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From the Editor

Dear colleagues,

It is my pleasure to present the tenth issue of *Explorations*. Apart from the regular contributions, the issue carries a Special Section on Sociology of Law. The regular contributions consists of five papers published under the ‘Articles’ category.

The first article titled *Pandemic-Pedagogy: Provocative Ruminations on Sociology of Teaching Practices in Contemporary India* by Dev Nath Pathak dwells on the pedagogic questions in the time of the Corona virus pandemic toward exploring the possibility of sociology of teaching practices in contemporary India.

The second article titled *Mother-Work and School Culture: Parenting Strategies in Banaras* by Nirmali Goswami examines how the ideas of parenting are shaped by occupational and spatial location by drawing from the experiences of mothers with lower educational backgrounds.

The third article titled *Epistemic Ashrāfiya-morality and Urdu Theatre Public Sphere in Nineteenth-century Bihar: Muslim Internal-Decoloniality* by Neshat Quaiser provides a Muslim internal-decolonial critique of the hegemonic ashrafiya knowledge-oligarchies through the prism of western-style Urdu theatre in the last quarter of the 19th century in the Indian province of Bihar.

The fourth article titled *Corporate Social Responsibility and Prevention of HIV & AIDS in the Tea Gardens of Assam, India* co-authored by Dilip Gogoi and Ksenia Glebova examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility (CSR) initiative for the Assam tea sector.

The fifth article titled *Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam* by Suryasikha Pathak attempts to relook at the early censuses, and the debates it generated within the purview of identity articulation, as a complex process, and explores how the diversity of communities and fluidity in the demographic structure in Assam added to this complexity and led to the formation of identities and identity politics.

SPECIAL SECTION

Sociology of Law is an important sub-field within the discipline of Sociology. The special section on Sociology of Law in this issue of *Explorations* is guest edited by Rukmini Sen, Professor of Sociology, Dr. B. R. Ambedkar University Delhi (AUD). Over the last forty years, sociologists/anthropologists and legal scholars in India have been doing research on law and society interface and contributing to the emergence of this sub-field. The move from research on legal issues impacting social relations to teaching sociology of law has been slow and not really popular. While law schools need to teach sociology at the initial years to primarily fulfil their objective of interdisciplinarity, sociology of law or studying the law-society interface is not mandatory within the discipline of sociology, and sometimes happens as an elective, based on faculty specialisation. It is however heartening to see that research at the law-society interface is happening through various departments and disciplines in recent times.

All the papers in this section engages with either legislations or judgements or constitutional debates and use survey methods, content analysis or auto-ethnographic methods of enquiry to provide sociological perspectives to legal texts. This special section has five ‘articles’ and four ‘research in progress’ papers. Kimsi Sonkar makes an analysis of judgements where the Maternity Benefits Act was used to engage with questions of non-permanent nature of women’s labour in the formal sector and subsequent denial of the ‘benefits’, as envisaged in the law. Nishit Ranjan Chaki engages with the conflicting questions of the constitutional guarantee of language rights on the one hand and the social exclusions of the Dhimals in the Terai-Himalayas region on the other. Sampurna Das looks at the National Food Security Act 2013 which was supposed to take care of food shortages failed to provide food security to women in the informal sector in the state of Assam. Snehal Sharma focuses on the ‘Prohibition of Unlawful Religious Conversion Ordinance’ of 2020 to ask critical questions around the politics of ‘love jihad’. Tasha Agarwal makes an enquiry into H4 visa and immigration policies for dependant women to join spouses in the USA.

In contrast, all the research in progress papers deal with important methodological questions on sociology of law. Gitanjali Joshua interprets two judgements involving inter-religious marriage and conversion while subverting individual’s choices when community boundaries are transcended. Guinea analyses parts of the forty eight in-depth interviews that she did in her PhD fieldwork with first

generation Delhi-based lawyers to assess presence of sexual harassment in the legal profession. Nidhin Donald examines the meanings of being a Christian and the legal discourses on endogamy outside of the Hindu stratum. Ashwin Varghese and Aishwarya Rajeev document the contraction between legal sanction and moral opposition to interfaith marriage and ways of navigating with the possibilities and limitations of the Special Marriages Act.

The special section also includes a detailed interview by Rukmini Sen with Kalpana Kannabiran, an expert in sociology of law. The interview engages with questions of interdisciplinarity as a pedagogic practice, lessons learnt from taking part in law making and legal education curriculum formulation, violence studies as part of sociology and/or law and ethics of doing social science research and teaching in contemporary times in India.

Explorations invites your contributions for future issues of the journal. We will appreciate your feedback or suggestions on the journal.

Finally, as I complete my term as the Editor of *Explorations*, a new editorial team will take over the journal from January 2022. I wish the new team all the very best and hope you will extend similar support to the journal in future.

Stay safe.

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Article: Pandemic-Pedagogy: Provocative Ruminations on Sociology of Teaching Practices in Contemporary India

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**Pandemic-Pedagogy:
Provocative Ruminations on Sociology of Teaching Practices
in Contemporary India**

--- Dev Nath Pathak

Abstract

The debates on the issues of higher education are fraught with dead-ends and rhetorical questions. Naming the structural anomalies, regimes of power, and technocratic interference, we seldom hear about the pedagogic peculiarities, problems, and possibilities. The onerous fact that teaching and learning are merely structural cogs became more palpable in the academic years during the COVID-19 pandemic. This dominant mode, method and meaning did not change much even in the anxious deliberations on education-during-pandemic. This paper provokes to find suitable departure from the veritable jigsaw puzzle. Rather than considering the teachers and students as docile pawns, the point is to reflect on them as actors with agencies. To do so, the paper returns to the pedagogic question in the time of the ongoing pandemic. The key question is, what does it mean to do teaching and learning in the online mode? This is toward exploring the possibility of sociology of teaching practices in contemporary India.

Key words: Pandemic, Pedagogy, Practice, Teaching, Sociology in India

*In the sea of pleasure's, Billowing roll,
In the ether waves', Knelling and toll,
In the world-breath's, Wavering whole-
To drown in, go down in-
Lost in swoon- greatest boon!*

- Friedrich Nietzsche¹

Introduction

The larger body of discussions on teaching practices in higher education renders the pedagogic question as secondary, or a non-issue, a mere red herring. The first imperative is to depart from the discursive dead-ends and rhetorical lamentation

on the state of affairs vis-à-vis doing sociology. The two dominant motifs in the discursive landscape, seemingly, are, ‘indigenising’ and ‘pluralising’, invariably in a mode of lament, submission to the Eurocentric knowledge and the decline of quality in the practice of sociology, respectively. In a phenomenology of pedagogic practices, teachers and students are the key stakeholders in doing sociology. Especially with reference to a class, which is South Asian not only in the sense of representation but also in academic orientation, it surfaces that the pedagogic question assumes greater significance and poses a daunting challenge. It is not easily available for a romantic conclusion, nor could it be summarily dismissed as a non-issue in the practice of teaching and learning. This paper discusses the case of teaching and learning, in the manner of auto-ethnography routed through phenomenology of pedagogic experiences, during the years of Covid-19 pandemic, i.e. 2020-2021. As an instructor of two courses, namely *Methodologies in Social Sciences* and *Sociology of South Asia* for postgraduate students at South Asian University, one was left without much systemic wherewithal to deal with the challenges of ‘online-teaching’. What shall be the course-curriculum, pedagogical practices, and nature and scope of teaching and learning in the wake of the precarious uncertainties of the pandemic and haphazardly imposed online model? This is also to depart from a popular notion of ‘pandemic-pedagogy’ⁱⁱ in which technologisation of education qua online-education has been a central issue without much eye at the details of experiences.

The question solicits a phenomenology of everyday experience of teacher and student informed by the interjections in public sphereⁱⁱⁱ. The idea of work-from-home is far more loaded than segregated spaces of work and home in which the teaching and learning have conventionally happened. With the outbreak of pandemic the distance between work and home shrunk, and the spatial distinction of working and living somewhat collapsed. In spite of the arrangements at home to conduct professional meetings without the interference of ‘home’, it was never absolutely segregated. If a toddler barged in the middle of an online meeting, it is not a crime for which one can get reprimanded unless the ‘boss’ was too rude and insensitive. This is not different for the teachers. The teachers giving the classes with well-prepared notes on the table and eyes on the screen had to cast a furtive glance towards ‘someone’ who came in between to say ‘something’. No matter how attentive the mind, taking care of the points of the discussion, the teacher had to mute (turn off the mic) and answer a query about household matters. More often than not, the classroom on the computer screen is a dead board with dots showing only the first alphabet of each attendee’s name. Even the teacher has to

turn the camera off, or keep switching between on and off, in order to ensure longer hours of smooth internet connectivity. Students have errands or other things to ensure while attending, or seemingly be attending the classes. Many female students informed that they have to help in the household chores, including the kitchen-work, sweeping-swabbing. Moreover, the banality of internet surfaces in the middle of class. They have to log in and log out, almost like students used to excuse themselves for attending to 'nature's call' during the lectures in the physical classrooms. Quite a few of them log in right in the beginning of the class, keep the camera and mic off throughout, and stay on in this 'unheard-invisible' mode even at the end of the class. Some of them return to the class toward the end, turning on their mics to say a few things so as to register their presence. Many teachers have tried out recording their lectures and putting them up on a platform like YouTube, or even sharing the recorded lectures with the students through emails. On the other hand, some of the discerning students also search for YouTube based lectures by various scholars, and impress the course teachers with updated ideas. Meanwhile quite a few of the digital version of erstwhile *kunji* (guidebooks) have been discovered for easier and quicker ways through courses. All such newly discovered course-related materials are duly marshaled to write essays for examinations in the online mode. Many teachers who care to read students' examination papers, essays and assignments, figure out a great chunk of online materials informing and influencing the students.

This is a generic synopsis of the practices during the pandemic characterised by a 'new normal' of higher education, i.e. online teaching and learning^{iv}. Framed in another context relevant for India too, the 'new normal' in education is akin to a 'technological order'. It entails a 'passive technologisation', without much contestation, during the pandemic. Experience from the online class rooms in India may indeed suggest that it is no longer passive, as everyone has actively resorted to it. Despite the prefix 'new', it is very old, since it hardly makes difference in the curriculum or the available structure of transactions. Mere technologisation flourishes due to the fact that some of those who can work 'remotely' exercise their privilege. The workers in this wake have their subjectivities digitalised. And therefore, every teacher in the new normal operates with a 'curriculum of things' (Pacheco, 2020), rather than curriculum of knowledge, experience, and of life.

This generic story can be made more muscular with reference to several ruminations by scholars of education, or by those who may be in any disciplinary

field and yet are concerned about the question of pedagogy. The purpose is to curate a background rather than presenting a perusal of the public-discourse. In this backdrop, we shall take note of some of the old issues that have resurfaced in graver forms with the debatable prefix 'new'. It is mostly about the objective of higher education. Pandemic is the context in which there is an evident imperative of asking a few fundamental questions, viz. why does a teacher teach, or why does a student attend a course or a program? It takes us back to the old debate on vocation of teaching and learning^v. Are the teachers merely service-providers in the larger machinery which is meant to deliver certification to the students? Or there is a larger purpose in the vocation that solicits innovations, experimentations and playful engagement, intellectual risk-taking and will to step out of the comfort zones, in the context of everyday life within which the teachers and students are situated?

This paper does not answer these and other related questions in a manner acceptable to the community of scholars. With humility it admits to merely show that the realm of teaching sociology and anthropology is pregnant with possibilities, which can aid in making course-content a source of refreshing imagination and intellectual courage in everyday life. After all, this was an expected outcome after Alvin Gouldner (1971) aggressively proposed the outlines of sociology, in which we were persuaded to see who we are, what we do, and where we are headed as teachers and students of sociology. It adequately radicalised us to almost perceive ourselves naked in the bathtub of our practices. We had to analyse ourselves with as much earnestness and honesty as we tend to cast our critical glances on the others. This was Gouldner's brand of reflexivity without which, it was clear, we would be only brute, dishonest, cunning and crooked, 'split personalities'. The sociologist with such split would be one thing in personal life and another in the professional practices. One can seldom hide this split in spite of the euphemisms such as scholar, sociologist, ethnographer, anthropologist, writers, and lastly celebrities. Pandemic is the time to return to the radical reflexivity of Gouldner, even though we know how to criticise and move ahead by revisiting Bourdieu and Wacquant (1992).

In such an act of reflexivity, teachers and students had to become collaborators in the pedagogic practices or co-travellers in the topsy-turvy ride of teaching and learning. Pedagogy, however, is not a source of an unstinted romance in our times. We ought to be also accepting the existence of this pedagogic enterprise as an interstitial reality with uncertainty of consequences. In agreement with a notion

of ‘pedagogy of hope’^{vi}, however, this paper indicates a way forward from the dead ends of debates on doing sociology in the South Asian context.

Academic Brahmanism in Higher Education

Pandemic years expressed it more dramatically that teachers and tragedies, causally determined by neoliberal logic, coincided in the contemporary milieu. The delimiting effects of neoliberal logic, operationalised in the state and economy, has altered the character of the universities where we hear only ranting on the rhetoric of freedom^{vii}. Those who rant loudest are the academic Brahmins and those who teach are reduced into mere cogs, ordinary pedagogues, or academic Shudras in the context of India^{viii}. Let alone sociality, relations of teachers and the taught, and pedagogy, the structures of universities leave little scope for the basics of intellectual progress and emotional sustenance. Irrespective of the pandemic, the tragedies pertain to the interplay between the structure (norms, conditions, rules and regulations) and agency of teachers and students. There is a scheme of analysis that mostly shifts the blame, in a sort of endless blame-game. The regimes of power, the technocratic administration of universities and colleges, the market forces, are some of the well-known villains in the dominant discourses against whom there is a never-ending shadowboxing. More paradoxically, many of the boxers, sworn critics of neoliberal policies and regimes of powers are themselves rivaling to occupy the position of technocratic power in the institutions of higher education. Most of the shadowboxing is indeed coloured by the vested interests. Hence, there was hardly an organised war cry when the online mode of teaching, learning, evaluation, and everything that is part of administrative chores became an overnight reality with the announcement of the lockdown in several parts of India on March 24, 2020, to begin with for 21 days and gradually extended into phases. Even after the phased unlocking, the government notifications announced the observance of the ‘new normal’ according to which the campuses were not open for the physical classes. Teachers toed the line, though there were critical whimpers, op-eds, and exchange of messages and emails about the idea of online teaching. Universities and colleges, schools and institutions of education, conducted meetings and pledged full conformity to the ‘new normal’^{ix}.

There was however hardly any news of teachers and administrators interacting about the fundamental questions, how to do online education? What should be the objectives, curriculum, methods, and pedagogy in teaching online? Instead, the

same courses which a teacher was supposed to teach offline, in physical spaces, were put across as the courses in the online mode. It seemed nothing had happened as far as higher education was concerned. Ironically, it seemed that COVID-19 may be dangerous for the humans, but higher education was immune to the threats and challenges of the virus^x. At least, this is what appeared from the announcement and execution of online teaching and learning. By and large, everyone in the institutions of higher education was expected to continue doing everything online, as if nothing had happened! The structures of hierarchy, power and privilege associated with professorial and administrative positions had to be intact. All teachers and students had to comply.

Teachers' tragedies unfold in such a melodramatic background. What could teachers and students do in this milieu while they could seldom bring about a radical transformation in the fundamental structure? What pedagogy could evolve in such a situation whereby everyone expected, pretended, and acted as if nothing happened? They arguably deal with 'tragedy', following Nietzsche (1956) to find Dionysius (creatively radical departures) responses to the Apollonian orders (status quo). The poorly thought out mode of online education becomes a possibility of novel exploration leading to both, benediction and curse. In a tragedy, Dionysius' spirit propels toward spontaneously cultivated ordinary artifacts of experiential knowledge.

This tragedy unfolds at broadly two levels for teachers and students. One is in relation with the subject of study, in the epistemic domain governed by the logic of Apollo, the Greek god of order. Teachers and students both could ask, 'what to study under a course in such a time when the planning, vision, objectives are not in place?'. By asking such a question, despite the fact that there is a course structure that one is supposed to follow, teachers and students are geared towards making changes to the given structure. It unfolds an art, transformative and triumphant, in such a situation. The tragedy manifests as the students and teachers worship Dionysius, the Greek deity of creative energy. Secondly, tragedy refers to an over-determining structure. Ironically, within such a seemingly rigid structure, teachers and students play with their 'hidden script' under the aegis of 'public transcripts'^{xi}. It is all official, hence a public transcript. But, the details that verbs entailed in such an official script suggest the enactment of the hidden ideas.

Let's ponder upon the first level of tragedy, underlining the dialectic between art and science, experience and technical instrumentality. Let's return to the fettered

cavemen in Plato's *Republic*. So tightly tethered to their position, location, pride, prejudices, and privileges, they could only see shadows cast by sun on the wall. They indulged in the art of interpretation until one of them endeavoured and beheld the beaming sun, metaphorical representation of unleashed knowledge. Thus ensued, as Max Weber helped us discern, an engagement in the realm of disenchantment. The teacher and students in the vocation of teaching and learning have to deal with the constant dialectics of shadows and sunlight, chained qua disciplined existence and wild curiosity blended in even the most wayward activities. Thereby rational structure in the vocation of teaching is not bereft of 'experience', 'feelings', and 'sentiments'. The perfectly planned course-curriculum too summons a sort of 'monkey business' from both, teachers and students. Since science and art have certain common features, the vocation of science, or teaching science, presupposes an ability to deal with the components of art. Considering it a necessity for a teacher, in the vocation of science, Weber argues that a teacher 'must qualify not only as a scholar but also as a teacher. And the two do not at all coincide. One can be a preeminent scholar and at the same time an abominably poor teacher' (Mills & Gerth, 1958, p. 133). In the pandemic years, every scholarly teacher yearning for clarity of structure, length and breadth of a course-curriculum, and patterns of examinations and criteria of evaluation reminded us that Weber's suggestion holds water even after such a long time, at this moment of modernity characterised by enhanced risk and precarity.

The vocation of teaching, often also termed as a profession with a stress on the rational structure and instrumentality attached to it, demands a teacher to deal with the complexity of experiences. If the courses taught during the pandemic years did not reflect a teacher's and her students' engagement with the everyday experiences of existential threats, would it not be equal to an intellectual sham? Moreover, it was these experiences in which Weber and many others perceived a possibility of growth for scientific knowledge. Stressing on the necessity to engage with the learners' perspectives, and thereof experiential components, Gramsci noted,

In the teaching of philosophy which is aimed not at giving the student historical information about the development of past philosophy, but at giving him a cultural formation and helping him to elaborate his own thought critically so as to be able to participate in an ideological and cultural community, it is necessary to take as one's starting point what the student already

knows and his philosophical experience (having first demonstrated to him precisely that he has such an experience, that he is a philosopher without knowing it). (Boggs, 1976, pp. 424-425)

Such profound insights were restrictively applied only in thinking about pedagogy in school education^{xii}, and seldom in the domain of higher education. It has been almost a taboo, in the domain of higher education to deliberate on pedagogy. Several scholars take offense when they are addressed to as teachers, and retort, ‘we are scholars, researchers, and not teachers’^{xiii}. Is it to do with the reproduction of the customary hierarchy whereby school education is inferior or secondary to higher education^{xiv}? The ‘Brahmins’ are the scholars in the universities and the ‘Shudras’ are the teachers in school, in this scheme of thinking^{xv}. In other words, in the domain of higher education only the content of study matters and ‘how to teach’ does not. This hierarchy of thinking-talking and doing is deeply engrained in the structures of higher education. To maintain collegial bonhomie, ignoring the potential curricular and pedagogic anomalies in a university, academic Brahmanism flourishes.

Some of the potential anomalies are: an unduly long reading list with quantified numbers of pages to be read every week, a method of presentations by students from the beginning to the end of a semester and the teacher assuming the role of a mere moderator or facilitator, a heavy reliance on the modes of evaluation at every step in the classroom to generate a paranoid interest in the course, an undue stress on the reward and punishment governing the execution of a course. This is furthermore exacerbated by the bureaucratic dead-ends in a university space whereby teachers and students are left with limited roles to perform. The teachers, as far as the job of teaching is concerned, is reduced to a category of an ‘academic clerk’. An ‘academic clerk’ is a teacher who formulates an impressive course-curriculum, executes it, evaluates students, in a manner quite ‘measurable’. Everything from prescribed readings to students’ assignments have to become calculable digits in this scheme. And hence a teacher’s performance is eventually judged in terms of work-hours. Students also inform about their lower status in the hierarchy of practices. They are judged on what they have read, and how much. ‘It doesn’t matter how deeply a student has reflected, or felt the pain of people suffering around, or what lessons, philosophical realisations, a student gained from such encounters’^{xvi}. It is an academic Brahmanism inherent in the structures that make teachers and students in sociology, as well as in other academic disciplines, oblivious of pain and suffering commonplace in the

surrounding. ‘A student is expected to have a critical mind, yet the structural apathy inbuilt in our disciplines give little time or the space to dwell on such philosophical reflections’^{xvii}. The pandemic has more brutally disclosed that our discipline, and our academic practices, alienate students from their experiences and reflections, everyday encounters of suffering and pain, and even hope and despair.

This is the context, attuned to the neoliberal educational scenario and accentuated in the time of pandemic, in which a creative contest unfolds. In short, it is akin to a vacillation between cavemen’s engagement with shadows and sun, interpretative-reflexive and rational-science, emotion and reason, intuition and intellect.

Recalling the Forgotten

As stated at the onset, there is an impressive ream of deliberations on the structural constraints in higher education in India^{xviii}. They highlight the delimiting impact of the academic bureaucracy, stultified institutional and intellectual growth among other things. It aids in understanding an unreflective, and to a great extent anti-teacher and anti-student bureaucracy, and hence non-regenerative social science. The bureaucratic authorities, institutional structure, and governing bodies are key actors and driving factors. In such a scheme, we can easily decipher an allegedly disembodied category of teacher as an unproductive or incompetent scholar. Also, there is a narrative of victimhood in which teachers are victim of market, state, and bureaucracy and the students are victims of a bad system and bad teachers, as it were. It is, however, erroneous to mistake the pawns, the teachers and students, as docile bodies.

Likewise, there is a strong liturgy of lament about the practice of sociology in the region of South Asia^{xix}. Emphasis is placed on the decline in the quality and standard in sociological researches, teaching and learning. A glorified notion of ‘rigour’ underpins the two other attributes, quality and standard. Paradoxically, there has been a contemporary call for pluralising sociology^{xx}, without a concrete plan or exemplars on ‘how to pluralise’. It thus is mere hobby-horse in intellectual deliberations detached from the practitioners, teachers and learners. There are many ways of doing sociology, intellectually as well as emotionally, vocationally as well as professionally, experientially as well as textually. This is where it is imperative to juxtapose the ‘diagnostic deliberations’ with ‘pedagogical pursuits’.

In addition to comprehending the issues of structural impediments, arguably, it is imperative to explore the micro-issues involved in teaching and learning. After all, sociological focus on inequalities out-there (social structure) cannot be separated from that on inequalities in-here (practices in the institutes of higher education). This divide between looking at self and the world is certainly as much a bottleneck as is the obsession with ‘buzzwords’^{xxi}. This simple idea may not persuade the disciplinary orthodoxy, and hence the preponderance of perpetual divide between self and the other plagues the sociological attention to any issue, question, and idea on the anvil of sociological analyses.

Thinking of pedagogy in the time of pandemic requires steering clear of the dominant modes and means of analysis, and returning to the reasons why scholars resist the invitation to become pedagogues. This need not amount to falling back on the famous ‘call for indigenisation’. Much water has flown over the call for indigenisation. But behind such a call there were significant intellectual-polemical stimulus that ought to be retrieved. One such insightful observation is about ‘captive mind’ (Alatas, 1972) that was aimed at revealing the intellectual laziness of those who seldom question the content and methods of knowledge-transaction. The calling out of captive mind also aimed at incorporating the local-contextual social thoughts in the curricular and pedagogic practices of teaching and thus responded to ‘academic dependency’ (Alatas, 1993). This was not to debunk theories, which emerged in the European context; this was however to debunk the uncritical emulation of European theories. These issues, of epistemological significance, are crucial for a context-sensitive disciplinary scholarship (research, curriculum, knowledge-production and dissemination).

In this light, the backdrop of pandemic compels for a rethinking about the course-curriculum and pedagogy. Perhaps it has been much easier to talk about these and other such issues in a manner of intellectual deliberation than perform it through a curriculum, let alone pedagogy. The task becomes much more challenging when skepticism about the engagement with the contextual particularities is expressed through the phrase of ‘methodological nationalism’, an intellectual apprehension that sociology of particularities will be a compromise on the ‘universal-cosmopolitan’ characteristics of the discipline. It takes the notion of indigenous with a pinch of salt to suggest that it is a discursive product loaded with colonial legacy, orientalist approach, and idealism of nation-building in post independent countries^{xxii}. The students along with teachers spontaneously resort to the local/contextual while engaging with the textual, in a pedagogical plan to render

teaching and learning into a context sensitive endeavour^{xxiii}. A life-threatening situation of pandemic makes this endeavour even more like an existential necessity. And hence, the following section elucidates a possible phenomenology of pedagogic pursuits in the context of pandemic. It is not merely about online education, instead, it is about how playfully teachers and students alter the given.

Pedagogic Possibilities during the Pandemic

With the announcement of closure of university campuses in March 2020, with subsequent lockdown across India, a new idea was abuzz: converting the mode of teaching from real classroom to virtual-digital space based! The online mode of education continues to be the only option in 2021 as well given the perpetuity of the pandemic. The official notifications only mentioned the shift to the online mode, almost ignoring the fundamental questions, i.e. what to teach and how! If any teacher asked it publicly, which some of them did, the answer was: it is a temporary measure to manage the teaching of the ongoing courses for the time being! Evidently the techno-managerial logic behind the decision to go online was more prevalent across various institutions. Hence, there was hardly any consultation with those who practice care for pedagogy. It was not thought out in a relational mode of decision-making. After all, this is how it has been with academic administration, passing unilateral conclusions and judgments.

A sense of liminality prevailed, in which the pre-existing structure was perpetuated with a good amount of extra-structural, if not necessarily anti-structural^{xxiv}. The pre-existing structural logic was not only in turning everything online without much consultation with the practitioners, but it was also in the fact that the same course-structure, structure of marking and evaluating, and even attendance was still thought to be sacred. Only gradually, much later, the institutions began to think otherwise. The holy cow, a trinity of attendance, evaluation and elimination, was available for rethinking. Such was the effect of the pandemic bound changes that brought about, if not really any lasting structural transformation, a possibility to not bother about the holy trinity. Not that there was any prophetic realisation, or profound awakening behind. Like many things, this too was only ad-hoc, managerial, bureaucratic, so as the show must go on! Even though without much change in the institutional conscience, there emerged some space for those who wish to see a change. All such changes reflected the extra-structural, pertaining to the possibility in the time of utter confusion that swayed society, state and educational institutions alike. The message was loud

and clear. All must continue to be on the 'job' of teaching and learning, the way they have been, following the official instructions. All must also have a structure in place, in teaching and learning, the way they have been, though not much instruction was available in this regard. The absence of a clear idea about 'how much of course-curriculum to teach', 'how to evaluate', and 'how to conduct the pedagogic practices', however, came as a blessing in disguise. But was it an absolute blessing?

What if, freedom suddenly dawns on those habitual of a rigid technocratic system? A bagful of mixed feelings engulfed with a bit of trepidation, uncertainty about how to do, fear of trial and error, and a bit of respite that this may keep students and teachers safe. Both teachers and students began to understand that it was a piecemeal arrangement, provisional and only for the pandemic. But then, both had a challenge about what to do in the online mode. Many just continued teaching the way they did in the real space, with the same course outline, same methods of transactions, with eyes transfixed at evaluating. We heard of teachers complaining about graver form of mass-absenteeism since it was difficult to detect the present and absent students. In spite of teachers' request to the students to keep the camera on during the classes, there was a pretext of poor internet connectivity and the digital divides. Many teachers hilariously emphasised the necessity of mandatory attendance, with the same old roll call. It was unthinkable since online mode facilitated the partial presence and absence of the students who logged on to attend classes with their cameras off. Teachers complained that we speak for forty minutes and we get questions from only one or two students. Rest of the students stay indifferent. Teachers tried the methods of evaluating the students during the classes. Those who ask questions get marks and those who don't, don't. Teachers asked them to read the volumes of reading materials, and based on them, send questions in email to the teachers. Quite a few of the students obliged for a while. Then, they turned silent. The greatest difficulty the teachers faced was about the manner of examination and evaluation. Even those teachers who were never in favor of open-book examinations, and quite a few of them also seem too unfamiliar with any such mode of exams, had no other choice than give questions to students who wrote answers at home referring to all possible sources. Teachers, who seem to rejoice the act of evaluating and passing judgments, had great frustration in reading those essays by students since they seem to have gone far beyond the stricture of a course.

This is the larger scenario in which I taught two courses, namely *Methodologies*

in *Social Sciences* and *Sociology of South Asia* in the Monsoon semester 2020 and Winter Semester 2020-2021 respectively. We knew that we were all living at home, with our families, juggling with our roles at home, worrying about the threat of virus and efforts to stay safe, and in the middle of it, we were teaching and learning. Even though we tried to segregate the parts of our jumbled existence, we knew the limits of such efforts. Admitting the complexity, I asked students to critically reflect on the existing course-structure, and think of the ways of cutting it short, with fewer topics and readings to discuss. The only criteria underlying the exercise were feasibility and interest. It triggered an intriguing excitement among students.

Methodologies in Social Sciences (henceforth *Methodologies*) was a course offered to the third semester postgraduate students, who had presumably already learned the classical and contemporary theories and other such basic courses in sociology. It is usually expected that after spending a year and half through the Masters in Sociology program, the students would be mature enough to deal with the philosophical, epistemological and ontological detailing in a course on *Methodologies*. But it turns out that the prior familiarity with the courses also comes with a-priori conditioning of the students' minds. Hence, there is an evident challenge in pedagogic play with the materials, issues, discussions, and thinking.

In two classes back to back, while laying out the introduction of the basic ideas in *Methodologies*, I expected them to start talking about their preferred and shortened version of the course-structure, which only yielded silence. The message reached out to the whole class that the students are invited by the teacher to re-frame the course structure. It synergised the class and the attendance increased in the first week. In the second week, however, it began to dwindle despite several cues, ideas, and suggestions about shortening on the offer. It was obvious that the intellectual freedom is easier sought than accomplished. While I set out giving first few lectures of half an hour each, referring to various nuggets available on YouTube, I began to enquire as to why there was no decision about the course structure as yet. The two class representatives eventually admitted that they were unable to cope with the given freedom, and their sheer lack of discretion in whatever ideas about shortening the course and its reading list. And yet they suggested a shortened version without an iota of care for coherence and justification.

A month had passed and the discussions on the emergence of positivism as the most accepted methodology was already a familiar idea. The class-discussions had already referred to the contributions of Karl Popper, Alvin Gouldner, Robert Nisbet, and C Wright Mills, etc. And right on the day when we were going to talk about René Descartes' meditations, the students requested me to shorten the course structure for them. This was an eventual surrender of the free will, in which our structures of higher education have already trained us to such an extent that we usually let go of a chance, an accidental opportunity. In a long meeting we cut short the course, retaining the fundamental texts and merging a few sections of course structure for shorter discussions. While the trajectory of methodology from Europe was shortened, we retained the exercise of exploring the methodological possibilities based on the texts from South Asia. This exercise was aimed at exploring the possibility of methodological innovations routed through the domains of experience from the socio-cultural contexts of the region. The larger objective of the course is to acquaint students with the available debates on how methodologies shaped up in social sciences, what ways of seeing emerged as dominant, and how contestation about the dominant ways of seeing in social sciences opened up the possibility for methodological innovations. With such objective, the course solicits the teacher and learners to connect the prescribed text/ reading materials with the contexts, the experiential domain of students and teachers.

However, it so happens that students are as unwilling to undertake risk and refer to experiences as the teachers. Hence, most of the time any class lecture or discussions in the light of a 'read-text' seldom steps out of the 'written words'. I have encountered it on usual occasion of physical classroom too. Students felt unable to relate from their life world. Instead, they either rattled from the texts, or paraphrased, or quoted, as part of the discussions. This was so in the online mode too. If they had to ask a question, it would be in the manner of asking for the basic meaning of what I said, the concept that was referred to, or the point that was raised. This was an exercise that one can summarily equate with the basic arithmetic, one plus one amounts to two! Exceptional observations in relation with the threat to life and troubled perceptions in the time of pandemic usually came from the seemingly non-metropolitan students, from cities and towns located away from Delhi. Those students usually struggle with paraphrasing from the prescribed reading materials, or texts, as much as they struggle with poor quality internet connectivity, and various kinds of scarcities in life. Such students, when encouraged, lead the discussions to acknowledge new avenues, novel

issues, and risk prone ways of seeing. Often such students do not end up writing an essay in assignment that a quality-rigour bound evaluative teacher could marvel upon. But their loud thoughts, raw ideas, nebulous interjections, bear enormous possibilities. Even though they fail to fully appreciate a text, they seem to be keen to connect everything with their contexts, a whirlpool of experiences.

When it comes to the exercise of exploring the possibility of methodological innovations, based on a text that the students have to select as per their preference, one is left with no choice other than leaving behind the basic arithmetic. Even in this exercise the students wanted to play it safe, and hence their first choices were the texts known and read in sociology. When asked to find a text usually not read in the various courses in sociology, the students had to be wanderer and explorer, like *Alice in Wonderland*, unsure and yet driven by the conviction to find. While they were attending classes, listening to some of the lectures available on YouTube, there were meetings about the selection of the texts. I had to once again, provide cues, ideas, hints, suggestions. It was interesting to observe that some of the students who spoke very good English, and had clarity of diction, and scored well in the written assignments, had great difficulty in finding a suitable text. Likewise, thinking about methodologies through the prism of pandemic bound experience felt like an outlandish exercise to the students. Most of the time, the teacher had to provide such connections, contestation and reconciliation.

If *Methodologies* was still manageable since there was a clear beginning and end to the structure despite our free-play with it, *Sociology in South Asia* (henceforth SSA) is structured as a seminar course, taught and learnt in workshop mode. This is offered as per the calendar of courses in the first semester when fresh lot of postgraduate students joins. The stated objective behind the course is to acquaint students about the basic characteristics of sociology, in relation with social anthropology, the disciplinary history and practices in the region of South Asia with reference to the stories from Afghanistan, Bangladesh, India, Nepal, Pakistan, Sri Lanka, and moreover exploring the questions and issues for taking forward the project of SSA. Ever since the advent of the Department of Sociology at South Asian University, this course has been taught as an ongoing project in the workshop mode. Hence, there have been generous changes in the course outline over the period of time too.

It really shows yet another kind of responses from students, leading to the emergence of an uncanny relationship between teacher and taught, and pedagogic

possibility, given that the students are fresh out of their undergraduate programmes. With due excitement, keen interest, and perpetual expression of wonder, students have been willing to indulge themselves in intellectual adventures in this course. With the pandemic in the backdrop, it was even more pronounced an imperative to think of SSA as a necessarily ‘regionally routed’ enterprise rather than the one handed down from ‘somewhere’. The course revolved around the basic epistemic units, such as, society, culture, polity, knowledge, tradition, modernity, Eurocentrism, and decolonising. For each, the students had plenty to say, on the precondition – the teacher had to be a patient listener. This is pedagogy of patience in which the relation between the teacher and taught unfolds with due fluidity and allows for sincere trial-and-error. Also, in sync with the workshop mode, everyone had to enact the role of craftsmen, literally hammering down on each idea, referring to a host of thinkers, scholars, and a lot of personal-biographic experiences. In this exercise name-dropping had little space. Instead, thinking through the unit ideas and putting together sung and unsung names without privileging anyone was more crucial.

In this regard, it is important to note that the students who had done sociology in undergraduate courses had certain fixed ideas about the discipline. Gradually, they began to realise that it was a particular mode of learning in which the basic characteristics of sociology, separated from anthropology more often than not, was hardly questioned. They had also grown up thinking that sociology means a particular list of questions, a particular set of concepts and perspectives, mostly from the textbooks, which seldom invite students to think critically while learning the basics. In this regard, the sociologically informed students were rarely different from the orthodox sociologists who leave no room for thinking against the grains. On the other hand, the students who came from literature and science background were far more willing to be open to the wonders. They learnt the disciplinary categories and yet they maintained a sense of discomfort about the categories, and hence willing to question them. For them, the crucial question was not only to understand the structural inequality and the ways of transformation; it was also important as to how one understands them, why, and what to expect out of the act of understanding. It was this openness that allowed students to toy with many novel facets, which may be relatively under-explored in sociology in South Asia.

The first trigger in such exploration was the so-called buzzwords. But then, it was not about following a fad. For example, the exploration of performative in

sociology and anthropology in South Asia meant situating it across borders, societies, cultures, and politico-economic contexts. Recognising as to why performative, art, photographs, etc. are relatively neglected also led to understand that SSA hardly ever arrived at the sensorium of structural inequalities. Inequality with any name and expression is not merely word, rhetoric, or an institutional imposition in societies in South Asia. In myriad forms, inequality is registered and perpetuated through human sensory perceptions based on smell, sight, touch, sound, and taste. The students came up with diverse seemingly non-sociological texts ranging from fiction, poetry, religious treatises, socio-philosophical ruminations, as their selected texts to speak of the ideas for doing sociology in South Asia. From such texts, and students' readings of them, there surfaced a *rasa*-matrix^{xxv} of inequality that the students were offering to add to their agenda for SSA. This *rasa*-matrix underscored the systemic and affective perpetuity, giving an ontological turn to some of the taken for granted categories, rhetoric, and ideas.

As evident, pandemic-pedagogy presupposes patience, perseverance, and persistence. There are many occasions when one joins in the mode of lament about the decline of interest in reading, informed debating, and writing. Also, teachers are not immune to the conditioning done by structures. On many occasions, as a teacher, I may have had second thoughts about the endeavour I had embarked upon. But, eventually a pedagogue is a die-hard optimist, we know from various philosophers of education. Hence, awaiting it to happen, one had to keep talking, or even give space to think in silence. Slices of individual biography, subjective experiences, and everything that seems personal had to become the means of doing. The 'personal' does not find an easy passage in the 'public' domain where teaching and learning unfolds. It could be also due to the training that students receive in their schools and undergraduate colleges. The training instills an undue skepticism toward one's own experiences as a learner. And hence, articulation of experiences in relation with theoretical propositions of the texts, no matter in agreement or disagreement, is fraught with linguistic punctuations, semantic confusions, and under-confident mannerisms. There seems to be a collision between 'hidden transcription' and 'public transcription', which Scott (1987) discusses while deliberating on the potential weapons of the weak. The students' 'hidden transcript' is, unlike the popular conception, not always a piece of juicy gossip. It is also inclusive of, in large part, the experiential narrations related to the socio-cultural and politico-economic context and biography. While the popular and dominant demand is, from the students, to

follow the ‘public transcript’, the prescribed texts, the curriculum, the assignments for evaluation, and the officially prescribed ways of doing the same, the hidden transcript vis-à-vis the experiential narratives are never out of the sight.

This evident tendency solicits from a teacher an alternative pedagogic plan, to let happen a fusion between textual and contextual, intellectual and experiential, rational and emotional. It solicits a necessary change in the method of execution, the course curricula had to be student-oriented, rather than a teacher-oriented curriculum with excessive display of the ‘teacher’s academic prowess’^{xxvi}. More often than not, a teacher feels inclined to cram a course with higher numbers of ‘readings’, with a quantifiable notion of ‘rigour’ and thus of ‘quality’. The prevalent, and questionable, commonsense is: the more the readings, the more rigorous the course. On the contrary, the above-discussed courses attempted to be selective about readings. The assumption was that a qualitative engagement with the chosen text, rather than a quantitative evaluation based on the numbers of pages read, is the prerequisite for experience to unfold with the texts. Second important step was to make sure that the texts are systematically, even though selectively, discussed in the lectures in the virtual classroom. The references to the selected texts were mostly dovetailed with the references to the slices from the biography of teacher, experiential fragments, illustrations based on the reports from newspapers, work in fiction, poetry, and cinema. The students invariably found it useful to see the analytical connections between the texts and the contexts (socio-cultural components pertaining to the everyday life of teachers and students). The lectures were often a mix of audio-visual, and oral presentations, combining the textual and contextual components.

Conclusion

Pandemic held the sociality as one of the culpable sources of the spread of virus. A pedagogy that seeks to generate an intellectually and emotionally exciting sociality, even though its online-education, is the need of the hour. Even in the ‘old normal’, as opposed to the so-called ‘new normal’, this was a prerequisite for a healthy academic vocation. It was always an imperative to recognise the variety of academic Brahmanism, and tackle them through the courses and pedagogic practices. With the shift to the online education, the challenges to pedagogy have increased manifold, as many of the old issues have found dramatically high decibel articulations that no academic deafness can ignore. The pedagogues do

not have easy access to the students in flesh and blood. We cannot look into their eyes, read their faces, judge their emotions, and talk to them accordingly. We have to be more prescient than ever before. Teachers as mere cogs in the unreflective machinery cannot do the wonders, let alone breaking free from the structures of strictures. By default, the online education provides that rare opportunity for the teachers and students to try out the ways that were structurally not available.

Tragedies persist, for, the world with structural thinking guided by neoliberal logic and imagination is not going to disappear in the wake of the pandemic. The technocratic administrators may interrogate, students may resist, and teachers may continue to just toe the line. But die-hard pedagogic optimism persists too, to give birth to a creative challenge to teachers and learners to rediscover their subjects of study. Responding to the levels of tragedies, with an awareness of the strictures posed by academic bureaucracy, this paper shows that the teachers and students have moved a few (perhaps baby) steps toward reconciliation between the prescribed texts and the learners' contexts. It is not without resistance, frustration, and failures. But then, every move of a pawn on the intellectual chessboard, grappling with the stalemate, does amount to both success and failure. These pedagogic pursuits may not be revolutionary enough to alter the structural behemoth. They are very small with smaller impacts. But then, to borrow a phrase from Schumacher (1993), small is beautiful, isn't it?

Notes:

ⁱ A metaphysical swan-song for Dionysian wisdom in praise of the tragedy-myth, which according to Nietzsche, characterises the works of art and experiences of aesthetics. See Nietzsche (1956).

ⁱⁱ For a similar approach and deliberation, see Schwartzman (2020).

ⁱⁱⁱ A similar approach, viz. phenomenology of experience, though with a different focus (practices of research and writing) was in Pathak, D. N. (2021).

^{iv} For more on the technologised mode of education, see Pacheco (2020) <https://link.springer.com/article/10.1007/s11125-020-09521-x>

^v This was central in a talk by a sociologist of education, namely Avijit Pathak at a public-academic space named GalpLok, see, <https://www.youtube.com/watch?v=Kt-Rw8qGt8w&t=9s>

^{vi} The diagnosis of an ailing system is merely a means and not an end. Freire (1994) aids in understanding the imperative of actions to break free from the system of banking education. That is where hope lies, in ontological sense, for the pedagogues.

vii On the perpetuity of neoliberal challenges to pedagogy, see Giroux (2014).

viii This twang is inspired by Guru (2002).

ix The various instructions related to new normal was also a part of the campaign during the pandemic, see <https://pib.gov.in/PressReleasePage.aspx?PRID=1634328>

x Lately, a provocative acknowledgment of the self-assumed immunity of the universities in India appeared in a popular piece, see Apoorvanand (2021) at <https://scroll.in/article/994076/indian-universities-are-pretending-everything-is-normal-as-the-world-around-them-is-collapsing>

xi For more on hidden transcript and public/official transcript, see Scott (1987).

xii National Council of Educational Research and Training in India, published the National Curriculum Framework-2005, which guides schools in framing curriculum as well as pedagogical approaches. It encourages schools for a context-sensitive and experiential learning of children in schools in India.

xiii Such remarks are heard more often than not when teaching practice is focus of discussion in various parts of India. It seems that in popular academic understanding in the institutions of higher education, a teacher is only found in the schools, not in colleges and universities.

xiv Elsewhere Kumar (2008) questions this fabrication, which results into perceiving school teachers as non-intellectuals, lacking in self-respect, and hence butts of quotidian criticism.

xv Guru (2002) discussed academic Brahminism in relation with the so-called pure and higher one who would develop theories, and polluted lowly scholars who do empirical research.

xvi A student informed in a personal communication.

xvii A student informed in a personal communication.

xviii See for example, Altbach (1977); Patel (2004); Beteille (2010), a few among others.

xix There has been a string of debate on the issue published in journals such as *Economic and Political Weekly*, see for example, Das (1993); Deshpande (1994); and *Contributions to Indian Sociology*, see for example, Vasavi (2011); Patel (2011).

xx I have in mind Vasavi (2011) and Chaudhury (2010).

xxi Chaudhuri's (2021) criticism of sociological preoccupation with fancy 'buzzwords' is well taken, but there is an ominous logical flaw in the separation of in-ward and out-wards interests in inequality.

xxii See Patel (2013) in this regard.

xxiii See for a rare example, Alatas and Sinha (2001).

xxiv Students of sociology and social anthropology religiously read about the interplay of structure and anti-structure in discussion on liminal in the rite of the passage, see Turner (2011).

xxv Rasa refers to the attributes, emotions, and accordingly enactments (bhawas) discussed in the ancient text *Natyastra* by the sage Bharat. See Bharat Muni (1951).

^{xxvi} Elsewhere this is discussed in terms of the self-indulgent superiority of the senior peers, supervisors, and teachers, see Pathak (2021).

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Article: Mother-Work and School Culture: Parenting Strategies in Banaras

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Mother-Work and School Culture: Parenting Strategies in Banaras

--- Nirmali Goswami

Abstract

The relationship that families share with schools has undergone significant shifts in contemporary times. Class, occupational status and social geography of their location have affected the relationship at a time when parents are expected to assume an active role in their children's learning. In this respect, the role of mothers has been extensively examined in the existing literature on the class and race differentiated parenting strategies with respect to schooling. While such literature has comprehensively added to our understanding of class specific and gendered ideas of parenting, it is often criticised for sidestepping on the questions of the agency of mothers from lower social class positions. The paper seeks to examine how the ideas of parenting are shaped by occupational and spatial location by drawing from experiences of mothers with lower educational backgrounds. Their location in the urban neighbourhoods, variously identified as 'slums' and/or as 'weavers' settlements', is constitutive of their collective identities as belonging to a world which is marked in terms of its occupational, linguistic and educational distinction from the rest of the city dwellers. The women in these settings are, however, constantly engaged through investments in their children's education. The conversations with these women are revealing about their efforts in disciplining the lives of their children in ways that make them better adjusted to school.

Key words: Consumption practice, Education, Middle-class, Mother-work, Parenting

Introduction

The relationship that families share with schools has been re-casted in new forms in contemporary times. These times, among other things, are characterised by the ascendancy of the neoliberal policy regime that has exacerbated economic and social insecurities on one hand, and affected the provisioning of services like

education on the other. As a result, an average individual is often viewed as a 'consumer-citizen' whose identity and politics is based on his consumption practices. The new consumption culture that defines much of the class-specific practices is also reflected in the preferences for schools. Family life across different segments of class has been oriented towards moulding children's lives in ways that gear them towards success in school life and beyond in an increasingly competitive and economically insecure world (Bowe, Gewirtz & Ball, 1994; Ball, 2003). The literature on the emergence of a 'new' middle-class in India and the consumption practices of its several fractions has strengthened our understanding of class fractions and their linkages with education (Deshpande, 2002; Fernandes, 2006; Donner, 2008). This has also contributed towards a sharper articulation of the social reproduction of inequality in terms of a skewed provisioning of education and, consumption-oriented activities of middle-class parents (Kamat, 1985; Nambissan, 2010, 2017).

However, the gendered forms of the micro activities of parenting, particularly of mothers have not received adequate attention barring a few exceptions (Kumar, 2007; Donner, 2008). It is through the material labour of the mothers towards the educational development of their children that the cultural ideals of education are being formed and realised. These activities, identified as 'mother-work' tend to be shaped by the intersecting variables of class, community and social-geographic locations of the mothers involved. In other words, while all mothers might be engaged in the childcare activities, the nature of their engagements and the benefits that these activities fetch in an education market varies. The literature suggests that mothers become active producers of the class and gender based identities through their engagement in the intensive care-work of children (Lareau, 1985; Reay, 1999; Vincent, 2001). The intensive and focussed nature of care-work by middle-class mothers has assumed different dimensions in post liberalisation India (Donner, 2008). One important aspect of the mothering activities, particularly for the middle-class women in the urban settings, is to make children ready for school life and to gear them towards success in it. That is because schools promise to provide gateways of particular kind of socio-economic mobility. The mobility is linked with credentials that one earns, in the form of certificates, access to highly valued symbolic resources and network. Success of children in school-related activities becomes the primary responsibility of mothers in family settings.

The gendered character of such an engagement is not a new phenomenon but its

newer forms in classes that aspire for the middle-class lifestyle at a time of economic and social insecurities have not been examined in sufficient detail. Also, much of the available literatures in Indian context have focussed on middle-classes located in the metropolitan cities. This paper seeks to explore the specific nature of engagement of mothers in the schooling of their young ones in families located in a non-metropolitan urban context and how class and community identities intersect and shape them. Secondly, it seeks to examine how the access to valued cultural resources is shaped by the segregated patterns of living in specific neighbourhoods of Varanasi. Thirdly, it will focus on how the mothering practices in these locations, while trying to emulate the middle-class school norms and practices, often contributes to the reproduction of gender and class based identities.

Class and Gender Dynamics of School and Family Relations in Urban India

The school and family relationship has been extensively examined within sociological studies of education which have highlighted the influence of class, race and gender. Drawing on the seminal works of Pierre Bourdieu and Basil Bernstein, various scholars have advanced our understanding of the class differentiated nature of the relationship between parenting style and school success. While Bourdieu's work employs the conceptual tools of habitus and cultural capital, Bernstein's work draws attention to class and occupation specific cultural practices within families that encode ways of acting in the school context (Bourdieu, 1985; Bernstein, 1997).

In this respect, Annette Lareau underlines the notion of 'home advantage' that students from middle-class families share because of the class specific practices at home. She has underlined how the practice of 'concerted cultivation', which refers to a specific parenting style that is intensively engaged and goal-oriented, helps middle-class students to do better at school in comparison to their counterparts from the working class families (Lareau, 1985, 2002).

Going beyond the binaries of school and family, S.B. Heath in her work has demonstrated how class and racial composition of urban settlements also contributed towards developing specific styles of communication among families in the urban context of US. She suggested how these locations and closely bound spaces of community life loomed large on communicative styles within family context that affects the children's experiences at school (Heath, 1983). These

processes have had implications for gendered labour of women within the family context. The class specific character of these processes has also been highlighted in the role played by mothers in their investment in children's education.

In the last few decades, growing number of studies have started focussing on the role played by the middle-class mothers in the social and cultural reproduction of class and status based privileges through schooling (Lareau, 1985, 2002; Vincent, 2001). It is suggested that the intensive mothering work of the middle-class women is often directed towards ensuring that the class based privileges are transmitted to their children which contributes towards their academic achievement at school vis-à-vis others. In other words, middle-class mothers have been playing an important role in the gatekeeping of the symbolic resources associated with social mobility in urban life.

Diane Reay (1998) seeks to bring out the gendered character of the process of social reproduction of inequality in and through schooling. Her work highlights how women from different class categories make extensive investments of time and efforts in organising and assisting their children in school-related tasks. Her work also highlighted the differential modes of engagements of working class and middle-class mothers. These differential modes of engagement actually help women from middle-class families to secure favourable terms for their children vis-à-vis school authorities and teachers. That does not mean mothers from working class and coloured families are not sufficiently engaged in their children's education, but it does suggest that school staff often operate with class and race specific codes. While middle-class mothers are viewed as proactive and succeed in their claims vis-à-vis school as a matter of right, working class mothers are viewed as not interested by school staff (Reay, 1998, 1999; Vincent, 2001). Reay (2014) has highlighted how class-differentiated use of linguistic resources has bearings on mothers' power vis-à-vis school teachers. Drawing on Bourdieu, she highlights the skilful use of linguistic capital by middle-class mothers to the advantage of their children in a school context. However, the literature on mothering practice as contributing to the social reproduction of class-based advantage is often criticised for not questioning the discourse of mothering in the sphere of education and for sidestepping the question of agency of working class mothers. The policy discourses in a neo-liberal world have placed working class mothers in a disadvantageous position while constructing them as deficient and responsible for the academic failure of their children (Braun, Vincent & Ball, 2008).

In the Indian context, a number of studies have demonstrated that the exclusive access to high status schools and symbolic resources like English is enjoyed by a certain fraction of middle-class familiesⁱ. Geetha Nambissan (2010), in her work on middle-class parenting styles, has highlighted how middle-classes in Indian society have managed to secure advantages in the school market by employing specific strategies. Vaidehi Ramanathan (2005), in her work on English and vernacular divide in the state of Gujrat, has talked about gatekeeping mechanisms and ‘assumption nexus’ employed by the middle-class families educated in English medium schools that continuously keep lower class and vernacular medium students out of the prestigious institutions. There is a number of studies using various disciplinary perspectives that attest to similar claims about close linkages of class background of families and access to quality education in contemporary India (Kamat, 1985; Drury, 1993; Ladousa, 2014; Goswami, 2017). But the majority of such work is silent on questions of gender and fail to provide a nuanced account of the relationship that mothers share with the schools and the schooling activities. There are only a few exceptions to the general trend.

H. Donner (2008), in her account of the middle-class women in Bengal, argues that with the insecurity of employment opportunities and the promise of the rise of the IT industry has had an effect on the ways mother’s role in a family is envisaged. She argues that in a changing political-economic context, middle-class women have to adapt and adjust to the new set of contradictory expectations in the family as mothers. As modern mothers, they are expected to take care of their family members, including children. But the competitive style of parenting means that they start investing most of their time and energies towards educational development of their children. These efforts begin at the pre-school level and are aimed at long-term returns for their children. Ironically, these class-specific strategies, employed by the educated women often end up reinforcing the prescribed gendered division of labour within the family realm. The couple of studies that focus on mothers from working class families provide important insights about their engagements and anxieties about their children’s educational future (Panda, 2015; Goswami, 2015).

While all these studies offer rich insights about the interconnections between family and school life in contemporary urban India, we have fewer details about these aspects in non-metropolitan locations. One of the noted exceptions has been the study of educational markets by David Drury (1993) where he relates the differentiated ways of parental strategies adopted by middle-class fractions to

secure the scarce educational capital for their children in Kanpur. However, like others, he too has focussed on how middle-class families negotiate the school market to secure the best deal for themselves. As mentioned earlier, the specific issue of mothers' engagements is not given adequate attention in most accounts of modernity and aspirations of social mobility in urban life.

Nita Kumar (2007), in her study of development of education in Banaras, has drawn attention towards *mohulla* specific processes of work leisure and learning, which both overlap and in few cases, present a contrast to the world of school in terms of spatial organisation. These contrasts and similarities have bearings on how families from specific locations view school life. She has also argued that there is a need to recognise that in colonial period a focus on mothering work is essential to develop an understanding of the narrative of modernity in South Asia (ibid, p. 134).

Therefore, one needs to reflect more closely on the experience of mothers from lower-income groups in non-metropolitan urban centres to get a fuller picture of how aspirations of mobility are being moulded in contemporary times and in what ways do categories of class, caste and community play out. It is also important to note that a lot of migration to urban centres in India has relied on community and caste based networks and has shaped the urban geography of cities. In other words, urban life in Indian cities has been segregated along the lines of class, caste and community. A historical contextualisation of such urban space is necessary to make sense of life in residential areas in contemporary times. In the next section, I seek to combine an understanding of the political and economic context of Varanasi with an understanding of the historic development of residential neighbourhoods which are also centres of material production of Banarasi saree. It is against this backdrop that I re-visit materials from my fieldwork conducted in the city and focus on narratives of mothers regarding their educational work with their children.

Examining the work of women as mothers, who are constantly negotiating their lives in a close and dense network of community and family ties, would thus provide a key vantage point in this paper. This paper seeks to examine the location of such women by taking cognisance of the processes that constitute her social and spatial contexts. Towards this end, I map out the class, community and caste specific ways in which neighbourhoods have emerged in the city of Banaras to examine the specific nature of relationship that families engaged in the

traditional occupation of manufacturing Banarasi saree share with modern schools. The distance between the two worlds represented by the family and the neighbourhood on one hand, and school on the other hand, creates a cultural distance which needs skilful navigating of cultural practices. Then I present the challenges that women face in preparing their children for a school culture which in many ways contradicts the lived aspects of their life.

Methodologically it focuses on mothers' engagement with children's education in communities and neighbourhoods that are deemed as educationally backward (Kumar, 1998, 2000). It views women with lower educational background as both constrained by structural relations while acknowledging that they are actively engaged and invested in their children's education. The paper includes insights gained from interviews conducted with women from eleven households from mixed community and class positions in the city of Varanasi during 2007-2011. These were located in specific residential pockets and linked to a private school that I have examined in detail elsewhere (Goswami, 2017, 2019). Seven of these families were occupied as small-scale traders from both Muslim and Hindu groups and four were engaged as employees in public and private organisations. These included four Muslims from Ansari community and seven households were from caste-Hindu groups.

In this research, my social position as an educated woman of caste-Hindu background has constructed my relationship with these families in specific ways. I accompanied the children from school to home, and, therefore, was always seen as a representative of the school fraternity. Men were more occupied with their business and I had shorter conversations with them. Eventually, I spent more time interacting with mothers, grandmothers and aunts of the students. My insights about their involvement in children's school-related activities are drawn through in-depth interviews which lasted for about one to two hours each. All these families were located in the northern central parts of the city adjacent to the commercial hub of the city. Their current location in the city is deeply tied to the history of urban development in the north Indian states.

Urban Space and School Market in Banaras

Historically, residential segregation along community and caste lines has been a distinctive feature of the old city space in Banaras. Nandini Gooptu (1997), in her study of the 'urban poor' in the 19th century towns of North India, notes how the

city administration, through town planning programmes, targeted the urban poor, strived to create separate areas of habitation for them, ghettoising them in certain pockets of the city. Among other things, such spatial arrangements were meant to protect the relatively wealthy from the threats posed by the ‘unsocial’ elements represented by the poor in the city. The town planning mechanisms, rather than addressing the problem, ended up ghettoising the poor and the resultant physical mapping of the city also reflected the social and class differences in which the areas marked for settlement of the poor had lesser access to civic amenities.

Though the town planning of the city has gone through many changes, different communities in the city continue to live a segregated and conclave life in present times. The latest report submitted by the city administration refers to three distinct areas in the city: the old city, the central city and the peripheral areas. The report also identifies the old and the central city as areas where the manufacturing and retail areas for traditional crafts are based (JNNURM, Varanasi City Development Plan, 2015). The areas marked for handloom weaving and embroidery work like Kacchi bagh and Koyla bazar are also identified as slums in the same report. The industrial cluster of silk weaving in Varanasi is an industry which can be called informal in its organisational structure and in manufacturing but employs the largest number of employeesⁱⁱ. Apart from the weavers, these areas are inhabited by small-scale traders and petty businessmen, and wage workers who are often from Muslim and low-caste Hindu groups. The residential and commercial areas tend to overlap in a labyrinth of the narrow lanes which connect the inner residential pockets to the main roads which house retail shops and also to civic amenities like schools and medical facilities. Such residential areas are separate from the main market cum residential area at *Chauk* in the old city, where mostly rich Hindu traders live and engage in the retail trade for finished productsⁱⁱⁱ. Both these areas are densely populated and connected through narrow lanes but these areas vary in terms of status and prestige. In local parlance, the wealthier areas of the old city are termed as *pukka mahal*. It literally refers to the neighbourhood consisting of *pukka* construction, denoting a membership to the most central part of the old city. On the other hand, the settlements like Alaipura, Lallapura and Reveritalab are located at the outskirts of the main part of the old city where weavers’ pockets are located.

The life of people in the saree industry is organised in unique ways. It is sustained by a complex web of familial and inter-community relationship among retail traders, suppliers, master weavers and weavers. These locations are known as the

weavers' settlement, but many of these families have started running power-looms and hiring workers to operate these, indicative of a relatively better-off position than that of the weavers. For few decades, people have started shifting to some other ventures but the majority of households and their members continue to have some kind of connection with the saree industry. Their homes also house their workplace in which residential parts are located in the upper floors and the weaving work is carried out in the ground floor. They continue to live in joint-family settings with or without a shared kitchen. Family members are also engaged in similar occupations. In most of the cases, the married women of the family are also usually from the same city or from rural areas adjoining the city. As these families started moving to the position of master weavers, earned more resources and were free from full-time manual weaving, their families started investing in modern forms of schools for the children. Such places are marked by a lack of mobility and social stagnation and are represented as the backward areas. Similarly, people inhabiting these places have always been profiled as problematic and not fitting in with the normative ideal of citizenry (Kumar, 2000). Nita Kumar (2000), in her work on the educational history of the city, has demonstrated the ways how urban geographies structure people's life in specific ways. In another context, it is seen that parents' notions about place and locality shapes the school preferences that they exercise (Bell, 2007).

Over the years, a number of transitions can be seen in the educational preferences of these families. Most of the young men and women from Ansari families have been to some madrasa school for five to eight years, unlike the younger generation. The younger siblings are moving to non-madrasa schools and, at times, to English-medium private schools in the vicinity. These moments of change, however sluggish they might seem, are not without their tensions. The families would not send their children to the English-medium schools in the far-off parts of the city or allow their daughters to continue in a co-educational school beyond the upper primary levels. A daughter's education is still a luxury which can be afforded only by a few, and has to be achieved while following strictly gendered norms of community living.

For these families, the sites of education are plural and not restricted to the schools alone. The alternatives sites of education in family and workplaces are sometimes in conflict with the school education and adjustments have to be made accordingly. For example, having made the transition to school education, these families continued to arrange for private instructions in the reading of Koran

along with school subjects like Science, Maths and English. Their choices for schooling seems to have expanded but has closely followed the community specific norms of gender. These families have invested in their daughter's education in a modern co-educational school only upto a certain level, after which they had to be re-admitted to an all girls' school in the vicinity. In my interactions with them, almost every family seemed open about sending their younger sons into higher education, a luxury which is not given to the eldest son because the eldest son is supposed to take care of the family business. They also discussed increased investments in education in supplementary forms, such as paying for private tuitions and coaching, etc.

However, not all 'business families' associated with the school have a similar experience with school education. There are other families of caste-Hindu traders, predominantly from Jaiswal and Yadav castes, who are going through a phase of transition from the traditional joint-family business to newer business ventures which are less dependent on kin networks such as traders of machine-embroidered cloth and retailers of grocery. In such families, the mothers' generation had limited exposure to schools not exceeding the high school level in any case. In these families, future aspirations for social mobility are more closely tied up with investments in formal education of their sons, as compared to the Ansari families. The younger siblings in the families were admitted to an English-medium school, while the older ones attended the school discussed above. The eldest daughters in all the families attended a Hindi-medium all-girls' school. Like the Ansaris, these families appeared to be more invested in gendered school choice for their children, but unlike them, they considered investing more in boys' schooling, exploring good schools for their children even outside the mohulla. In terms of linguistic practices, these families are making a clearer shift from the exclusive use of Bhojpuri-Banarasi towards using Hindi at home.

All these families are, therefore, more invested in the schooling of their younger generations as compared to the older generations, but they still practice caution in terms of investing in a culturally and physically distant English-medium school of the city. For the families of the traders, the cultural barrier of approaching a distant English-medium school was strong enough to deter them from thinking of investing in them. The private school that their children attended in common is proximate to their dwelling place. It also represented a school which was accessible to them, not just in monetary terms, but also because it was offering lessons in Hindi-medium with a strong focus on English. Most of the parents,

particularly the mothers, had not been to college and were hesitant to approach teachers directly about their children. The teachers' conceptions of such students were also marked in less favourable terms; they often saw these students as lacking in terms of a 'culture of education'. The construct was drawn on the basis of educational, occupational and linguistic background of students' families and only a few students coming from families employed in service sector, speaking in standard Hindi and having educated parents were seen as adept with the school culture (Goswami, 2017). It is against this context of shifts in occupational and educational preferences of these families that I present the narratives of women and their engagement in the educational refinement and disciplining activities.

Mother Work and Educational Discipline

The families and their social world cannot be understood without accounting for the work of the women in these families. The women, mostly the young mothers, and at times the elderly sisters, are actively invested in holding together the social, cultural and economic aspects of their life through their work. As the families, over the generations, have started investing more in the schooling of their young children, by opting for a private school, it also reorganises the time and energies of the mothers in specific ways. The private school was widely perceived as placing a premium on school success and instilling discipline among its students, and the responsibility of making the children ready for school fell upon its mothers, at times assisted by the more educated members of these families.

In spite of being placed in positions that are viewed as lacking power, they were more invested in children's education. It was reflected in terms of the time spent with them in getting them ready for school, preparing and packing school lunch, looking for a tutor, attending the school PTMs, talking to the teachers and supervising their progress. I have focussed on their controlling and disciplinary tactics employed in sanctioning or encouraging specific behaviours, language practices, and cultural forms that are believed to have a bearing on academic success at school. As I have already highlighted in the previous sections, the language variety used in these families are different from the ones preferred in schools. School teachers lament the fact that students coming from these families cannot speak and write Hindi in a manner deemed fit for school. They also labelled students on the basis of the kind of Hindi they actually used in school as deficient than those which used standard Hindi in school. Therefore, in a context like this, it is not just English that is important, knowing the right kind of Hindi

also becomes a valued resource from the perspective of the lower classes. Apart from the lower educational background of the parents, one major obstacle in acquiring the standard speech was students' location in residential and occupational arrangements that were deemed 'backward', in teachers' estimation.

The mothers in family settings that seemed to lack the 'culture of education' were not unaware of their vulnerabilities in educational spheres. My interviews with them revealed how their extensive engagement with children's lives also included strategies that were directed towards cultivating a more respectable form of language in their children by disciplining the use of mohulla-specific ways of speaking and being.

The social space of a mohulla is usually associated with leisure activities such as playing, gossiping, and indulging in other idyllic activities among peer groups. It represents an unregulated space where the popular language varieties described as 'Urdu-Hindi mix' and 'Banarasi boli' are used. It is also a highly gendered space, as it is an area which is experienced differently by men and women. For men, of different age-groups, it is a space meant for spending free time in group setting. Men of different age-groups often formed groups and used the space for hanging out. However, for married and unmarried women, it is construed as a threatening space which has to be crossed as soon as possible and most preferably in daylight. Women's relationship with the neighbourhood is not an easy one because of the mix of familiar and the strange in these surroundings and the strict norms of gendered conduct imposed on them. Similar instances have also been reported from more metropolitan context when women have to carefully navigate their movement in the city to ensure security and safety at personal level (Phadke, 2013; Parikh, 2018). However, the metropolitan context is characterised by anonymity, while the spaces in the neighbourhood is marked by familiarity. The threat of violence that women face while navigating the urban space in India has received a lot of attention in public domain and media attention after the Nirbhaya rape case. But the everyday nature of symbolic violence that women face and skilfully negotiate in their familiar locations is hardly ever discussed.

Most of the women that I interviewed shared concerns about their daughters' safety during their commute from school. Often women complained of lewd remarks routinely made by bystanders in these lanes.

Almost all the women complained about the behavioural traits of men in the

neighbourhood which marked the life in mohulla itself as lacking in use of refined speech. A similar concern loomed large in their conversations about schooling of their children wherein they expressed how their life in the neighbourhood was not conducive to the kind of socialisation they wanted for the children in general and for girls in particular.

It was not an easy task, however, to deny and wish it away from their life, but they did manage to negotiate with it in their own terms and adopted specific strategies to minimise its influence on their children's lives. Some mothers managed to restrain their children, both boys and girls of younger age-groups, from playing outside their home. For example, Sivanya's mother, living in a rented house and staying alone with her children when her husband is away at work, devised her ways of keeping children away from the neighbourhood. She regulated her children's playing habits by motivating them to play inside the house rather than go outside. She arranged for indoor game for her children for this purpose. The perceived threat of the effect of mohulla is very pronounced among mothers while discussing the educational lives of children. The threat is also articulated in terms of the polluting effect of language that is used in the mohulla. It was reflected in their preference for standard languages like *khadi boli*, *shudh Hindi* and *Urdu* over the ones used in their neighbourhood.

Married women in these families, by and large, expressed a sense of shame with the use of non-standard languages in their family and worked towards cultivation of standard speech practice among children. Most of these women devalued local ways of speaking and distanced themselves from its use. Many women ironically used the term *dehati*, i.e. 'belonging to the village', to describe the local language variety of Banaras and complained that it is disrespectful, vulgar and abusive in nature. In their estimation, these varieties thrived in their families and in the mohulla or neighbourhood in which they lived.

While all the families strive towards refinement of their young in matters of speech, the mothers in joint family settings and those engaged in traditional occupation of the saree industry were faced with greater difficulties. The joint family network and close and continuous proximity to an occupational culture which thrives on a form of speech that is non-standard makes their effort towards speech correction a solitary affair in the family, often inviting scorn from other family members. Their inability to restrict the non-standard language use, in spite of their efforts, suggests the difference of their socio-economic symbolic worlds

which make these families value different cultural resources in different domains, viz. Banarasi or Urdu-Hindi for trade and for interaction with the elderly and the neighbours, but standard Hindi and English for children's future.

Attempts were made by all these mothers to make their children more refined and cultured in their mannerisms and speech. Through such engagement with the upbringing of their children they sought to achieve a higher social status. These micro-processes of parenting are important to understand the spatial embeddedness of the experiences of these families and their struggles implicit in the process of shifting towards higher-status schools and the associated school cultures. Their negotiations with the spatial aspects of their life in the neighbourhood are a necessary component of their hopes for a better future of their children.

Conclusion

The urban space engages women in varied ways in and through a divergent set of activities. These activities are channelled through the intersecting vectors of age, class, caste, community and location. While family life in urban settings has been putting a premium on school-related activities of children at home, we see shifts in the mothering work performed by women from different locations. In this paper, the focus was on how urban spaces marked by segregated living in the city shapes the mothering work of women at a time when families engaged in traditional occupations are becoming more dependent on modern schooling. Almost all the families were getting more involved with the schooling of their young ones as compared to the previous generation of children. To a large extent, it can be linked to the shifts in the nature of work in the traditional manufacturing practices and resultant economic insecurities. Their location in the inner circle of the city with a distinct mode of life provided a contrast to the official cultures represented by the school opted for their children. The academic success in school calls for a continuous moulding of the lives of children in ways that they become better adjusted at school.

The mothering work here refers to the activities of women in not just nurturing the life inside the family, but more importantly, in bridging the gap between the worlds represented by the private school and the world of community mediated living. The cultural forms and manners of speaking valued in the world of traditional occupation are in stark contrast with the cultural forms and speech

patterns valued within school. It shows how particular neighbourhood emerges in contrast to school in their evaluations of people, and speech practice. The paper illustrates how married women attempt to bridge this gap through their mothering work directed towards refinement of their children's ways of speaking and by restricting their movements inside and outside of the mohalla. The mothers in these locations have to diligently work towards an elusive middle-class identity which is valued within school. In the context of an unfamiliar surrounding which is hostile for young married women, these attempts towards 'refinement' can also be seen as a mark of distinction for themselves in ways that can be justified in their familial role. In these ways, women from lower educational background contribute towards reproducing a culture of education that can only be achieved by furthering the domestic division of labour along gendered lines.

Notes:

ⁱ It is important to note that middle-class is a particularly difficult to define conceptual category to be employed in studies of educational inequities in India. Many scholars such as Leela Fernandes and Satish Deshpande have resorted to using notions of 'middle class fractions' and 'middle class practice' to describe the relationship between class position and education.

ⁱⁱ As per Economic census of Uttar Pradesh, the proportion is more than fifty per cent as cited in City Development Report Varanasi, JNNURM, 2006, pp. 28-33. Retrieved from [City development plan for Varanasi - India Environment Portal | News, reports, documents, blogs, data, analysis on environment & development | India, South Asia](#)

ⁱⁱⁱ According to an estimate, the labour force involved in the silk industry of Banaras is around 1-3 lakh weavers, 1,500 traders, mostly Hindus, and around 2,000 *girastas* or master weavers, mostly Muslims. See Rahul Varman and Manali Chakrabarti (2007). *Case studies on industrial clusters: A study of Kanpur leather & footwear, Varanasi silk saree and Moradabad brassware clusters*. IIT Kanpur.

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Epistemic *Ashrāfiya*-morality and Urdu Theatre Public Sphere in Nineteenth-century Bihar: Muslim *Internal-Decoloniality*

--- Neshat Quaiser

Abstract

This essay attempts to provide a Muslim *internal*-decolonial critique of the hegemonic *ashrāfiya*ⁱ knowledge-oligarchies. Epistemic *ashrāfiya*-morality is produced by these oligarchies as a mechanism to colonise the *shudra*ⁱⁱ-*dalit*ⁱⁱⁱ-disenfranchised Muslim mind *internally*. Through the prism of western-style Urdu theatre in the last quarter of the 19th century in the Indian province of Bihar, this essay examines the *ashrāfiya*'s epistemic-morality-based responses to the popularity of western-style theatre and its 'corrupting influences'; participation of subaltern 'lowly' women and men in theatre that posed a threat to *ashrāfiya* moral order; possible subaltern counter-intuitive subjectivity; women as objects of desire and other related issues. Although the essay deals with the colonial period, it has theoretical implications for comprehending the convincing continuity of epistemic *ashrāfiya*-morality in the postcolonial Indian subcontinent.

