacy has also been challenged in the Delhi High Court by a 44 year old unmarried woman as being discriminatory and violative of her fundamental rights under Articles 14 and 21 of the Constitution.¹⁶² The challenge questions the association of marital status with the eligibility for surrogacy, and the petitioner has argued that the use of donor eggs is medically advised to women her age. She argued that the genetic connection to the child as required under the law can be provided through her brother, who had consented to donate his sperm. This case is still pending in the Court and raises many ethical and legal issues about anonymity of the donor and using the gametes from a person within the prohibited degrees of marriage.

Patriarchal, Heteronormative and Exclusionary Approach to Parenthood

The ART Act and the SR Act limit the services under the Acts to married heterosexual couples and certain categories of single women, as discussed above. These provisions can be critiqued as being exclusionary towards single men, unmarried women, widows or divorced women who are under the age of 35 years or above the age

of 45 years, couples facing secondary infertility (that is when at least one prior pregnancy has been achieved),¹⁶³ couples in which either or both spouses do not fall within the prescribed age brackets, same-sex couples and other members of the LGBTQAI+ community. In a patriarchal approach, the ART laws do not allow unmarried women to commission surrogacy, or act as surrogate mothers, even for close family members.

Heterosexual cohabiting couples are also excluded from the purview of the Acts despite legislative and judicial recognition of “relationships in the nature of marriage”¹⁶⁴ and legitimacy of children from such relationships.¹⁶⁵ An unmarried, live-in couple has no right to adopt.¹⁶⁶ This issue of exclusion of certain categories of persons was also raised by some Members of Parliament when the two Bills were being debated in Parliament, but no impact was seen on the laws.¹⁶⁷ Apart from being exclusionary, some of the provisions of the two Acts also seem to not coalesce with many significant judicial interventions in the decade preceding their passage. Some of these interventions are being discussed here and are also being highlighted in the petitions challenging various provisions of the two Acts that are currently pending in the Supreme Court.

In *Suchita Srivastava v. Chandigarh Administration*,¹⁶⁸ the Supreme Court recognised “a woman’s right to make reproductive choices” as a “dimension of personal liberty as understood under Article 21 of the Constitution of India”.¹⁶⁹

On August 24, 2017, in *K.S. Puttaswamy v. Union of India*,¹⁷⁰ a nine-judge Constitution bench of the Supreme Court held the right to privacy to be a fundamental right which allows “individuals to make autonomous life choices”.¹⁷¹ The Court considered “family, marriage, procreation and sexual orientation as important aspects of dignity”.¹⁷² The Court recognised decisional autonomy which covers “intimate personal choices such as those governing reproduction” as a connotation of privacy.¹⁷³ According to the Court, “The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution of India”.¹⁷⁴

On April 15, 2014, in *National Legal Services Authority v. Union of India*,¹⁷⁵ a two-judge bench of the Supreme Court recognised the right of all persons to self-perceived gender identity as a man, woman or transgender. The Court directed that transgender persons be treated

as “third gender for the purpose of safeguarding their fundamental and legal rights”.¹⁷⁶ As per K.S.P. Radhakrishnan, J., Articles 14, 15, 16, 19 and 21 “do not exclude hijras/transgenders from their ambit” and that the “binary notion of gender” as reflected in “the laws related to marriage, adoption, divorce, inheritance, succession and other welfare legislations” leads to discrimination and denial of equal protection of law to transgender persons.¹⁷⁷ Subsequently, the Parliament has also recognised the right of individuals to self-perceived gender identity by enacting the Transgender Persons (Protection of Rights) Act, 2019.¹⁷⁸

A five judge Constitution bench of the Supreme Court decriminalised consensual same sex relationships on September 6, 2018 by holding that section 377 of the Indian Penal Code, 1860 was violative of Articles 14, 15, 19, and 21 of the Constitution, in so far as it criminalised consensual sexual acts of adults above the age of 18 years in private.¹⁷⁹ This reading down of section 377 was followed by filing of multiple petitions in the Supreme Court for legal recognition of same sex marriages. On October 17, 2023, a five judge Constitution Bench of the Supreme Court by a majority of 3:2 declined to recognize the right of same-sex couples in India to marry or have civil unions and held that legal status to a “civil union” can only be through a law enacted by the Parliament, and the Court cannot intervene in the matter.¹⁸⁰ The Court however, reaffirmed the right of LGBTQ+ couples under Article 21 of the Constitution of India to have a - “mental, emotional or sexual” union or relationship and traced it to “the right to privacy, right to choice, and autonomy”.¹⁸¹

The Constitution Bench referred to the decision of the Madurai Bench of the High Court of Madras in *Arun Kumar v. Inspector General of Registration, Chennai*,¹⁸² which upheld the validity of a marriage solemnised between a man and a transwoman, interpreting the term ‘bride’ in section 5, of the Hindu Marriage Act, 1955 to include transgender women.¹⁸³ Approving the High Court’s view, the Constitution bench of the Apex Court held that “transgender persons in heterosexual relationships can marry under the existing statutory provisions”.¹⁸⁴ In light of this judgment, the position of ‘trans-men’ and ‘trans-women’ under the ART and the SR acts also needs to be clarified by the Legislature and the Executive, in order to avoid inconvenience to and unnecessary litigation by the affected parties.

The non-recognition of same sex marriages by the Apex Court also precludes same sex couples from availing ART services under the current laws. Though, one partner in a lesbian relationship may be able to access ART in her individual capacity as a 'woman', but they cannot do so as a couple. A gay man will not be able to access ART, including surrogacy, individually or as a same sex couple. Thus, the only option for a gay man is to adopt a male child as a single individual, since adoption by both single females and males is allowed, but a single male cannot adopt a girl child.¹⁸⁵ If one partner in a same sex relationship adopts a child in his/her individual capacity, the other partner will have no legal relationship with the child as his/her name will not be there in the child's records and even distant relatives may be given precedence over the unrecognized parent in the same sex relationship, in case of a dispute, death or medical emergency etc.¹⁸⁶

The above stated exclusionary provisions of the ART laws seem to adopt "the heterosexual biologically intact model of family to be the only or the primary model" while undermining other kinds of families".¹⁸⁷ The Government has justified exclusion of same-sex couples and live-in partners from the SR Act and the ART Act on the ground of avoiding misuse and providing a complete family to the child.¹⁸⁸ In an affidavit filed by the Department of Health Research and the ICMR, it has been argued that the welfare of the child "trumps any notions of equality amongst prospective/intending parents/couples".¹⁸⁹ The Government acknowledged the decriminalisation of same-sex relations and legal recognition of live-in relations, but argued that "neither any special provisions have been introduced with respect to same sex/live-in couples nor have they been granted any additional rights".¹⁹⁰

Another issue faced by single women opting for ART is the societal and administrative bias against them. In one such case, a young, single mother from Kerala had to approach the High Court against the requirement to produce the father's name in the forms for registering birth and death of children born through IVF. The court granted the relief and directed the government to provide appropriate forms for registration of birth and death in such cases.¹⁹¹

The above discussion shows that while the law recognizes the growing acceptance of surrogacy and ARTs for begetting children, it tries to posit these technologies within the marital framework. This is being contested in the courts by many affected persons. The pending

challenges to the ART laws include the exclusion of unmarried men, married couple suffering from secondary infertility, unmarried women wanting to use donor eggs and the ban on commercial surrogacy.¹⁹²

The Issue of Maternity Leave for the Commissioning and Surrogate Mothers

Another issue relating to ART that had invited litigation in the decade preceding the enactment of the ART and the SR Act has been the absence of specific reference for maternity leave or child care leave in the Government Leave Rules for intending mothers who beget a child through surrogacy. This omission compelled many intending mothers who were denied maternity leave to file writ petitions in the jurisdictional High Courts, for availing maternity leave, even before the enactment of the ART Act and the SR Act.¹⁹³ In such cases, the High Courts recognized the denial of maternity benefits to women who adopt the surrogacy route for childbirth as “arbitrary, discriminatory and violative of the provisions of Articles 14 and 21 of the Constitution of India.”¹⁹⁴ Recognising that maternity leave is important for the health of the mother and for creating a bond of affection between the mother and child, the High Courts held that intending mothers who beget children through surrogacy are also entitled to avail maternity leave, just like mothers who give birth or adopt.¹⁹⁵ Despite these judgments, the ART Act or the SR Act and the Rules made thereunder did not make any provision about leave for the intending and surrogate mother. However, in June 2024, the Central Government amended the Central Civil Services (Leave) Rules, 1972 to permit a commissioning as well as the surrogate mother to avail maternity leave of 180 days, in case either or both of them are government employees. Under the amended Rules, the commissioning mother is also entitled to a child care leave of up to 730 days¹⁹⁶ and the commissioning father can also avail the usual paternity leave of 15 days. These amendments have rightly obliterated the distinction between children born naturally and children born through surrogacy, for the purpose of maternity leave. They will protect the rights and the well-being of the children and the parents, prevent discrimination and ensure equal treatment of children and parents, irrespective of the manner of birth and eliminate the need for litigation to avail leave benefits. Similar amendments should be made to other leave Rules also at the Central and State Level to avoid unnecessary litigation that

causes inconvenience to the intending parents also.¹⁹⁷ The provision of leave of six weeks, in cases of miscarriage or abortion, with medical certification in accordance with the Medical Termination of Pregnancy Act, 1971 that exists for women who give birth, should also be extended to the surrogate mother.¹⁹⁸

XI. Conclusion

The passage of the ART Act and the SR Act after almost two decades of attempts to legally regulate ART procedures is a significant step forward. The laws aim to standardize ART practice and procedures, prevent objectification of women and commodification of children. ART is useful as it facilitates the use of technology by infertile couples and individuals to have biologically related children. The passage of these laws is also likely to alleviate the stigma around infertility and use of ARTS in a patriarchal society like India. The clear legal enunciation that a child born through ART is also like a biological child, with all the attendant legal rights, is also likely to allay fears of prospective parents with these concerns. However, these laws have left certain concerns unaddressed. Many provisions of the Act and the associated Rules have been challenged in the courts and the decisions of the courts in such matters will also impact the implementation of these laws. The Acts provide for stringent punishments for various offences under the Acts. These stringent punishments under the Acts should be graded as per the scale of the mistake. While ethical transgressions of the law, like providing treatment to people outside the ambit of the law, should be dealt with more seriously, but assessment of medical procedures which are anyways subject to judgement by the respective State Medical Councils and courts, including consumer courts, should be left to medical experts. Since the new Acts involve maintenance of data at all levels, wrongs like bona fide mistakes in data entry or any typographical errors by operators should be judged as per the scale of the mistake. Important issues like breast feeding of the child, provision for milk banks, right of the child to access information relating to parentage, allowing ART clinics to also maintain ART Banks for better extraction, handling and storage of gametes have not been fully addressed in these laws, but will have to be paid attention in due course. Another issue that is already pending before the Delhi High Court and is likely to be agitated in future also due to the complexities involved, is the issue of posthumous

reproduction, posthumous extraction of gametes, and the related issue of whether frozen gametes are “property” to which legal heirs are entitled, in case the person or the couple die suddenly and intestate, after freezing the gametes or embryos for future use, and without any indication about their disposal. One such case is already pending before the Delhi High Court where a petition has been filed by a couple seeking the release of the frozen sperm of their 30 year old dead, unmarried son from a centre at the Ganga Ram Hospital for use to beget a grandchild through surrogacy.¹⁹⁹ ART has also been critiqued for making women’s bodies sites of state control and contributing to perpetuating patriarchal ideas about womanhood as motherhood.²⁰⁰ The ART laws indicate a clear hesitation to recognise and normalise alternative family structures, without reliable data about the impact of such family structure on the well-being of the child, which has often been the argument against recognising such family structures. This approach creates the “dangerous possibility of creating a hierarchy between different ways of making families, putting a premium on narrow understandings of ‘biological’ relatedness”.²⁰¹

Fertility treatments are expensive, and the registration and regulatory framework under the new Acts is bound to increase the cost further. Since infertility has been recognised as a disease by the WHO, infertility treatments should also be covered in the reimbursement policies for Union and State Government employees, in private insurance schemes and Government schemes like the Pradhan Mantri Jan Arogya Yojana (Ayushman Bharat Yojana) to make these treatments accessible to people from all backgrounds.

Legal awareness about the laws through campaigns in popular media and through medico-legal aid camps can help in tackling the stigma around infertility and ART treatments and generate awareness about ART. Such campaigns should be in easy to understand language to make them more accessible. Awareness about the offences under the Act should also be disseminated through such campaigns, to avoid exploitation and trapping of vulnerable donors and surrogates. As the Act requires the intending couple and the surrogate to apply to a Magistrate’s Court for order concerning parentage and custody of the child to be born through surrogacy, the Judicial Academies should conduct training programs so that the judicial officers are acquainted with statutory provisions.²⁰²

The ART and the SR Acts involve the intersection of law, science and technology which are dynamic and the laws also cannot remain static, as they would need constant evaluation, updation and amendments. Such evaluation and updation, whenever required, should be in consultation with scientific experts and specialists administering fertility treatments. A look at the recent challenges to various provisions of the Acts provides an interesting insight into the socio-legal issues around family and reproduction in India. Many provisions of the Acts and the Rules made under them have been challenged in the courts and the decisions of the courts in such matter will also impact the implementation of these laws. To conclude, there are some teething problems in the implementation of the Acts like has been seen with similar laws like the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and the Transplantation of Human Organs and Tissues Act, 1994. The emerging issues need to be examined with an open mind and, wherever necessary, amendments should be willingly made to avoid unnecessary litigation as ART procedures anyways take an emotional, financial, mental and physical toll on the intending parents.

(Footnotes)

- ¹ See, World Health Organization, Infertility prevalence estimates, 1990–2021 (Geneva, 2023) at ix, available at : <https://iris.who.int/bitstream/handle/10665/366700/9789240068315-eng.pdf?sequence=1> (last visited on March 02, 2024).
- ² Id., at xi.
- ³ See, Varun Agiwal, R. Sai Madhuri, Sirshendu Chaudhuri, “Infertility Burden Across Indian States: Insights from a Nationally Representative Survey Conducted During 2019-21” 24(4) *Journal of Reproduction & Infertility* 287 (2023) available at: <https://www.jri.ir/documents/fullpaper/en/140200.pdf> (last visited on March 02, 2024).
- ⁴ Anne R. Dana, “The State of Surrogacy Laws: Determining Legal Parentage for Gay Fathers” 18 *Duke Journal of Gender Law and Policy* 353 (2011) at 359.
- ⁵ Ibid.
- ⁶ See, ART Act, preamble.
- ⁷ See, SR Act, preamble.
- ⁸ In *Arun Muthuvel v. Union of India*, Writ Petition(Civil) No. 756 of 2022) a Chennai based IVF specialist has challenged several provisions of the SR Act and the ART Act as discriminatory and violative of the reproductive

rights of women and an impediment to the right to privacy. See, Padmakshi Sharma, “Infringes Reproductive Rights”: IVF Specialist Moves Supreme Court Challenging Provisions of Surrogacy Regulation Act & ART Act”, August 28, 2022, available at : <https://www.livelaw.in/top-stories/ivf-specialist-moves-supreme-court-challenging-provisions-of-surrogacy-regulation-act-act-207695#:~:text=A%20Petition%20challenging%20various%20provisions,leading%20IVF%20Specialist%20from%20Chennai> (Last visited on March 15, 2024).

⁹ ART Act, s. 2(1)(a). S. 2(1)(f): “embryo” means a developing or developed organism after fertilisation till the end of fifty-six days from the day of fertilisation; s. 2(1) (g): “gamete” means sperm and oocyte.

¹⁰ Supra note 4 at p. 360.

¹¹ See, Roger J. Chin, “Assisted Reproductive Technology - Legal Issues in Procreation” 8(3) *Loyola Consumer Law Review* 190 (1996), at 192-193 available at : <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1528&context=lclr> (last visited on June 25, 2024).

¹² *Ibid.*

¹³ See, Infertility FAQs, available at : <https://www.cdc.gov/reproductive-health/infertility-faq/index.html> (last visited on June 25, 2024).

¹⁴ ART Act, s. 2(1) (h): “Gamete donor” means a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child.

¹⁵ *Id.*, s. 2(1) (n): “patients” means an individual or couple who comes to any registered assisted reproductive technology clinic for management of infertility.

¹⁶ SR Act, s. 2(1) (zd): “surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth; s. 2(1) (r): “intending couple” means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy; s. 2(1) (s): “intending woman” means an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy.

¹⁷ Supra note 4 at 360.

¹⁸ See, Kim Bergman, Ritchie J. Rubio, Robert-Jay Green & Elena Padrón, “Gay men who become fathers via surrogacy: The transition to parenthood”, 6(2) *Journal of GLBT Family Studies*, 111 (2010).

¹⁹ See supra note 4 at 361-62. See also, Jessica Arons, “Future Choices: Assisted Reproductive Technologies and the Law” (Center for American Progress, December, 2007) at 6, available at : https://cdn.americanprogress.org/wp-content/uploads/issues/2007/12/pdf/arons_art.pdf (last visited on June 20, 2024).

- ²⁰ Ibid.
- ²¹ SR Act, s. 4(ii) (a), explanation: “gestational surrogacy” means a practice whereby a surrogate mother carries a child for the intending couple through implantation of embryo in her womb and the child is not genetically related to the surrogate mother.
- ²² *Id.*, s. 2 (1) (g): “commercial surrogacy” means commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses and such other prescribed expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother;
- ²³ *Id.*, s. 2 (1) (b): “altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.
- ²⁴ *Id.*, s. 4(ii) (b).
- ²⁵ *Id.*, s. 4(ii) (c).
- ²⁶ *Id.*, s. 40.
- ²⁷ See, Sandhya Ramesh, “Subhas Mukherjee pioneered IVF in India. But the government refuted his work”, *The Print*, June 19, 2023, available at : <https://theprint.in/theprint-profile/subhas-mukherjee-pioneered-ivf-in-india-but-the-government-refuted-his-work/1632147/> (last visited on March 30, 2024).
- ²⁸ See, Rajya Sabha Department-Related Parliamentary Standing Committee on Health and Family Welfare, “102nd Report on the Surrogacy (Regulation) Bill, 2016” (August, 2017) at p. no. 1, para 1.1, available at: https://prsindia.org/files/bills_acts/bills_parliament/2016/SCR-%20Surrogacy%20Bill,%202018.pdf (last visited on April 02, 2024).
- ²⁹ Ibid.
- ³⁰ *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.
- ³¹ *Jan Balaz v. Anand Municipality*, 2009 SCC OnLine Guj 10446.
- ³² *Id.*, paras 19-21.
- ³³ See, Law Commission of India, “228th Report on the Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties Connected to a Surrogacy” (August, 2009) (hereinafter 228th Report) at 9, para 1.2, available at : <https://lawcommissionofindia.nic.in/reports/report228.pdf> (last visited on April 23, 2024).