Key words: Epistemic Ashrāfiya-morality, Muslim Internal-Decoloniality, Urdu Theatre

*...throw this enemy-of-morality-civility-and-faith woman
immediately out of this theatre Company (Al-Punch, 1891, 7/15)*

Lots of lowly people, very few highborn [in theatre hall] (Al-Punch, 1898, 14/39)

Introduction

This essay, divided into four sections, draws primarily on Urdu weekly *Al-Punch*^{iv}. Section I outlines the concepts of epistemic *ashrāfiya*-morality; Muslim *internal*-decoloniality; and *ashrāf* and *ashrāfiya*-morality. Section II provides a brief overview of Urdu theatre in the late 19th century Bihar. Section III, with three sub-sections, deals with the question of popularity; contending moralities;

subaltern counter-intuitive subjectivity; responses to the ‘morally corrupting’ theatre; ‘lowly’ subalterns in theatre posing a threat to ashrafīya moral order; maghribyat^v (Westernism) and ashrafīya’s responses to colonialism; spatial-cultural, urban-suburban tensions, ashrafīya and subaltern; and ‘lowly’-bāzārī^{vi} women as objects of desire. Section IV, the conclusion, outlines the Urdu theatre public sphere; historicity of the epistemic ashrafīya-morality; and ashrafīya’s umma^{vii}-making endeavours and colonising the mind internally.

Section I: Epistemic Ashrafīya-morality and Muslim Internal-Decoloniality

Morality denotes a normative framework determining human transactions in different forms in all the fields of social life (for general concepts of morality, see Carson, 1984; Harman, 1977). However, morality is inscribed in ideologies of caste, class, race, religion, and culture; thereby, we find contending conceptions of morality (for contending moralities in our context see, section III). But when morality is epistemically foregrounded as religious-universal moral prescriptions, it becomes a ‘choreographically occultating’ ideology. Thus, epistemic ashrafīya-morality is that which claims non-ashraf morality and ethics cannot be authentic. It works from the logic that authentic morality that guides all-encompassing conduct in society derives from superior religious, caste, race, tribe, family lineages, and it alone can produce true knowledge. It, thus, epistemically excludes shudra-dalit Muslims from knowledge production. This supremacist morality framework produces relations of domination. Thus, the epistemically privileged ashrafīya-morality was/is presented as an Islamic divine, authentic general moral framework that aimed to colonise the non-ashraf Muslim mind. Epistemic ashrafīya-morality is produced by the internal hegemonic ashrafīya knowledge-oligarchies. This calls for decolonising the Muslim mind *internally*.

In the context of colonialism, decolonising refers to deconstructing the social, cultural, and political thoughts and values radiating centrifugally from colonial/western/white structures of domination (for the concept of decolonisation/decoloniality, see Thiong’o, 1986; Fanon, 2001; Mignolo & Walsh, 2018). Muslim decoloniality primarily focused on Western colonial technologies of domination to reshape and mould Islam and Muslim societies by privileging the western/‘modern’/orientalist constructions of religion and Islam, where secularism, democracy, and modernity emerged as the defining concepts. This engendered different Muslim counter-perspectives. Muslim decolonial thinking, however, as a part of a widely desired-counter strategy predominantly

deployed arguments such as Islam, is by its very nature, in itself is modern, democratic and harbinger of peace, etc.; and that Muslims are *Ummat-e wasaʿ*, meaning Muslims being just, away from extremism, undogmatic, and ‘moderate’. However, concepts such as *Al-zarūrāttobīh al-mahzūrāt* (necessities permit impermissible things), *iztirārī* (despairing) conditions, and *istishhād* (desired death of a martyr) have also come into play. Muslim decolonial thinking also meant critiquing epistemological and ontological foundations of European Enlightenment, reason, secularism, and modernity, to develop a Muslim/Islamic intellectual counter-strategy (for Muslim decoloniality, see among others Wali Allah, 1995; Al-Attas, 1993; Asad, 1993; Sayyid, 2014).

The overriding theoretical thrust of the grand Muslim decoloniality has been to consider Islam as an internally cohesive and universal religion, in which ‘political’ compulsions also played a significant role; and to consider Muslims as textually driven non-hierarchised essentialist category, with the notion of umma as the underlying structuring principle. This may be called the *ashrāfiya oligarchic Muslim decoloniality*, as the *external-colonial-factors-driven* Muslim decoloniality has expediently not paid required critical attention to the following crucial issues from the *internal-decoloniality* perspective: Islamic ‘canonical tensions and contradictions’; the manipulative *maslaki*^{viii} -jurisprudential hegemony; caste-race-lineage-class-based theories and practices of discrimination among the Muslims; and the *ashrāfiya* internal ‘epistemic’ and corporal violence. A critical examination of these issues alone will be able to unpack the colonising the mind projects of the hegemonic knowledge-oligarchies within Islamic/Muslim state, society, religion and politics, without necessarily abandoning the epistemic foundations of external-colonial experiences. Therefore, Muslim internal-decoloniality denotes shifting the focus ontologically from *external* to *internal*, within the wider historical and intellectual contexts. Muslim internal-decoloniality assumes greater significance as the continuation of epistemic *ashrāfiya*-morality has acquired newer implications, not only in the Indian subcontinent but also for other Muslim societies as well.

Ashrāf and Ashrāfiya-morality

Ashrāf (plural of *sharīf* – of noble birth) are considered to be those Muslims who claimed to be of foreign origin with highborn lineages such as sayyid (supposed to be descendants of the Prophet), shaikh (supposed to be descendants of Prophet’s companions), and Mughal and Pathan (the last two contextually are

vague categories, over which a studied silence is maintained. We have learned to take this ashraf propelled self-representation for an unquestionable truth^x. Although the Indian sub-continental ashraf were/are constituted by several constitutive elements, of which Hindu varna/jati based caste consciousness has been very crucial. All the four ashraf categories in the Indian subcontinent have since very long been disconnected from their claimed locales of origin. For them, the only model available was the Hindu ascriptive caste hierarchical model, which could enable them to maintain and acquire privileged status derived from pride in high lineages of foreign origin, distinguishing them from the low-caste converted Indian Muslims. Ashraf's claims of high status, as almost preordained for being of noble birth of foreign origin, corresponded to Hindu ideology of ascriptive status for justifying social segregation between savarna (high caste Hindus) and shudra-dalit. Marriages with shudra women and even amongst hierarchised ashraf castes are predominantly disdained, as it 'polluted' the purity.

Thus, the caste system among Muslims in the Indian subcontinent contains the Hindu caste constitutive features like endogamy, mandatory segregation based on ascriptive occupational affiliation, status hierarchy, and also in ritual purity and pollution with varying regional differences, but only in overt expression as these have expediently been equated with Islamic notions of 'pak' (clean) and 'napak' (unclean) (for caste among the Muslims, see Ansari, 1960; Momin, 1977; Sachar Committee Report, 2006; Ranganath Misra Commission Report, 2007; P. S. Krishnan Report, 2007; Deshpande, 2008; Falahi, 2007). However, some have argued that the caste system among Muslims differs from the Hindu model (Ahmad, 1973; Dumont, 1972). But empirical evidences suggest that the causal relationship between a Muslim's caste location and her/his related social disabilities are in no way different from Hindu caste practices, which are continually reproduced (Quaiser, 2011, pp. 49-68; Anwar, 2005; Ra'in, 2013; Trivedi et al., 2016, pp. 32-36; Lee, 2018, pp. 1-27).

Charles Lindholm (1995, pp. 449-467) has insightfully discussed various approaches on caste among the Muslims in India such as structural-functionalist adaptive, normative, essentialist, reflective symbolic, interpretative/constructionist, comparative, diffusionist, indigenous monistic. The discussion shows a great deal of confusion, chaos, and conflicting oscillation in comprehending caste among the Muslims in the Indian subcontinent. These approaches predominantly consider the ashraf-ajlaf-arzal divisions in terms of 'adaptive' practices, not in terms of palpable 'caste' divisions among the Muslims

as concretised in India defying even Islamic textual equality and justice. Ashrāf adopted an adaptive-essentialist strategy and portrayed the adaptive elements from the Hindu caste system as Islamic-essentialist in their exclusionary relations with shudra-dalit Muslims, in which ashrafīya ‘ulama (scholars of Islam) crucially contributed. This lived reality has produced hegemonic casteist ashrafīya subjectivity.

Epistemic ashrafīya-morality, as a mechanism to colonise the mind, emanated from the ashraf propelled self-representation and Hindu caste structures. There were/are four principal constitutive elements of this moral order: firstly, expediently reinterpreted^x sub-continental maslaka-jurisprudential notions of Islamic moral values^{xi} to the advantage of ashrafīya; secondly, pride in Arab or foreign lineages and entrenchment in the Hindu caste system that enabled ashrafīya to assume a superior ascriptive position akin to savarna; thirdly, pride in sub-continental conquistador lineage; and fourthly, ashrafīya’s collaboration with colonialism and other structures of oppression to safeguard their privileges after the final fall of ashrafīya political power in 1857. The processes of the formation of this epistemic ashrafīya-morality had begun with newer dimensions since the second half of the 18th century. This propelled them to engage vigorously in umma-making endeavours in the given contexts (see section IV below). Equipped with these mechanisms of colonising the mind, ashrafīya foregrounded the epistemic morality almost as divine predestination to reproduce conforming shudra-dalit Muslim subjects.

It was against this backdrop that the ashrafīya’s morality-related anxieties and dilemmas in the wake of colonialism produced Urdu akhlāq literature (morality-related literature) in South Asia since the late 19th century, which ranged from philosophical debate to issues of everyday life. Akhlāq literature ultimately represented not only ashrafīya’s moral dilemmas but also their quest for a ‘modern’ Muslim identity in colonial India with a new ‘liberal’ Islamic identity, which ultimately set the tone for a new akhlāqiyāt (moral code). This ultimately produced a reconciled ‘mixture’ of expediently ashrafīya-reinterpreted Islamic moral values and western-colonial moral norms, revealing two-facedness of the epistemic ashrafīya-morality (for dominant scholarship on Urdu akhlāq and adab literature, see Alam, 2004; Pernau, 2017, pp. 21-42; Metcalf, 1984; Hasan, 2007).

Section II: Urdu Theatre in Bihar: A Brief Overview

This section presents a brief account of Urdu theatre in 19th century Bihar. We find that the theatre that the ashrafīya opposed for its ‘corrupting influences’ was simultaneously patronised by them. Thus, ashrafīya’s reconciliation was stronger than the ambiguities.

The introduction of Western-style stage theatre in 19th century India emerged not only as a site to legitimise colonial rule, but also to contest it. However, beyond this binary, the theatre also became a site to contest local caste-class-race-religion-based ideologies of domination, particularly in terms of subalterns’ participation. This new theatre had come into existence in Calcutta in 1831, but it began in a big way after 1857. Theatre emerged as a potent site where the colonial rule, western modernity, existing institutions and moralities, and different responses to these came to be debated that created a theatre public sphere (for theatre in colonial India, see Bhatia, 2008; Singh, 2010).

The history of ‘modern’ Urdu theatre began with Indar Sabha of Amānat Lakhnavi which was staged in Lucknow in the early 1850s. However, it was after 1857 when professional theatrical companies were established on commercial lines mostly by Pārsīs (Zoroastrians). After the initial success in staging Gujrāti plays, Pārsīs took to commercially most promising Urdu plays, and a new phase of competitive theatre began (for Urdu theatre, see Nāmi, 1962; Rahmāni, 1987; Hansen, 2003, pp. 381-405; Hansen, 2016, pp. 1-30). Professional actors, singers, musicians, playwrights, costume designers, and importantly female actors were introduced. They expanded their activities beyond Bombay and staged Urdu plays in several Indian cities and towns, attaining popularity.

In Bihar, two Urdu plays – *Sajjādwa Sumbul* and *Shamshādwa Sausan* were written in 1874 (Hasan, 1959, pp. 33-38) by K. R. Bhatt^{xii} which were seemingly influenced by some Bangla plays. However, it was in the year 1884 that a theatre company called Imperial Theatrical Troupe staged several plays in Patna which became popular (Abdulwadūd, 1952). Soon after, Bihar Theatrical Troupe was established in Patna (Hasan, 1959, pp. 8-13). In 1891, the arrival of Jubilee Theatrical Company in Patna was reported, but was explicitly unwelcome:

In the month of February, this Company came to our city and staged several plays. With God’s blessings...now it is planning to

move towards west. (Al-Punch, 1891, 7/15)

In 1892, Damṛī Mukhtār Ka Theatre (Damṛī Mukhtār's Theatre) was established. This theatre company staged plays in and outside Patna and grew popular. This was a professional company in which not only the male, but female actors also worked. Actors were paid a proper salary. This company's well-known male and female actors were Mahbūb, Jawāhar, Khurshīd, Nasīr, and Nādir, of which Mahbūb and Jawāhar were very famous. Mahbūb excelled in his zenāna role, and theatre halls were always full to watch him act (Hasan, 1959, pp. 11-14). Nasīr too performed zenāna roles, and in the play Zahr-e Ishq^{xiii}, he played the character of Māhjabīn (Al-Punch, 1892, 8/14)^{xiv}. Damṛī Mukhtār Theatre usually staged Urdu plays which were already popular such as Zahr-e Ishq, Indar Sabha, Harish Chandar and Gul Bakauli. In addition to Patna, it staged plays in several other cities and towns, such as Gaya (ibid) and Muzaffarpūr (Hasan, 1959, pp. 11-14) and every year in the famous Sonepūr fair (ibid, pp. 8-13). When Damṛī Mukhtār's Theatre became popular and attracted particularly students in large numbers, it was more vigorously opposed. It finally packed up, and its exit was celebrated:

Boys have stopped going to theatre, and public have developed hatred...due to lack of patronage from schoolboys, Damṛī Theatre's sources of income have shrunk. (Al-Punch, 1892, 8/2)

After a gap of about five years, Damṛī Theatre was reorganised in 1898 as Bihar Theatrical Company in Patna City and a stage in Bānkīpūr^{xv} as well. Mahbūb of Damṛī Theatre fame joined this company and became its star actor. The Company's actress Bismillah attracted young people in large numbers. 'Students again came back to theatre and once again, a theatre ripple was created' (Hasan, 1959, pp. 8-13). Opposition to the theatre resumed, but the Company continued to stage plays (Al-Punch, 1899, 15/18). Bihar Theatrical Company staged several popular plays, such as Āshiq-e Jāñbāz, Zahr-e Ishq, Indar Sabha, Katora-Bhar Khūn, Dorangi Dunya, Dhūp Čhāon, Asīr-e Hawas, Khūbsūrat Balā. As a result of its success, several professional and amateur theatre companies were formed in early 20th century that continued for some time (Hasan, 1959, pp. 11-14). Most of these plays were based on traditional masnavi (long narrative poem), dāstān (oral storytelling), qissa (tales), etc., or were an adaptation of English plays. The central themes of these plays mostly related to love stories and heroic deeds. They reinforced the epistemic ashrafīya moral values.

Section III: Popularity, ‘Corrupting Influences’, ‘Lowly’ Women and Men, Spatial-Cultural Tensions, Contending Moralities and Counter-Intuitive Subjectivity

This section, in addition to an introduction, is divided into three subsections: a) Popularity of the theatre and its ‘corrupting influences’; b) The Bānkīpūr argument: modernist response, spatial-cultural, urban-suburban and subaltern-ashrāfiya tensions; and c) ‘lowly’-bazāri women: disdain and desire.

Urdu theatre performances, spectators, stage, actors, theatre companies, ashrafiya, literate public, ‘lowly’ women and men, and students, with multiple familiar and unfamiliar issues and questions created an Urdu theatre public sphere^{xvi} (see section IV) in which ashrafiya epistemic morality and subalterns’^{xvii} participation were the key organising principles.

Since the 1870s theatre attracted not only the ashrafiya, emerging educated and professional middle classes, but also the ‘lowly’ women and men in Bihar. *Theatre ka tamasha dekhna* (to watch theatre performance) was emerging as a critical supplementary source to form new identities in the colonial contexts. However, the active participation of the subalterns deeply disturbed the ashrafiya moral-cultural order. Thus, the expedient ashrafiya opposition to the popularity of theatre among the masses (‘awām-commoners, bazāri^{xviii} women, shudra Muslims, students) was an attempt to pre-empting a possible subaltern ideological challenge.

The participation, responses, and role of ‘awām, shudra Muslims, ‘bazāri’ women with regard to theatre were neither ‘written’ by themselves nor were adequately recorded in the newspapers or elsewhere in their own voice. Evidence of critical subaltern participation is to be extracted even from the disdainful ashrafiya narratives. Thus, ironically, they registered their presence through antagonistic and disdainful representations in ashrafiya narratives, thus, the absence was turned into presence, subverting the very logic of that narrative, as is evident from what follows.

However, how would subalterns possibly gain counter-intuitive subjectivity from the plays, which did not at all relate to subalterns’ life conditions, and reinforced ashrafiya moral values? Most of the plays that the subalterns patronised so eagerly in different ways were based on traditional tales or an adaptation from English

plays with highborn as central characters, and which were deeply entrenched in epistemic ashrafīya moral values. Yes, but the very fact that the subalterns came out of their socially assigned places of exclusion and entered the hitherto exclusive ashrafīya spaces publicly was of critical importance. While doing so, subalterns defied the process of expected subject formation and refused to be constituted expectedly by the ashrafīya authority^{xix}. The active participation of ‘lowly’ women and men in theatre signified the formation of a counter-intuitive subjectivity, no matter in what embryonic form it may have been. The act of being spectators and actors formed a critical constitutive element of the new subject formation, as the subalterns were excluded from the domain of knowledge in print. The very fact that the ashrafīya launched a tirade against subalterns’ participation in theatre provided internal evidence of their critical presence in theatre and a possible counter-intuitive subject formation. This counter-intuitive subject formation was not premeditated, and yet not totally unintended (see concluding remarks of this section). Besides, theatre created an atmosphere, ironically though, for subaltern women and men to become publicly visible in ashrafīya social spaces (for how subalterns gained from British presence, see Guru, 2005).

Thus, there emerged three sets of contending moralities: firstly, two-faced epistemic ashrafīya-morality; secondly, subaltern morality, which was constituted by the very act of subalterns’ participation in theatre with the promise for a new counter-intuitive subjectivity, even if the content of plays were not subaltern-centric. This, in essence, was an act of defiance to the ashrafīya prescribed moral codes of quiescence, passivity, and submission. The act of viewing theatre was a critical constitutive element of the new subaltern moral imagination, as knowledge in print was not their prerogative; thirdly, colonial-western moral values, though posed threat to ashrafīya-morality, but created an atmosphere for recognisable social visibility of subaltern ‘bāzārī’ women and ‘lowly’ men, ironically though.

a) Popularity of the theatre and ‘corrupting influences’

The popularity of theatre and concerns for its ‘corrupting influences’ assumed specific ideological connotations. Popularity simultaneously entails inclusionary and exclusionary connotations. In the given context, however, ‘popular’ tended to emerge as the early *colonial populism* for appealing to the colonised of all categories including ordinary people to legitimise colonial ideological

apparatuses. This was different from ‘authoritarian populism’ where ‘the people’ are pitted against the elite as Stuart Hall had enunciated in the late 1970s^{xx}; but beneath-the-surface-logic common to both is to produce homogeneity through explicit or implicit pressure. These characteristics were at play in the debate on theatre, under discussion, in different forms. Ashrāfiya’s responses were exclusionary as they targeted mainly ‘lowly’ people for making theatre popular, engendering defiance. Students of ashrafiya stock were deplored as they not only defied paternal authority as a visit to theatre meant knowing and imbibing new ideas, but also for they would ruin their chances of a bright future in the colonial administration by wasting their time in theatre.

We shall now briefly illustrate ashrafiya responses to the popularity of theatre and its ‘corrupting influence’.

A newspaper in early 1885 reported that a theatre company staged several plays last year and gained immense popularity. It commented:

Inhabitants of proper Patna are fully aware of the Imperial Theatrical Troupe...its plays had captivated not only the rich, nobles, different occupational categories, public in general but also the students...last year Imperial Theatrical Troupe’s oppressive influence had slit the throat of acquisition of knowledge and good conduct of our able and innocent students with blunt knife. (Abdulwadud, 1952; Hasan, 1959, pp. 8-13)

Theatre’s popularity had captivated also the educated middle-ashrafiya professionals such as lawyers that disturbed the high-ashrafiya. Lamenting the extent of theatre’s adverse impact on lawyers and students, a report much later observed:

Now listen to the kind of impact theatre had on rich and powerful, lawyers and students. Keeping aside their valuables, legal works and flat-stone-writing-plank and books...they reached the theatre as the clock struck seven o’clock (evening). (Al-Punch, 1892, 8/14)

One Nasserul-zurafa’ in a letter to the editor sarcastically suggested making use of theatre to tackle cholera epidemic:

Theatre is next to college...ask Mahbūb to sing in his characteristic style, and you will see Haiza (cholera) Khan would run away. (Al-Punch, 1899, 15/33)

The suggestion conveyed the message that theatre is so lethal that even cholera would run away on seeing it. Reference to Haiza Khan has sub-continental Muslim conquistador connotation that even great Pathan and Mughal warriors would run away in the face of the morally corrupting armoury of theatre. And yet one cannot miss in it the elements of appreciation of theatre.

In the face of upsetting tensions produced by the popularity of the theatre, some ashrafīya thought of using theatre to reform the community. One Sayyed Mohammad Nawāb Mohammad wrote a play *Jawan-Bakhtwa Shamsunnahār* (Mohammad, 1884) for reforming the community because plays staged by theatre companies were not morally fit for the cultured and educated society. A similar concern was expressed in the face of ‘moral degradation’ caused by ‘lowly’ women in the theatre in which the references to qaum (community/Muslim community) and ‘our Muslim brothers’ assumed significant connotations:

Jubilee Theatrical Company has publicised itself with magnified honourable claims as sympathiser of the country and community, and educator of morality. But these claims are misplaced. It has presented a wanton-eyed woman on the stage. Some people sympathise with this Company, for it is established by...our Muslim brothers. My suggestion is: throw this...woman immediately out of the Company. (Al-Punch, 1891, 7/15)

‘Reform’ within the ‘community’ therefore was essentially an ashrafīya concern for self-preservation.

Corrupting influence of theatre on students and young was opposed by both ‘modernist’ and ‘traditionalist’ ashrafīya. The traditionalist response was more concerned with the growing erosion of traditional Islamic moral values, expressed in the language of anti-maghribyat. A very prominent ashrafīya Urdu writer and poet, Maulana Fazl-e Haq Āzād ‘Azīmabādī^{xxi} wrote:

If possible, approach the Lieutenant Governor that he should try to

remove prostitutes and theatre from India. These are corrupting the morals of people. And also, influx of European novels in India should be prohibited because in them such materials are that the poetry of Jān Sāheb^{xxii} would appear like a dry leaf... (Al-Punch, 1899, 15/5)

Although Āzād expressed his concerns strongly for the preservation of Islamic values and protecting Indians from the European culture, novels, prostitutes, and the corrupting influences of theatre, he merely appealed to the Governor rather politely. This is for, despite his strong opposition to the theatre, Āzād was very much in favour of Muslims and others acquiring western knowledge and considered British rule as a boon for India. He was perhaps making a distinction between western culture and western scientific inventions and colonial administration.

This concern found expression in different forms, including Indian girls' English education. In a letter to the editor, one M. M. Sokhtadil wrote:

How the girls of respectable people would on a khatolī (a small bedstead) go to school and would learn the lesson of a, b, c. This much one can tolerate. But after this our simpleton girls of Bihar would shake hands with memsahib, which means after completing education they will fight with their husbands for freedom. So, our Bihar is going the London way. (Al-Punch, 1899, 15/10)

Sokhtadil, though hesitant of English education for respectable ashrafīya girls outside the home is ready to tolerate 'up to this', revealing the gradual acceptance of English education even for girls. But he expressed a grave concern relating to the control over women's body, sexuality, and expectations for strict adherence to the assigned religious-cultural roles of a wife^{xxiii}. Coming in contact with memsahib would morally contaminate the girls, as it would encourage them to deviate from the well-defined normative roles of an obedient wife.

Modernist response to the popularity of the theatre and its corrupting influences is discussed in the following subsection, as it is entangled with other emerging complex issues whereby epistemic ashrafīya-morality was acquiring newer characteristics.

b) The Bānkīpūr argument: modernist response, spatial-cultural, and urban-suburban and subaltern-ashrāfiya tensions

Modernist response to the theatre was entangled with more compelling and complex, emerging issues. Most ashrafīya tended to be ‘modernist’ and were aligned with colonial power adding new dimensions to epistemic ashrafīya-morality. Theatre, subalterns’ recognisable social visibility, colonial modernity, English education, colonial administration, etc. produced tensions of all kinds within the emerging modernist ashrafīya. These tensions were reflected through theatre in different forms, such as the tensions between the ‘modern’ and the old-fashioned residential localities; between the ashrafīya and subalterns; and between the urban (shahri) and suburban (qasbāti) ashrafīya. These tensions reflected conflicting economic, social, and political interests of urban and suburban ashrafīya and the subalterns. The following report reveals the theatre-related tensions, and the reference to qaum (community) in it denoted ashrafīya:

When theatre comes to Bānkīpūr, school children come under the control of some jinn. We heard it with great sorrow that a student of T. K. Ghosh academy...with some boys of Patna Collegiate has taken contract of theatre, which has saddened us most. Surprisingly, why did our kind and noble Headmaster of Patna Collegiate, Moulvi Amjad Ali Saheb not take corrective measures? If he takes little interest...these boys can be reformed...and qaum would thank him. (Al-Punch, 1899, 15/33)

One Kammo, in a letter, expressed similar concern for qaum’s welfare with reference to the hostility between modern and traditional localities that was created due to theatre, prompting even threat of physical violence:

...you keep unravelling political knots, how would you know the evil doings of theatre. You could not even ask why, leaving the whole of Patna^{xxiv}, has it come to Bānkīpūr? And why does it choose a place...just opposite Patna College? If you have even an iota of interest in community’s welfare, you should stop them...They should at least leave Bānkīpūr and perform their jugglery and rope-dancing in Patna and make money. If you cannot do it yourself, order your followers to tear them into pieces. Otherwise, I am ready to take on them (Al-Punch, 1899, 15/18)

The above report and the letter reveal an emerging conflict between the westernising Bānkīpūr and the old medieval Patna City. Bānkīpūr is a neighbourhood and residential area in Patna. Until the early 20th century, Bānkīpūr was the administrative centre of the Patna Division of Bihar, which came under the rule of the British East India Company following the battle of Buxar in 1764. Bānkīpūr lies some four kilometres west from the medieval Patna City, or ‘Azīmābād. Bānkīpūr, since the 1860s, signified a ‘modern’ locality inhabited by modern-oriented people. It was in Bānkīpūr where English medium educational institutions, new architecture, modern markets, western dress, Bānkīpūr Club, Bihar Young Men’s Institute, Jahangir’s Theatre and Cinema Hall, Rammohun Roy Seminary - an English medium High School, Patna Collegiate, etc. were situated. These were the markers of modernity. English medium education, colonial power, new job opportunities attracted the traditional urban-suburban high-ashrāfiya and other emerging English educated middle-ashrāfiya and other middle classes.

The argument in Kammo’s above-mentioned letter that theatre should leave Bānkīpūr and perform in Patna City signified tensions within the new ashrafiya, emanating from two main concerns: firstly, to sustain the hold of epistemic ashrafiya moral codes over ‘lowly’ people by keeping them away from Bānkīpūr. Patna City was predominantly inhabited by subalterns, labouring poor, artisans, shudra-dalit Muslims and Hindus – the non-ashraf population. The underlying argument was that there was no problem if theatre is performed in the old City as people in that locality were outdated, incapable of upward social mobility, and it was preordained that they were born poor and low in the caste hierarchy. If they come to Bānkīpūr to watch theatre, a culture of subaltern defiance will grow here as well. Secondly, the concern that theatre was distracting their progenies from being studious and competitive, necessary for acquiring ‘respectable’ jobs in the colonial administration, which would bring additional enviable social esteem. Thus, Bānkīpūr emerged as a site for new social, educational and economic opportunities from which ashrafiya alone were to benefit. Ashrafiya, thus, actively collaborated with the colonial administration in all possible ways. For example, despite their claim to be ‘modern’, ashrafiya were critical of the ‘corrupting influence’ of the theatre for reasons of political expediency as well. It enabled them to emerge as the sole representative of ‘Muslim’/Islamic/Indian/Eastern moral values and culture in the eyes of colonial administration. They became the representative of ‘community’s (all Muslims’) interest’. This became evident when ashrafiya hugely benefitted from

the separate electorate (Vohra, 2001, pp. 113-15). In the process, ashrafiya acquired jobs and positions of power in colonial administration, educational institutions, and the judiciary, and benefitted from the newly emerging political process.

Bānkīpūr and theatre also signified tensions between the urban and suburban ashrafiya, in which conflicting cultural, economic, and political interests were palpable. After 1857, both the urban (shahri) and suburban (qasbāti) ashrafiya began to move to Bānkīpūr. But the conflict between the two was expressed through culture, language and literature. City-bred urbane high ashrafiya were traditional Patna City based landed and affluent, and pedigreed with urban traditional education. The suburban ashrafiya were landed gentry of respectable families with suburban traditional education and constituted the suburban nobility. But the Patna City based urbane ashrafiya considered themselves of high culture and refined manners, and a repository of high linguistic and literary traditions. They considered the suburban ashrafiya rustic in their manners and substandard in matters of language, accent and literature. Their suburban location of origin rendered them culturally inferior in the eyes of city-bred ashrafiya. This produced a bitter tiff between the two. They launched a diatribe against each other to prove their cultural and literary superiority, and theatre did not remain unaffected from this, and for which *Al-Punch* provided space liberally.

Nonetheless, even such acrimonious argumentativeness contributed significantly to the emergence of a culture of critical public debate enriching comprehension not only of language and literature but also of politics, colonial rule, English education, and other issues. However, suburban ashrafiya such as Fazl-e Haq Āzād too had been well-informed of theatre and had strongly opposed it, and was considered to be the intellectual resource person behind *Al-Punch*. The editor and owner of *Al-Punch* too was a suburban ashrafiya. They, too, could not resist the temptation of being part of the new centre of culture and economy and began to move to Bānkīpūr, with the view to getting their share in the land of new opportunities. And soon they did make their presence felt in Bānkīpūr in a big way. For example, the Imam family from the suburban Neora became perhaps the most prominent family of Bānkīpūr. Thus, Bānkīpūr emerged as a site for the making of a post-1857 ashrafiya intellectual ethos.

By the end of the 19th century, ambiguities gave way to reconciliation and ashrafiya began to accept the ‘morally corrupting’ theatre expediently. They took

to the theatre to seek pleasure, with women emerging as objects of desire, as is evident from the following letter:

...brother, tell me, have you ever watched this theatre even in disguise...it is all pleasure and enjoyment...you are an old man...
(Al-Punch, 1899, 15/18)

More forthright appreciation followed:

Bihar Theatrical Company staged its play Āshiq-e Jāñbāz very nicely, with spectators in large numbers. Mast Nāz's style of acting...was wonderful...and why not...this role was performed by the old master Mahbūb. (Al-Punch, 1899, 15/24)

However, 'lowly' men and women were continued to be condemned with casteist disdain and blamed for the popularity of theatre, and 'modern' ashrafīya had no difficulty in collaborating with the colonial administration. For example, theatre brought 'lowly' people and high and middle ashrafīya at least to close physical proximity amounting to breaking the boundaries of casteist segregation, despite seating segregation according to the price of tickets and social status. This produced an alarmist reaction. Thus, a weaver was disdainfully reminded of his ascriptive status:

Leaving his loom, he goes to the theatre. For no reason, he will be harmed. If this eagerness to visit the theatre continues, even his loom will be sold out. (Al-Punch, 1906, 22/46)

The above reminder communicated the casteist social status of a shudra Muslim in the language of patron-client relationship. A stern message was conveyed that stick to your ascribed occupation; do not aspire for any vertical mobility by changing your occupation or by emulating ashrafīya cultural practices; to watch theatre neglecting loom was not your job. Despite the repeated admission that the theatre was patronised even by nobles, ashrafīya educated people, lawyers and students, yet subalterns were blamed for the success and popularity of theatre by lamenting that: 'a lot of lowly people, very few highborn' [in the theatre hall] (Al-Punch, 1898, 14/39).

c) 'Lowly'- 'Bāzārī' women: disdain and desire

Sex, gender and sexuality are among the defining categories in theatre studies. Gender and sexuality are inscribed in caste-class, religion, ethnicity, and nationality (see Bhattacharya, 1998; Hansen, 1999, pp. 127-147; Singh, 2010). Accordingly, a clear division existed between the subaltern and the upper-caste women in the theatre under study. Theatre created an atmosphere for women to undertake a journey from home-shanty-kothā (broadly, a whorehouse) to public stage contesting differently the ashrafīya notions of women's moral virtues. For 'decent' women, the home was a well-guarded place where they could be kept under control. Their participation in theatre was largely a sign of relative freedom encouraged by ashrafīya men, who were too eager to be part of the colonial power structures. Caste-based hierarchised predispositions were clear, as sympathetic concerns were expressed in the case of respectable women. For example, a bit sarcastically but not disdainfully, it was expressed that now even women (here, decent ones) are attracted to the theatre:

*Fair sex too now... have leanings for theatre
Listening to praises, they are restless with eagerness
Making tinkling sound of anklets, they come*

(Al-Punch, 1892, 8/1)

On the other hand, from the available sources, it is evident that low-caste women, branded as 'bāzārī', entered the theatre as performers primarily to earn a livelihood^{xxv}. 'Lowly bāzārī' women in the theatre were targeted for causing moral degradation, and purportedly could easily be consumed and owned as objects of desire. In a report, describing the caste-class composition of spectators in a theatre hall, a clear distinction was made between respectable-chaste and 'lowly' bāzārī women, and it was contemptuously stated that only with bāzārī women one can indulge in flirtatious acts. One Fakhrul-Zurafa Māel Dharampūrī Darbhangavi wrote:

They were respectable, chaste and pious wives and daughters of Bengali bābūs^{xxvi}...bāzārī women had not gone there, so there was no chance for you to act lasciviously. (Al-Punch, 1898, 14/39)

Thus, the subaltern women were portrayed as of lax morals, and ashrafīya demanded from the Theatre Company to divest them of their means of livelihood.

While doing so, upholders of the ashrafīya-morality two-facedly described the same women lasciviously^{xxvii}:

It has presented a wanton-eyed, unceremonious woman on the stage...throw this affliction-without-remedy, enemy-of-morality-civility-and-faith woman immediately out of this Company. (Al-Punch, 1899, 7/15)

In a long poem, on the decline of Damrī Theatre after its star actress Jawāhar eloped with Bādshāh Nawāb, bodily beauty of the actress and sorrow of the spectators are expressed, significantly, with a blend of ‘morality’ and lascivious desire:

*If old men get to see such a complete body, their old age will be taken care of,
And the condition of young men is worse than the old men, Ah Theatre!
When you could not satisfy your innate desire, you got the idea
And you subdued schoolboys, Ah Theatre!*

(Al-Punch, 1892, 8/4: Passim)

In yet another report, representing casteist segregation, it was lamented that no seating plans were made to segregate bāzārī women from the respectable members of the audience:

No separate seating plan was made for bāzārī women. Generally, they sat next to any person as per their desire. (Al-Punch, 1899, 15/24)

The violence of representation of the subaltern women was brazening. And yet the disdainful lamentation that ‘they sat next to any person as per their desire’ indicated at the self-respect that ‘lowly’ women were gaining – even if it was at a nascent stage.

A report blamed ‘common people’ for the growing number of women performers in theatre, as they increasingly desired to see women in proximity:

In the eyes of common people, women’s appearance on stage as

actors is certainly considered praiseworthy, and for that very reason they rush in hordes. But the gentry consider it vulgar and do not look at such theatre with respect. (Al-Punch, 1891, 7/15)

Participation in theatre was gradually transforming subaltern women into objects of marketised desire. Marketisation generally denotes the privatisation of public services within the welfare state (Kumlin, 2007). Marketisation, however, herein denotes a capitalist marketisation of social relations, which produces petrification of true meanings of immanent human qualities, to commodify, for example, women as objects of desire to be bought at a *price* effected by the market. Market manufactures commodified desire and presents it as innate to one's being (for desire as an object, see Quaiser, 2018, pp. 22-38; Beckert, 2009, pp. 245-69).

Within the sphere of theatre, ashrafiya casteist disdain and transformation of women into objects of desire to be consumed and owned went together. Thus, by the end of the 19th century, the expediently reluctant ashrafiya were attracted to female theatre performers to seek lascivious pleasure from the object-desired – the easily accessible immoral women. A reporter L. H. Hamsar Bhāgalpuri wrote:

Why did you go to Calcutta? It is because the Harmistone Circus' fearless, lustful...ladies' riding intoxicated horses...This generated lustful desire in spectators and clapping with great dejection. Pārsi Elphinstone Theatre's taut bodied girls' and fairy like boys' dance with expressive action and gesture on stage, and on every step trampling upon the hearts of out-of-control spectators under the feet of coquetry. Such alluring and confounding plays were in Calcutta that you would forego thousands of conferences for each expression of those women... (Al-Punch, 1900, 16/24)

The power of masculine ashrafiya social location to acquire the object-desired was displayed quite brazenly indicating a greater possibility of gaining easy access to and even 'run away' with the 'women of lax morals', wherein 'transaction' would not be 'forced' unlike in case of subalterns. It was lamentingly asserted:

Alas, I was not there, otherwise, right from the stage, clutching in my lap, I would have run away with at least one (of the actresses). (Al-Punch, 1899, 15/18)

Marketisation with the underlying logic of the ownership of the desired object led to the competitiveness among ashrafīya. Jawāhar of Damrī Mukhtār's Theatre was very beautiful, and many big wigs competed to possess her, but ultimately Bādshāh Nawāb was successful. In a poem, this event was commented upon, lamenting and longing for the body of the object-desired:

*I am faint-hearted; with grief I am dispirited - Ah!
Jawāhar
With you went away the splendour of stage - Ah! Jawāhar
What to say, what was that swelled up breasts - that was stairway
of beauty
It was here that the travellers of intimacy boarded the train - Ah!
Jawāhar
Movement of lips was stimulant for eagerness – speech was magic
In your sight was hidden Africa's magician - Ah! Jawāhar
Tell me, who sold you at Guzri^{xxviii} - O golden bird*

(Al-Punch, 1892, 8/45)

With the progress of time, almost all theatre companies preferred to have women actors. For the fruitful survival of theatre, it must be economically viable, and for that to happen, female actors were much needed.

As is evident, a new subaltern subjectivity was in the making through the very act of subalterns' participation in theatre as spectators and performers that constituted an act of defiance to the colonising the mind project of the epistemic ashrafīya-morality. The act of viewing^{xxix} assumed critical importance, as knowledge in print was the preserve of ashrafīya and other literate castes. Subalterns did not have a neatly worked out schema for class struggle when they actively participated in theatre; instead, it was an expression of impulsive, dormant, undeclared desire to say no to the undesirable state of existence marked by apparent silence, quiescence, servitude, meekness, passivity, submission to the ashrafīya-morality as preordained. The desire to say no finds expression in many undeclared transferences (Quaiser, 2019a, pp. 98-99). In the process, they learned mechanisms to act outside the given boundaries of epistemic ashrafīya-morality. 'Lowly bāzārī' women, shudra Muslims and other labouring poor were driven by their existence in everyday life and its counter-intuitive comprehension; they learned imaginative manoeuvrings convivially.

Subaltern participation in theatre, however, was contradiction-ridden as well; for if theatre facilitated subalterns' social visibility with emancipatory promise, the logic of colonialism at the same time was to subjugate them, and in times to come they would oppose the colonial power.

Section IV: Conclusion: Urdu Theatre Public Sphere, Historicity of the Epistemic Ashrāfiya-morality, Umma and Colonising the Mind Internally

Urdu theatre in Bihar in the period of our study created an Urdu theatre public sphere. It became a critical source for comprehending not only the changing ashrafīya cultural and social landscape but also of the making of a cultural history of subalterns. Thus, new discourses on gender, sexuality and ashrafīya-morality; ashrafīya perception of 'corrupting influences' of theatre; theatre enabling shudra Muslims and 'lowly women' to contest epistemic ashrafīya-morality amounting to decolonise internally through their participation in theatre; a challenge to the 'Muslim'/ashrafīya/'Islamic' cultural identity and concerns to reform and preserve it; ashrafīya collaboration with the colonial rule; colonial rule, English education, modernity, western moral values; and ashrafīya and lowly castes' responses to these issues constituted an Urdu theatre public sphere in Bihar. Within this sphere, unfamiliar issues, ideas, institutions, and a new language effected a new outlook, and the tensions that these produced engendered a sense of amazement, despair, lamentation, and attraction. Familiarity with the unfamiliar produced different routes for the ashrafīya and subalterns. The ashrafīya took the route of recognition of and negotiation with the colonial rule and continued with their epistemic morality. For subalterns, their convivial participation in theatre, questioned the ashrafīya moral order, amounting to decolonise the mind internally.

The processes of colonising the mind through epistemic ashrafīya-morality began with newer dimensions since the second half of the 18th century becomes critical. Assertion, contestation, recognition, negotiation, placation, and acceptance were the key ashrafīya responses at different stages. The defining event of 1857 radically altered the social life of all ashrafīya including 'ulama, who portrayed the event as a big blow to mashriqat^{xxx} and further ascendancy of maghriyat, causing attrition of distinct 'Muslim' identity. However, mashriqat has been a euphemism for ashrafīya-morality and political power. Compelled against this turn of history, ashrafīya began the construction of a sub-continental Muslim umma. Umma ideally denotes a united community of

Muslims bound to Islam, independent of national boundaries. However, territorial conditions, local ashrafīya's interests, and 'restorational politics' (Quaiser, 2011, pp. 49-68) ultimately shaped the conception of an umma. It meant, how to ultimately restore the lost 'Muslim'/Islamic (read ashrafīya) political power, but since such a possibility did not even remotely exist, the only option left was to recover and sustain whatever could be recovered and sustained. This post-1857 concern and its postcolonial implications are best captured when much after 1947, Imārat-e Shari'a Bihar and Orissa, a prominent ashrafīya institution established in 1921, introducing its raison d'être argued:

After the revolution of 1857 and the downfall of Mughal Empire in India, the 'ulama of the day...were compelled to find out a suitable platform for the Muslims in India through which their social, cultural, religious lives and activities could be managed, controlled and guided in the light of Shari'at laws...in non-Islamic countries. An organisation based on Shari'at laws under one Ameer (Chief of the faithful) is essentially required to educate, inspire and guide the Muslim ummah to enable them to lead a collective life under Islamic order. (see, Quaiser, 2019b, p. 173)

In Imārat's conception of the umma, Islamic identity and loss of Muslim political power assume critical significance. Certain other factors, such as the activities of Shuddhi Sangathan of Arya Samaj^{xxxi} and the rise of Hindutva forces in the pre-and-post-colonial period also supplemented the umma-making efforts. Thus, the notion of umma became a powerful tool to colonise the shudra-dalit Muslim mind. In this formulation, the ashrafīya-perpetuated caste-based vertical division among the Muslims was strategically never even mentioned. It is obvious that the need to expediently construct a Muslim umma was/is for the preservation of ashrafīya politico-religious oligarchic hegemony.

Notes:

i Of ashraf (of noble birth). Ashrafīya herein denotes a hegemonic-highborn-casteist-racist-knowledge-oligarchy. See the discussion in this section.

ii Shudra is the lowest-ranked category in the Hindu caste system, under the subordination of Hindu upper castes. They are producer peasants, artisans and labourers, engaged in necessary material production and reproduction. Shudra castes constitute the majority of the Muslim population in the Indian subcontinent, retaining their ascriptive caste social status. Caste affiliations constitute their primary identity and are accordingly disdained by ashrafīya.

iii Dalit means trampled upon, oppressed. The term Dalit was first used by Jyotirao Phule (1827-1890) for the untouchable lowest castes in the Hindu caste system. Muslims too have their share of converted dalits.

iv Urdu weekly *Al-Punch* was started in 1885 from Patna, the capital city of the north-eastern Indian province of Bihar. The weekly was read even outside Bihar. *Al-Punch* widely covered Urdu theatre activities in Bihar in the period of our study. *Al-Punch* covered national, provincial, local, suburban and international social, political, administrative, and cultural events and news. It supported the British Raj, as various post-1857 ashrafiya run Urdu newspapers did. Although, it was critical of the government's various policies and practices with wit, satire, and humour but in a rather friendly manner. *Al-Punch* represented the post-1857 emerging ashrafiya intellectual ethos in Bihar. This essay is part of the author's ongoing work on *Al-Punch*.

v Maghribyat - Westernism: Western normative structure, moral values and philosophy of life and society, which in the given context included also colonial state's economic, political, and cultural machinations.

vi Bāzārī (woman) herein means a woman portrayed as of lax moral, easily accessible for sexual gratification due to her low caste location.

vii Umma ideally denotes an integrated brotherhood of Muslims bound by tenets of Islam, devoid of caste-class-race hierarchies and independent of national boundaries. See section IV below for discussion (For a general concept of umma, see Shafi, 1997; Esposito, 2004).

viii The term mazhab denotes a school of Islamic jurisprudence. The term maslak in the Indian subcontinent refers to multiple denominations within a particular mazhab, with conflicting interpretations of the Quran, hadīs, and Sunna. They are in antagonistic relations with each other as they also significantly represent 'non-faith caste-race-class interests.

ix Scholars studying ashraf and their place in South Asian history (such as Margrit Pernau, 2013, 2016) too have taken this ashraf propelled representation as gospel. These categorisations are highly misleading, and they are only descriptive (which is also inadequate), which cannot be employed as an analytical category for comprehending ashraf as a 'caste' social category. This is crucial, as this originary theory has laid the ashrafiya epistemic foundation on which sub-continental hegemonic casteist ashrafiya subjectivity is constituted, which reproduces casteist hegemony to keep reproducing conforming non-ashraf subjects. Most scholars studying ashraf and their defining role in the 'making of South Asian Muslim society and politics' do not question the ashrafiya epistemic foundations, and in doing so they endorse ashrafiya hegemonic social locations. They can be called 'docile' authors as drawing on Foucault's schematisation of 'the author' Wael Hallaq has explained (Hallaq, 2018, pp. 134-5).

x Role of Islamic 'canonical tensions and contradictions' in expedient reinterpretations is a matter of another debate.

xi In Islam, akhlāq (morality/ethics) and ādāb (good manners) are traditionally rooted in Qur'an, sunnah, and hadīs. However, akhlāq has also been philosophically interpreted since the 9th century A.D. (See Fakhri, 1991; Hourani, 1985)

xii It has been claimed that the real author was Moulvi Hasan Ali. (see Hasan, 1959, *Eshara*, pp. 33-38; 31-36 and Hasan, 1962, pp. 5-8)

xiii Based on classical Urdu Masnavi (long narrative poem) *Zahr-e-Ishq* (1862) by Mirza Shauq Laknavi.

xiv For males representing females on stage, see Hansen, 1998, pp. 2291-2300.

xv Bānkīpūr (or Bānkīpore or Bānkī Bazaar; also known as Bāqīpūr) is a neighbourhood residential area four kilometres west from the medieval Patna City or 'Azīmābād, which came under the East India Company in 1764. Since the late 19th century, it signified a 'modern' locality.

xvi Habermas identified a public sphere in 18th century Europe where public issues were debated and the government's activities were criticised by the 'public' - the bourgeoisie (Habermas, 1989, pp. 13 and 27). However, increasingly public sphere became status-quoist to legitimise the capitalist state and society (see Thompson & Held, 1982, pp. 4-5; see also Calhoun, 1992). In the case of India, 'as the historical context of public spheres was different from that of the western bourgeois society, the nature of public sphere also differed. In India, public spheres existed much before the 18th century representing ideologically conflicting critical and conformist orientations outside the state. In India, it was concerned not only with the state and the political but also, with other indigenous structures of domination' (see Quaiser, 2012, p. 122. See also Joshi, 2001, pp. 23-58).

xvii Gramsci employed the term subaltern for those who are excluded from political representation, thus hegemonically denied having their voice (Gramsci, 1971, pp. 52-55). Moving away from Subaltern Studies Group's understanding (Ludden, 2003) or any mechanical class perspective, the subaltern is employed herein not strictly through and against the coloniser and colonised; instead to include also the non-colonial local caste-class forces of domination and forms of knowledge: the disenfranchised people of low castes; or at times even youth and student who felt suffocated under parental authority.

xviii Bāzārī (woman) herein means a woman portrayed as of lax moral, easily accessible for sexual gratification due to her low caste location.

xix For subject formation and subjectivity, see Althusser, 1971, p. 123; Quaiser, 2019b, p. 180.

xx For popular, populism and authoritarian populism, see Hall, 1980, pp. 157-185; Hall 1981. For Frankfurt School's views, see Jay, 1973.

xxi Fazl-e Haq Āzād (1854-1942) was a landed ashrafīya of Sayyed caste from the village Shāho Bigha in the Jahānābād district, Bihar, but later he settled in Bankipur in the 1880s.

xxii Jān Sāheb (1817-1896) is known for his Urdu poetry that detailed women's sexual desires and activities.

xxiii These concerns were articulated more forcefully by various prominent ashrafīya scholars.

xxiv Patna here refers to medieval Patna City.

xxv Samik Bandyopadhyay has noted in a general sense that, 'For the actresses, several of them single mothers or with dependents, the options were more constricted, and acting remained the only means of living' (see Bandyopadhyay, 1994, pp. 65-66).

xxvi Respectable educated men – plural of bābū.

xxvii For ashrafīya lascivious description, see endnotes xxvii, xxviii, xxix & xxxi.

xxviii Guzri – a residential and market locality in Patna City, where Badshah Nawab resided.

xxix Augusto Boal (2008) has underscored the possibility that the spectators could modify the representation according to their contextual experiences.

xxx Mashriqyat - Easternism: Eastern normative structure and philosophy of life, which in the given context meant Islamic, 'Muslim'/ashrāfiya morality, Indo-Islamic, composite culture, indicating conflicting ideological predilections.

xxxi Arya Samāj was formed in 1875 for the revival of Vedic values and practices. It gained notoriety for its shuddhī activities for conversion to Hinduism creating communal tensions.

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Corporate Social Responsibility and Prevention of HIV & AIDS in the Tea Gardens of Assam, India

--- Dilip Gogoi and Ksenia Glebova

Abstract

In India, 2.348 millionⁱ people were suffering from HIV and AIDS in 2019 as the global AIDS epidemic continued to growⁱⁱ, especially affecting the poor and the marginalised. Certain geographic areas and business sectors are worst hit and the tea industry in the northeast state of Assam is a case in point. Tea sector is a labour-intensive agricultural industry, and to sustain its operations, it depends on the tea garden workers who make the world-famous brew, despite the working conditions that render them susceptible to a wide range of communicable diseases including HIV and AIDS. The study examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility (CSR) initiative. HIV and AIDS prevention in the workplace is especially urgent in labour-intensive markets where public resources are constrained. This paper intends to assess the risks posed by HIV and AIDS to tea sector workers and to assess the feasibility of incorporating HIV and AIDS into core social responsibility policies of the tea companies to ultimately establish the business case for a policy on HIV and AIDS prevention for the Assam tea sector. Toward the end, the paper explores on how the tea companies in Assam can incorporate HIV and AIDS into their core activities of CSR by encouraging workplace prevention programmes for HIV and AIDS and extending appropriate care as well as support wherever needed.

Key words: Assam, Corporate Social Responsibility, HIV/ AIDS, Tea Garden

Introduction

The Indian state of Assam is world famous for its tea but the industry responsible for producing the renowned brew is increasingly under the looming shadow of HIV and AIDSⁱⁱⁱ. Tea is an agro-based industry directly dependent on manpower resources to sustain its operations and it is essential to assess the future impact of HIV and AIDS on the indispensable human resources at an early stage. Assam is

the largest single tea growing region of the world where it contributes nearly one sixth of the total global tea production (Economic Survey, Assam, 2015; Tea Board India, 2016). Nearly half of the total Indian tea production comes from Assam's 750 estates and 100,000 smallholder plots (Tocklai Tea Research Institute, 2016). The tea sector employs approximately 1.2 million workers in Assam (Trustlaw, 2015). They have different ethnic, linguistic and religious backgrounds as they originally migrated to Assam from different parts of the country. The workers' literacy rate is lower than average in Assam and school dropout rate is high in the tea garden areas of Assam. According to Assam State HIV Prevention Society, about 17 per cent of the labours are temporary, and they migrate seasonally to the neighbouring high HIV prevalent states^{iv}.

Moreover, tea is the backbone of Assam's economy, its only organised industry and the largest employer in the state^v. Ever since the introduction of the tea plant in Assam 1823, the impact of the tea industry on the state could hardly be overestimated. It was the remarkable growth of the tea industry under the British rule that proved the foremost factor in the increasing prosperity and significance of Assam. Mr. Robert Bruce discovered the local tea plant in the upper part of the Brahmaputra valley in the early 19th century. After initial doubts about the authenticity of the Assamese tea plant, it was eventually acknowledged to be a variety of the true tea plant marking the rapid rise of the local tea industry. Despite several setbacks on the way, today Assam is a leading tea producing region globally as a considerable percentage of the world's tea comes from Assam's numerous tea gardens. In the Indian context, Assam is considered the heartland of the Indian tea industry as the state's tea production accounts for about 55 per cent of the country's total tea output.

The rise and the success of the tea industry in Assam would not have been possible without the tea estate labourers. It was clear from the very beginning of tea cultivation in the state that the local labour force was not adequate to cater to the growing need for tea garden labourers. Assam had very few landless labourers and, after introducing a series of facilitating legislation, the Assam Company started hiring labour force from Bengal. The legislation introduced between 1863 and 1901 had a two-fold aim – ensuring that the employer could use the services of the imported labourers for long enough periods to recover the costs of recruiting and transport to the tea garden, while the labourer would be protected against fraudulent recruitment and provided adequate remuneration for the duration of the labour contract^{vi}.

In Assam tea industry, three categories of labour are commonly found. Permanent worker category denotes those who reside inside the tea estate and whose names are entered in the estate roll of workers; outside worker resides outside the estate, but whose name is entered on the estate roll of workers; seasonal or temporary worker, who has been engaged for work in the tea estate which is of an essentially temporary nature likely to be finished within a limited period. The majority of workers in the Assam tea sector reside in the tea garden together with their dependents. The outside workers generally come from the nearby places to work in the tea garden. The key issue today in most of the tea gardens is managing surplus labour. The main reasons for surplus labour are seasonal surplus due to an increase in non-working dependents; surplus as a result of a high birth rate; and surplus as a result of settlement of a portion of recruited emigrants in villages near the plantations in Assam.

Locating HIV and AIDS in the Indian Tea Industry

As per the UNAIDS Country Assessment record for India, the first HIV infection case was documented in Chennai in 1986. In 2019, almost 23.48 lakh cases have been reported to the National AIDS Control Organisation (India HIV Estimates 2019). In the Indian context, HIV is transmitted predominantly via heterosexual route, followed by injecting drug use^{vii}. According to the National AIDS Control Organisation HIV Status Report 2019, HIV prevalence among adult males (15-49 years) was estimated at 0.24 per cent (0.18-0.32%) and among adult females at 0.20 per cent (0.15–0.26%). However, the National AIDS Control Organisation highlights the wide gap between the reported and estimated figures because of the absence of epidemiological data in major parts of the country. The epidemic is concentrated in few states out of twenty-eight Indian states, including three Northeastern states of Mizoram, Manipur and Nagaland, neighbouring states to present Assam. As per the India HIV Estimates Report (2019), the states with the highest adult HIV prevalence from the Northeastern region are Mizoram (2.32%), Nagaland (1.45%), Manipur (1.18%), Meghalaya (0.54%) and Assam (0.09%). In the Northeastern states, the dominant mode of transmission is injecting drug use as opposed to heterosexual route in southern states.

As the AIDS epidemics is rapidly spreading across international boundaries, the social and economic impact of this grave public health disaster can be felt in Northeast India, one of the less economically developed parts of the country. Northeast India has been subject to growing concerns about spreading HIV and

AIDS and its leading state of Assam is no exception. The National AIDS Control Organisation of India (NACO) characterises Northeast India as a high threat area for HIV and AIDS and tea industry as one of the most vulnerable sectors to HIV and AIDS. Of the estimated workforce of approximately 12 lakhs in the Assam tea sector, almost half is made up of temporary labour. Women constitute nearly 51 per cent of the total workforce of Assam tea industry^{viii}. Studies on the state of health of the tea workers have revealed that malnutrition and disease are only too common among the tea workers and a large number of man-days are lost because of sickness (Misra, 2002). This implies that tea industry in Assam would be an especially sensitive zone to the spread of the fatal epidemic.

The incidence rate and destructive impact of HIV and AIDS on the tea industry has been previously explored in several tea producing countries other than India. A study done by Boston University's Centre for International Health shows that, in Kenya, the daily difference in tea leaves plucked by a healthy worker and a tea plucker with AIDS in the last three months of his/her life. The study quantifies the cost of AIDS in terms of lost productivity and gives employers involved in similar labour intensive agricultural ventures an idea of how the epidemic could affect them economically. The cost of AIDS included both direct costs, such as benefit payments, medical treatment and recruitment, and indirect costs, such as reduced productivity and increased absenteeism. The study confirmed that HIV and AIDS is having a serious and debilitating effect on the tea industry, with compound AIDS-related costs which were as high as 9 per cent of some firm's profits. This is also the case in other business sectors – for example, a South African sugar mill found that its HIV-positive employees took, on average, fifty-five additional sick days during the last two years of their lives^{ix}.

For instance, the tea industry in Malawi, one of the countries at the core of sub-Saharan Africa's HIV and AIDS epidemic, is losing millions of US dollars because of AIDS. The government of Malawi, Africa's second largest tea producer behind Kenya, has estimated that about one million Malawians have already been infected with the HIV virus. Tea garden owners say worker absenteeism has grown because of AIDS-related illnesses. Thus a combination of factors, including AIDS, prevents Malawi from achieving its goal of harvesting more than 80,000 tonnes of tea annually^x.

Some large tea companies in India have already expressed their awareness of the impact of HIV and AIDS on the human resource of the tea industry and adopted a

policy to combat the disease. For example, TATA Tea Ltd. was one of the first companies in India to develop its own workplace policy on HIV and AIDS following the 5th International Congress on AIDS in the Asia and the Pacific in 1999 in Malaysia. The Congress declaration, signed by TATA Tea, called for developing partnerships with private and public sector, non-governmental organisations and communities in order to foster better social responsibility^{xi}. TATA Tea policy on HIV and AIDS and the workplace commits the company to a number of measures designed for effective HIV and AIDS prevention and dealing with HIV and AIDS in the workplace. The policy complies with the state, company and local legislation on HIV and AIDS but goes beyond the minimalist approach. The policy specifies a number of non-discriminatory measures such as a ban on pre-employment HIV screening, ordinary workplace contact and employee protection from stigmatisation and discrimination by co-workers, condom distribution, STD care and, importantly, continuation of employment and up-to-date education on HIV.

At state level, action to introduce HIV prevention activities in the tea gardens in Assam has been undertaken by the Assam State AIDS Control Society (ASACS). The ASACS believes that HIV prevention through peer intervention is most appropriate and most effective for the sector due to the low literacy rates of the workers and their dependants. In 2002, the ASACS held advocacy meetings with management, tea association, trade unions and NGOs working in the tea gardens. The meetings were followed by training peer educators from sixty tea gardens on the topic of HIV prevention. The main initial constraint, the ASACS reported, came from the indifference of the management and the tea workers themselves. So far there has been no authentic survey as admitted by ASACS on status of HIV and AIDS conducted among the tea garden population.

Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a *nom de jour* today globally and it has now been catching up in India too. CSR is a comparatively new study field in Asia, whereas a great deal of research has already been conducted on CSR in Western countries (Chapple & Moon, 2005). Chapple and Moon (ibid) argue that although the concept of CSR has existed in business and business research and education for many decades, it has recently enjoyed something of a revival as noted even by those sceptical of the concept. There is no single universally accepted definition of CSR and to date many global companies differ in their

understanding and, consequently, implementation of corporate social responsibility activities. CSR was initially defined as the social involvement, responsiveness, and accountability of companies besides their core profit activities and beyond the requirements of the law and what is otherwise required by government. However, this definition is becoming more and more problematic; as various business cases for CSR are being made, governments began deploying incentives for CSR, and compliance with the law in a variety of global jurisdictions is emerging as a CSR issue (ibid). In general terms, CSR refers to business decision-making that takes into account ethical values, respect for people, communities and the environment. CSR is more than pure philanthropy or a collection of one-off handouts motivated by marketing and public relations but, rather, a comprehensive set of policies and practices integrated into daily business operation. Thus, CSR is a constant commitment by the corporates to integrate social and environmental concerns in their business strategy.

In India, the understanding of CSR reflects a dichotomy of extreme views. Either CSR is viewed as the bare minimum of operating business within the legal boundaries or as purely one-sided philanthropy with no returns on the company's investment. Despite long tradition of philanthropy in India, Indian companies practice corporate social responsibility that is mostly ad hoc and driven by top management. The general picture is that of emphasis on philanthropy as opposed to making it an integral part of the business. However, with the implementation of Section 135 in the Companies Act 2013, India became the first country of the world to have statutory obligations of CSR for specified companies^{xii}. There is a lot of evidence that CSR is gradually gaining ground as an essential component of the business-society relations. The development of a range of business coalitions to advance CSR such as the Global Business Coalition on HIV/AIDS is another illustration, to report on CSR such as the Global Reporting Index also testify to the growing awareness of the key role of CSR in the business world.

However, as this study shows, most of the medium-size tea garden companies operating in Assam do not have a specified CSR policy and hence there is need for action, considering the future impact of HIV/AIDS.

Initiatives: Global and Local

There have been a number of initiatives, both at state and international levels, tackling socio-economic conditions of tea garden labourers and some specifically

targeting HIV and AIDS. The government of India has occasionally taken special measures for improvement of the socio-economic conditions of tea garden labourers, but with little success. The following problems have been commonly identified – wages are inadequate for sustainable livelihood; housing conditions are unsatisfactory; inadequate medical and welfare services and required substantial improvement and expansion; lack of education, etc. The last two factors are especially crucial with regard to HIV and AIDS situation in the Assam tea industry, as will be discussed later.

After the independence, the Plantation Labour Act, 1951 was a significant step toward ensuring socio-economic development of the tea garden labourers. This Act had provided extensive provisions for overall welfare of the labourers. Under this Act, the government of Assam passed a series of rules to regulate the working conditions of the tea garden labourers including the Assam Factory Rules, the Assam Industrial Disputes Rules, the Assam Minimum Wages Rules, 1952; the Assam Plantation Labour Rules, 1956; the Assam Plantation Provident Fund Scheme, 1959; and the Assam Maternity Benefit Rules, 1965.

Today the practice differs from garden to garden but, in general terms, the workers are provided with the following facilities and benefits. The long list of benefits includes free housing, free medical facilities, education for children up to the age of fourteen, free fuel to be collected and cereals at subsidised rates, land to cultivate on a very nominal rent, free grazing land for the workers' cattle, free water supply, free sanitary arrangements, equipped crèches for workers' children with attendants, canteens on 'no-profit' basis, recreation centres, free liquid tea while on duty, free dry tea in some estates after realisation of excise duty, benefit of fishing in various gardens drains, ponds, maternity benefit allowance, sickness allowance, bonus to workers, leave with wages, repatriation where labourers are recruited from outside state.

However, health was one sector that did not perform satisfactorily. The Assam Plantation Rules of 1956 provide for two types of hospitals, garden hospitals and group hospital. Every employer is required to provide a garden hospital in his plantation according to the standard laid down in the rules. A minimum of fifteen beds is to be provided in every garden hospital per 1000 workers. Each hospital should have permanent infrastructure including a general ward for males, females, maternity, family planning, T.V. & V.D. Clinics, out-patient department, consulting room, minor operation and dressing room, dispensary and drug store.

Group hospitals are to be established wherever necessary only after consultation with the Medical Advisory Board. The group hospitals are required to have a minimum 100 beds and at least three beds per 700 workers.

In addition to the government schemes, the Tea Board also has a unit responsible for welfare activities of tea garden labourers under the Tea Act. The unit carries out various welfare programmes and provides financial assistance to a range of schemes including financial assistance for extension of existing facilities in hospital; financial assistance for setting up of welfare centres; assistance in procurement of milk powder, butter, and oil; and assistance in finding employment.

Initiatives tackling specifically HIV and AIDS have also come from international organisations such as the United Nations. The United Nations believes that multiform approach constitutes the best response to the global challenge of AIDS. UN agencies are increasingly teaming up with other stakeholders as businesses globally are also coming together in their joint realisation of the scale and destructive impact of HIV/AIDS on their operations.

In January 2006, UNESCO and the Global Business Coalition (GBC) on HIV and AIDS signed a partnership agreement to reinforce mobilisation against HIV and AIDS. The Global Business Coalition against HIV and AIDS is an alliance of 200 international companies, employing more than 54 million people worldwide. Founded in 1997, GBC encourages its members to commit themselves to the fight against the AIDS pandemic and helps them develop HIV and AIDS policies adapted to their specific needs, globally and locally, for the benefit of employees, families, and, in some cases, communities. The agreement, in effect from 2006 to 2010, aimed at rallying the entire spectrum of corporate stakeholders to integrate HIV and AIDS prevention education into the global development agenda, adapt preventive education to the diversity of needs and contexts, encourage responsible behaviour, and stimulate public-private partnerships at the local level between GBC member companies and UNESCO partners.

One of the aims of the study to be discussed in full below is to map the awareness of tea garden managers of the available global initiative to tackle the issue of HIV and AIDS at local level. The following global initiatives were included into the survey: Millennium Development Goals (MDG) which ended in 2015 and Sustainable Development Goals (2015-2030); the ILO Code of Practice on HIV

and AIDS and the world of work; International Guidelines on HIV and AIDS and Human Rights (UN); Global Reporting Initiative (GRI) – a framework for sustainability reporting on economic, environmental, and social performance by all organisations; UN Guiding Principles on Business and Human Rights.

Rationale and Aim of the Study

This study examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility initiative. HIV and AIDS prevention in the workplace is especially urgent in labour-intensive markets where public resources are constrained. The study seeks to address on how the tea companies in Assam can incorporate HIV and AIDS into their core activities of CSR by encouraging workplace prevention programmes for HIV and AIDS. This study examines the risks posed by HIV and AIDS to tea sector workers and to assess the feasibility of incorporating HIV and AIDS into core social responsibility activities of the tea companies to ultimately establish the business case for a policy on HIV and AIDS prevention for the Assam tea sector.

Moreover, most of the documented evidence on CSR as a component of business-society relations refers to North America, Western Europe, Australasia, and Japan. There has been relatively little research on the rest of Asia including Northeast India (Chapple & Moon, 2005). The same can be said of the tea sector as a whole. However, there has been growing interest in establishing the business case for HIV and AIDS prevention through CSR channels and several pioneering studies were conducted in the tea sector in Kenya and Malawi. In this backdrop, the study develops the following hypotheses for conducting the research as – Assam tea sector is particularly sensitive to HIV and AIDS due to the nature of the industry, in particular its labour-intensive character; partial reliance on migrant workforce and low literacy rates among the workers; research proves the links between HIV and other communicable diseases such as malaria and TB in labour intensive industries.

The Survey Methods

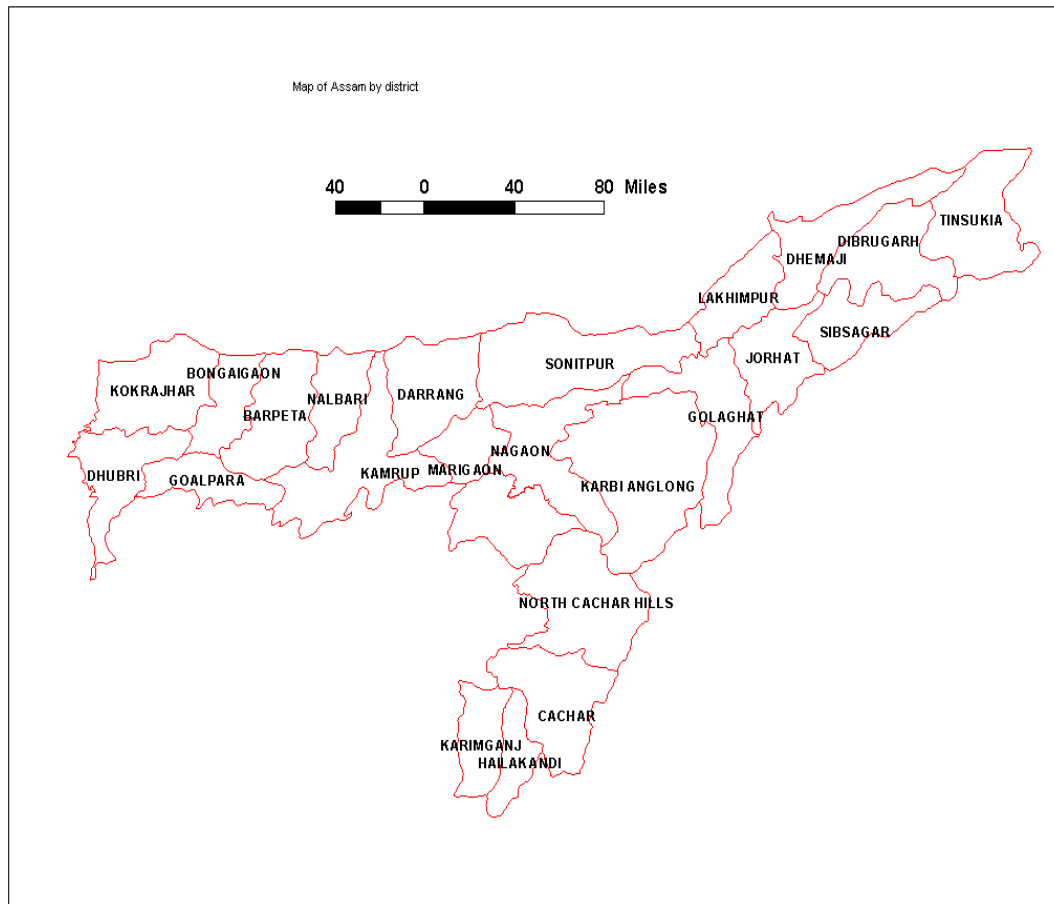
The survey instrument, consisting of five sections with an intent to collect information covering largely the time period between 2010-2020, was developed for the said research purpose. Section A addressed general information on the tea estate in question including the number of permanent tea workers and their

distribution into age groups. Section B addressed the essence of the study mapping the company's understanding and practice of CSR. In the third section C, the survey turned to probe the company's view of and strategy towards HIV and AIDS. Section D, correspondingly, mapped existent activities on HIV and AIDS and welfare schemes run by the tea companies. The final section E covers the business strategy of the tea gardens.

The primary criteria for selecting tea estates for the study have been their membership in the Tea Association of India (TAI). Of twenty-five tea gardens selected for the study, only three were not members of the TAI – Margherita Tea Estate, Greenwood and Dewan Tea Estates. Thus, the majority of tea gardens were randomly selected from the medium-size members of TAI, deliberately excluding large companies. The required information was gathered through contracting the selected tea gardens with the help of the TAI office in Jorhat, Assam. The fieldwork was conducted through visiting some of the tea gardens in person, interacting with tea garden managers/officials and administering questionnaire through postal services.

Map of Assam by District

The tea gardens participants in the study are located in the districts of Jorhat, Dibrugarh, Golaghat, Sibsagar, Sonitpur, Nagaon, Lakhimpur, Darrang, Cachar, Tinsukia (see map below).



Data Analysis and Explanations

Section A: General Information

The information on CSR policies and HIV and AIDS from the twenty-five tea gardens of Assam has been gathered through interviews based on the questionnaire. The majority of the tea gardens were members of the Tea Association of India (TAI) with the exception of Margherita Tea Estate, Greenwood and Dewan Tea Estates. The surveyed tea gardens are all located in the state of Assam with the number of permanent employees ranging from 342 to 1736. Of twenty-five surveyed tea gardens, eight failed to provide the number of their permanent employees.

As per the India HIV Estimates Report (2019), the high risk group for HIV

infection is the young sexually active adults between the ages of 15-49. In a majority of the surveyed tea gardens, majority of the workers belonged to the 30-39 age group, while in a minority of the tea estates, workers belonged to the 40-49 age group. Only two gardens – Namdang and Dewan – had majority of its workers between the ages of 20-29. Thus, one may conclude that the overwhelming majority of the tea garden employees are in the risk group for the spread of HIV and AIDS. According to NACO statistics, fewer women are infected with HIV and AIDS in India than men. All tea gardens had a substantial proportion of female workers. This characteristic of the labour forces goes back to the establishment of the tea industry in Assam, when women were perceived as particularly well suited to the delicate business of plucking tea leaves with their fingers.

Section B: Corporate Social Responsibility (CSR)

As for a formulated CSR policy, eleven tea gardens out of twenty-five did not have a policy document. Those which had a CSR policy in place had introduced over a long span of time ranging from 1969 at the earliest and as later as 2019. Nevertheless, some of the tea gardens that did not have a CSR policy had at their disposal a number of policy instruments tailored for individual issues such as, for example, health and safety, tuberculosis and malaria. The employers have various options for communicating their policies to the employees. Most commonly, the tea garden managers communicated their policies through a representative of the workers, while displaying policy texts on the notice board was the second most popular option. However, other alternatives such as written communication and workshops were also used by some tea gardens.

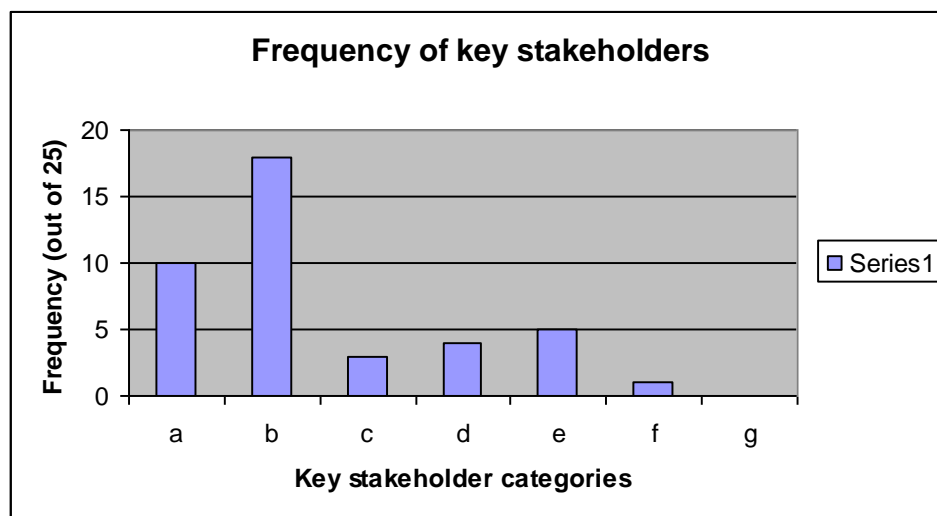
It clearly emerges from the replies to the questionnaire that absolute majority of tea garden managers view the workers and their families as the key stakeholders. Strikingly, none of the tea estates identified any non-governmental or civil society organisations as their key stakeholders.

TABLE 1: PERCEPTION ON KEY STAKEHOLDERS IN TEA GARDENS

KEY STAKEHOLDERS	FREQUENCY
a) Workers	10
b) workers and their families	18

c) supply chain	3
d) community	4
e) government agencies	5
f) multilateral agencies	1
g) NGO or civil society organisations	0

Figure 1: Frequency of Key stakeholders in Tea Gardens



The majority of the surveyed tea gardens did not cover their supply chains or value chains in implementing their CSR activities or extending their existing welfare schemes. Still, eight tea companies out of twenty-five did extend their CSR policies to supply/value chains. One potential explanation for why very few tea gardens considered their supply or value chains as their stakeholders may well lie in the fact that the responding managers did not fully understand the concept of stakeholders and/supply chains.

Section C: Risk Management

Risk management is essential for running industries such as the tea sector which are highly labour intensive and, according to research, also due to the nature of

the work and working conditions prone to various health risks such as malaria and, notably, HIV and AIDS. Most companies surveyed in this research had a risk management policy in place, which reflects the need for risk management strategy in the field. However, four tea gardens out of twenty-five did not have a risk management policy.

Most of those tea gardens that did have a risk management policy included multiple factors in their business risk assessment procedures. Social risks were most often mentioned as risk factors included in the business risks, followed by the environmental risks. Several tea gardens also noted the risk to their reputation and supply chain.

The perceptions on what constituted major risks to the workforce and to the business were then investigated in more detail.

TABLE 2: PERCEPTION ON MAJOR RISKS TO THE WORKFORCE

HEALTH ISSUES	YES
Malaria	10
TB	8
Cholera	0
Typhoid	0

It is alarming to see that six tea garden managers/officials did not consider any of the above diseases as a risk to their workforce or business. The remaining nineteen tea gardens considered either malaria or tuberculosis or a combination of the two as major risks to the employees. Six tea garden managers viewed both malaria and tuberculosis as eminent risks to their work force. However, cholera and typhoid were not named by any of the respondents. These findings raise the following questions: Do these results point in the direction of lacking awareness of the tea garden management of the health status of their workers? Are the results indicative of the actual state of affairs or, rather, illustrative of the manager's perception of the state of affairs?

Most interestingly for the purposes of this study, the response concerning the

perception of HIV and AIDS as a potential threat to the labour force has been almost evenly divided: while twelve tea garden managers did not consider HIV and AIDS as a potential risk, thirteen managers did. In comparison to the other diseases discussed earlier, this clearly demonstrates that HIV and AIDS is viewed as by far most potent threat to the work force in contrast to ten tea garden managers considering malaria the major risk in the previous category of other diseases excluding HIV and AIDS. All of the surveyed tea gardens had a health care centre, according to the questionnaire responses provided by the managers.

Section D: Activities on HIV/AIDS and Welfare Schemes

Once again, the surveyed tea gardens were divided into two almost equal groups on the basis of whether they ran any HIV and AIDS awareness raising activities: while thirteen tea gardens did not practice such activities, twelve tea gardens did run activities with the intention of raising awareness of the epidemic. Most curiously, some of the tea gardens which did not consider HIV and AIDS a potential threat to their work force or to the tea industry as a whole still chose to run awareness activities on their premises. Most of the tea gardens running such activities targeted them specifically at the employees and their family members. However, individual tea gardens also mentioned targeting the whole supply chain, the community as a whole or all of the listed options.

The surveyed tea gardens employed a wide array of methods to carry out the HIV and AIDS awareness work and many of the responsible managers indicated that they used several methods. Only one tea estate – Muttrapore – mentioned using peer education as a method of awareness-raising; three tea gardens – Rungagoga, Radhabari and Margherita – run their awareness raising activities through an NGO, and in the case of the Margherita tea estate, the NGO in question was the only method of awareness-raising. A considerable proportion of the twelve tea gardens that were involved in HIV and AIDS work were using a combination of two or more methods.

However, the picture changes drastically once we turn to formal training on HIV/AIDS and/or STDs. Only four of the surveyed twenty-five tea gardens had implemented a formal training programme on HIV and AIDS for their employees. Hence, there is a striking gap between informal awareness raising activities and formal training with the emphasis on the former. This is not surprising considering formal training not only requires resources but also expertise and

trained personnel. All four companies that offered formal training to employees also extended it to the other stakeholders.

Section E: Business Strategy

It emerges from the study that the tea sector companies in Assam are slowly awakening to the looming threat of HIV and AIDS to their workers and, ultimately, to their business. Of the twenty-five tea gardens surveyed, five have already completed an assessment of the financial impact of HIV and AIDS on their business, while three tea estates were in the process of undertaking such a study. This clearly indicates some awareness and interest on behalf of the tea garden management of the potential impact of HIV and AIDS. Again, paradoxically, a few tea gardens have undertaken a study of the financial impact of HIV and AIDS while not considering it a risk to the labour force or the tea sector as such.

Similar results were revealed in terms of evaluating business opportunities and benefits of engaging into HIV and AIDS awareness-raising and prevention activities. While four tea gardens were in the process of evaluating business opportunities and benefits of fighting HIV and AIDS, only three tea estates have already undertaken such an evaluation, leaving the majority of tea gardens as not considering HIV and AIDS in these terms.

Many of the surveyed tea companies were either involved in philanthropic activities or were making community investments: eleven tea garden managers/officials indicated such involvement, but that still leaves us with the majority of fourteen tea estates not involved in any philanthropic activities. In terms of collaborating with any governmental, non-governmental or multilateral agencies on the issue, five of the surveyed tea gardens were involved in such partnerships.

The areas of cooperation were multiple ranging from at least two to the maximum of five areas of cooperation. A very few tea gardens are at present working on issues of HIV and AIDS in cooperation with an external partner, National Rural Health Mission (NRHM). However, even the leading tea garden did not follow any of the available global initiatives such as Millennium Development Goals (2000-2015), the ILO Code of Practice on HIV and AIDS, etc. Not surprisingly, none of the surveyed tea gardens used any of the available global initiatives as

reference framework.

However, thirteen tea garden managers/officials considered incorporating sustainable HIV and AIDS prevention activities into their core business strategy as a competitive business advantage – clearly indicated the scope for work in this area. The study shows that while the initiatives are currently lacking, especially in terms of formal training for HIV and AIDS prevention and awareness raising as well as usage of existent global guidelines on HIV and AIDS, there is a potential demand and understanding on the part of the managers that incorporating HIV and AIDS may be good for their business and even necessary in the long run.

The study has concentrated on small and medium-sized members of the Tea Association of India. For example, TATA Tea, one of the largest players in the Indian tea sector, has implemented a variety of welfare projects for its employees and their families, who – according to TATA – are drawn from ‘the weaker section of society’. In Assam, the range of programmes includes a referral hospital and research centre, providing free care not only to the workers and their families but also to the poorer sections of the community; special health camps for eradication of malaria in the tea estates of Assam; mobile health clinics and other ‘community upliftment’ initiatives. For example, TATA Tea has also been pioneering HIV and AIDS workplace programmes in cooperation with other partners such as the Indian Medical Association and other allied agencies of the state. Last but not the least, we must remind ourselves that the survey results reflect the opinions of the tea estate management, not the workers. The viewpoint of the tea garden workers may be different considering the unequal relationship between the management and the workers.

According to Assam Branch Indian Tea Association (ABITA) database of tea garden medical facilities, not a single case of HIV infection has been found among the tea workers, but the association was not confirmed about the testing procedure. Also, TAI did not perceive HIV and AIDS as an immediate risk to the garden workers, but acknowledged it as a potential risk to the workers and to the community in near future. On the other hand, for example, TATA Tea recognised HIV and AIDS as a major risk to the employees and has been implementing various measures towards preventive actions. TATA Tea has developed an action plan to address the issue related to HIV and AIDS among the employees but the company was more interested on developing an action plan towards prevention of HIV and AIDS than conducting any intervention study to evaluate the

vulnerability of workers.

It has been suggested that tea estates are especially vulnerable to the impact of AIDS as they employ large numbers of people. Apart from the statutory benefits like bonus, provident fund, gratuity, etc., the tea worker is supposed to be provided with free housing, medical facilities, education for the children, adequate arrangement for sanitation, etc. With a few exceptions, most of the gardens have no proper medical facilities, sanitation, and housing facilities. Every year water-borne diseases take a heavy toll of life in Assam's tea gardens due to the bad sanitation and the lack of drinking water in the gardens. Only a few years ago, hundreds of tea labours of Assam's tea gardens died due to gastroenteritis epidemic, inviting organised protest from the trade unions to highlight the shocking state of sanitation and medical facilities in most of the gardens affected by the epidemic^{xiii}. Of late, the Covid -19 infections have spread across almost all the tea estates of upper Assam. This epidemic has badly affected the health of several thousands of tea workers including death of more than 20 labours^{xiv}.

Conclusion and Policy Recommendations

India is the largest producer and consumer of tea in the world, but in recent years both the production and export of tea has shown a declining trend, and the Assam tea industry is no exception. While reasons for the decline are multiple, the state of health of the tea workers emerges as a key factor for the productivity and long-term viability of this labour-intensive and risk-prone industry. The vulnerability of the tea garden labour force to HIV and AIDS as well as other communicable diseases is, however, unmatched by measures designed to tackle this vulnerability with very few exceptions among the surveyed medium-sized companies. At the same time, some individual companies and large companies such as TATA Tea have shown their awareness of the detrimental potential of HIV and AIDS and chose to incorporate prevention and awareness-raising activities into their already existent CSR schemes.

This study aimed to provide an overview of selected tea company characteristics in Assam. Ignoring HIV and AIDS, and not analysing the risks that it presents to a business or taking no action may prove to be the biggest risk. It is, therefore, important to identify where risks are highest to the business. Having information on the company's processes and their potential vulnerabilities is important in focusing on company prevention efforts.

The survey results clearly show that there is an alarming lack of awareness and, consequently, concern among tea estate managers of the potential health threat to their workforce. While all surveyed tea gardens had health care arrangements, only a couple were running programmes specially tailored to tackle HIV and AIDS. The Economic and Political Weekly commented on the piecemeal nature of corporate social responsibility activities by saying that, 'Surely, a sense of involvement cannot be brought about by an occasional dole for a sports complex or a literary prize. What is needed is the participation of the industry in the effort to bring about an overall improvement in the quality of life of the common people. This does not necessarily call for huge amounts of money but it does call for some degree of sensitivity to the plight both of the tea worker as well as of the villagers living next door' (Misra, 2002, p. 3031).

On the basis of the survey findings, several policy recommendations can be made. However, ultimately, due to vast differences between existent practices in the surveyed tea gardens it can be concluded that, for any HIV and AIDS prevention to be effective, it will need to be specifically tailored for the needs of each individual company on the basis of its existent capabilities and preparedness for action.

Firstly, as all tea gardens have health care facilities, HIV and AIDS prevention and awareness-raising programmes must be integrated into the already existent schemes in order to achieve cost effectiveness as well as long-term sustainability.

Secondly, HIV and AIDS education has an absolutely crucial role and it has to be extended to the local community in addition to targeting the tea labourers and their families. As emerges from the survey, a large proportion of tea garden labourers are of the age group most vulnerable to HIV infection in India. Research shows that the impact of health education has distinct advantages and potentially powerful impact in terms of its relatively low cost and great effectiveness. In addition to incorporating health education for tea garden workers, the questionnaire responses of the tea garden managers demonstrate the lack of awareness of HIV and AIDS threat, and thus, call for specifically designed education programme for managerial staff as well as key people among the labour force, such as workers' representatives, trade union leaders and welfare officers.

Thirdly, as the survey has revealed vast differences between the tea gardens in terms of awareness and existent CSR schemes as well as HIV and AIDS

prevention activities. Therefore, it is essential to assess the needs base of each tea estate individually before designing a suitable intervention programme. The assessment must focus on the target population of tea garden labour force, their families and local communities. The impact of introduced prevention and awareness programmes has to be regularly reviewed in order to fine-tune and frame future strategies for intervention.

Integrating HIV and AIDS into corporate social responsibility in the Assam tea sector is clearly a challenge for the medium-sized companies as their CSR activities are yet to take developed shape. However, the looming threat of HIV and AIDS to the tea garden workforce is a development that needs to be arrested in its course in order to allow sustainable growth of the industry. There is a clear business case for integrating HIV prevention into the CSR framework of the Assam tea sector. Two issues must be addressed in order to facilitate such incorporation and build a convincing business case – raising awareness of the management of the costs and benefits and development of corporate social responsibility as a whole.

Notes:

ⁱ As per Report on India HIV Estimates (2019), approximately 23.48 lakh/2.348 million people have been affected with HIV at national level. However, a declining trend of HIV infection since 2010 has been recorded in India HIV Estimates (2019).

ⁱⁱ 37.7 million people globally were living with HIV in 2020 estimates by UNAIDS 2021.

ⁱⁱⁱ The terminology has moved on in the past years to using ‘HIV and AIDS’ as standard. See p.8 in the UNAIDS Guidelines [UNAIDS Terminology Guidelines - 2015](#)

^{iv} Bhuyan, N. (2004). *HIV prevention intervention among the tea garden workers in Assam*. International AIDS Society.

^v Tea and trouble. (2005, December 1). *The Shillong Times*.

^{vi} This historical fact can be ascertained from *A History of Assam* by E. Gait, E. (2004, p. 341).

^{vii} See UNAIDS India Country profile at http://www.unaids.org/en/Regions_Countries/Countries/india.asp

^{viii} Report on *Capacity Building Program on International Trade towards Enhancement of Competitiveness of Indian Agriculture* by Ministry of Agriculture, GOI & Indian Institute of Foreign Trade <http://agritrade.iift.ac.in/html/Training/ASEAN%20E2%80%93%20India%20FTA%20Emerging%20Issues%20for%20Trade%20in%20Agriculture/Tea%20Export.pdf>

^{ix} Family Health International (2002): *Workplace HIV/AIDS Programs: An Action Guide for Managers*.

^x AIDS sows ruin of Malawian tea industry. (2005, July 20). *China Daily*. Retrieved from http://www.chinadaily.com.cn/english/cndy/2005-07/20/content_461608.htm

^{xi} For TATA Tea policy on HIV/AIDS, see Rafique (2002).

^{xii} As per the Act, Companies with a net worth of Rs 500 crore or more, or turnover of Rs 1,000 crore or more, or a net profit of Rs 5 crore or more during a financial year need to spend 2 per cent of the average net profits for the subsequent three years on CSR activities.

^{xiii} For detailed impact of epidemic, see Misra (2002).

^{xiv} 350 tea estates in Assam hit by COVID-19. (2021, May 30). *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/other-states/350-tea-estates-in-assam-hit-by-covid-19/article34683248.ece>

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Article: Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam

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Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam

--- Suryasikha Pathak

Abstract

Many historical studies of the census use the corpus of demographic knowledge as a part of ethnographic inquiry. But recent studies have brought into focus the politics of numbers, or the political arithmetic, because unlike in the 19th century, quantitative approaches are no longer enmeshed in a scientific attitude which is now regarded as naïve empiricism. The census admittedly was a document of great ethnographic value. But the question of numbers also becomes important from the 20th century onwards. Early colonial censuses were ethnographic classificatory exercises, but such concerns did not begin with the census. These issues and ideas were already a part of the administrative thinking by the 1850s. The census has also been an important historical source as a part of ethnographic inquiry, but it has also become important to inquire into the relationship between quantitative and qualitative definitions of populations. Though census enumeration and its awareness led to certain rigidity in defining collective identities to a considerable degree, it also set into motion controversial mobility of nationalist, ethnic, communal and other identities. This paper attempts to relook at the early censuses and the debates it generated within the purview of identity articulation. The situation in terms of enumeration and classification was complex in Assam, where the diversity of communities combined with remarkable fluidity in demographic structure made it challenging to pin down communities. Within such complexities reified identities took shape and articulated their politics.

Key words: Colonial census, Enumeration, Languages, Religion, Tribes/Castes

Introduction

Census as an exercise, especially colonial census was a ‘unique project’, because numbers, classification, explanation, all became a document which could be used in manifold ways (Padmanabh, 2011). Social sciences have gleaned much data from census as the corpus of the demographic data was one of kind, before other

surveys of more specific nature evolved. But recent studies and politics makes census as much qualitative as it is quantitative, the politics of numbers, or ‘the political arithmetic, because unlike in the nineteenth century, quantitative approaches are no longer enmeshed in a scientific attitude now regarded as naive empiricism’ (Kreager, 1997, p. 154). The census was admittedly a document of great ethnographic value and the ‘1881 census was the mother of colonial ethnography’ (Singh, 2011, p. 57). But the question of numbers also became important from the censuses of the 20th century. Early colonial censuses were of course primarily ‘ethnographic classificatory exercises’, originating ‘in the need for information about people to facilitate their governance and to expedite the exploitation of their skills and resources’ (Singh, 1996, p. 138). But ethnographic concerns did not begin, as often presumed, with the census. These issues and ideas were already a part of administrative thinking by the 1850s. The consolidation of colonial rule over an agrarian society of great diversity gave rise to systematic revenue collection and required comprehensive land register, which ensured maximum collection of land revenue, at a very local level (Kreager, 1997, p. 165). Colonial knowledge production geared towards governance of a large territory with diversity was the reason that ‘census was symptomatic of the Victorian urge to “know”, “classify” and “count”’ (Meeto, 2007, p. 43).

The ethnographic aspect of the census was always most dominant, and a number of studies do draw extensively upon the census data. Grierson, who compiled the Linguistic Survey of India, 1903, claimed that it was essentially based on figures from the census of 1891 (Meeto, 2007, p. 166). As Bernard Cohn remarks in his seminal essay, ‘(I)t would not be an exaggeration to say that down until 1950 scholars’ and scientists’ views on the nature, structure and functioning of the Indian caste system were shaped mainly by data and conceptions growing out of the census operations’ (Cohn, 1990, p. 242). The census has also been an important historical source as a part of ethnographic inquiry, but it has also become important and necessary to inquire into the relationship between quantitative and qualitative definitions of population.

Census classification and enumeration and its effect on the indigenous population, its ‘consciousness of caste and the use of census for validation of claims to new status within the caste system’ have been studied in great detail (Cohn, 1990, p. 242). As observed by Kenneth Jones, there was an increasing realisation that the critical relation between the census and political identity cannot be denied. The census was used in various ways by the subjects of the colonial state who were in

fact the subjects of the census itself. The census and the subject were involved in a complex relation and each defined the other and attempted to control it. But as mentioned by Arjun Appadurai and others, such an exercise was totally appropriated or conversely, ‘democratic’ politics came to be ‘adversely affected by the idea of numerically dominated bloc voting ...’ (Appadurai, Breckenridge & Veer, 1993, p. 331). So, although ‘the census did lead to certain rigidity in defining collective identities to a considerable degree, it also set into motion controversial mobility of nationalist, ethnic, communal and other identities’ (Kreager, 1997, p. 166).

But these trends concretised into a politics that depended on ‘representation’ and ‘representativeness’, and established the ground for present day communal and ethnic conflict in South Asia. On the question of identity politics, caste-based or communalised or tribes, ‘the most significant moment in the formation of fixed identities in the subcontinent was the introduction of the colonial census’ (Meeto, 2007, p. 128). The focus of Appadurai and others is caste, it being the crucial category to understand Indian reality (Appadurai et al., 1993, p. 331). This paper attempts to understand a similar situation – the contemporary ethnic situation in Northeast India. Particularly, in tribal communities, the demands for autonomy and separate statehood became very decisive within this framework of the politics of numbers. Here too, along with other means of articulation, census enumeration gave rise to an identity where demographic numerical strength played a determining role in the emerging notion of politics and identity. As mentioned by Appadurai, identities constructed by such a process, necessitated by the colonial state, ‘transformed not just into imagined communities but into “enumerated communities”’ (Appadurai, 1993, p. 331).

Notions of identity emerged since the first census because of its classificatory and enumerative role. This is evident in the increase and decrease in the numerical strength of the ‘tribal’ communities, seen through markers of religion and language. Census officials took an interest in the changes that they observed or in the question of how other communities related to the caste Hindu hierarchisation. As remarked by K.S. Singh, census officials were ‘prone to describe tribal religion as raw material for Hinduism’ (Appadurai, 1993, p. 142). They focused on the process of socio-cultural assimilation of tribal societies into Hinduism. Hinduism was a primary category for understanding ‘tribal’ societies, and Risley and others saw such a process as a negative marker for authentication of such communities (Census of India, 1891, Assam, Vol-I). Risley and Gait, who had

defined the basic principles of categorisation, thought that tribes all over India were gradually losing their identity and becoming 'Hinduised' in a movement from 'tribe' to 'caste' (ibid). The officers of the colonial administration presumed that the phenomenon of Hinduisation was an inevitability in the tribal world, but as remarked by B.B. Chaudhuri, the process was far more complex, especially where it was immediately linked with the radical agrarian movement (Chaudhuri, 2002, p. 34).

Constructing 'Tribe' and 'Caste' in Colonial Census

The situation was much more complex in the province of Assam, where the diversity of communities was much higher and there was a remarkable fluidity in the demographic structure. The region had experienced migrations from both east and west for centuries, and it was a trend predicted likely to continue. In fact, it was quite difficult to pin down communities; as admitted by B.C. Allen in the 1901 census. He says, 'There is, in fact, no absolute test by means of which we can divide the inhabitants of Assam into those who are Assamese and those who are not' (CoI, 1901, p. 17). The ambiguous or the fluid identity of the Assamese indicated that there was a thin line of differentiation between the Hindus and the non-Hindus or between tribe and caste. Hence in the Brahmaputra Valley, in order to differentiate between various communities – the caste Hindus and the 'tribal' communities – the colonial census authorities resorted to indices like religion and language, qualified by notions of purity, prescription and proscription. Therefore, the question of 'Hinduisation' and Hindu influences was critically intertwined with the increase and decrease in numbers of followers of animistic practices and these communities. This was especially the case in the Brahmaputra Valley where the colonial officials felt that the tribal communities were particularly susceptible or vulnerable to such influences. Simultaneously, they accepted that whether it was even possible to classify the animistic tribes of the province adding that even to 'the most casual observer, the Assam range must be an object of interest' ethnographically (ibid, p. 120). Animism itself was a negative category for classification, because, only 'those who had no recognised religion were shown in the column of the schedule for religion under the name of their tribe' (CoI, 1911, p. 36).

Since there was an ambiguity of definition, and the census officials perceived 'Hinduism' and 'Animism' as two opposite ends of a spectrum of faiths connected by the path of conversion, the problem of classification was

compounded. 'A large numbers of such people have already been converted to Hinduism and many of them now are as near the border line that it is difficult to say what they are' (CoI, 1911, p. 36). The problem was not as easily resolved as observed by the census enumerators; practices co-existed and these communities were reluctant to give up their old customs and food habits, and proscriptions were not usually successful. Therefore, certain differences in lifestyles and practices persisted, which demonstrated the nature of still extant community identities and challenged the construct of a homogenous 'Assamese' identity.

Gradually, the numerical strength of communities changed with the growth of political consciousness among various communities. Also, any seeming ethnographic clarity among the colonial officers of course was coupled with a certain political idea about the interplay of communities in the fluid demographic situation, as it was in the Brahmaputra valley during the early decades of the 20th century.

The first regular census of Assam was attempted in 1872, and at that time, the several districts forming the Chief Commissionership of Assam were under the Bengal government. Till 1878, the question of taking a new census was mooted by the government. The 1881 census marks the debates regarding understanding tribes and caste in colonial Assam, under the guidance of the Superintendent of Census, Denzil Ibbetson. There is no clear distinction established between tribe and caste before the 1901 census and that led to confusions regarding categories and their enumeration. The category 'Hill Tribes' was used 'arbitrarily to designate certain of the non-Aryan tribes, which are more decidedly hostile to Hinduism than others. Tribes like Abors, Daflas, Garos, Khasis, Syntengs, Kukis, Mikirs, Miris, Mishmis, and Nagas are included under this head; while many other tribes which are classed as aboriginal, such as Kacharis, Hajongs, Lalungs, and others, were entered in the Religion tables as Hindus' (CoI, 1881, p. 34). The Hindus in the hills, like the 'Kacharis' or Dimasas of North Cachar, the 1881 census observed that they were 'hardly more right to be classed among Hindus than Kukis or Mikirs have' (ibid, p. 35). It marked the increase in the numbers of 'hill tribes' as communities were no longer classified as Hindus but as 'aboriginal races'.

Categorising Religion: Hinduism and Animism, Caste and Tribe Connection

The 1891 census acquired importance since religion was classified separately

from caste and tribe to remove the confusion regarding ‘Hinduised’ tribals. In the 1881 census, the classification simplistically assumed that the ‘tribes on the frontier which were altogether beyond Hindu influence were shown to be Animistic, and those which were beginning to come under that influence as Hindu’ (CoI, 1891, p. 82). So, classification was hinged on hills-plains divide, further influenced by the biases of the local enumerators. The later censuses too are not objective in their classification but segregation led to contestation and claiming of certain categories. Animism was characterised as ‘a religion of a very low type’, thought to be ‘professed by the most backward tribes of the province’ (ibid, p. 94). Though the absence of comparative figures showing the spread of Hinduism since 1881 leaves a lot of ground for speculation, Gait claimed that work of proselytisation was steadily going on (ibid, p. 83). And the twin process of spread of education and the influence Hinduism gradually affected the number of people clinging to ‘their (ancestral) superstition of their forefathers’ (ibid, p. 94).

From the 1901 census to 1911, there was an increase in the numbers of Animists by 16 per cent. The increase in the Brahmaputra Valley was attributed to the greater accuracy in recording the religions; in Darrang, the increase registered was 38 per cent, in Sibsagar nearly 42 per cent, and in Lakhimpur nearly 32.7 per cent. Nowgong, where immigration was not a factor, showed an increase of over 35 per cent. However, in Kamrup the growth was less than 12 per cent and conversions to Hinduism were presumed to be the cause. There was a sharp decrease in Goalpara, which was due to conversion to a new faith, the Brahma, which should not be confused with the Brahma Samaj (CoI, 1911, p. 37).

Conversely it was claimed that the percentage of growth for Hindus was not equally encouraging. Colonial officials established an inverse relationship between Hinduism and Animism. As was stated explicitly in the census, ‘we see that in every district of the Brahmaputra Valley except Goalpara the proportion of Hindus has fallen owing to the increase of Animists and, to a small extent, of Muhammadans’ (CoI, 1911, p. 39). All this information was juxtaposed mainly against the Muhammadans and in a lesser degree against the Christians to locate the demographic transformations. However, the census also acknowledged that there was a certain ambiguity in defining Hindu and Hinduism. The 1911 census quoted Sir Alfred Lyall, lecturing in Cambridge in 1891:

If I were asked for a definition of Hinduism, I could give no precise

answer... For the word Hindu is not exclusively a religious denomination, it denotes also a country, and to a certain degree a race... Religion, parentage and country... (CoI, 1911, p. 39)

According to colonial officials, such ambiguity gave rise to complexities and fluidity. Though there was an accepted idea of mobility among the people in the plains, it was difficult to ascertain when new converts ‘definitely became Hindus’. Even the latter censuses abound in examples of the ensuing confusion. As J. Mc. Swiney comments in the 1911 census, ‘In the Brahmaputra Valley it is hard to say when the new converts definitely becomes Hindu, especially as many of them cling to their old habits of eating and drinking’ (CoI, 1911, p. 41). This kind of impression was drawn primarily from the ‘tribal’ communities, who progressively became ‘Hinduised’. For example, the Mishings, who he encountered in the east of Darrang, had continued eating fowl and drinking liquor, though they had come under the tutelage of a *Gossain*. Such proscription of food was strictly adhered to when the *Gossain* was present. The reasons stated for the conversion were mostly social and economic, ‘that they were strangers in a strange land, and unless they made some arrangements with the gods of the place or their representative, there was no knowing what evil might befall them’, meaning that they were attempting to adjust to the environment, to avoid alienation (ibid). So, they placed themselves under the religious patronage of *Gossain* and ‘paid him his annual fee in order to be on the safe side’ (ibid). He also remarked that, during that period the missionary efforts of the Vaishnava *Gossains* of the Brahmaputra valley had been very successful among the tribals.

By the 1921 census, it was reported that ‘accretion to the ranks of the Hindus from the aboriginal tribes has continued steadily but by no means evenly in all district’ (CoI, 1921, p. 50). Of course many of these claims and counter claims were individual and some of these were also influenced by the local enumerators and politics. Though the Hindu Mahasabha was not active in Assam during the early 1920s and the Tribal League was not formed, the *Sattradhikars* were strong spokesmen of Hinduism and equally active were the nascent associations among the tribes, especially the Kacharisⁱ. But there were also instances when orthodox Hindu enumerators refused to enumerate some animists’ plains Kacharis of Brahmaputra Valley as Hindus (ibid). Similarly, a section of the Kacharis in Nowgong aiming for caste mobility of being a ‘regular Hindu’ wanted to be classified as Saktas (ibid).

The local belief systems were fluid and ‘primitive practices so often continued side by side with Hindu ceremonies’ that uniformity could not be maintained by the enumerating staff (CoI, 1921, p. 50). So the census officers attempted to simplify the enumeration process by stating that if subjects claimed so, they must be entered as Hindus, and in other cases, people who held under and paid rent to a Gossain were to be entered as Hindus, according to customary definitions (ibid).

But political and social movements for the annihilation of caste and tribal barriers were, as observed by the census authorities, at most, superficial and were ‘still in domain of talk and not of practice... And it is noteworthy that Hindu and aboriginal recruits to recent advanced political views had generally to be obtained by promises of materials benefit...’ (CoI, 1921, p. 51).

Politics of Numbers: The 1930s and 40s

The issue of conversion to Hinduism among tribes becomes more important in the context of relative increase and decrease in the Hindu and Muslim population. For in 1921, there was an increase in the numbers of both Hindus and Muslims. And again it was observed that in ‘Kamrup, Darrang and Nowgong large increases of Hindu corresponds with decrease among the Animists; the new converts are chiefly plains Kacharis, Karbis and Mishings’ (CoI, 1921, p. 52). Therefore, in the Brahmaputra Valley, the increase had sharply dropped from the 1911 figures of animists.

This relation between numbers and politics led to the growing concern among the Assamese caste-Hindu middle class of a ‘Muslim invasion’ and change in the political pattern. So the numbers of the plain tribes was essential to the Hindus to maintain a majoritarian position in the province, and it was also a political necessity for the Congress, who considered its mass base – the caste Hindu peasantry – essential to counter the Muslim League. The Muslim population had increased by 16.8 per cent by 1921 in the province.

The 1931 census laid the strange base for further communalisation of demographic politics. It traced the growth of the immigrant population in the province, especially the East Bengal peasants from Mymensing district. According to Mullan (the census superintendent), the figures ‘illustrate the wonderful rapidity with which the lower district of the Assam Valley are becoming colonies of Mymensing’ (CoI, 1931, p. 50). The immigrants were

compared with vultures attracted to a carcass, in their hunger for land.

The 1931 census and the period prior to it saw the emergence of very strong propaganda efforts by the Hindu Sabha of Assam, which strengthened the movement of the Vaishnava Gossains and Satradhikars. The census authorities saw it as an extension and reflection of a nation-wide movement, like the missionary efforts of the Hindu Mahasabha, or the Hindu Mission, whose activities were confined among the tribals of Bihar, Bengal, Orissa and Assam laying claims on the 'aboriginal'. Perceiving changes in the returns of the census, the census superintendents felt that 'the propaganda work of the Hindu Mission' was certainly a great success in Assam from their point of view and had an enormous influence on the tribal people in the grey area between Hinduism and Animism. It was felt that such a claim was a recent development in the practice of Hinduism, and was an effect of the census. Unlike the earlier efforts, there was no attempt to formally convert or admit people to the Hindu fold and caste hierarchy. The Assam Provincial Hindu Sabha presumed that the tribes of Assam, like the Garos, Khasis, Mundas, Santals, Karbis, Mishings, Mishmis, Lushais, Tiwas, Rabhas, Kacharis, Meches were 'really Hindus' (CoI, 1931, p. 188).

It was protested that the 1921 census classified such communities as well as castes like Kaibarttas, Chutiyas, Koches, etc. as Animists. The notice was issued in the interests of those who loved the Hindu religion. It was Hindu Mahasabha's response to the threat that was felt by the 'tide of conversion to Christianity'ⁱⁱ. By being 'saviors' to these communities, 'the simple men and women', who were being converted to Christianity by various missionary societies, the mission claimed to have brought back the aboriginal within the fold of Hinduism. Their arguments too largely drew from the notion of unilinear influence of Hinduisation, which considered these communities to be 'naturalised Hindus by long and close contact with their Hindu neighbours' (CoI, 1931, p. 189). It was claimed that the misleading propaganda by Christians and colonial notions about caste and tribe gave rise to misconceptions. This propaganda encouraged the 'Animists' to return as 'Kshatriyas', and claimed that the absorption was more than shown in the census report of 1931. 'The newly initiated Animists wanted to be returned as Kshatriyas' but as mentioned earlier, enumerators, who were mostly upper caste Hindus were not convinced of such claims and returned them as animist (ibid). So there were instances of claims and counter claims on the issue of enumerating and classifying by such communities and fluidity of practices led to complexities and sometimes over simplification of the situation.

The census Superintendent and District Commissioners always presumed the naiveté of these ‘tribal’ communities and suspected that enumerators, nearly all of them being Hindus were naturally biased. As the Deputy Commissioner, Darrang, commented, ‘the Hindus enumerator (and they are nearly all Hindus) tends to record all animistic and aboriginal tribes, such as Kacharis, Karbis, Mishings, Mundas and Santhals, as Hindus. Even if the enumerator fails, the supervisor or checking officer tends to keep him up to the scratch. An instance was brought to my notice at Halem where the enumerator had written Mishing, but the checking officer changed it to “Hindu Mishing”’ (ibid, p. 190).

The official categories and classifications were often questioned and checked by the agency and consciousness among these people, ‘animists’ and ‘aboriginal’. Mullan himself claimed to have ‘received several petitions from Kacharis in Kamrup stating that they had returned as Hindus in the census schedules and that they objected to the action of the enumerators recording their religion as Hindu’ (CoI, 1931, p. 190). The propaganda campaign by Hindu Sabha produced many fold effects – some Kacharis willingly returned as Hindus, others were convinced by the enumerators to accept that category, and in some cases the enumerators’ took advantage of confusion or ignorance to record them as Hindus. Because in some cases, where there were no definite name for indigenous faith, there was genuine confusion. Some Tiwas came to see Mullan in Nowgong in January 1930 and asked his advice as to ‘how they should return their religion’. He was convinced after questioning them, and ascertained that it was a ‘purely tribal religion’ and advised the Tiwas to tell the truth (ibid). Thereafter, the Tiwas resolved in a meeting that the community should return their religion as Tiwa. But during enumeration, ‘inspite... of this resolution the vast majority of Tiwas returned themselves as Hindus, in many cases, voluntarily’ (ibid). Mullan suspected that in many cases enumerators influenced by the Hindu propaganda entered ‘Hindu’ names of ‘tribal’ people ‘who found it difficult to state precisely what their religion was and often in such cases Hinduism got the benefit of doubt’ (ibid). The relative success of Hindu propaganda was evident in the increase in the number of Hindus, which was conflated ‘owing to the inclusion of animists such as Kacharis, Mishings and aboriginal tea garden coolies’ (ibid).

Goalpara, among all the districts in the Brahmaputra Valley, showed remarkable increase (38 per cent) in the numbers of ‘Animists’. A large number of people in the Kokrajhar thana of that district returned ‘both their religion and their caste as Boro’ and the growing numbers of the Santhali settlers added to it (CoI, 1931, p.

193). It could be attributed to growing political consciousness. It is interesting to note that it was in the same area in the earlier decades that there was an attempt of religious reformation among the Bodos and it was a primary location for the various Associations of the Bodos.

Tribal Identity and the Census

The reaction to census politics saw the emergence of revivalism, strongly articulating the imagination and construction of a notion of 'tribal identity'. The census of 1931 quotes Rupnath Brahma, an accepted spokesperson to the Bodo community, and the authenticity of their claims is reiterated by the qualification of 'who himself belongs to the Boro community' (CoI, 1931, p. 194). He made a definite political statement by saying that the Bodos should speak for themselves. He claimed that Boros or Bodoshad 'a distinct state of civilisation of their own... also a distinct form of religion which they have been retaining' and were definitely not 'idol worshippers' (ibid). He asserted that despite Hindu influences, 'The Bodos had a separate society of their own and never allowed their tribal peculiarities to be merged into the Hindu society' and that they did not recognise the Brahmanical supremacy of caste hierarchy (ibid).

The people who followed the Vedic religion of 'Brahma' cannot be treated as Animist. But Rupnath Brahma also stated that proximity of religious practices was overridden by other considerations, because 'according to their views, they would be losers thereby in the *social and political spheres*' (CoI, 1931, p. 194). Therefore, political consciousness was decisive in the decision to enumerate as Bodos. By the 1930s, the administration too had clearly accepted the discourse of the tribal politics: 'They are in favour of having a separate representation of their own in councils and other government departments and they are not in favour of allowing their tribal interests to be merged with those of the Hindus. With these objective in view many of the Bodos, especially those of the Kokrajharthana, returned themselves as Boro by religion and Boro by caste. They say that considering the strength of their population in the whole province they have a rightful claim to have a separate category as Boro or Bodo in the census report' (ibid).

The question of numerical strength of communities had become important by then and the Bodos had been officially striving towards 'separate representation' since the arrival of the Simon Commission. So the 1931 census had the instrumental

role in the further franchise reforms that was to be constituted. The assertion of the plains tribes was also very evidently attributed to processes initiated by representative communitarian politics. The intensity was perhaps not equal to the Hindu-Muslim tension because of these communities 'autochthonous' status and also because of the fluidity of identities that existed. But there was a mounting pressure on the question of identities and politics, which led to colonial policies regarding various communities in the sphere of representational politics and that affected Congress balance of politics in the province.

Maintaining a 'tribal' identity had become important for that purpose mainly. By the 1931 census, the connection between *political power*, *representation* and *community identity* was very obvious. Census superintendents were also asked to compile lists of the Depressed and Backward classes and for Assam, Mullan compiled a list of communities based on social divisions –

- (a) Hindu exterior castes.
- (b) Indigenous backward tribes.
- (c) Tea garden cooly castes.

Indigenous backward tribes of Assam were the aboriginal communities – 'either living in the hills like the Naga tribes – quite untouched by Hinduism' or 'living in the plains – like the Tiwas or Mishings – and influenced to a greater or less degree by Hinduism' (CoI, 1931, p. 204). The criteria or qualification for this category, especially in the case of aboriginal tribes living in the Brahmaputra plains, was that 'such tribes should still be aloof from the main body of Hindus and should still be generally regarded as a separate community rather than as a Hindu caste. In deciding this, the fact that they still speak a Tibeto-Burmese tribal language may be of importance' (ibid).

Therefore, the colonial state did widen certain fissures in the Brahmaputra valley, especially on the question of representation in the various bodies and institutions and generally on the question of social and political power.

Language and Tribe: Speaking Assamese and Being Tribal

Another interesting aspect of identity was language – dying tribal dialects, growing bilingualism and the convergence of the use of Assamese language with emerging notions of a monolithic 'Assamese' identity. Infact, the task of classifying was not easy if the marker of being a backward and depressed 'tribe'

was indigenous religion, as accepted by various officials. The Tiwas, Rabhas, Kacharis, Meches, Mishings were under various degrees of Hindu influence and it was generally agreed upon that, 'In spite of partial conversion to Hinduism they still remain tribal people' (CoI, 1931, p. 21). Even the caste Hindu Assamese middle class, though eager to include them in the fold of Hinduism, still found it difficult to accept them as proper Hindus because they kept 'pigs and fowls' (ibid). Therefore, the question of tribal identity hinged not only on the definition of religion and the movement of tribal to caste by conversion, but segregation from the caste Hindu hierarchy and language were considered important too. Therefore, the Kacharis were a backward tribe but the Ahoms were not, because the latter, 'though in many ways a separate community – (had) been for so long completely Hinduised' that they (were considered) a racial caste (ibid). The Kacharis though 'nominally Hinduised' were considered 'more a tribe' than 'caste' (ibid). Preservation of one's own language and also the social and cultural distance maintained from the 'general development of Assamese culture' distinguished the 'tribe' from the 'caste' and therefore 'backward' from the privileged (ibid). Therefore, the backward tribes of Assam were divided into two sections, 'the real hillmen and those living principally in the plains who have been Hinduised to a greater or less extent', like the Kacharis, Mishings, Tiwas, Rabhas, Hojongs, Tiparas of Sylhet and Deoris of upper Assam, those who had preserved their tribal languages (ibid).

As observed above, adopting the Assamese language was often not perceived as a mere linguistic shift, it often signified conversion to 'Hinduism', ushering in a transformation in culture and mother tongue. The 1891 census thought that the Bodoⁱⁱⁱ (Kachari) language was dying out because the Bodo (Kacharis) were 'gradually being converted to Hinduism, and when this process is completed, many adopt Assamese as their parent tongue, at least as soon as they drop their distinctive racial name' (CoI, 1891, p. 159).

There was a general concern about the disappearance of various languages of the Bodo group or about the decrease from the 1881 figures. The comparison shows a sharp decrease especially in the case of Tiwas and more so for the Rabhas. The loss was in favour of Assamese, because these tribes which for centuries had retained their languages, had been rapidly taking to speaking in Assamese. The colonial authorities expressed surprise and thought that changes like 'better communications... and the greater amount of trade and travel' put people to greater exposure. As observed by E.A. Gait, 'Thousands of Kacharis leave their

home they must perforce speak Assamese... The process will doubtless continue at an annually increasing rate, and entire extinction of all these languages... is probably only a matter of very few years' (CoI, 1891, p. 163).

From 1910 to 1921 the trend of decrease continued, but the indigenous tribal languages continued to survive and did not disappear as predicted 30 years back. The decrease continued because of 'contact with others, i.e. practically, contact with the Aryan languages of the plains' (CoI, 1921, pp. 122-123). Aryan languages did not mean Assamese alone; in many cases, Bodos and Dimasas who returned their caste as Kshatriya, also returned languages as Bengali, as it happened in the North Cachar Hills and Goalpara (ibid). But the languages most affected by external influences in the plains were the Chutiya, Tiwa, Kachari and Rabha. The period till the 1920s experienced the gradual but penetrative influence of Hinduism. But as acknowledged by J.W. Mc. Swiney, the 'superior Aryan civilisation' continued to exert influence and pressure, and according to the 1921 census, many may not have lost their mother tongue, and a great number of them being bilingual, therefore 'the usual feeling of superior civilisation conferred by Aryan speech must have influenced them concurrently with the move towards Hinduism' (ibid, p. 123).

By 1931, officially there was a more organised effort to enumerate languages and dialects more accurately and scientifically by collapsing the social, ethnic map with the linguistic map. And so by 1931, political awareness among certain tribal communities led to a consciousness distinctive enumeration. Therefore, 1931 census showed a 9.5 per cent increase in the speakers of the Assam-Burmese branch, i.e. the Bodo group which comprised of the Garo, Rabha, Chutiya, Boro or Bodo (Kachari), Dimasa (Hill Kachari) and Tiwa (CoI, 1931, p. 172). Mullan remarks:

In 1911 the number of Rabha speakers numbered 28,000 so that the 1921 census figures for this language were apparently too low, (Rabha speakers now number 27,000 against 22,000 in 1921) Chutiya speakers who now number 4,315 show a slight increase over the 1921 figure... Bara, Bodo, Mech or plains Kachari which increase over the 1921 figure.... Bara, Bodo, Mech or plains Kachari which showed a slight decrease in 1921 shows a considerable increase at this census in the number of its speakers- from 260,000 to 283,000. (CoI, 1931, p. 172)

In the earlier two censuses, i.e. 1911 and 1921, the question was whether the tribal languages were disappearing as a result of contact with others, and this had caused some alarm. But it was evident that those languages were not dying, and as mentioned earlier, there has been an increase in their numbers. Therefore, the notion that Assamese was successful in hegemonising over other dialects was erroneous. These communities were undoubtedly the only real bilingual people but they were conscious of ‘holding their own in a wonderful manner’ (CoI, 1931, p. 181).

The Tribal League and 1941 Census

Though the ethnographic aspect of the census was given up in the 1941 census, where caste ceased to be a category of enumeration, the ‘idea of politics as the contest of essentialised and “enumerated” communities had already taken firm hold of local and regional politics and thus no longer required the stimulation of the census to maintain its hold on Indian politics’ (CoI, 1931, p. 331).

Therefore, though the 1941 census was not an elaborate ethnographic exercise like the 1931 census, with data presented of only a limited number of communities at the district level such as the scheduled castes, scheduled tribes and other castes, it created political tension regarding number (Singh, 1996, p. 143). It generated controversy about categories and numbers, particularly because by then representation in the Legislative Councils and Assemblies was totally driven by the logic of politics of numbers and ethnographically defined communitarian politics. 1941 census evoked strong responses from various sections of the Assamese society and led to a debate in the Assembly and in the newspapers. The Congress criticised the government for manipulating the census operation so as to conceal the correct figures of the followers of different religions. The Congress moved an adjournment motion to discuss the census operation^{iv}.

The cause of discontent and tension was the changed basis of classification, a shift from religion as a matrix of classification to one based on community. Compilation for communities was done with reference to ‘race, tribe and caste’ and not religion as it was in the case of the 1931 census. The Congress and few others accused the United Party government of tampering with date compilation and deviating from the rules followed by the census authority of India. It was under the Assam provincial government’s instance that Mr. Marar, the Census

Superintendent, issued a special circular to the Deputy Commissioners and Census Officers in Assam to compile data on the basis of ‘community’. He wrote:

The basis for community is answer to questions 3, but generally the communities are unavoidably mixed up and where community cannot be ascertained in answer to question 3, answer to question 4 will be the basis; e.g. If a Kachari has not in answer to question 3 mentioned that he is a Kachari, and is returned under question 4 as Hindu, Muslim or Christian, he will be shown as Hindu, Muslim or Christian as the case may be, but if he is returned as a Kachari against question 3 he will be entered such irrespective of his religion. (ALAP, 1941)

The government stated that the purpose of clubbing communities professing different religions was to create a ‘separate entity under the constitution for the purpose of franchise’^v. Siddhi Nath Sarma, for instance, clarified that as the tabulation would be done on the basis of ‘community’, and not on religious lines, it would simplify the problem of treatment or classification of the primitive tribes. He added that in this way their total number regardless of their religion could be recorded (ibid). These efforts on the part of the colonial government to seek out community identity corresponded to the Tribal League’s own efforts to project community identity as one tribal people. And for this purpose the Tribal League carried out propaganda. As Bernard S. Cohn has observed, such active interference in the process of census enumeration, because of growing ‘consciousness of the significance of the census operation had reached a point where Indians were not merely content to petition and to write book: some group set out to influence the answers which people would give in the census’ (Cohn, 1990, p. 249). A bulletin of the Tribal League was taken out in 1940 with the main objective of instructing the ‘tribal’ people – Bodo, Kachari, Mech, Rabha, Tiwa, Mishng, Karbi, Deuri, etc. – about the politics of census enumeration^{vi}. The importance of the census for preservation of ‘tribal identity’ and interests was reiterated. The political aspirations of the Tribal League were molded by government policies, which were correspondingly influenced by these political aspirations.

There was a growing reliance on the census for supporting data for articulating political aspirations, which resulted in the convergence between the census and the world it sought to describe. By 1941, the census became very closely

interlinked with political issues like proving the existence of a community to validate the creation of a separate constituency. 'Enumeration on the basis of community would show as a distinctive community which would enable us to demand special provisions in education and in the socio-economic spheres'^{vii}. It was also emphasised by the Tribal League that if special measures were not taken to ameliorate their conditions, they would remain backward forever. The Tribal League's definition of 'tribals' was broad based and included those who were otherwise classified as 'Hinduised'. Religion was a secondary aspect of the identity. The essence of 'tribalness' was the existence of distinctive rituals and customs, rules and regulations, which were retained, therefore aiding the preservation of a distinctive lifestyle often in totality and some cases partially (Deuri, 1940, p. 4).

Further, the Tribal League also emphasised the separateness and difference of the social structure of the 'tribals' and the caste Hindu Assamese. The Tribal League persistently opposed various moves by more conservative circles and the Congress to categorise them as a part of the Hindu society. Such a projection was a simplistic depiction of a complex social reality. It is difficult to say whether the 'tribal' leaders comprehended the complexity and how far politically motivated was the invention of the notion of two polarised societies. But in giving it a concrete shape, at least in politics, the census aided the crystallisation of identity.

In conclusion, the census enumeration made the identity of the plains tribes a political reality. It became a site for contestation and redefining of identity because of the official legitimacy it conferred on communities. The apparent connection once established between the census and political rights contributed to the communitarian politics of the 1930s and 1940s. However, it also demonstrated that identities are never fixed and often situationally motivated, and there are several layers to one visible and tangible identity.

Notes:

ⁱ The nomenclature Kachari was loosely used for various communities like the Bodos, Dimasas, Sonowals and such groups.

ⁱⁱ As stated in the pamphlet quoted in the Census of India, 1931, p. 189.

ⁱⁱⁱ The nomenclature Kachari was used for the Bodo tribe and Dimasa tribe alternatively.

^{iv} *ALAP*, December 4, 1941: Adjournment motion in connection with the conducting of the last census operations in Assam brought by Siddhi Nath Sarma.

^v Classification of communities according to Appendix II, prepared by the Assam Government, was as follows : (1) Assam Valley Hindus; (2) Assam Valley Muslims; (3) Surma Valley Hindus; (4) Surma Valley Muslims; (5) Scheduled castes ; (6) Tribals people, Hills; (7) Tribals people, Plains; (8) European and Anglo-India.

^{vi} Deuri, B. (1940). *The Assam Tribal league*, 2(1).

^{vii} Deuri, B. (1940). *The Assam Tribal league*, 2(4).

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**Article: Are Contractual Employments Rendering Maternity Benefit Act, 1961
Toothless? A Case Law Analysis of Supreme Court of India and Delhi High
Court**

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**Are Contractual Employments Rendering
Maternity Benefit Act, 1961 Toothless?
A Case Law Analysis of Supreme Court of India and Delhi High Court**

--- Kimsi Sonkar

Abstract

The Maternity Benefit (Amendment) Act, 2017 which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper through the various Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper it has been attempted to analyse how the type of ‘employment contract’ namely, the permanent and contractual type (also known as fixed term), and ‘employment status’ (whether regular, temporary, ad-hoc or on daily wage basis and casual basis etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women.

Key words: Ad-hoc, Case laws, Contractual, Maternity Benefit, Maternity Leave

Introduction

In India, industrialisation started in the pre-independence era. With the increase in industrial workers also grew union movement, and there were demands for improvement in the working and living conditions of workers. Thus, social security legislation which provided the workers with benefits designed to insure them against the risks associated with their employment, to support them when unable to earn, and to revive them to gainful activity gained momentum. At International Labour Organisation (ILO) Conference in 1919, India participated

but did not give its assent to the clause of maternity benefit. First the Maternity Benefit Bill was proposed by the then Labour Union Leader N.M. Joshi. After this there were several maternity benefits acts which were adopted in pre-independent India like in Bombay (1929), Madras (1934), Uttar Pradesh (1938), West Bengal (1939), and Assam (1944). The first central enactment related to maternity benefit however was in the form of the Mines Maternity Benefit Act, 1941, but with a limited application as it was applicable only in mines. In independent India, after the constitution was formulated and adopted in 1950, the Fundamental Rights and Directive principles of the state policy provided impetus to consolidate and enact such legislations which would protect women's right. Thus, a central legislation in the form of the Maternity Benefit Act, 1961 was enacted. The Maternity Benefit Act, 1961 is a part of such a social security legislation in India. However, there are many legislations which provide social security to women against risks associated with maternity.

In this paper, only Maternity Benefit Act, 1961 as amended in 2017 has been taken into consideration in which liability for payments of maternity benefit has been placed on the employers. Such legislations which were considered to be measures of social security to the women workers are thus found to be inadequate as the employers found out ways to either avoid it completely or come to an undocumented compromise with the employees. The present paper deals with the cases in Supreme Court of India and Delhi High Court in which maternity benefit was denied to women workers, and examines how the ideals of social security namely, human dignity and social justice is meted out.

The Maternity Benefit Act, 1961 is a law that regulates the employment of women in certain establishments for certain period before and after childbirth. The Act extends to the whole of India and covers female employees in any shop or establishment employing 10 or more persons. According to the section 5(3) of Maternity Benefit Act, 1961 as amended in 2017, a female employee is entitled to twenty-six weeks of maternity leave, of which not more than eight weeks shall precede the date of her expected delivery. Further, as per section 5(2) it is required that she has actually worked in an establishment of the employer from whom she is claiming maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The Central Government is responsible for administration of the provisions of the Act in Mines and in the Circus Industry, while the concerned State Governments are responsible for the enforcement of the Act in factories, plantations, and other

establishments. The Central Government has entrusted the responsibility of administration of the Act to the Chief Labour Commissioner (Central) in respect to the Circus Industry. Concerning payment, the Maternity Benefit Act states that a female employee shall be paid at the rate of her average daily wage by her employer when she is on maternity leave. It is, according to the Act, unlawful for an employer to discharge or dismiss an employee during or on account of maternity leave. If a woman is deprived of maternity benefit or medical bonus or discharged or dismissed during or on account of maternity leave, she can approach an Inspector appointed under the Act. She can also file her case in court within one year if she is unsatisfied with the orders passed by the Inspector, or if a larger question of law is involved. The Maternity Benefit Act makes clear that an employer shall not employ a woman during the six weeks immediately following her delivery. An employer shall also not make a woman do arduous work, or work that interferes with her pregnancy, during the month before her expected delivery.

As enlisted in the above paragraph, the law provides for its implementation to all the establishments irrespective of type of employment. But as the subsequent sections would show, beneficiaries of the Maternity Benefit Act, 1961 have approached the court for its implementation in their respective cases. Like the Section 5(2) which deals for the right to payment of maternity benefits has also put forth a criterion that a woman is entitled to maternity benefit only if she has worked with the employer from whom she claims maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of expected delivery. Apart from such criteria which are specifically mentioned in the act, the contractual employment often has a fixed term after which the contract has to be renewed. Thus, the continuity of employment is broken, and entitlement becomes difficult to be claimed. It is worth noting how such beneficial legislation is either not implemented fully or a partial fulfilment of it is done taking the route of some of these loopholes. In fact, Chhachhi contends that, 'Protective legislation for working women has always been viewed as double-edged-laws for providing women with better working conditions in response to their specific needs have often been used against them and at times become an obstacle to their work opportunities' (1998, p. 21).

The judgements are analysed keeping in mind the different type of 'employment contract' namely, the permanent and contractual (also known as fixed term), and 'employment status' namely, regular, temporary, ad-hoc or on daily wage basis, either directly or through an agent, including a contractor, with or without the

knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. Often the denial of maternity leave to such women are based on the statute governing maternity benefit (as there are various other acts apart from Maternity Benefit Act, 1961 which also provide maternity benefit like The Employees State Insurance Act, 1948; The Beedi Workers Welfare Fund Act, 1976; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Advocates' Welfare Fund Act, 2001; The Payment of Wages Act, 1936, to name a few) in the organisation where the women is employed.

The following judgement analysis would substantiate this argument further as often contractual employment is taken as a ground for not providing women with maternity benefit that is the paid leave and other associated benefit. Women are often compelled to leave their jobs on account of their pregnancy. D'Cunha (2018) has argued that the increased maternity benefit by the latest amendment can have unintentional effect such as replacement of women by male labour, reduction in women's wages and labour force participation as employers have been made fully responsible for providing maternity benefits. On similar note, Uma and Kamath (2019) have also argued that women workers were particularly vulnerable to arbitrary and sudden termination when they declared their pregnancy citing reasons like poor performance, attendance, loss of projects, overall downsizing, etc. Many cases are not even recorded as they either do not have the capability to approach for justice or they settle for a compromise evading their immediate difficulties.

The structure of this paper is as follows: first section is case law on maternity benefit in which a detailed analysis of three case laws namely, first in Supreme Court, *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.*ⁱ in 2000, second and third in Delhi High Court, *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.*ⁱⁱ, and *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.*ⁱⁱⁱ, in 2013 and 2020 respectively, is done to explicate the main argument made; then in the next section a general overview of the analysis of the case laws on maternity benefit with some statistics collected regarding the number of case laws is provided to further the main argument and finally a concluding remark is provided with a way forward. In this paper, three judgements are selected on the basis of their relevance for a detailed discussion,

while the thorough analysis of judgements covered in the timeline form the basis of the main argument put forth.

The Case of Female Workers on Muster Roll^{iv}

In the year 2000, Supreme Court gave its landmark judgement in *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.*, in which it held that maternity benefit should also be given to workers on muster roll like the regular workers. In this case, the appellant, Municipal Corporation of Delhi, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the Delhi Municipal Workers Union, the union concerned, espoused their cause. Consequently, a reference was made to the Industrial Tribunal to adjudicate upon the question: ‘Whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?’ The union claimed that the workers on muster roll were recruited perennially and were engaged on the same nature of duties and responsibility as regular workers, yet denied maternity benefit under the Maternity Benefit Act, 1961, while the Corporation argued that since the workers on muster roll were on daily basis, they could not be granted maternity leave under the Act. The Industrial Tribunal allowed the claim of the female workers (muster roll) and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster-roll workers who were in continuous service of the Corporation for three years or more. The Corporation’s writ petition and writ appeal were dismissed by the High Court. The subsequent litigations and the issues involved: whether the Corporation comes under the definition ‘undertaking’ and ‘industry’ or not as per the Industrial Dispute Tribunal Act?

Before the Supreme Court, the Municipal Corporation contended that since the provisions of the Maternity Benefit Act, 1961 had not been applied to the Corporation, such a direction could not have been issued by the Industrial Tribunal. The Corporation further contended that the benefits provided by the Maternity Benefit Act, 1961 could be extended only to work-women in an ‘industry’ and not to the muster roll women employees of the Municipal Corporation. The Supreme Court upheld the decision of Industrial Tribunal that Municipal Corporation was an industry under the Industrial Disputes Act, 1947 and all the statutory provisions applicable in Industrial Law including Maternity Benefit Act, 1961 would be applied. The judges were of the view that as per the

Maternity Benefit Act, 1961, there is no provision which says that only the regular employees are entitled to maternity benefit and not those on casual basis or on muster roll on daily-wage basis. The court finally affirmed what the Industrial Tribunal had directed the Municipal Corporation of Delhi, that is to grant the maternity leave to muster roll workers who were in service for more than or equal to three years. It is important to note the reasoning given in the judgement as it explains the underlying philosophy of maternity benefit. The excerpts:

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation, and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre- or post-natal period. (Municipal Corporation of Delhi vs. Female Workers and Ors., para 30)

The Case of Contractual Paramedics^v in Government Hospitals

In *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.*, the Delhi High Court itself has pointed out how the employees working on contractual basis are having grievances in terms of denial of entitlements of wages and other benefits, including the maternity benefits. However, they have taken a consistent view that the contract appointed employees could not be equated with regular employees. It is worth noting here that in the judgement it is mentioned how the Government of NCT of Delhi had issued an office order directing that the contract appointed

paramedics would be entitled to the various leaves including maternity leave for 135 days for delivery and paternity leave for 15 days. Further, the judgement gives the excerpts of a circular by the Government of NCT of Delhi on November 19, 2012, which was issued enclosing therewith 'Proforma of consent' to be accorded by those who were engaged on contract basis, condition No.10 which expressly said that Maternity Benefit Act, 1961 would be applicable to them.

The court had further cited the judgement by itself in 2013 in the writ petition Government of NCT of Delhi and Anr. vs. Suman Singh that a female contractual employee who is working for eleven years would be entitled to maternity leave, while a male contractual employee to paternity leave. However, the point to be noted here is that it neither went into the reasoning for taking the eleven years, and not ten or nine years. The discretion and consequently the arbitrariness in deciding the time period of the court on case-to-case basis without providing a reasoning would interfere with the laws uniform application and the precedent would be subsequently followed. The quote:

A lady contractual employee who is working for 11 years would certainly be entitled to maternity leave and so would a male contractual employee to paternity leave. (Government of NCT of Delhi and Anr. vs. Suman Singh, para 12)

The court has directed for one-time policy of regularisation in which existing contractual employees shall be considered for appointment to these new posts. It is worth noting that if such a direction could be made in some sectors of service, why the same has not been implicated in education sector where huge number of ad-hoc professors are appointed in Higher Education Institutions (HEIs) and consequently denied the other benefits including the benefit of paid maternity leave.

Despite the above mentioned point, the court in Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors. deciding on the writ petition of petitioners, who are paramedics in different hospitals established by the Government of NCT of Delhi working as contractual employees for over a decade and a half over, the grievances that they are not being extended the benefit of the law declared by a Victoria Massey case^{vi}, directed that all contract appointed employees shall be paid wages by the Government of NCT of Delhi and shall be entitled to leave of all kinds including maternity and sick leave. It further directed that the

Government of NCT of Delhi to carry out a personnel requirement assessment in all its departments, sanction the number of posts as are necessary, thus, framing a one-time policy of regularisation amending the existing rules in different departments and considering the existing contractual employees for appointment to these new posts. The legal reasoning in this case thus came out to be that if personnel were recruited in service in accordance with the recruitment rules, they were entitled to regularisation.

The Case of Ad-Hoc Assistant Professors in University of Delhi

In *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.*, the petitioner, who was employed by the University of Delhi on ad-hoc basis since 2013 and completed tenure of more than five years with the University, of which tenure of four and a half years are at Sri Aurobindo-Evening College, the respondent No.1, through the writ petition sought directions quashing the impugned letter of termination dated 29.05.2019 issued by the respondent No.1 – the college, and the direction to the respondent No.1 to reinstate the petitioner to the post of Assistant Professor on ad-hoc basis from 20.03.2019. The court noted the petitioner's counsel argument that the petitioner's contract, which had a specific term of four months each, had been continuously renewed from 2014-2019, after a working day's break, till the end of every academic session; but when she proceeded to go on her maternity leave, the college removed the petitioner from the rolls of the college. However, the single judge bench court dismissed in limine^{vii} the petition^{viii} stating that the petitioner's contract with the respondent – college was with effect from 19.11.2018 to 18.03.2019, which had already ended, and she was no longer on the rolls of the respondent; therefore, no question arose for allowing the petitioner to resume her duties unless the period of contract was extended by the college.

When the petitioner filed an appeal against single judge bench judgement dated on 20.08.2019 via *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.*, the Division Bench Court quashed the termination order and directed the respondents No. 1 & 2/College to appoint the appellant/petitioner forthwith to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointments.

The court specifically noted that the reason for the denial of the petitioner's re-employment as an Assistant Professor on an ad-hoc basis in the respondents No.1

& 2/College, despite being the senior-most and no issues raised on her performance as a teacher, to be only that she applied for maternity leave from the respondents No. 1 & 2/College to take care of her newborn.

The judgement further mentioned the AC Resolution which stated the rule of the university which excluded 'maternity leave' from the list of admissible leaves, wherein the court itself had pointed out that there were other kinds of leave which could have been granted to her 'such as half pay leave on medical grounds, casual leave and earned leave'^{ix}.

The judgement still further mentioned how extension was granted during the entire five years of her service with at least one day break and that declining the extension was not on the basis of her proficiency and ability. It also noted how similar ad-hoc and guest appointments were continued thereby highlighting the arbitrariness and whimsicality of the administrative authority of the college. Unlike other cases discussed so far, the court in this case noted that denial of maternity leave could not be said to be on the argument that the ad-hoc appointment contract was not liable to extension as their very own engagement of the petitioner and other ad-hoc Assistant Professors made clear that the extension was also required and the need for appointment of professors was also there.

The court in its decision denied the ground for declining the extension of tenure to be legitimate, and stated that when the petitioner needed such leave, the denial would mean penalising a woman for choosing to become a mother together with her employment. The court also mentioned that it would violate the basic principle of equality before law and equality of opportunity enshrined in Articles 14 and 16 respectively and also her right to employment and protection of reproductive rights as a woman enshrined in Article 21 of the Constitution of India. The excerpts:

...Such a justification offered by the respondents for declining to grant an extension to the appellant/petitioner as she had highlighted her need for leave due to her pregnancy and confinement would be tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment. This is violative of the basic principle of equality in the eyes of law. It would also be tantamount to

depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16. (Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors., para 17)

However, it is to be noted that since the present appeal was not concerned with the regular appointment of the appellant/petitioner to the post of Assistant Professor with the respondents No. 1 & 2/College, the court did not decide upon it and merely mentioned that the process had already commenced, and the appellant/petitioner would be entitled to participate therein. The court finally quashed the termination order and directed Aurobindo College-Evening to reinstate Manisha Priyadarshini to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointment.

Socio-legal Observations on the Judgements

A careful analysis of judgements from Supreme Court of India and Delhi High Court was done from the year of passing of the Act that is 1961 till 2020. The judgements which involved the benefits of maternity as per the Maternity Benefit Act, 1961 or any related legislation having the provisions of it were analysed. The contractual appointment here covers all, variously referred as contract-basis, casual-basis, daily-basis, and ad-hoc basis. The number of cases in which the women involved were employed on contractual or casual or daily basis was numerically higher than the number of cases which involved other issues of contention^x. When compared with other cases, a clear trend could be seen that the majority of the women who did not get maternity benefit were either employed on contractual basis or casual or daily basis. They were either given termination letters when they applied for maternity leave or denied any maternity benefit at all, irrespective of the fact whether they were employed in public or private sector. However, the judgements related to public sector in which permanent employment was the case, the issues involved were clearly different namely, related to the calculation of period of maternity leave or amount of leave and the likes. Apart from these issues, the contractual employment cases had a common matter related to the contract period of their employment which either did not

coincide with the maternity leave sought or wrongfully terminated so that maternity benefit could not be availed on account of non-fulfilment of the criteria given in the Act.

From the above discussion, it is clear that despite the fact that court itself in Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors.^{xi} interpreted that the Maternity Benefit Act, 1961 to be applicable to all establishments, irrespective of the nature of employment, whether tenure, contractual or of a kind which has acquired a status but only in relation to such establishments as which falls within the definition of 'Establishment' in Section 3(e) of the Act.

Further as discussed above, though it had been settled in the Supreme Court of India that workers on muster roll having same responsibilities as regular workers of Municipal Corporation of Delhi were entitled to maternity benefits, yet a number of cases had been filed which involved contractual workers and employees being denied maternity benefit. Often in the contractual, non-regular, casual, or daily wages employment, the woman is terminated when she applies for the maternity leave as was also established in *Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors.*^{xii}; *K. Chandrika vs. Indian Red Cross Society and Ors.*^{xiii}; *Vishakha Kapoor vs. National Board of Examination and Ors.*^{xiv}; *Vandana Shukla vs. Indian Institute of Public Administration and Ors.*^{xv}, etc.

The court in many case laws is cautious of the real motive being different than what is cited for termination in case of probationary or contractual appointments, especially when an event has followed related to the person concerned which might warrant any other motive. This is clear when the court observes in *National Board of Examinations vs. Rajni Bajaj and Ors.*^{xvi} that it is 'open to court to lift the veil'. The court has itself held that merely the form of order cannot be conclusive of its true nature.

Similarly, in many cases, the maternity leave was not given due to expiry of contract like in *Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors.*^{xvii}; *Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department and Ors.*

Has Maternity Benefit Act, 1961 been Rendered Toothless by Contractual Employment?

Considering what women go through during their pregnancy, paid maternity leave and other facilities like crèche needs to be given to women irrespective of their type of employment and status of employment. The 2017 amendment made it mandatory crèche facility for every establishment having fifty or more employees and four visits to the crèche including the interval for rest allowed to her^{xviii}. The requirement of minimum number of employees is important to note for two reasons: first, this makes the claim of women working in establishments with less than fifty women employees to crèche entitlement difficult to make, and at the mercy of employers in such organisations as they have no statutorily sanctioned requirement to be fulfilled. Also, this would discount the efforts to realise the objective of Maternity Benefit Act, 1961 ‘to protect the dignity of motherhood by providing maternity benefit for the fuller and healthier maintenance of woman and her child when she is not working’^{xix}. Second, that the Act is unclear on the eligibility as it does not specify on the number of female workers for crèche to be provided unlike The Factories Act, 1948 which mentions it to be thirty or more female workers as per section 48. However, this could also be read as progressive legislation since by making it only minimum criteria to be fifty workers, it would help in making childcare more gender-neutral.

There are other issues regarding the implementation of the crèche facility, as pointed out by D’Cunha (2018), that the Act neither defined common facilities nor gave guidelines governing crèche accessibility, infrastructure design standards, child enrolment and retention ages, competence standards for personnel and care. He has further argued that the crèche provisions do not consider the childcare support from the extended family in middle-class Indian families and the domestic workers help. He argued that the Act also overlooked the physical and monetary costs of transporting children to and from worksites nor did it make provision for subsidising the cost for childcare support by domestic worker. Even similar arguments were made by the respondents in the field study on the need of crèche. Not only the crèche facility but feeding room at every public place was suggested by many respondents. The maternity benefit which comprises paid leave and crèche facilities should be available to working women in each and every sector at each level. However, as it can be seen from the overall analysis of judgements, this is not the case despite legislation of a separate Act for the same namely, Maternity Benefit Act, 1961.

Most of the cases in which maternity leave was denied pertained to contractual appointments. This was the trend even after the landmark judgement by the Supreme Court in *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Anr (Supra)* in which the apex court held that even workers on muster roll are eligible for maternity benefits. To take an example of HEIs where a trend of ad-hoc appointment to teaching positions is followed, thereby effectively denying women maternity benefits on account of being non-permanent employment status. The ‘Absorption Demand’^{xx} by the Assistant Professors of Delhi University is a testimony to the agonies faced by such ad-hoc female assistant professors. The process of regular appointment or what is called permanent employment, in which maternity benefits comes under other benefits to be given to the employee, is decreasing, and if at all they are happening, the process is extremely slow. In such a situation, the judgement in *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.*, wherein the termination order was quashed and reinstatement on an ad-hoc basis as was done earlier. Such judgements are anything but a norm. They come as exceptions and often leave us to think as to why at all a statutorily given right needs to be enjoyed by fighting a lawsuit? There can be no straight jacket answer to this. The Act puts the obligation of payment of maternity benefit solely on employer and an employer running a business wants to increase its profits. The measures adopted for increasing their profits involve reducing their expenditure and payment of maternity benefit in the form of paid maternity leaves is an expenditure they want to surely cut on. Since this cannot be done statutorily, the mechanism is not direct but through some loopholes, in this case it is a contractual employment of short durations. So, then, are contractual employments rendering Maternity Benefit Act, 1961 toothless for formal workers^{xxi}? Indeed, the trend shows some evidence to answer this in the affirmative.

Table 1 below illustrates the number of cases related to maternity benefit in Supreme Court and Delhi High Court as given on Manupatra^{xxii} from the year 1961-2020.

TABLE 1: NUMBER OF CASES IN SUPREME COURT AND DELHI HIGH COURT (1961-2020)

Name of the Court	Total No. of Cases for Word Search 'Maternity Benefit'	No. of Cases Actually related to Maternity Benefit	Employer/Maternity Benefit Granting Authority		Nature of Employment		
			Public Sector	Private Sector	Permanent	Contractual /Temporary	Students
Supreme Court of India	56	8	2	6	0	2	0
Delhi High Court	69	34	31	3	1	17	8

From Table 1 it is clear that most of the cases in Delhi High Court involve the Public Sector as an Employer/Maternity Benefit Granting Authority and contractual type of employment.

The point to be noted is that, contrary to the assumption^{xxiii} that employees are granted maternity benefits in public sectors easily as compared to private sector, here we see a trend that majority of the cases involved the public sector as an employer. The point further to be noted is that a mode of contractual employment is increasingly taken in public sector where most of the contention related to maternity benefit relates to. All these strengthen the main argument that contractual employment is rendering Maternity Benefit Act, 1961 toothless.

The Maternity Benefit Act, 1961 categorically puts the burden of maternity benefit to be paid to women employees on the employers. From hindsight, it is logical to assume that the employers, whether in public sector or private sector, are always trying to reduce their cost and expenditure. In a mixed economy like India, though the government is guided by welfare of its citizen, it has also embarked on downsizing economy and efficiency in its governmental functioning and increasingly seeing the viability of its economic undertakings, which makes them look for ways to reduce cost and expenditure. In India, the social security provisions are given in various statutes comprising both pre-independence as well as post-independence statutes. To name a few, The Factories Act, 1881; The

Mines Act, 1901; The Workmen's Compensation Act, 1923; The Trade Union Act, 1926; The Payment of Wages Act, 1936; The Employees' State Insurance Act, 1948; The Industrial Disputes Act, 1947; The Industrial Employment (Standing Orders) Act, 1946; The Factories Act, 1948; The Minimum Wages Act, 1948; The Employees' Provident Fund and Family Pension Fund and Deposit-Linked Insurance Fund Act, 1952; The Payment of Bonus Act, 1965; and The Maternity Benefit Act, 1961. Approaches to Social Security as per ILO is, 'The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards'^{xxiv}. Though there is no dearth of social security legislations in India, as the statutes listed out would show, yet the workers are denied in many instances. As in this case, one would discern from the analysis of judgement that even court has noted that regularisation of employees needs to be done by proper manpower assessment and giving them social securities. However, we see that contractual employment as a type of employment is increasingly being opted by the employers in every sector of economy, be it public or private, where the employer has found out a loophole to avoid such social security payments like maternity benefit which tend to reduce the burden on them. As explained through the three case laws, Maternity Benefit Act, 1961 is rendered toothless with the contractual type of employment.