- ³⁴ Ibid.
- ³⁵ Id., at 24-25, para 4.1.
- ³⁶ Id., at 25, para 4.2, pt. 1.
- ³⁷ Id., at 26, para 4.2, pt. 3.
- ³⁸ Id., para 4.2, pt. 7.
- ³⁹ Id., para 4.2, pt. 8.
- ⁴⁰ Id., para 4.2, pt. 5.
- ⁴¹ Id., at 6-17, para 2.1.
- ⁴² Id., at 26, para 4.2, pt. 4.
- ⁴³ Ibid.
- ⁴⁴ See, Ministry of Home Affairs, Government of India, Letter Number 25022/74/2011-F dated July 9, 2012, Letter No. 25022174/2011-F.1 (Vol. III) dated February 19/21, 2014, Letter No. 25022/74/2011-F.1 (Vol.III) dated November 3, 2015 available at : https://www.mha.gov.in/PDF_Other/surrogacy03112015.pdf (last visited on April 21, 2024). See also, supra note 28 at pp.1-2, para 1.4-1.5.
- ⁴⁵ Id., Letter dated July 9, 2012.
- ⁴⁶ Ministry of Home Affairs (Foreigners Division), Government of India Letter No. 25022/74/2011-F.1 (Vol.III) dated February 19/21, 2014.
- ⁴⁷ Ministry of Home Affairs (Foreigners Division), Government of India Letter No No. 25022/74/2011-F.1 (Vol. III) dated November 3, 2015 available at: https://www.mha.gov.in/PDF_Other/surrogacy03112015.pdf.
- ⁴⁸ Government of India, Ministry of Commerce and Industry, Department of Commerce, Notification No. 25/ 2015-2020 dated 26th October, 2015 available at : https://main.icmr.nic.in/sites/default/files/Circulars_front/19_1_0.pdf (last visited on April 23, 2024).. See also, P. M. Arathi, “Silent Voices: A Critical Analysis of Surrogacy’s Legal Journey in India” 49(2) Social Change, 344 (2019) at 346.
- ⁴⁹ Supra note 28 at 14, para 5.22.
- ⁵⁰ Id., at 14, para 5.21.
- ⁵¹ Id., at 28, para 5.83.
- ⁵² Id., at 23, para 5.60.
- ⁵³ Id., at 23, para 5.61.
- ⁵⁴ Id., at 19, para 5.42.
- ⁵⁵ Id., at 30, para 5.90.
- ⁵⁶ Id., at 8-19, paras 5.41-5.42.
- ⁵⁷ Id., at 30, para 5.94.
- ⁵⁸ Rajya Sabha, “Report of the Select Committee on the Surrogacy (Regulation) Bill, 2019” (February, 2020) available at: https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/70/137/1_2021_7_11.pdf?source=rajyasabha (last visited on April 22, 2024).
- ⁵⁹ Id., at 36, para 4.88

- ⁶⁰ Ibid.
- ⁶¹ *Id.*, at 22, para 4.8
- ⁶² *Id.*, at 19, para 3.21. The justification given by the RSSC for inclusion of widows and divorced women was that a “young age widow, who is otherwise capable but cannot carry a child because of fear of social stigma attached to pregnancy of a widow in our society. One cannot explain (to) everyone that the child in her own womb is of surrogacy and therefore such single person should be given option of surrogacy within permitted regulation under the Bill. Similar situation is of a divorced lady who doesn’t want to remarry but wants (a) child”. See, at 25, para 4.24.
- ⁶³ Rajya Sabha Department Related Parliamentary Standing Committee on Health and Family Welfare, “129th Report on the Assisted Reproductive Technology (Regulation) Bill, 2020” (March, 2021) available at : [https://prsindia.org/files/bills_acts/bills_parliament/2020/SCR%20The%20Assisted%20Reproductive%20Technology%20\(Regulation\)%20Bill,%202020.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2020/SCR%20The%20Assisted%20Reproductive%20Technology%20(Regulation)%20Bill,%202020.pdf) (last visited on April 22, 2024).
- ⁶⁴ ART Act, s. 9; SR Act, ss. 15-16
- ⁶⁵ For procedure of registration, see ART Act, ss. 15-20; SR Act, ss. 11-16.
- ⁶⁶ ART Act, s. 2(1)(b) : “assisted reproductive technology bank” means an organisation which shall be responsible for collection of gametes, storage of gametes and embryos and supply of gametes to the assisted reproductive technology clinics or their patients; s. 2(1) (c): “assisted reproductive technology clinic” means any premises equipped with requisite facilities and medical practitioners registered with the National Medical Commission for carrying out the procedures related to the assisted reproductive technology.
- ⁶⁷ *Id.*, s. 21.
- ⁶⁸ Ibid.
- ⁶⁹ *Id.*, s. 23.
- ⁷⁰ *Id.*, s. 11(a).
- ⁷¹ *Id.*, s. 3 read with SR Act, s. 17.
- ⁷² *Id.*, s. 5.; SR Act, s. 25.
- ⁷³ *Id.*, s. 11(b), (c).
- ⁷⁴ *Id.*, ss. 6- 8; SR Act, ss. 26-34.
- ⁷⁵ *Id.*, s. 2(1) (e) read with s. 2(1) (j).
- ⁷⁶ *Id.*, s. 21(g) (i), (ii).
- ⁷⁷ *Id.*, s. 2(1) (u) read with s. 21 (g) (i).
- ⁷⁸ *Id.*, s. 27(2) (a), (b).
- ⁷⁹ ART Rules, Rule 10.2.3.
- ⁸⁰ ART Act, s. 27(2) (c) read with ART Rules, Rule 26.
- ⁸¹ *Id.*, s. 27(1). ART Rules, Rule 10.2.1.
- ⁸² ART Rules, Rule 10.2.2

- ⁸³ ART Act, s. 27(4).
- ⁸⁴ *Id.*, s. 22. (1) (b).
- ⁸⁵ *Id.*, s. 26(1).
- ⁸⁶ *Id.*, s. 25.
- ⁸⁷ ART Act, ss. 23, 27, 28; ART Rules, Rule 10.2.4.
- ⁸⁸ See ART Rules, Forms 14, 19B, 22, 23.
- ⁸⁹ *Id.*, s. 31(1).
- ⁹⁰ *Id.*, s. 31(2).
- ⁹¹ 2024 SCC OnLine Bom 2602.
- ⁹² *Id.*, paras 9.9, 18; See also, Purnima Sah, “Egg or sperm donor has no legal right on child: Bombay HC” *The Hindu*, August 14, 2024 at 14.
- ⁹³ ART Act, s. 22(1) (a), s. 22, explanation (iii) “parties” includes the commissioning couple or woman and the donor.
- ⁹⁴ *Id.*, S. 28.
- ⁹⁵ ART Rules, Rule 25.1.1
- ⁹⁶ ART Act, s. 24.
- ⁹⁷ *Id.*, s. 27(3).
- ⁹⁸ SR Act, s. 2(1) (r) “intending couple” means a couple who have a medical indication necessitating gestational surrogacy and who intend to become parents through surrogacy;
- ⁹⁹ *Id.*, s. 4 (ii) (a), explanation.
- ¹⁰⁰ *Id.*, s. 4 (iii) (c) (II).
- ¹⁰¹ *Id.*, s. 4 (iii) (c) (II), proviso.
- ¹⁰² *Id.*, s. 2(1)(s).
- ¹⁰³ *Id.*, s. 4(iii) (a) (I) Explanation: For the purposes of this item, the expression “District Medical Board” means a medical board under the Chairpersonship of Chief Medical Officer or Chief Civil Surgeon or Joint Director of Health Services of the district and comprising of at least two other specialists, namely, the chief gynaecologist or obstetrician and chief paediatrician of the district;
- ¹⁰⁴ *Id.*, s. 4(iii) (a) (II).
- ¹⁰⁵ *Id.*, s. 4(iii) (a) (III).
- ¹⁰⁶ *Id.*, s. 4 (iii) (c).
- ¹⁰⁷ *Id.*, s. 4. (ii) (a), proviso.
- ¹⁰⁸ *Id.*, s. 8.
- ¹⁰⁹ *Id.*, s. 4(b)(I).
- ¹¹⁰ See, Awstika Das, “Surrogate Mother Need Not Be Genetically Related To Child’ : Centre Clarifies Surrogacy Law Provision Before Supreme Court”, *Live Law*, February 7, 2023 available at: <https://www.livelaw.in/top-stories/surrogate-mother-need-not-be-genetically-related-to-child-centre-clarifies-surrogacy-law-provision-before-supreme-court-220977> (last visited on June 25, 2024).

- ¹¹¹ SR Act, s. 4(b)(II).
- ¹¹² *Id.*, s. 4(b)(III).
- ¹¹³ *Id.*, s. 4(b)(IV).
- ¹¹⁴ *Id.*, s. 4(b)(V).
- ¹¹⁵ *Id.*, s. 4(iii) (b).
- ¹¹⁶ See SR Act, s. 4(ii) (b), s.4(ii) (c); s. 2(1) (q) “insurance” means an arrangement by which a company, individual or intending couple undertake to provide a guarantee of compensation for medical expenses, health issues, specified loss, damage, illness or death of surrogate mother and such other prescribed expenses incurred on such surrogate mother during the process of surrogacy.
- ¹¹⁷ See Arun Muthuvel v. Union of India, Writ Petition(Civil) No. 756 of 2022).
- ¹¹⁸ *Supra* note 28 at 13, para 5.18.
- ¹¹⁹ *Id.*, at 13, para 5.18.
- ¹²⁰ *Id.*, at 23, para 5.60-5.61; SR Act, s. 4(iii)(a) (III); SR Rules, Rule 5.
- ¹²¹ *Id.*, at 11, para 5.8.
- ¹²² *Ibid.*
- ¹²³ *Id.*, at 11-12, para 5.10.
- ¹²⁴ *Id.*, at 12, para 5.11.
- ¹²⁵ *Id.*, at 13, para 5.19.
- ¹²⁶ *Id.*, at 14, para 5.22.
- ¹²⁷ *Id.*, at 13, para 5.20.
- ¹²⁸ *Id.*, at 11, para 5.9. See also, Namita Kohli, “Surrogacy ban: Poor women stand to lose the ‘better option’ ” *The Hindustan Times*, August 27, 2016.
- ¹²⁹ *Supra* note 28 at 13, para 5.18.
- ¹³⁰ *Id.*, at 12, para 5.15.
- ¹³¹ *Id.*, at 13, para 5.17.
- ¹³² *Id.*, at 11-12, para 5.10.
- ¹³³ *Ibid.* See also, Sonali Kusum, “Review of ART Bill 2014 –Contested Issues and Cases” *ILI Law Review*, Summer Issue (2016) at 20-22, available at : <https://ili.ac.in/pdf/paper1.pdf> (last visited on April 01, 2024)
- ¹³⁴ *Ibid.* See also, “Surrogacy, Interview with Dr. Kiran Coelho” available at: <https://www.youtube.com/watch?v=hCajN3cIYRY> (last visited on July 15, 2024).
- ¹³⁵ See Paramjit S. Jaswal and Jasdeep Kaur, “Surrogate Motherhood In India: An Analysis of Surrogacy (Regulation) Act, 2021”, *IV Shimla Law Review* 257 (2021) at 265 available at : <http://www.hpnl.ac.in/journal-level-3.aspx?ref-id=18>; See also, Daksha Khanna and Abeera Dubey, “One Step Forward, Two Steps Back: A Critique of the Surrogacy (Regulation) Bill, 2019” *10(1) NLIU Law Review* 119 (2020-21) at 128-133, available at : <https://nliulawreview.nliu.ac.in/wp-content/uploads/2021/01/M256.pdf> (last visited on April 01, 2024)

- ¹³⁶ Arun Muthuvel v. Union of India, Writ Petition(Civil) No. 756 of 2022).
- ¹³⁷ 2023 SCC OnLine Kar 16.
- ¹³⁸ Id., para 24.
- ¹³⁹ Id., para 25, 26.
- ¹⁴⁰ Id., para 27.
- ¹⁴¹ Id., para 28.
- ¹⁴² Id., para 29.
- ¹⁴³ See Shruti Kakkar, “Surrogacy law based on science, says Delhi HC”, The Hindustan Times, January 25, 2024.
- ¹⁴⁴ Arun Muthuvel v. Union of India, Writ Petition (Civil) No(s). 756/2022.
- ¹⁴⁵ SR Act, s. 4 (ii) (a), s. 4 (iii) (a) (I).
- ¹⁴⁶ See, GSR 179 (E) dated March 14, 2023, available at: https://upload.indiacode.nic.in/showfile?actid=AC_CEN_12_72_00002_202147_1643711958603&type=rule&filename=the_surrogacy_amendment_rule_2023.pdf
- ¹⁴⁷ Arun Muthuvel v. Union of India, 2023 SCC OnLine SC 1862.
- ¹⁴⁸ See Ravikant Chauhan v. Union of India, 2023 SCC OnLine Del 6837.
- ¹⁴⁹ 2023 SCC OnLine SC 1862, para 8.
- ¹⁵⁰ Id., paras 11-12.
- ¹⁵¹ Id., para 14.
- ¹⁵² Id., para 15.
- ¹⁵³ Id., para 15.
- ¹⁵⁴ See, Arun Muthuvel v. Union of India, 2023 SCC OnLine SC 1903.
- ¹⁵⁵ Bindu Shajan Perappadan, “Centre amends surrogacy rules, allows couples to use donor gametes” The Hindu, Feb. 24, 2024 at 12.
- ¹⁵⁶ Ibid.
- ¹⁵⁷ “HC says surrogacy using donor gametes can’t be prohibited as a condition in consent form” The Hindu, Nov. 22, 2023 at 6.
- ¹⁵⁸ Ibid.
- ¹⁵⁹ 2024 SCC OnLine Bom 486.
- ¹⁶⁰ “Surrogacy ‘industry’ shouldn’t be encouraged in India: HC” The Hindu, Dec. 14, 2023, at 2.
- ¹⁶¹ “HC says surrogacy using donor gametes can’t be prohibited as a condition in consent form” The Hindu, Nov. 22, 2023 at 6.
- ¹⁶² Aaratrika Bhaumik, “Why were surrogacy rules modified?” The Hindu, Feb. 26, 2024 at 10.
- ¹⁶³ See, WHO, Infertility: Key Facts, May 22, 2024 available at : <https://www.who.int/news-room/fact-sheets/detail/infertility#:~:text=Infertility%20can%20be%20primary%20or,universal%20health%20coverage%20benefit%20packages> (last visited on July 02, 2024).
- ¹⁶⁴ See, The Protection of Women from Domestic Violence Act, 2005, s. 2(f); Nandakumar v. *State of Kerala*, (2018) 10 SCC 1.
- ¹⁶⁵ See, S.P.S. Balasubramanyam v. *Suruttayan*, (1994) 1 SCC 460.

- ¹⁶⁶ Adoption Regulations, 2022 (passed under the JJ Act, 2015), clause 5(3) states: “no child shall be given in adoption to a couple unless they have at least two years of stable marital relationship except in the cases of relative or step-parent adoption”, available at : https://carings.wcd.gov.in/Login/pdf/Regulation_english.pdf (last visited on July 01, 2024).
- ¹⁶⁷ See, Lok Sabha Debates, Vol. XIV No. 3, Dec. 01, 2021, available at: https://eparlib.nic.in/bitstream/123456789/835605/1/lsd_17_07_01-12-2021.pdf (last visited on July 01, 2024).
- ¹⁶⁸ (2009) 9 SCC 1; See also, *Devika Biswas v. Union of India* (2016) 10 SCC 726,
- ¹⁶⁹ *Id.*, at 15, para 22.
- ¹⁷⁰ (2017) 10 SCC 1.
- ¹⁷¹ *Id.*, at 634, para 644.
- ¹⁷² *Id.*, at 635, para 645.
- ¹⁷³ *Id.*, at 472, para 248. See also Bhairav Acharya, “The Four Parts of Privacy in India”, 50 (22) *Economic & Political Weekly* 32 (2015).
- ¹⁷⁴ *Id.*, at 421, para 144.
- ¹⁷⁵ (2014) 5 SCC 438.
- ¹⁷⁶ *Id.*, at 508, para 135.1.
- ¹⁷⁷ *Id.*, at 492, para 81.
- ¹⁷⁸ S. 4(2).
- ¹⁷⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 at 311, para 645.1.
- ¹⁸⁰ *Supriyo alias Supriya Chakraborty v. Union of India*, 2023 SCC OnLine SC 1348.
- ¹⁸¹ *Id.*, para 564.
- ¹⁸² 2019 SCC OnLine Mad 8779.
- ¹⁸³ In doing so, the Court referred to mythology, religious texts, neuroscience and the NALSA judgment, Article 16 of the Universal Declaration of Human Rights, 1948 (UDHR) and the Supreme Court’s judgment in *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368, where the adult person’s right to choose a life partner was held to be integral to Article 21 of the Constitution, although that case involved a heterosexual couple. For a similar view, see also, *Shakti Vahini v. Union of India*, (2018) 7 SCC 192; *Lata Singh v. State of Uttar Pradesh* (2006) 5 SCC 475; *Laxmibai Chandaragi B. v. State of Karnataka*, (2021) 3 SCC 360.
- ¹⁸⁴ *Supra* note 180, para 564, pt. ix.
- ¹⁸⁵ See, The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 57 and Regulation 5 of the Adoption Regulations, 2017 available at : http://cara.nic.in/PDF/Regulation_english.pdf (last visited on April 4, 2024).
- ¹⁸⁶ *Supra* note 180, paras 370, 372.
- ¹⁸⁷ Amanda Roth, “What Does Queer Family Equality Have to Do With Reproductive Ethics?” 9(1) *International Journal of Feminist Approaches to Bioethics* 27-67 (Spring 2016) at 32.