Conclusion

The Maternity Benefit (Amendment) Act, 2017, which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper by analysing three case laws from Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper, it has been attempted to analyse how the type of 'employment contract' namely, the permanent and contractual type (also known as fixed term) and 'employment status' (whether regular, temporary, ad-hoc or on daily wage basis and casual basis, etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit, if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. Both the government and private employers are parties to the judgements analysed, and both have denied maternity benefits on the ground of contractual employment.

This paper argues for a need of legislative amendment by inclusion of text clearly

mentioning the employment types and statuses in section 3 (o), which defines 'woman' as a woman employed, whether directly or through any agency, for wages in any establishment, so that its reading is not left to the employer to decide and giving a scope of discretion to deny maternity benefit. This paper also argues that the judgement pronounced in *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.* related to maternity benefit claim of an Assistant Professor working on ad-hoc basis is a landmark judgement for the contractual employees who are often denied maternity leave on the ground of their contractual employment type and ad-hoc, temporary, casual, daily basis of employment status. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women. This paper has argued overall that keeping in line with the objectives of the Maternity Benefit Act, 1961 'to protect the dignity of motherhood' would be achieved only when every working woman is provided with maternity benefit irrespective of type and status of employment.

Notes:

ⁱ *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.* (08.03.2000 - SC): MANU/SC/0164/2000.

ⁱⁱ *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.* (06.11.2013 - DELHC): MANU/DE/4116/2013.

ⁱⁱⁱ *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.* (20.08.2019 - DELHC): MANU/DE/2695/2019.

^{iv} Muster roll worker is a worker on daily wage rate basis whose attendance register is maintained by the establishment.

^v The paramedics are specialist healthcare professionals who provide emergency medical treatments and work with diagnostic tools like X-rays and ultrasound etc., in testing labs. In this case, the paramedics referred to are working as Nursing Attendants, O.T. Technicians, Laboratory Assistants, E.C.G. Technicians and Junior Radiographer in different hospitals established by the Government of NCT of Delhi.

^{vi} On July 23, 2008, deciding O.A. No. 1330/2007, the Full Bench of Tribunal held that contract employees working in various hospitals established by the Government of NCT of Delhi as also Municipal Corporation of Delhi would be entitled to wages at par with the regular employees including increments. However, this decision was modified by a Division Bench of this Court on May 22, 2009, when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey was decided. The Division Bench held that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments. This decision was challenged in Supreme Court but was unsuccessful, consequent upon which on November 19, 2012, the Government of NCT of Delhi had issued an order which is challenged in the present case.

^{vii} The Latin word *in limine* mean at the threshold. Here, used by the High Court as it did not even consider the case worthy of being discussed in the first place.

^{viii} W.P.(C) 8518/2019

^{ix} *ibid* at note 3

^x See Table 1

^{xi} Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors. (01.11.2013 - DELHC): MANU/DE/4963/2013.

^{xii} Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors. (09.08.2005 - DELHC): MANU/DE/1055/2005.

^{xiii} K. Chandrika vs. Indian Red Cross Society and Ors. (24.04.2006 - DELHC): MANU/DE/1807/2006.

^{xiv} Vishakha Kapoor vs. National Board of Examination and Ors. (03.03.2009 - DELHC): MANU/DE/0971/2009.

^{xv} Vandana Shukla vs. Indian Institute of Public Administration and Ors. (14.09.2018 - DELHC): MANU/DE/3330/2018.

^{xvi} National Board of Examinations vs. Rajni Bajaj and Ors. (10.02.2012 - DELHC): MANU/DE/6348/2012.

^{xvii} Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors. (08.02.2018 - DELHC): MANU/DE/0614/2018.

^{xviii} As per Section 11A, sub-section (1) and (2) of Maternity Benefit (Amendment) Act, 2017.

^{xix} The objective of Maternity Benefit Act, 1961 as described by Labour Commission Government of NCT of Delhi.

^{xx} In the field study, assistant professors, who were ad-hoc appointees in various colleges of the Delhi University, were interviewed, who were running the Absorption Campaign during January-February, 2020 near the Vice Chancellors' house where the demand was essentially to regularise them and give them the social security benefits prominently the maternity benefit.

^{xxi} According to the Ministry of Labour and Employment, formal workers are all those workers who are employed in an enterprise with ten or more workers. It also includes all government workers as formal workers.

^{xxii} Total no. of cases for word search 'Maternity Benefit' has been taken from Manupatra. Though same word, search has been done for triangulation from two other sources namely, SCC Online and India Kanoon, which revealed different number of cases. Through a careful reading of the same, it was ascertained that only the number of cases which were given on Manupatra were relevant for this study.

^{xxiii} In a field study done on 'Maternity Benefit in Higher Education Institutions in India', the respondents mentioned that maternity benefit was easily available to public sector employees than the private sector employees.

^{xxiv} Report of National Labour Commission, 1969 (p. 162) cited ILO's Approaches to Social Security.

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Article: A Life in the Shadow of the Mountains: An Empirical Study of the Lesser Known Speech Community of *Dhimal*

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**A Life in the Shadow of the Mountains:
An Empirical Study of the Lesser Known Speech Community of *Dhimal***

--- Nishit Ranjan Chaki

Abstract

The Constitution of India makes provision for a heterogeneous and multi-cultural society. A reading of Parts III and IV reflects broad differentiation between provisions empowering the individual and the community. Articles 29, 30 provides for Cultural and Educational Rights for communities. Articles 21, 21A champions individual rights and liberties. Thus, we come across a dichotomy between the individual and the group (community) aspirations, requirements and probable choices. The modern State deals the more obvious dichotomies legally (e.g. rules of marriage, family, inheritance). However, subtle dichotomies manifests as social processes, and must be carefully recognised (e.g., language erosion). Leaving them to the mercy of the dominant social identities will impact the redistributive goals of justice, a primary concern of the law. Language has to be preserved if multiculturalism is to be preserved. Education (perhaps the only subject mentioned in all the Parts III, IV and IV-A) involves questions of mother tongue, medium of instruction and inclusive growth. Dhimals, a lesser known speech-community in the Indian Terai-Himalayan region, have been facing the dominant social identities of Bengali, Gorkhali and Rajbanshi since long. The paper discusses how their cultural identity and language are at stake and may proceed to the path of extinction as most of the constitutional and legal benefits are directed to the other linguistic communities in the region while Dhimals are not even legally recognised as a tribe.

Key words: Dhimals, Identity-crisis, Linguistic-minority, Rights

What moves us, reasonably enough, is not the realisation that the world falls short of being completely just – which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate.

– Amartya Sen (2009)

Introduction

The normative foundationⁱ of the Constitution was decided by the Constituent Assembly, and though the Constitution has often been amended, yet, the normative foundation is to be preservedⁱⁱ. The Preamble reflects this foundation and the *society* that it wills into existenceⁱⁱⁱ, in which the principles of *Justice, Liberty, Equality* and *Fraternity*^{iv} are secured to all the citizens. Thus, the Constitution ensures, amongst other ends, social and economic justice, liberty of thought and expression, equality of opportunity and dignity of the individual. The value of justice and equality^v are the primary subject of this essay; however, certain aspects of the value of liberty will also be inquired into.

In our heterogeneous society^{vi}, languages like Tamil, Telegu, Odia, Bengali, etc. have always been popularly cherished with strong social presence. The provincial-committee reorganisation of the Congress party in the 1920s (Krishna, 1966) gave a boost to linguistic identities and language nationalism. Soon after independence, the federal division was redrawn in 1956 primarily on the linguistic basis (Choudhry, 2009) which henceforth dramatically changed the sociological effects of now federally entrenched linguistic identity^{vii}. Hence linguistic identity can be singled out for the basis of analysis between various competitive constitutional values.

Being a unique social and constitutional problem, legally languages are diversely classified as Classical Languages, Scheduled Languages, Official Languages, Mother Tongue and Other Languages. Language is an instrument of upward social mobility and also has overtones of emotional attachment and individual identity. Evaluating^{viii} an occurrence or practice as constitutional or unconstitutional forms an integral part of any understanding of constitutional law and thus, it necessitates the examination of the actual effect of the Linguistic Rights in developing the society promised. The concerned constitutional provisions^{ix} are primarily found in Part III and Part XVII respectively.

The small linguistic communities^x in India have a much heightened form of complex relationships with the present form of language classification referred above. Very often, small-languages are relegated to the informal domain of the home/family and may be perceived as an inferior language^{xi} which is to be avoided in the general social interactions. It is important to explore this maze of language rights from a constitutional perspective and a socio-legal empirical

approach seems to better calibrate this exploration with the ground-reality. Within this theme of identity crisis, the present paper seeks answers to the following research questions with respect to the *Dhimals*:

RQ 1: What is the perception of the community on the role of Dhimal language in shaping the cultural identity of an individual?

RQ 2: What necessitates the people of Dhimal community to adopt the language of other linguistic communities?

RQ 3: What role does the law play in facilitating or restricting the learning, use and preservation of Dhimal language *vis-à-vis* other languages?

RQ 4: How far are the specific demands of the Dhimal community in so far as language is concerned in competing with other linguistic communities and is constitutionally compatible?

The specific focus of this essay is on the Dhimals in relation to the other dominant communities, yet, the findings will serve greater purposes in similar contexts. It is expected that this paper will attempt to provide an understanding of the social-psychological impact of the constitutional and legal provisions^{xii}. The question of language is studied at the very bottom of the social structure, as it is realised and experienced in day-to-day life and education. In this respect, this essay makes one of the first attempts to study and understand the effects of law on a social question with respect to the Dhimals.

An Account of the Dhimals

The Dhimals live in close vicinity to the dominant linguistic community of Bengali (this term refers to West Bengal Bengalis only) and share their neighbourhood with the other community of *Rajbanshis* (the North Bengal development department website specifically mentions the districts of Jalpaiguri, Cooch Behar, Darjeeling, Malda and Murshidabad in West Bengal as home to the speakers' of this language). It was found that the latter have been increasingly occupying the immediate neighbourhood of the Dhimals and thus directly affecting the language used. Further, many words from the *Gorkhali* community have entered into and are widely used in the Dhimal community. This provides an interesting account of the interplay of the various socio-legal aspects connected to the issue of language preservation. These other linguistic groups have had a history of language-development, language-movement and West Bengal has time and again seen separatist movements from the Gorkhas and the Rajbanshis. Thus,

the Dhimals become more vulnerable to language and identity dilution whereas the minority groups referred to above have been given protection as castes and tribes and thus gains from the substantive equality principle.

Dhimal^{xiii} is a community in Northern part of West Bengal (popularly known as North Bengal) residing in nearby three villages of the Naxalbari region (popularly known as *Dhimal Basti*, known as *Ketugapur* in the Dhimal language) of the Darjeeling district. Though a small section of Dhimals can be found in Nepal also, but their only major concentration of population is in this place in India which further accentuates their vulnerability. It is found that the approximate population of Dhimals are 1000 (Lahiri, 2016), however, during the present enquiry, the number was suggested (by the participants) to be approximately 2000. Dhimals prefer to conduct marriages within the community itself, claiming that inter-community marriages are generally prohibited or looked down upon. Yet, during the present study it was reported by one of the participant (Ganesh Mallick, name changed) that such marriages do take place and in most of such cases, the bride or the groom take up the identity of the other community, mostly being Rajbanshis and/or Gorkhalis and this shows the level of vulnerability prevalent.

However, the situation is slowly becoming favourable as more and more persons from the Dhimals become aware of the language and shows interest in learning and preserving the same. One of the participants of the present study was the first graduate from the community (have been a school teacher) who recalls a life-long struggle to preserve his mother tongue.

Dhimals are one of the oldest inhabitants of the region right from the first census of 1872, and along with *Meches*, are said to be the early chief inhabitants due to their not being affected by the then unhealthy nature and climate (Khasnobish, 2012). This was also corroborated by the participants who claimed that the population that resides in Nepal have migrated from here due to a number of reasons like the unwillingness to work as tea-plantation labourers, breach in traditional forest-dependant lifestyle and limited interaction with the huge influx population that came when the tea industry evolved. The Dhimals of Nepal are at a relatively beneficial position due to the favourable circumstances (Biswas, 2008) and this further creates incentives for migration.

Interestingly, the Dhimals were placed at the mercy of the colonial laws of forest conservation, tea-garden establishment, etc. which affected their practice of *jhum*

cultivation and made them depend on other sources of livelihood. Gradually they migrated from their home and went on to other territories, leaving behind their home to many of the influx population. One of the participants in the present study even pointed out that their identity is often mixed with that of Rajbanshis, Meches, etc. and this can be corroborated by the historical documents studied by earlier scholars (Biswas, 2008). This respondent stated that this community was treated all along as a tribal community, and yet due to some reason they did not end up being a tribe in independent India and thus as a beneficiary of the constitutional protection.

Research Design

The fact of limited educational attainments and potential likelihood to understand and respond to the interview in a meaningful way was kept in consideration while preparing the research design. The first respondent was selected on the basis of his educational attainments and role in language protection. Thereafter, snowball sampling was resorted to for identifying the other participants. The sample size was decided based on the data saturation that was reached based on suitability of the studied participants on basis of their characteristics like age, gender, education, and language proficiency to answer the interview questions. The following six participants were interviewed for 30-40 minutes each in consecutive sessions in Bangla:

- a. Ganesh Mallick (GM) (name changed, age sixty-plus, retired teacher);
- b. Ruchi Mallick (RM) (name changed, tentative age twenty, college student in Bangalore). She dressed up in traditional attire before presenting herself for the interview;
- c. Krishno Mallick (KM) (name changed, age seventy-five, farming);
- d. Raju Mallick (RM2) (name changed, age twenty-four, unemployed school dropout);
- e. Kanti Mallick (KM2) (name changed, age fifty, farming)

The interview was a semi-structured one with open-ended questions. These interviews were audio-recorded, translated and then analysed as per the required data-set.

Individual Identity Formation in Dhimals

This section will explore the role of the Dhimal language as perceived by the

community in individual identity formation (the focus of Research Question 1).

GM emphatically says, ‘...they (the Nepali-Dhimals) say about their forefathers belonging to West Bengal/Jalpaiguri, Assam, etc. However, we never hear of vice-versa’. He further states that this claim can be supported by their practice of offering prayers in East-West direction and naming of deities reflecting terms from this region. Population pressure seems to be one of the most important direct reasons of linguistic vulnerability. Due to the larger social presence of the other languages, individual Dhimals community are practically forced to learn and borrow terms from those languages. For example, RM states^{xiv} that, ‘Dhimal is less than 1000 and thus the language use and learning gets affected, especially we don’t even have a school in our language. We study in Bengali, Nepali, etc. and thus our language gets lost day by day due to non-usage’. Various sociologists have often highlighted this process of adoption of the dominant culture (Muysken, 1999) and language often plays a dominant role in this social process (Appel & Muysken, 2005). Further, it was stated that unfortunately even their surname *Mallick* is often confused with a so-called lower caste of the Bengali community and also with the Muslims.

The relation of language with education is reflected when RM says that their ‘home-language’ comes into conflict with their ‘school-language’ and this can be easily avoided. GM says that, ‘Without language no one can live, this being our greatest identity and is like the “mother’s milk”’. Thus, the role of a common language in primary socialisation with the immediate ethnic community is well understood by the Dhimals. Here it can be said that they are well aware of the role of language in forming the identity and strengthening the relationship between small groups of people^{xv} (Mamadouh & Ayadi, 2016). In fact, Dhimal children have to withstand the challenge of learning three languages in minimum from an early childhood (for home, general interaction and education, respectively).

On the positive side, due to life-long struggles for language, GM states that, ‘Our children proudly wear their identity and introduce themselves as Dhimals. However, this was not the case even thirty-five years ago from now... We speak in our language with other Dhimals when we meet at Naxalbari. Every age group does that today’. The veracity of this statement can be ascertained from the earlier sociological studies of this community (Lahiri, 2018). Again, KM2 states that, ‘I don’t know to read and write in Dhimal language but my children can. New generation is slowly taking up the language’.

It is a principle of justice that the burden of social co-operation should be uniformly distributed in a multicultural society. On a minimum note, the legal system *should not institutionalise any discrimination* between the various constituent groups on the basis of arbitrary differences. Thus, in every multicultural society having a democratic set-up, we find the existence of principles of rule of law, equality of opportunity, substantive equality, etc. Specifically, Articles 29 and 30^{xvi} of the Constitution of India reveals that since this right is a community based right, hence the deep association of language and culture can be presumed in every case. In fact, language is the tool through which culture of any community is transmitted from one generation to another^{xvii}. The language and its association with culture are aptly recognised at all levels of the normative order^{xviii}. Cultural rights are in consonance with the liberal conception of justice and also the various territorially based societal cultures^{xix} grounded on a common language ‘*must be institutionally embodied – in schools, media, economy, government, etc.*’ (Kymlicka, as cited in Kumar, 2013). Bhikhu Parekh (2006) states that conflicts in any society can be intra-cultural or inter-cultural; however, there exists *equality of culture* in multicultural society and a mere plurality of cultures in societies that have multiple cultural groups.

Now, owing to values of the Preamble to the Constitution, it can be said that to characterise the Indian society as multicultural would be the very apt characterisation. In this respect, it must be emphasised that Articles 29 and 30 forms part of the Part III of the Constitution which is immune from the parliamentary interference by virtue of Article 13 and the principle of judicial review. Even this protection of linguistic communities did not lead to the omission of State-led efforts as we find that Constitution (Seventh) Amendment Act, 1956 inserted Article 350A in Part XVII of the Constitution of India, which mandates adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups within a state.

However, despite the laudable constitutional protection of linguistic identity, the Dhimals are facing the obvious opposite when they are forced to take up another language due to implementation bottlenecks. There is acute shortage of education generally and educational materials and command over the technical Dhimal language in particular (to be used for reading and writing). As regard to the constitutional provisions, the participants did not have technical knowledge, but were broadly informed of such provisions. It should be noted here that a

knowledge of the constitutional provisions, especially that of the respective fundamental rights (Articles 29 and 30) and that of Article 350A would have empowered them better in presenting their cause to the government. This owes to the possibility that grounding of their cause in specific constitutional provisions would have highlighted the fact that due to some practical considerations^{xx}, they are unable to enjoy the benefits provided by their own constitution!

Although the community is financially constrained to exercise the right under Article 30, they reported to have formed organisations for cultural preservation and have taken active steps like petitioning, applying, etc. to both State and Union governments highlighting their problem. They are continuously conducting workshops and programmes for preserving their language and culture. They are aware of the need to recognise their linguistic identity and are actively learning the language and also spreading awareness of this language, culture, etc. (Lahiri, 2018).

Dhimals Adopting Other Languages

This section will explore the process of socialisation of Dhimals with the other communities, namely Bengalis, Rajbanshis and Gorkhalis (the focus of Research Question 2).

The unique situation of Dhimial language is cited by the participants to be the cause of the present need to learn other languages. First, this language doesn't have any similarities with the other languages spoken in this region. Second, the population of the language community being very less, the consequent social presence and restricted individual use (within the speakers of the language) limits the overall language use. GM states that even from pre-nursery, the children are being taught languages like Bengali, Hindi, Nepali and English. He recalls that, 'When I was a child, the population of Dhimals was much larger, even in my primary school (Ketugapur) we had a large number of Dhimial children'.

The new generation speaks Dhimial within the community itself and often in the home-setup. However, there are unique challenges even to this situation as the use depends on the locality of the household. Thus, while Rajbanshis abound in GM's neighbourhood, it is Gorkhali in RM's neighbourhood^{xxi}. In such a situation, the use of Dhimial by any individual, especially the learning of the language by children gets affected as the language becomes virtually useless even in the

immediate neighbourhood.

The participants cite the educational process and lack of educational and other resources^{xxii} in their language as another reason for adoption of other languages. This uniformity in thinking reflects a common understanding of the linguistic problem and appreciation of a common solution. Dhimal language becomes a special case because the population of the speakers is very low and thus, language crisis may easily cause language extinction. GM aptly states that, ‘...even financially we cannot promote our language by writing and publishing’. On this note, RM states^{xxiii} that, ‘While I was here, I used Bengali, Rajbanshi, Nepali and sometimes English’.

The participants however cited different orders of languages when posed with the question of which of the said languages influence them most in social interaction^{xxiv} and educational processes^{xxv}. Thus, on a societal level the order reported is that of Gorkhali, Rajbanshi, and Bengali, while from the point of education^{xxvi}, the order reported is that of primarily Bengali, and also Hindi.

The ground reality is very shocking as far as linguistic rights of such people are concerned. GM states that, ‘Our children know who they are, but not their very own history!’ This community has represented themselves even at Delhi (along with other communities like Kurmi, Tamang, Mech, Lepcha, etc.) and petitioned for tribal status^{xxvii}, apart from petitioning the State government in 2021 for a Cultural (development) Board^{xxviii}. During the course of the interviews, it was revealed that such efforts have not yet yielded positive result. In 2011, *Bhasha Research and Publication Centre* acknowledged one Sri. Garjan Mallick, an eminent member of the community, as ‘one of our most valuable associates’ in the *People’s Linguistic Survey* mission undertaken collectively with the latter. In its aspiration for tribal status, Garjan Mallick had written a book in Dhimal language but with Bengali script, as the original Dhimal script is claimed to be very difficult to learn and since Bengali script may positively impact the reach of the book. This example shows that a part of linguistic identity has already been affected (since the original Dhimal script is not used even by Garjan Mallick, who is respected widely in the community for his life-long struggle for the preservation of this language) and further damage is possible if it is not stemmed legally, especially when the requisite provisions do exist under the present constitutional structure. From the personal archives of Garjan Mallick (accessed during the research), it was learned that in 2009, an answer to a *Rajya Sabha*

Unstarred question stated that proposal for inclusion of Dhimal in the State's list of Scheduled Tribes have been processed. In 2014, pursuant to the report of the Cultural Research Institute (Govt. of W.B.), the State of West Bengal recommended the inclusion of Dhimals in the list of Scheduled Tribes of West Bengal. Further, in 2016, a Committee was constituted in the Ministry of Tribal Affairs to examine and recommend the granting of ST status to 11 communities, including Dhimals. In 2020, the Member of Parliament from Darjeeling had expressed (in a letter to Garjan Mallick) his hopes that the government will take positive step in this regard. In 2021, in response to a representation made by *Gorkha Janjati Kalyan Samiti*, Darjeeling, the Under Secretary to the Government of India wrote that the matter is under examination as per modalities. However, the ground reality is that the inclusion is yet to be made and despite high hopes, the formal processes mentioned are still underway.

The word 'minority' is not defined in the Constitution, however, in the landmark case of case of *In Re: The Kerala Education Bill... v. Unknown* (1959 1 SCR 995), the Supreme Court held that 'minority' means a community which is less than 50 per cent of the total population^{xxix}. The Constituent Assembly Debates reflect that the language provisions were not dealt with in a formal legal sense, but was addressed from the personal and emotional connect the members had with language in a way that this sensitive issue may not otherwise hamper the functioning of the Assembly. Even after the guarantee of Articles 29 and 30, the language question loomed large on the Indian democracy. This led to the continuous additions to the 8th Schedule and the other classifications of language referred to above. With 1956 States-reorganisation, each major language was given a specific area of authority^{xxx} and this entailed their relative dominance over other languages of the region. It was to stem this dominance of one language over the others that Article 350A^{xxxi} was inserted in the same year. Article 350A is complementary to Articles 29 and 30, the effort in the former being State led, in the latter being privately led. Further, implementation of Article 350A necessitates various practical considerations and hence this is only a constitutional provision and not a fundamental right. However, the substantive equality^{xxxii} principle of the Constitution may be used to give special treatment to the present language community, especially since this is on the verge of possible extinction from the country.

Law, Social Processes and Dhimals

This section will explore the role of law in preservation of the Dhimial language (the focus of Research Question 3) and the compatibility of the demands of the Dhimial community with the present constitutional structure (the focus of Research Question 4).

Today the formal education system is dominant over any other education system and hence, the language of this system directly affects the language preservation of any community. This prompted recognition of ‘*Cultural and Educational Rights*’ and guaranteeing the establishment and administration of educational institutions of choice as a fundamental right. Even under the pretext of Article 15, the State cannot make an inroad on the right enjoyed under Article 30 of the Constitution. However, the Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A^{xxxiii} and the subsequent Right of Children to Free and Compulsory Education (RTE) Act, 2009 mandates education for a specific age-group. The implementation of the latter right is indirectly making inroads^{xxxiv} into the linguistic minority rights and also is at crossroads with the State responsibility under Article 46^{xxxv} of the Constitution.

The Dhimals have a few persons who continue their education beyond the secondary and into undergraduate programs. A Bengali newspaper report of *Sangbad Pratidin* (2007, June 11) accessed from the personal archive of Garjan Mallick stated that the first Dhimial girl to have passed secondary education (2007) joined the family occupation of agriculture and could not continue further studies. In 2008, Dhimals presented a mass deputation to the *Siliguri* administration demanding tribal recognition and making a case for educational benefits. In 2018, a *Dhimial Community Existence Preservation & Welfare Society* document reported the dismal picture of 80 per cent people living as day labour, mere eighteen to be in Class X, fourteen in Class XII, four B.A. pass, one B.Sc. pass and one M.A. pass, respectively. The present study found that the participants are of the opinion that cognitive development in tribes takes place at a later stage than general population and linguistic demands placed over the child makes her education more exhausting.

GM recounts a childhood-incident as:

Our English teacher (a Bengali) once asked the meaning of ‘cat’.

My friend said 'cat means meu-khao'. He was beaten up and he never returned to the school! My first realisation with the school system revealed that even if the medium of instruction is different, if the teacher knows the local-language, then education will be much fruitful, children can be reached out to.

Participants are of the opinion that at least primary education from the age of five to ten years should be in their mother tongue^{xxxvi}. RM states that she faces difficulties in speaking and vocabulary for English due to use of Dhimal language in home and Bengali in school. She further states that books and teachers in Dhimal will surely aid the language preservation. RM2 could not complete secondary education due to language problem, though he states that his teachers took great care in teaching the concepts to him. This is in fact the primary reason for low educational achievements in the community. The prevalence of girls to be married off at some point, and hence not educating them is challenged by the likes of RM who has hopes of higher education and getting a job. KM2 states language to be the cause of children not learning beyond class IX. Further, he states that non-recognition as tribe and mere OBC status places them at a competitive disadvantage with respect to the other communities and aids in their backwardness. To this situation is added the fact that now OBC is also not being granted to first-generation applicants due to a technicality in the procedure!^{xxxvii}

The constitutional position and its violation become even more clarified when a mention is made of certain other provisions which indirectly promote and preserve distinct linguistic identity^{xxxviii}. Article 347 provides for a possibility for the recognition of any language used in any state as one of the official languages by virtue of a Presidential direction. Chapter IV of Part XVII housing Articles 350, 350A, 350B and 351 read with Articles 29 and 30 of Part III tend to protect multiculturalism in India. Article 350 authorises the redress of grievances in any language used in the Union and the State, whereas Article 350B provides for Special Officer for Linguistic Minorities.

Hence, a rights-based mother tongue education system is being argued in order to stem the growth of language defection^{xxxix}. Instead of making it optional on the States to provide mother tongue education, a right to such education, howsoever minimal may go a long way to educate younger generations on their own language.

Summary and Way Forward

Linguistic conflicts^{xi} can be said to be subtle conflicts, as the individual is much more autonomous, and the effect of the dominant linguistic community is much pronounced. However, these have an impactful effect on the redistributive goals of justice^{xli}, which is a primary concern of the Constitution. The gradual assimilation of such identities will certainly run counter to the constitutional values mentioned above. In this reference, it can be said that the various principles mentioned in the Preamble and then supported by the provisions under Part III like those mentioned above are ought to be non-negotiable.

Even within the rich mosaic of language diversity, the social reality differs from one region of India to another. Though the Census of India, 2011^{xlii} reports that 96.71 per cent of Indian population have one Scheduled Language as their mother tongue, the speakers' strength reflects Hindi (43.63 %) at the top, Bengali (8.03%) as second and Tamil (5.70 %) as last in the top 5. North Eastern States are rich of speakers of 'Other Languages', the percentage ranging from 26.36 per cent in Sikkim to 88.13 per cent in Nagaland. West Bengal (99.47 %) has one of the highest speakers of Scheduled Languages. Hence, one-formula-fits-all approach in case of linguistic rights may be futile even if we accept the above data to be completely authentic^{xliii}. Thus, although the rights under Article 30 are to be privately enforced and although the provision of Article 350A is not worded as an enforceable right, yet, specific unique social circumstances may warrant an alternate reading of these. If this alternate reading is not afforded, then, the small linguistic communities (for example, Dhimals) will not be able to preserve their language and script. In such a case, these communities will be stripped of their linguistic identity due to technical legal reasons, and the constitutional provisions (including one fundamental right) which seeks to preserve the rich linguistic diversity of India will be rendered practically useless (as the communities will be adopting other languages). Devy (2021) states that every language is a unique world view and source of unique knowledge, thus is to be preserved.

One of the constitutionally mandated processes of education targeted to achieve better individual enrichment is that of mother-tongue education, and in the present case, Dhimals are demanding just that. This community barely has a population size of 1000-2000 and thus is a long way from the governmental gaze. However, Dhimals being limited to this region^{xliv} and facing continuous onslaught of social process, systematic non-implementation of Article 350A will certainly erode

away their language, identity and culture in the long run. Apart from school education and social base, the other languages are used widely, in job, public places, courts, administration, etc. The Dhimals however are unable even to read, write and educate their own children in their own language at a mass level, in their own country!

Notes:

ⁱ The term normative foundation is used here to refer to the foundational values that were decided by the Constituent Assembly of India while drafting the Constitution. For example, the decisions and qualities decided for India, like that of Democracy, Republican government, and the goals of Justice (particularly in three different forms), Liberty, etc. These values and qualities once decided were meant to be achieved and perfected in the newly formed Republic.

ⁱⁱ In the landmark case of *Kesavananda Bharati v. State of Kerala*, (1974) (4 SCC 225), the ‘Basic Structure doctrine’ was evolved to judge the constitutionality of Parliamentary legislations. A number of the constitutional values expressed to be a part of this doctrine are reflected in the Preamble. Later in the case of *S.R. Bommai v. Union of India*, 1994 AIR 1918, the Supreme Court held that, ‘The preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution’.

ⁱⁱⁱ Every provision of the Constitution is a ‘means’ to achieve the ‘end’ that the Preamble champions.

^{iv} These general words are made certain and particular with the specific mention of certain attributes. These mentions of attributes animate the general words with particular constitutional meanings which are to be pursued as a goal.

^v With respect to the cultural co-existence, the Constitution sought to preserve and promote the cultural heritage of India and the concept of *Unity in Diversity*.

^{vi} The Constitution of India recognises religious minorities, gender minorities, caste-based minorities, linguistic minorities, etc. (See, Constitution of India, Arts 15-17, 24-30).

^{vii} Report of the States Reorganisation Commission (1955) dedicates the Chapter I of Part IV of the report to highlight the problems for linguistic minority groups in different States.

^{viii} In interpreting the Constitution, two approaches that are often found at strong disagreements with each other are that of ‘the living tree doctrine’ and ‘the original intent doctrine’. Recently, this conflict came to the forefront in the discussions related to the *Sabarimala judgement (Indian Young Lawyers Association v. The State of Kerala, 2018 (8) SCJ 609)* which held the prohibitions based on gender and biological processes that were imposed over the women to be unconstitutional. Specifically, Article 17 of the Constitution was held to be encompassing any form of untouchability and not to be restricted to the caste-based forms only (which would have been the only form of untouchability covered under the Article if the other approach to constitutional interpretation was to be adopted).

^{ix} Education connects these various forms of rights so as to conserve and preserve the distinct linguistic traditions of various communities. *Education of the language* promotes the sociological function of language preservation, while *education through the language* facilitates the language preservation through constitutional means.

^x The Constitution supports preservation of linguistic identity; yet, the harsh social reality often relegates such rights to the background and makes communities vulnerable to the onslaught of linguistic dominance and identity crisis.

^{xi} Apart from the language classification, English has established its own social relevance as a language of social mobility. *The India Skill Report* published by the CII and Wheebox states that English is among the top 3 skills employers look for.

^{xii} This paper is based on the premise that social enrichment occurs when every culture is cherished and the rich cultural heritage of India is preserved.

^{xiii} The Scheme for Protection and Preservation of Endangered Languages (SPPEL), Govt. of India, classifies it as an endangered language of the 'East Central Zone'. The word *Indian Dhimal* is often used to differentiate these people from the eponymous community residing in the neighbouring country of Nepal. The term broadly translates into 'son of the mountains'.

^{xiv} An instance of marketing in nearby city of Siliguri was recalled here to humorously refer to the situation when this language was spoken to a shopkeeper who only understood Bengali.

^{xv} The participants stressed on the reality of losing the language every moment and the unfortunate instances of being identified as Rajbanshis or Gorkhas, the same communities from which they face linguistic dominance.

^{xvi} Text of Articles 29 and 30 of the Constitution of India are as follows:

Article 29: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

^{xvii} Pappas and McKelvie (2021) quotes Cristina De Rossi, an anthropologist at Barnet and Southgate College in London, who states that culture includes religion, food, what we wear, how we wear it, language, marriage, music, and also what we believe is right or wrong, how we sit at the table, how we greet visitors, how we behave with loved ones, and a million other things.

^{xviii} The UNESCO rightly identifies the linguistic crisis by stating that with the loss of each language, there is an irreparable loss of a unique cultural set-up, traditional knowledge and value systems, etc. In the international scenario, the vulnerability of any language is defined on the basis of the number of speakers and the inter-generational transmission of the language.

^{xix} Kumar (2013) quotes Kymlicka, according to whom a societal culture provides its members with meaningful ways of life throughout the full range of human activities which includes social, educational, religious, recreational and also economic life while including both the public and private spheres.

^{xx} For example, funds are required for the establishment of educational institutions under Article 30 and Dhimals may have requested funds citing this provision (though this financial aid is not part of the right), as otherwise their population and economic capacity renders this right useless. Similarly, Article 350A may have been invoked to draw attention to this crisis and necessary state intervention requested citing the very low population figures and resultant narrow language base.

^{xxi} RM who can also read and write in Dhimal, says that she picked up Bengali with great difficulty and the latter community appreciates this, but at the same time understands that her accent is different and sounds similar to the way Gorkhali people speak Bengali language.

^{xxii} In 2021, it was reported that the State school education department would inspect 200 informal schools which use Rajbanshi language as medium of instruction and consider their conversion into formal schools (Push for Rajbanshi, 2021). It was further reported that the State had announced language academies, allotted funds and instructed them to prepare syllabus and schoolbooks for primary schools. Earlier, in 2017, two cultural boards, namely 'Kamtapuri Bhasa Academy' and 'Rajbanshi Development and Cultural Board' were announced while Rajbanshi Bhasa Academy continued to function (Bhattacharya, 2017).

^{xxiii} At present in her studies at Bangalore and also for primary interaction, she uses English language. The recent stress on online education also required her to depend on the English language exclusively for academic purposes.

^{xxiv} Gorkhali (also called Nepali) have been a medium of instruction in schools while Rajbanshi may soon be one. Further, Cooch Behar Panchanan Barma University has been named after Thakur Panchanan Barma, a Rajbanshi leader. These factors, in addition to more populous linguistic communities, account for the social perception and hierarchy. Further, Dhimals have more social interaction with these two communities than Bengali, because of their inhabitation in nearby areas.

^{xxv} From educational point of view, Dhimals are more in favour of educating themselves through the medium of instruction of Bengali and Hindi due to the greater usefulness and reach of these languages, apart from the factor of educational resources.

^{xxvi} With *English* education being opted presently in very few cases, and that too up to Class V at most (due to financial constraint).

^{xxvii} The community is also part of an 11-community *Gorkha Janjati Kalyan Samiti* who is fighting for similar claims. The name of this organisation ironically dilutes the specific identities of the constituent groups into the broader Gorkha identity. But, financial constraints are to be blamed for this dilution as the separate communities are too weak to individually pursue their claims.

^{xxviii} This Board is looked upon by the community as a source of financial security to preserve their language through various efforts till the time they receive their actual entitlements under the Constitution. A newspaper report in early 2021 stated that the Dhimals are disappointed over the delay in grant of tribal status and will be seeking a development board (Ghosh, 2021).

^{xxix} It may be noted here that recently in 2019, the Supreme Court has dismissed a plea which sought guidelines to identify and define religious minorities in every State, this because linguistic minority rights are considered on a State-wise criteria and the religious minority is considered on a pan-India criteria.

^{xxx} This is due to the operation of State Official Language provisions under Part XVII of the Constitution of India and Official Languages Act, 1963.

^{xxxi} Text of Article 350A is as follows:

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

^{xxxii} This principle was adopted by the assembly to give protection to those individual and group interests which may otherwise be at the mercy of the majority community. For example, Article 14 incorporates the principle of equality, whereas Articles 15-18 is more grounded on the principle of substantive equality. The Cultural and Educational Rights and other provisions of Language Rights are based on this principle.

^{xxxiii} In the classic case of *Re: The Kerala Education Bill... v. Unknown* (1959 1 SCR 995), it was held that even free education should not be resorted to at the cost of minority rights.

^{xxxiv} This inroad also affects the conception of justice as mentioned in the Preamble of the Constitution.

^{xxxv} Article 46 states that, 'The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'.

^{xxxvi} Interestingly, the National Education Policy 2020 also stresses upon the role of mother-tongue especially in the formative years of a child's education.

^{xxxvii} Participants have revealed that OBC status was not sought for due to very few advantages when it was originally granted. Hence, when it is claimed now, documentary proofs of caste identity are required which the applicants do not have because of being first-generation OBC applicants.

^{xxxviii} Further, one of the themes in the present study was the almost unanimous perception of English as the most dominant language in terms of social mobility. This adds another point of concern as individual liberty may dictate the adoption of this language and relegation of the mother tongue as inferior, then either the community will be educated in this language or will give-up education in face of linguistic pressure from other communities.

^{xxxix} While the Three Language formula has been there in the policy documents for long, yet, in spirit, it was not implemented.

^{xl} Making the case for re-organisation of the States on linguistic lines, it was observed that it will enhance internal cohesiveness due to language being a vehicle of communication of thoughts, to ensure real consciousness of identity of interests amongst the government and the people under a democracy, ensuring proper education through regional languages and also *political and economic justice*. Such considerations, howsoever trivial due to negligible numeric strength is equally convincing in case of the local languages that became minority in the face of regional dominance of the regional languages.

^{xli} The broad theme of Equality of Opportunity and the sub-questions of medium of instruction and that of education itself is intricately connected with survival of language and the linguistic community itself. Education enriches individuals and communities and thus evens out the fruits of development throughout the population.

^{xlii} This information is taken from the *Census of India 2011* prepared by the Office of the Registrar General, India.

^{xliii} Devy (2021) states that since 1971 several languages have been subsumed under the Hindi language and a population of 10,000 was necessary for their mother-tongue to be listed in published data. Further, fifty-three languages were shown as sub-sets of Hindi in the census of 2011.

^{xliv} GM says that, 'We are facing identity loss and identity crisis at every phase of life! Our language is going extinct bit by bit every day. This ought to be preserved if not to become extinct permanently'. The respondent further recalls that villages of Hatighisa, Moniram (Kilaram, Ketukapur, etc.) have Dhimal population, but when marriages are conducted with other communities (love-marriage, since arranged marriages in this respect does not occur), specially Gorkhali and Rajbanshis, individuals relocate to other villages like the nearby Balason basti and

take up different surnames like Singh and Roy to change their identity completely. The present researcher is aware of localities named after Dhimals in the nearby vicinity also, and the participants stated that only the name remains, as the inhabitants from those localities have migrated to Nepal. It was further noted by the participants that Assam had a large number of Dhimals but they got assimilated in other languages in that area.

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COVID-19 and National Food Security Act, (2013): Analysing Experiences of Food Security in Assam, India

--- Sampurna Das

Abstract

Availability, access, stability, and sustainability of food are four pillars of food security. The pandemic has challenged these pillars, particularly for the most vulnerable and poor population. Scenes of empty shelves, long queues outside the fair price shops (FPS), community workers being jailed for questioning the siphoning of rice from the FPS stores, were widespread in the news channels and social media. They told of the anxieties surrounding glaring food shortages and supply lapses. The National Food Security Act, 2013 (NFSA) was supposed to take care of them. People were worried: Will and from where and how will the food come? Based on a study in Assam, the key objective of the paper is to identify the impact of COVID-19 lockdown on the food security of women in the informal sector, within the broader context of the NFSA (particularly its Targeted Public Distribution Scheme [TPDS]). The findings of the study suggest: firstly, the state's decision of providing a few kilos of rice and pulses looks like an active and planned site of defining a dehumanised citizen, meant for large-scale governance policies; secondly, there is a calculated attempt of the state to slowly do away with its responsibility of distributing and delivering food, by shifting the task to non-government entities.

Key words: Citizen, COVID-19 lockdown, Food relief packages, NFSA, NGOs

Introduction

A nationwide lockdown was implemented to tackle the first wave of COVID-19 on March 25, 2020ⁱ. This was one of the most stringent lockdowns in the world, seeing a complete shutdown of all forms of livelihood generation. Many of those livelihood avenues have completely disappeared. As a result, by the end of March 2020, a food crisis was brewing in India. In the north-eastern Indian state of Assam, where the study is located, the government announced 5 kg of rice per month per member to those without ration cards (Singh, 2020). This was part of

the direct ration benefit scheme launched under the National Food Security Act, 2013 (NFSA) to mitigate challenges of complete lockdown during the first wave of COVID-19. But given India's weak food supply chain, these direct relief packages did not reach the desired hands. Nor did the additional free 5 kg of food grains reach those who had ration cards.

Availability, access, stability, and sustainability of food are four pillars of food security, as per the Food and Agricultural Organisation (FAO) (World Food Summit, 1996). *Availability* of food in each country or household through any means (for example, production, import or food-aid); *access* to food by people or household through market purchases, own stock/home production, gifts, or borrowing; food utilisation, the actual processing and absorption capacity of the supplied nutrients by the body; *stability and sustainability* over time. COVID-19 has challenged these pillars, particularly for the most vulnerable and poor population. Scenes of empty shelves, long queues outside the fair price shops (FPS), community workers being jailed for questioning the siphoning of rice from the FPS stores, were widespread in the news channels and social media. They told of the anxieties surrounding glaring shortages and supply lapses, that was supposed to be solved through the NFSA. People were worried about the country's food infrastructure: Where and how will the food come from?

This paper builds on anthropological works, like Melissa Cladwell (2002), Neringa Klumblyte (2010), that examines food as not a neutral entity, but rather a fact intimately bound up with politics around production, supply and consumption of food. Affordable food has always been an important part of the social contract between the government and the citizens of India. The NFSA was a culmination of this social contract that hinges on the universal right to food. In India, thus, the food contract goes beyond the question of merely universal affordability. Providing subsidised food and an abundant landscape of rights around food was a means through which the state gained legitimacy. Mentioned within NFSA are sections that demand that people of India should receive food security allowance in circumstances where food supply was disrupted. Secondly, that there should be transparency regarding how food is decided, procured, supplied and distributed. Thirdly, nutrition should be considered while deciding the food products to be subsidised within the NFSA.

On the ground, however, the NFSA had operational flaws. The first wave of COVID-19 infection and the following lockdown highlighted the issues. Firstly,

as per the NFSA Chapter III, the state government should provide food security allowance when food supply is disrupted. During the COVID-lockdown when the disbursement of the regular food security benefits was irregular, the state should have opted for allowance as per NFSA. But it went on to announce direct food benefits despite being aware of the lopsided supply scene in the country. I argue thus that the state by deciding to provide some kilos of food grains, instead of the stipulated allowance, is dehumanising citizens by debarring them from availing their constitutional guarantees. Second, one could observe a diminishing role of the state and greater responsibility on the non-government entities to deliver food to the needy. This goes strictly against Chapter VIII of the NFSA which clearly states that transportation and distribution of food grains will happen both through central and state governments and their agencies, and not through any non-government parties. In the course of the paper, we will contextualise the NFSA and elaborate on my arguments.

A Brief Contextual Note on NFSA

With a recommendation from the FAO, the Indian state had introduced the Public Distribution System (PDS) with three categories of ration cards based on economic status: extreme poverty (Antyodaya), below the poverty level (BPL), above the poverty level (APL). On July 5, 2013, when the NFSA came into effect to ensure ‘food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live with a dignity’ (GOI, 2013), it provided legal entitlement (or ‘right to food’) of subsidised food grain to 75 per cent of the rural population and 50 per cent of the urban population of India. NFSA replaced PDS with the Targeted Public Distribution Scheme (TPDS), merging the APL and BPL categories. It was decided that under TPDS, the merged category will be entitled to 5 kg of food grains (wheat/rice/coarse grain) at a subsidised price. The Antodaya category under Antodaya Anna Yojana (AAY) remained as it is with beneficiaries receiving 35 kg of food grains per household at a subsidised price.

To an extent, as planned the PDS has been able to improve food security status and reducing poverty. At all Indian levels, the PDS has been estimated to reduce the poverty-gap index of rural areas by 18-22 per cent. These figures are further encouraging in larger states with well-functioning PDS. Tamil Nadu and Chhattisgarh marked reduction of poverty gap as high as 39 per cent and 57 per cent respectively (Dreze & Khera, 2013). Particularly after being developed as

TPDS, there is an increased purchase of subsidised grains recorded from fair-price shops and diversification of food baskets of poor households (Kishor & Chakrabarti, 2015). Thampi (2016) too underlined that TPDS was able to ensure dietary diversity and longer-term nutritional indicators. The NITI Ayog (2016) report underlines that TPDS was able to ensure more nutritional security to the Antodaya category.

Nonetheless, there is a long way for TPDS to achieve the four pillars of food security. This is primarily due to large scale anomalies targeted within the TPDS scheme which weakens its effort. Khera (2011), and, Gulati and Saini (2015) had referred to large scale leakages in the food distribution scheme. Khera had conducted her field data from Rajasthan, wherein there was low utilisation of the subsidised food grains and households were seen purchasing wheat from the market at higher prices before exhausting their subsidised quota. Under-purchase is mainly due to supply constraints. Gulati and Saini underlined that the per cent share of total leakage increased with states where the greater per cent of India's poor resided (five states of the Uttar Pradesh, Bihar, Madhya Pradesh, Maharashtra and West Bengal). Home to close to 60 per cent of India's poor, they accounted for close to 50 per cent of the total grain leakage. These disruptions in the supply chain had made many think that cash transfers are the way forward.

Researches, however, have time and again proved that citizens prefer food over cash benefit, even where the supply chain is decent. Some amount of leakages are bearable it seems (Muralidharan, Niehaus & Sukhtankar, 2011; Chanchani, 2017). In tribal areas of Uttar Pradesh, TPDS has not helped to provide food security to the vulnerable household in absence of assured regular income (Shankar, 2004). Others pointed out that while subsidies did change the consumption pattern, it does not have any effect on nutrition measured by per capita calorie intake, per capita protein intake, and per capita fat intake hinting (Kaushal & Muchomba, 2015). All these studies highlighted that even after revisions, the current food subsidy scheme needs changes to be able to reach the NFSA goals.

The COVID-19 situation has further highlighted these anomalies. Studies like Ahmad (2021), and, Boss, Pradhan, Roy & Saroj (2021) point out the issues of food security during COVID-19 arising from the malfunctioning of the NFSA. They question issues of eligibility and lack of commodity choices. None however show that analysing food security measures in COVID-19 does much more. It highlights the nature of the state and its citizens. This paper is an attempt to do so.

Methodology

Data for this paper is drawn based on the primary survey conducted in the north-eastern Indian state of Assam. The survey was led by Assam based feminist organisation – the Women’s Leadership and Training Centre (WLTC). Coordinating the survey on behalf of the WLTC, we surveyed women working in a range of informal sectors – like poultry, animal husbandry, weaving, domestic worker. The survey was limited to female workers of the informal sector as the pre-survey food relief drive suggested them to be the hardest hit of all. The absence of strong legislation (like flexible contracts and work hours) looking over the Indian informal sector were to be blamed. Even before the lockdown, these women were a vulnerable and under-represented working group. They were paid low and income was highly insecure. These workers found it hard to meet their food needs (Gopichandran, Claudius, Baby, Felinda & Mohan, 2010). The lockdown just exacerbated the situation.

Data was collected by 13 field researchersⁱⁱ across 14 districtsⁱⁱⁱ of Assam between April-May 2020, for four weeks. A total of 244 responses were collected, out of which around 25 per cent of responses were from the Kamrup (Metro) district. Half of our respondents were married. 30 per cent of our population were between the age group of 25-35. On average, the household was four to six members. The survey aimed to put together information about how COVID-19 lockdown affected women located across age groups, marital status and geographies; within existing structural, social and economic vulnerabilities – wherein food security was one of the focus areas.

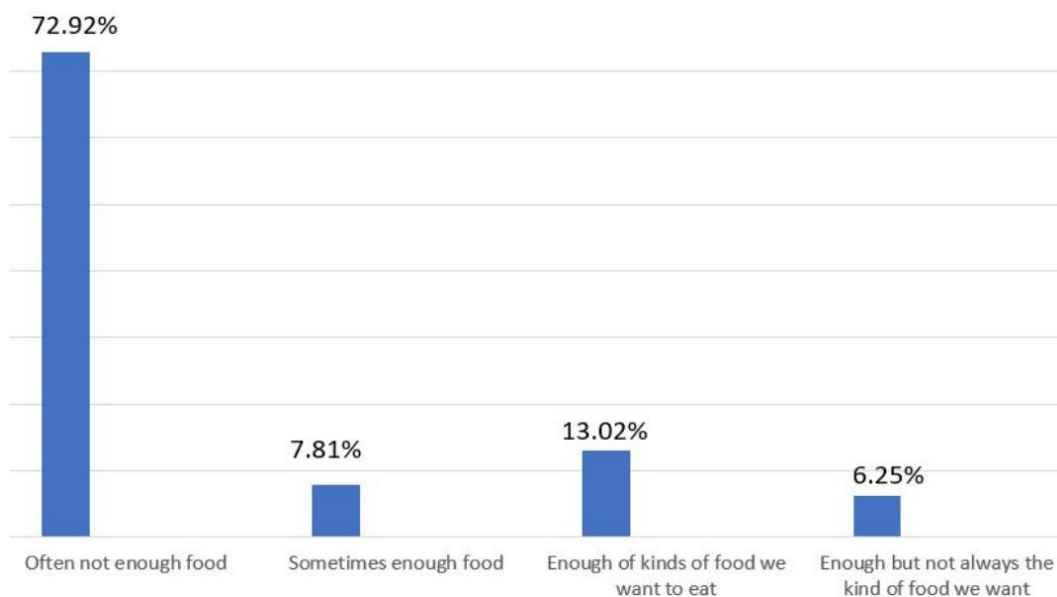
Findings

To identify the impact of COVID-19 lockdown concerning access to food, we asked three questions: (a) Was there enough food for the women and the family? (b) Have they received any food support? (c) From where did they get food support?

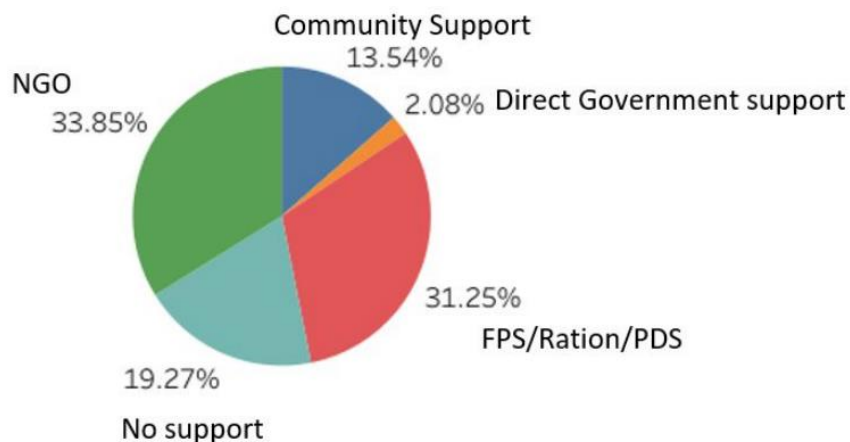
The direct ration benefit scheme launched to manage COVID-lockdown was supposed to feed this section of the marginalised citizens. But as high as 80 per cent of women in our survey responded about food shortages (Figure 1). There was just not enough food. Firstly, they complained that the fair price shops did not have enough subsidised food for everyone like them. Secondly, even when there was information on food availability, the strictness of the lockdown meant that

they were harassed when trying to avail any subsidised food. There are numerous cases of police harassing women when they stepped out of their houses to procure food. Women highlighted the additional burden of arranging food during the lockdown. Many were forced to forage food from the wild patches near their homes, as government schemes seemed distant. Foraging was additional work the women had to do in the event of sky-high prices of edibles during the lockdown (PTI, 2020). It was a choice between hunger and harassment for these women.

Figure 1: Availability of food



The food security services in Assam or the fair price shops were never efficient. Despite the prevailing TPDS and the newly announced direct food benefit, half of our respondents were dependent on civil society means to meet their food needs – the NGOs and community support (Figure 2). A major chunk of women, i.e. 19 per cent were without any support whatsoever – be it government or non-government. None of them had a ration card. They were eligible for the COVID-19 special direct ration benefit but received nothing. Overall women pointed out the glaring food shortage. They felt that NGOs and community support can only provide additional help. It was the government's job to provide food security. As providers of food, women were left in severe distress.

Figure II: Sources of Food Supply

Analysis

a) *Food relief and the dehumanised citizen*

But what about cooking oil? Spices? Vegetables? Milk for the child? Detergent? Do we have savings? How do we survive with just 5 kg of rice? Today I cooked jackfruit. Our neighbour gave it to me. I can cook another meal of jackfruit, but how many more? Does the government think that one can survive with just 5 kg of rice a month? – A respondent from Barpeta, Assam (May, 2020)

The state by deciding to provide some kilos of food grains, instead of allowance, is defining a standardised dehumanised citizen which is devoid of the ability to make choices. As noted scholar James Scott (1998, p. 346) outlines, the state machinery has always been defining generic subjects ‘who needed so many square feet of housing space, acres of farmland, litres of clean water, and units of transportation and so much food...’. These citizens have no idea of gender, tastes, history or opinions. Those building on Scott’s ideas like Martin Hall (2020) or Jeremie Sanchez (2020) also attested that the state’s imagination of its citizens was singularly abstract. The citizens should have no idea of tastes and needs. They are characterised by only those traits that the state deems relevant for their large-scale planning exercise. Such attempts at bracketing the population result in needless dehumanisation. It also goes against the very promise of NFSA which guaranteed that citizens would be allowed access to food that eventually will

enable them ‘to live life with dignity’ (GOI, 2013). Looking closely at the items given in the food relief packages illuminates how food is an everyday medium through which the state imagines its citizens.

The Indian state, when ascertaining the COVID-19 food relief packages, neglected the ‘absorption (nutrition)’ component of food security underlined by FAO. They just gave a few kilos of rice and pulses. Social anthropologist Graeme MacRae (2016) outlined that the state resonates with the view shared by multinational food corporations, like the World Bank, that the only realistic way to deal with food scarcity is through large-scale, high-tech and input-invasive methods. These processes come under the umbrella term of food security, instead of working with the idea of food sovereignty. The latter is a bottom-up approach to tackle food needs, that relies on understanding the specific food cultures and building agricultural systems towards supporting these food cultures, shared by target vulnerable communities and built on foundations of local and practical knowledge. Advocating the idea of food security, the Indian state categorises its vulnerable population as those who could sustain through the paltry amount of rice and pulses. The culinary imagination of its citizens by the state falls short on the ground. It stands in complete opposition to what our study has seen on the ground. ‘We cannot just eat rice, can we? It is just not enough. I will go looking for some ferns’, said one of our respondents. Studies in Bihar, Odisha and Uttar Pradesh too have reported that direct food benefits during COVID have been inadequate (Boss, Pradhan, Roy & Saroj, 2021).

A cursory look at the food security measures highlights how the Indian state perceives its vulnerable citizen as dehumanised abstracted citizens. A case in point is the falling per capita calorie intake for the rural population from 2240 kcal per day to 2047 kcal per day, and the urban population from 2070 kcal per day to 2021 kcal per day, from 1983 to 2004-05. This is much less than the norm of 2400 calories in rural areas and 2100 in urban areas. In the same period, per capita protein consumption declined from 63.5 grams to 55.8 grams per day in rural areas, and 58.1 grams to 55.4 grams in urban areas (Suryanarayan, 1996). All of the above metrics are decided by the Indian Council of Medical Research (ICMR). Another case would be the falling rank of India in the Global Hunger Index (GHI), which captures three dimensions of hunger – insufficient availability of food, shortfalls in the nutritional status of children and child mortality. The 2021 GHI score of India has witnessed the country slipping from 94 to 101 rank amongst 132 countries, clearly faltering on the FAO principles India aspired to

follow by introducing the NFSA.

As anthropologist Samson Bezabeh (2011) argues, such patterns of marking and dehumanisation are rooted in the logic of the modern nation-state. These dehumanisation practices are part of the ongoing negotiations and contestations that produce and maintain statehood all over the world. They occur through various institutionalisation and social relations involved in them. In this case, we see it as how it pans out in the provision of food security.

b) State responsibilities versus NGO goals

Unlike others, I do not have a ration card. I did not receive the 1000 rupees government was supposed to give us. No sight of the five kilograms of rice from the government. Someone in the contractor might have taken our share, who knows. Like always. The government should take care. They are the ones to lock the country. They should also be the ones to provide food. An NGO gave us a one-time food package of rice, pulses, soybean, sugar, mustard oil, biscuits, etc. Many like us are dependent on such NGO packages to survive now. The PDS shopkeeper says he has no idea about my share of rice. But, how long can we sustain on packages of NGO? They come on occasionally. Hunger is permanent. If the lockdown continues, I am sure we will die not out of the disease but hunger. I do not know about others but surely, we cannot manage any longer without regular government assistance! – A respondent from Sonitpur, Assam (May, 2020)

Second, the state is relying on non-governmental organisations to feed the poor. This goes against Section 12 of the NFSA which aimed for shifting management of the food distribution from private owners to public bodies such as women's bodies under the TPDS. The responsibilities seem to have barely shifted, given our survey revealed that 33.85 per cent of women relied on NGOs for providing food during the lockdown. Various newspapers had also reported that when the state was unable to provide any food to the vulnerable during the initial period of lockdown, it was the NGOs who stepped up to provide relief (Mazumdar, 2020). In fact, in some regions, NGOs had outperformed the government in feeding the vulnerable (SRD, 2021).

The long history of the takeover of various socio-economic activities by NGOs for the vulnerable population – including food, education, microcredit, and so on – has led to a situation in which the government can avoid its obligation to deliver food security services to the vulnerable communities. This primarily has to do with the post-cold war era developments that saw the rise of the market-based neoliberal ideology that tends to de-emphasise the role of the state and highlight the role of non-state actors. Political scientists, like John Clarke (1995), Shamsul Haque (2020), have shown that neoliberal beliefs in market-led solutions, less state intervention and a greater role for non-state actors have considerably increased the reliance of developing countries on NGOs. Elsewhere regarding north-eastern India, it had pointed out that the inadequacy with state services strengthens the rationale for partnership with NGOs to deliver basic services (Das, 2019).

This trend towards replacing the obligations and responsibilities of government with those of NGOs has adverse implications for the rights of citizens towards basic services. It also points to a direction where the social contract between the state and citizens is being redrafted due to the expanding role of NGOs replacing the state's obligation to deliver even essential services. Earlier, the vulnerable population had the right to hold public servants responsible; now this ability is only limited to paper. Instead, they have to rely on the charity or goodwill of the NGOs. It seems as if the rights of the people are steadily replaced by charity or goodwill. That the state was mulling to rely on NGOs for lack of better food relief distribution highlights the growing capillaries of the non-state actors (Hazarika, 2020).

This excessive dependence on NGOs however means that society has to rely more on stop-gap measures substituting the much needed structural changes. Sociologist James Petras (1997) had written how in countries like Bolivia, Chile, Brazil and El Salvador, the coming of international NGOs have reduced government accountability on one hand, and pursuing a neoliberal role to commercialise and depoliticise the public. Political scientist Julie Hearn (1998) underlines the long term dependence of the Kenyan state on NGOs for its health services. By placing excessive importance on NGOs, citizens are made to ask for social welfare. There is a depoliticisation of the public and push towards a pro-market agenda. They disunite people into receivers and non-receivers of credit, relief, and so on.

The shift privileges interest of the particular (individual or specific group) over the well-being of the general. For the state, the development goals are for the wider society, but for the NGOs it community-specific. For the latter, certain fortunate communities may experience an improvement in their living standards, here food security, while the rest of the society remains stagnant. Fragmentation is thus built into the NGO goals, with the provision of services or attempt to equity. NGO goals are targeted for survival, which goes against the very promise of the NFSA that promises a dignified life for all.

Ending thoughts

Fearing another lockdown in the coming weeks due to the third wave, some of our respondents still await the food packages government had announced in the first wave. In between, news of food contractors siphoning of food meant for COVID-19 quarantine facilities have further crushed their spirit. Their 'right to food' enshrined in the NFSA 2013 looks non-functional.

The lockdown more glaringly revealed that in terms of food relief, government supply systems are broken and NGOs are not entitled enough to provide for everyone. Anxieties about food and hunger prevail. This anxiety about food is part of the more generalised anxiety that the government does not care about the vulnerable anymore. Years of broken political promises add to this anxiety. The handling of the food relief packages just made it obvious. As such food emerges as an everyday medium through which imaginations and ideologies of the state are articulated and circulated.

Women in our study tried to meet their food needs through the support of other women, within the family and otherwise. Community foraging also became the central means to feed themselves and their family. Wild food, like varied ferns and stems, which otherwise is seen as unpalatable, developed as an alternate local food system. In these performances of solidarity, sharing food was important. Emerging from the common experience of vulnerability, it was necessary for women to defend themselves against exploitative and numbing conditions of the pandemic. Their ways are marked with resourcefulness, openness, and responsiveness to healing modes. But these solidarities can only do so much. They are limited in character. The only way out was to hold the state accountable.

As economist Jean Dreze (2018) outlines, for policies to be successful on the

ground, the state must listen more to its citizens. This is much in line with what James Scott (1998) propounded years ago, that the only way towards owing its responsibility, successful governance and reducing dehumanisation is by developing the spirit of mutuality. Mutuality will allow taking into cognisance the views of the common citizens. In this case, it will enable a bottom-up approach of understanding the specific food cultures and building agricultural systems towards supporting these food cultures, shared by vulnerable communities and built on foundations of local and practical knowledge. Perhaps why within the country, a state like Kerala, by exercising its federal rights did a better job managing the food crisis. Precisely because it tried to take into account the needs of the target population (Pothan, Taguchi & Santini, 2020). It did so by decentralising power and finances, which enabled the local self-government institutions to think and plan effectively at ground level. The Kerala model of tackling COVID-19 showed us that it requires proactive steps by the state to keep the marginalised from starving, for the civic bodies can do only so much. They are ancillary agents and cannot be made responsible for ensuring food security which is the prerogative of the state.

Notes:

ⁱ The lockdown starting from March 25, 2020 went on to May 31, 2020. Thereafter, the lockdown remained for certain high risk 'containment zones'. In a steady process, of over sixteen phases, sector-wise 'unlock' began.

ⁱⁱ Anjuman Ara Begum, Asma Khatun, Bhaotina Mushahary, Hirmelim Beypi, Manjuwara Mullah, Mina Sutradhar, Nur Nasreen, Padumi Kalita, Rajida Kalita, Sanju Shaw, Shahida Khatin, Shahnaz Parvin, Silsila Das.

ⁱⁱⁱ Kamrup (Metro), Kamrup (Rural), Barpeta, Karbi Anlong, Sonitpur, Kokrajhar, Darrang, Dhemaji, Udalguri, Golaghat, Chirang, Tinsukia, Jorhat, Dibrugarh.

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Article: Anti- Love Jihad Law: An Analysis of Women's Religious and Marital Rights

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Anti- Love Jihad Law: An Analysis of Women's Religious and Marital Rights

--- Snehal Sharma

Abstract

In November 2020, Uttar Pradesh government enacted an ordinance – ‘Prohibition of Unlawful Religious Conversion Ordinance, 2020’. Since the ordinance has made the process of religious conversion and interfaith marriage complicated and prolonged in the state, it is commonly known as ‘anti- love jihad law’. This paper analyses and lays out the potential impact of this ordinance on inter-religious marriages, and how it conflicts with women's religious, marital, and bodily autonomy. Here the author discusses the procedures of anti-conversion ordinance along with the Special Marriage Act (1954) and personal laws related to marriage to assess their impact on inter-religious couples and their prospect of getting married. The paper focuses on ‘opindia.com’, a self-proclaimed liberal right news portal that publishes news, current affairs, and opinion pieces from Hindu right-wing perspective, and it is frequently cited on social media by groups and people who believe in the conspiracy of love jihad in order to understand the discourse on love jihad and demand for anti-conversion law in various Indian states.

Key words: Demographic-dystopia, Love Jihad, Religious-conversion, Right to Religion

Introduction

Right-wing movements across the world have used the fear of ‘demographic dystopia’ and the ‘great replacement’ to mobilise people against their enemies. Though the phrase demographic dystopia was coined by Steven Gardiner only in 2006, the concept has been in use for centuries. Gardiner writes that the concept of demographic dystopia essentialises the racial, religious, linguistic, and other social constructs as the basic forms of self, social and national identification and ‘it is reified as a basis for fear mongering’ (2006, p. 75) among their communities. The community is made to believe that their total population is being reduced

because the population of ‘others’ (people who are different and belong to other caste, race, religion, nationality, etc.) is increasing and soon they will be outnumbered by them. The ‘great replacement’ is also a similar concept that suggests that a certain community is being replaced by the ‘others’. John Feffer (2019) claims that the concept of the great replacement is ‘insidious’ as it infiltrates the government and social institutions, changes the culture and society, and demands people to give birth to more children to save their community. He further informs that the idea of great replacement was introduced in France by Renaud Camus (a French white nationalist and novelist) in 2010, and since then it has been adopted by several right-wing nationalist groups across the world. In the same year, Mohan Rao wrote in the context of India that ‘[b]y engendering fear and anxiety about the future, what saffron demography successfully does is insidious: it evokes complicity in morally offensive policies among people’ (2010, pp. 7-8).

In the decade of 2010, the world has seen a high influx in right-wing movements and, as a result, several democratic countries have elected right-wing parties and leaders as head of their nations. Demographic dystopia has been used as a major mobiliser by the right-wing separatists, nationalists, and supremacists across the nations. As Feffer (2019) argued, these right-wing organisations/parties use the fear of the great replacement to urge their communities to have more and more children through endogamous marriages to maintain or grow their population. To retain their status as the majority population, these groups want to control the bodies of their community’s women, in the name of purity of their nation, religion, caste, race, etc. (Sarkar, 2018; Belew, 2018; Chan, 2019). Similarly, in India, Hindu right-wing organisations, and their followers have assumed the responsibility to maintain the purity of Hindu women. One of such measures taken by these groups is generation of ‘public awareness’ against ‘love jihad’ among Hindu families to ‘save’ the women of their families and communities from Muslim men (Huffington Post India, 2015, as cited in Strohl, 2019, p. 28). As per the anti- love jihad campaign, some international Muslim organisations (terrorist organisations like ISIS) recruit Indian Muslim men to lure Hindu women (underage or in early twenties) in romantic relationships. Further, the propaganda claims, these romantic relations are formed by trickery, as the Muslim men pose as Hindus to deceive Hindu women. Once the men trick Hindu women in their ‘love-trap’, they either try to get married or have sex with them with the aim of impregnating them. As soon as these women become pregnant or marry these men, they reveal their real Muslim identities to the women. These Hindu women

are then forced to convert to Islam and remarry according to Islamic rituals (*nikah*). The propagandists insist that the idea behind love jihad is to increase the Muslim population through Hindu women's wombsⁱ (Sarkar, 2019; Tyagi & Sen, 2020).

The propaganda is supported by a consistent movement against love jihad, especially on social media. People and organisations involved in this movement have demanded for law against love jihad and conversion for marriage at both state and national level constantly for a couple of years now. As a result, various Indian states are in process to bring a law to regulate interfaith marriages and religious conversion. In November 2020, Uttar Pradesh (UP) government enacted an ordinance, named – 'Prohibition of Unlawful Religious Conversion Ordinance, 2020 (PURCO)'. The ordinance is projected as a saviour of the vulnerable population of the state from fraudulent and forceful religious conversion. It enforces stricter rules for conversion along with familial, social, and state surveillance on any religious conversion. This ordinance has complicated the religious conversion process by adding several steps and procedures before a person could convert from one religion to another in the state. At the same time, breaking this law or not fulfilling its requirements can result into severe carceral and monetary punishments. On the superficial level, it appears that the ordinance treats all religions equally, as this law applies to the people of all faiths in UP. However, this ordinance is commonly as 'love jihad law' by Indian and international media, as its main aim is anticipated by various media houses to curb the 'forceful conversion' of women from Hinduism to Islam in the name of love and marriageⁱⁱ.

This paper analyses the ways in which the propaganda of love jihad and subsequent enactment of laws/ordinances like PURCO have impacted the right to marry a person of choice and right to profess any religion, especially for women in the states like UP. The paper assesses the potential impact of this ordinance on inter-religious marriages, and how it conflicts with women's religious and bodily autonomy. I have used the discourse circulating on social media platforms related to love jihad to understand the demand and popularity of laws that restrict interfaith marriages, mainly between Hindu women and Muslim men. In this context, the paper discusses the Special Marriage Act, 1954 – the constitutional provisions related to inter-religious and inter-caste marriages and recently enacted UP's anti-conversion ordinance, and their impact on interfaith marriages in UP.

Methodology

The paper uses discourse analysis as the primary method to examine the recent online discussions and debates around love jihad that allows to situate the context of love jihad and forceful conversion in current socio-political context. The piece focuses on a couple of articles published by OpIndia, a right leaning, self-proclaimed ‘liberal right’ online blog. The artifacts (texts and images) collected from OpIndia’s website have been examined in its historical, political, and social context to discuss their affective impact on the readers. The rationale behind analysis of OpIndia’s articles is based on the website’s popularity among people, as the blog has a strong presence on twitter with 5,706,000 followers. It is bilingual (English and Hindi) and one of the most frequently cited news and opinion blog by people on the topic of love jihad. The focus of the analysis will be on OpIndia’s article titled - ‘Anti-Conversion law: Yogi government approves ordinance against unlawful religious conversions, violations to attract up to 10 years in jail’ (2020) that celebrated the enactment of PURCO in UP. The article was also posted by OpIndia on their twitter account and attracted decent readership and responses in the form of likes, retweets and commentsⁱⁱⁱ. The paper will analyse the response to the twitter post to understand how publication and circulation of such materials in online spaces impact people in offline worlds. Reading online published articles and response to those articles on twitter helps to understand how such messages ‘reverberate between spaces, bodies and psyches, producing unexpected effects’ which impacts the ‘real’ life and incidents in physical world through circulation of hatred, suspicion and ‘opportunities for resistance’ (Kuntsman, 2010, p. 300).

The History of Love Jihad

In October 2009, a young women named Anitha Moolya from Karnataka went missing. Some local Hindu right-wing organisations suggested that ‘she was the latest victim of “Love Jihad” – a name given to the belief that Muslim youths were luring Hindu women away and converting them to Islam’ (The Telegraph, 2011). However, later that month, police found out that she was killed by her lover, a Hindu serial killer who may have killed twenty women. This was the time when the idea of ‘love jihad’ was coined. Later in 2014, the concept of love jihad gained popularity through the anti- love jihad campaign during the state election in UP. Though, when the concept emerged, the phrase love jihad was being interchangeably used with Romeo jihad^{iv} in the initial couple of years. However, it was only during the televised coverage of Hadiya case^v in 2018 that made love

jihad became a commonly used phrase while Romeo jihad was dropped out from the vocabulary.

Since 2017, the Hindu right-wing organisations and right leaning online media such as OpIndia.com have continuously published on the topic of love jihad. Frequent publications on this subject matter have made it a major topic of national discourse on Indian twitter and other social media platforms. The articles published by OpIndia over the years related to love jihad have used the affective language to spread the feelings of insecurity and demographic dystopia among Hindus. Some of the articles' titles read as – 'In-laws rape and murder Hindu woman after she refuses to convert to Islam' (OpIndia Staff, 2017); 'Hadiya's father's fate awaits all Hindus if they don't wake up to cultural challenges' (Bhattacharjee, 2018); 'India needs to address the issue of protection of its women with utmost urgency' (Dosapati, 2019); 'Love Jihad is not a figment of the "right wing" imagination, it is a real and present danger' (Goyal, 2019); 'Malappuram's Love Jihad factory: Missing girls, conversions, marriages and ISIS exports' (Sanghamitra, 2020); 'Law against "Love Jihad" does not violate anyone's fundamental rights: Smashing the "liberal" arguments with truth' (Nayak, 2020); 'It is time to free India from the evils of conversion: VHP demands nation-wide enactment of anti-conversion law to get rid of "conversion-jeevi"' (OpIndia Staff, 2021), and so on. All these articles have been posted on twitter as well and have been used as resources and evidence by people who have been advocating for law against love jihad and forced religious conversion.