- ¹⁸⁸ See, Awstika Das, “Including Live-In & Same-Sex Couples Under Surrogacy Act Might Lead to Misuse: Centre to Supreme Court” May 09, 2023 available at : <https://www.livelaw.in/top-stories/live-in-same-sex-couples-surrogacy-act-misuse-centre-supreme-court-sc-228257>(last visited on April 4, 2024).
- ¹⁸⁹ Krishnadas Rajagopal, “Same sex couples, live in partners not included in surrogacy laws: Centre in SC” The Hindu, May 10, 2023 at 13.
- ¹⁹⁰ Ibid.
- ¹⁹¹ See Anupama Mili, “Single mothers in Kerala face discrimination right from the top” The New Indian Express, January 22, 2022 available at: <https://www.newindianexpress.com/cities/kochi/2022/jan/22/single-mothers-in-kerala-face-discrimination-right-from-the-top-2409763.html> (last visited on April 10, 2024).
- ¹⁹² See Aneesha Mathur, “Why not allow single women to opt for child by surrogacy? Plea in Supreme Court” India Today, Dec. 5, 2023, available at : <https://www.indiatoday.in/law/story/supreme-court-to-examine-discriminatory-surrogacy-act-provisions-against-single-women-2472415-2023-12-05> (last visited on Dec. 10, 2023); “Supreme Court Issues Notice on Challenge to Surrogacy Act Excluding Unmarried Women” Feb 11, 2024, available at: https://www.lawinsider.in/news/supreme-court-issues-notice-on-challenge-to-surrogacy-act-excluding-unmarried-women#google_vignette (last visited on March 10, 2024); Inderpal Singh, “Surrogacy in India: The Fight for Inclusivity and Fundamental Rights in Parenthood” The Probe, March 08, 2024, available at: <https://theprobe.in/stories/surrogacy-in-india-the-fight-for-inclusivity-and-fundamental-rights-in-parenthood-4317421>(last visited on March 10, 2024).
- ¹⁹³ See Central Civil Services (Leave) Rules, 1972, Rules 43, 43-AA, 43-B, 43-C; The All India Services (Leave) Rules, 1955, Rule 18, 18-A.
- ¹⁹⁴ Dr. Mrs. Hema Vijay Menon v. State of Maharashtra, 2015 SCC OnLine Bom 6127, para 8. See also, P. Geetha v. The Kerala Livestock Development Board Ltd., 2015 SCC OnLine Ker 71; Rama Pandey v. Union of India, 2015 SCC OnLine Del 10484; K. Kalaiselvi v. Chennai Port Trust, (2013) 2 CTC 400 (Mad); Amisha Girish Ramchandani v. Divisional Manager (Personnel Branch) Mumbai CST, 2016 SCC OnLine Bom 71; Sadhana Agrawal v. State of Chhatisgarh, 2017 SCC OnLine Chh 19; Dr. Pooja Jignesh Doshi v. State of Maharashtra, 2019 SCC OnLine Bom 1433; Sushma Devi v. State of Himachal Pradesh, 2021 SCC OnLine HP 416; Chanda Keswani v. State of Rajasthan, 2023 SCC OnLine Raj 3274.
- ¹⁹⁵ Sushma Devi v. State of Himachal Pradesh, 2021 SCC OnLine HP 416, para 15.
- ¹⁹⁶ The Central Civil Services (Leave) Rules, 1972 as amended by the Central Civil Services (Leave) (Amendment) Rules, 2024, notified on June 18,

2024, Maternity Leave: Rule 43(6): In case of surrogacy, the surrogate, as well as the commissioning mother with less than two surviving children, may be granted maternity leave of 180 days, in case either or both of them are Government servants. (DOPT Notification No. A-24011/21/2023-ESTT-Leave, dated June 18, 2024). Note 2: The expression ‘surrogate mother’ shall mean the woman who bears the child on behalf of the commissioning mother. Paternity Leave: Rule 43-A (6): In case of a child begotten through surrogacy, the commissioning father who is a male Government servant with less than two surviving children may be granted paternity leave of 15 days within the period of 6 months from the date of delivery of the child. (DOPT Notification No. A-24011/21/2023-ESTT-Leave, dated June 18, 2024) Note 3: The expression ‘commissioning father’ in this rule shall mean the intending father of the child born through surrogacy. Rule 43-C (8): In case of surrogacy, the commissioning mother with less than two surviving children may be granted child care leave. Note 1: The expression ‘commissioning mother’ shall mean the intending mother of the child born through surrogacy. (DOPT Notification No. A-24011/21/2023-ESTT-Leave, dated June 18, 2024).

¹⁹⁷ See *Supriya Jena v. State of Odisha*, W.P.(C) No.30616 of 2020, Orissa High Court, Cuttack, judgment dated June 25, 2024.

¹⁹⁸ See Central Civil Services (Leave) Rules, 1972, Rule 43(3) read with (DOPT Notification No. 13018/7/94-Estt (L), dated March 31, 1995) provides for maternity leave of 45 days in case of miscarriage, including abortion; The All India Services (Leave) Rules, 1955, Rule 18, read with G.I. D.P. & A.R. letter No. 11019/9/75—AIS (III), dated June 6, 1975 provides for maternity leave of six weeks in case of miscarriage, including abortion.

¹⁹⁹ *Gurvinder Singh v. Government of NCT of Delhi*, Writ Petition (Civil) 15159/2021; See also, The Hindu Bureau, “Couple seeks dead son’s frozen sperm for surrogacy” *The Hindu*, Nov. 24, 2022 available at : <https://www.thehindu.com/news/national/high-court-asks-centre-to-respond-to-parents-plea-for-dead-sons-frozen-sperm/article66174931.ece> (last visited on July 1, 2024).

²⁰⁰ See generally, Vrinda Marwah and Sarojini N, “Reinventing Reproduction, Re-conceiving Challenges: An Examination of Assisted Reproductive Technologies in India” 46(43) *Economic and Political Weekly* 104 (2011).

²⁰¹ Sneha Banerjee, “The family we choose” *The Indian Express* Feb. 29, 2024 at 13.

²⁰² “Take steps to set up District Medical Boards as per Surrogacy Act: High Court” *The Hindu* (Chennai), April 05, 2023, at 7.

Koshi River Floods: Unearthing the Politics Beneath the Policy

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Abstract:

In common parlance, disasters are depicted as natural accidents. They are deemed an 'Act of God' over which humans have practically no control. It is also said that disasters don't discriminate based on caste, gender, religion or race. However, framing disasters as 'natural' gives clean chit to humans responsible for converting hazards into disasters. Also, it erases social markers that mediate the distribution of impacts caused by disasters. Building upon research in the anthropological approach to disaster studies, this article examines the case of the Koshi River floods in northern Bihar and unbundles natural and human components of the disaster people face annually in the monsoons. It further examines the disaster management and relief process after the floods to probe the state's working. The above exercise unearths the 'politics' involved in the process, starting from framing hazards as disasters, undertaking disaster management and ending with disaster relief operations.

***Keywords:** Disaster, Floods, Environment, Politics*

Introducing the Anthropological Approach to Understanding Disaster

Statements made in public after the Uttarakhand and Nepal earthquakes are crucial to understanding the popular perception regarding disasters.

“...had caused this calamity because he ate beef and then went to Kedarnath..., without any purification ceremony. Without such basic precautionary measures, the earthquake was bound to happen.

“Call me superstitious...but the Nepal earthquake happened

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because the missionaries are trying to destroy dharma”.
(Daniyal 2015)

Such statements^s are not limited to Koshiⁱ or India. A priest remarked after the devastating hurricane Katrina hit New Orleans in the US in 2005.

“This is one wicked city, OK? It’s known for Mardi Gras, for Satan worship. It’s known for sex perversion. It’s known for every type of drug and alcohol, the orgies, and all of these things that go on in New Orleans. There’s been a black spiritual cloud over New Orleans for years. They believe God is going to use that storm to bring revival.” (**Scarborough 2005**)

The statements above illustrate how the depiction of disasters is linked to both natural and supernatural forces, as well as to the moral decay of human society. Notably, this portrayal is not confined to societies deemed ‘barbaric’, like India, but is also prevalent in so-called ‘developed’ countries like the United States. As Ronald Dworkin noted, those who suffer the impacts of disasters are often considered “unlucky” or victims of “brute luck” (Anderson 1999). These framing obscures the reality that disasters do not affect all members of society equally. It also plays a significant role in how blame is assigned during and after such events. The ‘naturalization’ of disasters shifts our focus away from the complex human-nature relationship, which is deeply influenced by societal political, economic, and power dynamics. The concept of ‘vulnerability’—shaped by political and economic factors—has led to a paradigm shift in disaster studies (Oliver-Smith & Hoffman, 2019).

Prior to the emergence of a multidisciplinary approach in the 1970s, disasters were typically viewed as isolated, extraordinary events—rare accidents that disrupted a “normal” life. This view reinforced the idea of a mostly stable world until interrupted by unpredictable natural phenomena. Over time, however, this conceptualization shifted the focus away from what was “normal” toward the idea of a necessary correction or a fresh start following the crisis. Roitman (2014) argues that the concept of “crisis” often leads us to focus on the question “What went wrong?” This tendency obscures the everyday practices that actually create the conditions for crises in the first place. Such an approach tends to emphasize mistakes and accidents, treating the crisis as an isolated, exceptional event rather than as a product of ongoing systemic issues. Another

perspective associated with disasters is their “unavoidability.” This view holds that there is little we can do in the face of a disaster beyond responding to it (Alexander, 1997). Disasters are seen as moments when communities are caught off guard, marked by suddenness, unpredictability, and uncontrollability. These events are often considered to originate in the natural world, suggesting that little can be done to prevent or mitigate their impact. Emerging disaster paradigms, however, argue that disasters are not just the unintended consequences of poorly applied technologies but require a fundamental rethinking of how humans relate to the non-human world (Hewitt, 1983).

In contrast, the anthropological approach to disaster studies challenges the view of disasters as “natural” events or as brief, isolated crises. Instead, it frames disasters as the outcome of the interaction between human populations and potentially destructive agents, mediated by the vulnerability of those populations, which is shaped by social and economic factors. Rather than being a singular, momentary event, a disaster is seen as a process that unfolds over time, revealing complex interactions between biological, physical, and socio-cultural forces. From this perspective, hazards are inherent in certain natural environments, while vulnerability is socially and culturally constructed. Disasters, therefore, expose a society’s capacity to adapt to its natural surroundings, and the institutionalization of maladaptive responses can increase vulnerability to future hazards. Furthermore, disasters can serve as opportunities for development and political consolidation (Barrios, 2017).

How disasters—such as floods—are addressed also depends on how the state conceptualizes nature. Rochefort and Cobb (1994) explore how issues are framed politically and why these definitions matter for government action and policy agendas. They argue that how a social problem is framed shapes the decisions that follow, influencing both the political discourse and the emerging public policies. Defining the ‘problem’ sets the stage for policy decisions, and underlying power structures often influence this framing. Therefore, the way a disaster is framed is not just an academic or scientific issue; it is deeply tied to political dynamics and power distribution.

With the above discussion in the backdrop, we will critically reflect on various aspects and junctures of the Koshi Flood Management Policy in the following sections. This exercise would help us examine

the human interventions and decisions that shaped the conversion of a river into a calamity.

Taming the River Koshi: The Properties of the River and Structural Interventions

The Koshi River in northern Bihar, India, has devastated the people living in its floodplains for centuries. The river's unpredictable and often destructive nature has shaped the lives of the region's inhabitants over time. Rising in the Himalayas at 7,000 meters above sea level, the Koshi flows into India near Hanuman Nagar after passing through Tibet and Nepal. Of its vast catchment area of 93,355 square kilometres, only 20% lies within Indian territory (Water Resource Department, 2002). Most of the river's annual rainfall—about 80%—occurs between mid-June and mid-October. The river's massive silt load, approximately 100 million cubic meters per year, results from changes in land use and seismic activities in the upper catchment area. This led the river to shift its course by 160 kilometres between 1723 and 1948 (Gole & Chitale, 1966). As the river deposits sediment in the plains, its channel adopts a braided pattern, further complicating its management.

The river's discharge and sedimentation have impacted the people's lives in the region for centuries. Colonial engineers and administrators documented these changes and challenges. In 1869 and 1870, severe flooding prompted the colonial government to intervene, attempting to control the river's flow. However, after observing the negative consequences of such interventions in other parts of the country—such as waterlogging, drainage congestion, severe floods, and the spread of waterborne diseases—the British eventually abandoned active river control and decided to let the Koshi flow more naturally.

Despite this, the devastating floods of 1953 led the post-independence Indian government to launch the Koshi Project in 1954 to embank the river. This involved the construction of two parallel embankments—eastern and western—along with a barrage containing 56 gates and a pair of canals. An agreement was also signed between India and Nepal to maintain these structures (Water Resource Department, 2002). Following this, the Sikrahatta-Majhari Low Bund was built on the western side of the river, inside the original Western embankment. More recently, the Koshi Mahasetu (Koshi Bridge) has

been completed, including a highway and a railway line, and the Bakaur-Bheja Bridge is currently under construction.

The Koshi River has been a natural challenge and a focus of engineering efforts for centuries. Despite various attempts to control its course, the river's dynamic and unpredictable nature continues to pose significant challenges for the region.

Implications of Taming the River

Pandey (1963) argued that a river carrying such a vast amount of silt and water is inherently prone to flooding, a fact that has been tragically evident in the case of the Koshi River. The embankments built to control the river have breached at least eight times, each breach causing significant loss of life and property (Mishra, 2008). Ethnographic studies conducted in the villages of Supaul district, Bihar, support these academic observations. Local residents have noted a sharp decline in Kharif crop yields since the 1980s, a period when the effects of sediment deposition and resulting land erosion within the embankment became increasingly apparent.

Interestingly, the region once had a diverse range of rice varieties, with paddy being the primary staple crop, and wheat consumption was virtually non-existent. As 70-year-old B. Yadav from Mungrar village (situated within and near the Eastern Koshi Embankment) laments, many of these rice varieties have been lost in the Diyara region due to changing environmental conditions. This growing uncertainty surrounding agriculture in the area has contributed to an increase in out-migration. Locals often refer to their destinations as "Dilli-Punjab," a catch-all term for the various places people move to, particularly Delhi and Punjab (Kumar, 2022). Migration from the Koshi region has notably intensified since the 1980s, when the consequences of the embankments became more apparent. This migration trend aligns with the rising demand for labor in places like Punjab and Haryana, driven by the Green Revolution's agricultural boom.

Today, seasonal migration has become a near-universal practice in the region, with almost every household sending members away for work. The embankments have disrupted the delicate balance between the people and the river, exacerbating the challenges faced by the local population. Despite the region's agricultural decline, the government continues to collect *lagan* (a form of tax) from the

people, yet provides few essential services such as hospitals, schools, or other basic civic amenities. The embankments have also forced people to relocate their homes repeatedly in response to the unpredictable behavior of the river. Those living within the embankment have not been adequately rehabilitated, and relief efforts during floods are often insufficient, leaving people to cope on their own.

Respondents in the field repeatedly shared their experiences of losing their homes multiple times, with entire villages fragmented, their populations scattered across different locations. The displacement caused by the river's changing course and the failure of the embankments has left communities vulnerable and isolated, their sense of stability constantly undermined by both natural forces and inadequate state support.

Examining the Politics of Disaster

From the above discussion, it is clear that the narrative of flood control is intrinsically linked to the broader story of controlling the river itself. This process has been shaped by a discursive framing of the river's natural characteristics as a problem to be solved, followed by the selection of specific interventions and the continued implementation of these solutions despite their detrimental effects. In the following analysis, we will explore how politics permeates every stage of this process, from the initial framing of the disaster, through policy choices, to the inertia that prevents meaningful change.

This investigation also seeks to answer a crucial question: can the floods of the Koshi River be classified as a sudden, extraordinary event, or should they be understood as the product of a long-standing historical process? By reframing the issue in this way, we aim to challenge the conventional understanding of these floods as isolated incidents and instead recognize them as part of a broader, ongoing dynamic shaped by human and natural forces over time.

Ultimately, this inquiry strives to reassert the central role of politics in disaster management. It aims to show that decisions about how to manage floods, the interventions chosen, and the failure to address their root causes are not merely technical or natural processes, but deeply political ones. Understanding the Koshi floods as the outcome of historical and political decisions, rather than as unforeseeable natural disasters, can provide new insights into how such crises might be more effectively managed in the future.

Framing the disaster: Multiple natures and discrediting already existing knowledge

A short film produced by the Film Division of the Government of India on the Koshi Project of 1953 remarks.

“For centuries, the people of Bihar have been victims of ravaging river Koshi. ...Once in the plains, the river, like a writhing snake, changes its course almost at will...bringing devastation to the fertile land...its spreading water wipes out traces of human endeavour from the countryside.” (Films Division 2015)

Following are the statements people made about the changing character of the river since the construction of the embankments in 1954.

“The river was not so furious earlier. We used to cross the river on the back of Buffalo. There was no need to wait for boats. The shepherds used to drive the cattle to the jungles of Kaas and Pater. There used to be a competition like Kusti and Pahalwani.”ⁱⁱ

“It is because of them that we have only one wheat crop. Earlier, we used to have bumper crops. We used to produce beyond our consumption capacity. We used to have kurthi, kelay, mosri, khesari etc. Wheat has become prominent these days only.”ⁱⁱⁱ

However, the above statements can be contrasted with those made by the technical officials of the government of Bihar regarding the same river.

“Multiple factors influence the morphology and river drainage, like rainfall in Nepal/Tibet, climate change, deforestation, etc. The need for embankments is linked with the need for development. The river has been divided into four stretches: Barahakshetra - Kosi Barrage - Kosi Mahasetu - 125 km - Naugachia. There is a physical modelling centre at CWPRS (Central Water and Power Research Station), Department of Water Resources, River Development and Ganga Rejuvenation, Ministry of Jal Shakti.”^{iv}

Rabinow (2005) argues that the socio-historical context shapes how people frame specific events as disasters or not. This dynamic was clearly evident in colonial attempts to control rivers across India,

especially in the northern and eastern regions. Mishra (2001) demonstrates that, before colonial intervention, local populations effectively utilized floodwaters and the fertile silt they brought for agricultural purposes, employing a system known as “controlled flooding.” Singh et al. (2021) further explored this by studying “flood recession farming” in the Ganga River Basin, showing that this flood-based agricultural system had been central to food security and environmental sustainability for centuries.

Bandyopadhyay (2018) conceptualizes the river as a WEBS—Water, Energy, Biodiversity, Sediment—emphasizing the river’s multifaceted role in the ecosystem. The colonial project, however, sought to separate land from water, treating them as distinct, binary entities. Dixit (2017) argues that sediment erosion, transportation, and deposition are essential components of the hydrological cycle, shaping rivers, floodplains, and ecosystems. Rivers, landscapes, communities, and cultures together form a “waterscape,” but the colonial elite adopted a reductionist view of rivers that ignored their complex ecological nature. This simplistic view was driven by concerns about revenue collection under the Permanent Settlement and the colonial state’s need to assert control over land and resources. Recurrent floods were seen as a disruptive force that hindered governance and state formation (D’Souza, 2006; Singh, 2008).

The colonial framing of the river and the human-nature relationship was therefore strongly tied to the political economy of the time. According to Knowles and Wareing (2014), human intervention in nature is often rooted in an ontological predisposition—the belief that nature can and should be controlled. This “possibilist” ideology, which assumed that any natural challenge could be overcome through human ingenuity, led the colonial state to intervene in the river’s course and obstruct its natural flow in various parts of India. In doing so, the colonial authorities dismissed the local people’s knowledge and their cultural practice of “living with floods” as naive, parochial, and fatalistic.

However, the detrimental consequences of such river control efforts in other parts of India eventually led to a shift in colonial policy. The negative outcomes of these interventions—such as waterlogging, drainage congestion, and social dislocation—prompted a reconsideration of the earlier approach. By the early 20th century, a broader understanding began to emerge, advocating for a more natural

flow of the river. This shift culminated in the conclusion that rivers, like the Koshi, should be allowed to flow freely to meet the sea, as recognized by colonial officials such as O'Malley (1911) and Inglis (1909). This change in outlook reflected a more nuanced understanding of the river's ecological and social importance, moving away from the reductionist, control-oriented mindset that had initially guided colonial interventions.

Managing the disaster: The politics of policy choice

In the years leading up to India's independence in 1947, there was significant discourse and action focused on addressing the recurrent floods in the Koshi region. A shift began to take place towards the idea of controlling the river, with proposals emerging for constructing a dam or training the river to flow within a single channel. This growing interest was evident at the Patna Flood Conference in 1937, where discussions on flood control began to gain traction. In December 1945, Lord Wavell visited the flood-stricken areas of Bihar and, during a meeting with engineers in Calcutta, expressed his frustration that the Koshi River remained "uncontrolled" (Water Resource Department, 2002).

In 1946, the Nirmali Conference, which convened flood-affected communities from the Koshi region, placed significant focus on the construction of a high dam at Barahkshetra as a potential solution to the persistent flooding. Around this time, the idea of a high dam was actively promoted in the media as a viable method for controlling the river's destructive behavior. Between 1947 and 1951, the concept gained substantial traction, but it was eventually abandoned due to concerns over its high cost and financial viability.