Though the phrase love jihad was coined in the late 2000s, the narrative of abduction, forced marriage and conversion of Hindu women by Muslim men is not new. Charu Gupta (2009) has traced the history of this storyline to the 1920s. During this period, Arya Samaj used the bodies of Hindu women to map the communal boundaries between Hindus and Muslims. As per Gupta's analysis of Hindi novels and stories published during the late 19th and early 20th century, many Hindu writers have depicted Muslim male characters generally have '[I]nchance behaviour, high sexual appetites, a life of luxury, and religious fanaticism' (ibid, p. 14). Paola Bacchetta argues that in the early literature of Rastriya Swayamsevak Sangh (RSS), Muslims were categorised in two groups – 'Muslims-as-Foreign-Invaders' and 'Muslims-as-ex-Hindu-Converts' and both categories were seen as anti-nationals and a threat to Hindu women (1996, p. 151). Gupta uses the image of Muslim men in popular culture during this era to discuss how the image of Muslim men as rapists and abductors of Hindu women

is created. Both Bacchetta and Gupta have indicated that the basis of such negative image of Muslim men was literature of this era instead of any concrete cases and well researched newspaper reports. Declaration of Muslim men as abductors of Hindu women also helped to dismiss any assertion by women over their own bodies and major life decisions like marriage. In the storyline that was circulated in the 1920s, women were seen as passive victims who were ‘abducted’ and ‘coerced’ in an interfaith relation, hence they needed to be ‘saved’ by men of their community (Baccetta, 1996; Gupta, 2009; Sarkar, 2019). In this case, women were stripped of any agency they had over their decision of conversion and marriage, as well as on their own bodies. Then it was unimaginable for men that women can challenge the patriarchal norms of their families and communities. Hence, any interfaith marriage between Hindu women and Muslim men automatically fell into the category of ‘forced marriage’.

Learning from the History

In the post 9/11 world, where Islam is frequently equated with terrorism, Hindu right-wing fundamentalists have utilised the image of Muslim men as ‘terrorists’ to further their own agenda of ‘Hindu nation’. Several newspapers and magazines affiliated to Hindu right-wing organisations regularly circulate ‘fictitious stories’^{vi} about Hindu women being forcefully/deceitfully converted to Islam, raped, or killed by Muslim men. Similar to the 1920s, today’s love jihad theory is accompanied by another rumor that suggests – the Muslim population is increasing exponentially, and they will outnumber the Hindu community in the next 100 years^{vii}. Resultantly, Muslims will gain political and economic power over the Hindu community and curtail their religious rights. Such propaganda invokes anxiety and fear among Hindus and makes them suspicious about interfaith marriages, especially between Hindu women and Muslim men (Rao, 2010). Inter-caste and inter-religious marriages have always been discouraged and opposed in India, often times with violence. Such violence in the name of families’ and communities’ dignity are generally referred as ‘honour crimes’ which include murder, physical and mental torture, kidnapped within one’s own house, and forced marriage. Amnesty International argues that ‘[t]he regime of honour is unforgiving’ because once the shame is brought upon the family and community by a woman, the only ‘socially acceptable’ way to gain back the respect ‘is to remove the stain on their honour by attacking the woman’ (*Broken bodies, shattered minds*, 2001, p. 9). In 2015, a daily English newspaper reported a ‘792% spike in honour killing’^{viii} cases, UP tops the list’ that translated into total

251 registered honour killings all across the nation in 2015 compared to total 28 killings in 2014 (Hindustan Times, 2016).

In the context of marriages in India, Uma Chakravarti and Maithreyi Krishnaraj (2018) write that ‘endogamous marriage is ubiquitous’, and it is followed across religions (including non-Hindus)^{ix}. She argues that the cultural, social relations and hierarchy in a caste-based society is very much depended on ‘specific marriage structures’. Any change to such marriage practices not only affects the marriage system, but it also challenges the caste-based hierarchical social relations. Hence, ‘love’ as the basis of marriage is seen as a threat in such societies because it has the potential to challenge the social hierarchy and relation based on caste and religion. In such cases, elopement and civil marriage are common ways chosen by inter-caste and interfaith couples (Chaudhari, 2018, p. 7). Many times, such marriages are never accepted by the families or communities and could lead to honour crimes against the couple. Up until the decade of 2000s, despite all the opposition and violence, such marriages were commonly referred to as ‘love marriage’ as opposed to arranged marriage (Mody, 2006, pp. 225-226). However, in the past decade, most romantic relationships between a Muslim man and a Hindu woman are categorised as love jihad and are seen as ‘religious terrorism’ by Muslims against Hindus. The allegations of love jihad at inter-religious marriage changes the meaning of such relations as ‘ordinary life is transformed into a feverish kind of fantasy in which a seemingly impulsive interaction-flirting-could turn out to be part of a jihadi that demands intervention from the state conspiracy’ (Gökarıksel, Neubert & Smith, 2019, p. 572). In past as well, families and communities have joined hands with the state against ‘wrong sexual unions’ in the aftermath of partition (Das, 2007, p. 33). However, ‘the coming together of state police, family controls and Hindutva organisations to destroy such love’ is new (Sarkar, 2018, p. 10).

The coming together of state police, family and Hindu right-wing organisations also indicates that they are serious about ‘saving’ Hindu women. However, unlike the 20th century campaign against Muslim abductors, the anti- love jihad campaign of 2010s recognises the agency of women over their decisions and bodies, and so, they are involved in awareness generation campaigns against love jihad across the country with a focus on adolescent girls and young women (for more details, see Tyagi & Sen, 2020). Interestingly, on one hand they are aware that women have the right to marry anyone, despite religious and caste differences. While, on the other hand, they project women in such relationships as

‘gullible’ and ‘love-blind’ who cannot see that their boyfriends do not want to marry for love, but only to further their religious agenda. This assumption that women need protection of the men of their families, communities, as well as from the state, because they are intrinsically incompetent to make ‘right decisions’ is aptly proved in Hadiya’s case. In this case, not only her family but also the High Court proved this point by putting an adult woman into judiciary supervision and annulling her marriage that was by no means legally invalid. The campaign against love jihad has ‘also exposed grave anxieties and fears over women’s independent and individual expressions of love, desire and intimacy’ (Gupta, 2016, p. 294; Tyagi & Sen, 2020, pp. 105-106).

Liberal Right Narrative: OpIndia

OpIndia claims to be a ‘liberal right’ news portal that does not mirror the Indian mainstream media. Its editorial board writes that they believe in the right to free speech, but in their editorial guideline they have mentioned that they ‘won’t entertain the usual left-liberal narrative’ as they are not obliged to do so (OpIndia, 2015). The ‘about us’ page of OpIndia informs its readers that it is ‘a news and current affairs website’. They put their scope of work as – ‘We publish opinion articles, analysis of issues, news reports (curated from various sources as well as original reporting) and fact-check articles’ (OpIndia, 2020). The portal was founded by Rahul Raj and Kumar Kamal in December 2014, the same year when Bharatiya Janata Party (BJP) came in power (May 2014). Rahul Raj left the organisation in 2019 because as per him, OpIndia has become the mouthpiece of BJP. Raj explained this in a tweet posted on August 9, 2019 (see the tweet given below).



Rahul Raj @bhak_sala · Aug 9, 2019

Replying to @bhak_sala

My stand was clear when I became a part of OpIndia. I wanted to write against lies and propaganda spread by media. I wanted to expose the hypocrisy of LW. I wrote it. Later when OpIndia became a blind mouthpiece of BJP, I distanced myself. Popularity was not my priority (3/n)



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Image 1: Rahul Raj explained on twitter the reason to leave OpIndia

The screenshot shows the OpIndia website homepage. At the top, there is a navigation bar with the OpIndia logo and menu items: POLITICS, OPINIONS, FACT-CHECK, MEDIA, VARIETY, SPECIALS, MORE..., SUPPORT US, and ओपइंडिया. Below the navigation bar is a large yellow banner advertisement for the Uttar Pradesh government, featuring the text "1.41 Crore Households Electrified" and "Soch Imaandaar Kaam Dumdaar" with a photo of a man. The main content area is divided into three columns. The left column, titled "Latest news", contains several short news items. The middle column, titled "In Focus", features a large article about India administering 100 crore coronavirus vaccine doses in less than 10 months, with a sub-headline "Here is how 'Sarve Santu Niramaya' manifested itself". The right column, titled "Editor's Picks", features an article by Tulsi Gabbard condemning violence against Hindus in Bangladesh. Below the main article, there are several smaller news reports and advertisements, including one about a BJP MP writing to CEAT Tyres and another about sugarcane prices in Uttar Pradesh.

Image 2: OpIndia's homepage with Three Advertisements of Uttar Pradesh government's Achievements

Advertisements seem to be the major source of the portal's income (see image 2). Along with advertisements, the portal also appeals for financial support to its readers. In their 'support us' appeal they write:

Whether NDTV or "The Wire", they never have to worry about funds. In the name of saving democracy, they get money from various sources. We need your support to fight them. Please contribute whatever you can afford. (OpIndia, n. d.)

They further claim that – 'The mainstream media establishment doesn't want us to survive, but you can help us continue running the show by making a voluntary contribution'. Unlike mainstream news portals, OpIndia does not ask its readers to subscribe to their newspaper to access its contents. As a result, anybody can access all their articles, archives, reportages, editorials, etc. without any subscription. The support us message further clarifies that the amount paid to them is not a donation but financial support from readers who value their work. Their support us appeal is based on the rhetoric of 'fighting with others'. They write that their business model is based on presenting a different narrative than the mainstream media, and they emphasise that the people who believe in their side of the story/narrative as opposed to the mainstream media, should consider paying them for the content they read on their website (check OpIndia's support us page - <https://www.opindia.com/support/>).

Another important message that is projected on almost all pages of the portal is an appeal to Hindus to share the stories of discrimination and persecution they have faced due to their religion and 'prevalent Hinduphobia.' It appears, OpIndia constantly uses the victimhood framework to attract its reader base. The message given in the poster suggests that Hinduism and Hindus and Hindu temples are under constant attack. Even forceful conversion of Hindus to Islam is rampant. It generates an affective atmosphere of fear that may result in frustration and anger among the readers. At the bottom of the right-hand side, the poster shows a tied hand just above the ground as the background image that indicates the struggle of Hindu people, who according to the poster are being persecuted due to their religion (see image 3). The hand also represents the effort of the Hindu community that is trying to break free from their oppressors (Muslims and even secular Hindus and people who believe in equal rights for everyone). The poster has also appropriated the slogan 'Black Lives Matters' and 'Dalit Lives Matters' by writing 'Hindu Lives Matters' at two places (on the right side in white font).

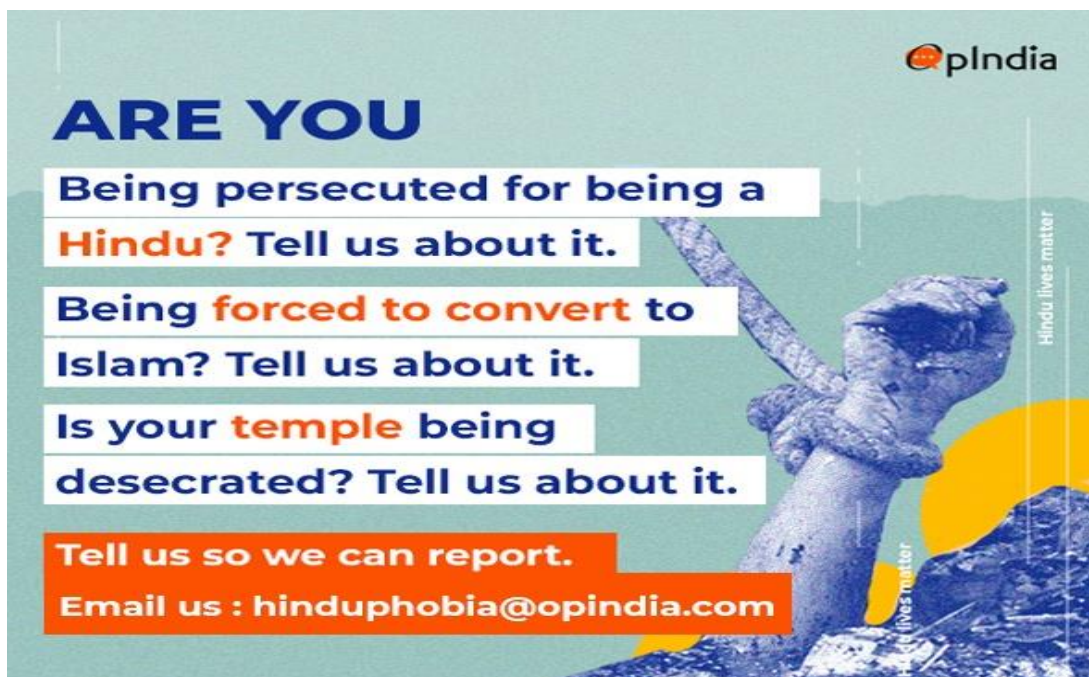


Image 3: Poster shared on OpIndia about discrimination against Hindus

Demand for Anti- Love Jihad Law

A tweet about a Hindu girl from Mumbai was shared in November, 2019 by a twitter user, Shefali Vaidya. She writes:

Sameer Khan seduced Hindu minor Neha Vishwakarma, encouraged her to steal her mother's jewellery and then killed her because she did not steal enough! And they say #LoveJihad doesn't exist. But what is it with Hindu girls? Why do they fall 4 guttersnipes?

This tweet was liked by 3000 people, 1.9 thousand people retweeted it and 120 people commented on it. Mahesh, a commentator, blames Hindu parents and film industry for such mishaps. He writes, '[b]ecause we Hindus have stopped giving sanskars to our children...'. In similar reply, another commentator Swadeshi writes:

[C]an we spend a moment on how less these girls are educated about reality? And how less they know about Indian history and

the faith from other side? Some pay the price of parents' secularism while others of media houses.

Another tweeter user @muthuShiv asks for some ideas and plan on, *[h]ow to prevent young Hindu girls who are in schools & colleges #LoveJihad & #LoveConversion pervert vultures?*

There were 5 comments on this tweet. One of the commentators suggested that children should be informed about love jihad and conversion since young age and parents should keep close eyes on their children, act on any sudden changes in children's behavior and if possible, mothers should sleep with their daughters in same room. Another twitter user recommended that children should be taught about Hindu religion and its superiority to other religions to stop conversion from Hinduism. Other commentators have discussed the availability of sexual contents on the internet and its impact on 'hormonal youths', and the need to educate parents about Hinduism so that they can develop capability to pass on good moral and religious values to their children.

These tweet and comments mentioned above are just a sample of persistent discourse on social media related to love jihad. People who believe in this conspiracy have continuously demanded for solutions to deal with it that includes the demand for a law that can control love jihad. To understand this demand, I used the key words 'need of love jihad law' on twitter search bar. As a result, plenty of tweets appeared that demanded such law. It can be said that the persistent demand for anti-conversion/anti- love jihad law was fulfilled by the UP government in 2020. They passed 'the Prohibition of Unlawful Religious Conversion Ordinance' on November 24, 2020 and promulgated on November 27, 2020. On the same day (November 24), OpIndia published an article named – 'Anti-Conversion law: Yogi government approves ordinance against unlawful religious conversions, violations to attract up to 10 years in jail' (OpIndia Staff, 2020). The article is 311 words long and gives basic information about the ordinance and provisions of punishments under this ordinance. The subheading of the article – 'Home Dept of the Uttar Pradesh had earlier sent a proposal to the law ministry to bring strict law against Love Jihad', suggests that it is framed as a weapon to tackle incidents of 'love jihad'. The first paragraph of the article describes what love jihad is and how it impacts the Hindu community and especially through Hindu women's forceful conversion to Islam. At the end, the article highlights that Allahabad High Court announced that any conversion just

for the sake of marriage will be invalidated and UP Chief Minister has warned Muslim men against indulging in the crime of love jihad.

Same day, the article was also posted on twitter (OpIndia.com, 2020) where it received 1,629 likes. It was retweeted 397 times (fifty-two times with quotes/comments) and it had a total of forty-three comments. Out of these forty-three comments, twenty-two were in favour of the ordinance, eleven were against it (four tweets are from the same account/person) and one was unrelated (self-promotion). For some reason (may be the accounts are private or deleted^x) only thirty-four comments were visible. Twenty-two comments have welcomed the ordinance and praised the UP Chief Minister (CM) Yogi Adityanath for bringing this law. Three hashtags^{xi} have been used multiple times to praise him that loosely translate as – ‘Confidence is there because of Yogi’; ‘Because of Yogi ji daughters are safe’; ‘Trust is there because of Yogi’. All these slogans like hashtags show the support for the ordinance, as well as for Yogi Adityanath led BJP government in UP. However, among these the first hashtag – *#Yogi_hain_to_yakin_hain* (confidence/trust is there because of Yogi) is very popular on twitter, mainly in the context of upcoming UP state election.

Fundamental Rights vs. Cultural Rights

As per the Constitution of India, ‘right to life’ is one of the fundamental rights granted to all Indian citizens. This right cannot be alienated from Indian citizens without proper legal procedure. As an extension to the right to life, people of India have the right to family and marriage. Additionally, the Indian law recognises and allows marriages of interfaith and inter-caste couples. The Special Marriage Act of 1954 has made provisions for such exogamies. As per this act, any adult (women should be at least 18 years of age and men 21 years old) can get married to a person from different caste/religion by registering their marriage in court under this act. To get married under the Special Marriage Act, people do not need to convert to their spouse’s religion, and it upheld their right to profess any religion they want to. However, under all Indian personal laws, one can marry only with a person of same religion. Consequently, the only legal way to get married for any inter-religious couple is to register their marriage under the Special Marriage Act. However, registration of marriage under this act is neither an easy nor a fast-track process. According to the regulations of the Act, a couple needs to fill an application for the registration of marriage and submit it to the marriage registrar. Once the application is approved by the registrar’s office, a

public notice is posted for thirty days outside the office that provides details of the couple. If no one objects to the marriage, the couple can get married after thirty days. But if someone objects, the registrar will investigate the matter that can delay the marriage for at least a couple of months (Choudhary, 1991, p. 2981).

The wait period of minimum thirty days is often risky for an interfaith or inter-religious couple who wants to get married against their families' will. Since the notice of marriage is published on a public notice board, it is very easy for the families and relatives of the couple to know about their intention of elopement and marriage. This regulation makes it difficult for such couples to get married without letting the news spread that could put their freedom and safety in jeopardy. In such cases, many women fear that either their parents will imprison them in the home or will forcefully marry them to someone else chosen by the family. There are very high chances that the family and relatives of the bride and groom will use violence against them. There have been plenty of cases where lovers have been killed or a false police case of abduction and rape has been filed against the man (Mody, 2002; Sarkar, 2019). Perveen Mody writes that one of her informants told her about the Hindu right-wing cells that function as vigilante public (Banaji, 2018) and regularly scan the list of marriage applicants to keep an eye on Hindu-Muslim weddings. This act of meddling with law and its beneficiaries is described by Mody as 'a wholesale political appropriation of the law' (2002, p. 256). The rule of publishing the couples' information in public puts the onus of safety on the petitioners themselves and they will be rewarded with the marriage by the law if they survive the waiting period.

Due to such provisions under this act, desperate couples are left with only one option – getting married as per the personal law that needs both persons to belong to the same faith. In such cases, many times one person converts to another person's faith for the sake of getting legally married (Mody, 2013, p. 52). Here the important point is – when a Hindu woman, who gets married by converting to Islam to make the process of marriage faster, could be seen as a victim of forced conversion. As a result of conversion in today's communally polarised situation, the marriage could be interpreted as a case of love jihad. The provision of personal laws as well as Special Marriage Act do not leave many options for the couple because without being legally married, they cannot seek legal protection, especially if the girl can be proved to be a minor in terms of age (less than 18 years of age).

In addition to the rules of Special Marriage Act, enactment of the Prohibition of Unlawful Religious Conversion Ordinance, 2020 has made the process of interfaith marriages lengthier and riskier. If any person wants to convert their religion or get married to someone of another religion, then they have a minimum wait period of two months. The ordinance clearly states that any religious conversion for the sole purpose of marriage will be unlawful and such marriages will be legally void. The ordinance mandates that if a person wants to change their religion, they need to apply for it to the District Magistrate (DM) of their area at least sixty days in advance from the intended date of conversion. Simultaneously, the religious convertor who is doing the conversion procedure also needs to file a separate petition thirty days in advance. Once the application procedure is completed by both parties, the DM will investigate the case with the help of local police to ensure that the conversion is willful and does not violate any of the rules and provisions of PURCO. Meanwhile, DM will publish the notice of conversion in the public (on their office building's notice board) for a period of sixty days, and any family member or relative can object to conversion during this period. If the investigation satisfies the need, the DM will overrule the objection and give the permission for conversion to both the person who is being converted and the converter. If not, the DM may deny the conversion petition. In case of success, the applicant who has converted needs to appear in front of the DM within twenty-one days of conversion to confirm their 'identity and the contents of the declaration'. Failure to do so will invalidate their conversion.

Similarly, in case of an interfaith marriage, a couple needs to apply at least sixty days in advance if either man or woman wants to convert to the religion of their spouse before or after the marriage. They also need to follow the same steps as mentioned in the previous paragraph for religious conversion. If the procedures are not completed as directed in the ordinance, or during the investigation if there is a sign of misrepresentation, force, undue influence, coercion, allurements, or fraud, the marriage and conversion will not be permitted. If the conversion or marriage has already taken place, it will be considered void. In addition, people who have been part of conversion/marriage will be charged as parties to the offence and burden of proof will lie on them, as the offence under the ordinance is cognizable and non-bailable. Usually, the crimes that fall under cognizable cases in India are serious offences like, murder, rape, theft, culpable homicide, etc. Fraud and cheating are considered non-cognizable offences. However, under PURCO, the conversion/marriage due to fraud is placed under cognizable offence.

When we read the rules of PURCO along-side the guidelines of the Special Marriage Act, 1955, it becomes clear that the ordinance has taken away any fast-track means of getting married for inter-religious couples. Now they can marry only after thirty days waiting period if they decide to marry in the civil court or after sixty days, if one of them wants to convert their religion. In both processes, the information about the marriage or conversion will be posted in public and that can create a life-threatening situation for interfaith couples, as marriage is still a very contentious issue and a matter of family and community's honour and dignity. Though the Constitution of India guarantees the right to profess any religion, this ordinance in UP creates hurdles in the way to do so, mainly in cases when a person wants to follow a religion in which they are not born. The ordinance allows any relative by blood, adoption, or marriage to file a complaint against religious conversion and interfaith marriage, which gives immense power in the hands of family members who can use these legal maneuvers if needed.

If a man from non-SC or ST community is converted from one religion to another by force, greed, or fraudulent means, then the offender can be imprisoned for 1-3 years. However, in the case of conversion of women, and people from Schedule Castes (SC) and Scheduled Tribes (ST), the provision of incarceration is even more stringent. If it is proved that any woman, SC, or ST people have been converted through misrepresentation, force, undue influence, coercion, allurements, or fraud, then the offender can be imprisoned for 2-10 years. Special provision for these three categories of state population indicates that these people are 'infantile' and 'naïve' in the eyes of lawmakers. Despite the legal right to personhood, the provision of PURCO gives priority to religious and community rights over individual rights by allowing other people of the family to file complaints against one's marriage or religious choices. The ordinance indicates that women, SCs and STs are inherently incapable of making right decisions for themselves and need special provisions and protection from the government. The religious and cultural relations have traditionally treated upper caste men as intellectually superior, while women of all castes and men from SC and ST communities as intellectually less capable, and the UP's anti-conversion ordinance seems to adhere to that tradition.

Conclusion

The title of an article published in NDTV indicates how PURCO has started negatively affecting interfaith couples. The title, 'How UP's new anti-conversion

law is being used to harass Hindu-Muslim couples: The law, which came into force in the form of an ordinance on November 28, is seen as giving legal teeth to the BJP's battle against so-called "love jihad", makes it clear that the ordinance is being used by Hindu vigilantes to restrain the ability of getting married of interfaith couples at local level. The case study given by the author of the article shows that a couple got married in July 2020, four months before the enactment of the ordinance. Still, the woman's husband and brother-in law have been arrested on the basis of the complaint filed by the woman's mother of forceful conversion. As per an article by Indian Express, within one month of enactment of the ordinance in UP, fourteen cases were registered and forty-nine people were arrested under PURCO. Out of these fourteen cases, only two were filed by the women themselves.

Women's right to profess a religion or to marry a person of their choice has always been at odds with their community. To settle the communal and ethnic identity conflict – 'women are the ones who are often targeted first', as the community and state regulate their sexuality to map the differences between communities (Kandiyoti, 1991, p. 443, as cited in Menon, 2005, p. 59). Ritu Menon argues, '[f]amily, community and state emerge as the three mediating and interlocking forces determining women's individual and collective destinies, and religious identity and sexuality as determining factors in their realisation of citizenship and experience of secularism' (2005, p. 60). Till date, family laws are followed in India in matters related to marriage, divorce, inheritance, adoption, etc. These laws are still rooted in the traditional morality, colonial interpretation of religion and custom. Women are not able to access the constitutional rights to equality in most spheres of life in their individual capacity. Hence, when we discuss the case of love jihad and PURCO, we need to highlight the underlying assumption behind such laws that gives priority to community over individual women.

The narrative of horrible married life with a Muslim man is created to control Hindu women and to define the category 'other'. People who spread such stories of conservatism and cruelty of Muslims have created the image of Hindus as victims who have been exploited and converted by Islam for centuries, and now it's their chance to fight for 'justice'. As Sara Ahmed argues that emotion of hate helps to create the ordinary people as victims – in this case, Hindu population in India believe in their victimisation by others whose mere presence is sufficient to harm the ordinary people. She finally claims that '[t]he bodies of others are hence

transformed into “the hated” through a discourse of pain’ (Ahmed, 2004, p. 118). Along with the discourse of pain, the discourse of fear is also at work in this context. Gokariksel et al. (2019) define this fear as ‘demographic fever dreams’ (p. 562), because like a dream during fever, the discourse of demographic dystopia and the great replacement also lack coherence and play on emotions to appeal for political actions against the others to save their race, religion and the nation. Such imaginations distort the data and facts and obscure the real condition of ‘demographic patterns of migration, birth, or mortality to dismiss or undermine class tensions and create fictitious communities of homogeneity’ (ibid, p. 563).

The creation of endogamous Hindu society to establish moral and religious superiority of Hindus over Muslims and other minorities is a priority of vigilantes involved in anti- love jihad campaign. Muslim men, who are already under constant surveillance by the state, due to association of Islam with terrorism, are now additionally surveilled by the society. For example, in December 2017, a Hindu man hacked a Muslim man and then he burnt him because of the suspicion that he is ‘planning to commit love-jihad’ (Singh, 2017). The culprit filmed the whole incident and then put it on social media (Facebook). Such violent incidents clearly show the impact of the circulation of affective materials between the digital world and the real world. The recent development on social media against love jihad and in favour of PURCO in UP and various other states are meddling with the fundamental rights of right to marry and right to religion. It looks like, soon there will be no space for love, romance, and marriage for people of different communities. This is an attack on people’s everyday experiences, as well as on their intimate relations and spaces.

Notes:

ⁱ See newspaper articles published by Hindu right-wing media. For example, ‘Love Jihad is not a figment of the “right wing” imagination, it is a real and present danger’ by Shashank Goyal published in OpIndia on May 2, 2019, <https://www.opindia.com/2019/05/love-jihad-is-not-a-figment-of-the-right-wing-imagination-it-is-a-real-and-present-danger/>

ⁱⁱ See some sample news articles that discusses the enactment of the law. For example- check ‘UP Home Department Proposes Tough Law Against “Love Jihad”: Report’, <https://www.ndtv.com/india-news/up-home-department-proposes-tough-law-against-love-jihad-report-2328251>

ⁱⁱⁱ Twitter is a micro-blogging and social media website that allows to exchange short messages known as tweets. Anyone can follow any person who is a twitter user and messages posted on twitter are public unless a person has made their account private. Tweets are now 240 characters long. Photos and videos can also be posted as tweets. Twitter users can retweet (share) someone else’s (anybody) tweets to promote that message or comment on any tweet to express their feeling and opinions. In July 2021, India ranks third in terms of twitter users with total 22.1

million active twitter users ('Leading countries based on number of Twitter users as of July 2021, Statista'). Please visit the following link for more details: <https://www.statista.com/statistics/242606/number-of-active-twitter-users-in-selected-countries/>

^{iv} See the article 'Anti-Romeo & Love Jihad: Experiments in moral policing in Uttar Pradesh,' published in Indian Express for more details on the emergence of the concept love/Romeo jihad in 2014, <https://indianexpress.com/article/explained/anti-romeo-love-jihad-experiments-in-moral-policing-in-uttar-pradesh/> The information can also be found on Wikipedia page – 'Love Jihad' - https://en.wikipedia.org/wiki/Love_Jihad

^v In 2017, Hadiya married to a Muslim man named Shafin Jehan, whom she met through a marriage portal. Due to the judiciary surveillance, the newlywed couple appeared before the High Court of Kerala in May 2017 and informed about their marriage. In response, the court annulled their marriage without any reasonable excuse, and forcefully sent Hadiya to her parents' house. Subsequently, Jehan appealed against the judgement in the Supreme Court of India. In the attempt to determine the case, the Supreme Court appointed the National Investigation Agency (NIA), a government organisation that investigates cases of terrorism, to investigate this case. The NIA presented some vague evidence and claimed it to be a case of love-jihad. In March 2018, Hadiya's marriage was reinstated due to her statement about her willful conversion and marriage, the immense pressure from women's rights organisations across India, and the absence of any concrete evidence from the NIA.

^{vi} I have cross-checked various such cases published in OpIndia. Most of these cases were not reported in any local or national newspapers. The ones that were reported have given very vague evidence and there was no follow-up article on such cases. For example, check this news - <https://navbharattimes.indiatimes.com/metro/mumbai/other-news/he-killed-with-whom-he-escaped/articleshow/71996573.cms>. There is no follow-up report that suggests what happened next or about the trial of the case in the court. I also couldn't find the case published in any other newspaper.

^{vii} In the past decade, there have been numerous occasions when the right-wing Hindu organisations and people affiliated to them have appealed Hindu families to reproduce more children to maintain the majority population status of Hindus in India. Please see the following link for news related to such appeals – 'India MP Sakshi Maharaj: Hindus must have more babies' (BBC News, 2015) <https://www.bbc.com/news/world-asia-india-30706431>
'Hey Hindus, the VHP wants you to have more babies to save the nation!' (Dutta, 2015) <https://www.india.com/viral/hey-hindus-the-vhp-wants-you-to-have-more-babies-to-save-the-nation-342813/>
'Produce more children, RSS tells Hindu couples' (The Hindu, 2016) <https://www.thehindu.com/news/national/other-states/Produce-more-children-RSS-tells-Hindu-couples/article14582028.ece>
'BJP MLA urges Hindus to produce more babies at population control event' (News18.com, 2018) <https://www.news18.com/news/india/bjp-mla-urges-hindus-to-produce-more-babies-at-population-control-event-1670877.html>

^{viii} Honour killings are a category of murder that is committed by family, relatives and community in the name of family's and community's honour.

^{ix} Also see, PEW Research Center's survey – 'Religion in India: Tolerance and Segregation'. It depicts that most Indians believe that they need to stop interfaith marriages. As per the report, 'Roughly two-thirds of Hindus in India want to prevent interreligious marriages of Hindu women (67%) or Hindu men (65%). Even larger shares of Muslims feel similarly: 80% say it is very important to stop Muslim women from marrying outside their religion, and 76% say it is very important to stop Muslim men from doing so', <https://www.pewforum.org/2021/06/29/religion-in-india-tolerance-and-segregation/>

^x If a twitter account is private, then the content posted by that account will not be visible to the general public. Only

people who follow the account can see and react to the tweets posted by that account. In case, if a twitter account is deleted, their posts will not be visible.

^{xi} ‘A hashtag—written with a # symbol—is used to index keywords or topics on Twitter. This function was created on Twitter, and allows people to easily follow topics they are interested in’ (Help Center, n.d. <https://help.twitter.com/en/using-twitter/how-to-use-hashtags>)

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Article: Unemployed by Design: ‘Migrated Indian Wives’ and Deterring Immigration Laws in the U.S.

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Unemployed by Design: 'Migrated Indian Wives' and Detering Immigration Laws in the U.S.

--- Tasha Agarwal

Abstract

In India, a large number of women travel to different parts of the world post marriage. The experience of such international migration, for the spouse migrant, is to a large extent dependent on the immigration policies of the destination countries, here USA. The immigration policies, like any other policies of the nation, are embedded in the socio-psychological and cultural norms of the state. This sets the tone for defining the criteria of identifying 'spouse' and defining their experience of being in the destination country. Taking the particular case of women on H4 visa, based on primary data collected through telephonic interviews with thirty women with H4 visa, the paper concludes that by the design of immigration policies, the women are forced out of labour market and the state redefines their role which is confined to the domestic space, hence impacting their lived experiences.

Key words: H4 visa, Immigration, Labour market, Law, Women

Introduction

Marriage migration has often been contested in policy discourse of various countries, where some countries such as Malaysia, Germany, etc., do not allow family integration, and hence restrict marriage migration of spouses. However, some other countries such as the USA, UK, Australia, and some European countries often allow the spouses of a citizen for family integration, hence allowing permanent settlement of spouses following marriage migration. The policymakers in different countries often use marriage migration as a policy tool in order to manage the flow of migrants. The often-cited reasons for not allowing spouse migration in some countries is to discourage permanent settlement, reduce the burden on the government's resources which would have to be spent on dependent members of the family, maintain ethnic homogeneity in the society, and so on.

Spouses, mostly women, are the ones who are most affected by such policies which discourages family integration. In a scenario of transnational marriages, where two countries are involved, the role of the respective government becomes all-pervasive to manage or create platforms that can minimise the vulnerability of the individual. Gender inequality being deeply rooted in India's social and cultural practices, the role of government becomes even more critical to facilitate a conducive ground for females to make such long-distance travel away from family.

As per the immigration laws of many developed countries such as the US, the spouses are welcomed in the destination country only by beholding 'dependent' status. The dependent status carries a set of nuances that completely redefines how a spouse, primarily women, is supposed to live in a destination country. Hence, through its immigration laws, the state reinforces the already deeply rooted gender inequality into a further deeper level with a higher magnitude of vulnerability. It is a dual vulnerability in which women position her. First, as being spatially distanced into a new place with a new set of rules and regulations which takes years to understand and adjust into, and secondly, to dwell into the same old social practices which predefined roles and responsibilities of women of being confined to the domestic space; all these being reinforced by law.

These women are mostly unaware or unprepared for the *packaged roles* designed for them. Hence the problem arises when these women travel on dependent visas after marriage. There have been many instances where these women who hold high academic qualifications and equivalent work experience are confined to remain out of the workforce because the immigration law restricts them. It dramatically impacts their career aspirations and adds to their economic vulnerability in the destination country. The inability to join the labour force is also associated with losing confidence, impinging upon their identity and belongingness. Because of the dependent visa's vulnerability, Banerjee (2012) has used the term *vegetable visa* as synonyms for dependent visa¹.

This paper will look into such immigration laws and how it impacts the experiences of spouse migrants and their daily lives. The paper is divided into four sections. The following section discusses the understanding of the legally sanctioned marriage as per the United States Citizenship and Immigration Services (USCIS), which is framed predominantly on the Hindu upper caste cultures and norms. Thereafter, the next section discusses how the idea of control

and coverture penetrates from the personal law in the US to the immigration laws concerning foreign nationals. With this understanding of the laws about marriage in the US, the section that follows discusses the specific visa, i.e. H4 visa, which is the subject of the study, and through this visa, we try to understand how law permeates control. The last section presents anecdotal evidence on the experiences of the women on H4 visas and the psychological and social impact of the same.

Understanding ‘Spouse’ in US immigration

Immigration laws, like any other laws, are embedded in the socio-psychological and cultural norms of the state. This sets the tone for defining the criteria for identifying the law’s subject, here ‘spouse’. The laws on immigration are even more complicated as there are other nations involved, and hence the criteria for identifying ‘spouse’ are not just based on a common interpretation of the term in the destination country but also on those recognised in the country of origin. Therefore, any symbolic identity markers, symbolising marriage as per the cultural norms of the origin country, are adopted as the norms for authenticating the real marriages as against fraudulent cases.

The problem arises when the marriages take place beyond the conventional norms of the society, thereby facing difficulty to authenticate the same for immigration purposes. For example, same-sex marriages were not acceptable in the immigration laws granting the spouse visa until 2013. Till 2013, the Defense of Marriage Act (DOMA) of 1996 defined the institution of marriage and the legal definition of ‘spouse’ and ‘marriage’. This act emphasised the usage of the term ‘marriage’ and ‘spouse’ to imply only the opposite sex. The law states ‘the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife’ (Cornell Law School, 2020).

In 2013, the case of *United States v. Windsor* challenged such narrowly defined terminology of marriage as a result of which Section 3 of the Defense of Marriage Act, which emphasised the usage of the term ‘marriage’ and ‘spouse’ to imply opposite sex, was declared unconstitutional, declaring same-sex marriage as a valid marriage based on the place-of-celebration ruleⁱⁱ (USCIS, 2021; Cornell Law School, 2020).

Apart from the socio-cultural aspect determining the state's policy, the state is also governed by the power hierarchy where the destination country's laws are still considered supreme. Even though the immigration service predominantly emphasises the place of celebration rule to validate a marriage, it does have a specific set of criteria that is considered unacceptable as per the state's law. Therefore, in a scenario where the place of celebration rules and the US admission criteria clash, those in sync with the US criteria are deemed applicable (Calvo, 2004).

According to USCIS (2021), a marriage is not considered as valid in the following scenario, even if it is valid in the place of celebration:

- Polygamous marriage
- Civil unions, domestic partnerships, or other such relationships are not recognised as marriages in the place of celebration
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated
- Certain marriages that violate the firm public policy of the state of residence of the couple

Thus ideally, as per US immigration laws, the spouse is considered as those who are monogamous, not incestuous and are in a legally sanctioned relationship (Calvo, 2004).

Transcending the Idea of 'Control' from Personal Law to Immigration Laws

Historically, immigration in the US had been predominantly female, which derives disproportionately from women being a significant component of family migration (Fitzpatrick, 1997). Even after a decade, spouse migrants to the US continues to be predominantly female (Balgamwalla, 2014; Calvo, 2004). Therefore, any laws concerning spouse migration directly impact women.

Different studies have discussed the nature of US immigration laws, which ignores the gendered aspect of policy domains and how it has an unequal impact on different groups of people (Olivares, 2015; Banerjee, 2012; Manohar, 2009). It is believed that by making immigration laws gender-neutral, the lawmakers are doing more harm because the structural constraints faced by women already

delimit their capacity to a large extent. Therefore, immigration laws ought to be gender-sensitive rather than gender-neutral. In the words of Fitzpatrick,

...Gender is an organising principle, not a simple variable, in-migration, and the experience of the United States as a receiving state is no exception to this pattern... (1997, pp. 24-25)

The immigration laws concerning spouse migrant or dependent migrant is one such policy tool that leads to the production of power hierarchy and concentration of dependent migrants by the principal visa holder. Even though the visibility of females has increased over the years, it has not transcended down to the immigration laws to address the specific need, concerns and risks of the female immigrants (Fitzpatrick, 1997). The immigration laws, which allege to establish coverture, ultimately lead to the chastisement of women by their husbands (Calvo, 2004).

Coverture is defined as a legal arrangement where post marriage, the existence of women are incorporated and consolidated with that of the husband. A woman is not considered to have an existence of their own, and their identity is wholly based on the existence of their husband. This kind of arrangement is further facilitated by state law, where the woman is under the 'cover' of the husband (Ballgamwala, 2014). In the words of Calvo,

Coverture is a legal notion that husband and wife are one, and the one is the husband. (2004, p. 160)

Coverture entitles a husband to have an ownership right over his wife, including the movable and immovable property owned by her. A social contract implies disciplining the wife to obey her husband after marriage, and the law enables the husband to file suit against her. However, a similar right to file suit against the husband is not available to a woman. Children born out of such marriages are also considered to be belonging to the husband, and as per law, the mother has no right whatsoever (Calvo, 2004). This has been a part of the familial discourse in the US, where marital law and social norms played a vital role in subordinating women's position in society.

Until the late 19th century, coverture was socially and legally acceptable, where the husband had the legal right to chastisement (Siegel, 1995). Any corporal

punishment to discipline the wife was deemed acceptable unless it does not leave permanent physical damage to the person. Later with feminist uproar concerning changes in marital and family laws, the laws regarding chastisement were repudiated. However, it was replaced by other new forms of control wherein the cases concerning domestic violence were veiled under the concept of 'family privacy' aimed towards the promotion of 'domestic harmony' (Siegel, 1995). Siegel calls such an attempt towards the maintenance of the status quo as 'preservation through transformation'. She describes:

...When the legitimacy of a status regime is successfully contested, lawmakers and jurists will both cede and defend status privileges - gradually relinquishing the original rules and justificatory rhetoric of the contested regime and finding new rules and reasons to protect such status privileges as they choose to defend. (1995, p. 2119)

The immigration laws concerning family migration, in general, and spouse migration, in particular, seems to be transcending from the family laws governing US citizens. Hence, the regulations on wives imposed by the family law are pretty evident in the immigration policies regulating the dependents of the principal visa holder, right from the inception (Zaher, 2002). Citizenship was always considered a male domain, so much so that before World War II, married women often travelled on their husband's passports (Ballgamwala, 2014). Thus, females were often assumed to be carrying the citizenship of that of their husband. The immigration laws governing families in the 1920s gave male citizens and male permanent residents the legal right over the immigration status of their wives. However, the same was not available to females, i.e. a female citizen or female permanent resident could not have legal rights over her foreign-born husband. The immigration laws of 1952 rectified the gender-biased language adopted in its policy document, thereby correcting the gender differentiation in its functioning. However, the subsequent immigration law of 1965, though not explicit in terms of gender-biased language, but implicitly reinforced their idea of coverture through their visa policies concerning principal visa holders and their dependents; where the principal visa holders are predominantly male while their dependents are predominantly female (Ballgamwala, 2014). This has been made possible through specific sets of rights for the principal visa holders and restrictions for the dependents.

Such an idea of control commences with controlling their participation in the labour market, thereby curtailing their economic independence. As per USCIS, the H4 visa holders are not authorised to participate in the labour market. This policy automatically creates a filter for the entry of thousands of women into the labour market. Most of the women who travel to the US on H4 visas are highly qualified with degrees in medicine, engineering, law, architecture and work experience of working in leading companies in India before migrating to the US on an H4 visa. Their academic degree and work experience make them equally skilled to participate in the labour market. However, with restrictive policy, they are confined at home and are dependent on their partner. However, this has been severely critiqued on the ground that females are always at work. It can be any one of the three cases – ‘paid or recognised’ or ‘paid but non-recognised’, i.e. kept off the records, or ‘unpaid and unrecognised’. In any of these cases, the women are always at work. Therefore the ‘dependency’ may not be real and absolute as the westernised understanding of ‘dependent’ is concerned (Morokvasic, 1984).

About H4 Visa

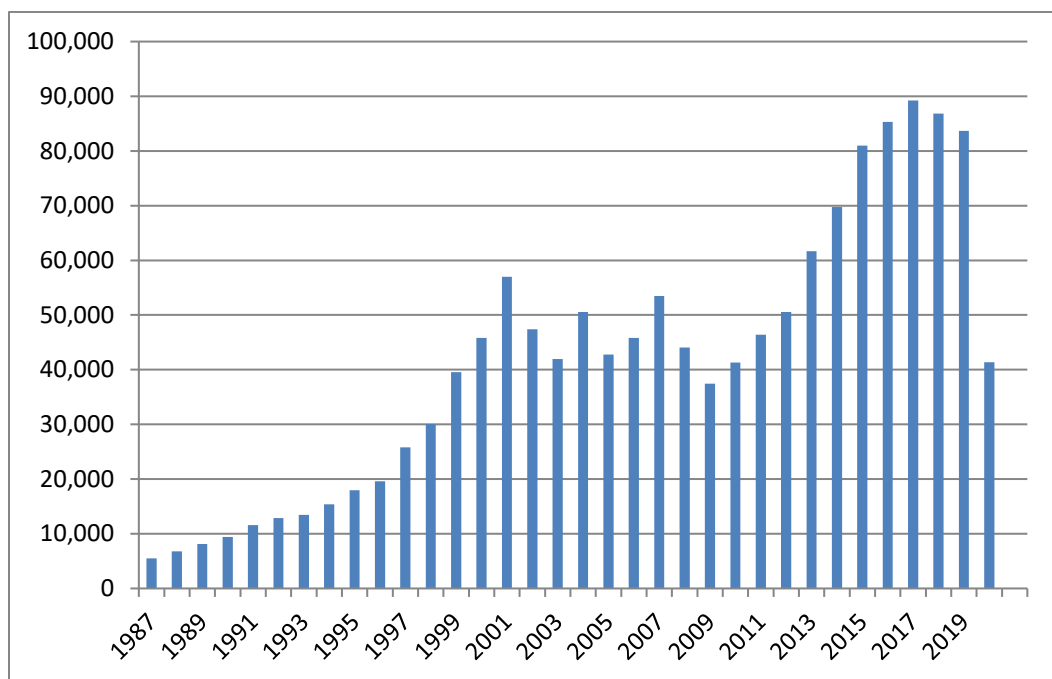
H4 visas, also known as dependent visas, are provided to the spouses and children of H-visa holders; this may include H1B, H2A and H2Bⁱⁱⁱ. Since both H2A and H2B are seasonal, it does not generally lead to the migration of the family members. Therefore, most of the H4 visas are allotted to the family of H1B visa holders. H4 visa holders can move to the US only when the H1B visa holder has got his/her visa approved. Therefore, the entry in the US and their continuity of being in the US is contingent on their primary visa holders, i.e. H1B. The validity to stay in the US for the H1B visa holders is two terms of three years each, i.e. six years in total. After six years, if the employer considers the H1B employee an asset for the organisation, they can apply for the Green Card. Simultaneously, for those on H4 visas, if they are willing to receive the work authorisation, H4 EAD^{iv} will also be filed for the upgradation of status.

Under the presidency of Obama, the US administration brought changes in the H4 visa to include the H4 EAD category in order to facilitate the participation of women in the labour market. In order to upgrade from H4 to H4 EAD category, one must have spent at least six years working in the USA and must be holding an approved I-140 petition^v. Once the Green Card application has been filed, it permits them to extend their stay for a year, renewed every year until the Green

Card is issued. If the H1B holder runs out of status during the process, then both H1B and their corresponding H4 visa holder need to leave the country.

The issuance of H4 visas by the US has increased considerably over the last few decades (See Fig. 1). The majority of these visas are allotted to dependents from India, China and Mexico. As per the Department of Homeland Security (DHS), 80-90 per cent of the H4 visas are allocated to Indians (Bier, 2020). Thus, Indians form a significant chunk of the group receiving the H4 visa from the US. For those applying for H4 EAD in the last five years, 91 per cent are Indian nationals (Bier, 2020). Most women applying for the H4 visas are highly educated with adequate work experiences in diverse fields (Banerjee, 2012).

Figure 1: Number of H4 visas allotted by the US in different years



Source: Department of Homeland Security (different years)

Of the thirty women interviewed, all women had higher education with work experience of at least a year before moving to the US (Table 1 & 2). Most of these women were engineers and had qualifications equivalent to their husbands. These women are already the ones who can be considered ‘skilled’ workers; however, by the design of the immigration laws, these women are barred from entering the labour market.

TABLE 1: EDUCATIONAL QUALIFICATION OF THE RESPONDENTS

Educational Qualification	Number of Respondents
Graduate (B. Tech/B.Com/BBA/BA)	17
Post Graduate (M. Tech/M. Com/MBA/MA)	8
MPhil/PhD	2
Other Professional Degrees	3

TABLE 2: WORK EXPERIENCE OF THE RESPONDENTS

Work Experience (in Years)	Number of Respondents
0-1	4
1-2	7
2-5	11
5+	8

Few researches have studied the economic contribution of those individuals who have received their H4 EAD visa and their labour market contributions. As per research conducted by Brannon and McGee (2019) on the cost-benefit analysis of repealing the H4 EAD, it was brought out that the H4 holders are highly employable and contribute substantially to the US economy. According to their estimate, approximately 75 per cent of all people who applied for work authorisation are employed and contribute approximately \$5.5 billion annually to the US economy. The median wage offered to the H1B and H4 EAD visa holders show just a slight variation, with the median wage being \$113,022 for H1B and \$111,632 for H4 visa holders (Bier, 2020). Hence, it is well established that the H4 visa holders are also among the highly skilled individuals to contribute equally to the US economy. Had these H4 visa holders not have to wait for at least six long years for the work authorisation, they would have been able to join the labour force much before they did.

Dependence by Structure: Experiences of Indian Wives

Despite being educated, skilled and experienced, these women are out of the labour force primarily because of the intersection of the regressive policy of the state and the social norms of Indian society. The patrilocal norms of the Indian marriage system generate a structure where the women are expected to shift their residence to their husband's place, and any deviation from the same is deemed unacceptable. In such a scenario, even though a woman might be willing to wait for her H1B visa, there are lots of precarity involved. Women often find themselves trapped in providing the exact timeline of the 'waiting period', and hence, there is always a covert pressure to move to the US along with the husband.

The delimitations imposed by the US immigration laws significantly impact an individual's experiences moving on a dependent visa. When these women move on H4 visas, they often have a different experience to offer, providing heterogeneity to the much-celebrated homogeneous notion of the *American Dream*.

One of the significant dependencies created by this visa is that of economic dependency. A woman losing her financial independence and being utterly dependent on her husband for every single need has been one of the significant drawbacks discussed at length by the respondents.

Shruti (pseudonym), 28 years old, moved to the US after her marriage in 2016. Since the husband was already on an H1B visa in the US for the last few years, she received her H4 EAD a bit early, i.e. in 2019. Before she migrated to the US, she thought H4 visa holders could participate in the labour market, only to find out later that H4 visa holders cannot work. By profession, she is an engineer and was working with a reputed MNC in Bangalore. She describes her experience of moving to the US on H4, with no provision of engaging in the labour market, as:

I did not work for one year. So until January 2017 from January 2016, I was not doing anything. And I was going literally mad because in India I used to work from morning till evening. I used to be in the office. I then realised that I do not have any good hobbies and was going literally mad and really desperate to get a job. (Interview conducted on October 17, 2020)

Nandita (pseudonym), 34 years old, a Ph.D. holder from the University of Delhi discusses her experience as:

...after I came here for one week, I was just crying about why I had come here because there was nobody to talk to. My husband would leave in the morning and come back at night. I was alone the entire day with nothing to do. It was just me and the household chores. This was not something that I signed up to. Household chores have never been my thing. And here I am in the US handling the household chores. From outside it might look all fancy that I am in the US but here I know how it feels to stay without work and identity...What am I supposed to do with my PhD degree then?
(Interview conducted on February 16, 2021)

Medhavi (pseudonym), 31 years old, discussed how this forceful unemployment has impacted her not just financially, but also socially and psychologically. She got married after seven years of relationship with her husband. Even though she knew her husband pretty well before marriage, the dissatisfaction and frustration with economic dependence perpetuated down to her family life, impacting her marriage:

We both finished our studies together and worked as software engineers in different MNCs in Mumbai before he (husband) received his H1B visa and moved to the US. Initially it was all good when we were busy with our curiosity of a new place...Slowly, when you are more settled, you tend to reflect on what are you up to...I started questioning myself about everything. I started feeling impatient, losing all the confidence and hope. I used to be angry and frustrated most of the time. I just wanted to work. That's it...I wanted to go back to India, but he had a better job here. So I couldn't even force him, but I was losing myself too...Finally, it came down to the point where we thought of getting a divorce. I even went back to India to stay there for a few months. (Interview conducted on July 09, 2020)

In order to utilise their time more efficiently, it was often seen that these women would resort to exploring the alternatives to keep themselves updated and productive, which is often aimed towards future employment prospects. Many of

the women were seen to be engaging in unpaid freelancing work, volunteering with NGOs, pursuing higher education, or pursuing their hobby until they received their work permit.

There were few who went for higher education to increase their probability of employment in future. One of the defining factors for joining higher education institute in the US, apart from self-motivation, has been the support from the husband and the in-laws. Women often carry the baggage of social and cultural norms from the country of origin and often, the in-laws in India try to exercise control over the women in the destination country.

Bhavana (pseudonym), 34 years old, discussed her life in India, where she used to work in XYZ Company and then moved to the US after marriage. She plans to raise a family and take care of the kids in the coming year. She initially mentioned her lack of interest in higher education or work permit, but on further probing, she mentioned:

...See with pursuing higher education, there is some problem. My husband and I, we both are engineers. We both have done B. Tech. If I go for M. Tech, I will be the one with higher qualifications. My mother-in-law does not want this. My husband supports me, but we don't want to upset her...So we haven't thought about the work permit thing. Anyways I will have to take care of the kids.
(Interview conducted on February 18, 2021)

Those women who are willing to build a career ahead often find themselves positioned in the strange amalgamation of the restrictive state laws and the regressive social norms which transcends the geographical borders.

Even after one receives their H4 EAD, i.e. work authorisation, the recognition of such work authorisation in the labour market adds to the existing barrier. The employers are seen to be apprehensive about the work authorisation associated with an H4 visa, as an H4 visa is popularly understood as a dependent visa where one cannot work. This apprehension stems from the changes which are very recent, i.e. it was only in 2015 that amendments in the H4 visa were made and the provision of a work permit was granted to the H4 visa holders fulfilling specific criteria. Thus, many employers are not yet aware of such changes. Secondly, the volatility associated with the H4 visa; with the change of government in 2017,

there was a fear dwindling on the work permit of H4 visa holders. With frequent public discussions happening around immigration laws in general and a growing possibility towards the removal of work permits of the dependent visa holders, there was a lot of confusion and apprehensions surrounding the legality of the work permit of H4 visa holders and the possibility of continuity of such work permit in the then on-going political climate. All these deeply impacted the women, both who were on H4 visas, waiting to receive the work permit, and also among those who had successfully gained the work permit.

Shreya (pseudonym), 38 years old, mentions a similar account:

...Contrary to popular belief, it is not as easy to get a job on EAD because a lot of...like in the normal companies...like basic American companies, a lot of people don't know what H4 EAD is...So when you say EAD, people assume that it's a Green Card EAD...I mean, I learned the hard way after giving enough interviews. So today, assume that you're on the way to get a job and then you tell them, Oh no, it's an H4 EAD. And then they're like, Oh! What is that? And the worst part is H4 EAD has a very bad reputation. So imagine that you never heard of H4 EAD. You go and Google it. And the first thing you see is that it's going to be revoked. Nobody really wants to give a job with that kind of visa because you don't know for sure how long they'll be allowed to work for you. So although people may seem like, Oh my god, you have an H4 EAD so these jobs must be raining on you. It's not like that. (Interview conducted on March 30, 2021)

Even if someone manages to secure a job for themselves, it is like restarting one's career right from the beginning. The restart is because of the halt of 6 years in between, i.e. shifting from H4 to H4 EAD, sometimes due to non-availability of job which is in cognisance with one's education and experience, and most of the time due to a shift towards the social reproductive role adopted by the women and the lack of helping hand to share these responsibilities.

Kavita (pseudonym) worked for eight years after completing her MBA and was in a reputed MNC, heading a brand which is an international money transfer brand, in India. She moved to the US post marriage in 2013 and received her work

permit in around 2018. She narrates her struggle of looking for work after receiving the work permit:

...then I kind of just gave up looking for a job. I think the difference was that at that point, I used to think that I wanted a similar job as to what I did in India. So the same level...same type of...you know, like big scale, stuff like that. After struggling for almost a year, I kind of readjusted my expectations. And I was like, you know what, at this point, I think I just need a job. Beggars can't be choosers. So once I readjusted it, it was easier because then I was hoping to get a contractual job like an hourly wage job. It didn't matter how low the rate was because I needed a foot in the door. (Interview conducted on December 14, 2020)

Prerna (pseudonym), 30 years old, adds:

The worst part about this visa is you can't work. So then what do you do? You do all the household work like cooking, cleaning, washing, etc. I used to hate these household works and I still do. The worst part is – I can't even hire a help. It's not like in India here. Here, the house helps are damn expensive. I can't even ask XXX (husband) that I want them. Because then he will be like why do you need them? What will you do the entire day then? Blah blah blah...and now with kids around, there's hardly any time to get back to work. I can't even think of that now. (Interview conducted on September 27, 2021)

In a way, it can be said that the immigration law has altered the social, psychological and economic well-being of women at a larger level and has confined them in domestic space with the expectation towards the fulfillment of social reproductive role.

Conclusion

The laws of any country are framed by actors who are very much part of the same society. Therefore, to a large extent, the law reflects the social fabric of the society it belongs to. The notion of women and their role in family and marriage, which existed historically around the world, was manifested in the family and

personal law and was exhibited through the idea of control and coverture. The same idea of control and coverture further transcends down to the immigration laws concerning non-nationals, which is visible to date.

On the one hand, the H1B visa holders from India are welcomed in the US but their spouse's entry is conditional. The conditionality imposed is not just regressive but also places women in a vulnerable position. Through its immigration laws, the state redefines the role of these dependent women in society and creates boundaries restricting their movement in the destination country. This dual treatment of individuals belonging to the same family, legitimised by the law, has brought in much difference in how a person narrates their experience of being in the US, hence adding to the heterogeneity in understanding skilled migration to a developed nation.

The effort to integrate into the new land is often more challenging for these women than their male counterparts, who have access to avenues for social interaction and participation. Women with career aspirations often find themselves struggling with the situation where they try to manoeuvre within the existing frames of the immigration laws, trying to be productively associated with some activities which might add to their future career prospects. Amidst all these, their non-participation in the labour market often pushes them towards the social reproductive role, which many of these women are not prepared for or would have never been their choice.

Lack of financial independence, along with the push towards the social reproductive role, has brought in a plethora of issues ranging from economic dependence and loss of career aspiration to loneliness, identity crisis and belongingness, which often results in psychological distress. This distress further transcends beyond the individual level to affect the family, thereby creating a domino effect.

Therefore, laws framed with specific subjects in mind are not merely the binding principles guided towards governing them; it further transcends down to impact them socially and psychologically, disrupting their usual way of life.

Notes:

ⁱ Some other equivalent terms used are 'prison visa' and 'handicap visa'.

ⁱⁱ According to a place of celebration rule, any marriage recognised in the jurisdiction where the marriage took place will be considered valid.

ⁱⁱⁱ H1B visa is for skilled workers, H2A is for seasonal agricultural workers, and H2B is for other unskilled work, which is seasonal/temporary.

^{iv} EAD is an Employment Authorisation Document which dependent visa holders need to apply to the United States Citizenship and Immigration Services (USCIS) using the I-765 form if s/he has been living in the US for the last six years on a dependent visa and is now willing to get the work permit. EAD, however, does not ensure any job. It is just an authorisation from USCIS that the person is legally eligible to join the labour market.

^v I-140 is the application that transfers the status of H1B visa holders from temporary workers to Legal Permanent Resident availing Green Card.

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Research in Progress: Negotiating Legal Categories in Inter-Religious Marriages

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Negotiating Legal Categories in Inter-Religious Marriages

--- Gitanjali Joshua

Abstract

This paper examines two judgements which involve inter-religious marriages and conversion. Together they throw light on the ways in which religious personal law deals with the messiness of overlapping and intersecting identities. These cases have been chosen as ‘trouble cases’ in an attempt to study discretely imagined religious communities and the slippages between them when they are encountered by law. The cases demonstrate the way complex marital dispute is mapped on to categories such as ‘conversion’ within the judicial register. These categories are often used to enforce discrete notions of community and to subvert the individual’s access to marital choice when it transcends the bounds of community. They also demonstrate the way ‘monogamy’ as a category becomes intertwined with ‘conversion’ and invoked in ways that further the othering of Muslims, marking them out as traditional as against the assumed secularity of Hindu subjects.

Key words: Conversion, Inter-religious Marriage, Polygamy, Religious Personal Law

Introduction

Khushboo Jaiswal married Dilbar Habib Siddiqui in December 2009. According to her date of birth as recorded on her admit card issued by Board of High School and Intermediate Examination, she was eighteen years old at the time. Her parents opposed the marriage and filed a criminal case against Dilbar alleging that he had kidnapped Khushboo and compelled her to marry him. This F.I.R. claimed that Khushboo was only sixteen years old. Khushboo however replied to the court that she was a major, legally competent to enter into marriage and had married Dilbar without any threat or coercion. Dilbar and she claimed that they were living together happily.

The Allahabad High Court judgement, dealing with Dilbar’s Writ Petition which

sought to quash the criminal case of abduction against him, demonstrates the complex legal terrain that inter-religious marriages find themselves negotiating in India. The case presents us with one instance of the use of a diverse range of well documented legal strategies¹ to curtail a young woman's marital choice exercised against parental wishes.

The story of G. C. Ghosh and Sushmita Ghosh also invokes the category of conversion. G. C. Ghosh, a Hindu, approached his wife, Sushmita Ghosh, seeking a divorce. When Sushmita refused, he informed her that he had converted to Islam and intended to marry another woman, in any case. He advised Sushmita to file for a mutual consent divorce along with him, rather than 'put up' with a second wife (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000). Sushmita refused and sought legal intervention to prevent him from marrying. Their case along with three others animated the landmark *Sarla Mudgal* judgement (Smt. Sarla Mudgal, President, vs. Union of India & Ors., 1995), and was also taken up separately in the *Lily Thomas* judgement (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000).

While Khushboo's claim to have converted to Islam was made in order to marry a Muslim partner, G. C. Ghosh and his intended wife, converted from Hinduism to Islam in order to marry under Muslim Personal Law where polygamy is ostensibly permitted, given Sushmita's unwillingness to accept a divorce.

Even a bare reading of the situations recounted here suggests immediately that both conversions were a means to exercising marital choice. However both judgements dwell on the validity of the conversions and on the issue of polygamy, displacing choice of partner as the issue at stake, and mapping the disputes instead on to the categories of conversion, polygamy and monogamy within law. This paper, therefore, examines these two cases in an attempt to examine the life of the categories of conversion and monogamy/polygamy within the religiously differentiated legal regime governing marriage and divorce in India. Through this, we hope to gesture towards some sociological implications of the functioning of law in cases of inter-religious marriage.

Accessing these tales mediated through court judgements, these legal categories become implicated in producing the accounts themselves, obscuring and overwriting the individuals' own version of their actions. Thus, within most of these cases, marital disputes are mapped on to religion instead of caste or class. In

recounting these cases, I make no claims as to the ‘truth’ of the account presented. Instead, what is of interest to us is the way these categories of conversion, monogamy and polygamy play out within the judicial narrative.

Khushboo and Dilbar

As recounted above, Khushboo converted to Islam in order to marry Dilbar. The judgement recounts Dilbar’s argument against the criminal case filed by Khushboo’s parents against him. Dilbar alleges that, ‘because of lust and greed for economic benefit, parents of Khushboo Jaiswal wanted to solemnise her marriage with an aged individual and therefore Khushboo Jaiswal embraced Muslim religion and contracted marriage...’ with Dilbar (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 1). At the start, it is thus suggested that Khushboo’s parents are at least partly to blame for her transgression of conversion and marriage with Dilbar, through the invocation of their ‘lust and greed’ in arranging a marriage for her. The judgement also suggests that the marriage was inter-caste in addition to being inter-religious, further angering the parents into filing the criminal case against Dilbar (ibid). No mention of the castes of either Khushboo or Dilbar is made, however.

We see already the numerous transgressions of social order that this marriage has involved. Khushboo has ostensibly attempted to escape an arranged marriage – rendered marginally less appropriate by the description of the man as ‘aged’ – and has done so, marrying across caste and religion. Dilbar’s filing of the Writ Petition is an attempt to escape arrest for the alleged crime of kidnapping. Khushboo also appeared before the court to declare that she had married Dilbar without any coercion (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 1). Documentary evidence is available to prove that she was a major, competent to enter into a marriage (ibid).

The judgement recounts that during the hearing, Smt. Hassibunnisa appeared before the court claiming to be Dilbar’s first wife and adding an additional layer of complexity to the case. She brought along with her their three children, and argued against Dilbar being given any relief in the case. The judgement records that Hassibunnisa alleged that Dilbar ‘deals in human trafficking’ by leaving the various girls he marries, destitute (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 2). This very particular allegation of human trafficking is reported unsupported by any further evidence of multiple marriages and

subsequent desertion of the wives. It is also reported devoid of any insight into the process through which it was framed invoking the legally significant categories of human trafficking and destitution.

Though Dilbar's lawyer pointed out that as a Muslim, Dilbar was 'entitled to keep as many as four wives', as per Muslim Personal Law (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 2), the appearance of his first wife in court seems to weight the rest of the judgement against him. The judgement recounts that Khushboo's mother filed the F.I.R. three months after Dilbar had allegedly abducted Khushboo and attributes this delay in filing to Dilbar's 'dexterous manoeuvres and deceit' in not getting the F.I.R. registered during this period (ibid). It makes this claim with no supporting evidence.

Khushboo's conversion is deemed never to have taken place. Indeed no document is provided in court supporting the claim of her conversion, and the judgement dwells on the use of her name as 'Khushboo' instead of using an Islamic name – the use of which would presumably add weight to the validity of the conversion she claims – on the Nikahnamah (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 3). A verse from the Quran, as cited in a text book of Mohammedan Law, is quoted to establish that Muslims should not marry women who do not believe, that is, who do not have faith in Islam and the Prophet Mohammed. Islamic marriage is held within the judgement, to be both a contract and a 'sacred' or 'devotional act' (ibid). Further, a list of qualifications of a Muslim bride is cited to establish that for a valid Muslim marriage, both parties need to be Muslim (ibid). Based on the invalidation of Khushboo's conversion, and the conditions necessary for a valid Muslim marriage, their marriage is also held to be invalid.

The question of Muslim men being entitled to marry four times is dealt with by emphasising the directive from the Quran, cited in the text book of Mohammedan Law, that polygamy is sanctified conditional on the man's ability to 'do justice to orphans' (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 4). Indeed this condition has been regularly used by courts since the 1959 case of *Itwari vs. Asghari* (Itwari vs. Smt. Asghari & Ors., 1959), where the judgement deemed that taking a second wife could be construed as cruelty to the first wife and refused to uphold Itwari's suit for Restitution of Conjugal Rights.

Thus, in this judgement, a man like Dilbar, who has *not divorced* his first wife and

provided for her and their children, is deemed incompetent to enter into a second marriage (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 4). The judgement interprets his not having divorced his previous wife in order to marry Khushboo as his incapability to be fair to more than one wife. In effect, his polygamy is used to invalidate his capability to be polygamous.

Further, it holds that he had intentionally hidden the fact of his previous marriage and three children from the court. Khushboo's silence on the matter of his previous marriage is interpreted as her ignorance of this relationship, and the judgement holds this silence to indicate that she has been deceived. Further, despite her assertion and her school document proving her age, the judgement depends on the F.I.R. filed by her parents and declares that she is sixteen instead of eighteen and that she was taken out of the custody of her parents by Dilbar. In upholding her parents' claim that she is underage, the court renders her consent and participation in her relationship with Dilbar statutorily invalid.

Having thus rendered Khushboo legally incapable of exercising marital choice, and produced a narrative in which she was deceived, the court directs her to be released from the Nari Niketan – a government shelter for women – to the custody of her parents.

Sushmita and G. C. Ghosh

As described within the introduction, Sushmita and G. C. Ghosh had been married for roughly eight years, when G. C. Ghosh sought a divorce from Sushmita in order to marry Vanita Gupta – described within the judgement as a 'divorcee with two children' (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000, p. 1). G. C. Ghosh had in any case 'converted' to Islam along with Vanita Gupta, and they intended to marry (ibid).

Though in this case, the couple uses the 'Islamic' names, Mohd. Carim Ghazi and Henna Begum on their Nikahnama (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000, p. 4), the judgements note that G. C. Ghosh's conversion is purely to enable this marriage and does not reflect a change of faith (ibid). The *Lily Thomas* judgement notes repeatedly stated that G. C. Ghosh does not practice Islamic rites, and that neither his name nor his religion has been changed in official identity documents or documents relating to property (ibid). Their son's birth certificate records the parents' names as G. C. Ghosh and Vanita Ghosh and both

their religions as 'Hindu' (ibid).

The *Lily Thomas* judgement therefore finds that this conversion is not the exercise of freedom of conscience, but instead is 'feigned' in order to enable G. C. Ghosh's second marriage and avoid criminal liability for bigamy which is emphasised to be strictly prohibited under Hindu Law (*Lily Thomas, Etc. Etc. vs. Union of India & Ors.*, 2000, p. 6).

In contrast, the *Sarla Mudgal* judgement declared that the continued existence of Muslim Personal Law was an 'open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim' (*Smt. Sarla Mudgal, President, vs. Union of India & Ors.*, 1995, p. 3). This judgement insists that monogamy is the law and is strictly enforced for Hindus, while Muslim law permits as many as four wives, ignoring the large body of case law that insists on the conditional nature of Muslim polygamy and regularly grants divorces to wives, construing such polygamy as cruelty. Hindu law, it is argued, is also sacramental in origin. Hindus along with Sikhs, Buddhists and Jains are described as having 'forsaken their sentiments in the cause of national unity and integration' where 'some other communities would not' (ibid, p. 12). Codified Hindu Law is thus associated with the Uniform Civil Code, ostensibly resisted by the minority religions. The judgement ominously notes that 'those who preferred to remain in India after the partition fully knew that... there was to be only one Nation... and no community could claim to remain a separate entity on the basis of religion' and resist the introduction of the Uniform Civil Code (ibid). The necessity for 'harmony between the two systems of law' as between the two communities is emphasised, suggesting that such harmony rests on each legal system occupying their respective ambits and not 'trespassing' on the personal laws of the other, as in this case (ibid, p. 10). The *Sarla Mudgal* judgement attributes this 'trespass' to the whole system of Muslim law, rather than to its misuse by individuals, as it is construed in the *Lily Thomas* judgement.

Both judgements hold G. C. Ghosh's second marriage void, relying on the conditions for a valid marriage under the Hindu Marriage Act (*Lily Thomas, Etc. Etc. vs. Union of India & Ors.*, 2000, p. 7), which continues to govern the first marriage between G. C. Ghosh and Sushmita Ghosh (ibid). His conversion does not serve to automatically dissolve their marriage under Hindu Law, and is instead a fault based ground for divorce available only to the unconverted spouse (ibid, p. 10).

Inter-religious Marriage in Law

Marriage in India regularly plays out along lines of caste, class and religion, maintaining family and honour and situating women within systems of patriarchal and familial alliance (Basu, 2015, pp. 169-70; Mody, 2008, p. 7). Marriages of choice exist in a grey zone marked as a departure from the norm as 'love marriages', disrupting the presumed natural order of marriage preceding love (Mody, 2008, p. 8). Despite the existence of the Special Marriage Act, a secular law under which individuals can solemnise marriage regardless of their religious affiliation, a large body of case law testifies to the regular use of conversion as a means to gain legal and familial acceptance of a marriage transcending religious community.

Unhappily, an established pastiche of legal strategies exists to either curtail or certify women's agency in choice of spouse. *Habeas Corpus* petitions sometimes coupled with allegations of statutory rape are levelled against the woman's partner to mobilise state machinery to track down the couple; and through a combination of custodial violence at the hands of the police or her natal family and illegal detentions in state-run institutions for women, their relationship is rendered illicit in law (Baxi, 2014, p. 236). *Habeas Corpus* petitions are also utilised by the husband, and at times 'collusive' cases of *Restitution of Conjugal Rights* are filed to legally certify the women's choice to marry (ibid). In several instances, protection orders from the court are secured against harassment by the natal families and this document is culturally seen as a means of certifying the marriage itself (Srinivasan, 2020, p. 106).

Against the backdrop of this legal terrain that often allies state power and resources to familial control, we have examined two cases of inter-religious marriage. In both cases, familial networks triumph. Khushboo, attempting to escape the marital union being organised for her by her parents, is returned to the custody of her parents, despite her evidence of being a major and her declaration of having entered into her marriage with Dilbar (however complicated that union may appear), willingly. Her silence on his existing marriage is read as evidence of her being deceived, further strengthening the narrative infantilising her. G. C. Ghosh, attempting to exit his marriage with Sushmita is thwarted through a variety of legal strategies which invalidate the relationship he has chosen to enter into with Vanita Gupta.

‘Conversion’ and ‘Polygamy’ in Judicial Discourse

In Khushboo’s case, the ‘conversion’ is claimed in order to marry across religious lines, whereas in G. C. Ghosh’s case, the ‘conversion’ is used to facilitate a second marriage. As we see, the judgements examine and deem invalid the conversions. The use of their ‘Hindu’ names – in Khushboo’s case on the Nikahnama itself, and in G. C. Ghosh’s case on various identity and property documents – is seen as proof of the insincerity of the conversions. This judicial scrutiny of motive for conversion is not matched by a similar scrutiny of ascribed religious affiliation. The burden of genuinity is brought to bear on conversion without any corresponding weight on religion itself, suggesting an assumed primordially to religious identity (Sangari, 1999, p. 39). While conversions may be claimed instrumentally by individuals for various reasons, it becomes evident that the law entering into evaluating the genuineness of the conversion has strong implications for ‘Freedom of Religion’. The assumed primordially allows courts to sort individuals into religious identities along lines of family and kinshipⁱⁱ, lending these networks state backing, strengthening these familial controls and sorting individuals into discretely imagined religious communitiesⁱⁱⁱ.

The existence of Muslim polygamy animates the denial of the validity of both marriages. In Khushboo’s case, we have seen how the continued existence of Dilbar’s prior marriage is used to invalidate his ability to contract a second marriage. In G. C. Ghosh’s case, we have seen that Muslim polygamy and the continued existence of Muslim law are read as incentive to Hindu men to convert and as threats to Indian Unity. Conversion in order to enter into polygamous marriage is read as a misuse of Muslim Law, and his marriage to Vanita is invalidated.