Subsequent proposals aimed at controlling the river included the construction of a reservoir alongside embankments to regulate the flow and train the river. However, these proposals also faced rejection, as they were deemed insufficient or impractical. Despite these setbacks, the push for a long-term solution to the Koshi River's flooding persisted, laying the groundwork for future engineering interventions in the region.

The momentum for action on the Koshi River grew significantly after Prime Minister Jawaharlal Nehru's visit to the region in 1953. His visit catalyzed the formulation of the Koshi Project, which was officially planned and developed by the Central Water and Power

Commission (CWPC) in the same year (Mishra, 1997). The primary aim of the project was to control the river's flow by constructing embankments and other infrastructure, marking a decisive shift toward large-scale engineering interventions in the Koshi River basin. This signaled the start of a new era in flood control efforts, one that would deeply affect both the region's landscape and the lives of those living in the floodplains.

Notably, the Koshi Project was framed as a "technical" decision, designed to appear as a rational, objective solution to the flooding problem—one that could not be "politicized." The government portrayed it as a purely scientific and engineering-based approach to managing the river. However, ethnographic research conducted in the villages affected by the embankments reveals the profoundly political context in which the Koshi Project was conceived and implemented. Local respondents have shed light on the political and economic interests that played a critical role in the decision-making process, illustrating how the project was deeply intertwined with the broader political economy of the region. These insights challenge the portrayal of the Koshi Project as a purely technical solution and highlight the ways in which politics, power, and economic interests shaped its execution and the impacts it had on local communities.

"The influential people of the time, like Mol babu of Purnea, Maharaja of Darbhanga, Sau parbatta etc., wanted the flood controlled. There was uncertainty due to the shifting course of the river. No one was sure of their fortunes. The landlords on both sides of the river, viz., Madhubani in the west and Purnea in the east, wanted their lands to be unaffected by the river. They wanted their land to be permanently dry. Hence, they wanted the river to be embanked."^v

B. Ram of Khokhnaha village further says that the alignment of the embankments was politically motivated.

"Lalitgram, the village of Lalit Narayan Mishra, was saved by changing the alignment of the embankment."^{vi}

Mishra (2008) highlights that the alignment of the Koshi embankments was not determined purely by technical considerations but was, in fact, influenced by the interests of the local landed elite. The design and positioning of the embankments were strategically reimaged to align with the economic and political needs of these influential landowners, shaping the project's implementation in ways that benefitted them. This argument is further substantiated by Appu

(1973), who demonstrates that the canal irrigation system promoted by the Koshi Project primarily served the interests of the landed elite, ensuring that they reaped the lion's share of the benefits, particularly in terms of increased agricultural productivity.

Jha (2012) takes this analysis a step further, suggesting that one of the political motivations behind the Koshi Project was to solidify the dominance of the Congress party in the region. The distribution of public funds for the project, particularly through earthwork contracts and other infrastructure projects, became a means of reinforcing patronage networks. By channelling resources to local elites and key political figures, the Congress party could maintain a system of clientelist relationships, securing political loyalty in exchange for economic benefits. Thus, the Koshi Project was not just an engineering endeavour but also a tool for political consolidation, reinforcing the party's power in the region through strategic investments in local infrastructure. This reveals how the Koshi Project, while framed as a technical solution to the flood problem, was deeply entangled with the political economy of the time, shaped by both local and national power dynamics.

The Politics of policy inertia

In 1980, the National Commission on Floods (Rashtriya Barh Ayog) raised critical concerns about the continued reliance on embankments as the primary method of flood control without any thorough performance evaluation (Rashtriya Barh Ayog Report, 1980). The commission underscored that this approach ignored the underlying causes of flooding, such as changing land use patterns in the upper catchment areas and the growing population living in the paleochannels of the river. These factors, the report argued, needed to be addressed in any long-term flood management strategy.

The commission also highlighted the importance of local adaptation strategies, such as elevating the topography of flood-prone villages, to enhance the resilience of the communities living in these areas (Ganga Flood Control Commission, 2015). One of the critical issues that compounded the vulnerability of people in flood-prone regions was their exposure to flooding due to encroachment on floodplain areas. The need for floodplain zoning was discussed as an essential tool to mitigate this vulnerability by decongesting areas most susceptible to flooding (INCID, 1993).

The National Disaster Management Authority (NDMA) further advanced this critique in its 2008 report, arguing strongly against the continued emphasis on structural solutions like embankments and for a shift toward non-structural responses to floods. The NDMA emphasized that the focus should not be on controlling the river, but on preparing communities to cope with floods through flood forecasting, preparedness, and mitigation strategies. The report highlighted how advancements in information and communication technology (ICT) could be harnessed to provide timely and accurate flood warnings to affected populations, enabling them to better prepare and respond to impending disasters.

This shift in perspective marked a critical move away from solely engineering-based flood control approaches and emphasized the importance of disaster preparedness, community resilience, and the need for a more integrated and sustainable approach to flood management.

Critics of the Koshi River's embankment-based flood control approach have long pointed out its fundamental flaws. Ray (1953) was one of the early critics, highlighting the challenges posed by the river's natural tendency to meander. At the time of the Koshi Project's conceptualization, the river's shifting course was a well-known issue, and attempts to constrain it within embankments were viewed as problematic. Wells and Dorr (1987) further emphasized the difficulty of managing such a dynamic and meandering river, which often defied the rigid control mechanisms set by human engineering.

Mishra (2008) argues that the breach of the Koshi embankments is "inevitable," given the river's nature. He points out that confining a river like the Koshi within two embankments is inherently flawed, as the sediment accumulation over time forces the river to breach its boundaries. As sediment builds up in the riverbed, the water discharge increases, putting immense pressure on the embankments, eventually leading to breaches. Sinha (2008) concurs with this, noting that most flood management strategies overly focus on hydrological data, neglecting the fact that a river is not just a conduit for water but also carries vast amounts of sediment. He argues that flood control efforts need to incorporate geomorphological studies, which would provide a better understanding of the river's dynamics and sediment transport, rather than relying solely on hydrological models.

Dixit (2009) adds to this critique by highlighting that embankments often create a “false sense of security” for people living in flood-prone areas. The physical presence of embankments may lead communities to believe they are protected, despite the unpredictable nature of the river and the changing environmental conditions. He also points to the changing land use patterns in the upper catchment areas, which, coupled with erratic monsoon patterns and flawed hydrological assumptions, make it difficult to predict the river’s behavior reliably.

Iyer (2008) similarly questions the effectiveness of the dam-and-reservoir system as a solution, arguing that it provides only limited protection against floods. While these structures may mitigate some flood risks, they do not address the root causes of flooding and offer only temporary relief. Iyer advocates for a shift in focus toward enhancing the capacity of communities and systems to cope with floods, rather than relying on infrastructure that might not withstand future challenges.

Finally, Sinha et al. (2019) propose a more comprehensive approach, suggesting that a detailed morphological study of the entire Koshi River basin is necessary. Such a study would help identify areas of intense siltation and erosion, enabling targeted interventions such as dredging and deepening the river channel. This, they argue, would reduce the frequency and severity of flood events, as it would allow the river to carry away sediment more efficiently, reducing the risk of blockages and breaches in the embankments.

In summary, these critiques collectively argue for a paradigm shift in flood management—one that moves away from rigid, engineering-focused solutions like embankments and dams and embraces a more holistic, ecological, and adaptive approach that takes into account the river’s natural dynamics and the socio-environmental factors influencing flood risk.

Given the growing body of critique, both from within and outside the government, questioning the efficacy of embankments as a flood control measure, it becomes essential to explore why this approach continues to be perpetuated. Despite mounting evidence highlighting the flaws and limitations of embankments, the continued reliance on them reflects deeper political, economic, and institutional factors. The following explanatory framework, developed through a literature review and ethnographic engagement with the communities living in

the Koshi floodplains, seeks to shed light on the reasons behind the persistence of this approach.

Vote bank politics and the political economy of Earthwork

The most common sentiment among the people in and around the embankments is that the Koshi Project and flood management works, like anti-erosion and flood-fighting work, are a source of corruption and distribution of public money. People, at large, say that in the whole scheme of things, people affected by the floods and erosion within the embankments don't count^{vii}.

A river expert and activist based in Patna said.

“Embankment construction is a big component of the political economy in Bihar—the coterie of politicians-contractors-engineers benefits from this. Dalals control the opinion-making concerning the embankments. They look at the immediate kickbacks.”^{viii}

The Dominance of the Water Resource Department

The decision-making power regarding the Koshi flood management is highly concentrated among the engineers of the Water Resource Department of Bihar. Interactions with the Disaster Management Department officials, people of the flood-affected areas, political representatives, etc., suggest that there are practically no mechanisms to intervene in the flood management policy.

When asked about engagement with political representatives like MP, MLA or Panchayati Raj, an executive engineer said.

“We have an engagement with DM. He has his apparatus and men and information. DM can add changes in the report being sent to TAC – he is also on board. Communication with the DM is in an official capacity – we also send copies of documents to his office. However, his inputs are reviewed in the technical paradigm”^{ix}

In an FGD, a group of people said.

“The public is not consulted. The world has become technical now. Whatever engineers say, that only will be done. The contractors don't follow the design. There is no quality control also. The money gets distributed between different stakeholders. There is no media, no newspaper. Who will raise the question?”^x

In an interaction with the Ganga Flood Control Commission (GFCC) officials, I probed why we don't see any policy shift despite the push for non-structural measures of flood control. An official responded.

“The government of Bihar says there cannot be flood plain zoning in the Koshi river flood plains. Ask the WRD why the SMLB was built.”^{xi}

Here, it must be reminded that flood management is a state subject, and the role of bodies beyond the state government is limited to advise and suggestions only. The nexus of interests at the state level seems too strong to allow any interference in the status quo.

Politics of Delimitation of Constituencies

Currently, the Koshi River passes through the Supaul, Darbhanga, Saharsa, Khagaria, Madhepura, Bhagalpur and Katihar districts of Bihar before merging with the Ganga at Kursela in Katihar. These districts have been divided into multiple Lok Sabha and Vidhan Sabha constituencies. Moreover, since Independence, these constituencies have undergone multiple delimitation processes (Srikanta 2009). This, de facto, has fragmented the ecological integrity of the Koshi region through the imposition of shifting political boundaries. This electoral fragmentation renders people's voices dispensable. An instance corroborating this came up when a starred question was to be raised in the Bihar Legislative Assembly on the initiative of the Koshi Navnirman Manch, a people's movement, regarding the illegal collection of *Lagaan*^{xii} from the people of the diyara despite a notification giving a waiver to the people who have agricultural land up to 4 hectares. This question was raised not by any MLA from the Koshi region but by an MLA of CPI-ML from a faraway constituency. In an interview, the founder of one of the people's movements, Koshi Navnirman Manch, underlined that the entire stretch of the geography within the embankments should be declared one single electoral constituency. This will give critical mass to the people to push for their demands in the electoral democracy^{xiii}.

The stigmatisation of diyara people

One of the potent methods of ignoring the voice of the people living in the Koshi diyara is the delegitimisation of the demands. I have tried to articulate a broader public discourse around life inside the Koshi

diyara. The following excerpts from the interviews are essential to understand the aspects of the above-mentioned discourse.

An official of the Ganga Flood Control Commission said.

“What will the government do if someone goes and sit in the lap of the river.”^{xiv}

An official of the Disaster Management Department said.

“Not all living inside the embankment come to the relief camp. It means that people have homes both inside and outside the embankments.”^{xv}

Another District Disaster Management Department official decried the people’s behaviour during the floods.

“People don’t want to vacate their homes even if we give information about the floods. They tie their cattle with the poles.”^{xvi}

The interview excerpt with an intellectual living in the countryside is worth reiterating.

“Inside, people are happy. Mostly OBCs and Muslims live and have better cultivation as new soil comes after the flood. People inside the bunds work as vote banks. The Gazette of GoI states that no development work can be done within the embankments, but we have middle schools, dispensaries, etc. We have more than 20 Punarwas settlements. They grow cash crops. They have a makeshift arrangement on the embankments. Everyone has the boat. They have two kinds of habitations: inside and on the bunds. The majority of the people have “safe land” to habitat. The per capita income of the people within the embankment is more. People affected by the floods migrate temporarily.”^{xvii}

There is an official position that people living inside the diyara live in the “wrong place”. This means that the land within the embankments is not supposed to be inhabited by the people. The people who live there are doing so illegally. They also have irrational place attachments. It is the people who are coming in the way of the river. Officially, the government claims to have rehabilitated the people who fell on the riverside in the Punarwas colonies outside the embankments. The reality of this claim has been tested during the field study. It also appears that the people’s struggle with the floods and their resilience is being put against them.

Conclusion

This paper starts with an outline of the ecological backdrop of the river Koshi and the structural control of the river in 1954. I presented the implications of river control on the people living in the flood plains through an ethnographic account. Deploying the anthropological approach to the study of disasters, I argue that the Koshi floods are a policy-induced disaster and the allegedly ‘technical’ flood management policy is deeply political. An attempt has been made to unbundle these politics at various stages of framing the disaster, policy choice and continuation of an obsolete approach.

Notes

- i. Koshi is used interchangeably to denote the river Koshi and the geographical area around the river Koshi.
- ii. Respondent Yadav B. Interviewed by Rahul Kumar Yaduka. 2022.
- iii. Focus Group Discussion. Interviewed by Rahul Kumar Yaduka. 2022.
- iv. Respondent Kumar D. Interviewed by Rahul Kumar Yaduka. 2022.
- v. Respondent Mishra A. Interviewed by Rahul Kumar Yaduka. 2022.
- vi. Respondent Ram B. Interviewed by Rahul Kumar Yaduka. 2022.
- vii. Respondent Rai S. Interviewed by Rahul Kumar Yaduka. 2022.
- viii. Respondent Kumar R. Interviewed by Rahul Kumar Yaduka. 2022.
- ix. Respondent Gaurav V. Interviewed by Rahul Kumar Yaduka. 2022.
- x. Focus Group Discussion. Interviewed by Rahul Kumar Yaduka. 2022.
- xi. Respondent Prabhakar A. Interviewed by Rahul Kumar Yaduka. 2022.
- xii. A tax collected from the peasants based on the size of their land
- xiii. Respondent Yadav M. Interviewed by Rahul Kumar Yaduka. 2022.
- xiv. Respondent Prabhakar A. Interviewed by Rahul Kumar Yaduka.

- 2022.
- xv. Respondent Kumar A. Interviewed by Rahul Kumar Yaduka. 2022.
- xvi. Respondent Kumar D. Interviewed by Rahul Kumar Yaduka. 2022.
- xvii. Respondent Mishra L. Interviewed by Rahul Kumar Yaduka. 2022.

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Conundrums of Language Communication among Gujjar Pastoralist Students of Rajouri District of Jammu and Kashmir

Zaffer Iqbal and Dr Subhash Misra*

Abstract

Effective communication skills are essential to prospering in a career and excelling intellectually. Unfortunately, communication difficulties, such as the medium of instruction and medium of communication within and outside the classrooms, are syntactic barriers to educational backwardness and dropout rates. The Gujjar community of Jammu and Kashmir is pastoralist. They are isolated from the other social community, which leads to communication barriers for the whole Gujjar community, further creating problems for their children in schools. Most of the Gujjar community students, which includes both male and female students, are facing communication problems in the schools, which further leads to school dropouts as well as low levels of learning among the Gujjar students. Hence, the Gujjar children prefer teachers of their mother tongue so that they can learn quickly in the classrooms. The present study examines the conundrums of Language communication among Gujjar pastoralist students of the Rajouri district of Jammu and Kashmir.

Keywords: *Language, Communication Barriers, Education and Gujjar Pastoralist Students*

Introduction

Education can be defined as the systematic transmission or acquisition of knowledge, skills, and values, typically facilitated within a structured and organized institutional framework. Cultural transmission refers to

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the process by which knowledge, skills, attitudes, beliefs, and habits of a particular group of individuals are passed down from one generation to the next through various methods (Law et al., 2007).

Therefore, our actions are a direct result of our knowledge and the information we have acquired, whether it be from explicit orders or through the process of observation and assimilation. While most individuals perceive education as an imperative, they often view it as a means to achieve particular objectives or personal milestones. However, the underlying reality is that education holds significant and interconnected value within society, making it inseparable from knowledge (Kamaludin et al., 2022). Education is an essential and irreplaceable instrument that is crucial for the personal growth and development of individuals across all domains. Moreover, education plays a significant role in fostering the overall progress and advancement of society on a broader scale (Son et al.,2019). A comprehensive institutionalized education system is essential for the holistic development of individuals within a nation, enabling personal growth and facilitating the growth of others as well. The individuals comprising a society are fundamental units, and the prosperity of a society is contingent upon the provision of appropriate education to these individuals.

Language is the primary aspect of culture in that it allows for the understanding, configuration, expression, and transmission of information and culture. Culture also impacts our attitudes, tastes, behaviours and it is reflected, disseminated, transmitted and preserved through communication. However, communication is an obligatory part of any education. With proper communication among students, education as a medium becomes efficient to facilitate any significant and affirmative result. Educational institutions (schools and colleges) and actors in education (teachers, principals, and parents), therefore, need to inculcate the necessary education through effective channels of communication to every group of students who come under the purview (Durall, Zurakowski&Wolfe,2012). Communication augments the quality of classroom instruction and thus helps in successful collaboration in educational environments. Prioritizing communication is not only necessary for self-development but also essential to developing those skills that are necessary for shaping the social lives of the students (Powell et al.,2015). Communication, or lack thereof, becomes a significant impediment when different barriers in communication are allowed to thrive without proper care from the major

stakeholders. As part of our training, ways of communicating are an essential component in teacher training but less emphasized in classrooms in real-life practical situations.

Nonetheless, the Indian population consists of several groups, and schedule tribes are one facet of them (Lakshmi & Paul, 2019). Schedule Tribal education has become vital for the country's planned growth of its human capital.

The Gujjar community of Jammu and Kashmir is pastoralist. Cow and Buffalo herders, known as Gujjars, are primarily involved in agriculture, animal husbandry, and the production and supply of milk. They keep cows and other domesticated animals, such as buffaloes, in the plains and foothills of mountains. These Gujjar tribal people have been residing in Jammu and Kashmir for generations, retaining their uniqueness via the preservation of their language, culture, and customs Hari (1998). The Gujjar tribe holds the distinction of being the most populous group among all scheduled tribes. Gojri is the mother tongue of the Gujjar community, which speaks several languages. Because Dogri, Urdu, Hindi and English mainstream languages are so widely used in schools and other settings, the number of people speaking the Gojri language is decreasing. Instead, the school-age Gujjar community members study and use the mainstream languages. The Gojri language is in danger of dying out since the school-age children of the Gujjar population speak and learn these mainstream languages rather than their mother tongue.

The use of the mother tongue is an essential language to have a complete understanding of the concepts (A damkova & Dankova, 2014). The low rate of learning among the Gujjar Tribes of Jammu and Kashmir is a severe problem for the Government and also for the stakeholders of education. One major issue for tribal students is learning other communicative languages. The Gujjar students in the schools need help understanding the teaching of their teachers in any other language, due to which they become dropouts. Therefore, the present study aims to examine the conundrums of language communication among Gujjar pastoralist students of Rajouri district of Jammu and Kashmir.