‘Conversion’ as a category within Indian law occupies a difficult position. On the one hand, it is arguably a right protected under Articles 25-28 of the Indian Constitution, commonly collectively referred to as the right to ‘Freedom of Religion’. On the other hand, several states have enacted laws curtailing conversions. The definition of a Hindu itself, within the Hindu Marriage Act (HMA), 1955, in its staggering catholicity specifically excluding only Muslims, Christians, Jews and Parsis, undermines an individual’s freedom to self-definition (Sangari, 1999, p. 30) and the potential of conversion as a means to unsettle or challenge caste norms.

Judicial engagement, in questions of conversion relating to entering into and exiting from marriage, implicates a history that stretches well into the colonial period. It demonstrates that conversion was a common strategy used by women to exit unsatisfactory marriages that began to be curtailed as a result of colonial processes of fixing law (De, 2010, p. 1013). The cases of *Vera Tiscenko* (Noor Jehan Begum vs. Eugene Tiscenko, 1941) and *Robasa Khanum* (Robasa Khanum vs. Khodadad Bomanji Irani, 1946) mark a change in the legal position, implicating the emerging Indian legislature and the passage of the Dissolution of Muslim Marriages Act (DMMA), 1939 in the changed legal position on conversion not automatically dissolving a pre-existing marriage (De, 2010). Instead, conversion is today treated as a fault-based ground for divorce available only to the unconverted spouse (Vilayat Raj Alias Vilayat Khan vs. Smt. Sunila, 1983), except under Muslim Personal Law, where conversion no longer affects the status of a marriage at all, since the passage of the DMMA in 1939.

Meanwhile, ‘polygamy’ as we have demonstrated, is in practice often denied to Muslim men within the Indian judiciary. However, it serves as a rhetorical device to contrast Muslim Law with disciplined codified modern Hindu Law. This framing ignores the long history and continuing prevalence of Hindu polygamy (most often, bigamy) as well as the strong opposition that sprang up against the codification of Hindu law precisely contesting the invalidation of Hindu polygamy^{iv}. These comments are not, of course, to suggest that polygamy does not exist or to argue in its favour, but to point out that when cases reach court, most often, polygamy is denied legitimacy whether to Muslim or Hindu men – as we saw in the two cases examined. Rather, polygamy functions as a rhetorical device to fuel criminalising legislation such as the recent Muslim Women (Protection of Rights on Marriage) Act, 2019^v or the more recent Prohibition of Unlawful Religious Conversion Ordinance, 2020 in UP^{vi} and the amendment to Gujarat’s Freedom of Religion Act, 2003^{vii}.

In the cases examined above we see that the categories of conversion and polygamy function together within law in a form of governance of religion to curtail marital choice across religious domains and instead to streamline marriage according to acceptable kinship networks producing discrete religious community identities. Further, we see that these categories are used to cast Islam as the traditional other associated with polygamy and detrimental to women’s rights, as against apparently secular modern monogamous Hinduism.

Notes:

i For a detailed look at some of these strategies, see Baxi (2006, pp. 59-78; 2014, pp. 174-283).

ii The case of Annapazham and Perumal Nadar whose marriage was arranged by their families across religions but within the same caste illustrates that courts can at times uphold conversion even when there is no evidence of it. As long as there is familial support for the marriage and acceptance by both communities, courts do assume conversion in order to hold a marriage valid. See *Perumal Nadar (Dead) by L.R.S Vs. Ponnuswami*, 1971 AIR 2352; 197R (1) 49 (Supreme Court, 1970).

iii In a strange contrast, ‘genuine’ conversion on the basis of piety is often read as coerced and instrumental as with the Hadiya case, also in ways that strengthen familial controls (see Sethi, 2019, p. 116).

iv See Agnes (1999, pp. 86-88), Basu (2015, pp. 41-48), Kishwar (1994) and Parashar (1992, pp. 113-15) on the resistance to ‘imposing’ compulsory Monogamy under the Hindu Marriage Act, 1955 and the criminalising of bigamy. The main line of the opposition to this ‘imposition’ of monogamy under Hindu Law was that polygamy remained valid under Muslim Law. Another argument was that polygamy should be permitted for the purpose of ensuring a male heir, necessary for performing the last rites of the parents. If the first wife could not conceive, a second could be taken in order to ensure a male heir. The combination of granting women divorce rights and enforcing monogamy was seen as a major detrimental interference in Hindu society and domestic life.

v Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 provides that a punishment of up to three years of imprisonment and a fine can be awarded to a Muslim man found guilty of pronouncing unilateral triple talaq or talaq-e-bidat. Section 5 awards the woman and dependent children a subsistence allowance, without considering that the man is likely to be incarcerated and therefore unable to earn and pay such an allowance. All of these provisions work together to make reporting such a divorce more detrimental to the woman than pursuing other avenues of securing support for herself and her children.

vi The Prohibition of Unlawful Religious Conversion Ordinance, 2020 was replaced by the Prohibition of Unlawful Religious Conversion Bill passed by the U.P. Legislative Assembly in February 2021 and is pending passage in the upper house and the approval of the governor. It is commonly referred to as the Love Jihad law. The Bill prescribes a jail term of up to five years and a fine of Rs.15,000 or more for those convicted of converting or attempting to convert a person from one religion to another using coercion, allurement or fraudulent means –including conversion for the sake of marriage. The punishment rises to imprisonment for ten years and a fine of Rs.25,000 if the person who converted is a minor, a woman or belongs to a Scheduled Caste or Scheduled Tribe.

vii The Gujarat Freedom of Religion Act, 2003 criminalises forcible conversion and conversion through any form of allurement or fraud or for material benefit (marriage is often read as a material benefit) and prescribes a punishment for such conversion of imprisonment for up to three years and a fine of Rs.50,000 with the punishment becoming more severe (imprisonment up to four years and a fine of Rs.1,00,000) in the case of the person converting being a minor, a woman, or a person belonging to a Scheduled Caste or Scheduled Tribe.

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**Research in Progress: Sexual Harassment in Indian Legal Profession:
Reflections from the Field**

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Sexual Harassment in Indian Legal Profession: Reflections from the Field

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Abstract

This paper is based on forty-eight in-depth interviews with first generation Delhi-based lawyers, for over a period of sixteen months between 2017 and 2019, on questions around a wave of legislations against sexual violence against women in the last decade. The aim of the interviews was to understand, in the Indian context, the supposed disjuncture between theoretical postulates and the everyday application of laws around sexual violence against women. While attempting to conceptualise this disjuncture through questionnaire-responses and interviews with lawyers, the responses directed towards the presence of sexual harassment within the legal profession. This paper, thus, focuses on the empirical evidences of existence of sexism within and outside Delhi courts, the dismissal or denial of which results in a cold-shoulder treatment to cases of sexual harassment. For this purpose, public statements of two defence lawyers in the 2012 Nirbhaya gang rape case are considered alongside interview responses of the Delhi-based first-generation lawyers practicing in various courts in Delhi. The paper extends the argument to establish that persistent passive sexism and active discouragement in reporting sexual harassment has resulted in alternate grievance redressal modes for victims within the legal profession.

Key words: CLA 2013, Delhi Courts, Indian Legal Profession, PoSH Act, Sexual Harassment

Introduction

Amendments to laws concerning sexual violence against women gripped the country after the *Nirbhaya* gang rape case in 2012ⁱ (Agnes, 2014). Resulting from a nation-wide agitation against the brutal gang rape and eventual death of a physiotherapy student in the national capital, Indian rape laws were thoroughly overhauled in 2013, leading to the Criminal Law (Amendment) Act, 2013 (henceforth, CLA, 2013). The year 2013 holds a special place in India's socio-

legal history. The first half of the year marked a significant milestone in the history and evolution of laws concerning sexual harassmentⁱⁱ in India. On February 26, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by the Rajya Sabha after sixteen years of constitution of the Vishaka Guidelinesⁱⁱⁱ by the Supreme Court. On March 21, 2013, Rajya Sabha passed the CLA 2013, which came with its share of criticism from the involved women's groups, academicians as well as members of the legal community. On the same date, Asha Menon, Member Secretary of the National Legal Services Authority, submitted a report on the matter concerning a petition filed by advocates Binu Tamta and Vibha Dutta Makhija on the status of sexual harassment complaint committees at various district and High courts in India.

The report stated that the committees existed only on paper, and had neither the guidelines to look into matters of sexual harassment nor the power to deal with the complaints^{iv}. Eventually, the Supreme Court formed a Gender Sensitisation and Internal Complaints Committee^v for women advocates who faced sexual harassment in terms of unwarranted physical, verbal or non-verbal sexual advances by their male counterparts within the court complex. This was a legally active start to the year when legislative and judiciary seemed to be working hand-in-glove to work towards, in however limited sense, protection of women from sexual violence.

The second half of 2013 also holds significance but only contrarily to the earlier developments. A law graduate from a reputed Indian law school levelled allegations of sexual harassment on a retired judge of the Supreme Court of India while she was his intern^{vi} in 2012. Within a week, she issued a statement^{vii} announcing that the Chief Justice of India (CJI) formed a committee to look into the allegation. A three-judge committee^{viii} formed by the then CJI P.G. Sathasivam *prima facie* held the accused, former SC judge, guilty^{ix} of sexual harassment and the police began preliminary inquiry into the matter^x, but the intern who had accused the former SC judge refused to pursue the case legally^{xi}. Another intern^{xii} accused the same judge for sexual harassment, but by then the SC had pulled out of taking up any such cases. Subsequently, two similar cases came to public notice: one in 2014 and the other in 2019. Both the cases were immediately dismissed by the court; the former with a prompt media gag^{xiii} and the latter with an outright rejection of the complaint^{xiv}.

While the country underwent an overwhelmingly crucial phase of jurisprudential churning in terms of anti-sexual assault laws (CLA and PoSH), the Indian legal community failed its own members who complained of sexual harassment at workplace. The paper is based on the premise that the problem lies not as much in the theory as in the application of the anti-sexual harassment laws. I argue in the paper that the legal community enables the re-affirmation and re-establishment of gender-based stereotypes into the everyday legal practice^{xv} despite a wave of legislative amendments^{xvi} in the 21st century. The paper establishes through empirical research that the ‘harmless’ sexist remarks that are periodically dismissed by the court and majority members of the legal community in the everyday courtroom conversations pave way for more grave and regressive statements against women in general, and victims of aggravated sexual violence in particular. Secondly, the paper argues that the constitutional guarantee of ‘equality before law’ (Article 14), prohibition of discrimination based on sex (Article 15), and legislative promises of affirmative action for women [Article 15(3)] stand in contrast to the tradition of deeply patriarchal legal system, the functioning of which deters the lawyer-victims of sexual harassment to seek legal remedies. Lastly, I empirically argue that the lawyer-victims, in order to avoid hurdles in their career, either ignore the issue, drop out of the profession, or resort to extralegal mechanisms of grievance redressal.

The paper is divided into two parts. The first presents the methodology for participant selection from among Delhi-based lawyers. The section envelops the process of data collection and difficulties overcome during the fieldwork. The second section establishes the existence of sexism within the Indian legal profession through the role of language within and outside courts complexes. The section proceeds to discuss how innate sexism within the Indian legal profession translates into a collective neglect (and sometimes covert affirmation) of incidents of sexual harassment within the legal community. Drawing from the experience of sexual harassment at workplace by women lawyers in Delhi, I argue that re-enforcement of gender stereotypes through everyday misogyny (ranging from sexism to sexual harassment) is not as much a jurisprudential debate as it is a question of practice of the law by the agents of law themselves. I discuss how the (mis)handling of reported cases of sexism and sexual harassment acted as deterrents for most participants into not seeking legal help and pushed victim-lawyers into opting for alternate means and modes of grievance redressal to continue their professional journey.

Overview of the Field and Selection of Participants

Between 2017 and 2019, I conducted fieldwork in Delhi courts – the six district courts^{xvii} and Delhi High Court, interviewing and observing first generation Delhi-based lawyers on their perception of rape as a crime, their understanding of the Indian rape laws and their opinions on the rape law amendments so far. This paper is a cumulative summary of the recorded behaviour, attitude and arguments of lawyers in sexual harassment cases before, during and after trial, inside and outside the courtroom through interviews, participant observation, group discussion and covert observation. The idea was to comprehend the perspective of Delhi-based lawyers on sexual violence on women and contrast it with the prevalent sexism within the courtrooms. Despite initial apprehensions and anticipations, I was welcomed at the courts complexes and was generously taken through the busy corridors of the district courts and the Delhi High Court.

In the initial phase there were focused group discussions within courts complexes and a questionnaire was prepared with open-ended questions that was sent to 359 lawyers based in Delhi, out of which 127 lawyers responded to the questionnaire in full. Of the 127 who responded to the questionnaire, forty-eight lawyers were shortlisted for interviews. Participants were selected if they were first generation lawyers practicing criminal law in Delhi with specialisation in handling cases of sexual violence against women and children. Another criterion was a practice of a minimum of seven years alongside an association with a senior. It was made sure that equal numbers of male and female participants were selected for interviews. Upon selection of the participants, rapport was built with each one of them in either courts complexes, or chambers/firms they are working at. After rapport formation, unstructured interviews were held at their respective courts of practice and open-ended in-depth interviews were conducted thereafter. All follow-ups were conducted either via telephone, or through Zoom/Skype/WhatsApp video call. Certain queries were raised and responded through e-mail.

By extending Bourdieu's (1987, pp. 808-809) rationale of studying structured behaviours and customary procedures alongside the legal written record – briefs, commentaries, judicial decisions and legislation, I proceeded to understand laws for protection of women against sexual violence as a socio-cultural process that affects, impacts and shapes the behaviour of the agents of the Indian legal profession. Bourdieu (ibid) deploys an extended notion of 'text' that goes beyond the written record – legislation, judicial pronouncements, ordinances, acts and

commentaries – and encompasses ‘structured’ behaviours and customary procedures characteristic of the ‘juridical field’. These behaviours and customary procedures, Bourdieu explains, are subjects of the same interpretive competitions as the codified texts themselves. This contention is explored in this essay with focus on Delhi-based first generation lawyers.

One of the major themes that evolved from the group discussions and observation of the everyday of the lawyers inside and outside the court complexes was that of the prevalence of gender-based discrimination and exploitation of women lawyers, of which sexual harassment was a part. Such discrimination is categorised under five sub-themes that emerged during the interviews – re-establishment of gender-based stereotypes, verbal discrimination, physical breach of boundaries, professional intimidation and sexual harassment. These are discussed in detail in the next section.

From ‘Subtle’ Sexism to Sexual Harassment

In March 2015, a BBC Documentary was set to be released covering various aspects of the *Nirbhaya* case including interviews with the defence lawyers, the prime accused in the case, and the parents of the deceased victim. The documentary was banned^{xviii} by the Indian government a few days ahead of its worldwide release on International Women’s Day, citing the statements of the defence lawyers as ‘problematic’^{xix}. The statements of the defence lawyers were found to be outrageous and sexist not just by the Indian government, but also by women’s organisations across the country, especially the Supreme Court Women Lawyers Association (henceforth, SCWLA). The SCWLA wrote a letter to the Bar Council of India to take strict action against the two defence lawyers. In response to this, the Bar Council of India issued a show-cause notice^{xx} to both the lawyers to explain why disciplinary action should not be taken against them. The Lok Kalyan Sanstha came in support of the SCWLA in demanding harsh punishment for the two defence lawyers for ‘making unwarranted statements outside the court premises’^{xxi}. Despite the seriousness, the matter is still pending.

▪ ***Calling out sexism within the legal profession***

In March 2019, Senior Advocate Indira Jaising wrote an open letter^{xxii} to the then Chief Justice of India baring the presence of deep-rooted sexism within the courtrooms and the subsequent plight of woman lawyers and judges. In her letter she contended, ‘... there have been multiple incidents where *sexist remarks being*

made by lawyers, go unnoticed by the Bench. Such tacit acceptance of sexist language in the courtroom and brushing it aside as *didn't mean any harm*, gives it a level of legitimacy, and a judge fails in their duty in protecting the fundamental right enshrined under Article 15 if they don't disapprove of and call out sexist language, remarks or comments made in their courtroom.' (first emphasis mine; second author's). She further wrote, 'Judgments of courts across the country enjoy the status of being the law of the land, but unfortunately *judicial language continues to use words and phrases which perpetuate patriarchy*, endorse stereotypes of women's perceived roles and behaviour and entrench biases that are detrimental to the status of women in our society.' (emphasis mine).

Iterating on the importance of language, Ms. Jaising pointed out at the prevalence of sexism in the courtrooms, and the inaction of judges to reprimand such usage. This inaction of the judges in not actively curbing the use of sexist language by lawyers and judges against their own counterparts reflects on the attitude of the judiciary towards ensuring and maintaining a healthy work environment for its women lawyers and judges. Taking this into consideration, I conducted intensive in-depth interviews with forty-eight Delhi-based lawyers to understand sexism and sexual harassment from the insider's vantage point.

▪ ***Sexual harassment at workplace: accounts of lawyer-victims in Delhi***

During the course of the fieldwork, I came across an 'internal practice' of a law firm in Delhi that did not hire female interns or lawyers. Upon inquiry from a participant who was a former intern at that law firm, it was found that the said firm considered the presence of women as a 'distraction'. The participant said that his former employee believed that 'women cannot take jokes, and men bear the brunt of the sexual harassment policy'. This is not a standalone case of gender-based professional discrimination where misogynistic comments are pushed as jokes and function as office banter among colleagues. Another participant shared that her senior had asked for her 'nude/semi-nude pictures after a brief discussion at his chamber in a Delhi court'. When she denied and said it was inappropriate, he said he could 'help her professionally and even recommend her to the Supreme Court' if she complied.

In another interview, a participant stated that she was asked to lead the orientation session of a new intern. While she was speaking, the lawyer 'shut his chamber's door at the courts complex and held the participant by waist'. She immediately

withdrew herself but the lawyer ‘insisted on holding her and asked the new intern to leave’. The participant immediately left the chamber and reported the matter to her brother who is also a lawyer, but he suggested that ‘she remained quiet about it’. So she moved to another court to work with another lawyer, a female senior this time.

In other cases, the participants shared that they were asked by their seniors to wear more make-up and ‘look pretty’, or were called by their employers at wee hours of the night and asked questions about their personal lives (if they had a boyfriend, etc.). A few participants also mentioned that they were told to wear attire that will ‘accentuate the figure’. The common thread that binds these experiences is the fact that none of the sixteen lawyer-victims of sexual harassment filed any official complaint. This can be explained by the dismissal of aforementioned reported cases of sexual harassment by the legal community.

▪ *Bargaining with misogyny*

As ‘agents of law’ in the Indian ‘juridical social field’, lawyers are responsible for professionally defined patterned activity (Bourdieu, 1987). During the course of my fieldwork, a sense of collective was observed among male participants in the form of sexist ‘banter’ about their female counterparts. The response of women lawyers to the everyday misogyny within legal community was recorded in terms of their coping mechanisms or alternate modes of grievance redressal to survive in a male-dominated profession. During the interviews, most female participants seemed either disturbed or embarrassed, and some blamed themselves for being ‘too polite’ or ‘cordial’ or ‘agreeable’. While none of them lodged any formal police complaint or filed a complaint at Internal Complaints Committee, they all had paved their way out. They either switched from litigation to arbitration with less interaction with seniors, or joined another senior (mostly female), or practiced independently. There were indirect mentions of fellow female lawyers dropping out of the profession^{xxiii} because of sexual harassment.

Such modes of bargaining with misogyny were explained as ‘careful steps to move forward in the male-dominated profession’. One participant (male) remarked that legal profession is competitive and only ‘thick-skinned’ survive. This statement was made in a group discussion and most participants agreed to it. It was observed that being silent is considered better than being called a ‘troublemaker who calls out on reputed and sought-after’ seniors.

Conclusion

The 2013 PoSH Act defines sexual harassment as ‘unwelcome acts or behaviours’ including ‘physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature’ [Section 2(n)]. Sexual harassment at workplace also holds ‘implied or explicit promise of preferential treatment in employment, threat of detrimental treatment in employment, threat about present or future state of employment, interference with the work, and humiliating treatment affecting health and safety of a female employee at her workplace’ under the ambit of sexual harassment. In this context, the paper presented empirical evidences of breach of sections of the PoSH Act by the employers within the legal profession.

Sexual harassment within the Indian legal community is not a new phenomenon (Sathe, 1992). It is also not peculiar to India (French, 2010). However, the Indian legal community has been considered ‘predatory’ (Raju, 2020, p. 2) and innately reliant on gendered notions of female sexual passivity and victimisation (Basu, 2011, p. 194) by members of the Bar themselves. This was concretised during the interviews since women participants considered some seniors in the profession as ‘voyeuristic’. They said that seniors either ‘stood too close’, or ‘hold inappropriately while clicking pictures’, or ‘hold by the waist’ during court briefings, or ‘tell us to behave around men and not chatter much’. MacKinnon’s (1979, p. 48) postulation that such cases go unreported because women tend to ignore harassment in a hope that the harasser will stop holds ground in this context.

We have seen that although all victim-lawyers knew they were being sexually harassed, they either found themselves guilty, or took refuge in either quitting or enduring as against being labelled ‘loud-mouth’. We have also seen that all lawyer-victims underwent experiences that both, the PoSH Act, and the IPC recognise as sexual harassment, but none of them reported the abuser. This paper is indicative of re-victimisation of lawyer-victims not based only on theoretical flaws in legislation on sexual harassment as contended by Raju (2020) but also on the application of the legislations by the legal community itself.

Notes:

ⁱ Drache and Velagic (2014, p. 11) mark that the *Nirbhaya* case has been the most extensively covered case of sexual violence in the recent Indian history. They established that rape reporting after the December 2012 incident had gone up by 30 per cent, out of which 50-80 per cent coverage was of this case itself. Not only national, but international media too got obsessed with the details of the case and the outcome of it (Chaudhuri, 2019).

ⁱⁱ Criminal Law (Amendment) Act, 2013 was the first rape law amendment since 1983, when the Indian rape law was modified for the first time since its inception.

ⁱⁱⁱ *Vishaka and Others vs. State of Rajasthan and Others* [JT 1997 (7). SC 384].

^{iv} *SC to consider draft rules on sexual harassment at apex court*. Retrieved from <https://www.freepressjournal.in/headlines/sc-to-consider-draft-rules-on-sexual-harassment-at-apex-court> on 27.02.2016

^v *SC forms sexual harassment committee for women lawyers*. Retrieved from <https://www.hindustantimes.com/delhi/sc-forms-sexual-harassment-committee-for-women-lawyers/story-YVSQhqrQDwr7RBhEkbBwM.html> on 27.02.2016 (Chapter II of the PoSH Act, 2013 lays foundation for constitution of Internal Complaints Committees).

^{vi} The Supreme Court intern posted her ordeal on November 06, 2013 in a blogpost. The blog was accessed on 14.02.2016 on <https://jilsblognujs.wordpress.com/2013/11/06/through-my-looking-glass/>

^{vii} In less than a week of posting details of the issue on her personal blog, Stella Jones, the victim, issued a statement confirming that the CJI had formed a committee to look into the matter, and that she would shortly depose before the court. Full statement can be accessed at <https://jils.co.in/statement-of-stella-james/>

^{viii} *CJI constitutes 3-judge commission to probe ex-SC judge sexual harassment allegation*. Accessed on 14.02.2016 on <https://www.legallyindia.com/201311124109/Bar-Bench-Litigation/cji-probe-into-3-judges> (The three judges constituting the committee were justices RM Lodha, HL Dattu and Ranjana Prakash Desai).

^{ix} *Law intern dismisses justice Ganguly's claim of innocence, hints at filing police complaint*. Accessed on 14.02.2016 on https://zeenews.india.com/news/nation/law-intern-dismisses-justice-gangulys-claim-of-innocence-hints-at-filing-police-complaint_898980.html

^x *Police begin inquiry into charges against former judge*. Accessed on 14.02.2016 on <https://www.thehindu.com/news/national/police-begin-inquiry-into-charges-against-former-judge/article5355419.ece>

^{xi} *Law intern not for pursuing charge*. Accessed on 14.02.2016 on <https://www.thehindu.com/news/national/law-intern-not-for-pursuing-charge/article5365253.ece>

^{xii} *The second intern alleged that she gained courage to speak out about her experience owing to the action taken by the Supreme Court in the allegations by the first intern*. Information accessed on <https://www.legallyindia.com/201311144114/Bar-Bench-Litigation/sc-intern-sex-harassment-another-interns-social-media-account> on 14.02.2016

^{xiii} *Gag order in Swatanter case mockery of the rule of law: Editors Guild*. Accessed on 18.05.2017 on <https://timesofindia.indiatimes.com/india/Gag-order-in-Swatanter-case-mockery-of-the-rule-of-law-Editors-Guild/articleshow/28977317.cms>; *Making the powerful accountable*. Accessed on 20.09.2017 on <https://www.thehindu.com/opinion/op-ed/making-the-powerful-accountable/article5627494.ece> (Entire media-gag order can be accessed at <https://indiankanon.org/doc/180037999/>).

^{xiv} The allegations were dismissed as soon as the news came out, even before the committee was constituted or the evidence provided by the complainant were evaluated. Details on <https://theprint.in/judiciary/bar-council-of-india-national-green-tribunal-condemn-allegations-against-cji-ranjan-gogoi/224288/> accessed on 02.01.2021. (Most members of the Bar Council of India not only condemned the allegations of sexual harassment against the accused, they also came in full support of the way the case was handled by the Supreme Court. Demands were also made to book the complainant for ‘false accusation’. For details, see <https://theprint.in/talk-point/is-supreme-court-handling-sexual-harassment-allegation-against-cji-ranjan-gogoi-correctly/225002/> accessed on 02.01.2021).

^{xv} A discussion on judgements in rape cases and their application as precedents suggests that despite amendments to rape laws, precedents continue to shape and affect judgements.

^{xvi} Protection of Children from Sexual Offences Act, 2012; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; Criminal Law (Amendment) Act, 2013; Juvenile Justice (Care and Protection of Children) Act, 2015; Criminal Law (Amendment) Act, 2018.

^{xvii} Tis Hazari courts, Karkardooma courts complex, Patiala House, Dwarka complex, Rohini courts complex and Saket courts complex.

^{xviii} Despite the ban, the documentary was released on various internet sites. The ban was opposed by women’s organisations while the Director of the documentary fled the country despite notices issued to her to stay in India for enquiry on the script and the way the documentary was shot. The documentary was a source of various other controversies that are beyond the scope of this paper.

^{xix} The statements of the two lawyers, one claiming that ‘there is no place for women in Indian culture’, and that if men see women roaming on the streets at night, ‘it will immediately put sex in his mind’, and the other stating that ‘he will burn his daughter and sister if they roam at night’ led to a nation-wide demand for revocation of their licences to practice at the Bar and an urge to the Supreme Court of India to put a ban on their entry on the court premises alongside strict punishment for their moral and professional misconduct, punishable under Section 35 of the Advocates Act, 1961.

^{xx} See *Bar council issues notices to defence lawyers for remarks in Nirbhaya documentary*. Accessed on <https://www.ndtv.com/india-news/bar-council-issues-notices-to-defence-lawyers-for-remarks-in-nirbhaya-documentary-744719>

^{xxi} See *Show-cause to lawyer for sexist remarks*. Accessed on <https://www.thehindu.com/news/national/showcause-to-lawyer-for-sexist-remarks/article5183036.ece>

^{xxii} Read the full letter at <https://thewire.in/law/open-letter-indira-jaising-to-cji-womens-day>

^{xxiii} A participant shared that her law college friend left litigation and went abroad to pursue LLM because she was not ‘as thick-skinned’ and ‘succumbed to pressure’.

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**Research in Progress: Is Endogamy Christian or Un-Christian? Tracing the
Knanaya Debate**

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Is Endogamy Christian or Un-Christian? Tracing the Knanaya Debate

--- Nidhin Donald

Abstract

Biju Uthup's civil suit catalysed a reform movement against blood marriages and expulsions in the Knanaya Catholic community of Kerala. This paper is a close reading of the Uthup judgement to highlight the conflicts between – the individual and the community on one hand, and global Catholicism and Knanaya customs on the other. Both petitioners and defendants position themselves as guardians of the Christian faith. Thus, a fight over the meaning of Christianity was inevitably pursued. This paper briefly explores these contentions and provides a glimpse of Knanaya community's competing social and legal discourses on endogamy

Key words: Caste, Christianity, Endogamy, Kerala, Knanaya Catholics

Introduction

Knanayaⁱ Christians (or Southists) are a mutli-denominational endogamous community who trace their origins to a fourth century Mesopotamian merchant – Thomas of Kana (Kulathramannil, 2000). They have existed in Kerala as an exclusive group without difficulty, owing to the caste affinities of their neighbours. In the early 20th century, they were successful in carving out a 'separate diocese' within Catholicism – the largest denomination in Kerala. This diocese or archeparchy is known as the Kottayam diocese. With this separation, the highest episcopal authority endured the notion of Knanaya endogamy. Pallath and Kanjirakatt (2011) trace the historical origins of the Southist Vicariate in 1911 and the conflicts that preceded it. They note that the changes in the administrative structure of the native Catholics in the 19th century meant – a withdrawal of European leaders, appointment of native bishops, creation of vicar apostolics and later eparchies for the Syrian Catholics and complete administrative separation from the Latin rite and Latin Christians. In this historical reordering, questions of high and low, noble and plebian, commensality and marriage were routinely discussed. The Catholic Church has historically

tolerated caste, never confronting it directly. This approach was embraced to avoid schisms and loss of revenue. Thus, we find the Catholics in Kerala administered along 'caste' and sectorial lines, though the Church maintains a display of caste apathyⁱⁱ.

By the late 20th century, thanks to transnational migration, a partial collapse of Knanaya endogamy became evident. Mobile members of this church migrated to new places and entered nuptial ties with other Christians of Kerala. This group of inter-married couples and their off-springs have come to represent the 'reformers' within the Knanaya Catholic Church. With their legal and cultural battles, they have argued against 'blood marriages'ⁱⁱⁱ. In 1990, Biju Uthup, a product of inter-marriage and now a retired scientist, was denied '*kalyanakuri*' (or ritual permission to honour a marriage within the home parish) by his Knanaya Church on the excuse that his grandmother is a 'Latin Catholic' (Annamma Chacko in Punnen et al., 2014, p. 15). According to the un-codified endogamy rules of the Church, both parents need to be Knanaya for the child to be considered one. This came as a surprise to the Uthups as Biju's siblings were married in Knanaya parishes.

Cross-over marriages were not completely uncommon among the Knanayites. However, the renewal of social conservatism among Knanayites in the late 1980s sought to problematise such marriages. Uthups became one of their 'victims'. In 1986, the Bishop of the Kottayam Diocese was served a notice by the conservatives, stating that Mr. O.M. Uthup (Biju's father) and his son-in-law had 'ceased to be Knanayites, owing to their marriages and that they should be excommunicated from the church'. Unhappy with the cold response of the Bishop, the conservatives approached the civil court and filed a relief for declaration in 1988 challenging the membership of Biju Uthup's family. Thus, the issue became a legal-communal problem, forcing the Kottayam Bishop and the local parish priest to 'deny' permission for Biju's wedding. Soon after, Biju Uthup approached the court seeking a 'mandatory injunction' to enable his wedding in the local Knanaya parish. With this began a new chapter on endogamy among Knanayites. Today, Uthup is the chairman of the 'Global Knanaya Catholic Reform Conference' – a movement which anchors the legal and cultural fight against endogamy-based expulsions. We also witness counter-mobilisation by the majority still in favour of the endogamy rule. From legal defence to cultural productions such as beauty pageants and short films – the mainstream of

this community has tried to fortify their position. I have engaged with some of these cultural productions in my doctoral work^{iv}.

The Knanaya case has a bearing on the jurisdictions of dioceses and church revenue – as this group is now a globally dispersed community. While most sociological and legal scholarship on endogamy in India revolve around the Hindu caste order, we do find spirited debates and legal battles on nuptial endogamy and reform among non-Hindus, as evidenced by the Knanaya Catholics^v. In the next sections, I would take a deeper look at the content of Biju Uthup's judgement. I have also drawn from my telephonic conversation with Mr. Biju Uthup to disentangle the human agency that animated the journey^{vi}.

The Legal Battle

As mentioned earlier, Biju Uthup filed a civil suit for a 'mandatory injunction' against the Parish Vicar (who denied him '*Vivah-kuri*'^{vii}) and the Bishop of Kottayam Diocese in the Additional Munsiff Court of Kottayam in 1989. Knanaya Catholic Congress was impleaded as the third defendant in the suit, arguing that the relief sought by Biju would implicate the entire Church and the community. The Congress, formed in the early 20th century, was established to protect the purity and traditions of the community – much like the other caste associations of the period. In his petition, Uthup argued that 'being a true and faithful member of the parish, he cannot imagine his marriage being conducted in any other manner or in any other church' (Uthup vs. Manjungal, 1990, p. 3). Getting married elsewhere would be a cause of social stigma, agony and trauma to him and his family. The denial of *kuri* was argued to be an 'unchristian act' against the canons of the Catholic Church.

On the other hand, the defendants portrayed Biju Uthup's family as imposters. According to them – non-Knanayites can be baptised in a Knanaya church. However, this doesn't ensure parish membership. It only signals their entry into the Holy Catholic Church. For them the marriage of Biju Uthup's parents (O.M. Uthup and Annamma Chacko) in the 1950s was a 'mistake'. Allowing the Uthup family in the Church would hurt the community and its traditions. They argued that customs and practices have the 'force of law' for the diocese and the community.

Is Christian Marriage Civil or Communal?

Further, the defendants pointed out that ‘communal matters’ stand outside the jurisdiction of the civil court. Marriage (among Christians) was not a civil right but a ‘holy sacrament’ exclusively attached to the domain of ecclesiastical authority. According to them, a mandatory injunction under Section 39 of The Specific Relief Act, 1963 was impossible in such a matter. Mandatory injunction prevents the breach of an obligation, it necessitates the performance of certain acts which the court is capable of enforcing. The court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. However, such an intervention is possible only when the matter is ‘civil’ in nature. The Judge, George Oommen interpreted the question of church/parish membership as a matter of ‘civil right’, where the Kottayam Diocese of the Roman Catholic Church was held ‘synonymous to a voluntary association’ (Uthup vs. Manjunkal, 1990, p. 16). It also observed that if the bye-laws or rules of the association debarred members from invoking the jurisdiction of a civil court then the matter would have been interpreted differently. However, that wasn’t the case.

The question of jurisdiction, the court underlined, depended upon the substance of the plaint and the object of the suit. If a given ritual or ceremony has affect on the ‘civil rights of an individual or a sect’, then it is a dispute of civil nature. In the Biju Uthup case, the court observed that right to membership is a matter of civil right and if such rights impinge on the ‘customs and rituals of a community’, the latter would only be secondary to the court.

Is Biju Uthup a Knanaya Catholic?

Having settled the civil nature of the suit, the Court considered in great length whether Biju Uthup was a Knanaya Catholic or not. The family maintained that they were received as members in their present parish in 1977 and were never excommunicated. The defendants, on the other hand, argued that membership in a Knanaya Church is not subject to ecclesiastical discretion; rather, it is a matter of inheritance. In other words, no human agency has power over issues of membership in the community. The court observed that even when we assume that the Uthups are ‘transgressors’ in the Knanaya Church and by extension the community, the material facts and circumstances proved that they *lived* as its members and were accepted as such by the community for over thirty years before the present controversy erupted (Uthup vs. Manjunkal, 1990, pp. 41-42). It

should be noted that Catholicism being a hierarchical order with centralised authority, its members often possess an array of documents to prove their membership and contributions to a parish. A devout Catholic household gives away substantial amounts of its earnings to the Church as part of life-cycle rituals and other events. The Uthups could prove their membership with the help of this paper trail.

As per the evidence presented to the court, the Parish Vicar, Mr. George Manjungal, was willing to permit Biju's wedding in his parish till the case surfaced. Thus, exogamy (of at least a few) was always an open secret. The empirical contradictions of everyday life were tolerated and even accepted by the diocese. However, when the matter was brought under the gaze of a secular court – claims of strict endogamy were remobilised and asserted. The court observed that if Annamma Chacko, Biju's mother and daughter of a Latin Catholic, was granted membership due to mistaken identity, no evidence was presented by the defendants to prove this claim. The court distinguished the 'diocese' from the 'endogamous community' and ascertained the membership of the Uthups in the Kottayam diocese.

Is Endogamy a 'custom' among Knanaya Christians?

The court observed that the canon law defined marriage as a 'sacrament', and in case of Uthup's parents, there wasn't any dispute over the fact that they got married and had children. Further, according to the canon law, 'family' is a more vital unit than the individual. The wife assumes the affinities and affiliations of her husband after marriage – making caste or endogamy (and the individual) irrelevant. The defendants maintained that endogamy should be viewed as central to their ethnic identity and integrity. However, the petitioner argued that the custom of endogamy – as claimed by the Church – was never an established custom. Jews had no custom of endogamy prior to the period of 345 CE, the apparent year when the Babylonian ancestors of the Knanaya Community appeared on the shores of Malabar (Joseph, 2014).

The court held that since there was no reliable evidence on endogamy prior to 345 CE among Jewish Christians, it cannot be an established custom. A custom can have a legal force only when it is 'proved to the hilt' (Uthup vs. Manjungal, 1990, p. 49). Moreover, referring to oral accounts which claim that Knai Thommen had Nair wives, the court challenged the very existence of endogamy. Swiderski

traces the competing stories surrounding Thomas of Kana's wives to point out how Knanayites are alternatively attributed to be children of Thomas' West Asian or Nair wife. On the other hand, the Northists (or the more populous section among the Syrian Christians) are attributed to be children of his Nair or Mukkuva (fisher-folk) wife. Swiderski (1988) underlines that the identity of the wives and their apparent social distance from each other are decided by the identity of the storyteller. The contention that Thommen might have taken wives from the local community is a logical assumption put forth by historians.

The defendants relied on the ancient songs of Syrian Christians to underline the endogamous character of the community. According to them, settlers were given clear instructions that they should 'not change their [endogamous] moorings' on migration. The court, after going through the transcripts of ancient songs, observed that the instructions were not related to endogamy; rather they were concerned with the upkeep of the Ten Commandments and the Christian faith. Moreover, the Court argued that the Knanaya community attach missionary significance to their migration. If this were true, the court asked – 'how can you stay aloof and follow endogamy if you are missionary?' (Uthup vs. Manjunktal, 1990, p. 49).

The court observed that establishment of customary law must spring from a legal necessity and must not be immoral. It must not be opposed to 'public policy' or must not be expressly forbidden by the legislature (Uthup vs. Manjunktal, 1990, p. 56). The Court conceptualised Knanaya endogamy as an unsteady rule which did not decide the character of the diocese or the community.

Diocese ≠ Community ≠ Christianity ≠ Caste

The court ascertained that as per the canonical law, the diocesan bishop is vested with legislative, executive and judicial powers. Citing the Canon, the Judge defined parish as 'a certain community of Christ's faithful established within a particular church, whose pastoral care, under the authority of the bishop is entrusted to the parish priest' (Uthup vs. Manjunktal, 1990, p. 58). Thus, contrary to the stand of the defendants, the court stated that the bishop and the priest are juridical persons with specific powers to determine the membership. Moreover, it was held that 'community and diocese are not synonymous' and the creation of a new diocese (in 1911) didn't validate the custom of endogamy. The marriage rituals of the Knanaya community (clasping of bands by the uncles of the

bridegroom and the bride at the betrothal, ceremonial shaving, welcome, ululation, etc.) were perceived to have ‘no connection’ with the sacrament of marriage. It was noted that as per the liturgy – ‘a sacrament becomes an agreement binding throughout the life which starts and ends in the Church’ (Uthup vs. Manjungal, 1990, p. 60). In other words, the specificities of local Knanaya cultural expressions stood outside the realm of sacrament. Local cultures are not seen as essential or binding but simply as decorations. Clearly, the court delinked caste, community, diocese and Christianity from each other, which otherwise meant the same thing for the defendants.

With this, the court granted Biju Uthup a mandatory injunction and ordered the Parish Vicar to issue the Vivah-kuri. However, the defendants did not issue any Vivah-kuri. After completion of one month, the plaintiff filed an execution petition which was disregarded by the defendants. Finally, the court ordered the arrest and detention of the Bishop for the non-compliance of the decree. However, Biju Uthup withdrew his petition as he was an ‘ardent believer’ and didn’t want the Bishop arrested.

Biju’s marriage was conducted with the direct intervention of Apostolic Pro Nuncio who directed Metropolitan Archbishop of Changanassery, Mar Joseph Powathil to conduct the marriage without relinquishing his membership from Kottayam diocese. The defendants filed an appeal before the District Court, Kottayam and it was transferred to District Court, Ernakulam (AS 244 and 245/04) against the judgement of the lower court. Ashok Menon, the then District Judge, after an elaborate hearing, finally passed the judgment in 2008 and dismissed the appeal, upholding the previous judgement (Thomas in Punnen et al., 2014, p. 145).

The defendants then approached the High Court. Justice K. Harilal dismissed the appeal and upheld the previous judgements in 2017 (George Manjungal vs. Biju Uthup & Ors., 2017). The defendants then filed a review petition with the High Court of Ernakulam. Again, Justice Harilal upheld the decisions of his judgement but clarified that the observations on endogamy in the Munsiff Court’s judgement are binding only to the parties of the case and not the entire community. Thus, the High Court, invoking the principle of natural justice managed the spill-overs of previous decrees (George Manjungal vs. Biju Uthup & Ors., 2018, p. 50). Unhappy with the High Court, the defendants approached the Supreme Court, where Justice Arun Mishra and Vineet Saran ordered the High Court to hear the

review appeal afresh (George Manjungal vs. Biju Uthup & Ors., 2018, No. 10196-10197).

Concluding Note: Reflections on the Knanaya Conflict

With the Biju Uthup controversy and the reform movement which picked up soon after, we see the Syro-Malabar Catholics of Kerala come a full circle. In the late 19th century, when the Northists and Southists were fighting over separate administration, either group maintained that the divisions between them were insurmountable and cannot be resolved through ‘human agency’. They viewed each other as lowly, inferior and impure. Even those men who wanted to abolish caste distinctions among the Syrians were consistent in proving the ‘lower’ origins of the other (Pallath & Kanjirakatt, 2011). However, by the turn of the 20th century, we witness how individuals and their families built marital alliances (across caste divides) and displayed ‘human agency’ in overcoming the hitherto powerful divide. The reasons for such inter-caste marriages were hardly political. In other words, families (including the Uthup clan) didn’t marry non-Southists to prove a point or fight against caste divisions. Biju Uthup in his interview mentions that his father displayed all attributes of Knanaya racial pride and wanted his children to marry Southists, till the time the Church denied permission for his wedding. Such marriages, thus, were results of personal connections, class mobility, transnational migrations, dwindling numbers of Southists and even the proclivities of the dowry market among Kerala Christians.

The fight against Knanaya blood marriages is fashioned as an endogenous one – an inherent predilection to change within the boundaries of faith. The Uthup family or the reform party argue as ‘faithful Catholics’ who aim to end the rule of endogamy within the Kottayam diocese. The conflict is also postulated as one of values. The fighting groups contest the meanings of ‘Christianity’ and what it means to be a ‘Christian’; or more precisely – whether caste and endogamy are important to Christianity. The Indian judiciary has a consistent position on this question based on the precedence set by previous judgements and a modern ‘reinterpretation’ of Christianity which does not go beyond the 19th century. It perceives Christianity as a religion which militates against caste.

However, this ideology of ‘castelessness’ often goes hand-in-hand with that of caste, according to Lionel Caplan (1980). He notes that a vast majority of Christians are part of endogamous marriage circles. Even those with clearly

hybrid marriages and families hold on to an apical ancestor of high social station. Yet, the explanations for such practices are not derived from a Hindu past. Rather, as Caplan notes, they emerge from a certain convenient idea of Indianness and Indian culture (ibid). In case of Kerala Christians, Fuller (1976) has argued that Syrian Christians share a ‘common orthopraxy’ and ‘ideological conceptualization’ of caste. This point rings true even in recent studies (Thomas, 2018; Abraham, 2019). However, the story of Christian endogamy needs to be rescued from the simple argument that it is an offshoot of a Hindu past or an Indian feature. Groups such as Knanaya push the envelope.

We saw how the Knanaya Catholic Church failed in the court to make a case for endogamy as an age-old custom. The court honoured the written words of the Canon law more than the oral accounts of a ‘parochial’ custom. Thus, an interesting conflict between the global rules of Catholicism and the local rules of the faithful come to the fore. The pro-reform minority in the community attach themselves to the universal Canon Law as against the local custom. Finally, the case reviewed the immigrant myths, legends and founding documents of the Knanaya community in search of an uncontested history of endogamy. It was nowhere to be found. The entry of the ‘non-knanaya woman’ in the Kottayam diocese was not completely unheard of, though she becomes the root of the entire controversy in the 1990s. Surveillance, oversights and tacit forms of boycott and excommunication existed side by side without much public attention. The problem of the ‘non-knanaya’ woman became a well-framed issue only when it was made public in a constitutional court.

The Kottayam diocese has always told the unassuming public that they are a racially pure caste and have been one for centuries. Though folklore has its own way of punching holes into such claims, this was undisputedly the story that was repeated and recollected. But with Biju Uthup, this public face was tarnished. As a consequence, the discursive consciousness of the diocese (irrespective of empirical contradiction) stood challenged.

Notes:

i The term ‘Knanaya’ is a 19th century invention. Now, it has come to occupy a dominant position displacing the older term Southist. According to scholars, ‘Southists’ or its Malayalam equivalent – *Thekumbhagar*, was more commonly used in church documents. Similarly, the term ‘*Suriani*’ or Syrians was used as a common term for both Northists and Southists (For details, see Pallath & Kanjirakatt, 2011).

ii For example, the Syro-Malabar and Malankara divisions are predominantly upper-caste, on the other hand Latin Catholic division is mostly made up of converts from fishing communities who are included as 'Latin Catholics' in the Other Backward Classes list of Kerala.

iii Knanaya Catholic Reform Committee, which represents such families, has recently filed a case against the Knanaya Diocese demanding the re-entry of all members who were forced to leave due to inter-caste marriages.

iv This paper is a work-in-progress, drawn from my doctoral engagements with Knanaya cultural productions on endogamy. Biju Uthup's legal battle stood as a bone of contention in many Knanaya accounts.

v Parsi women married to non-Parsis have been fighting civil suits against ostracisation for some time (For an account on such excommunications, see Shelar, 2017).

vi The telephonic interview was conducted in the month of September, 2021.

vii *Vivah-kuri* is a necessary pre-condition for the conduct of betrothal and marriage among Kerala Christians.

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Conversation: Kalpana Kannabiran in conversation with Rukmini Sen

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Kalpana Kannabiran in conversation with Rukmini Sen

[Transcript* of the interview held on September 16, 2021]

Introduction

Kalpana Kannabiran is a sociologist (with a Ph.D. from Jawaharlal Nehru University, Delhi) and a lawyer (with Bachelors and Masters Law degrees from Osmania University, Hyderabad). She received the Rockefeller Humanist-in-Residence Fellowship, Women's Studies Program, Hunter College, City University of New York in 1992-1993. She received the VKRV Rao Prize for Social Science Research in 2003 for her work in the field of Social Aspects of Law and the Amartya Sen Award for Distinguished Social Scientists in 2012 for her work in the discipline of Law. Both these awards were conferred by the Indian Council of Social Science Research. Part of the founding faculty of NALSAR University of Law, Hyderabad, where she taught sociology and law for a decade (1999-2009), she was also Regional Director, Council for Social Development, Southern Regional Centre, a research institute recognised and supported by the Indian Council of Social Science Research, from 2011-2021. Alongside her academic career, she is co-founder of Asmita Resource Centre for Women, set up in 1991 in Hyderabad, where she has led the legal services and outreach and pro-bono counselling services for women survivors of violence and women in difficult situations. [Please check her [website](#) for details on her projects and publications]

Rukmini Sen is Professor, School of Liberal Studies, Dr B. R. Ambedkar University Delhi (AUD), and currently Director, Outreach and Extension Division and Centre for Publishing, AUD.

Rukmini Sen (RS): First of all, thank you very much for agreeing to do this, Kalpana. Given that this conversation will be part of an issue which will contain a special section on 'Sociology of Law', I was actually hoping to begin with interdisciplinarity. While there have been various efforts towards

* Rukmini Sen thanks Emil Skaria Abraham, a communication professional based in Thiruvananthapuram, Kerala for the transcription of the interview.

interdisciplinarity that has happened in different university spaces, yet somehow it just feels that it is still something that is extra, based on individual interest rather than naturally a part of the system. Despite the five-year law school model thinking about interdisciplinarity, despite even the discipline of sociology kind of always boasting that they are more interdisciplinary than other social sciences, and yet there is something amiss. I am kind of thinking through your own experience of – as student, during your student days, as a teacher, as well as in your activism – the different sides and the way in which you would have practiced interdisciplinarity.

Kalpana Kannabiran (KK): Thank you for asking me to do this, Rukmini. Speaking of my student days, it was just Sociology – both at the undergraduate and the postgraduate levels. At the undergrad, of course, I also had Economics and Geography, but I didn't do very much with either of those; in my mind it was Sociology and I wasn't actually thinking about interdisciplinarity at all at that time. But by the time I was in my final-year BA or so, the women's groups had started forming, I myself was part of one, so I would finish college and go off to demonstrations, and attend meetings of the dowry death investigation committees and those kinds of things. The Rameeza Bee incident happened around then, when I was in my BA, so one just got exposed to issues particularly related to violence against women – domestic violence, dowry deaths, rape – not that they were happening suddenly, but there was a lot of activity around those issues; resistance had built up. So, I think the beginnings were in a very obtuse manner thinking about the efficacy of law, the necessity of law, and trying to match what you understood, with what you were learning in classes with what you saw. Interestingly, MA was more insular than BA, because in BA I was also doing other subjects. But that insularity in my MA, in Hyderabad Central University, was kind of offset by the fact that I was more active in women's groups.

In my own mind I hadn't actually thought through the idea of interdisciplinarity but I was thinking along two tracks, you know, the activist track and the Masters track; and they didn't necessarily come together at the Masters level. In fact, I know there were teachers in Central University who actually resented the fact that I was in street plays on dowry deaths and would say they wished I put more time into my course, that kind of thing. Then I went in for an MPhil also in Central University and almost naturally my choice of research area was women in the unorganised sector. My MPhil dissertation was an ethnographic study of *beedi* makers in urban Hyderabad. For the dissertation, I didn't have too many

resources by way of readings in the Sociology department of the University. All my resources came from my feminist friends. But even there I don't think I was consciously thinking about interdisciplinarity. I just did things...I just went fumbling along and finding my way.

Then with my PhD, it was just a series of errors that again got me hurtling towards law without my planning it all. I planned to do a village study focussing on caste and gender. I chose a remote village in southern Tamil Nadu which has a predominantly Telugu population.

I must digress a bit here. The way I was socialised – I come from a Communist family three generations up, and I had married by that time, by choice. My father-in-law was a single parent who lived an austere life and was not really hooked onto religion or caste, etc. He was just focussed on his work and his daily walks. So caste was never really a question I grappled with in my personal life or outside – there were no barriers. Plenty of intermarriages across caste and religion, and we never really thought about these things growing up. But in Sociology it was a huge thing. Thus, there was this break between my personal life and sociological training.

When I went for fieldwork in Tamil Nadu to look at caste and gender, I suddenly found that people were decoding my speech, my accent, my language, my demeanour, and in less than a day, they had mapped my caste. We are Tamil immigrants in Telangana, and I married a Telugu person. I was bilingual, but far more at home with Telugu. So I was speaking to the people in the village in Telugu. I don't know how, but through my scattered Tamil speech they figured out everything and slotted me in their Vaishnava order. I was extremely uncomfortable. I did my fieldwork there for a year and a half, but each time I went it was getting more and more uncomfortable. And good old Professor Yogendra Singh, my supervisor, said, 'okay Kalpana, this is your last field visit. Come back in three months and write up your thesis'. I said okay but I came back from the last field trip completely traumatised and told him I didn't want to write a thesis on this subject – I did not want to write a thesis on caste where I was implicated in the caste system. I was not a resident of Tamil Nadu, I was not a resident of that village, I didn't belong to that ecosystem at all. Nor did I belong in that ideological framework. I was insistent on my refusal to continue with the research. He was very distraught and upset – he thought that here I was going to

finish my thesis – I had already spent three years on my PhD by then. But he was really good to me and agreed to go along.

I had actually fled the field and gone to Madurai. While I was browsing through the Madurai archives rather aimlessly, I stumbled upon a whole lot of Inam settlement records of *devadasis*. I photocopied the entire lot, came to Delhi and announced that I was going to work on Inam settlements of devadasis in Ramnad district. I had never studied History, and had no formal training. I had finished three years of fieldwork in Sociology, and now I wanted to step into a totally new area. Yogendra Singh asked, ‘where are you going to find devadasis to do your fieldwork?’ I told him archival materials are primary sources. He looked at me completely baffled, he said, Kalpana, in Sociology, archival is a secondary source. I made my first case for interdisciplinarity – but in History, it is primary.

I worked in Teen Murti Library and studied the Muthulakshmi Reddy papers and soon found enough material on the devadasi Inam settlements in Madras Presidency. I had come across two or three references to late 19th – early 20th century Madras High Court Reports, so I told my father that I wanted to work in the High Court library in Hyderabad. He was going to court very regularly at that time; this was in the late 1980s. He introduced me to one of his friends in the library, and they gave me access to the old reports. I would just go and sit in the High Court and either copy or photocopy all of the cases; about seventy-five cases between late-19th and mid-20th centuries. By this time, despite Professor Y. Singh’s insistence, I did not agree to do fieldwork with devadasis. I was looking at 15th, 16th century archaeological records of Tanjore, the epigraphic series of Travancore, the Tirupati Devasthanam epigraphic series, Inam settlements, the epigraphic records of military chiefs branding women who were then rebranded when they were transferred to another chief. There were all these kinds of records that kept floating up. I zeroed in on looking at political economy and social history through archival, archaeological, and judicial records. That was my primary data. But even then, I had not theorised interdisciplinarity.

Whenever there was a problem that interested or excited me, I didn’t let a disciplinary boundary fetter me or obstruct me from looking at other stuff. That was in fact the first time I looked at case law at great length. That was my tryst with interdisciplinarity, but until then I hadn’t actually studied Law. Meanwhile, just before I submitted my thesis, we had started [Asmita](#) in Hyderabad. Here I had my second encounter with law. With the pro-bono counselling we did in Asmita, I

found it impossible to deal with lawyers because they assumed you are illiterate where it concerns the law, you don't know anything about courtcraft, and they were reluctant to explain to a non-professional how and why they took the decisions they did, although the cases were cases you had entrusted to them. To get around this, I just told our counsellors – there were two of them and me – ‘why don't we take the law entrance? It's not a big deal, you know, we can just do the three-year law degree’. I was working full-time in Asmita at that time. So we took the entrance but I was the only one who finished. And I did it, like I said, for a totally different reason – to be able to keep our lawyers in check. After this I joined NALSAR, and did LLM, while I was teaching there.

I have never actually looked at myself as firmly located within Law. I identified as a sociologist. But I have never done traditional Sociology, either. Never. You know, none of my writing, none of what I do, has been in sociology alone. It has rather been kind of like a potted selection of a bit of this and a bit of that. So, like you said, I don't think interdisciplinarity was a choice. It just happened.

RS: Exactly!

KK: Why Law particularly? Because, like gender, law is never absent. I wonder how sociologists are able to narrate violence without invoking a sensibility of the law at all. I think the question is really the interconnections, and as feminists we can't afford to allow ourselves to be fenced in by boundaries – either disciplinary, or activism-academics...It doesn't make very much sense if you are engaged in certain kinds of work that intersects constantly.

RS: Right. I hadn't thought of this previously but as you speak, there is something which is coming to my mind which has also been there through my own readings around the Sociology of Law, etc. which is, I somehow found it strange that a discipline in the Indian university system – Sociology – which is doing village studies, and is doing caste and family studies, right, how is it even possible that that discipline is actually not engaging with law in a more direct way? I am just thinking, it was very poignant as you said, you think of yourself as a sociologist and yet you do not anchor yourself in the traditional way in which sociology is done. So maybe it is from there that I am curious to know what do you think, where was this amiss, why was this not done, the sociology engaging with caste and family and yet not engaging with the legal equation?

KK: I think it has to do with the idea that societies are to be studied in particular ways; in methodological questions about how you study societies and how you map the normative in societies; but the law has a very different normative protocol. There is, in a sense, the separation at both ends, because the Law also separates itself from other non-law disciplines like Sociology.

RS: But then if we think about it, then you find that even the normative in Sociology is constituted by a legal, moral sensibility. The legal and the moral are very closely tied. I mean, we can call it legal pluralism but that's still law, right?

KK: Take the example of village government – that's still law. But you don't feel comfortable talking very much about the law if you have not spent time familiarising yourself with the internal protocols of law. It makes a difference if you have handled cases, if you've counselled cases, if you've studied legal provisions, even if you haven't studied law. If you've studied and tried to understand legal provisions, it makes a huge difference. And of course, within the law, they just believe that they are totally autonomous. I remember the year that I taught Law & Poverty in NALSAR, that was only one year, the students said this is Sociology III. I said, well, you know, so be it.

RS: Do you look at law as something that connects people, citizens, state but it is also something that disrupts relationships or both connecting relations between people and institutions, but also that which disrupts, people, institutions, etc. Is that the reason why, in all your writings, law is the thread? Or you would want to call it something else?

KK: I actually don't think outside the space of law. It's perhaps a limitation, but I cannot actually frame a problem without recourse to law. Whether the law as disruptive or the law as restitutive, or the law as enabling, in whatever form, I can't actually frame a problem in absence of the law. And yet, my relationship with practice and courtcraft – formal law – is very tenuous. I can never be a professional lawyer. 60 years is a bit late to begin. I don't see myself standing in court and arguing. It's basically the professional protocols that I have simply not been schooled into.

RS: I was thinking of your own experience with the Equality Commission or in CEDAW (Convention on the Elimination of all forms of Discrimination against

Women); these would be closest to actually working and writing for an already given legal institutional framework that exists. So how would you reflect on that?

KK: They are two very different experiences. With CEDAW, my major contribution was to get people to write, bringing all of that together, editing it according to the required framework, making sure that all the nuances of a particular problem are in, rewriting parts where they needed to be rewritten, preparing the summaries – basically my work had to do with the preparation of the document. Because the thing that I really enjoy the most is writing. In both the CEDAW Committee meetings, in New York and Geneva, my task was quite clearly defined.

The fact of being in academics and at the intersection of Law came in very handy for me when I was part of the CEDAW effort. People had wonderful ideas, they had wonderful lobbying skills, but in terms of writing in a particular template – that was something I think that I did contribute to.

With the Expert Group on the Equal Opportunity Commission (EOC), it was a good experience for me working with a very diverse group – I was the only woman, and was added on later. Professor Madhava Menon chaired this group. It was an interesting exercise because I had never worked with the government before that. We used to meet in the Department of the Ministry of Minority Affairs; we did enjoy writing that report but nothing came of it. I was just kind of soaking in the experience. The following year, the Government of Kerala asked Professor Menon to devise a blueprint that would link all the autonomous and government law colleges and the national law college in Cochin, to a common curricular ecosystem. What the Education Minister wanted to get was a blueprint so that all law teaching institutions could be networked into a single system and have a common entrance, and students can choose to study close to home or far away depending on where they want to go, but all will offer roughly the same curriculum, maybe options would differ, but the base curriculum would be the same. This was a fantastic idea which can only happen in Kerala. Prof. Menon was all excited about this. And I made two or three trips to Kerala. It was most amazing. I think I visited every single Law Department, every single Law College in Kerala as part of that effort. We submitted a very detailed report on reform of legal education in Kerala to the Kerala Government. This was around 2008/09. So for me, the EOC effort is much more remembered because of the Kerala experiment.

RS: It's interesting that having done all my degrees in Sociology, till MA one didn't study Kalpana Kannabiran, but it was the teaching at the Law School which brought me to read you. BA was probably more spread out, I did History and Political Science together with Sociology so, therefore, there was some amount of interdisciplinary reading, but MA had nothing; and then after MA, I started teaching at the law school in Kolkata, and with Prof. Menon you are just forced to study the law, you just couldn't be at the law school without studying the law, and so in fact, the first book that I read of yours was the *Violence of Normal Times*, and then one eventually went towards *From Mathura to Manorama*, by that time, with also my own engagement with women groups in Calcutta had begun. But I was actually thinking today that when you wrote the *Violence of Normal Times*, I think what struck me most was the fact that we would always look at violence as something that is extraordinary or something that is episodic and not something which is constantly there, that one is actually living with it. One still did have the vocabulary of 'everyday' at that point of time. But then I was thinking how similar are the times that we are living in, how has fear and violence become normalised in our everyday life and yet, how is it that in our teaching we teach it or don't teach it. Violence, as courses actually do not exist, again, women sociology within law, we at AUD have an elective course on Sociology of Violence that we have been able to do only twice, and I don't know whether law schools actually even do a separate course around violence. So I was just kind of thinking about if you want to tie a few of these together through the book, of course.

KK: My earlier book which I co-authored with my mother was also on violence – *De-eroticizing Assault* – and so the spectre of violence was always kind of there and I never actually felt I could evade it. It's possibly because of work around questions of domestic violence within the movement. It's also possibly my very early exposure to state violence at very close quarters, seeing torture victims in our home there, which was also a safe house. With Asmita, I would have women coming, ever so normally, show me unimaginable injuries and asked me what they could do, and we talked about it or didn't talk about it or they just came to sit because they just wanted place out of that situation. There was something that was so eerily normal about the way survivors conducted themselves, about how not just violence but trauma was normalised as well. I had actually been processing cases, and it's from that experience I think that a phrase like *Violence of Normal Times* emerged, not consciously, but because everywhere around me, it was not

the extraordinary rape and encounter killing, it was the more everyday forms of violence, that were traumatic.

And also your other point on violence itself not being taught, that's actually true, it's not even taught in criminal law. Criminal Law teaches you the law of crimes but it never tells you that the crimes are violent, nor does it tell you that punishment is violent. It never tells you that the death penalty is violent. In fact you are taught to see the death penalty as punishment, not violence; so nothing – incarceration, death penalty, nothing within Criminal Law is framed in terms of violence, not even terror. On the one hand, you have the whole discourse on non-violence but you don't have the corresponding discourse on violence; the corresponding discourse is on law and order.

RS: So, as you were saying that there is a discourse on non-violence and we don't teach violence, is it also because there is a limitation in our understanding on how we even study violence. You know the methods of studying violence, I am kind of thinking about the early women studies writings around how difficult it is to do research on domestic violence. And from there, to how difficult is it to do research, let's say with death row prisoners, and you know one is thinking about the Death Penalty Project that National Law University Delhi has been doing, so I am wondering, does it also have to do with the fact that we are not training people with how to study violence.

KK: I think there are many layers in the study of violence. For instance, I have never been able to 'study' violence to this day. I have worked with survivors, I have worked with testimonies, I have worked with case law, which is one step removed, but I haven't actually ever, I think, interviewed a sample of women who are survivors of violence and published the findings. That is a balance that every researcher has to strike up. What is it that you will use, what are your own limitations, basically, the feeling in your gut; What can you deal with, what can't you deal with? Emotionally, how do you connect to a problem, how much are you able to distance yourself, and at what level are you able to distance yourself.

RS: And definitely involves questions on ethics...

KK: Ethics, of course, first of all. But once you cross the problem of ethics, or rather once you settle the issue of ethics, you still have a series of choices. On what your materials of study will be, and that can be any of a range. It can be

prisoners, under trials, survivors, victims' families, it can be any of a range of options, and with each then you have a fresh set of ethical questions that arise, except where you are looking at reported cases from the public record, where you only have to settle up your ethical question once. In a sense, it's a bit of an easy exit.

RS: As you're saying this, I'm finding a connection with this set of things that you said, you worked with testimonies, case laws, you've worked with survivors with public reports but not done detailed, in-depth interviews, or even if you have done cases, you've not used it. And these in some sense seem to be connected with your PhD thesis where you were being asked to find out and do interviews with devadasis but you were working with records and Imam Settlements and other kinds of written records.

RS: With the book *From Mathura to Manorama* one of the thoughts with the book's title that I had was why the names in the title? While, of course, one knew these names and yet one was also aware of all debates by the 2000s about anonymising, etc. But one of the thoughts that has remained with me is that if violence is actually everyday and normalised then why would we want to remember moments in women's movements? Mathura and Manorama, of course play very important roles as movements, legal transformations, etc., but still a certain kind of unease, I would think, I was just thinking that.

KK: If we just historicise the anonymising debate, both Rameeza and Mathura were prior to it, and if you don't say Mathura or don't say Rameeza, you don't know the case. If I say, Tukaram vs. State it may not ring a bell. Rameeza's name is even mentioned in the Justice Mukhtadar Commission Report that was tabled before the Andhra Pradesh Legislative Assembly. She is named as Rameeza Bee in the official records. All the rape law reform campaigns named Mathura in the late 1970s and early 1980s. It is a 'watershed' in the women's movement. Both the Rameeza and the Mathura cases cascaded into huge campaigns that forced the general public to take note of the fact that these are injustices. That is something that can't be forgotten. Thangjam Manorama had died. The protest of the Meira Paibis was unparalleled. Our focus was on the continuum of violence and on the continuum of protest against violence. Because this was a book on feminists organising against violence, so that's the reason why we said okay let's use these two historical moments, the campaign for justice for Mathura and the protest

against the murder of Manorama – the focus was on suffering and harm and importantly on feminist organising.

RS: The other questions that I had was around Telangana studies and as I was looking through, this was something that I just read in your website; I haven't followed the series, but the question that I was thinking about as a sociologist was that, how important do you think is studying specific political, cultural, spaces and context in India, and to what extent do you think that the discipline of Sociology does that, because we gave up village studies, we've shifted from there to doing urban studies; studying the cities is now becoming somewhat popular, going to the rural is another thing that we do. Some departments either in Sociology or in Women's Study tried to do north-east writings, etc. So keeping these as background in mind, what we still go on doing is Indian Sociology or Sociology of India, those are the kinds of courses that we still end up doing and as if we're also saying that the other courses there aren't India, it is in this course that you could do. So I think two kinds of things that I'm curious to ask, one is, why Telangana studies, two, where is the space of this kind of discourse within Sociology?

KK: Belonging to Telangana, the whole idea of the cultural specificity of Telangana is something that I grew up with. In 2007-09, when the movement for separate Telangana really picked up, a bunch of us just went off on a road trip to all the districts in Telangana talking to everybody on the streets. There were Joint Action Committees in every village, every town. So we just got into a jeep and went all over the state, in forest areas, outside, everywhere just asking people why they support the demand for a separate Telangana. And the responses we got were really amazing; we put it out in an article on EPW in 2009 called 'On the Telangana Trail'. Later I joined an ICSSR institute supported by the state government. There had to be a research partnership with the government. We had a rather friendly bureaucrat who had done his MPhil from SIS in JNU who was in charge of planning – BP Acharya. It was in conversation with him that the idea of putting out a Social Development Report for Telangana emerged. We brought in researchers from outside. We had Padmini Swaminathan, formerly with Madras Institute of Development Studies, and J. Jeyaranjan, who is now the Vice Chair of the State Planning Commission in Tamil Nadu – both economists – and me, coordinating this entire effort with other scholars involved as well. We put together two reports. The second Telangana Social Development Report (2018) focused on Gender Access and Well-being. In this report, we included crimes

against women as a social indicator of well-being. It's possibly the only report which has district-wise figures on crimes against women using data from NCRB, NSSO and census. So where the Telangana Studies is concerned, I think it was much more institutionally driven, it wasn't really something I was personally interested in. It definitely is a regional perspective and therefore important.

RS: Right, I think we have come to the last set of thoughts today, which is, your teaching, you as a teacher in the law school, and in your website you do write about the thesis that you have supervised, and there is one which is still ongoing, and I'm just wondering that you will not be a traditional Sociology teacher and you've not taught in a Sociology department, which itself is something very noteworthy, I think, and yet I am still trying to think about the kind of courses that you taught in the law school, curriculum building, as well as transacting these courses to law students. Given the resistance that would have remained in the way in which – you did mention about the Law and Poverty thing that we are doing Sociology 3 – and yet what is it that you would say as your role as a teacher who is not consciously doing interdisciplinarity and yet is using so many kinds of materials (which I thought is the most important thing). What are your reflections on teaching?

KK: The years that I spent in NALSAR were actually in terms of my teaching, the best. Because after that, I moved out of undergraduate and was only doing research supervision. I was teaching Introduction to Sociology and Sociology of Law. I also taught a bit of Labour Law for a couple of years, I shared the course on Criminal Law for a year or two. And then I did seminar courses for two years and taught the LLM Human Rights course. But the one that I enjoyed the most was teaching the Sociology course to the first year students because you're actually in a conversation where a new world is literally opening out. For them and also for you, because you haven't actually met eighty different young people who have come with a baggage of experiences. I was getting stories about discrimination on campus, discrimination by faculty members, by other students, homophobia, silences, battering at campus, battering at home, all kinds of things. I engaged with them in my lectures, because I was teaching the family, I was teaching caste, I was teaching social stratification. I had split the Criminal Law course with a Criminal Law teacher and I was teaching the sexual offenses chapter – offences against the body – and there was no censoring, we talked about everything, we talked about why something is rape, why something is not rape, how can something be outraging modesty, we had these conversations very

openly in class and I just said, everybody should participate. If you have a disagreement with me, you have to tell me and tell me why. Then came along a retired judge who was appointed Criminal Law teacher; when it came to offences against the body, he would teach murder and homicide, and the rest of it, he would say were not important.

Already in Sociology, I was teaching Article 17 because Constitutional Law never teaches you Article 17. I started sexual offenses in Sociology so my Sociology was a default setting. Nothing was really outside the domain of Sociology. Everything the kids felt was getting left out somewhere came into Sociology.

I was very strict in class – insisted that if you are in class, you have to listen, you have to engage. I am not giving you a choice on that, you can't just sit and do your own texting, you have to tune in. Even that was a gamble that worked. I mean they have to be willing to listen to you, they have to trust you enough to listen to you and I was just lucky. I got lucky many times over. In the fifth year, when I offered seminar courses, I had quite a few students opting for my seminar courses. And several of them are now practicing in Delhi. But if you are a social science teacher who is not familiar with law at all, then you don't have the basis for a conversation with these students. That was what I realised.

With the Council for Social Development, it was basically courses on research methods. I haven't supervised too many, I have supervised two LLM dissertations in Human Rights in NALSAR. At CSD, I had six PhD students, of whom five were in women's studies and one in social sciences. But even so, I found it kind of a good experience. Of the six, five students are from TISS. Of the four that have already been awarded their PhDs, they are all people who are much older, people who returned for a PhD quite late after a long gap. One of them finished when she completed 60 in 2019... Lata... She worked on women in the OBC movement.

RS: How endearing is that!

KK: The other student Vaishali, who also came in after a very long time in Human Rights and looked at Dalit women in employment and then there was Rimi, who was from Arunachal who did a wonderful thesis on Apatanis of Arunachal.

RS: The last question I have is at this juncture where social science teaching and practice is undergoing a huge transformation. It has been undergoing a transformation for long. So I necessarily don't see it happening only now through the NEP, it has been happening through, from the National Knowledge Commission, Yashpal Committee Report and all of that. What would you have to say to early-career researchers, teachers, as to what would be non-negotiables in teaching and research of social sciences?

KK: I think the first is certainly revisiting the canon. That we haven't begun to do, I mean we are still doing the fathers of sociology and then adding the mothers and other beings. We do need to revisit the canon, both in terms of materials that have emerged from the subcontinent historically, and materials and writings outside. For instance, Ambedkar, Tarabai Shinde, just to name two, would be absolutely central. But also Gloria Anzaldúa, Zora Neale Hurston, I mean, we need to look at the structuring of the canon differently. And then look for the criss-crossing of concepts, methods, and approaches to study. So we can actually look at different sets of people and read, conceptualise the key concepts, reformulate the key concepts, reformulate the canon, do a completely fresh curriculum that it is not meant to set the old one right but displaces the old one and put something radically different in its place, more contemporary.

A lot more literature is needed; creative writing does not enter the Sociology curriculum at all. And creative writing is just so rich in its possibilities of understanding socialities, resistance, emotions, all of which are a huge part of Sociology. We don't teach the sociology of emotions. How do you re-conceptualise your core and your electives in such a way that even if I don't take an elective, the areas of that elective already figure in the core. Because as of now, we may not study rural sociology at all, then if we don't take an elective in rural sociology we get out of the Masters without studying rural sociology. Rather than doing that, what are the spaces that we must cover – work, family, emotions, socialities, hierarchies, inequalities, boundaries, relationships, intimacy, citizenship. Reimagining the discipline is the key.

Research in Progress: Legally Sanctioned but Socially Opposed: Experiences of Navigating an Inter-faith Marriage

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Legally Sanctioned but Socially Opposed: Experiences of Navigating an Inter-faith Marriage

--- Ashwin Varghese and Aishwarya Rajeev

Abstract

This paper explores the contradiction between legal sanction and moral opposition to inter-faith relationships and marriages, and how couples try to navigate this conundrum. For this purpose, we draw from auto-ethnographic accounts of the authors, of their experience of choosing to marry under Special Marriage Act (SMA) as a Christian-Hindu couple. We examine how the opposition to inter-faith marriage manifests in the confrontation between couples, state and social institutions, along with what forms these oppositions take, and the gendered experience of blame, guilt and expectations that are disproportionately placed on women through the constitutive elements of a hetero-patriarchal 'family'. While the SMA offers an avenue for inter-faith couples to get married, it also forces social institutions to create mechanisms through which the danger of love, choice and desire is diffused by accommodating autonomy, as long as it is not in contravention to norms of endogamy and exogamy.

Key words: Auto-ethnography, Inter-faith marriage, Kinship, Love, SMA

...kinship organization expresses something completely different than genealogical relations, that it essentially consists in juridical and moral relations sanctioned by society, and that it is a social tie or it is nothing...