Objectives of the Study:

The objective of the present study was-

- To explore the conundrums of Language Communication among Gujjar Pastoralist Students of Rajouri District of Jammu and Kashmir

DELIMITATIONS OF THE STUDY

1. The present study was delimited to the Government Schools of Rajouri District.
2. The present study was delimited to class X students.
3. The present study was delimited to only three densely populated villages of Gujjar Community of Rajouri District of Jammu and Kashmir.

METHODOLOGY

The present study was a Descriptive Survey as it involved systematic collection, classification, analysis, comparison, presentation and interpretation of data concerning the existing phenomena. The investigator utilized a semi-structured questionnaire, an interview schedule, a house hold survey, targeted focused group discussions, and observation techniques to gather relevant data for the investigation.

Sample of the Study

The study was conducted in Gujjar Pastoral dominant villages- Peeri, Rehan and Prori Gujraan villages of Budhal Block, Koteranka Tehsil, Rajouri District of Jammu Region. These villages were chosen to participate in household surveys, focused group discussion and observations. The study sample was Male and Female Students of class X in Government Secondary Schools of Rajouri district. The sample of the study was selected purposively. The study sample comprises 100 male and 100 female students of class X. The total number of students is 200, and other than this, the sample comprises 24 households of the 03 villages, namely- Peeri, Rehan and Prori Gujraan, of Rajouri District and 10 teachers from the schools (02 teacher from each school).

Table: Showing the School Wise and Sample Wise breakup of the sample

S. No.	Name of the School	Male	Female
1.	Govt. Higher Secondary School Peeri	25	23
2.	Govt. Secondary School Demote	15	15
3.	Govt. Higher Secondary School Rajouri	20	20
4.	Govt. Secondary School Dhar Sakri	20	17
5.	Govt. Secondary School Prori Gujraan	20	25
Total		100	100

Source: Field Work Data

Tools of Data Collection:

Statistical Techniques Used: In this study, Percentages and Graphical Representations have been used to showcase the data.

Results and Discussion

The Scheduled Tribe's education has presumed special significance in the development of human capital. Literacy and primary education have an advantageous impact on economic development and social mobility. Education helps to advance awareness among the Scheduled Tribes (STs) of their legal, social, political and economic rights. Education will secure jobs and improve tribal socio-economic conditions. Education can be an effective means of changing society. It empowers people to eradicate social inequality through class, gender, caste, age, and disability. Therefore, the present section explores the Communication preferences of scheduled tribes in the Rajouri district of Jammu and Kashmir.

Table 1: Communication Preference of Gujjar Students in Schools

Communication Language	Male Students	Female Students
Gojri	92(92.00)	96(96.00)
Hindi	4(4.00)	1(1.00)
Urdu	6(6.00)	3(3.00)
	100	100

Source: Field Survey Data

Figure 1: Language Preference for Communication among Gujjar Pastoralist Students.

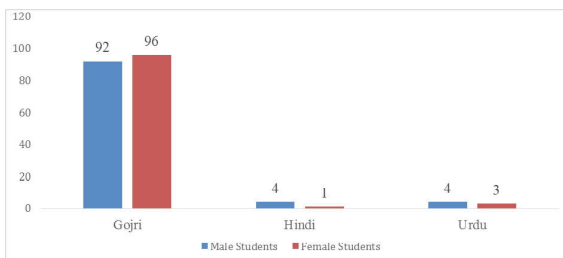


Table 1 reveals that 92 % of male Gujjar pastoralist students said that they prefer Gojri for communication, and 4% of male students said that they prefer Urdu for communication. Whereas 4 % of the male students said they prefer Hindi for communication. Similarly, in the case of the female students, 96 % female Gujjar pastoralist students said that they prefer Gojri for communication, 3% female students said that they prefer Urdu for communication, and 1 % of the female students said that they prefer Hindi as communication. Therefore, the overall results reveal that the Gujjar pastoralist students, including male and female students, have their highest preference for Gojri language as medium of communication.

Table 2. Shows Proficiency in languages skills among Gujjar Pastoralist Students

Language Skills	Male	Female
Speak & Understand	Gojri, Pahari, Urdu	Gojri, Pahari, Urdu,
Read	Urdu, Arabic,	Urdu, Arabic
Write	Urdu, English	Urdu, English

It was found that Gujjar Pastoralist Students are multilingual in nature and can communicate more than two languages. The proficiency and usage of English language is low among Gujjar Pastoralists students whose parents are illiterate. The educated members of the Gujjar Pastoralist Students can proficiently speak, understand, read and write in Urdu and English because of the fact that these two languages are part of school curriculum. It was observed that both the male and Female Gujjar pastoralist Students can proficiently speak and understand more than two languages like Gojri, Urdu, and Pahari only. However, the small literate portion of the Gujjar Pastoralist students can understand, speak, read and write in Urdu and English only. It was observed that very small proportion especially literate female Gujjar Pastoralist students are proficient in reading and writing Urdu and English only because these two languages are mostly taught in schools.

Perception of Gujjar students while learning in other languages

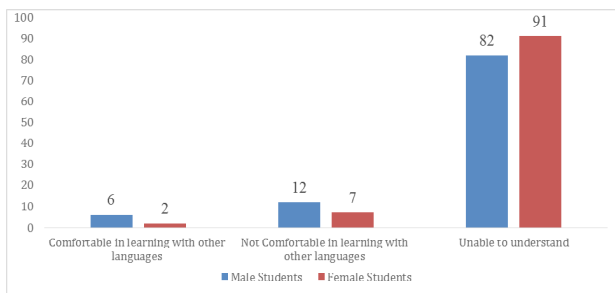
The present section explores the perception of Gujjar students in other languages in schools.

Table 3: Perception of Gujjar students while learning in other languages

Dimensions/ Parameters	Boys	Girls
Comfortable in learning with other languages	6(6.00)	2(2.00)
Not Comfortable in learning with other languages: Memorize the concepts and answer the questions	12(12.00)	7(7.00)
Extremely Uncomfortable with other languages: Unable to understand the concepts and reflect on them	82(82.00)	91(91.00)
Total	100	100

Source: Field Survey Data

Figure 3: Perception of Gujjar students while learning in other languages



It has been observed from Table 3 that 82 % of the male Gujjar pastoralist students said that they are Extremely Uncomfortable with other languages with respect to understanding the concepts and reflect on them in a language other than Gojri. Whereas 12 % of the male Gujjar pastoralist students said they are not comfortable in understanding the concepts in other languages, however they memorize the concepts and answer the questions. Thus, 94% male Gujjar pastoralist students are not comfortable with other language as a medium of instruction. Only 6% male Gujjar pastoralist students expressed the view that they are comfortable in learning with other languages.

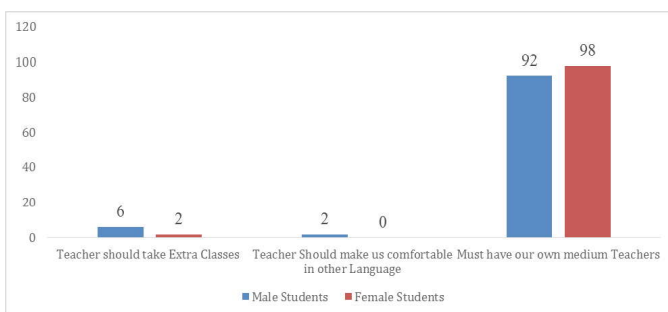
In the same way, 91% of the female Gujjar pastoralist students said that they would prefer to avoid learning through other than Gojri

languages as they are Extremely Uncomfortable with other languages with respect to understanding the concepts and reflect on them in a language other than Gojri. Moreover, 7% of the female students said that they are not comfortable in understanding the concepts in other languages, however they memorize the concepts and answer the questions. Thus, 98% female students are not comfortable with other languages as a medium of instruction. Whereas 2 % of the female Gujjar students said that they are comfortable learning through the medium of languages other than their mother tongue. Therefore, the overall results reveal that the highest percentage (94.5%) of the Gujjar pastoralist students, which includes both male and female students, are not comfortable learning through the medium of language other than their mother tongue.

Table -4. Perception of Students for Improving their Learning in Schools

Dimensions/Parameters	Boys	Girls
Teachers should take Extra Classes	6(6.00)	2(2.00)
Teachers should make us comfortable in other Language	2(2.00)	0(0.00)
Must have our own medium Teachers	92(92.00)	98(98.00)
Total	100	100

Figure 4: Perception of Students for Improving their Learning in Schools



It has been observed from Table 4 that for improving the learning in the school, 92 % of the Gujjar pastoralist students revealed that they want the teachers of their mother tongue to improve their

interaction in classroom. However, 6 % of the Gujjar pastoralist students said that the teachers should take extra classes to make our concepts much clearer. At the same time, 2 % of the male Gujjar pastoralist students said that the teachers should make them comfortable while delivering lectures in other languages. Similarly, 98 % of the female Gujjar pastoralist students said that they must have teachers of their own Gojri language to ease them in conversing during classroom interaction. Moreover, 2 % of the female Gujjar pastoralist students said that the teachers should take extra classes to make the concept clear to them. Therefore, the overall results reveal that the highest percentage of the students want teachers in their mother tongue medium.

Focused Group Discussion Results

A focused group discussion with the Gujjar pastoralist Students, Teachers and their Parents of the Rajouri District of Jammu and Kashmir revealed that-

- The conundrums of language communication among Gujjar pastoralist students are multifaceted and challenging. This situation often arises due to a combination of linguistic, cultural, and socioeconomic factors especially the native language and the language of instruction.
- Teachers of Gujjar pastoralist students revealed that-multilingual environment is a major factor of conundrum among Gujjar Pastoralists students. Gujjar pastoralist communities have their own Gojri language and dialect, which is not the medium of instruction in schools. In the Rajouri District, the official languages are Urdu, Dogri, Kashmiri and English whereas spoken languages are-Pahari and Gojri. The students face difficulties in understanding and expressing themselves in these languages.
- Most of the students of the Gujjar pastoralist community revealed that- they have un-educated family backgrounds, and their mother tongue is Gojri. However, after getting enrolled in the schools, they find more difficulty in understanding the concepts, as their mother tongue is Gojri, but most of the school teachers belong to non-Gujjar community and they do not speak Gojri language. Among them, many of the teachers have a Hindi or Urdu language background. However, the

Gujjar students need to become more familiar with the Hindi and Urdu languages, or the teachers must be familiar with the mother tongue language of the Gujjar Pastoralist students, which is. Due to this, the Gujjar Tribal students face a conundrum with the use of language in the classroom and out of the classroom, and the teachers teach them in Hindi or Urdu.

- Parents of Many Gujjar pastoralist students revealed that their wards are not proficient in the medium of instruction used in schools. As the medium of instruction is a language different from their native tongue, it creates a significant language barrier that affects their learning. Thus, Language barriers are creating difficulties in comprehension and expression among Gujjar Pastoralists students.
- The teachers of the Gujjar pastoralist students also revealed that the students from Gujjar communities are not proficient in the dominant languages used in schools. This leads to lower academic performance, frustration, and a lack of participation in the classroom.
- The parents of the Gujjar students revealed that they use Gojri as their mother tongue and are primarily uneducated pastoralists; they prefer only Gojri as they are well versed in speaking Gojri as a medium of conversation, and they are isolated from the other social community groups.
- The issue of cultural divide has been raised by the teachers also. The teachers reported that the isolation from the other social community leads to a communication barrier for the whole Gujjar community, further creating problems for their children in schools. Therefore, most of the Gujjar community students, which includes both male and female students, are facing communication problems in the schools, which further leads to school dropouts as well as low levels of learning and education among the Gujjar children in the school. Hence, the Gujjar children prefer teachers of their mother tongue/medium so that they can learn quickly in the classrooms.
- Thus, Cultural Divide between the Gujjar community and the mainstream population have been found a barrier to effective communication by the teachers and parents both. The Gujjar Pastoralists students find it challenging to relate to the content

and context of the lessons. Most of the members of the Gujjar pastoralist communities face economic challenges and limited access to quality education resources. This lack of access may exacerbate the language-related challenges faced by students.

- Every member of the surveyed population identified Gojri as their mother tongue. Although they speak Gojri a lot for interaction and communication, they are taught in Hindi and Urdu instead of Gojri. While some Gujjar tribal community members who work as local teachers converse and engage with Gujjar community students, and according to what students and teachers said during the focused group discussion and interview, “they are the Gujjar community’s *most beloved teachers*”.

Conclusions

Although Gojri is not taught in schools and is spoken by the Gujjars of J&K, its speakers remain marginalized despite being the third largest ethnic group in the state after the Dogras and Kashmiris. Despite the fact accepted by most of the respondents, both teachers and students in the present study, that they feel more comfortable in their mother tongue for better communication, they study and communicate in other communicative languages such as Dogri, Urdu, Hindi and English language as they are practised in school by teachers and students in which the language of the textbook plays a more significant role in considering these languages. The importance of communicative languages in place of the mother tongue creates a situation of conundrum among the students for their preference in deciding the medium of communication during the presence of a teacher in the classroom; in the classroom when no teacher is present, only peers are communicating with each other; at the time of examination; at the playground, during lunch time, at the time of conversation with their parents at home, in society, etc.

The overall study reveals that the highest percentage of the students, including male and female students of the Gujjar pastoralist tribe, want teachers of their linguistic medium, i.e. Gojri. The students are unable to perform better in learning concepts in other languages, as their mother tongue is Gojri. However, the teachers from other mediums of instruction were unable to teach in the Gojri language,

which became a barrier to communication for these pastoralist tribal students, and it further leads to educational backwardness and the dropout of Gujjar pastoralist students. Hence, the present study recommends that the –

- Government should recruit local teachers of the Gojri language for the schools of Gujjar pastoralist students.
- Gojri language may be promoted through the creation of content in the language and the provision of financial assistance to authors of Gojri literature.
- The Gojri language may be saved from extinction by having the school curriculum translated into Gojri, having Gojri taught as a separate language subject, and using Gojri as a teaching tool in classrooms.
- Lack of Gojri language proficiency is the primary cause of Gujjar students' poor verbal competence. They need to improve in writing in Gojri script, which mostly follows Urdu and Arabic.
- A lack of Hindi proficiency is another significant area for improvement in their communication; however, they verbally communicate in Urdu which is mostly similar in speaking Hindi most often. Hence, the curriculum must be designed respecting linguistic diversity, culturally sensitive teaching methods and strategies.
- Develop a curriculum that incorporates the cultural and linguistic aspects of the Gujjar community, making education more relevant and engaging for these students.
- Engaging with the Gujjar community and involving parents in their children's education is crucial. Building trust and understanding with the community can help address some of the communication challenges.
- Foster a strong connection between schools and the Gujjar community. Engage parents and community leaders in the educational process to create a supportive learning environment.
- Raise awareness and sensitize both teachers and students to the challenges faced by Gujjar pastoralist students, promoting empathy and inclusivity.
- Provide supportive interventions such as implementing support programs- as tutoring or language classes, to help

students improve their language skills and academic performance.

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Condition of Women under Bihar Jail: A Critical Inquiry¹

Pooja Kumari*

Introduction

The latest statistics by State of Bihar in the Lagislative Council in March, 2023 reveals a total of 62,108 prisoners in Bihar jails, including 2,730 females. However, as of March 31, the capacity of Bihar's 59 jails, including eight central prisons, was 47,750².

Bihar has reported the second highest female occupancy rate in 2022 (**146.8%**) in India as per the Prison Statistics India–2022 report after Uttarakhand (166.5%). However, the highest number of female inmates were confined in the jails of Uttar Pradesh (4,809) followed by Bihar (2,938) and Madhya Pradesh (1,911). Bihar has reportad the second highest female occupancy rate (152.3%) in 2021 as well.

This research examines the issue of human rights, the rights of prisoners as laid down in the constitutional provision, Jail Manuals, procedural safeguards and remedies available in relation to women prisoners in State of Bihar during the period of 2020- 2024 (period of COVID-19 and after).

Many positive changes have definitely taken place in our country after independence. However, there is not enough positive transformation in the jail administrative system. As a result, the prisoners living inside the jail suffer from various forms of violations of human rights.

This thinking did not change even during the COVID-19 period. Prisoners had to face lack of treatment and space in the jail during

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** The paper is short version of the Study “INCARCERATED GENDER: A STUDY OF WOMEN PRISONERS IN BIHAR JAILS” (2020-2024)

this period. This study was conducted during Covid-19 period and covered Bihar.

During the course of this research, we identified key human rights issues in the jails of Bihar. This included a lack of basic living facilities, overcrowding and lack of qualified health workers etc.

The term ‘custody’ means protective care. Custody means the care and control of a thing or person for inspection, preservation and security. Custodial violence means any kind of violence occurring in the custody whether legal or not, which is not acceptable under the law of land.

There is a growing concern over the increasing number of women prisoners in the country in violation of constitutional safeguards as well as rulings of Supreme Court in relation to security of accused under custody.

It has been found that the majority of prisoners are from lower castes, untouchables, tribes, religious minorities and economically poor in general. The ‘Death Penalty India Report’ (2016) by the National Law University, Bangalore, found that delayed police investigations result in large number of Dalits and Adivasis in jail. “Many prisoners languish in prisons because the police do not complete investigation and file the charge sheet on time. This is a very serious matter because such people remain in prisons without any clue of a police case against them.

Origin of the Research Problem

The international and national human rights organisations have been highlighting the issue of violation of human rights of women prisoners from time to time. However, the issue has become a ‘public agenda’ in last few years in view of large number of cases related to the women prisoners reported widely across many states in India. Various studies and Commission’s Report and their valuable suggestions have neither prevented nor reduced the rate of women prisoners. Hence, there is need to have an in-depth study of this subject.

Dimensions of Prisoners Including Women Prisoner

Prisoners have political and civil right as guaranteed under the Indian Constitution. However, the judicial maxim, ‘*bail is a rule and jail are an exception*’ has hardly been followed in the Indian criminal

justice system. As a result, the number of incarcerated prisoners has phenomenally increased in India. As per the Prison Statistics India–2022, report at all India level out of the 5,73,220 prisoners, 5,49,351 were male prisoners, 23,772 were, female prisoners and 97 were transgender as on 31st December 2022.

Number of female prisoners in Bihar

Convicts	Undertrials	Total
263	2656	2919
*Source: Prison Statistics India–2022		

Prisons – Types & Occupancy

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year	Occupancy Rate at the end of the year
2020	1,306	4,14,033	4,88,511	118.0%
2021	1,319	4,25,609	5,54,034	130.2%
2022	1,330	4,36,266	5,73,220	131.4%

(*Source: Prison Statistics India–2022)

As on 31st December 2022- Prison Statistics India–2022 report, total available capacity of all the prisons in the country is 4,36,266. Uttar Pradesh has reported the highest capacity of prisons (67,600) followed by Bihar (47,750), Madhya Pradesh (29,715), The highest occupancy rate was in District Jails (156.5%) followed by Central Jails (124.9%) and Sub Jails (96.6%).

The overall occupancy rate in all jails at national level was 131.4% whereas the occupancy rate for male (135.6%), female (76.3%) and transgender were 91.5% respectively. Mizoram (168.8%) has reported, highest overcrowding in Women jails, followed by Tripura (156.0%), Maharashtra (130.9%) and Bihar (110.4).

Only 16 States/UTs were having Women Jails (34 Women Jails) with a total capacity of 7,080 in India.

Prisoners – Types & Demography

Year	No. of Convicts	No. of Undertrial Prisoners	No of Detenues	No. of Other Inmates	Total No. of Prisoners
2020	1,12,589	3,71,848	3,590	484	4,88,511
2021	1,22,852	4,27,165	3,470	547	5,54,034
2022	1,33,415	4,34,302	4,324	1,179	5,73,220

(*Source: Prison Statistics India–2022)

Uttar Pradesh has reported the maximum number of undertrials (21.7%,

94,131) in the country followed by Bihar (13.2%, 57,537) and Maharashtra (7.6%,32,883) at the end of 2022.

*As per the Prison Statistics India–2022, there were 1,537 women prisoners with 1,764 children in India as on 31st December 2022. Among these women prisoners, 1,312 women prisoners were undertrial prisoners who were accompanied by 1,479 children and 198 convicted prisoners who were accompanied by 230 children. Uttar Pradesh has reported the highest number of Women with children (325 women with 365 children) followed by **Bihar (300 women with 331 children)** and West Bengal (160 women with 213 children) as on 31st December, 2022.*

Age wise female prisoners in Bihar Jails

Convicts (Female Prisoners) in Bihar Jails by Age-groups			
18 – 30 Years	30 – 50 Years	50 Years & Above	Total
43	129	91	263
Undertrials (Female Prisoners) by Age-groups			
18 – 30 Years	30 – 50 Years	50 Years & Above	Total
730	1418	508	2656

(*Source: Prison Statistics India–2022)

It is worth noting that there is no classification of prisoners on the basis of education, caste, class, religion, domicile or gender.

The former Chief Justice of India, Mr. N V Ramana, in one of his speeches in 2022 said that the high number of undertrials affecting the criminal justice system has the potential of a “serious” disruption. He said that about 80 percent of the 6.10 lakh jails in the country are undertrial prisoners who are “a punishment” in the criminal justice system process. “We need a holistic plan of action to increase the efficiency of the administration of the criminal justice system,” the CJI said at the inaugural session of the 18th All India Legal Services Authority in Jaipur³.

Due to the number of prisoners in Indian jails being more than their capacity, they are forced to live in close contact with each other. Which creates a serious health risk.

As mentioned above, lack of facilities, overcrowding inside prisons and shortage of health workers etc. have made the prisoners more vulnerable to COVID-19. The Bihar prison department even banned visitors and relatives as a measure to combat overcrowding and maintain social distancing. *However, jail officials and prisoners do not consider this decision to be correct. During the interview, a jail official said that during this period, the prisoners became more worried about their future and were mentally disturbed due to not being able to find out about their families.*

Another jail official from Bihar was telling that, a family about video conferencing (E-Mulakaat) and it was clear that a common man could not do it properly without any help. Many prisoners were from poor families who did not even have basic phones in their homes to find out about their families. They kept the numbers of their neighbors for any conversation. In the women’s ward of another jail, there was not even paper and pen to write letters, where the women were more distressed.

Significance of Research

One of the strong commitments of a democratic state is the protection of human lives and freedom from arbitrariness, coercive action of government. The Indian constitution, subsequent legislations and Judicial pronouncements have laid down detailed procedural safeguard to protect life, liberty, dignity and property of a person. However, notwithstanding the strong tradition of procedural democracy in India, the Indian governments at central and state levels have relatively poor track records in meeting human rights obligations while dealing with

suspects or accused. Several international human rights organisations have pointed deficit in the governing system of India. This research proposal therefore seeks to understand the underlying material reasons for the 'institutional lacuna' in humane treatment of the suspect/accused specially women.

JAIL INSIGHTS

During our visit to jail in Bihar we observed that women prisoner were more distressed compared to men. Family members, relatives and friends hardly visited them. Most of the women were accused of domestic violence, land disputes, making/selling country liquor and murder. Some told that the police arrested them on false charges of murder, and they are in jail since no legal help reached them. Their trial had not even started due to the arrival of COVID -19. Amidst the uncertainties of the future, many women were sitting alone or quietly in a group of two or four. Mental stress was high among women. This was further contributed by the harsh environment of most prisons.

Problem of over population in jails

- ❖ Sasaram Jail: As on 19th March 2021, total prisoners were 1297 Males and 42 Females as against sanctioned capacity of 770. (42 female inmates were kept in 1 ward with capacity of 10 prisoners).
- ❖ Ara Jail: Overcrowding of female prisoners are here also a big issue as men prisoners. They are kept in 1-3 wards.
- ❖ Beur Central Jail: Most of prisoners were under trials in Bihar Prohibition and Excise Act, 2016. *Our local facilitator Adv. Santosh Kumar facilitated bail of one of the women prisoners (undertrial). She was booked under the excise law along with her husband. The husband was released but she was in jail for more than 18 months. Jail admin said she was above 18 years of age, but she did not seem to be any more than 15-16. The jail administration was not cordial with the normal public.*

Phulwari Sharif Jail

So far, there was no women prisoner there during the field visit, so the female ward was locked. As per the jail administration, the medical report is not shared with family unless being specifically asked for.

As a routine, the reports are shared with the government agencies. Like all other jails, this jail also has medical ward within the premises equipped with all basic treatment, medicine, staff and qualified medical practitioner. In cases of mentally challenged / unstable prisoners, 'on call' psychiatrist from PMCH is made available. This was witnessed during jail visit.

Ara Jail

Female Ward - In the aftermath of COVID-19 pandemic, no one has spoken with their family members (in person). In fact, some of them had no idea about family's whereabouts. Few of them did not have contact details of the family members. Most of them were illiterate. There was no provision of writing letters to family. No pen and paper are provided. Family members do visit jails on the festive occasions like Diwali and Chhath puja, to give sweets and clothes. But jail administration does not allow inmates to receive these things. Female prisoners were facing genuine problems about clothes and requested us to look into the issue. Some of the prisoners wanted to share their mental traumas but were stopped by fellow inmates citing presence of jail admin personal. (This shows that there is no major help to getting help them for taking bail from officials, usually there is a provision to facilitate a lawyer for poor victims). Those who seemed financially well-offs were treating better offed.

Just as it was seen in the male wards of the jail that the poor and the rich along with the powerful and the economically weak were separated, the situation was more or less the same, but all are staying at the same place due to space limits in the women's ward.

Gaya Central Jail

Female ward: According to the female prisoners, on 8th March 2021 on the occasion of World Women's Day, all new kitchen was set up in female ward. This was a special separate arrangement for female prisoners where they could engage themselves in cooking.

There are 7 sub wards each with attached bathroom to provide convenience at night. The hygiene was well maintained. Women were allowed to do their routine work, some of them were reading while other were engaged in other mundane activities.

There was a provision of independent and isolated study room, especially for those who wanted to pursue studies. One of the inmates

was utilising this facility, who seemed to be pursuing education in Law.

All inmates are provided with the facility to have telephonic conversation from jail landline with the family members outside the prison. They can do utilise this facility twice a month (once in 15 days). On the day of my visit two prisoners had utilised this facility.

For entertainment every room had a TV installed, with due permission from higher authorities. (Story behind the TV setup – In 2018, soon after his joining, Dy Superintendent was bombarded with daily complaints of skirmishes in female ward. To solve these fights, he came up with an idea of providing TV set in one ward. This innovative measure led to visible decrease in chaos and fights among the female inmates. All of them were collectively occupied and some sort of comradery had developed. Encouraged by these results the officer sought permission to set up TV sets in remaining wards.)

The only one jail where positive environment was clearly visible. Everyone appeared to be free and relaxed. Inmates were not scared of Dy Superintendent and showed immense respect to and were very receptive of his presence. (Unlike other prisons we visited where inmates were very scared of authority). There were many old aged prisoners, some were above 90 years of age, according to Dy Superintendent.

Sasaram Jail

Female ward: In the aftermath of COVID-19 pandemic, no one has spoken with their family members (in person). In fact, some of them had no idea about family's whereabouts. Few prisoners were very old and majority of them were accused in dowry related cases. Many of them were awaiting their trials and had no idea about working of courts.

- They have well equipped medical facility with all primary medicines. A separate medical ward with separate rooms reserved for TB and AIDS patients (prisoners).
- Administration highlighted the 10% clause of medical budget when asked about the limitations jail administration faces when it comes to medical facilities. As per the clause jail cannot purchase medicines from private player beyond budgeted 10% amount of total. Meaning it limits the options of doctors in prescribing medicines to prisoners. This limitation may turn fatal in few cases.

- E- Mulakati system (online video calling system started during COVID - 19) has not worked in many cases. Many people are neither gadget friendly nor these virtual meets substitute in person meetings. In person meetings contribute in balancing mental health.

Many elderly women in Ara, Gaya and Sasaram who were accused of domestic violence and assault including land disputes were facing many problems with their advancing age. Looking at their age, Santosh Upadhyay of Bandi Adhikar Manch in Sasaram, who works for legal aid, says that they should be released at this age now. So that they can spend their last days with their family. Apart from this, it will also reduce the cost of medical treatment in the jail, which they do not get very well.

GROUP DISCUSSION WITH KEY INFORMATIVE STAKEHOLDERS

According to Ms. Savita Kumari, Journalist, Dainik Bhaskar, while narrating her experiences in Beur Central Jail, stated that when anyone wants to revenge in jail with fellow female prisoners, they give task to make extra roties and extra food to the fellow women prisoner and no one can interrupt due to some strong prisoners who usually play a role of warden.

As per another stakeholder, the jails become fertile ground for transforming petty criminal into a hardcore one. The state has wherewithal to manage all these issues just by following procedures. But for their political gains state doesn't do the needful. The Bihar law banning the selling and consumption of liquor has had detrimental effect on the communities whose livelihood was dependent on brewing and selling. No care was taken to accommodate their livelihood needs while enacting the law.

As per the Superintendent of Phulwari Sharif, the Police should do inquiry before arresting of any person. This will help in reducing the number of prisoners (read under trial prisoners). Because a majority of the inmates are in jails for a very small crime which may not require to be kept in jail. Also, majority of the prisoners belong to very poor economic background and hence find it difficult to fetch bails. Some undertrials are get converted into hardened criminal after staying in jails with the other fellow criminals.

He added that, if any prisoner is suffering from serious illness and found to be in need of special medical care then he is shifted to the government hospital and is accompanied by the jail staff. The medical report is not shared with family unless being specifically asked for. As a routine, the reports are shared with the government agencies. Like all other jails, this jail also has medical ward within the premises equipped with all basic treatment, medicine, staff and qualified medical practitioner.

Total Sanctioned Budget during the financial year 2020-21, 2021-22 & 2022-23 in Bihar

Total Sanctioned Budget (in ‘ Crore)		
2020-2021	2021-2022	2022-2023
587.2	797.3	889.0
Source* Prison Statistics India–2022		
Actual Expenditure (Rs. in Crores)		
2020-2021	2021-2022	2022-2023
490.8	590.4	635.1
Source* Prison Statistics India–2022		

The above data clearly indicates that jail administration have failed to utilise 96.4 Crore in the financial year of 2020-2021, 206.9 Crore in the financial year of 2021-22. And 253.9 Crore in the financial year of 2022-23.

Details of Expenses on Inmates during the financial year 2022-2023 in Bihar (‘ In Crore)

Food	Clothing	Medical	Vocational/ Educational	Welfare Activities	Others	Total
184.40	5.49	5.51	0.00	0.00	26.58	221.99

Source* Prison Statistics India–2022

The above mention table reveals that in the year 2022-23, which count as post COVID period, there were no money spent on Vocational/

Educational and Welfare Activities. Further, only 5.51 crore were spent on medical and similarly, 5.49 crore on clothing. But the budget spent on others category was much more and spent around 26.58 crore.

Details of Expenses on Inmates during the financial year 2021-2022 in Bihar (‘ In Crore)

Food	Clothing	Medical	Vocational/ Educational	Welfare Activities	Others	Total
177.36	5.67	6.25	0.23	0.00	34.27	223.78

Source* Prison Statistics India–2021

Similarly, in financial year 2021-22 the above mention table clearly revealed there were only 6.25 crore that was spent on medical and similarly 5.67 crore on clothing. But the budget spent on others category was much more and spent around 34.27 crore.

On the issue of poor spending on medical facilities by the jail administration, the Sasaram Jail Superintend pointed out that Jail administration is entitled to spend only 10% of the entire budget on medicine. As per this clause, the jail authorities cannot purchase medicines from private player beyond 10% amount of total budget. Meaning it limits the options of doctors in prescribing medicines to prisoners. This limitation may turn fatal in few cases. Jail administration allows food and clothes brought by family members of the prisoners. They follow humanitarian principles as much as possible.

According to Shri Ajit Mishra, there should not be any jail. Jail is a disgrace for the civilized society. Jail should be only for professional criminals. He stated that “today women are sent to jail due to domestic problems including inter family conflicts such as between mother-in-law and daughter in law, husbands selling liquor (in liquor ban state, especially in Bihar) etc. In all these cases, except for organized crime, no one should be sent to jail. There are many other punishments which should be given outside the jail also. I have visited jail many times, saw separate ward/warden for women, cleanliness seemed normal but still food and drink are very bad at some places. Still, jail is jail. Women should be sent to jail only when all options are exhausted”.

Advocate Santosh Kumar narrated following problems that prisoners were/are facing inside jail:- “there is overcrowding even

today, there is not much area for women. There is no library in every jail. There is a need to improve the visiting system. Women do not complain to us out of fear. The hospital is small, it should be bigger. They also face difficulty in going to court from the jail. Due to no visitors during COVID-19, not getting things from home, they were in mental trouble more than men. In one case the husband in Phulwari jail and wife in city jail. Recently they are shifted in one place now both of them are able to sit together and talk on Sundays while staying in the same jail. Visiting facility has been made available, it was completely closed during COVID time. Many women were sent from Patna to other districts where the family was not informed, even their advocates did not know. Prisoners were transferred from Patna to 3-4 districts. It took time to get the bail bond, after release these people were able to come out of jail after 4-5 days”.

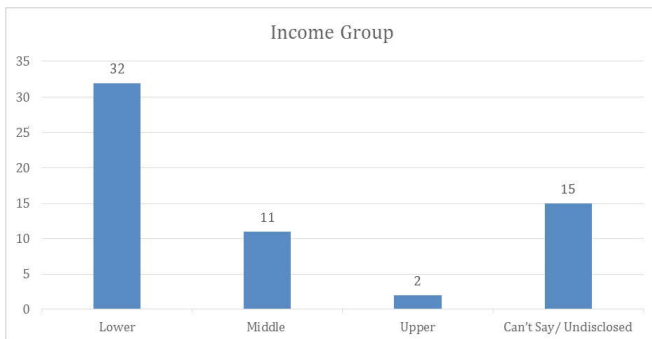
DATA COLLECTED FROM UNDER-TRIAL AND CONVICTED PRISONERS⁴

1. Gender: All Women

Below 18	20-35 years	35-50 years	50-65 years	Above 65 years
1	13	32	11	3
Total			60	

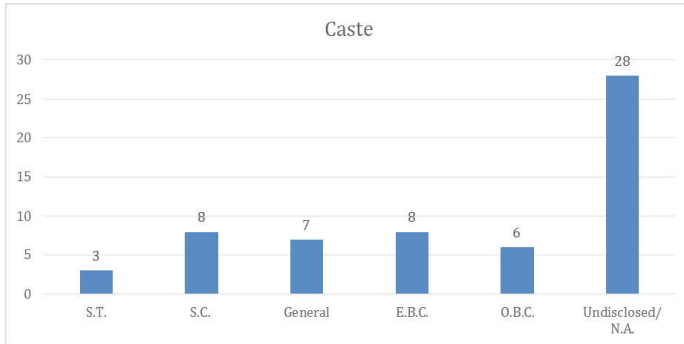
2. Income Group

Out of total 60 women prisoners, 32 were from lower income group, 11 from middle income group, 2 were upper and 15 have undisclosed or they could not say on it.



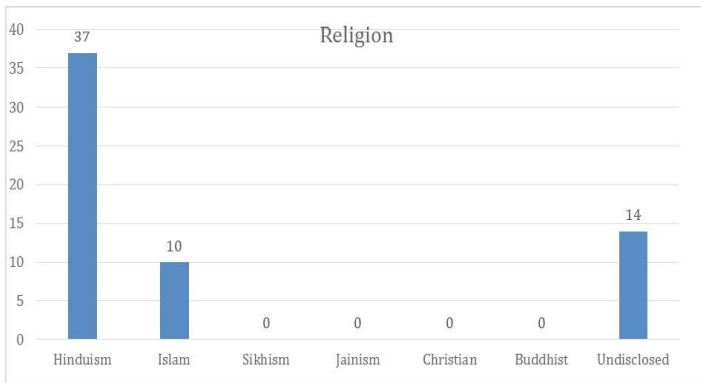
3. Caste

Out of total 60 women prisoners, 28 have not stated their caste, E.B.C and S.C were 8-8, in general category are 7, were O.B.C are 6 and 3 from S.T group.



4. Religion

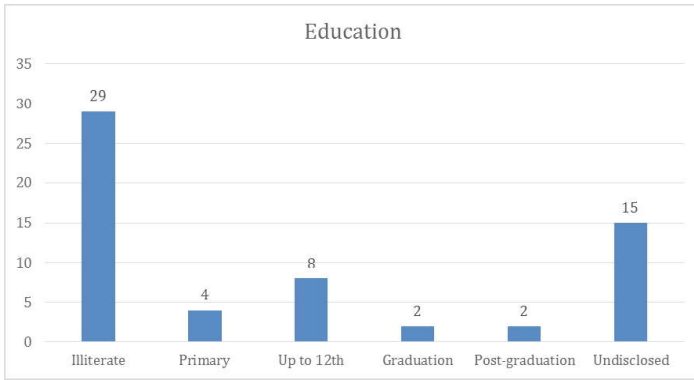
In order of religion, there are total 37 Hindu women and 10 from Islam 14 have not disclosed, skip the question or can't say on it.



5. Education

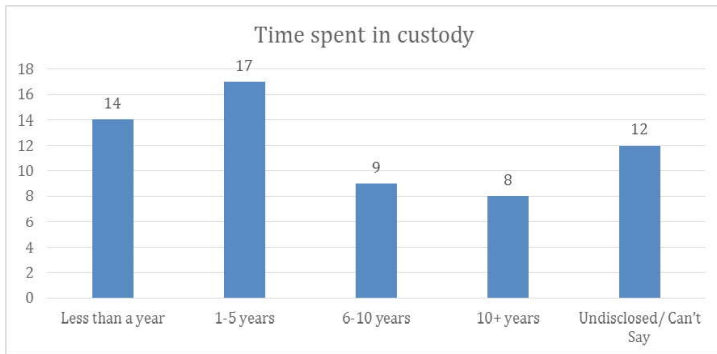
Mostly women prisoner were illiterate. Merely 4 women who have attended school still primary and 8 have done 12th. Only 2-2 women

were graduated or post graduated. Meanwhile, 15 women could not answer or undisclosed.