(Durkheim in Sahlins, 2011, p. 9)

...love marriages challenge parental authority and related notions of inter-generational reciprocity, filial duty and parental responsibility.

(Donner, 2002, p. 93)

Introduction

Sahlins (2011) notes a paradigmatic shift in conventional understanding of ‘kinship’ in Durkheim who views kinship as juridical and moral relations sanctioned by society. It reflects a paradigmatic shift from blood/genealogy to human unions. Even though kinship, through this conception, is still most prominently studied through marriage and affinal relationships, it nevertheless reflects a change in vantage point from lineage to social/human ties. Perhaps that is the extent to which Durkheim’s imagination could extend kinship to, given his social and political context. Sahlins (2011), acknowledging this shift, develops his own conceptualisation of kinship as ‘mutuality of being’ and ‘intersubjective belonging’. These are again informed by the transition in understanding kinship as ties of blood to kin/ship as relation/ship, engulfing all mutually constitutive relationships, from marriage to friendship and even more hitherto unexplored relations.

For this essay, we explore the idea of kinship as juridical and moral relations sanctioned by society, to mark a contradiction between the two. It is not necessary that human unions that enjoy juridical sanctions also enjoy moral and/or social approval or even recognition, inter-religious/caste marriages in India are a case in point. However, to understand this contradiction better, we must look at both legal/juridical and social/moral ties as dynamic and susceptible to change, which brings them to the domain of the everyday, to the daily behaviours and practices that overdetermine these legal and social relations.

In inter-religious marriages in India, we encounter a schism; while on the one hand, such unions receive legal sanctions through provisions under the Special Marriage Act, 1954 (SMA), on the other hand, they face the ire of social opposition by the vanguards of morality. This essay tries to explore the contradiction between juridical sanction and moral opposition of inter-religious marriage, and traces the forms in which social oppositions manifests themselves and the mechanisms available for inter-religious couples to subvert such oppositions in attempting to solemnise their marriage. For this purpose, we draw from an auto-ethnographic account of our experience of choosing to marry under SMA as a Christian-Hindu couple to unearth specific reasons for social opposition and trace the alternatives proposed.

Proposal

We had been friends and partners for about five years, and began discussing marriage as a possible means of co-habitation given personal circumstances in 2020, as the world reeled under the onset of the COVID-19 pandemic, and India progressively became more hostile to inter-faith marriages with the looming spectre of an ‘anti-love jihad’ law. Both our families hail from Kerala, with our paternal families from the same district; we both did our Master’s degree together, and are now pursuing our Ph.D.s from the same University. Despite these similarities, as an inter-faith coupleⁱ, we already knew that solemnising our marriage under the SMA and finding social acceptance would be difficult, since both of us wanted to retain our socio-religious identities and practices. Subsequently, the prospect of marriage was then pitched to respective families, objections were raised, negotiations initiated and actions were taken to subvert certain norms.

Aishwarya’s parents were happy about the decision, as they had known Ashwin for the past five years owing to their friendship, and liked him. However, her grandparents were reluctant about the idea of her marrying a Christian boy, predominantly because of their religious and caste practices, as well non-awareness of people in their community having married outside their faith. Some relatives also reacted very coldly to the news. However, since Aishwarya’s parents stood firmly in support, others eventually came around, albeit begrudgingly.

The opposition was more pronounced for Ashwin whose immediate family and community members were reluctant because Aishwarya belonged to a different religious community. His parents didn’t seem to have a problem with Aishwarya personally, so the proposed way forward was ‘Holy Matrimony’ in the Syrian Christian custom, for which Aishwarya would have to become a baptised member in Ashwin’s denomination.

This was proposed in the first meeting, in early 2021, when our parents decided to meet to discuss how to proceed further. After the initial pleasantries, once the conversation had moved onto the topic of marriage, Aishwarya’s family enquired, ‘how should we proceed?’ In response, Ashwin’s family explained the holy matrimony rituals practiced in their church, and added, ‘if they want to get married like that, Aishwarya would have to join our *sabha*ⁱⁱ first, only then would

it be possible'. This however, was not acceptable to Aishwarya's family, who were of the opinion that neither of us should have to give up our religion for marriage. After some back and forth, the issue of children was raised, where Ashwin's family asked, 'which religion would the child follow, if both the parents have different faiths?' This issue was resolved (temporarily) by everyone agreeing to revisit the topic when the child would be born. Ashwin's family reiterated that they wanted a church ceremony, and therefore Ashwin suggested a blessing ceremony instead of holy matrimony in another church, which could take place only after the court marriage. A blessing ceremony, unlike holy matrimony, is conducted in some denominations, specifically for inter-faith marriages solemnised under SMA. For this, one partner has to be a baptised Christian, and the other partner may be from any other faith. A prerequisite in this regard is the marriage certificate from the SMA registration. In effect, the blessing ceremony, as the name suggests, is a blessing of the civil marriage, and does not qualify for registration under the Indian Christian Marriage Act, 1872. This was acceptable to Aishwarya's family and it helped that the blessing ceremony accommodated a common ritual, i.e., the tying of the *thali/minnu*ⁱⁱⁱ. They were not insistent on a temple ceremony, and moreover the temple they went to, did not allow ceremonies for inter-faith marriages either. Ashwin's family also reluctantly agreed, finding no other alternative. It was thus agreed that the marriage would be solemnised through SMA followed by a blessing ceremony in church.

This situation has to be understood in its specificity. While an overarching generalisation may not be possible, certain anxieties do become apparent, which have a general character. The reluctance in accepting such marriages traversed predominantly two concerns; one, different faith-based practices, and two, anxiety over the child/children. Butler, while discussing the acceptability of non-heterosexual parents, notes that 'the figure of the child...becomes a cathected site for anxieties about cultural purity and cultural transmission' (2002, p. 23). Nandy through his framework of construction and reconstruction of childhood unpacks these anxieties in the modern world-view, and argues that 'there is greater sanction now for the use of the child as a projective device. The child today is a screen as well as a mirror. The older generations are allowed to project into the child their inner needs and to use him or her to work out their fantasies of self-correction and national or cultural improvement' (2011, p. 429). We could extend this anxiety over the figure of the child in this context as well, knowing full well that the anxieties derived from the child of an inter-religious heterosexual couple and that of a non-heterosexual couple are qualitatively different. Here we note

that the figure of the hypothetical child is used as a means of ‘self-correction’ of the ‘wrong’ of inter-faith kinship, through rigid and orthodox cultural assimilation. The argument here is that the figure of the child, owing to its specificity, is always a site of anxiety, contestations, and negotiations. In this case as well, it was a crucial site of anxiety and opposition.

Opposition

When Ashwin first spoke to his family about marrying Aishwarya, he faced initial opposition, and then a reluctant acceptance on the condition that Aishwarya agrees for a wedding as per their customs. Elaborating upon the reasons for opposition, they stated that after inter-religious marriages, for the spouse, who is born and brought up in a different custom, adopting another way of life is very difficult. Similarly, for Ashwin’s community, accepting a spouse from a different community is very difficult. To contravene this, marriage as per prescribed customs and practices of religion and patriarchy is proposed which is seen to accord the ‘value and recognition of a proper marriage’, as otherwise in a ‘registered marriage’ both the couple and the parents are perceived to have committed a grave mistake, subjecting the family to gossips and snide remarks by community members. Furthermore, a child born out of such a marriage is seen to be without religion, and ‘caste’^{iv} and therefore without a community.

While noting the compulsions stated by Ashwin’s family, connecting rituals and practices associated with marriage and birth, it is important to highlight the notions that, one, the woman goes into the man’s house after marriage, and two, consequently gives up her customs and practices, to be absorbed into the man’s family, were considered the natural order of things and sacrosanct. We argue that despite religious differences, these notions remain common across religious communities and smack of the acceptance of patriarchal, patrilocal norms of marriage. This was evident from comments that came our way, such as ‘they will convert her, she is going to his house, she will have to adopt their customs’, ‘naturally when a woman comes to the man’s house, she gives up her way of life and adjusts according to his customs and practices’.

Kinship studies have tried to understand such unions through the concept of ‘love marriage’, which face societal opposition because it entails the exercise of an individual’s autonomy in choosing a partner, as opposed to the socially sanctioned ‘arranged marriage’ where agency lies with the community. Underlying the

opposition to love marriage is the threat of individual autonomy in the choice of a partner, potentially contravening social norms of endogamy and exogamy, parental authority, filial duty and inter-generational reciprocity (Mody, 2002; Donner, 2002). In our experience the main oppositions were systemic, wherein, even if the parents were not morally opposed to such marriages, the communal system didn't allow it without assimilation. The caste-like nature of this community must be remarked upon here, wherein such practices maintain the norms of endogamy and exogamy. Anxieties over the child formed a crucial aspect of this. Assimilation therefore was seen by some as a means of contravening these norms.

The difficulty and violence that an inter-faith couple has to face is evident. The violence implied in cultural assimilation contingent on withdrawal of one's faith and customs for the purpose of marriage is recognised. The specificity however, of both social locations have to be kept in mind as well. We are both urban-educated, upper caste, middle class, cis-gendered heterosexual, young academics, born and raised in Delhi. Making use of our social capital and networks, we were able to navigate the bureaucratic, labyrinthine process of solemnising our marriage under the SMA with relative ease. Family members opposed to the marriage however belong to a generation of migrant settlers in Delhi from rural Kerala, who grew up with values keeping communal sentiment paramount, even at the cost of individual autonomy. The threat of ostracisation for Ashwin's parents for example, was much more real than for either of us. While the violence of an imposed ideology on Aishwarya may be acknowledged and recognised by most audiences of this story, the precarious position that the situation put Ashwin's mother in must also be remarked upon. Communal standards pitch keeping children in line as the primary duty of the mother. The blame of any act committed by children that went against community values is attributed to the mother, as 'she did not raise them properly'. The same is not attributed to the father as much. This mechanism of guilt and blame then puts the mother in a precarious position where she has to either stand against the norms and ideologies of the community she was born in and derives her identity from, to uphold her son's decision; or to oppose the son's decision and try to accommodate it through whatever means available to her. Whatever the choice, the process itself is inherently violent, predominantly because it attempts to contravene the norms of endogamy and exogamy.

Interruption

While SMA and blessing ceremony are generally not acceptable, and only seen as a last resort, in our situation it became relatively more acceptable because of the changed political climate created by the rhetoric around 'love-jihad' in 2020-2021. This rhetoric demonised inter-faith relationships and marriages so much, that there was also a fear of physical violence on the couple and family members by self-appointed crusaders of social morality. As community members feared being perceived as propagating 'love-jihad', SMA and blessing ceremony became more acceptable as a modality to both legally and socially sanction our marriage.

While we were predominantly concerned only about the SMA wedding, and agreed to give in to demands of social sanction through a religious ceremony, we only gathered the importance of the latter for Ashwin's parents when it happened. More than being ceremonial, it was seen as a 'real marriage' by people, despite being aware that the wedding had already taken place at the Sub Divisional Magistrate's office as per the SMA procedure. However, socially the legal documentation and juridical procedures are not seen as a wedding. A wedding was seen to be socially valid only through a social and religious ceremony, almost as a social stamp. In this way, it didn't matter whether the Government of India certified that we were married or not, but it mattered if they could tell a neighbour, a friend or a relative that we were married in a church. This harks back to Durkheim's observations that kinship organisations are social ties or they are nothing. These social ties however are fundamentally conditioned, in the Indian context especially, with diversity. As Uberoi asks, 'can one speak of an Indian kinship system, or are there several? And if there is more than one structurally distinct system of kinship and marriage, how does each relate to the other(s)' (2000, p. 45). These multiple forms of kinship structures function in a political hierarchy, where inter-faith kinship, as 'inter-faith kinship' not masked by cultural assimilation, presents itself as a problem. We note that an absence of a cultural ritual to sanctify such kinship on the one hand and anxieties over the child on the other are two manifestations of the problem of inter-faith kinship. Similar (yet different) concerns are also raised in the case of inter-racial couples, for example in the United States of America, wherein families express concerns over the social acceptability of such unions as well as the child born therein, implicitly underscoring a hierarchy along racial lines (Herman & Campbell, 2011; Osuji, 2019).

What we see here is the incompatibility of the juridical and the moral sanctions at two levels. First, while the SMA offered an avenue and a legal ceremony for a civil wedding, it was incapable of replacing the social and religious ceremonies that are accepted by the respective communities as 'wedding'. Second, social and religious norms of marriage were incompatible with the moral and ethical norms of the couple and supporting family members, who despite not being opposed to an inter-religious marriage personally, broach the issue cautiously because of the dominant social norms.

It is usually assumed that more examples of inter-faith marriages would make them more acceptable. While this may be true to some extent, we note that respective communities that are opposed to such marriages adapt and build new alternatives to keep the threat of inter-faith unions at bay. We argue that inter-faith marriage is not the only way to legitimise inter-faith kinship, for this a thorough diffusion of the marital institution is required. We draw a sharp distinction and note that inter-faith marriages do not give social legitimacy to inter-faith kinships, where couples chose associated living without adopting the institution of marriage. In our choice of marriage, we interrogate the idea of 'marriage' by noting that inter-faith marriages are not a radical alternative to, but rather an interruption in, the dominant ideas of marriage and kinship, especially in the current socio-political environment witnessing demonisation of such relationships, in addition to delegitimisation through anti-conversion laws.

Conclusion

Finally, we end with a note on the methodological difficulties in working on inter-faith kinship. Through our experience, we note that the threat of inter-faith unions is predominantly diffused through assimilation, and then eventual registration of such marriages under religious marriage acts like the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, etc. This makes first the identification and estimation of existing inter-faith unions, where partners retain their social-religious identities, difficult. This feeds into the myth of inter-faith marriages as being 'rare' and 'abnormal'. Those who are able to register marriages through the SMA procedure usually have the social capital and material means necessary to navigate and persevere through the process^v. In many instances, the functionaries of the bureaucratic process also dissuade SMA marriages, as has been shown by Mody (2002). In our case as well, a lawyer suggested an Arya Samaj wedding as an alternative, which involved a *shuddhi* (purification) of the non-Hindu partner

as a prerequisite, which we refused.

This ability to persevere makes the universe of inter-faith couples, who are registered as inter-faith couples, skewed in favour of the privileged few, obscuring the stories of many who opt for other alternatives. Several couples and associated family members also shy away from being identified as inter-faith couples, and divulging their stories and struggles, fearing retribution from community and state, thus adding to methodological and ethical complexities in studying such forms of kinship.

While the legal sanction of the SMA offers an avenue for inter-religious couples to solemnise their marriage, it is not equipped to challenge the social norms of endogamy and exogamy. This incompatibility between the juridical and moral sanctions also forces social institutions, which oppose such unions, to create mechanisms, like 'love-cum-arranged marriage'. This kind of marriage, 'whilst predicated on the choice and agency of the couple-in-love, is nonetheless domesticated and brought within the purview of parental [societal] authority and control and the reciprocal obligations of the child' (Mody, 2002, pp. 248-249). Increasingly, 'love-cum-arranged marriages', are accommodated and encouraged to an extent in both Syrian Christian and Nair communities where individuals chose their partners but from within their own caste/community. Following this choice, the respective families arrange the marriage mutually. Through such mechanisms the danger of love, choice and desire is diffused by not only accommodating but also promoting autonomy as long as it is not in contravention to norms of endogamy and exogamy. Indeed as Donner (2002) notes, the most common form of love marriage is one within one's own caste or *jati*.

We note that normalisation and reflexive communal change is unlikely to happen on its own, unless the norms of endogamy and exogamy are consciously ruptured. This rupturing is an inherently violent process. Keeping in mind the caste-based practices of the Syrian Christian and Nair communities ensuring the maintenance of norms of endogamy and exogamy, the desire of normalisation of inter-faith kinship is reminiscent of Ambedkar for whom along with interdining, 'the real remedy for breaking caste is intermarriage. Nothing else will serve as the solvent of caste' as 'fusion of blood can alone create the feeling of being kith and kin' (1936, p. 31).

Notes:

ⁱ Ashwin is a Syrian Christian and Aishwarya is a Nair Hindu.

ⁱⁱ *Sabha* is used to denote the community that is formed by the church members of the same denomination.

ⁱⁱⁱ *Thali/minnu* is a nuptial pendant made of gold. Among Malayalis, tying of the *thali/minnu* is the main ritual in both Syrian Christian and Nair Hindu weddings.

^{iv} The term is used interchangeably with religion, community, etc. but reflects greatly on the caste-like nature of Christianity in India.

^v This essay is derived from an ongoing auto-ethnographic exploration of the everyday of inter-faith marriage.

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Sociology as a discipline, like other social sciences, is passing through a transition. The developments in the contemporary world have opened up new areas of enquiry expanding the traditional frontiers of the discipline. Many sociologists are engaged in these new and emerging areas of study which is often informed by a multidisciplinary approach. Sociologists in India are also in increasing numbers engaged in such research (in areas which includes environment, minority rights, gender studies, sexuality studies, etc. to name a few). However, they have an additional challenge posed by the need to integrate the enormous regional, social and cultural multiplicities of India into the Indian sociological canvas. These diversities, especially those of the socially marginal and geographically peripheral societies, have remained somewhat out of the radar of Indian sociology. However, emerging discourses on caste, tribe, ethnicity, religion, region, nation and nation building in contemporary India have created new consciousness and imperatives to integrate the marginal regions and societies into the broad canvas of India Sociology. The journal is sensitive to such discourses and it aims to encourage scholarly publications focused on such identities and regions. While the major focus of the journal is societies, histories and cultures of India, it also welcomes publications of comparative studies with other countries as well as on societies and cultures of South Asia.

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- Cover page, showing title of the paper, name of author, author's affiliation and institutional address with pin code, email id and a 100–150 word abstract. Authors' names and references should not be used in the text in order to keep authors' anonymity (e.g., 'as the author has written elsewhere' should be

avoided). In case there are two or more authors, then corresponding author's name and address details must be clearly specified on the first page itself.

- The contributors should also provide 4–5 keywords for online searchability.
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- References should come at the end of the manuscript.
- Tables and figures should be provided in editable format and should be referred to in the text by number separately (e.g., Table 1) not by placement (e.g., see Table below). They should each be submitted on a separate page following the article, numbered and arranged as per their references in the text. They will be inserted in the final text as indicated by the author. Source citations with tables and figures are required irrespective of whether or not they require permissions.
- Figures, including maps, graphs and drawings, should not be larger than page size. They should be numbered and arranged as per their references in the text. All photographs and scanned images should have a resolution of minimum 300 dpi and 1500 pixels and their format should be TIFF or JPEG. Permissions to reprint should be obtained for copyright protected photographs/images. Even for photographs/images available in the public domain, it should be clearly ascertained whether or not their reproduction requires permission for purposes of publishing (The Publisher is a profit-making endeavour). All photographs/scanned images should be provided separately in a folder along with the main article.
- Mathematical formulae, methodological details, etc. should be given separately as an appendix, unless their mention in the main body of the text becomes essential.

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- The language and spellings used should be British (U.K.), with 's' variant, e.g., globalisation instead of globalization, labour instead of labor. For non-English and uncommon words and phrases, use italics only for the first time. Meaning of non-English words should be given in parenthesis just after the word when it is used for the first time.
- Articles should use non-sexist and non-racist language.

- Spell out numbers from one to ninety nine, 100 and above to remain in figures. However, for exact measurement (e.g., *China's GDP growth rate 9.8 per cent*) use numbers. Very large round numbers, especially sums of money, may be expressed by a mixture of numerals and spelled-out numbers (*India's population 1.2 billion*). Follow thousand, million, billion number metric system instead of lakhs and crores.
- Single quotes should be used throughout. Double quote marks are to be used within single quotes. Spellings of words in quotations should not be changed. Quotations of words or more should be separated from the text.
- Notes should be numbered serially and presented at the end of the article. Notes must contain more than a mere reference.
- Use 'per cent' instead of % in the text. In tables, graphs etc, % can be used. Use '20th century', '1990s'.
- We do not encourage frequent use of capital letters. They should be used selectively and consistently. Only the first word of title and subtitle should start with capitals. Although proper names are capitalised, many words derived from or associated with proper names, as well as the names of significant offices are lowercased. While the names of ethnic, religious and national groups are capitalised (*the Muslims, the Gorkhas, the Germans*), designations based loosely on colour (*black people*) and terms denoting socio-economic classes or groups (*the middle class, the dalits, the adivasis, the african-american*) are lowercased. All caste, tribe and community names (*the Santhals, the Jatavs*) are to be capitalised but generic terms (*the kayasthas*) are to be lower cased. Civil, military, religious, and professional titles (*the president*) and institutions (*the parliament, the united nations*) are to be put in lower case, but names of organisations (*the Labour Party, the Students Federation of India*) are to be capitalised. The names of political tendencies (*the marxists, the socialists*) should remain in lower case.
- Abbreviations are spelled out at first occurrence. Very common ones (*US, GDP, BBC*) need not be spelled out. Other commonly used abbreviations (*am, pm, cm, kg, ha*) can be used in lower case, without spaces.

3. Citations and References

Guidelines specified in the *Publication Manual of the American Psychological Association* (6th edition, 2009) must be followed.

- References: A consolidated listing of all books, articles, essays, theses and documents referred to (including any referred to in the tables, graphs and maps) should be provided at the end of the article.
- Arrangement of references: Reference list entries should be alphabetized by the last name of the first author of each work. In each reference, authors' names are inverted (last name first) for all authors (first, second or subsequent ones); give the last name and initials for all authors of a particular work unless the work has more than six authors. If the work has more than six authors, list the first six authors and then use et al. after the sixth author's name.
- Chronological listing: If more than one work by the same author(s) is cited, they should be listed in order by the year of publication, starting with the earliest.
- Sentence case: In references, sentence case (only the first word and any proper noun are capitalized – e.g., 'The software industry in India') is to be followed for the titles of papers, books, articles, etc.
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- Citations and References should adhere to the guidelines below (based on the *Publication Manual of the American Psychological Association*, 6th edition). Some examples are given below:

In-text citations:

- One work by one author: (Kessler, 2003, p. 50) or 'Kessler (2003) found that among the epidemiological samples..'
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- One work by three or more authors: (Basu, Banerji & Chatterjee, 2007) [first instance]; Basu et al. (2007) [Second instance onwards].
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- Authors with same surname: Include the initials in all the in-text citations even if the year of publication differs, e.g., (I. Light, 2006; M.A. Light, 2008).

- Works with no identified author or anonymous author: Cite the first few words of the reference entry (title) and then the year, e.g., ('Study finds', 2007); (Anonymous, 1998).
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- Two or more works by same author: (Gogel, 1990, 2006, in press)
- Two or more works with different authors: (Gogel, 1996; Miller, 1999)
- Secondary sources: Allport's diary (as cited in Nicholson, 2003).
- Films: (Name of the Director, Year of release)

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Amanor, K. S., & Moyo, S. (Eds.) (2008). *Land and sustainable development in Africa*. London/New York: Zed Books.
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- In-press article:
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- Special issue or section in a journal:
Haney, C., & Wiener, R. L. (Eds.) (2004). Capital punishment in the United States [Special Issue]. *Psychology, Public Policy, and Law*, 10(4), 1-17.

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From the Editor

Dear colleagues,

It is my pleasure to present the tenth issue of *Explorations*. Apart from the regular contributions, the issue carries a Special Section on Sociology of Law. The regular contributions consists of five papers published under the ‘Articles’ category.

The first article titled *Pandemic-Pedagogy: Provocative Ruminations on Sociology of Teaching Practices in Contemporary India* by Dev Nath Pathak dwells on the pedagogic questions in the time of the Corona virus pandemic toward exploring the possibility of sociology of teaching practices in contemporary India.

The second article titled *Mother-Work and School Culture: Parenting Strategies in Banaras* by Nirmali Goswami examines how the ideas of parenting are shaped by occupational and spatial location by drawing from the experiences of mothers with lower educational backgrounds.

The third article titled *Epistemic Ashrāfiya-morality and Urdu Theatre Public Sphere in Nineteenth-century Bihar: Muslim Internal-Decoloniality* by Neshat Quaiser provides a Muslim internal-decolonial critique of the hegemonic ashrafiya knowledge-oligarchies through the prism of western-style Urdu theatre in the last quarter of the 19th century in the Indian province of Bihar.

The fourth article titled *Corporate Social Responsibility and Prevention of HIV & AIDS in the Tea Gardens of Assam, India* co-authored by Dilip Gogoi and Ksenia Glebova examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility (CSR) initiative for the Assam tea sector.

The fifth article titled *Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam* by Suryasikha Pathak attempts to relook at the early censuses, and the debates it generated within the purview of identity articulation, as a complex process, and explores how the diversity of communities and fluidity in the demographic structure in Assam added to this complexity and led to the formation of identities and identity politics.

SPECIAL SECTION

Sociology of Law is an important sub-field within the discipline of Sociology. The special section on Sociology of Law in this issue of *Explorations* is guest edited by Rukmini Sen, Professor of Sociology, Dr. B. R. Ambedkar University Delhi (AUD). Over the last forty years, sociologists/anthropologists and legal scholars in India have been doing research on law and society interface and contributing to the emergence of this sub-field. The move from research on legal issues impacting social relations to teaching sociology of law has been slow and not really popular. While law schools need to teach sociology at the initial years to primarily fulfil their objective of interdisciplinarity, sociology of law or studying the law-society interface is not mandatory within the discipline of sociology, and sometimes happens as an elective, based on faculty specialisation. It is however heartening to see that research at the law-society interface is happening through various departments and disciplines in recent times.

All the papers in this section engages with either legislations or judgements or constitutional debates and use survey methods, content analysis or auto-ethnographic methods of enquiry to provide sociological perspectives to legal texts. This special section has five ‘articles’ and four ‘research in progress’ papers. Kimsi Sonkar makes an analysis of judgements where the Maternity Benefits Act was used to engage with questions of non-permanent nature of women’s labour in the formal sector and subsequent denial of the ‘benefits’, as envisaged in the law. Nishit Ranjan Chaki engages with the conflicting questions of the constitutional guarantee of language rights on the one hand and the social exclusions of the Dhimals in the Terai-Himalayas region on the other. Sampurna Das looks at the National Food Security Act 2013 which was supposed to take care of food shortages failed to provide food security to women in the informal sector in the state of Assam. Snehal Sharma focuses on the ‘Prohibition of Unlawful Religious Conversion Ordinance’ of 2020 to ask critical questions around the politics of ‘love jihad’. Tasha Agarwal makes an enquiry into H4 visa and immigration policies for dependant women to join spouses in the USA.

In contrast, all the research in progress papers deal with important methodological questions on sociology of law. Gitanjali Joshua interprets two judgements involving inter-religious marriage and conversion while subverting individual’s choices when community boundaries are transcended. Guinea analyses parts of the forty eight in-depth interviews that she did in her PhD fieldwork with first

generation Delhi-based lawyers to assess presence of sexual harassment in the legal profession. Nidhin Donald examines the meanings of being a Christian and the legal discourses on endogamy outside of the Hindu stratum. Ashwin Varghese and Aishwarya Rajeev document the contraction between legal sanction and moral opposition to interfaith marriage and ways of navigating with the possibilities and limitations of the Special Marriages Act.

The special section also includes a detailed interview by Rukmini Sen with Kalpana Kannabiran, an expert in sociology of law. The interview engages with questions of interdisciplinarity as a pedagogic practice, lessons learnt from taking part in law making and legal education curriculum formulation, violence studies as part of sociology and/or law and ethics of doing social science research and teaching in contemporary times in India.

Explorations invites your contributions for future issues of the journal. We will appreciate your feedback or suggestions on the journal.

Finally, as I complete my term as the Editor of *Explorations*, a new editorial team will take over the journal from January 2022. I wish the new team all the very best and hope you will extend similar support to the journal in future.

Stay safe.

Chandan Kumar Sharma

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Article: Pandemic-Pedagogy: Provocative Ruminations on Sociology of Teaching Practices in Contemporary India

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**Pandemic-Pedagogy:
Provocative Ruminations on Sociology of Teaching Practices
in Contemporary India**

--- Dev Nath Pathak

Abstract

The debates on the issues of higher education are fraught with dead-ends and rhetorical questions. Naming the structural anomalies, regimes of power, and technocratic interference, we seldom hear about the pedagogic peculiarities, problems, and possibilities. The onerous fact that teaching and learning are merely structural cogs became more palpable in the academic years during the COVID-19 pandemic. This dominant mode, method and meaning did not change much even in the anxious deliberations on education-during-pandemic. This paper provokes to find suitable departure from the veritable jigsaw puzzle. Rather than considering the teachers and students as docile pawns, the point is to reflect on them as actors with agencies. To do so, the paper returns to the pedagogic question in the time of the ongoing pandemic. The key question is, what does it mean to do teaching and learning in the online mode? This is toward exploring the possibility of sociology of teaching practices in contemporary India.

Key words: Pandemic, Pedagogy, Practice, Teaching, Sociology in India

*In the sea of pleasure's, Billowing roll,
In the ether waves', Knelling and toll,
In the world-breath's, Wavering whole-
To drown in, go down in-
Lost in swoon- greatest boon!*

- Friedrich Nietzsche¹

Introduction

The larger body of discussions on teaching practices in higher education renders the pedagogic question as secondary, or a non-issue, a mere red herring. The first imperative is to depart from the discursive dead-ends and rhetorical lamentation

on the state of affairs vis-à-vis doing sociology. The two dominant motifs in the discursive landscape, seemingly, are, ‘indigenising’ and ‘pluralising’, invariably in a mode of lament, submission to the Eurocentric knowledge and the decline of quality in the practice of sociology, respectively. In a phenomenology of pedagogic practices, teachers and students are the key stakeholders in doing sociology. Especially with reference to a class, which is South Asian not only in the sense of representation but also in academic orientation, it surfaces that the pedagogic question assumes greater significance and poses a daunting challenge. It is not easily available for a romantic conclusion, nor could it be summarily dismissed as a non-issue in the practice of teaching and learning. This paper discusses the case of teaching and learning, in the manner of auto-ethnography routed through phenomenology of pedagogic experiences, during the years of Covid-19 pandemic, i.e. 2020-2021. As an instructor of two courses, namely *Methodologies in Social Sciences* and *Sociology of South Asia* for postgraduate students at South Asian University, one was left without much systemic wherewithal to deal with the challenges of ‘online-teaching’. What shall be the course-curriculum, pedagogical practices, and nature and scope of teaching and learning in the wake of the precarious uncertainties of the pandemic and haphazardly imposed online model? This is also to depart from a popular notion of ‘pandemic-pedagogy’ⁱⁱ in which technologisation of education qua online-education has been a central issue without much eye at the details of experiences.

The question solicits a phenomenology of everyday experience of teacher and student informed by the interjections in public sphereⁱⁱⁱ. The idea of work-from-home is far more loaded than segregated spaces of work and home in which the teaching and learning have conventionally happened. With the outbreak of pandemic the distance between work and home shrunk, and the spatial distinction of working and living somewhat collapsed. In spite of the arrangements at home to conduct professional meetings without the interference of ‘home’, it was never absolutely segregated. If a toddler barged in the middle of an online meeting, it is not a crime for which one can get reprimanded unless the ‘boss’ was too rude and insensitive. This is not different for the teachers. The teachers giving the classes with well-prepared notes on the table and eyes on the screen had to cast a furtive glance towards ‘someone’ who came in between to say ‘something’. No matter how attentive the mind, taking care of the points of the discussion, the teacher had to mute (turn off the mic) and answer a query about household matters. More often than not, the classroom on the computer screen is a dead board with dots showing only the first alphabet of each attendee’s name. Even the teacher has to

turn the camera off, or keep switching between on and off, in order to ensure longer hours of smooth internet connectivity. Students have errands or other things to ensure while attending, or seemingly be attending the classes. Many female students informed that they have to help in the household chores, including the kitchen-work, sweeping-swabbing. Moreover, the banality of internet surfaces in the middle of class. They have to log in and log out, almost like students used to excuse themselves for attending to 'nature's call' during the lectures in the physical classrooms. Quite a few of them log in right in the beginning of the class, keep the camera and mic off throughout, and stay on in this 'unheard-invisible' mode even at the end of the class. Some of them return to the class toward the end, turning on their mics to say a few things so as to register their presence. Many teachers have tried out recording their lectures and putting them up on a platform like YouTube, or even sharing the recorded lectures with the students through emails. On the other hand, some of the discerning students also search for YouTube based lectures by various scholars, and impress the course teachers with updated ideas. Meanwhile quite a few of the digital version of erstwhile *kunji* (guidebooks) have been discovered for easier and quicker ways through courses. All such newly discovered course-related materials are duly marshaled to write essays for examinations in the online mode. Many teachers who care to read students' examination papers, essays and assignments, figure out a great chunk of online materials informing and influencing the students.

This is a generic synopsis of the practices during the pandemic characterised by a 'new normal' of higher education, i.e. online teaching and learning^{iv}. Framed in another context relevant for India too, the 'new normal' in education is akin to a 'technological order'. It entails a 'passive technologisation', without much contestation, during the pandemic. Experience from the online class rooms in India may indeed suggest that it is no longer passive, as everyone has actively resorted to it. Despite the prefix 'new', it is very old, since it hardly makes difference in the curriculum or the available structure of transactions. Mere technologisation flourishes due to the fact that some of those who can work 'remotely' exercise their privilege. The workers in this wake have their subjectivities digitalised. And therefore, every teacher in the new normal operates with a 'curriculum of things' (Pacheco, 2020), rather than curriculum of knowledge, experience, and of life.

This generic story can be made more muscular with reference to several ruminations by scholars of education, or by those who may be in any disciplinary

field and yet are concerned about the question of pedagogy. The purpose is to curate a background rather than presenting a perusal of the public-discourse. In this backdrop, we shall take note of some of the old issues that have resurfaced in graver forms with the debatable prefix 'new'. It is mostly about the objective of higher education. Pandemic is the context in which there is an evident imperative of asking a few fundamental questions, viz. why does a teacher teach, or why does a student attend a course or a program? It takes us back to the old debate on vocation of teaching and learning^v. Are the teachers merely service-providers in the larger machinery which is meant to deliver certification to the students? Or there is a larger purpose in the vocation that solicits innovations, experimentations and playful engagement, intellectual risk-taking and will to step out of the comfort zones, in the context of everyday life within which the teachers and students are situated?

This paper does not answer these and other related questions in a manner acceptable to the community of scholars. With humility it admits to merely show that the realm of teaching sociology and anthropology is pregnant with possibilities, which can aid in making course-content a source of refreshing imagination and intellectual courage in everyday life. After all, this was an expected outcome after Alvin Gouldner (1971) aggressively proposed the outlines of sociology, in which we were persuaded to see who we are, what we do, and where we are headed as teachers and students of sociology. It adequately radicalised us to almost perceive ourselves naked in the bathtub of our practices. We had to analyse ourselves with as much earnestness and honesty as we tend to cast our critical glances on the others. This was Gouldner's brand of reflexivity without which, it was clear, we would be only brute, dishonest, cunning and crooked, 'split personalities'. The sociologist with such split would be one thing in personal life and another in the professional practices. One can seldom hide this split in spite of the euphemisms such as scholar, sociologist, ethnographer, anthropologist, writers, and lastly celebrities. Pandemic is the time to return to the radical reflexivity of Gouldner, even though we know how to criticise and move ahead by revisiting Bourdieu and Wacquant (1992).

In such an act of reflexivity, teachers and students had to become collaborators in the pedagogic practices or co-travellers in the topsy-turvy ride of teaching and learning. Pedagogy, however, is not a source of an unstinted romance in our times. We ought to be also accepting the existence of this pedagogic enterprise as an interstitial reality with uncertainty of consequences. In agreement with a notion

of ‘pedagogy of hope’^{vi}, however, this paper indicates a way forward from the dead ends of debates on doing sociology in the South Asian context.

Academic Brahmanism in Higher Education

Pandemic years expressed it more dramatically that teachers and tragedies, causally determined by neoliberal logic, coincided in the contemporary milieu. The delimiting effects of neoliberal logic, operationalised in the state and economy, has altered the character of the universities where we hear only ranting on the rhetoric of freedom^{vii}. Those who rant loudest are the academic Brahmins and those who teach are reduced into mere cogs, ordinary pedagogues, or academic Shudras in the context of India^{viii}. Let alone sociality, relations of teachers and the taught, and pedagogy, the structures of universities leave little scope for the basics of intellectual progress and emotional sustenance. Irrespective of the pandemic, the tragedies pertain to the interplay between the structure (norms, conditions, rules and regulations) and agency of teachers and students. There is a scheme of analysis that mostly shifts the blame, in a sort of endless blame-game. The regimes of power, the technocratic administration of universities and colleges, the market forces, are some of the well-known villains in the dominant discourses against whom there is a never-ending shadowboxing. More paradoxically, many of the boxers, sworn critics of neoliberal policies and regimes of powers are themselves rivaling to occupy the position of technocratic power in the institutions of higher education. Most of the shadowboxing is indeed coloured by the vested interests. Hence, there was hardly an organised war cry when the online mode of teaching, learning, evaluation, and everything that is part of administrative chores became an overnight reality with the announcement of the lockdown in several parts of India on March 24, 2020, to begin with for 21 days and gradually extended into phases. Even after the phased unlocking, the government notifications announced the observance of the ‘new normal’ according to which the campuses were not open for the physical classes. Teachers toed the line, though there were critical whimpers, op-eds, and exchange of messages and emails about the idea of online teaching. Universities and colleges, schools and institutions of education, conducted meetings and pledged full conformity to the ‘new normal’^{ix}.

There was however hardly any news of teachers and administrators interacting about the fundamental questions, how to do online education? What should be the objectives, curriculum, methods, and pedagogy in teaching online? Instead, the

same courses which a teacher was supposed to teach offline, in physical spaces, were put across as the courses in the online mode. It seemed nothing had happened as far as higher education was concerned. Ironically, it seemed that COVID-19 may be dangerous for the humans, but higher education was immune to the threats and challenges of the virus^x. At least, this is what appeared from the announcement and execution of online teaching and learning. By and large, everyone in the institutions of higher education was expected to continue doing everything online, as if nothing had happened! The structures of hierarchy, power and privilege associated with professorial and administrative positions had to be intact. All teachers and students had to comply.

Teachers' tragedies unfold in such a melodramatic background. What could teachers and students do in this milieu while they could seldom bring about a radical transformation in the fundamental structure? What pedagogy could evolve in such a situation whereby everyone expected, pretended, and acted as if nothing happened? They arguably deal with 'tragedy', following Nietzsche (1956) to find Dionysius (creatively radical departures) responses to the Apollonian orders (status quo). The poorly thought out mode of online education becomes a possibility of novel exploration leading to both, benediction and curse. In a tragedy, Dionysius' spirit propels toward spontaneously cultivated ordinary artifacts of experiential knowledge.

This tragedy unfolds at broadly two levels for teachers and students. One is in relation with the subject of study, in the epistemic domain governed by the logic of Apollo, the Greek god of order. Teachers and students both could ask, 'what to study under a course in such a time when the planning, vision, objectives are not in place?'. By asking such a question, despite the fact that there is a course structure that one is supposed to follow, teachers and students are geared towards making changes to the given structure. It unfolds an art, transformative and triumphant, in such a situation. The tragedy manifests as the students and teachers worship Dionysius, the Greek deity of creative energy. Secondly, tragedy refers to an over-determining structure. Ironically, within such a seemingly rigid structure, teachers and students play with their 'hidden script' under the aegis of 'public transcripts'^{xi}. It is all official, hence a public transcript. But, the details that verbs entailed in such an official script suggest the enactment of the hidden ideas.

Let's ponder upon the first level of tragedy, underlining the dialectic between art and science, experience and technical instrumentality. Let's return to the fettered

cavemen in Plato's *Republic*. So tightly tethered to their position, location, pride, prejudices, and privileges, they could only see shadows cast by sun on the wall. They indulged in the art of interpretation until one of them endeavoured and beheld the beaming sun, metaphorical representation of unleashed knowledge. Thus ensued, as Max Weber helped us discern, an engagement in the realm of disenchantment. The teacher and students in the vocation of teaching and learning have to deal with the constant dialectics of shadows and sunlight, chained qua disciplined existence and wild curiosity blended in even the most wayward activities. Thereby rational structure in the vocation of teaching is not bereft of 'experience', 'feelings', and 'sentiments'. The perfectly planned course-curriculum too summons a sort of 'monkey business' from both, teachers and students. Since science and art have certain common features, the vocation of science, or teaching science, presupposes an ability to deal with the components of art. Considering it a necessity for a teacher, in the vocation of science, Weber argues that a teacher 'must qualify not only as a scholar but also as a teacher. And the two do not at all coincide. One can be a preeminent scholar and at the same time an abominably poor teacher' (Mills & Gerth, 1958, p. 133). In the pandemic years, every scholarly teacher yearning for clarity of structure, length and breadth of a course-curriculum, and patterns of examinations and criteria of evaluation reminded us that Weber's suggestion holds water even after such a long time, at this moment of modernity characterised by enhanced risk and precarity.

The vocation of teaching, often also termed as a profession with a stress on the rational structure and instrumentality attached to it, demands a teacher to deal with the complexity of experiences. If the courses taught during the pandemic years did not reflect a teacher's and her students' engagement with the everyday experiences of existential threats, would it not be equal to an intellectual sham? Moreover, it was these experiences in which Weber and many others perceived a possibility of growth for scientific knowledge. Stressing on the necessity to engage with the learners' perspectives, and thereof experiential components, Gramsci noted,

In the teaching of philosophy which is aimed not at giving the student historical information about the development of past philosophy, but at giving him a cultural formation and helping him to elaborate his own thought critically so as to be able to participate in an ideological and cultural community, it is necessary to take as one's starting point what the student already

knows and his philosophical experience (having first demonstrated to him precisely that he has such an experience, that he is a philosopher without knowing it). (Boggs, 1976, pp. 424-425)

Such profound insights were restrictively applied only in thinking about pedagogy in school education^{xii}, and seldom in the domain of higher education. It has been almost a taboo, in the domain of higher education to deliberate on pedagogy. Several scholars take offense when they are addressed to as teachers, and retort, ‘we are scholars, researchers, and not teachers’^{xiii}. Is it to do with the reproduction of the customary hierarchy whereby school education is inferior or secondary to higher education^{xiv}? The ‘Brahmins’ are the scholars in the universities and the ‘Shudras’ are the teachers in school, in this scheme of thinking^{xv}. In other words, in the domain of higher education only the content of study matters and ‘how to teach’ does not. This hierarchy of thinking-talking and doing is deeply engrained in the structures of higher education. To maintain collegial bonhomie, ignoring the potential curricular and pedagogic anomalies in a university, academic Brahmanism flourishes.

Some of the potential anomalies are: an unduly long reading list with quantified numbers of pages to be read every week, a method of presentations by students from the beginning to the end of a semester and the teacher assuming the role of a mere moderator or facilitator, a heavy reliance on the modes of evaluation at every step in the classroom to generate a paranoid interest in the course, an undue stress on the reward and punishment governing the execution of a course. This is furthermore exacerbated by the bureaucratic dead-ends in a university space whereby teachers and students are left with limited roles to perform. The teachers, as far as the job of teaching is concerned, is reduced to a category of an ‘academic clerk’. An ‘academic clerk’ is a teacher who formulates an impressive course-curriculum, executes it, evaluates students, in a manner quite ‘measurable’. Everything from prescribed readings to students’ assignments have to become calculable digits in this scheme. And hence a teacher’s performance is eventually judged in terms of work-hours. Students also inform about their lower status in the hierarchy of practices. They are judged on what they have read, and how much. ‘It doesn’t matter how deeply a student has reflected, or felt the pain of people suffering around, or what lessons, philosophical realisations, a student gained from such encounters’^{xvi}. It is an academic Brahmanism inherent in the structures that make teachers and students in sociology, as well as in other academic disciplines, oblivious of pain and suffering commonplace in the

surrounding. ‘A student is expected to have a critical mind, yet the structural apathy inbuilt in our disciplines give little time or the space to dwell on such philosophical reflections’^{xvii}. The pandemic has more brutally disclosed that our discipline, and our academic practices, alienate students from their experiences and reflections, everyday encounters of suffering and pain, and even hope and despair.

This is the context, attuned to the neoliberal educational scenario and accentuated in the time of pandemic, in which a creative contest unfolds. In short, it is akin to a vacillation between cavemen’s engagement with shadows and sun, interpretative-reflexive and rational-science, emotion and reason, intuition and intellect.

Recalling the Forgotten

As stated at the onset, there is an impressive ream of deliberations on the structural constraints in higher education in India^{xviii}. They highlight the delimiting impact of the academic bureaucracy, stultified institutional and intellectual growth among other things. It aids in understanding an unreflective, and to a great extent anti-teacher and anti-student bureaucracy, and hence non-regenerative social science. The bureaucratic authorities, institutional structure, and governing bodies are key actors and driving factors. In such a scheme, we can easily decipher an allegedly disembodied category of teacher as an unproductive or incompetent scholar. Also, there is a narrative of victimhood in which teachers are victim of market, state, and bureaucracy and the students are victims of a bad system and bad teachers, as it were. It is, however, erroneous to mistake the pawns, the teachers and students, as docile bodies.

Likewise, there is a strong liturgy of lament about the practice of sociology in the region of South Asia^{xix}. Emphasis is placed on the decline in the quality and standard in sociological researches, teaching and learning. A glorified notion of ‘rigour’ underpins the two other attributes, quality and standard. Paradoxically, there has been a contemporary call for pluralising sociology^{xx}, without a concrete plan or exemplars on ‘how to pluralise’. It thus is mere hobby-horse in intellectual deliberations detached from the practitioners, teachers and learners. There are many ways of doing sociology, intellectually as well as emotionally, vocationally as well as professionally, experientially as well as textually. This is where it is imperative to juxtapose the ‘diagnostic deliberations’ with ‘pedagogical pursuits’.

In addition to comprehending the issues of structural impediments, arguably, it is imperative to explore the micro-issues involved in teaching and learning. After all, sociological focus on inequalities out-there (social structure) cannot be separated from that on inequalities in-here (practices in the institutes of higher education). This divide between looking at self and the world is certainly as much a bottleneck as is the obsession with ‘buzzwords’^{xxi}. This simple idea may not persuade the disciplinary orthodoxy, and hence the preponderance of perpetual divide between self and the other plagues the sociological attention to any issue, question, and idea on the anvil of sociological analyses.

Thinking of pedagogy in the time of pandemic requires steering clear of the dominant modes and means of analysis, and returning to the reasons why scholars resist the invitation to become pedagogues. This need not amount to falling back on the famous ‘call for indigenisation’. Much water has flown over the call for indigenisation. But behind such a call there were significant intellectual-polemical stimulus that ought to be retrieved. One such insightful observation is about ‘captive mind’ (Alatas, 1972) that was aimed at revealing the intellectual laziness of those who seldom question the content and methods of knowledge-transaction. The calling out of captive mind also aimed at incorporating the local-contextual social thoughts in the curricular and pedagogic practices of teaching and thus responded to ‘academic dependency’ (Alatas, 1993). This was not to debunk theories, which emerged in the European context; this was however to debunk the uncritical emulation of European theories. These issues, of epistemological significance, are crucial for a context-sensitive disciplinary scholarship (research, curriculum, knowledge-production and dissemination).

In this light, the backdrop of pandemic compels for a rethinking about the course-curriculum and pedagogy. Perhaps it has been much easier to talk about these and other such issues in a manner of intellectual deliberation than perform it through a curriculum, let alone pedagogy. The task becomes much more challenging when skepticism about the engagement with the contextual particularities is expressed through the phrase of ‘methodological nationalism’, an intellectual apprehension that sociology of particularities will be a compromise on the ‘universal-cosmopolitan’ characteristics of the discipline. It takes the notion of indigenous with a pinch of salt to suggest that it is a discursive product loaded with colonial legacy, orientalist approach, and idealism of nation-building in post independent countries^{xxii}. The students along with teachers spontaneously resort to the local/contextual while engaging with the textual, in a pedagogical plan to render

teaching and learning into a context sensitive endeavour^{xxiii}. A life-threatening situation of pandemic makes this endeavour even more like an existential necessity. And hence, the following section elucidates a possible phenomenology of pedagogic pursuits in the context of pandemic. It is not merely about online education, instead, it is about how playfully teachers and students alter the given.

Pedagogic Possibilities during the Pandemic

With the announcement of closure of university campuses in March 2020, with subsequent lockdown across India, a new idea was abuzz: converting the mode of teaching from real classroom to virtual-digital space based! The online mode of education continues to be the only option in 2021 as well given the perpetuity of the pandemic. The official notifications only mentioned the shift to the online mode, almost ignoring the fundamental questions, i.e. what to teach and how! If any teacher asked it publicly, which some of them did, the answer was: it is a temporary measure to manage the teaching of the ongoing courses for the time being! Evidently the techno-managerial logic behind the decision to go online was more prevalent across various institutions. Hence, there was hardly any consultation with those who practice care for pedagogy. It was not thought out in a relational mode of decision-making. After all, this is how it has been with academic administration, passing unilateral conclusions and judgments.

A sense of liminality prevailed, in which the pre-existing structure was perpetuated with a good amount of extra-structural, if not necessarily anti-structural^{xxiv}. The pre-existing structural logic was not only in turning everything online without much consultation with the practitioners, but it was also in the fact that the same course-structure, structure of marking and evaluating, and even attendance was still thought to be sacred. Only gradually, much later, the institutions began to think otherwise. The holy cow, a trinity of attendance, evaluation and elimination, was available for rethinking. Such was the effect of the pandemic bound changes that brought about, if not really any lasting structural transformation, a possibility to not bother about the holy trinity. Not that there was any prophetic realisation, or profound awakening behind. Like many things, this too was only ad-hoc, managerial, bureaucratic, so as the show must go on! Even though without much change in the institutional conscience, there emerged some space for those who wish to see a change. All such changes reflected the extra-structural, pertaining to the possibility in the time of utter confusion that swayed society, state and educational institutions alike. The message was loud

and clear. All must continue to be on the 'job' of teaching and learning, the way they have been, following the official instructions. All must also have a structure in place, in teaching and learning, the way they have been, though not much instruction was available in this regard. The absence of a clear idea about 'how much of course-curriculum to teach', 'how to evaluate', and 'how to conduct the pedagogic practices', however, came as a blessing in disguise. But was it an absolute blessing?

What if, freedom suddenly dawns on those habitual of a rigid technocratic system? A bagful of mixed feelings engulfed with a bit of trepidation, uncertainty about how to do, fear of trial and error, and a bit of respite that this may keep students and teachers safe. Both teachers and students began to understand that it was a piecemeal arrangement, provisional and only for the pandemic. But then, both had a challenge about what to do in the online mode. Many just continued teaching the way they did in the real space, with the same course outline, same methods of transactions, with eyes transfixed at evaluating. We heard of teachers complaining about graver form of mass-absenteeism since it was difficult to detect the present and absent students. In spite of teachers' request to the students to keep the camera on during the classes, there was a pretext of poor internet connectivity and the digital divides. Many teachers hilariously emphasised the necessity of mandatory attendance, with the same old roll call. It was unthinkable since online mode facilitated the partial presence and absence of the students who logged on to attend classes with their cameras off. Teachers complained that we speak for forty minutes and we get questions from only one or two students. Rest of the students stay indifferent. Teachers tried the methods of evaluating the students during the classes. Those who ask questions get marks and those who don't, don't. Teachers asked them to read the volumes of reading materials, and based on them, send questions in email to the teachers. Quite a few of the students obliged for a while. Then, they turned silent. The greatest difficulty the teachers faced was about the manner of examination and evaluation. Even those teachers who were never in favor of open-book examinations, and quite a few of them also seem too unfamiliar with any such mode of exams, had no other choice than give questions to students who wrote answers at home referring to all possible sources. Teachers, who seem to rejoice the act of evaluating and passing judgments, had great frustration in reading those essays by students since they seem to have gone far beyond the stricture of a course.

This is the larger scenario in which I taught two courses, namely *Methodologies*

in Social Sciences and Sociology of South Asia in the Monsoon semester 2020 and Winter Semester 2020-2021 respectively. We knew that we were all living at home, with our families, juggling with our roles at home, worrying about the threat of virus and efforts to stay safe, and in the middle of it, we were teaching and learning. Even though we tried to segregate the parts of our jumbled existence, we knew the limits of such efforts. Admitting the complexity, I asked students to critically reflect on the existing course-structure, and think of the ways of cutting it short, with fewer topics and readings to discuss. The only criteria underlying the exercise were feasibility and interest. It triggered an intriguing excitement among students.

Methodologies in Social Sciences (henceforth *Methodologies*) was a course offered to the third semester postgraduate students, who had presumably already learned the classical and contemporary theories and other such basic courses in sociology. It is usually expected that after spending a year and half through the Masters in Sociology program, the students would be mature enough to deal with the philosophical, epistemological and ontological detailing in a course on *Methodologies*. But it turns out that the prior familiarity with the courses also comes with a-priori conditioning of the students' minds. Hence, there is an evident challenge in pedagogic play with the materials, issues, discussions, and thinking.

In two classes back to back, while laying out the introduction of the basic ideas in *Methodologies*, I expected them to start talking about their preferred and shortened version of the course-structure, which only yielded silence. The message reached out to the whole class that the students are invited by the teacher to re-frame the course structure. It synergised the class and the attendance increased in the first week. In the second week, however, it began to dwindle despite several cues, ideas, and suggestions about shortening on the offer. It was obvious that the intellectual freedom is easier sought than accomplished. While I set out giving first few lectures of half an hour each, referring to various nuggets available on YouTube, I began to enquire as to why there was no decision about the course structure as yet. The two class representatives eventually admitted that they were unable to cope with the given freedom, and their sheer lack of discretion in whatever ideas about shortening the course and its reading list. And yet they suggested a shortened version without an iota of care for coherence and justification.

A month had passed and the discussions on the emergence of positivism as the most accepted methodology was already a familiar idea. The class-discussions had already referred to the contributions of Karl Popper, Alvin Gouldner, Robert Nisbet, and C Wright Mills, etc. And right on the day when we were going to talk about René Descartes' meditations, the students requested me to shorten the course structure for them. This was an eventual surrender of the free will, in which our structures of higher education have already trained us to such an extent that we usually let go of a chance, an accidental opportunity. In a long meeting we cut short the course, retaining the fundamental texts and merging a few sections of course structure for shorter discussions. While the trajectory of methodology from Europe was shortened, we retained the exercise of exploring the methodological possibilities based on the texts from South Asia. This exercise was aimed at exploring the possibility of methodological innovations routed through the domains of experience from the socio-cultural contexts of the region. The larger objective of the course is to acquaint students with the available debates on how methodologies shaped up in social sciences, what ways of seeing emerged as dominant, and how contestation about the dominant ways of seeing in social sciences opened up the possibility for methodological innovations. With such objective, the course solicits the teacher and learners to connect the prescribed text/ reading materials with the contexts, the experiential domain of students and teachers.

However, it so happens that students are as unwilling to undertake risk and refer to experiences as the teachers. Hence, most of the time any class lecture or discussions in the light of a 'read-text' seldom steps out of the 'written words'. I have encountered it on usual occasion of physical classroom too. Students felt unable to relate from their life world. Instead, they either rattled from the texts, or paraphrased, or quoted, as part of the discussions. This was so in the online mode too. If they had to ask a question, it would be in the manner of asking for the basic meaning of what I said, the concept that was referred to, or the point that was raised. This was an exercise that one can summarily equate with the basic arithmetic, one plus one amounts to two! Exceptional observations in relation with the threat to life and troubled perceptions in the time of pandemic usually came from the seemingly non-metropolitan students, from cities and towns located away from Delhi. Those students usually struggle with paraphrasing from the prescribed reading materials, or texts, as much as they struggle with poor quality internet connectivity, and various kinds of scarcities in life. Such students, when encouraged, lead the discussions to acknowledge new avenues, novel

issues, and risk prone ways of seeing. Often such students do not end up writing an essay in assignment that a quality-rigour bound evaluative teacher could marvel upon. But their loud thoughts, raw ideas, nebulous interjections, bear enormous possibilities. Even though they fail to fully appreciate a text, they seem to be keen to connect everything with their contexts, a whirlpool of experiences.

When it comes to the exercise of exploring the possibility of methodological innovations, based on a text that the students have to select as per their preference, one is left with no choice other than leaving behind the basic arithmetic. Even in this exercise the students wanted to play it safe, and hence their first choices were the texts known and read in sociology. When asked to find a text usually not read in the various courses in sociology, the students had to be wanderer and explorer, like *Alice in Wonderland*, unsure and yet driven by the conviction to find. While they were attending classes, listening to some of the lectures available on YouTube, there were meetings about the selection of the texts. I had to once again, provide cues, ideas, hints, suggestions. It was interesting to observe that some of the students who spoke very good English, and had clarity of diction, and scored well in the written assignments, had great difficulty in finding a suitable text. Likewise, thinking about methodologies through the prism of pandemic bound experience felt like an outlandish exercise to the students. Most of the time, the teacher had to provide such connections, contestation and reconciliation.

If *Methodologies* was still manageable since there was a clear beginning and end to the structure despite our free-play with it, *Sociology in South Asia* (henceforth SSA) is structured as a seminar course, taught and learnt in workshop mode. This is offered as per the calendar of courses in the first semester when fresh lot of postgraduate students joins. The stated objective behind the course is to acquaint students about the basic characteristics of sociology, in relation with social anthropology, the disciplinary history and practices in the region of South Asia with reference to the stories from Afghanistan, Bangladesh, India, Nepal, Pakistan, Sri Lanka, and moreover exploring the questions and issues for taking forward the project of SSA. Ever since the advent of the Department of Sociology at South Asian University, this course has been taught as an ongoing project in the workshop mode. Hence, there have been generous changes in the course outline over the period of time too.

It really shows yet another kind of responses from students, leading to the emergence of an uncanny relationship between teacher and taught, and pedagogic

possibility, given that the students are fresh out of their undergraduate programmes. With due excitement, keen interest, and perpetual expression of wonder, students have been willing to indulge themselves in intellectual adventures in this course. With the pandemic in the backdrop, it was even more pronounced an imperative to think of SSA as a necessarily 'regionally routed' enterprise rather than the one handed down from 'somewhere'. The course revolved around the basic epistemic units, such as, society, culture, polity, knowledge, tradition, modernity, Eurocentrism, and decolonising. For each, the students had plenty to say, on the precondition – the teacher had to be a patient listener. This is pedagogy of patience in which the relation between the teacher and taught unfolds with due fluidity and allows for sincere trial-and-error. Also, in sync with the workshop mode, everyone had to enact the role of craftsmen, literally hammering down on each idea, referring to a host of thinkers, scholars, and a lot of personal-biographic experiences. In this exercise name-dropping had little space. Instead, thinking through the unit ideas and putting together sung and unsung names without privileging anyone was more crucial.

In this regard, it is important to note that the students who had done sociology in undergraduate courses had certain fixed ideas about the discipline. Gradually, they began to realise that it was a particular mode of learning in which the basic characteristics of sociology, separated from anthropology more often than not, was hardly questioned. They had also grown up thinking that sociology means a particular list of questions, a particular set of concepts and perspectives, mostly from the textbooks, which seldom invite students to think critically while learning the basics. In this regard, the sociologically informed students were rarely different from the orthodox sociologists who leave no room for thinking against the grains. On the other hand, the students who came from literature and science background were far more willing to be open to the wonders. They learnt the disciplinary categories and yet they maintained a sense of discomfort about the categories, and hence willing to question them. For them, the crucial question was not only to understand the structural inequality and the ways of transformation; it was also important as to how one understands them, why, and what to expect out of the act of understanding. It was this openness that allowed students to toy with many novel facets, which may be relatively under-explored in sociology in South Asia.

The first trigger in such exploration was the so-called buzzwords. But then, it was not about following a fad. For example, the exploration of performative in

sociology and anthropology in South Asia meant situating it across borders, societies, cultures, and politico-economic contexts. Recognising as to why performative, art, photographs, etc. are relatively neglected also led to understand that SSA hardly ever arrived at the sensorium of structural inequalities. Inequality with any name and expression is not merely word, rhetoric, or an institutional imposition in societies in South Asia. In myriad forms, inequality is registered and perpetuated through human sensory perceptions based on smell, sight, touch, sound, and taste. The students came up with diverse seemingly non-sociological texts ranging from fiction, poetry, religious treatises, socio-philosophical ruminations, as their selected texts to speak of the ideas for doing sociology in South Asia. From such texts, and students' readings of them, there surfaced a *rasa*-matrix^{xxv} of inequality that the students were offering to add to their agenda for SSA. This *rasa*-matrix underscored the systemic and affective perpetuity, giving an ontological turn to some of the taken for granted categories, rhetoric, and ideas.

As evident, pandemic-pedagogy presupposes patience, perseverance, and persistence. There are many occasions when one joins in the mode of lament about the decline of interest in reading, informed debating, and writing. Also, teachers are not immune to the conditioning done by structures. On many occasions, as a teacher, I may have had second thoughts about the endeavour I had embarked upon. But, eventually a pedagogue is a die-hard optimist, we know from various philosophers of education. Hence, awaiting it to happen, one had to keep talking, or even give space to think in silence. Slices of individual biography, subjective experiences, and everything that seems personal had to become the means of doing. The 'personal' does not find an easy passage in the 'public' domain where teaching and learning unfolds. It could be also due to the training that students receive in their schools and undergraduate colleges. The training instills an undue skepticism toward one's own experiences as a learner. And hence, articulation of experiences in relation with theoretical propositions of the texts, no matter in agreement or disagreement, is fraught with linguistic punctuations, semantic confusions, and under-confident mannerisms. There seems to be a collision between 'hidden transcription' and 'public transcription', which Scott (1987) discusses while deliberating on the potential weapons of the weak. The students' 'hidden transcript' is, unlike the popular conception, not always a piece of juicy gossip. It is also inclusive of, in large part, the experiential narrations related to the socio-cultural and politico-economic context and biography. While the popular and dominant demand is, from the students, to

follow the ‘public transcript’, the prescribed texts, the curriculum, the assignments for evaluation, and the officially prescribed ways of doing the same, the hidden transcript vis-à-vis the experiential narratives are never out of the sight.

This evident tendency solicits from a teacher an alternative pedagogic plan, to let happen a fusion between textual and contextual, intellectual and experiential, rational and emotional. It solicits a necessary change in the method of execution, the course curricula had to be student-oriented, rather than a teacher-oriented curriculum with excessive display of the ‘teacher’s academic prowess’^{xxvi}. More often than not, a teacher feels inclined to cram a course with higher numbers of ‘readings’, with a quantifiable notion of ‘rigour’ and thus of ‘quality’. The prevalent, and questionable, commonsense is: the more the readings, the more rigorous the course. On the contrary, the above-discussed courses attempted to be selective about readings. The assumption was that a qualitative engagement with the chosen text, rather than a quantitative evaluation based on the numbers of pages read, is the prerequisite for experience to unfold with the texts. Second important step was to make sure that the texts are systematically, even though selectively, discussed in the lectures in the virtual classroom. The references to the selected texts were mostly dovetailed with the references to the slices from the biography of teacher, experiential fragments, illustrations based on the reports from newspapers, work in fiction, poetry, and cinema. The students invariably found it useful to see the analytical connections between the texts and the contexts (socio-cultural components pertaining to the everyday life of teachers and students). The lectures were often a mix of audio-visual, and oral presentations, combining the textual and contextual components.

Conclusion

Pandemic held the sociality as one of the culpable sources of the spread of virus. A pedagogy that seeks to generate an intellectually and emotionally exciting sociality, even though its online-education, is the need of the hour. Even in the ‘old normal’, as opposed to the so-called ‘new normal’, this was a prerequisite for a healthy academic vocation. It was always an imperative to recognise the variety of academic Brahmanism, and tackle them through the courses and pedagogic practices. With the shift to the online education, the challenges to pedagogy have increased manifold, as many of the old issues have found dramatically high decibel articulations that no academic deafness can ignore. The pedagogues do

not have easy access to the students in flesh and blood. We cannot look into their eyes, read their faces, judge their emotions, and talk to them accordingly. We have to be more prescient than ever before. Teachers as mere cogs in the unreflective machinery cannot do the wonders, let alone breaking free from the structures of strictures. By default, the online education provides that rare opportunity for the teachers and students to try out the ways that were structurally not available.

Tragedies persist, for, the world with structural thinking guided by neoliberal logic and imagination is not going to disappear in the wake of the pandemic. The technocratic administrators may interrogate, students may resist, and teachers may continue to just toe the line. But die-hard pedagogic optimism persists too, to give birth to a creative challenge to teachers and learners to rediscover their subjects of study. Responding to the levels of tragedies, with an awareness of the strictures posed by academic bureaucracy, this paper shows that the teachers and students have moved a few (perhaps baby) steps toward reconciliation between the prescribed texts and the learners' contexts. It is not without resistance, frustration, and failures. But then, every move of a pawn on the intellectual chessboard, grappling with the stalemate, does amount to both success and failure. These pedagogic pursuits may not be revolutionary enough to alter the structural behemoth. They are very small with smaller impacts. But then, to borrow a phrase from Schumacher (1993), small is beautiful, isn't it?

Notes:

ⁱ A metaphysical swan-song for Dionysian wisdom in praise of the tragedy-myth, which according to Nietzsche, characterises the works of art and experiences of aesthetics. See Nietzsche (1956).

ⁱⁱ For a similar approach and deliberation, see Schwartzman (2020).

ⁱⁱⁱ A similar approach, viz. phenomenology of experience, though with a different focus (practices of research and writing) was in Pathak, D. N. (2021).

^{iv} For more on the technologised mode of education, see Pacheco (2020) <https://link.springer.com/article/10.1007/s11125-020-09521-x>

^v This was central in a talk by a sociologist of education, namely Avijit Pathak at a public-academic space named GalpLok, see, <https://www.youtube.com/watch?v=Kt-Rw8qGt8w&t=9s>

^{vi} The diagnosis of an ailing system is merely a means and not an end. Freire (1994) aids in understanding the imperative of actions to break free from the system of banking education. That is where hope lies, in ontological sense, for the pedagogues.

^{vii} On the perpetuity of neoliberal challenges to pedagogy, see Giroux (2014).

^{viii} This twang is inspired by Guru (2002).

^{ix} The various instructions related to new normal was also a part of the campaign during the pandemic, see <https://pib.gov.in/PressReleasePage.aspx?PRID=1634328>

^x Lately, a provocative acknowledgment of the self-assumed immunity of the universities in India appeared in a popular piece, see Apoorvanand (2021) at <https://scroll.in/article/994076/indian-universities-are-pretending-everything-is-normal-as-the-world-around-them-is-collapsing>

^{xi} For more on hidden transcript and public/official transcript, see Scott (1987).

^{xii} National Council of Educational Research and Training in India, published the National Curriculum Framework-2005, which guides schools in framing curriculum as well as pedagogical approaches. It encourages schools for a context-sensitive and experiential learning of children in schools in India.

^{xiii} Such remarks are heard more often than not when teaching practice is focus of discussion in various parts of India. It seems that in popular academic understanding in the institutions of higher education, a teacher is only found in the schools, not in colleges and universities.

^{xiv} Elsewhere Kumar (2008) questions this fabrication, which results into perceiving school teachers as non-intellectuals, lacking in self-respect, and hence butts of quotidian criticism.

^{xv} Guru (2002) discussed academic Brahminism in relation with the so-called pure and higher one who would develop theories, and polluted lowly scholars who do empirical research.

^{xvi} A student informed in a personal communication.

^{xvii} A student informed in a personal communication.

^{xviii} See for example, Altbach (1977); Patel (2004); Beteille (2010), a few among others.

^{xix} There has been a string of debate on the issue published in journals such as *Economic and Political Weekly*, see for example, Das (1993); Deshpande (1994); and *Contributions to Indian Sociology*, see for example, Vasavi (2011); Patel (2011).

^{xx} I have in mind Vasavi (2011) and Chaudhury (2010).

^{xxi} Chaudhuri's (2021) criticism of sociological preoccupation with fancy 'buzzwords' is well taken, but there is an ominous logical flaw in the separation of in-ward and out-wards interests in inequality.

^{xxii} See Patel (2013) in this regard.

^{xxiii} See for a rare example, Alatas and Sinha (2001).

^{xxiv} Students of sociology and social anthropology religiously read about the interplay of structure and anti-structure in discussion on liminal in the rite of the passage, see Turner (2011).

^{xxv} Rasa refers to the attributes, emotions, and accordingly enactments (bhawas) discussed in the ancient text *Natyastra* by the sage Bharat. See Bharat Muni (1951).

^{xxvi} Elsewhere this is discussed in terms of the self-indulgent superiority of the senior peers, supervisors, and teachers, see Pathak (2021).

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Article: Mother-Work and School Culture: Parenting Strategies in Banaras

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Mother-Work and School Culture: Parenting Strategies in Banaras

--- Nirmali Goswami

Abstract

The relationship that families share with schools has undergone significant shifts in contemporary times. Class, occupational status and social geography of their location have affected the relationship at a time when parents are expected to assume an active role in their children's learning. In this respect, the role of mothers has been extensively examined in the existing literature on the class and race differentiated parenting strategies with respect to schooling. While such literature has comprehensively added to our understanding of class specific and gendered ideas of parenting, it is often criticised for sidestepping on the questions of the agency of mothers from lower social class positions. The paper seeks to examine how the ideas of parenting are shaped by occupational and spatial location by drawing from experiences of mothers with lower educational backgrounds. Their location in the urban neighbourhoods, variously identified as 'slums' and/or as 'weavers' settlements', is constitutive of their collective identities as belonging to a world which is marked in terms of its occupational, linguistic and educational distinction from the rest of the city dwellers. The women in these settings are, however, constantly engaged through investments in their children's education. The conversations with these women are revealing about their efforts in disciplining the lives of their children in ways that make them better adjusted to school.

Key words: Consumption practice, Education, Middle-class, Mother-work, Parenting

Introduction

The relationship that families share with schools has been re-casted in new forms in contemporary times. These times, among other things, are characterised by the ascendancy of the neoliberal policy regime that has exacerbated economic and social insecurities on one hand, and affected the provisioning of services like

education on the other. As a result, an average individual is often viewed as a 'consumer-citizen' whose identity and politics is based on his consumption practices. The new consumption culture that defines much of the class-specific practices is also reflected in the preferences for schools. Family life across different segments of class has been oriented towards moulding children's lives in ways that gear them towards success in school life and beyond in an increasingly competitive and economically insecure world (Bowe, Gewirtz & Ball, 1994; Ball, 2003). The literature on the emergence of a 'new' middle-class in India and the consumption practices of its several fractions has strengthened our understanding of class fractions and their linkages with education (Deshpande, 2002; Fernandes, 2006; Donner, 2008). This has also contributed towards a sharper articulation of the social reproduction of inequality in terms of a skewed provisioning of education and, consumption-oriented activities of middle-class parents (Kamat, 1985; Nambissan, 2010, 2017).

However, the gendered forms of the micro activities of parenting, particularly of mothers have not received adequate attention barring a few exceptions (Kumar, 2007; Donner, 2008). It is through the material labour of the mothers towards the educational development of their children that the cultural ideals of education are being formed and realised. These activities, identified as 'mother-work' tend to be shaped by the intersecting variables of class, community and social-geographic locations of the mothers involved. In other words, while all mothers might be engaged in the childcare activities, the nature of their engagements and the benefits that these activities fetch in an education market varies. The literature suggests that mothers become active producers of the class and gender based identities through their engagement in the intensive care-work of children (Lareau, 1985; Reay, 1999; Vincent, 2001). The intensive and focussed nature of care-work by middle-class mothers has assumed different dimensions in post liberalisation India (Donner, 2008). One important aspect of the mothering activities, particularly for the middle-class women in the urban settings, is to make children ready for school life and to gear them towards success in it. That is because schools promise to provide gateways of particular kind of socio-economic mobility. The mobility is linked with credentials that one earns, in the form of certificates, access to highly valued symbolic resources and network. Success of children in school-related activities becomes the primary responsibility of mothers in family settings.

The gendered character of such an engagement is not a new phenomenon but its

newer forms in classes that aspire for the middle-class lifestyle at a time of economic and social insecurities have not been examined in sufficient detail. Also, much of the available literatures in Indian context have focussed on middle-classes located in the metropolitan cities. This paper seeks to explore the specific nature of engagement of mothers in the schooling of their young ones in families located in a non-metropolitan urban context and how class and community identities intersect and shape them. Secondly, it seeks to examine how the access to valued cultural resources is shaped by the segregated patterns of living in specific neighbourhoods of Varanasi. Thirdly, it will focus on how the mothering practices in these locations, while trying to emulate the middle-class school norms and practices, often contributes to the reproduction of gender and class based identities.

Class and Gender Dynamics of School and Family Relations in Urban India

The school and family relationship has been extensively examined within sociological studies of education which have highlighted the influence of class, race and gender. Drawing on the seminal works of Pierre Bourdieu and Basil Bernstein, various scholars have advanced our understanding of the class differentiated nature of the relationship between parenting style and school success. While Bourdieu's work employs the conceptual tools of habitus and cultural capital, Bernstein's work draws attention to class and occupation specific cultural practices within families that encode ways of acting in the school context (Bourdieu, 1985; Bernstein, 1997).

In this respect, Annette Lareau underlines the notion of 'home advantage' that students from middle-class families share because of the class specific practices at home. She has underlined how the practice of 'concerted cultivation', which refers to a specific parenting style that is intensively engaged and goal-oriented, helps middle-class students to do better at school in comparison to their counterparts from the working class families (Lareau, 1985, 2002).

Going beyond the binaries of school and family, S.B. Heath in her work has demonstrated how class and racial composition of urban settlements also contributed towards developing specific styles of communication among families in the urban context of US. She suggested how these locations and closely bound spaces of community life loomed large on communicative styles within family context that affects the children's experiences at school (Heath, 1983). These

processes have had implications for gendered labour of women within the family context. The class specific character of these processes has also been highlighted in the role played by mothers in their investment in children's education.