6. Time spent in custody

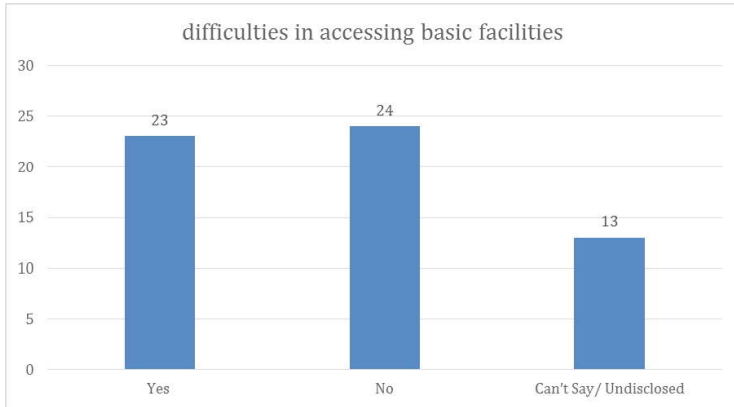
17 women have been in jail since from 1-5 years, 14 have less than one year 9 were from 6-10 years, 8 were more than 10 years and 12 have undisclosed including some of have forget their real number of staying in jail.



7. Difficulties in accessing basic facilities

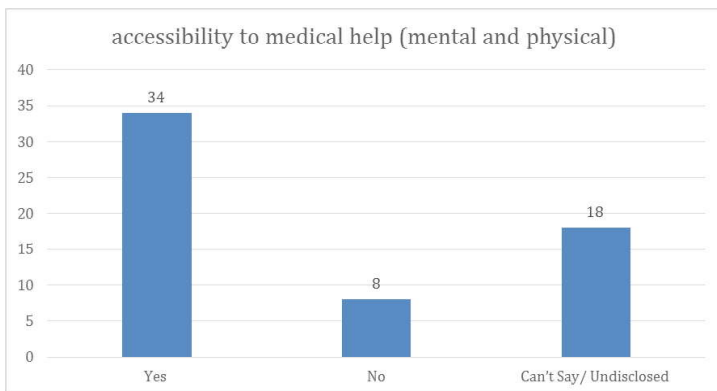
On asking difficulties in accessing basic facilities, generally, such as sleeping, hygiene, clothing, medical help, entertainment, contacting

family members etc., out of 60 women, 23 women having problem to access these things, 24 have said no and 13 undisclosed or can't say on it.



10. Accessibility to medical help (mental and physical)

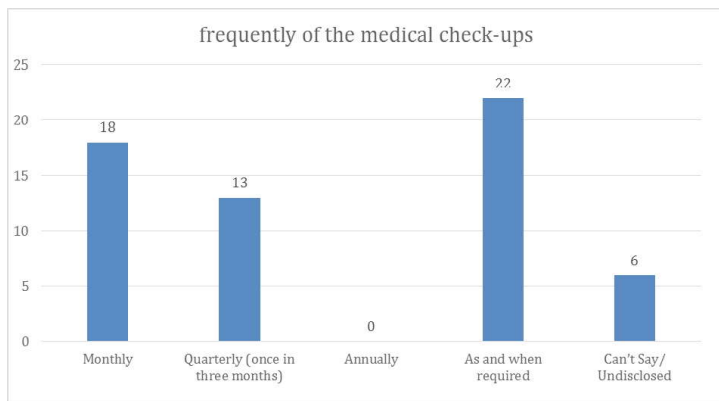
34 women stated that they had accessibility to get medical help, 18 did not state clearly; while 8 have clearly said that they have problem to get medical help. They found it difficult for easy access to medicines from the medical ward, which are mostly located in or nearby general ward or in men's ward.



11. Frequency are the medical check-ups conducted in custody

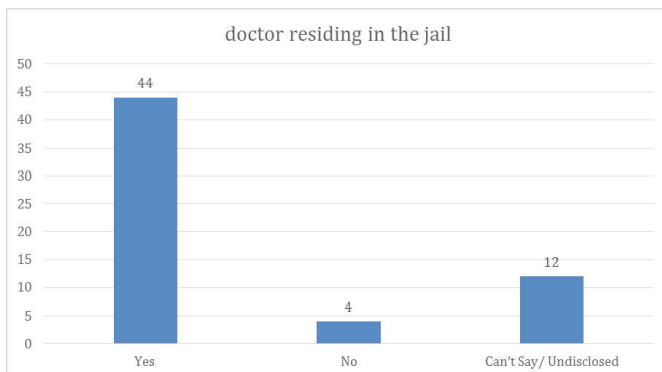
Out of 60, 22 women have said that whenever they required medical need, their check-up conducted, 18 have said that this happens monthly and 13 said that it happened quarterly and 6 have does not disclosed.

An interesting aspect of Bihar Jail Administration, as stated by some of them, is that they organized every four months medical checkup with help of some NGOs, and mental health experts.



12. Doctor residing in the jail premises

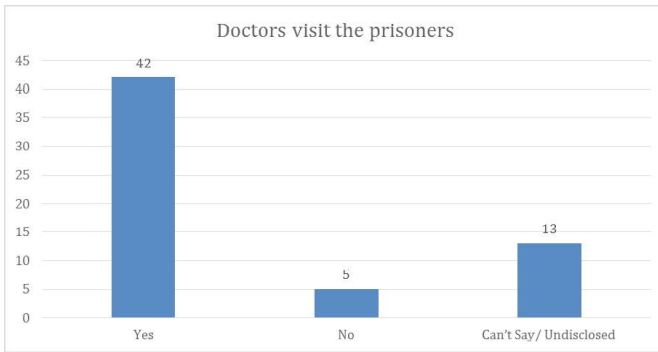
An overwhelming majority of 44 women prisoners stated there were doctors in the jail premises, while 4 said no and 12 did not say



anything. During the field work, I have found separate medical rooms where doctors were there; however, these medical rooms were located nearby men's ward and all prisoners were admitted were also men. Women get medicine in their ward, but in case they need more attention, were they had to be admitted in the jail or shifted to outside hospital was my concern.

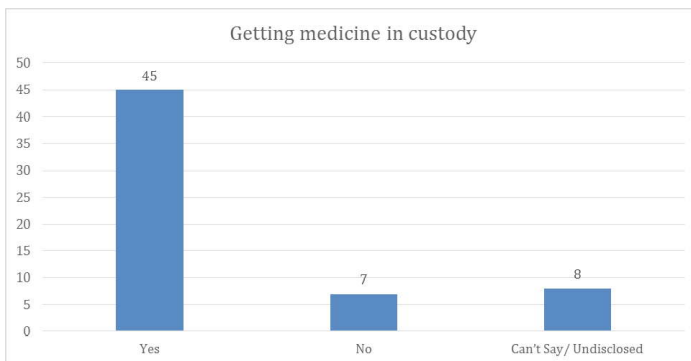
13. Doctors visit the prisoners

Out of 60, 42 women said that yes doctors visited the prisoners, 5 said no and 13 have stated under can't say or does not disclosed it.



14. Getting medicine in custody

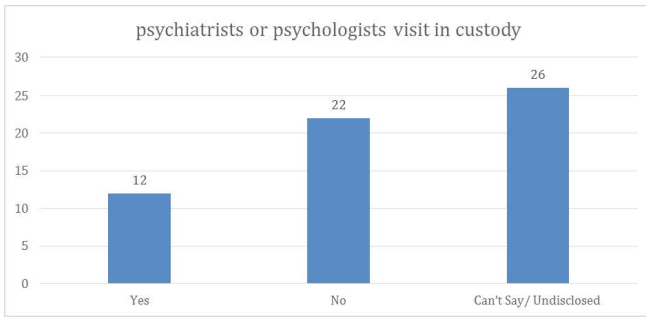
Maximum number 45 out of 60 women said that they got the medicine as and when they required; while 7 said no to such efficiency and 8



did not say anything. Most of them also stated the Jail administration try to arrange the medicine from outside when the drugs were not available inside the jails.

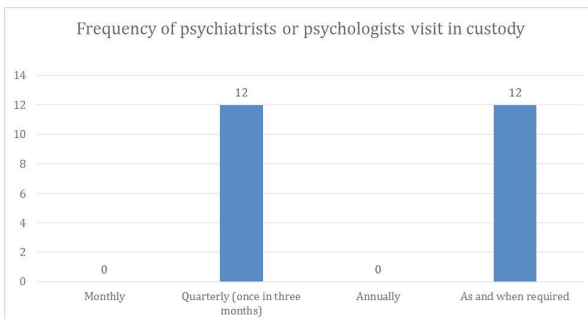
15. Psychiatrists or psychologists visit in custody

According to 22 women out of 60, there are no psychiatrists or psychologists in jail. While 26 women remained undisclosed or did not say on it. Only 12 have stated that these facilities were available quarterly. Maximum are coming to the jail while camps arrange by the administration.



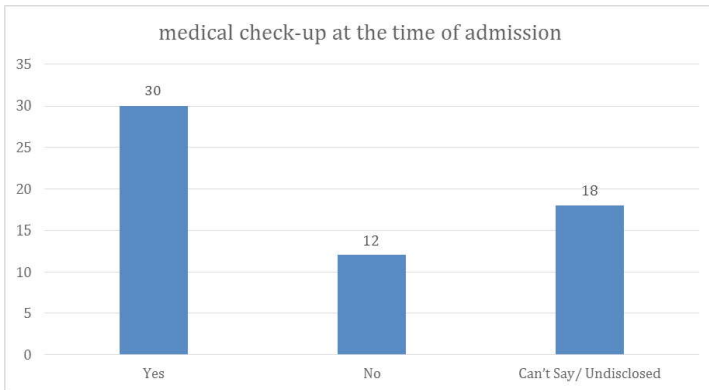
16. Frequently of psychiatrists or psychologists

12 out of 60 women stated that psychiatrists or psychologists visited them during the camp organized by the Jail administration. The same number also that the jail administration made available the service of psychiatrists or psychologists when they requested for the same.



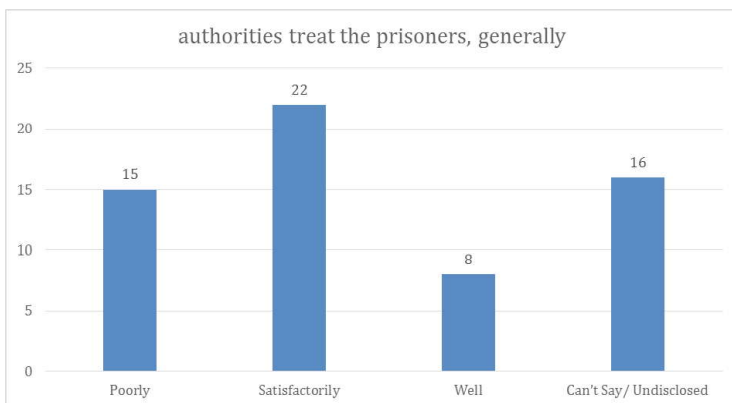
17. Medical check-up at the time of admission into custody

According to 30 women, there are some basic medical check-up during admission into custody, 12 have denied and 18 women did not disclose it or could not say on it.



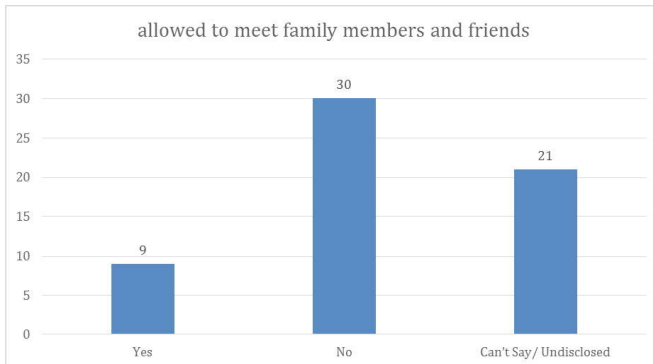
18. Authorities treat the prisoners, generally

22 out of 60 women expressed satisfaction on the everyday treatment they received by the jail authorities; 16 did not say anything; 15 women expressed 'poor treatment' while 8 stated that authority treated them very well.



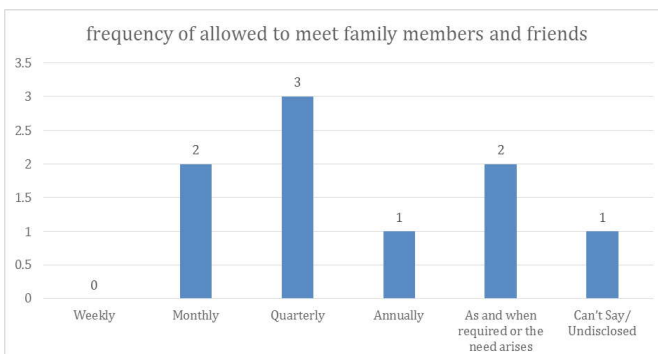
19. Allowed to meet family members and friends

On asking to women about their meeting with their family or friends, out of 60, 30 women said they have not met their family, 21 did not disclosed and only 9 stated they met with their family members after gap of two months. However, it needs to be noted that Bihar state had banned any meeting or any outsiders during the COVID-19 period to ensure public safety.



20. Frequency of allowed to meet family members and friends

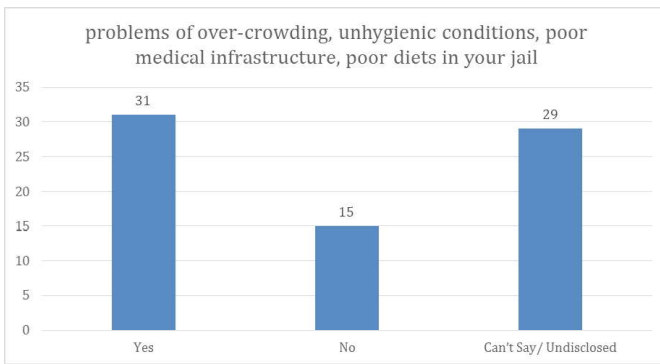
Those women who having chance to meet their family members are very low number, which was only 9 women and their frequency was also not regular. Only two women have met their family on monthly basis, 3 have met quarterly, 1 have met once in year and two have said



that whenever required, they met with their family and 1 have not disclosed about it.

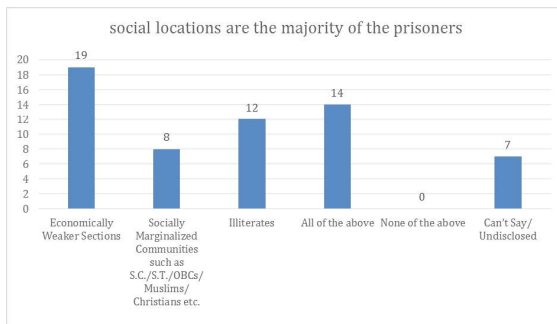
21. Problems of over-crowding, unhygienic conditions, poor medical infrastructure, poor diets in jail

While discussing with women, 31 women have stated that they having face problem like overcrowding, unhygienic, poor medical infrastructure and sometime also about food. 15 women said they have no such problems and 29 women can't comment on it or either not disclosed.



22. Social locations of the prisoners in jail

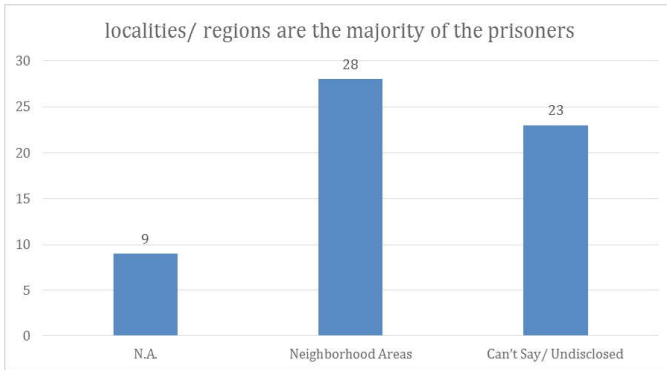
Out of 60 women, 19 were sated that mostly prisoners come from economically weaker section, 8 said that the socially mirginalised



community like S.C, S.T, OBC, EBC, Muslims Christians etc. 12 said that mostly comes from illiterate background, 14 said that prisoners come from all of these and 7 have stated this to undisclosed.

23. Localities/ regions are the majority of the prisoners in jail

28 out of 60 women prisoners in visited jail came from neighboring areas or from the same districts, where jails were located; 23 did not disclose and 9 women stated ‘not applicable, because a lot of come from very far region.



The interviews with them reflect that the concerns about the future are common among women. Sanitation, medical facilities and food have improved in prisons, but a lot of work still remains to be done.

Many at times it felt like they have been completely abandoned by their family and society, while at the same time many people were pleading with the officials outside the jail premises to meet their male members. Women had more mental health problems for which there was a lack of special arrangements.

In a state like Bihar where literacy is low, the online facility for prisoners was of no use to either the male prisoners or the female prisoners. This was a kind of joke being played on them in the form of technological development.

Many women in Ara, Gaya and Sasaram who were accused of domestic violence and assault including land disputes were facing many problems. Especially elderly women with their advancing age are mostly not talk much.

Many women were in jail with their children, who also need special facilities. In Sasaram jail, the officials had arranged toys for them. But there was not much space for them.

As per many jail staff, it is becoming difficult for the jail administration to fully implement the suggestions given by Patna High Court regarding the mental health of prisoners. The reason for this is the lack of mental health experts in Bihar. Which they are trying to fulfill by organizing health camps under '*Mission Vihaan*' in collaboration with NGOs. These medical camps have also provided them some relief and their frequency should be increased.

Recently, jails have also started yoga and many other activities for the health of prisoners. There is a need to increase the participation of women in this.

CONCLUSION

Overall, the living condition of women prisoners in Bihar jail was depressing. However, their condition also varies from jail to jail depending upon the governing culture of particular jail. For example, in Ara jail, many women were facing acute shortage of basic facilities and neither did they have the facility to talk to their family members. Whereas in Gaya jail, all these were available for them. Not only this, arrangements for their study and entertainment were also made in their wards. Many women in Ara, Gaya and Sasaram who were accused of domestic violence and assault including land disputes were facing many problems. Especially elderly women with their advancing age are mostly not talk much.

During COVID period, they women were more worried about not getting any news of their family and loved ones. This is also acknowledged by prison officials. Even after the situation started improving after COVID, the condition of these women did not change much. Their condition looked worse due to long trials and without any legal help.

Concerns about the future are common among women. Sanitation, medical facilities and food have improved in prisons, but a lot of work still remains to be done. Recently, jails have also started yoga and many other activities for the health of prisoners. There is a need

to increase the participation of women in this. It shows that if the jail staff wants, then improvement is possible. Whether it is jail medical or making good arrangements for men and women, it also depends on the superintendent of the jail.

There were more male than women officers in jail. This is also a shortcoming which shows why the condition of women is more pathetic. Gender plays a diverse role in area and there was shortage of female superintendent and jailor not only on all India level but also in Bihar jails.

The medical ward was far away from the women's ward in every jail, due to which they had to face some difficulties. Even their treatment was done in a huge crowd. It is becoming difficult for the jail administration to fully implement the suggestions given by Patna High Court regarding the mental health of prisoners. The reason for this is the lack of mental health experts in Bihar. Which they are trying to fulfill by organizing health camps under '*Mission Vihaan*' in collaboration with NGOs.

Many women prisoners were in jail for the crime of selling and making liquor. Their sentence has now been reduced under this, those poor women should get relief, but they were getting affected due to their poverty and lack of education.

There are many women whose trial has still not started, and the government should come forward for this.

Bihar jail responding is less in the name of research. Here we had to go with the recommendation of someone or who works with jails or on the issues of prisoners.

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Conflict of Manuski

Deepak Singh*

Abstract

This paper talks about the conflict of self-respect of the discriminated and the discriminators. It bases its idea on the importance of self-respect as implied by the Dalit Bahujan thought that how attaining self-respect can help one fight caste-based inequalities and take a stand against any sort of discrimination against them. It talks about the importance of self-respect for an individual and how its deprivation can lead to subjugation. But in contrast, not only does it talk about the importance of self-respect as an important tool for the Dalits to fight against discrimination (in this context, caste-based discrimination) but also as a tool which was used by the discriminators to exercise caste-based discrimination. I have talked about three aspects of self-respect in this paper. First aspect will deal with the idea of self-respect and its importance. Second aspect will talk about the importance of self-respect for Dalit Bahujan thinkers, mainly revolving around the works of Periyar. Third aspect will bring in the self-respect as a tool used by the people from high caste to discriminate against the people of low caste. It will also try to throw some light on the relevance of self-respect in contemporary times and how it shapes or constitute an individual.

Self-Respect/*manuski*

What is self-respect? Why is it important to constitute oneself? Why is it relevant for Dalit Bahujan discourse? These are some important questions whose answer we need to know. In this section we'll keep aside the caste lens and the Dalit Bahujan thought and try to answer the first two questions.

Self-Respect, denoted as *izzat* in Hindi/Urdu, *suya mariyadhai* in Tamil and *manuski* in Marathi, according to Cambridge dictionary

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is “a feeling of respect for yourself that shows that you value yourself.” To give a clear idea of what self-respect is, I’ll bring in some arguments of experts from different fields.

When you respect yourself, **you know when to say “no”** to what is no longer emotionally, mentally, or financially healthy for you. Gaining self-respect is about learning your worth, knowing your value, and advocating for yourself, as needed. (Dr. De’Andrea Matthews, President of Claire Aldin Publications).

It’s the belief that you are worthy of love, attention, and respect, and you are no less than anyone else. Given this belief, you set boundaries with others, essentially drawing a line with regard to how you will and will not be treated.

A person with self-respect treats others how they want to be treated, and when they are treated poorly by another person, they talk with them about it or they consider distancing themselves from that individual or ending the relationship. Conversely, a person without self-respect not only tolerates this kind of treatment but is quick to excuse it or to believe they deserve it. (Jesse D. Matthews, Psy.D., Matthews Counselling & Coaching)

Self-respect is a state of recognition that a person is just as important and worthy as any other human or sentient being on the planet. One person is no more or less important but is significant nonetheless. (Lisa S. Larsen, Psy.D., Licensed Psychologist in Lancaster, California)

These definitions of self-respect are more than enough to understand as to why self-respect is important to constitute ourselves in a way that we are not subjugated by others or say, we are able to resist any subjugation or discrimination by others.

Dalit Bahujan thinkers picks up this idea of self-respect and argues how the deprivation of self-respect has led to the subjugation of those lower down the hierarchy. The movement led by EV Ramaswamy, popularly known as Periyar, was called self-respect movement depicting how important self-respect is.

Dalit Bahujan Thinkers on Self-Respect

Aristotle defined humans as rational animals. It means that humans work based on or in accordance with reason or logic. With this logic

people who are treated instrumentally as per the pleasure of others and not according to their own reason must not be considered humans.

(1) Then it is safe to say they are treated like this because they are not considered humans or in this context, they are considered to be inferior without any self-respect, merely as a 'thing' to be used.

The venomous varna system has filled the Indian society with its poison of hierarchical structure. The division between the Brahmins, the Kshatriyas, the Vaishyas and the Shudras in the same hierarchical order has created such a divide between people which has not yet been bridged. The ones who have suffered the most are the ones lowest down the hierarchical order and the ones who have dominated the most are the ones on the top i.e., the Brahmins and their ideology of Brahminism.

This hierarchical position of Brahmins given to them by themselves has led to the development and flourishing of only their community in all the three aspects i.e., social, economic and political and the ones in the bottom most position has suffered the most in all the three aspects. The Shudras were allowed only to perform the menial jobs without inadequate or no payment regardless of their capacity and capability. They were also not considered the part of the society and were regarded as untouchables. The Hindu literature, traditions and customs led them to believe that this is how society works and the discrimination against them is justified. The acceptance of such absurd discourse can only be justified with the lack of self-respect. It is only when a person lacks self-respect, he/she/they work(s) according to the will of others. This lack of self-respect in the context of cast-based society is the central concern of the Dalit Bahujan thinkers.

The societal norms and the hierarchical order deprived the people down the social order from constituting their own identity which they are proud of and also which earns respect from others. They were deprived of all the resources essential to pursuit their own ends and were made believe that how the society treats them is a norm and not discrimination. It was the lack of self-respect among the people of lower position that allowed the Brahmins to discriminate against them. Because a person with self-respect will in no way allow being discriminated until and unless he/she/they is/are kept silent with force.

The entire spectrum of Dalit Bahujan thought (2) is strongly evocative of self-respect. The idea of Dalit Bahujan thinkers was to

instil this feeling of self-respect among the discriminated people in the hope that this will lead to people fighting against discrimination for their own rights and equality. The self-respect movement led by Periyar can be used to depict the relevance of self-respect and how it helps in constituting a notion of equality.

Self-Respect Movement

Self-Respect movement was described from the beginning as “dedicated to the goal of giving non-Brahmins a sense of pride based on their Dravidian past.”⁽³⁾ It was non-religious and secular in its approach to social problems and aimed to achieve social equality. Its main goal was to instil the feeling of self-respect among the people and to eradicate all kinds of birth-based inequalities and discrimination and to establish a casteless and classless society with equal rights, free from superstitious beliefs and the eradication of all social evils.

The aims of the Self-Respect movement have been outlined and stated in two pamphlets *Namathu Kurikkol* and *Tiravitakkalaka Lateiyam*.⁽⁴⁾

- a) This movement aims to do away with such social structure of the society where one class of people claim to be superior to others and some men claim to be of higher birth than others.
- b) It aims to work for getting equal opportunities for all people, irrespective of their communities it will strive to secure equal status for women along with men in life and according to law.
- c) All people should be given equal opportunities for growth and development. Friendship and fellow feeling should be natural among all the people.
- d) It aims to completely eradicate untouchability and to establish a united society based on brotherhood and sisterhood.
- e) To establish and maintain homes for orphans and widows and to run educative institutions.
- f) To discourage people from building new temples, mutts, chlorites or Vedic Schools. People should drop the caste titles in their names. Common funds should be utilized for educational purpose and for creating employment opportunities for the unemployed.

Although many aspects of respect are context-specific, there are certain larger and universal indicators of respect such as regard to human person qua human and their bodily integrity, the distinction

between human and non-human, and the conception of self-worth ensuring there from. ⁽⁵⁾ For Periyar, self-respect is man's birth right and must precede swaraj or self-government. 'Swaraj is possible only where there is already a measure of self-respect' (Geetha and Rajadurai, 1998: 297).

The importance of self-respect can also be explained on the basis of Maslow's Hierarchy of Needs. ⁽⁶⁾ One of the classifications of Maslow's pyramid is Esteem needs which precedes the Self-Actualisation needs. Esteem here can be considered as self-respect which according to the pyramid is necessary for self-actualisation. People who are aware of their capability and potential will never feel inferior to others and will not allow any sort of discrimination against themselves. Not only will they resist discriminatory behaviour towards them but after realizing their true potential they will help others who are treated unfairly to realize their potential so that they can also fight against any kind of discrimination. Based on this argument it is clear that self-respect plays a very important role to constitute oneself and is a crucial 'tool' to eradicate caste-based discrimination.

Self-Respect of Discriminators

It is now a well settled claim that self-respect is important for the one's who have been discriminated. That it is an important tool to fight against discrimination. But this notion of self-respect can also be seen as a tool on the basis of which discrimination has been done against the people from lower caste.

The idea of pride and self-respect within the higher castes and their community plays an important role. People who have been in power and who have acquired the top most position in the caste hierarchy also tends to maintain that position in their community. And to maintain this position self-respect is important. The idea of self-respect starts from an individual and goes on to become the notion of the whole community. On an individual level we can take the example of *honour killing*.

Honour killing is the practice of killing an individual, either an outsider or the member of the family, by someone who is seeking to protect the dignity and honour of themselves or their family. This happens when a person from higher and a person from lower caste wishes to marry each other or be in a relation with each other. A simple act of marriage or love is considered as something which

harms a person's or their family's dignity and honour. The idea of an individual from a lower caste marrying or being in a relation with an individual from a higher caste is not something that is easy to digest for the people of higher castes. They consider this act as a direct attack to their honour. Because, in a society where lower castes are considered as low as untouchables, the idea of forming a relation with them runs shock down the spine of people from higher castes. But more shocking than this is that a simple act of marriage or love is considered as an attack on honour and not the killing of an individual. Such practices are enough to show us that how people from higher castes in protecting their own self-respect ends up discriminating the people from lower castes.

The entire caste system can be explained through the notion of self-respect. The hierarchy can be seen mainly based on how people consider themselves superior to others, on how people worried about their self-respect and dignity and were ready to exploit the same of others to safeguard theirs. Thus, it is safe to say that the very notion of self-respect became the reason for the discrimination against the lower castes. The individuals from the higher caste in order to protect their and their community's self-respect were ready to take on any road, which was in this case, caste discrimination.

Aristotle said that, "Man is by nature a social animal." (7) In order to fulfil the self-esteem needs, an individual requires the validation of others. It is necessary to respect oneself but it is also necessary that others respect us as well. People living in a society will always try to act in a way which gains them respect from others in order to fulfil their self-esteem needs. They will let their families or even themselves suffer for the sake of society. And, if in order to protect their status in the society people are willing to suffer then it is not hard for them to make someone else suffer to protect their status. This idea leads to the atrocities which were done against the lower caste by the higher caste.

The high caste people have given themselves the highest position in the society and have assumed that the people from other castes are inferior to them. Now, the higher your position in the society, the more respect you will gain from others and the lower you are, the more you will lack of it. This feeling of self-respect and superiority leads people to create a community of their own. And if any person, who according to them is inferior tries to be a part of this community, is severely punished.

We can now see the importance of self-respect. That how its fulfilment gives people the power to dominate others and discriminate against them and how when it's lacking it leads to people accepting their fate of being discriminated without putting up a fight.

Thus, dalit-bahujan thinkers have emphasised on the importance of self-respect as a 'tool' in order to fight against discrimination and that how its fulfilment can lead to a feeling of self-satisfaction and empowerment. But it is also necessary to look on the other side of self-respect, that how it became the criteria due to which the low caste people were discriminated.

What can be done?

Self-respect is a virtue closely bound with community, and therefore, is a public virtue or the virtue of the public place (Valerian Rodrigues, 2008:6).

Pursuit of self-respect necessarily requires transformation of beliefs and practices which have hitherto treated people with contempt and humiliation. It should also be kept in mind that self-respect should not be engendered through the generosity of others. It should be the result of the collective struggle of those who have been deprived of it. Because in hoping that those who have kept the low caste people scarce of self-respect by not allowing them to develop, by not allowing them proper education, by not providing them the level playing field, etc., will now grant them respect is hard to believe. Self-respect itself includes the word self and implies that a sense of self can only come from within and not by the charity of others. Ambedkar also insisted on self-effort, destruction of institutions and values that heaped abuse on backward classes in general, and untouchables in particular, demanding that social life be based on principles conducive to the appreciation of self-respect.

There is still a ghost of caste-based inequalities looming over the Indian society in contemporary times. But the condition is not as severe as it was in past. The idea of constitutionalism and democracy has helped in eliminating the evil of inequality, may it be caste-based, gender-based, religion-based, etc. Constitutionalism today not only talks about limiting the government or a frame of governance. Its meaning has transformed and today its function is to integrate diverse social groups, to conciliate opposing interests, in the search for what has been called constitutional consensus, so that agreement on the

content of the Constitution becomes a fundamental premise for the establishment of public order, to serve the attainment of social harmony and the coexistence of citizens and peace. ⁽⁸⁾ But the constitution and the government alone are not enough to defeat the evil of caste which is so deeply embedded into the Indian society. Neither they themselves are free from it.

Many institutions and organisations in India still suffer from caste-based inequalities. Today also most of the top positions in the government are acquired by the people from higher caste who many times have a biased influence on the outcome of results and interviews. And for people who say that the reason behind the acquirement of top positions by the high caste is their credibility and ability, must not forget about the social capital and the opportunities only they have got due to their dominance in the past. It's not that the people from lower cast are not able or credible. They have just lacked the social capital and opportunities to get results out of their hard work. They have been deprived of the resources throughout the past, may it be economical, social or political and the worst case is that they have also been deprived of the opportunity to garner those resources. Affirmative actions provided by the constitution has helped in the accumulation of these resources in the contemporary times. May it be the reservation in government jobs or may it be the reservation in Panchayati Raj, all such actions have helped people to come out of the bog filled with inequalities, injustice and discrimination. Such actions have provided opportunities to the people of the low caste and helped them create a sense of self-respect. But equality in the society can only prevail when everyone in the society considers everybody equal and not inferior or superior. Equality not financially, which obviously will differ from person to person but equality as humans, equality of opportunity, freedom of expression and freedom to do anything that does not go against the law must be everyone's right. And not just equality but substantive equality is important.

Despite measures from government and help from the constitution there are still some practices in India which stands as a proof that caste-based discrimination is far from over. One such practice is Manual Scavenging. ⁽⁹⁾ The practice of manual scavenging violates Article 21 of the Indian Constitution which guarantees the 'Right to live life with dignity.'

It is pertinent to highlight that in India manual scavenging is banned under the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 2013 (PEMSR). The Act acknowledges it as a “dehumanizing practice” and cites a need to “correct the historical injustice and indignity suffered by the manual scavengers.” But despite being banned, there are still around sixty thousand people who are identified as manual scavengers in India and around forty-five thousand people have their caste identity registered with the government. Out of these forty-five thousand approximately 97 percent of the people belong to low caste. ⁽¹⁰⁾

Based on the data it is not hard to assume that the caste-based atrocities still prevail in India and that people from lower caste are still forced to do menial jobs which are so derogatory in nature that the one’s performing it cannot be looked with respect and neither they themselves feel any sense of self-respect.

Therefore, the road ahead to casteless society is still a very long one to go. Government must keep ensuring that no one is deprived of social justice and the rules and regulations are properly implemented. People need to understand that everyone has equal rights as a human and that no one is inferior or superior to one another. To come on to a level playing field it is necessary that people who lack self-respect keep on pursuing it and people who have created a false notion of self-respect around the feeling of superiority let it go. Both the things are not easy to achieve, because, to keep fighting and to let go is a work not many are capable or willing to do.

Conclusion

The importance of self-respect is now well asserted. Self-respect in dalit-bahujan thought is directed against the construction of a self which seeks to place itself over and above the others in an order of ranking, and where active engagement with the world through labour, productive and reproductive, is seen as defiling. It emphasizes the idea that a human being, in order to sustain and reproduce themselves, should not be put to indignities by the community around them (Valerian Rodrigues, 2008:6).

The dominance of the ideology of Brahmanism has worst affected the people lowest down the hierarchy. But one particular sect which has endured the most atrocities is women. Women, no matter which caste they belong to, were regularly the victims of discrimination.

They were deprived of equal rights and opportunities and even equal status as men. Patriarchy can be considered as one of the worst outcomes of the Brahminical ideology which even still persists in parts of Indian society. Gender has been socially constructed with dividing works for both men and women. To nurture is a women's work and to provide is a men's work. Such beliefs have resulted in the subjugation of women in all three aspects i.e., social, economical and political throughout the history. Despite constitutional help in contemporary times, women still face discrimination in the Indian society. The sect which comprises fifty percent of the world's population must be treated equally and must be given equal opportunities.

For all those who have been subjugated and discriminated throughout the history, it is must that they constitute themselves as an individual who stands up against discrimination. In the past there were no opportunities, but in contemporary times there are. Though the evil of cast and other divides still prevails in the present time, today there is space for development. People can achieve a certain position which will help them fulfil their self-esteem needs which in turn will help in the fulfilment of self-actualisation needs. And once a person is aware of his capabilities and is full of self-respect, no one will be able to discriminate against him/her/them, not without force at least.

Also, the people who have enjoyed being on top of the hierarchical order must give up the false notion of pride and dignity surrounding them. They must know and understand that as humans no one is superior or inferior to anyone and that everyone is equal. Anyone who is shackled by the chains of the ideology of Brahminism, may it be brahmins or people from other castes, must break free from it. The traditions, norms, literatures, etc., which have been used as tools to authorize power and practice discrimination must be forgotten.

In a country which is driven by its religious beliefs, tasks such as mentioned above sounds close to impossible but the fight against discrimination must go on. To achieve the goal of casteless society it is must that people who have been subjugated pursuit self-respect so that they can consider themselves as equal to others and not inferior. And people who have been the discriminators must let go off the reigns of authority and should accept that just because you are born in a particular sect does not mean that you can discriminate against someone and neither you are superior to anyone. A person should be

known and respected for his/her/their work and not just because he/she/they belong(s) to a particular section of the society.

Inequalities cut deep through the Indian society which can be studied through various lenses, may it be caste, class, religion, race, gender and so on. But with the help of constitutional provisions and the continuous pursuit of self-respect in order to constitute oneself any kind of discrimination can be fought in the hope that the fight will at some point come to an end.

End Notes

1. In the Nicomachean Ethics I.13, Aristotle states that the human being has a rational principle, on top of the nutritive life shared with plants, and the instinctual life shared with other animals, i.e., the ability to carry out rationally formulated projects.
2. For biographical details of the main protagonists of dalit-bahujan thought, see the following: for Dr. B.R. Ambedkar: Dhananjay Keer (1962); for Jotirao Phule: Dhananjay Keer (1964); for Narayan Guru: Samuel V Thomas (1977); for Iyothee Thass: G Aloysius (1998); for E.V. Ramaswamy: Vellore Senthamizhko (1987).
3. E.V. Ramasamy Periyar, *The Genesis of my Self-Respect Movement*, trans. A. S. Venu (Madras: Periyar Self-Respect Propaganda Institution, 1981), p.11.
4. Vishwanathan, p. 73.
5. Self-respect is an important theme in contemporary political philosophy and rhymes closely with some of the central considerations of dalit-bahujan thought: John Rawls considers self-respect as 'perhaps the most important primary good' a rational person seeks and says: 'we may define self-respect (or self-esteem) as having two aspects. First of all, ... it includes a person's sense of his own value, his secure conviction that his conception of his good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfil one's intentions ... Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them' (Rawls, 1973:440).
6. Abraham Maslow, *Motivation and Personality*, 1954.
7. Aristotle, *Politics*: "Man is by nature a social animal; an individual who is unsocial naturally and not accidentally is either beneath our notice or more than human. Society is something that precedes the individual. Anyone who either cannot lead the common life or is so self-sufficient as not to need to, and therefore does not partake of society, is either a beast or a god."

8. Martha I. Morgan and Monica Maria Alzate Buitrago, "Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution" (1991–1992) *A Yale Journal of Law & Feminism* 353, at 402.
9. Asian Human Rights Commission: "Manual scavenging in India is officially defined as 'lifting and removal of human excreta manually', at private homes and toilets maintained by municipal authorities. The practice consists of gathering human excreta from individual or community dry latrines with bare hands, brooms or metal scrapers into woven baskets or buckets. This the scavengers then carry on their heads, shoulders or against their hips, (and in wheelbarrows if they can afford it) into dumping sites or water bodies. Apart from this, many scavengers are similarly employed to collect, carry and dispose excreta from sewers, septic tanks, drains and railway tracks."
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