In the last few decades, growing number of studies have started focussing on the role played by the middle-class mothers in the social and cultural reproduction of class and status based privileges through schooling (Lareau, 1985, 2002; Vincent, 2001). It is suggested that the intensive mothering work of the middle-class women is often directed towards ensuring that the class based privileges are transmitted to their children which contributes towards their academic achievement at school vis-à-vis others. In other words, middle-class mothers have been playing an important role in the gatekeeping of the symbolic resources associated with social mobility in urban life.

Diane Reay (1998) seeks to bring out the gendered character of the process of social reproduction of inequality in and through schooling. Her work highlights how women from different class categories make extensive investments of time and efforts in organising and assisting their children in school-related tasks. Her work also highlighted the differential modes of engagements of working class and middle-class mothers. These differential modes of engagement actually help women from middle-class families to secure favourable terms for their children vis-à-vis school authorities and teachers. That does not mean mothers from working class and coloured families are not sufficiently engaged in their children's education, but it does suggest that school staff often operate with class and race specific codes. While middle-class mothers are viewed as proactive and succeed in their claims vis-à-vis school as a matter of right, working class mothers are viewed as not interested by school staff (Reay, 1998, 1999; Vincent, 2001). Reay (2014) has highlighted how class-differentiated use of linguistic resources has bearings on mothers' power vis-à-vis school teachers. Drawing on Bourdieu, she highlights the skilful use of linguistic capital by middle-class mothers to the advantage of their children in a school context. However, the literature on mothering practice as contributing to the social reproduction of class-based advantage is often criticised for not questioning the discourse of mothering in the sphere of education and for sidestepping the question of agency of working class mothers. The policy discourses in a neo-liberal world have placed working class mothers in a disadvantageous position while constructing them as deficient and responsible for the academic failure of their children (Braun, Vincent & Ball, 2008).

In the Indian context, a number of studies have demonstrated that the exclusive access to high status schools and symbolic resources like English is enjoyed by a certain fraction of middle-class familiesⁱ. Geetha Nambissan (2010), in her work on middle-class parenting styles, has highlighted how middle-classes in Indian society have managed to secure advantages in the school market by employing specific strategies. Vaidehi Ramanathan (2005), in her work on English and vernacular divide in the state of Gujrat, has talked about gatekeeping mechanisms and ‘assumption nexus’ employed by the middle-class families educated in English medium schools that continuously keep lower class and vernacular medium students out of the prestigious institutions. There is a number of studies using various disciplinary perspectives that attest to similar claims about close linkages of class background of families and access to quality education in contemporary India (Kamat, 1985; Drury, 1993; Ladousa, 2014; Goswami, 2017). But the majority of such work is silent on questions of gender and fail to provide a nuanced account of the relationship that mothers share with the schools and the schooling activities. There are only a few exceptions to the general trend.

H. Donner (2008), in her account of the middle-class women in Bengal, argues that with the insecurity of employment opportunities and the promise of the rise of the IT industry has had an effect on the ways mother’s role in a family is envisaged. She argues that in a changing political-economic context, middle-class women have to adapt and adjust to the new set of contradictory expectations in the family as mothers. As modern mothers, they are expected to take care of their family members, including children. But the competitive style of parenting means that they start investing most of their time and energies towards educational development of their children. These efforts begin at the pre-school level and are aimed at long-term returns for their children. Ironically, these class-specific strategies, employed by the educated women often end up reinforcing the prescribed gendered division of labour within the family realm. The couple of studies that focus on mothers from working class families provide important insights about their engagements and anxieties about their children’s educational future (Panda, 2015; Goswami, 2015).

While all these studies offer rich insights about the interconnections between family and school life in contemporary urban India, we have fewer details about these aspects in non-metropolitan locations. One of the noted exceptions has been the study of educational markets by David Drury (1993) where he relates the differentiated ways of parental strategies adopted by middle-class fractions to

secure the scarce educational capital for their children in Kanpur. However, like others, he too has focussed on how middle-class families negotiate the school market to secure the best deal for themselves. As mentioned earlier, the specific issue of mothers' engagements is not given adequate attention in most accounts of modernity and aspirations of social mobility in urban life.

Nita Kumar (2007), in her study of development of education in Banaras, has drawn attention towards *mohulla* specific processes of work leisure and learning, which both overlap and in few cases, present a contrast to the world of school in terms of spatial organisation. These contrasts and similarities have bearings on how families from specific locations view school life. She has also argued that there is a need to recognise that in colonial period a focus on mothering work is essential to develop an understanding of the narrative of modernity in South Asia (ibid, p. 134).

Therefore, one needs to reflect more closely on the experience of mothers from lower-income groups in non-metropolitan urban centres to get a fuller picture of how aspirations of mobility are being moulded in contemporary times and in what ways do categories of class, caste and community play out. It is also important to note that a lot of migration to urban centres in India has relied on community and caste based networks and has shaped the urban geography of cities. In other words, urban life in Indian cities has been segregated along the lines of class, caste and community. A historical contextualisation of such urban space is necessary to make sense of life in residential areas in contemporary times. In the next section, I seek to combine an understanding of the political and economic context of Varanasi with an understanding of the historic development of residential neighbourhoods which are also centres of material production of Banarasi saree. It is against this backdrop that I re-visit materials from my fieldwork conducted in the city and focus on narratives of mothers regarding their educational work with their children.

Examining the work of women as mothers, who are constantly negotiating their lives in a close and dense network of community and family ties, would thus provide a key vantage point in this paper. This paper seeks to examine the location of such women by taking cognisance of the processes that constitute her social and spatial contexts. Towards this end, I map out the class, community and caste specific ways in which neighbourhoods have emerged in the city of Banaras to examine the specific nature of relationship that families engaged in the

traditional occupation of manufacturing Banarasi saree share with modern schools. The distance between the two worlds represented by the family and the neighbourhood on one hand, and school on the other hand, creates a cultural distance which needs skilful navigating of cultural practices. Then I present the challenges that women face in preparing their children for a school culture which in many ways contradicts the lived aspects of their life.

Methodologically it focuses on mothers' engagement with children's education in communities and neighbourhoods that are deemed as educationally backward (Kumar, 1998, 2000). It views women with lower educational background as both constrained by structural relations while acknowledging that they are actively engaged and invested in their children's education. The paper includes insights gained from interviews conducted with women from eleven households from mixed community and class positions in the city of Varanasi during 2007-2011. These were located in specific residential pockets and linked to a private school that I have examined in detail elsewhere (Goswami, 2017, 2019). Seven of these families were occupied as small-scale traders from both Muslim and Hindu groups and four were engaged as employees in public and private organisations. These included four Muslims from Ansari community and seven households were from caste-Hindu groups.

In this research, my social position as an educated woman of caste-Hindu background has constructed my relationship with these families in specific ways. I accompanied the children from school to home, and, therefore, was always seen as a representative of the school fraternity. Men were more occupied with their business and I had shorter conversations with them. Eventually, I spent more time interacting with mothers, grandmothers and aunts of the students. My insights about their involvement in children's school-related activities are drawn through in-depth interviews which lasted for about one to two hours each. All these families were located in the northern central parts of the city adjacent to the commercial hub of the city. Their current location in the city is deeply tied to the history of urban development in the north Indian states.

Urban Space and School Market in Banaras

Historically, residential segregation along community and caste lines has been a distinctive feature of the old city space in Banaras. Nandini Gooptu (1997), in her study of the 'urban poor' in the 19th century towns of North India, notes how the

city administration, through town planning programmes, targeted the urban poor, strived to create separate areas of habitation for them, ghettoising them in certain pockets of the city. Among other things, such spatial arrangements were meant to protect the relatively wealthy from the threats posed by the ‘unsocial’ elements represented by the poor in the city. The town planning mechanisms, rather than addressing the problem, ended up ghettoising the poor and the resultant physical mapping of the city also reflected the social and class differences in which the areas marked for settlement of the poor had lesser access to civic amenities.

Though the town planning of the city has gone through many changes, different communities in the city continue to live a segregated and conclave life in present times. The latest report submitted by the city administration refers to three distinct areas in the city: the old city, the central city and the peripheral areas. The report also identifies the old and the central city as areas where the manufacturing and retail areas for traditional crafts are based (JNNURM, Varanasi City Development Plan, 2015). The areas marked for handloom weaving and embroidery work like Kacchi bagh and Koyla bazar are also identified as slums in the same report. The industrial cluster of silk weaving in Varanasi is an industry which can be called informal in its organisational structure and in manufacturing but employs the largest number of employeesⁱⁱ. Apart from the weavers, these areas are inhabited by small-scale traders and petty businessmen, and wage workers who are often from Muslim and low-caste Hindu groups. The residential and commercial areas tend to overlap in a labyrinth of the narrow lanes which connect the inner residential pockets to the main roads which house retail shops and also to civic amenities like schools and medical facilities. Such residential areas are separate from the main market cum residential area at *Chauk* in the old city, where mostly rich Hindu traders live and engage in the retail trade for finished productsⁱⁱⁱ. Both these areas are densely populated and connected through narrow lanes but these areas vary in terms of status and prestige. In local parlance, the wealthier areas of the old city are termed as *pukka mahal*. It literally refers to the neighbourhood consisting of *pukka* construction, denoting a membership to the most central part of the old city. On the other hand, the settlements like Alaipura, Lallapura and Reveritalab are located at the outskirts of the main part of the old city where weavers’ pockets are located.

The life of people in the saree industry is organised in unique ways. It is sustained by a complex web of familial and inter-community relationship among retail traders, suppliers, master weavers and weavers. These locations are known as the

weavers' settlement, but many of these families have started running power-looms and hiring workers to operate these, indicative of a relatively better-off position than that of the weavers. For few decades, people have started shifting to some other ventures but the majority of households and their members continue to have some kind of connection with the saree industry. Their homes also house their workplace in which residential parts are located in the upper floors and the weaving work is carried out in the ground floor. They continue to live in joint-family settings with or without a shared kitchen. Family members are also engaged in similar occupations. In most of the cases, the married women of the family are also usually from the same city or from rural areas adjoining the city. As these families started moving to the position of master weavers, earned more resources and were free from full-time manual weaving, their families started investing in modern forms of schools for the children. Such places are marked by a lack of mobility and social stagnation and are represented as the backward areas. Similarly, people inhabiting these places have always been profiled as problematic and not fitting in with the normative ideal of citizenry (Kumar, 2000). Nita Kumar (2000), in her work on the educational history of the city, has demonstrated the ways how urban geographies structure people's life in specific ways. In another context, it is seen that parents' notions about place and locality shapes the school preferences that they exercise (Bell, 2007).

Over the years, a number of transitions can be seen in the educational preferences of these families. Most of the young men and women from Ansari families have been to some madrasa school for five to eight years, unlike the younger generation. The younger siblings are moving to non-madrasa schools and, at times, to English-medium private schools in the vicinity. These moments of change, however sluggish they might seem, are not without their tensions. The families would not send their children to the English-medium schools in the far-off parts of the city or allow their daughters to continue in a co-educational school beyond the upper primary levels. A daughter's education is still a luxury which can be afforded only by a few, and has to be achieved while following strictly gendered norms of community living.

For these families, the sites of education are plural and not restricted to the schools alone. The alternatives sites of education in family and workplaces are sometimes in conflict with the school education and adjustments have to be made accordingly. For example, having made the transition to school education, these families continued to arrange for private instructions in the reading of Koran

along with school subjects like Science, Maths and English. Their choices for schooling seems to have expanded but has closely followed the community specific norms of gender. These families have invested in their daughter's education in a modern co-educational school only upto a certain level, after which they had to be re-admitted to an all girls' school in the vicinity. In my interactions with them, almost every family seemed open about sending their younger sons into higher education, a luxury which is not given to the eldest son because the eldest son is supposed to take care of the family business. They also discussed increased investments in education in supplementary forms, such as paying for private tuitions and coaching, etc.

However, not all 'business families' associated with the school have a similar experience with school education. There are other families of caste-Hindu traders, predominantly from Jaiswal and Yadav castes, who are going through a phase of transition from the traditional joint-family business to newer business ventures which are less dependent on kin networks such as traders of machine-embroidered cloth and retailers of grocery. In such families, the mothers' generation had limited exposure to schools not exceeding the high school level in any case. In these families, future aspirations for social mobility are more closely tied up with investments in formal education of their sons, as compared to the Ansari families. The younger siblings in the families were admitted to an English-medium school, while the older ones attended the school discussed above. The eldest daughters in all the families attended a Hindi-medium all-girls' school. Like the Ansaris, these families appeared to be more invested in gendered school choice for their children, but unlike them, they considered investing more in boys' schooling, exploring good schools for their children even outside the mohulla. In terms of linguistic practices, these families are making a clearer shift from the exclusive use of Bhojpuri-Banarasi towards using Hindi at home.

All these families are, therefore, more invested in the schooling of their younger generations as compared to the older generations, but they still practice caution in terms of investing in a culturally and physically distant English-medium school of the city. For the families of the traders, the cultural barrier of approaching a distant English-medium school was strong enough to deter them from thinking of investing in them. The private school that their children attended in common is proximate to their dwelling place. It also represented a school which was accessible to them, not just in monetary terms, but also because it was offering lessons in Hindi-medium with a strong focus on English. Most of the parents,

particularly the mothers, had not been to college and were hesitant to approach teachers directly about their children. The teachers' conceptions of such students were also marked in less favourable terms; they often saw these students as lacking in terms of a 'culture of education'. The construct was drawn on the basis of educational, occupational and linguistic background of students' families and only a few students coming from families employed in service sector, speaking in standard Hindi and having educated parents were seen as adept with the school culture (Goswami, 2017). It is against this context of shifts in occupational and educational preferences of these families that I present the narratives of women and their engagement in the educational refinement and disciplining activities.

Mother Work and Educational Discipline

The families and their social world cannot be understood without accounting for the work of the women in these families. The women, mostly the young mothers, and at times the elderly sisters, are actively invested in holding together the social, cultural and economic aspects of their life through their work. As the families, over the generations, have started investing more in the schooling of their young children, by opting for a private school, it also reorganises the time and energies of the mothers in specific ways. The private school was widely perceived as placing a premium on school success and instilling discipline among its students, and the responsibility of making the children ready for school fell upon its mothers, at times assisted by the more educated members of these families.

In spite of being placed in positions that are viewed as lacking power, they were more invested in children's education. It was reflected in terms of the time spent with them in getting them ready for school, preparing and packing school lunch, looking for a tutor, attending the school PTMs, talking to the teachers and supervising their progress. I have focussed on their controlling and disciplinary tactics employed in sanctioning or encouraging specific behaviours, language practices, and cultural forms that are believed to have a bearing on academic success at school. As I have already highlighted in the previous sections, the language variety used in these families are different from the ones preferred in schools. School teachers lament the fact that students coming from these families cannot speak and write Hindi in a manner deemed fit for school. They also labelled students on the basis of the kind of Hindi they actually used in school as deficient than those which used standard Hindi in school. Therefore, in a context like this, it is not just English that is important, knowing the right kind of Hindi

also becomes a valued resource from the perspective of the lower classes. Apart from the lower educational background of the parents, one major obstacle in acquiring the standard speech was students' location in residential and occupational arrangements that were deemed 'backward', in teachers' estimation.

The mothers in family settings that seemed to lack the 'culture of education' were not unaware of their vulnerabilities in educational spheres. My interviews with them revealed how their extensive engagement with children's lives also included strategies that were directed towards cultivating a more respectable form of language in their children by disciplining the use of mohulla-specific ways of speaking and being.

The social space of a mohulla is usually associated with leisure activities such as playing, gossiping, and indulging in other idyllic activities among peer groups. It represents an unregulated space where the popular language varieties described as 'Urdu-Hindi mix' and 'Banarasi boli' are used. It is also a highly gendered space, as it is an area which is experienced differently by men and women. For men, of different age-groups, it is a space meant for spending free time in group setting. Men of different age-groups often formed groups and used the space for hanging out. However, for married and unmarried women, it is construed as a threatening space which has to be crossed as soon as possible and most preferably in daylight. Women's relationship with the neighbourhood is not an easy one because of the mix of familiar and the strange in these surroundings and the strict norms of gendered conduct imposed on them. Similar instances have also been reported from more metropolitan context when women have to carefully navigate their movement in the city to ensure security and safety at personal level (Phadke, 2013; Parikh, 2018). However, the metropolitan context is characterised by anonymity, while the spaces in the neighbourhood is marked by familiarity. The threat of violence that women face while navigating the urban space in India has received a lot of attention in public domain and media attention after the Nirbhaya rape case. But the everyday nature of symbolic violence that women face and skilfully negotiate in their familiar locations is hardly ever discussed.

Most of the women that I interviewed shared concerns about their daughters' safety during their commute from school. Often women complained of lewd remarks routinely made by bystanders in these lanes.

Almost all the women complained about the behavioural traits of men in the

neighbourhood which marked the life in mohulla itself as lacking in use of refined speech. A similar concern loomed large in their conversations about schooling of their children wherein they expressed how their life in the neighbourhood was not conducive to the kind of socialisation they wanted for the children in general and for girls in particular.

It was not an easy task, however, to deny and wish it away from their life, but they did manage to negotiate with it in their own terms and adopted specific strategies to minimise its influence on their children's lives. Some mothers managed to restrain their children, both boys and girls of younger age-groups, from playing outside their home. For example, Sivanya's mother, living in a rented house and staying alone with her children when her husband is away at work, devised her ways of keeping children away from the neighbourhood. She regulated her children's playing habits by motivating them to play inside the house rather than go outside. She arranged for indoor game for her children for this purpose. The perceived threat of the effect of mohulla is very pronounced among mothers while discussing the educational lives of children. The threat is also articulated in terms of the polluting effect of language that is used in the mohulla. It was reflected in their preference for standard languages like *khadi boli*, *shudh Hindi* and *Urdu* over the ones used in their neighbourhood.

Married women in these families, by and large, expressed a sense of shame with the use of non-standard languages in their family and worked towards cultivation of standard speech practice among children. Most of these women devalued local ways of speaking and distanced themselves from its use. Many women ironically used the term *dehati*, i.e. 'belonging to the village', to describe the local language variety of Banaras and complained that it is disrespectful, vulgar and abusive in nature. In their estimation, these varieties thrived in their families and in the mohulla or neighbourhood in which they lived.

While all the families strive towards refinement of their young in matters of speech, the mothers in joint family settings and those engaged in traditional occupation of the saree industry were faced with greater difficulties. The joint family network and close and continuous proximity to an occupational culture which thrives on a form of speech that is non-standard makes their effort towards speech correction a solitary affair in the family, often inviting scorn from other family members. Their inability to restrict the non-standard language use, in spite of their efforts, suggests the difference of their socio-economic symbolic worlds

which make these families value different cultural resources in different domains, viz. Banarasi or Urdu-Hindi for trade and for interaction with the elderly and the neighbours, but standard Hindi and English for children's future.

Attempts were made by all these mothers to make their children more refined and cultured in their mannerisms and speech. Through such engagement with the upbringing of their children they sought to achieve a higher social status. These micro-processes of parenting are important to understand the spatial embeddedness of the experiences of these families and their struggles implicit in the process of shifting towards higher-status schools and the associated school cultures. Their negotiations with the spatial aspects of their life in the neighbourhood are a necessary component of their hopes for a better future of their children.

Conclusion

The urban space engages women in varied ways in and through a divergent set of activities. These activities are channelled through the intersecting vectors of age, class, caste, community and location. While family life in urban settings has been putting a premium on school-related activities of children at home, we see shifts in the mothering work performed by women from different locations. In this paper, the focus was on how urban spaces marked by segregated living in the city shapes the mothering work of women at a time when families engaged in traditional occupations are becoming more dependent on modern schooling. Almost all the families were getting more involved with the schooling of their young ones as compared to the previous generation of children. To a large extent, it can be linked to the shifts in the nature of work in the traditional manufacturing practices and resultant economic insecurities. Their location in the inner circle of the city with a distinct mode of life provided a contrast to the official cultures represented by the school opted for their children. The academic success in school calls for a continuous moulding of the lives of children in ways that they become better adjusted at school.

The mothering work here refers to the activities of women in not just nurturing the life inside the family, but more importantly, in bridging the gap between the worlds represented by the private school and the world of community mediated living. The cultural forms and manners of speaking valued in the world of traditional occupation are in stark contrast with the cultural forms and speech

patterns valued within school. It shows how particular neighbourhood emerges in contrast to school in their evaluations of people, and speech practice. The paper illustrates how married women attempt to bridge this gap through their mothering work directed towards refinement of their children's ways of speaking and by restricting their movements inside and outside of the mohalla. The mothers in these locations have to diligently work towards an elusive middle-class identity which is valued within school. In the context of an unfamiliar surrounding which is hostile for young married women, these attempts towards 'refinement' can also be seen as a mark of distinction for themselves in ways that can be justified in their familial role. In these ways, women from lower educational background contribute towards reproducing a culture of education that can only be achieved by furthering the domestic division of labour along gendered lines.

Notes:

ⁱ It is important to note that middle-class is a particularly difficult to define conceptual category to be employed in studies of educational inequities in India. Many scholars such as Leela Fernandes and Satish Deshpande have resorted to using notions of 'middle class fractions' and 'middle class practice' to describe the relationship between class position and education.

ⁱⁱ As per Economic census of Uttar Pradesh, the proportion is more than fifty per cent as cited in City Development Report Varanasi, JNNURM, 2006, pp. 28-33. Retrieved from [City development plan for Varanasi - India Environment Portal | News, reports, documents, blogs, data, analysis on environment & development | India, South Asia](#)

ⁱⁱⁱ According to an estimate, the labour force involved in the silk industry of Banaras is around 1-3 lakh weavers, 1,500 traders, mostly Hindus, and around 2,000 *girastas* or master weavers, mostly Muslims. See Rahul Varman and Manali Chakrabarti (2007). *Case studies on industrial clusters: A study of Kanpur leather & footwear, Varanasi silk saree and Moradabad brassware clusters*. IIT Kanpur.

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Article: Epistemic *Ashrāfiya*-morality and Urdu Theatre Public Sphere in
Nineteenth-century Bihar: Muslim *Internal-Decoloniality*

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Epistemic *Ashrāfiya*-morality and Urdu Theatre Public Sphere in Nineteenth-century Bihar: Muslim *Internal-Decoloniality*

--- Neshat Quaiser

Abstract

This essay attempts to provide a Muslim *internal*-decolonial critique of the hegemonic *ashrāfiya*ⁱ knowledge-oligarchies. Epistemic *ashrāfiya*-morality is produced by these oligarchies as a mechanism to colonise the *shudra*ⁱⁱ-*dalit*ⁱⁱⁱ-disenfranchised Muslim mind *internally*. Through the prism of western-style Urdu theatre in the last quarter of the 19th century in the Indian province of Bihar, this essay examines the *ashrāfiya*'s epistemic-morality-based responses to the popularity of western-style theatre and its 'corrupting influences'; participation of subaltern 'lowly' women and men in theatre that posed a threat to *ashrāfiya* moral order; possible subaltern counter-intuitive subjectivity; women as objects of desire and other related issues. Although the essay deals with the colonial period, it has theoretical implications for comprehending the convincing continuity of epistemic *ashrāfiya*-morality in the postcolonial Indian subcontinent.

Key words: Epistemic Ashrāfiya-morality, Muslim Internal-Decoloniality, Urdu Theatre

*...throw this enemy-of-morality-civility-and-faith woman
immediately out of this theatre Company (Al-Punch, 1891, 7/15)*

Lots of lowly people, very few highborn [in theatre hall] (Al-Punch, 1898, 14/39)

Introduction

This essay, divided into four sections, draws primarily on Urdu weekly *Al-Punch*^{iv}. Section I outlines the concepts of epistemic *ashrāfiya*-morality; Muslim *internal*-decoloniality; and *ashrāf* and *ashrāfiya*-morality. Section II provides a brief overview of Urdu theatre in the late 19th century Bihar. Section III, with three sub-sections, deals with the question of popularity; contending moralities;

subaltern counter-intuitive subjectivity; responses to the ‘morally corrupting’ theatre; ‘lowly’ subalterns in theatre posing a threat to ashrafīya moral order; maghribyat^v (Westernism) and ashrafīya’s responses to colonialism; spatial-cultural, urban-suburban tensions, ashrafīya and subaltern; and ‘lowly’-bāzārī^{vi} women as objects of desire. Section IV, the conclusion, outlines the Urdu theatre public sphere; historicity of the epistemic ashrafīya-morality; and ashrafīya’s umma^{vii}-making endeavours and colonising the mind internally.

Section I: Epistemic Ashrafīya-morality and Muslim Internal-Decoloniality

Morality denotes a normative framework determining human transactions in different forms in all the fields of social life (for general concepts of morality, see Carson, 1984; Harman, 1977). However, morality is inscribed in ideologies of caste, class, race, religion, and culture; thereby, we find contending conceptions of morality (for contending moralities in our context see, section III). But when morality is epistemically foregrounded as religious-universal moral prescriptions, it becomes a ‘choreographically occultating’ ideology. Thus, epistemic ashrafīya-morality is that which claims non-ashraf morality and ethics cannot be authentic. It works from the logic that authentic morality that guides all-encompassing conduct in society derives from superior religious, caste, race, tribe, family lineages, and it alone can produce true knowledge. It, thus, epistemically excludes shudra-dalit Muslims from knowledge production. This supremacist morality framework produces relations of domination. Thus, the epistemically privileged ashrafīya-morality was/is presented as an Islamic divine, authentic general moral framework that aimed to colonise the non- ashraf Muslim mind. Epistemic ashrafīya-morality is produced by the internal hegemonic ashrafīya knowledge-oligarchies. This calls for decolonising the Muslim mind *internally*.

In the context of colonialism, decolonising refers to deconstructing the social, cultural, and political thoughts and values radiating centrifugally from colonial/western/white structures of domination (for the concept of decolonisation/decoloniality, see Thiong’o, 1986; Fanon, 2001; Mignolo & Walsh, 2018). Muslim decoloniality primarily focused on Western colonial technologies of domination to reshape and mould Islam and Muslim societies by privileging the western/‘modern’/orientalist constructions of religion and Islam, where secularism, democracy, and modernity emerged as the defining concepts. This engendered different Muslim counter-perspectives. Muslim decolonial thinking, however, as a part of a widely desired-counter strategy predominantly

deployed arguments such as Islam, is by its very nature, in itself is modern, democratic and harbinger of peace, etc.; and that Muslims are *Ummat-e wasaʿ*, meaning Muslims being just, away from extremism, undogmatic, and ‘moderate’. However, concepts such as *Al-zarūrāttobīh al-mahzūrāt* (necessities permit impermissible things), *iztirārī* (despairing) conditions, and *istishhād* (desired death of a martyr) have also come into play. Muslim decolonial thinking also meant critiquing epistemological and ontological foundations of European Enlightenment, reason, secularism, and modernity, to develop a Muslim/Islamic intellectual counter-strategy (for Muslim decoloniality, see among others Wali Allah, 1995; Al-Attas, 1993; Asad, 1993; Sayyid, 2014).

The overriding theoretical thrust of the grand Muslim decoloniality has been to consider Islam as an internally cohesive and universal religion, in which ‘political’ compulsions also played a significant role; and to consider Muslims as textually driven non-hierarchised essentialist category, with the notion of umma as the underlying structuring principle. This may be called the *ashrāfiya oligarchic Muslim decoloniality*, as the *external-colonial-factors-driven* Muslim decoloniality has expediently not paid required critical attention to the following crucial issues from the *internal-decoloniality* perspective: Islamic ‘canonical tensions and contradictions’; the manipulative *maslaki*^{viii} -jurisprudential hegemony; caste-race-lineage-class-based theories and practices of discrimination among the Muslims; and the *ashrāfiya* internal ‘epistemic’ and corporal violence. A critical examination of these issues alone will be able to unpack the colonising the mind projects of the hegemonic knowledge-oligarchies within Islamic/Muslim state, society, religion and politics, without necessarily abandoning the epistemic foundations of external-colonial experiences. Therefore, Muslim internal-decoloniality denotes shifting the focus ontologically from *external* to *internal*, within the wider historical and intellectual contexts. Muslim internal-decoloniality assumes greater significance as the continuation of epistemic *ashrāfiya*-morality has acquired newer implications, not only in the Indian subcontinent but also for other Muslim societies as well.

Ashrāf and Ashrāfiya-morality

Ashrāf (plural of *sharīf* – of noble birth) are considered to be those Muslims who claimed to be of foreign origin with highborn lineages such as sayyid (supposed to be descendants of the Prophet), shaikh (supposed to be descendants of Prophet’s companions), and Mughal and Pathan (the last two contextually are

vague categories, over which a studied silence is maintained. We have learned to take this ashraf propelled self-representation for an unquestionable truth^x. Although the Indian sub-continental ashraf were/are constituted by several constitutive elements, of which Hindu varna/jati based caste consciousness has been very crucial. All the four ashraf categories in the Indian subcontinent have since very long been disconnected from their claimed locales of origin. For them, the only model available was the Hindu ascriptive caste hierarchical model, which could enable them to maintain and acquire privileged status derived from pride in high lineages of foreign origin, distinguishing them from the low-caste converted Indian Muslims. Ashraf's claims of high status, as almost preordained for being of noble birth of foreign origin, corresponded to Hindu ideology of ascriptive status for justifying social segregation between savarna (high caste Hindus) and shudra-dalit. Marriages with shudra women and even amongst hierarchised ashraf castes are predominantly disdained, as it 'polluted' the purity.

Thus, the caste system among Muslims in the Indian subcontinent contains the Hindu caste constitutive features like endogamy, mandatory segregation based on ascriptive occupational affiliation, status hierarchy, and also in ritual purity and pollution with varying regional differences, but only in overt expression as these have expediently been equated with Islamic notions of 'pak' (clean) and 'napak' (unclean) (for caste among the Muslims, see Ansari, 1960; Momin, 1977; Sachar Committee Report, 2006; Ranganath Misra Commission Report, 2007; P. S. Krishnan Report, 2007; Deshpande, 2008; Falahi, 2007). However, some have argued that the caste system among Muslims differs from the Hindu model (Ahmad, 1973; Dumont, 1972). But empirical evidences suggest that the causal relationship between a Muslim's caste location and her/his related social disabilities are in no way different from Hindu caste practices, which are continually reproduced (Quaiser, 2011, pp. 49-68; Anwar, 2005; Ra'in, 2013; Trivedi et al., 2016, pp. 32-36; Lee, 2018, pp. 1-27).

Charles Lindholm (1995, pp. 449-467) has insightfully discussed various approaches on caste among the Muslims in India such as structural-functionalist adaptive, normative, essentialist, reflective symbolic, interpretative/constructionist, comparative, diffusionist, indigenous monistic. The discussion shows a great deal of confusion, chaos, and conflicting oscillation in comprehending caste among the Muslims in the Indian subcontinent. These approaches predominantly consider the ashraf-ajlaf-arzal divisions in terms of 'adaptive' practices, not in terms of palpable 'caste' divisions among the Muslims

as concretised in India defying even Islamic textual equality and justice. Ashrāf adopted an adaptive-essentialist strategy and portrayed the adaptive elements from the Hindu caste system as Islamic-essentialist in their exclusionary relations with shudra-dalit Muslims, in which ashrafīya ‘ulama (scholars of Islam) crucially contributed. This lived reality has produced hegemonic casteist ashrafīya subjectivity.

Epistemic ashrafīya-morality, as a mechanism to colonise the mind, emanated from the ashraf propelled self-representation and Hindu caste structures. There were/are four principal constitutive elements of this moral order: firstly, expediently reinterpreted^x sub-continental maslaka-jurisprudential notions of Islamic moral values^{xi} to the advantage of ashrafīya; secondly, pride in Arab or foreign lineages and entrenchment in the Hindu caste system that enabled ashrafīya to assume a superior ascriptive position akin to savarna; thirdly, pride in sub-continental conquistador lineage; and fourthly, ashrafīya’s collaboration with colonialism and other structures of oppression to safeguard their privileges after the final fall of ashrafīya political power in 1857. The processes of the formation of this epistemic ashrafīya-morality had begun with newer dimensions since the second half of the 18th century. This propelled them to engage vigorously in umma-making endeavours in the given contexts (see section IV below). Equipped with these mechanisms of colonising the mind, ashrafīya foregrounded the epistemic morality almost as divine predestination to reproduce conforming shudra-dalit Muslim subjects.

It was against this backdrop that the ashrafīya’s morality-related anxieties and dilemmas in the wake of colonialism produced Urdu akhlāq literature (morality-related literature) in South Asia since the late 19th century, which ranged from philosophical debate to issues of everyday life. Akhlāq literature ultimately represented not only ashrafīya’s moral dilemmas but also their quest for a ‘modern’ Muslim identity in colonial India with a new ‘liberal’ Islamic identity, which ultimately set the tone for a new akhlāqiyāt (moral code). This ultimately produced a reconciled ‘mixture’ of expediently ashrafīya-reinterpreted Islamic moral values and western-colonial moral norms, revealing two-facedness of the epistemic ashrafīya-morality (for dominant scholarship on Urdu akhlāq and adab literature, see Alam, 2004; Pernau, 2017, pp. 21-42; Metcalf, 1984; Hasan, 2007).

Section II: Urdu Theatre in Bihar: A Brief Overview

This section presents a brief account of Urdu theatre in 19th century Bihar. We find that the theatre that the ashrafīya opposed for its ‘corrupting influences’ was simultaneously patronised by them. Thus, ashrafīya’s reconciliation was stronger than the ambiguities.

The introduction of Western-style stage theatre in 19th century India emerged not only as a site to legitimise colonial rule, but also to contest it. However, beyond this binary, the theatre also became a site to contest local caste-class-race-religion-based ideologies of domination, particularly in terms of subalterns’ participation. This new theatre had come into existence in Calcutta in 1831, but it began in a big way after 1857. Theatre emerged as a potent site where the colonial rule, western modernity, existing institutions and moralities, and different responses to these came to be debated that created a theatre public sphere (for theatre in colonial India, see Bhatia, 2008; Singh, 2010).

The history of ‘modern’ Urdu theatre began with Indar Sabha of Amānat Lakhnavi which was staged in Lucknow in the early 1850s. However, it was after 1857 when professional theatrical companies were established on commercial lines mostly by Pārsīs (Zoroastrians). After the initial success in staging Gujrāti plays, Pārsīs took to commercially most promising Urdu plays, and a new phase of competitive theatre began (for Urdu theatre, see Nāmi, 1962; Rahmāni, 1987; Hansen, 2003, pp. 381-405; Hansen, 2016, pp. 1-30). Professional actors, singers, musicians, playwrights, costume designers, and importantly female actors were introduced. They expanded their activities beyond Bombay and staged Urdu plays in several Indian cities and towns, attaining popularity.

In Bihar, two Urdu plays – *Sajjādwa Sumbul* and *Shamshādwa Sausan* were written in 1874 (Hasan, 1959, pp. 33-38) by K. R. Bhatt^{xii} which were seemingly influenced by some Bangla plays. However, it was in the year 1884 that a theatre company called Imperial Theatrical Troupe staged several plays in Patna which became popular (Abdulwadūd, 1952). Soon after, Bihar Theatrical Troupe was established in Patna (Hasan, 1959, pp. 8-13). In 1891, the arrival of Jubilee Theatrical Company in Patna was reported, but was explicitly unwelcome:

In the month of February, this Company came to our city and staged several plays. With God’s blessings...now it is planning to

move towards west. (Al-Punch, 1891, 7/15)

In 1892, Damṛī Mukhtār Ka Theatre (Damṛī Mukhtār's Theatre) was established. This theatre company staged plays in and outside Patna and grew popular. This was a professional company in which not only the male, but female actors also worked. Actors were paid a proper salary. This company's well-known male and female actors were Mahbūb, Jawāhar, Khurshīd, Nasīr, and Nādir, of which Mahbūb and Jawāhar were very famous. Mahbūb excelled in his zenāna role, and theatre halls were always full to watch him act (Hasan, 1959, pp. 11-14). Nasīr too performed zenāna roles, and in the play Zahr-e Ishq^{xiii}, he played the character of Māhjabīn (Al-Punch, 1892, 8/14)^{xiv}. Damṛī Mukhtār Theatre usually staged Urdu plays which were already popular such as Zahr-e Ishq, Indar Sabha, Harish Chandar and Gul Bakauli. In addition to Patna, it staged plays in several other cities and towns, such as Gaya (ibid) and Muzaffarpūr (Hasan, 1959, pp. 11-14) and every year in the famous Sonepūr fair (ibid, pp. 8-13). When Damṛī Mukhtār's Theatre became popular and attracted particularly students in large numbers, it was more vigorously opposed. It finally packed up, and its exit was celebrated:

Boys have stopped going to theatre, and public have developed hatred...due to lack of patronage from schoolboys, Damṛī Theatre's sources of income have shrunk. (Al-Punch, 1892, 8/2)

After a gap of about five years, Damṛī Theatre was reorganised in 1898 as Bihar Theatrical Company in Patna City and a stage in Bānkīpūr^{xv} as well. Mahbūb of Damṛī Theatre fame joined this company and became its star actor. The Company's actress Bismillah attracted young people in large numbers. 'Students again came back to theatre and once again, a theatre ripple was created' (Hasan, 1959, pp. 8-13). Opposition to the theatre resumed, but the Company continued to stage plays (Al-Punch, 1899, 15/18). Bihar Theatrical Company staged several popular plays, such as Āshiq-e Jāñbāz, Zahr-e Ishq, Indar Sabha, Katora-Bhar Khūn, Dorangi Dunya, Dhūp Čhāon, Asīr-e Hawas, Khūbsūrat Balā. As a result of its success, several professional and amateur theatre companies were formed in early 20th century that continued for some time (Hasan, 1959, pp. 11-14). Most of these plays were based on traditional masnavi (long narrative poem), dāstān (oral storytelling), qissa (tales), etc., or were an adaptation of English plays. The central themes of these plays mostly related to love stories and heroic deeds. They reinforced the epistemic ashrafīya moral values.

Section III: Popularity, ‘Corrupting Influences’, ‘Lowly’ Women and Men, Spatial-Cultural Tensions, Contending Moralities and Counter-Intuitive Subjectivity

This section, in addition to an introduction, is divided into three subsections: a) Popularity of the theatre and its ‘corrupting influences’; b) The Bānkīpūr argument: modernist response, spatial-cultural, urban-suburban and subaltern-ashrāfiya tensions; and c) ‘lowly’-bazāri women: disdain and desire.

Urdu theatre performances, spectators, stage, actors, theatre companies, ashrāfiya, literate public, ‘lowly’ women and men, and students, with multiple familiar and unfamiliar issues and questions created an Urdu theatre public sphere^{xvi} (see section IV) in which ashrāfiya epistemic morality and subalterns’^{xvii} participation were the key organising principles.

Since the 1870s theatre attracted not only the ashrāfiya, emerging educated and professional middle classes, but also the ‘lowly’ women and men in Bihar. *Theatre ka tamasha dekhna* (to watch theatre performance) was emerging as a critical supplementary source to form new identities in the colonial contexts. However, the active participation of the subalterns deeply disturbed the ashrāfiya moral-cultural order. Thus, the expedient ashrāfiya opposition to the popularity of theatre among the masses (‘awām-commoners, bazāri^{xviii} women, shudra Muslims, students) was an attempt to pre-empting a possible subaltern ideological challenge.

The participation, responses, and role of ‘awām, shudra Muslims, ‘bazāri’ women with regard to theatre were neither ‘written’ by themselves nor were adequately recorded in the newspapers or elsewhere in their own voice. Evidence of critical subaltern participation is to be extracted even from the disdainful ashrāfiya narratives. Thus, ironically, they registered their presence through antagonistic and disdainful representations in ashrāfiya narratives, thus, the absence was turned into presence, subverting the very logic of that narrative, as is evident from what follows.

However, how would subalterns possibly gain counter-intuitive subjectivity from the plays, which did not at all relate to subalterns’ life conditions, and reinforced ashrāfiya moral values? Most of the plays that the subalterns patronised so eagerly in different ways were based on traditional tales or an adaptation from English

plays with highborn as central characters, and which were deeply entrenched in epistemic ashrafīya moral values. Yes, but the very fact that the subalterns came out of their socially assigned places of exclusion and entered the hitherto exclusive ashrafīya spaces publicly was of critical importance. While doing so, subalterns defied the process of expected subject formation and refused to be constituted expectedly by the ashrafīya authority^{xix}. The active participation of ‘lowly’ women and men in theatre signified the formation of a counter-intuitive subjectivity, no matter in what embryonic form it may have been. The act of being spectators and actors formed a critical constitutive element of the new subject formation, as the subalterns were excluded from the domain of knowledge in print. The very fact that the ashrafīya launched a tirade against subalterns’ participation in theatre provided internal evidence of their critical presence in theatre and a possible counter-intuitive subject formation. This counter-intuitive subject formation was not premeditated, and yet not totally unintended (see concluding remarks of this section). Besides, theatre created an atmosphere, ironically though, for subaltern women and men to become publicly visible in ashrafīya social spaces (for how subalterns gained from British presence, see Guru, 2005).

Thus, there emerged three sets of contending moralities: firstly, two-faced epistemic ashrafīya-morality; secondly, subaltern morality, which was constituted by the very act of subalterns’ participation in theatre with the promise for a new counter-intuitive subjectivity, even if the content of plays were not subaltern-centric. This, in essence, was an act of defiance to the ashrafīya prescribed moral codes of quiescence, passivity, and submission. The act of viewing theatre was a critical constitutive element of the new subaltern moral imagination, as knowledge in print was not their prerogative; thirdly, colonial-western moral values, though posed threat to ashrafīya-morality, but created an atmosphere for recognisable social visibility of subaltern ‘bāzārī’ women and ‘lowly’ men, ironically though.

a) Popularity of the theatre and ‘corrupting influences’

The popularity of theatre and concerns for its ‘corrupting influences’ assumed specific ideological connotations. Popularity simultaneously entails inclusionary and exclusionary connotations. In the given context, however, ‘popular’ tended to emerge as the early *colonial populism* for appealing to the colonised of all categories including ordinary people to legitimise colonial ideological

apparatuses. This was different from ‘authoritarian populism’ where ‘the people’ are pitted against the elite as Stuart Hall had enunciated in the late 1970s^{xx}; but beneath-the-surface-logic common to both is to produce homogeneity through explicit or implicit pressure. These characteristics were at play in the debate on theatre, under discussion, in different forms. Ashrāfiya’s responses were exclusionary as they targeted mainly ‘lowly’ people for making theatre popular, engendering defiance. Students of ashrafiya stock were deplored as they not only defied paternal authority as a visit to theatre meant knowing and imbibing new ideas, but also for they would ruin their chances of a bright future in the colonial administration by wasting their time in theatre.

We shall now briefly illustrate ashrafiya responses to the popularity of theatre and its ‘corrupting influence’.

A newspaper in early 1885 reported that a theatre company staged several plays last year and gained immense popularity. It commented:

Inhabitants of proper Patna are fully aware of the Imperial Theatrical Troupe...its plays had captivated not only the rich, nobles, different occupational categories, public in general but also the students...last year Imperial Theatrical Troupe’s oppressive influence had slit the throat of acquisition of knowledge and good conduct of our able and innocent students with blunt knife. (Abdulwadud, 1952; Hasan, 1959, pp. 8-13)

Theatre’s popularity had captivated also the educated middle-ashrafiya professionals such as lawyers that disturbed the high-ashrafiya. Lamenting the extent of theatre’s adverse impact on lawyers and students, a report much later observed:

Now listen to the kind of impact theatre had on rich and powerful, lawyers and students. Keeping aside their valuables, legal works and flat-stone-writing-plank and books...they reached the theatre as the clock struck seven o’clock (evening). (Al-Punch, 1892, 8/14)

One Nasserul-zurafa’ in a letter to the editor sarcastically suggested making use of theatre to tackle cholera epidemic:

Theatre is next to college...ask Mahbūb to sing in his characteristic style, and you will see Haiza (cholera) Khan would run away. (Al-Punch, 1899, 15/33)

The suggestion conveyed the message that theatre is so lethal that even cholera would run away on seeing it. Reference to Haiza Khan has sub-continental Muslim conquistador connotation that even great Pathan and Mughal warriors would run away in the face of the morally corrupting armoury of theatre. And yet one cannot miss in it the elements of appreciation of theatre.

In the face of upsetting tensions produced by the popularity of the theatre, some ashrafīya thought of using theatre to reform the community. One Sayyed Mohammad Nawāb Mohammad wrote a play *Jawan-Bakhtwa Shamsunnahār* (Mohammad, 1884) for reforming the community because plays staged by theatre companies were not morally fit for the cultured and educated society. A similar concern was expressed in the face of ‘moral degradation’ caused by ‘lowly’ women in the theatre in which the references to qaum (community/Muslim community) and ‘our Muslim brothers’ assumed significant connotations:

Jubilee Theatrical Company has publicised itself with magnified honourable claims as sympathiser of the country and community, and educator of morality. But these claims are misplaced. It has presented a wanton-eyed woman on the stage. Some people sympathise with this Company, for it is established by...our Muslim brothers. My suggestion is: throw this...woman immediately out of the Company. (Al-Punch, 1891, 7/15)

‘Reform’ within the ‘community’ therefore was essentially an ashrafīya concern for self-preservation.

Corrupting influence of theatre on students and young was opposed by both ‘modernist’ and ‘traditionalist’ ashrafīya. The traditionalist response was more concerned with the growing erosion of traditional Islamic moral values, expressed in the language of anti-maghribyat. A very prominent ashrafīya Urdu writer and poet, Maulana Fazl-e Haq Āzād ‘Azīmabādī^{xxi} wrote:

If possible, approach the Lieutenant Governor that he should try to

remove prostitutes and theatre from India. These are corrupting the morals of people. And also, influx of European novels in India should be prohibited because in them such materials are that the poetry of Jān Sāheb^{xxii} would appear like a dry leaf... (Al-Punch, 1899, 15/5)

Although Āzād expressed his concerns strongly for the preservation of Islamic values and protecting Indians from the European culture, novels, prostitutes, and the corrupting influences of theatre, he merely appealed to the Governor rather politely. This is for, despite his strong opposition to the theatre, Āzād was very much in favour of Muslims and others acquiring western knowledge and considered British rule as a boon for India. He was perhaps making a distinction between western culture and western scientific inventions and colonial administration.

This concern found expression in different forms, including Indian girls' English education. In a letter to the editor, one M. M. Sokhtadil wrote:

How the girls of respectable people would on a khatolī (a small bedstead) go to school and would learn the lesson of a, b, c. This much one can tolerate. But after this our simpleton girls of Bihar would shake hands with memsahib, which means after completing education they will fight with their husbands for freedom. So, our Bihar is going the London way. (Al-Punch, 1899, 15/10)

Sokhtadil, though hesitant of English education for respectable ashrafīya girls outside the home is ready to tolerate 'up to this', revealing the gradual acceptance of English education even for girls. But he expressed a grave concern relating to the control over women's body, sexuality, and expectations for strict adherence to the assigned religious-cultural roles of a wife^{xxiii}. Coming in contact with memsahib would morally contaminate the girls, as it would encourage them to deviate from the well-defined normative roles of an obedient wife.

Modernist response to the popularity of the theatre and its corrupting influences is discussed in the following subsection, as it is entangled with other emerging complex issues whereby epistemic ashrafīya-morality was acquiring newer characteristics.

b) The Bānkīpūr argument: modernist response, spatial-cultural, and urban-suburban and subaltern-ashrāfiya tensions

Modernist response to the theatre was entangled with more compelling and complex, emerging issues. Most ashrafīya tended to be ‘modernist’ and were aligned with colonial power adding new dimensions to epistemic ashrafīya-morality. Theatre, subalterns’ recognisable social visibility, colonial modernity, English education, colonial administration, etc. produced tensions of all kinds within the emerging modernist ashrafīya. These tensions were reflected through theatre in different forms, such as the tensions between the ‘modern’ and the old-fashioned residential localities; between the ashrafīya and subalterns; and between the urban (shahri) and suburban (qasbāti) ashrafīya. These tensions reflected conflicting economic, social, and political interests of urban and suburban ashrafīya and the subalterns. The following report reveals the theatre-related tensions, and the reference to qaum (community) in it denoted ashrafīya:

When theatre comes to Bānkīpūr, school children come under the control of some jinn. We heard it with great sorrow that a student of T. K. Ghosh academy...with some boys of Patna Collegiate has taken contract of theatre, which has saddened us most. Surprisingly, why did our kind and noble Headmaster of Patna Collegiate, Moulvi Amjad Ali Saheb not take corrective measures? If he takes little interest...these boys can be reformed...and qaum would thank him. (Al-Punch, 1899, 15/33)

One Kammo, in a letter, expressed similar concern for qaum’s welfare with reference to the hostility between modern and traditional localities that was created due to theatre, prompting even threat of physical violence:

...you keep unravelling political knots, how would you know the evil doings of theatre. You could not even ask why, leaving the whole of Patna^{xxiv}, has it come to Bānkīpūr? And why does it choose a place...just opposite Patna College? If you have even an iota of interest in community’s welfare, you should stop them...They should at least leave Bānkīpūr and perform their jugglery and rope-dancing in Patna and make money. If you cannot do it yourself, order your followers to tear them into pieces. Otherwise, I am ready to take on them (Al-Punch, 1899, 15/18)

The above report and the letter reveal an emerging conflict between the westernising Bānkīpūr and the old medieval Patna City. Bānkīpūr is a neighbourhood and residential area in Patna. Until the early 20th century, Bānkīpūr was the administrative centre of the Patna Division of Bihar, which came under the rule of the British East India Company following the battle of Buxar in 1764. Bānkīpūr lies some four kilometres west from the medieval Patna City, or 'Azīmābād. Bānkīpūr, since the 1860s, signified a 'modern' locality inhabited by modern-oriented people. It was in Bānkīpūr where English medium educational institutions, new architecture, modern markets, western dress, Bānkīpūr Club, Bihar Young Men's Institute, Jahangir's Theatre and Cinema Hall, Rammohun Roy Seminary - an English medium High School, Patna Collegiate, etc. were situated. These were the markers of modernity. English medium education, colonial power, new job opportunities attracted the traditional urban-suburban high-ashrāfiya and other emerging English educated middle-ashrāfiya and other middle classes.

The argument in Kammo's above-mentioned letter that theatre should leave Bānkīpūr and perform in Patna City signified tensions within the new ashrafiya, emanating from two main concerns: firstly, to sustain the hold of epistemic ashrafiya moral codes over 'lowly' people by keeping them away from Bānkīpūr. Patna City was predominantly inhabited by subalterns, labouring poor, artisans, shudra-dalit Muslims and Hindus – the non-ashraf population. The underlying argument was that there was no problem if theatre is performed in the old City as people in that locality were outdated, incapable of upward social mobility, and it was preordained that they were born poor and low in the caste hierarchy. If they come to Bānkīpūr to watch theatre, a culture of subaltern defiance will grow here as well. Secondly, the concern that theatre was distracting their progenies from being studious and competitive, necessary for acquiring 'respectable' jobs in the colonial administration, which would bring additional enviable social esteem. Thus, Bānkīpūr emerged as a site for new social, educational and economic opportunities from which ashrafiya alone were to benefit. Ashrafiya, thus, actively collaborated with the colonial administration in all possible ways. For example, despite their claim to be 'modern', ashrafiya were critical of the 'corrupting influence' of the theatre for reasons of political expediency as well. It enabled them to emerge as the sole representative of 'Muslim'/Islamic/Indian/Eastern moral values and culture in the eyes of colonial administration. They became the representative of 'community's (all Muslims)' interest'. This became evident when ashrafiya hugely benefitted from

the separate electorate (Vohra, 2001, pp. 113-15). In the process, ashrafīya acquired jobs and positions of power in colonial administration, educational institutions, and the judiciary, and benefitted from the newly emerging political process.

Bānkīpūr and theatre also signified tensions between the urban and suburban ashrafīya, in which conflicting cultural, economic, and political interests were palpable. After 1857, both the urban (shahri) and suburban (qasbāti) ashrafīya began to move to Bānkīpūr. But the conflict between the two was expressed through culture, language and literature. City-bred urbane high ashrafīya were traditional Patna City based landed and affluent, and pedigreed with urban traditional education. The suburban ashrafīya were landed gentry of respectable families with suburban traditional education and constituted the suburban nobility. But the Patna City based urbane ashrafīya considered themselves of high culture and refined manners, and a repository of high linguistic and literary traditions. They considered the suburban ashrafīya rustic in their manners and substandard in matters of language, accent and literature. Their suburban location of origin rendered them culturally inferior in the eyes of city-bred ashrafīya. This produced a bitter tiff between the two. They launched a diatribe against each other to prove their cultural and literary superiority, and theatre did not remain unaffected from this, and for which *Al-Punch* provided space liberally.

Nonetheless, even such acrimonious argumentativeness contributed significantly to the emergence of a culture of critical public debate enriching comprehension not only of language and literature but also of politics, colonial rule, English education, and other issues. However, suburban ashrafīya such as Fazl-e Haq Āzād too had been well-informed of theatre and had strongly opposed it, and was considered to be the intellectual resource person behind *Al-Punch*. The editor and owner of *Al-Punch* too was a suburban ashrafīya. They, too, could not resist the temptation of being part of the new centre of culture and economy and began to move to Bānkīpūr, with the view to getting their share in the land of new opportunities. And soon they did make their presence felt in Bānkīpūr in a big way. For example, the Imam family from the suburban Neora became perhaps the most prominent family of Bānkīpūr. Thus, Bānkīpūr emerged as a site for the making of a post-1857 ashrafīya intellectual ethos.

By the end of the 19th century, ambiguities gave way to reconciliation and ashrafīya began to accept the ‘morally corrupting’ theatre expediently. They took

to the theatre to seek pleasure, with women emerging as objects of desire, as is evident from the following letter:

...brother, tell me, have you ever watched this theatre even in disguise...it is all pleasure and enjoyment...you are an old man...
(Al-Punch, 1899, 15/18)

More forthright appreciation followed:

Bihar Theatrical Company staged its play Āshiq-e Jāñbāz very nicely, with spectators in large numbers. Mast Nāz's style of acting...was wonderful...and why not...this role was performed by the old master Mahbūb. (Al-Punch, 1899, 15/24)

However, 'lowly' men and women were continued to be condemned with casteist disdain and blamed for the popularity of theatre, and 'modern' ashrafīya had no difficulty in collaborating with the colonial administration. For example, theatre brought 'lowly' people and high and middle ashrafīya at least to close physical proximity amounting to breaking the boundaries of casteist segregation, despite seating segregation according to the price of tickets and social status. This produced an alarmist reaction. Thus, a weaver was disdainfully reminded of his ascriptive status:

Leaving his loom, he goes to the theatre. For no reason, he will be harmed. If this eagerness to visit the theatre continues, even his loom will be sold out. (Al-Punch, 1906, 22/46)

The above reminder communicated the casteist social status of a shudra Muslim in the language of patron-client relationship. A stern message was conveyed that stick to your ascribed occupation; do not aspire for any vertical mobility by changing your occupation or by emulating ashrafīya cultural practices; to watch theatre neglecting loom was not your job. Despite the repeated admission that the theatre was patronised even by nobles, ashrafīya educated people, lawyers and students, yet subalterns were blamed for the success and popularity of theatre by lamenting that: 'a lot of lowly people, very few highborn' [in the theatre hall] (Al-Punch, 1898, 14/39).

c) 'Lowly'- 'Bāzārī' women: disdain and desire

Sex, gender and sexuality are among the defining categories in theatre studies. Gender and sexuality are inscribed in caste-class, religion, ethnicity, and nationality (see Bhattacharya, 1998; Hansen, 1999, pp. 127-147; Singh, 2010). Accordingly, a clear division existed between the subaltern and the upper-caste women in the theatre under study. Theatre created an atmosphere for women to undertake a journey from home-shanty-kothā (broadly, a whorehouse) to public stage contesting differently the ashrafīya notions of women's moral virtues. For 'decent' women, the home was a well-guarded place where they could be kept under control. Their participation in theatre was largely a sign of relative freedom encouraged by ashrafīya men, who were too eager to be part of the colonial power structures. Caste-based hierarchised predispositions were clear, as sympathetic concerns were expressed in the case of respectable women. For example, a bit sarcastically but not disdainfully, it was expressed that now even women (here, decent ones) are attracted to the theatre:

*Fair sex too now... have leanings for theatre
Listening to praises, they are restless with eagerness
Making tinkling sound of anklets, they come*

(Al-Punch, 1892, 8/1)

On the other hand, from the available sources, it is evident that low-caste women, branded as 'bāzārī', entered the theatre as performers primarily to earn a livelihood^{xxv}. 'Lowly bāzārī' women in the theatre were targeted for causing moral degradation, and purportedly could easily be consumed and owned as objects of desire. In a report, describing the caste-class composition of spectators in a theatre hall, a clear distinction was made between respectable-chaste and 'lowly' bāzārī women, and it was contemptuously stated that only with bāzārī women one can indulge in flirtatious acts. One Fakhrul-Zurafa Māel Dharampūrī Darbhangavi wrote:

They were respectable, chaste and pious wives and daughters of Bengali bābūs^{xxvi}...bāzārī women had not gone there, so there was no chance for you to act lasciviously. (Al-Punch, 1898, 14/39)

Thus, the subaltern women were portrayed as of lax morals, and ashrafīya demanded from the Theatre Company to divest them of their means of livelihood.

While doing so, upholders of the ashrafīya-morality two-facedly described the same women lasciviously^{xxvii}:

It has presented a wanton-eyed, unceremonious woman on the stage...throw this affliction-without-remedy, enemy-of-morality-civility-and-faith woman immediately out of this Company. (Al-Punch, 1899, 7/15)

In a long poem, on the decline of Damrī Theatre after its star actress Jawāhar eloped with Bādshāh Nawāb, bodily beauty of the actress and sorrow of the spectators are expressed, significantly, with a blend of ‘morality’ and lascivious desire:

*If old men get to see such a complete body, their old age will be taken care of,
And the condition of young men is worse than the old men, Ah Theatre!
When you could not satisfy your innate desire, you got the idea
And you subdued schoolboys, Ah Theatre!*

(Al-Punch, 1892, 8/4: Passim)

In yet another report, representing casteist segregation, it was lamented that no seating plans were made to segregate bāzārī women from the respectable members of the audience:

No separate seating plan was made for bāzārī women. Generally, they sat next to any person as per their desire. (Al-Punch, 1899, 15/24)

The violence of representation of the subaltern women was brazening. And yet the disdainful lamentation that ‘they sat next to any person as per their desire’ indicated at the self-respect that ‘lowly’ women were gaining – even if it was at a nascent stage.

A report blamed ‘common people’ for the growing number of women performers in theatre, as they increasingly desired to see women in proximity:

In the eyes of common people, women’s appearance on stage as

actors is certainly considered praiseworthy, and for that very reason they rush in hordes. But the gentry consider it vulgar and do not look at such theatre with respect. (Al-Punch, 1891, 7/15)

Participation in theatre was gradually transforming subaltern women into objects of marketised desire. Marketisation generally denotes the privatisation of public services within the welfare state (Kumlin, 2007). Marketisation, however, herein denotes a capitalist marketisation of social relations, which produces petrification of true meanings of immanent human qualities, to commodify, for example, women as objects of desire to be bought at a *price* effected by the market. Market manufactures commodified desire and presents it as innate to one's being (for desire as an object, see Quaiser, 2018, pp. 22-38; Beckert, 2009, pp. 245-69).

Within the sphere of theatre, ashrafiya casteist disdain and transformation of women into objects of desire to be consumed and owned went together. Thus, by the end of the 19th century, the expediently reluctant ashrafiya were attracted to female theatre performers to seek lascivious pleasure from the object-desired – the easily accessible immoral women. A reporter L. H. Hamsar Bhāgalpuri wrote:

Why did you go to Calcutta? It is because the Harmistone Circus' fearless, lustful...ladies' riding intoxicated horses...This generated lustful desire in spectators and clapping with great dejection. Pārsi Elphinstone Theatre's taut bodied girls' and fairy like boys' dance with expressive action and gesture on stage, and on every step trampling upon the hearts of out-of-control spectators under the feet of coquetry. Such alluring and confounding plays were in Calcutta that you would forego thousands of conferences for each expression of those women... (Al-Punch, 1900, 16/24)

The power of masculine ashrafiya social location to acquire the object-desired was displayed quite brazenly indicating a greater possibility of gaining easy access to and even 'run away' with the 'women of lax morals', wherein 'transaction' would not be 'forced' unlike in case of subalterns. It was lamentingly asserted:

Alas, I was not there, otherwise, right from the stage, clutching in my lap, I would have run away with at least one (of the actresses). (Al-Punch, 1899, 15/18)

Marketisation with the underlying logic of the ownership of the desired object led to the competitiveness among ashrafīya. Jawāhar of Damrī Mukhtār's Theatre was very beautiful, and many big wigs competed to possess her, but ultimately Bādshāh Nawāb was successful. In a poem, this event was commented upon, lamenting and longing for the body of the object-desired:

*I am faint-hearted; with grief I am dispirited - Ah!
Jawāhar
With you went away the splendour of stage - Ah! Jawāhar
What to say, what was that swelled up breasts - that was stairway
of beauty
It was here that the travellers of intimacy boarded the train - Ah!
Jawāhar
Movement of lips was stimulant for eagerness – speech was magic
In your sight was hidden Africa's magician - Ah! Jawāhar
Tell me, who sold you at Guzri^{xxviii} - O golden bird*

(Al-Punch, 1892, 8/45)

With the progress of time, almost all theatre companies preferred to have women actors. For the fruitful survival of theatre, it must be economically viable, and for that to happen, female actors were much needed.

As is evident, a new subaltern subjectivity was in the making through the very act of subalterns' participation in theatre as spectators and performers that constituted an act of defiance to the colonising the mind project of the epistemic ashrafīya-morality. The act of viewing^{xxix} assumed critical importance, as knowledge in print was the preserve of ashrafīya and other literate castes. Subalterns did not have a neatly worked out schema for class struggle when they actively participated in theatre; instead, it was an expression of impulsive, dormant, undeclared desire to say no to the undesirable state of existence marked by apparent silence, quiescence, servitude, meekness, passivity, submission to the ashrafīya-morality as preordained. The desire to say no finds expression in many undeclared transferences (Quaiser, 2019a, pp. 98-99). In the process, they learned mechanisms to act outside the given boundaries of epistemic ashrafīya-morality. 'Lowly bāzārī' women, shudra Muslims and other labouring poor were driven by their existence in everyday life and its counter-intuitive comprehension; they learned imaginative manoeuvrings convivially.

Subaltern participation in theatre, however, was contradiction-ridden as well; for if theatre facilitated subalterns' social visibility with emancipatory promise, the logic of colonialism at the same time was to subjugate them, and in times to come they would oppose the colonial power.

Section IV: Conclusion: Urdu Theatre Public Sphere, Historicity of the Epistemic Ashrāfiya-morality, Umma and Colonising the Mind Internally

Urdu theatre in Bihar in the period of our study created an Urdu theatre public sphere. It became a critical source for comprehending not only the changing ashrafīya cultural and social landscape but also of the making of a cultural history of subalterns. Thus, new discourses on gender, sexuality and ashrafīya-morality; ashrafīya perception of 'corrupting influences' of theatre; theatre enabling shudra Muslims and 'lowly women' to contest epistemic ashrafīya-morality amounting to decolonise internally through their participation in theatre; a challenge to the 'Muslim'/ashrafīya/'Islamic' cultural identity and concerns to reform and preserve it; ashrafīya collaboration with the colonial rule; colonial rule, English education, modernity, western moral values; and ashrafīya and lowly castes' responses to these issues constituted an Urdu theatre public sphere in Bihar. Within this sphere, unfamiliar issues, ideas, institutions, and a new language effected a new outlook, and the tensions that these produced engendered a sense of amazement, despair, lamentation, and attraction. Familiarity with the unfamiliar produced different routes for the ashrafīya and subalterns. The ashrafīya took the route of recognition of and negotiation with the colonial rule and continued with their epistemic morality. For subalterns, their convivial participation in theatre, questioned the ashrafīya moral order, amounting to decolonise the mind internally.

The processes of colonising the mind through epistemic ashrafīya-morality began with newer dimensions since the second half of the 18th century becomes critical. Assertion, contestation, recognition, negotiation, placation, and acceptance were the key ashrafīya responses at different stages. The defining event of 1857 radically altered the social life of all ashrafīya including 'ulama, who portrayed the event as a big blow to mashriqat^{xxx} and further ascendancy of maghriyat, causing attrition of distinct 'Muslim' identity. However, mashriqat has been a euphemism for ashrafīya-morality and political power. Compelled against this turn of history, ashrafīya began the construction of a sub-continental Muslim umma. Umma ideally denotes a united community of

Muslims bound to Islam, independent of national boundaries. However, territorial conditions, local ashrafīya's interests, and 'restorational politics' (Quaiser, 2011, pp. 49-68) ultimately shaped the conception of an umma. It meant, how to ultimately restore the lost 'Muslim'/Islamic (read ashrafīya) political power, but since such a possibility did not even remotely exist, the only option left was to recover and sustain whatever could be recovered and sustained. This post-1857 concern and its postcolonial implications are best captured when much after 1947, Imārat-e Shari'a Bihar and Orissa, a prominent ashrafīya institution established in 1921, introducing its raison d'être argued:

After the revolution of 1857 and the downfall of Mughal Empire in India, the 'ulama of the day...were compelled to find out a suitable platform for the Muslims in India through which their social, cultural, religious lives and activities could be managed, controlled and guided in the light of Shari'at laws...in non-Islamic countries. An organisation based on Shari'at laws under one Ameer (Chief of the faithful) is essentially required to educate, inspire and guide the Muslim ummah to enable them to lead a collective life under Islamic order. (see, Quaiser, 2019b, p. 173)

In Imārat's conception of the umma, Islamic identity and loss of Muslim political power assume critical significance. Certain other factors, such as the activities of Shuddhi Sangathan of Arya Samaj^{xxxi} and the rise of Hindutva forces in the pre-and-post-colonial period also supplemented the umma-making efforts. Thus, the notion of umma became a powerful tool to colonise the shudra-dalit Muslim mind. In this formulation, the ashrafīya-perpetuated caste-based vertical division among the Muslims was strategically never even mentioned. It is obvious that the need to expediently construct a Muslim umma was/is for the preservation of ashrafīya politico-religious oligarchic hegemony.

Notes:

i Of ashraf (of noble birth). Ashrafīya herein denotes a hegemonic-highborn-casteist-racist-knowledge-oligarchy. See the discussion in this section.

ii Shudra is the lowest-ranked category in the Hindu caste system, under the subordination of Hindu upper castes. They are producer peasants, artisans and labourers, engaged in necessary material production and reproduction. Shudra castes constitute the majority of the Muslim population in the Indian subcontinent, retaining their ascriptive caste social status. Caste affiliations constitute their primary identity and are accordingly disdained by ashrafīya.

iii Dalit means trampled upon, oppressed. The term Dalit was first used by Jyotirao Phule (1827-1890) for the untouchable lowest castes in the Hindu caste system. Muslims too have their share of converted dalits.

iv Urdu weekly *Al-Punch* was started in 1885 from Patna, the capital city of the north-eastern Indian province of Bihar. The weekly was read even outside Bihar. *Al-Punch* widely covered Urdu theatre activities in Bihar in the period of our study. *Al-Punch* covered national, provincial, local, suburban and international social, political, administrative, and cultural events and news. It supported the British Raj, as various post-1857 ashrafīya run Urdu newspapers did. Although, it was critical of the government's various policies and practices with wit, satire, and humour but in a rather friendly manner. *Al-Punch* represented the post-1857 emerging ashrafīya intellectual ethos in Bihar. This essay is part of the author's ongoing work on *Al-Punch*.

v Maghribyat - Westernism: Western normative structure, moral values and philosophy of life and society, which in the given context included also colonial state's economic, political, and cultural machinations.

vi Bāzārī (woman) herein means a woman portrayed as of lax moral, easily accessible for sexual gratification due to her low caste location.

vii Umma ideally denotes an integrated brotherhood of Muslims bound by tenets of Islam, devoid of caste-class-race hierarchies and independent of national boundaries. See section IV below for discussion (For a general concept of umma, see Shafi, 1997; Esposito, 2004).

viii The term mazhab denotes a school of Islamic jurisprudence. The term maslak in the Indian subcontinent refers to multiple denominations within a particular mazhab, with conflicting interpretations of the Quran, hadīs, and Sunna. They are in antagonistic relations with each other as they also significantly represent 'non-faith caste-race-class interests.

ix Scholars studying ashraf and their place in South Asian history (such as Margrit Pernau, 2013, 2016) too have taken this ashraf propelled representation as gospel. These categorisations are highly misleading, and they are only descriptive (which is also inadequate), which cannot be employed as an analytical category for comprehending ashraf as a 'caste' social category. This is crucial, as this originary theory has laid the ashrafīya epistemic foundation on which sub-continental hegemonic casteist ashrafīya subjectivity is constituted, which reproduces casteist hegemony to keep reproducing conforming non-ashraf subjects. Most scholars studying ashraf and their defining role in the 'making of South Asian Muslim society and politics' do not question the ashrafīya epistemic foundations, and in doing so they endorse ashrafīya hegemonic social locations. They can be called 'docile' authors as drawing on Foucault's schematisation of 'the author' Wael Hallaq has explained (Hallaq, 2018, pp. 134-5).

x Role of Islamic 'canonical tensions and contradictions' in expedient reinterpretations is a matter of another debate.

xi In Islam, akhlāq (morality/ethics) and *ādāb* (good manners) are traditionally rooted in Qur'an, sunnah, and hadīs. However, akhlāq has also been philosophically interpreted since the 9th century A.D. (See Fakhri, 1991; Hourani, 1985)

xii It has been claimed that the real author was Moulvi Hasan Ali. (see Hasan, 1959, *Eshara*, pp. 33-38; 31-36 and Hasan, 1962, pp. 5-8)

xiii Based on classical Urdu Masnavi (long narrative poem) *Zahr-e-Ishq* (1862) by Mirza Shauq Laknavi.

xiv For males representing females on stage, see Hansen, 1998, pp. 2291-2300.

xv Bānkīpūr (or Bānkīpore or Bānkī Bazaar; also known as Bāqīpūr) is a neighbourhood residential area four kilometres west from the medieval Patna City or 'Azīmābād, which came under the East India Company in 1764. Since the late 19th century, it signified a 'modern' locality.

xvi Habermas identified a public sphere in 18th century Europe where public issues were debated and the government's activities were criticised by the 'public' - the bourgeoisie (Habermas, 1989, pp. 13 and 27). However, increasingly public sphere became status-quoist to legitimise the capitalist state and society (see Thompson & Held, 1982, pp. 4-5; see also Calhoun, 1992). In the case of India, 'as the historical context of public spheres was different from that of the western bourgeois society, the nature of public sphere also differed. In India, public spheres existed much before the 18th century representing ideologically conflicting critical and conformist orientations outside the state. In India, it was concerned not only with the state and the political but also, with other indigenous structures of domination' (see Quaiser, 2012, p. 122. See also Joshi, 2001, pp. 23-58).

xvii Gramsci employed the term subaltern for those who are excluded from political representation, thus hegemonically denied having their voice (Gramsci, 1971, pp. 52-55). Moving away from Subaltern Studies Group's understanding (Ludden, 2003) or any mechanical class perspective, the subaltern is employed herein not strictly through and against the coloniser and colonised; instead to include also the non-colonial local caste-class forces of domination and forms of knowledge: the disenfranchised people of low castes; or at times even youth and student who felt suffocated under parental authority.

xviii Bāzārī (woman) herein means a woman portrayed as of lax moral, easily accessible for sexual gratification due to her low caste location.

xix For subject formation and subjectivity, see Althusser, 1971, p. 123; Quaiser, 2019b, p. 180.

xx For popular, populism and authoritarian populism, see Hall, 1980, pp. 157-185; Hall 1981. For Frankfurt School's views, see Jay, 1973.

xxi Fazl-e Haq Āzād (1854-1942) was a landed ashrafīya of Sayyed caste from the village Shāho Bigha in the Jahānābād district, Bihar, but later he settled in Bankipur in the 1880s.

xxii Jān Sāheb (1817-1896) is known for his Urdu poetry that detailed women's sexual desires and activities.

xxiii These concerns were articulated more forcefully by various prominent ashrafīya scholars.

xxiv Patna here refers to medieval Patna City.

xxv Samik Bandyopadhyay has noted in a general sense that, 'For the actresses, several of them single mothers or with dependents, the options were more constricted, and acting remained the only means of living' (see Bandyopadhyay, 1994, pp. 65-66).

xxvi Respectable educated men – plural of bābū.

xxvii For ashrafīya lascivious description, see endnotes xxvii, xxviii, xxix & xxxi.

xxviii Guzri – a residential and market locality in Patna City, where Badshah Nawab resided.

xxix Augusto Boal (2008) has underscored the possibility that the spectators could modify the representation according to their contextual experiences.

xxx Mashriqyat - Easternism: Eastern normative structure and philosophy of life, which in the given context meant Islamic, 'Muslim'/ashrāfiya morality, Indo-Islamic, composite culture, indicating conflicting ideological predilections.

xxxi Arya Samāj was formed in 1875 for the revival of Vedic values and practices. It gained notoriety for its shuddhī activities for conversion to Hinduism creating communal tensions.

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Corporate Social Responsibility and Prevention of HIV & AIDS in the Tea Gardens of Assam, India

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Abstract

In India, 2.348 millionⁱ people were suffering from HIV and AIDS in 2019 as the global AIDS epidemic continued to growⁱⁱ, especially affecting the poor and the marginalised. Certain geographic areas and business sectors are worst hit and the tea industry in the northeast state of Assam is a case in point. Tea sector is a labour-intensive agricultural industry, and to sustain its operations, it depends on the tea garden workers who make the world-famous brew, despite the working conditions that render them susceptible to a wide range of communicable diseases including HIV and AIDS. The study examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility (CSR) initiative. HIV and AIDS prevention in the workplace is especially urgent in labour-intensive markets where public resources are constrained. This paper intends to assess the risks posed by HIV and AIDS to tea sector workers and to assess the feasibility of incorporating HIV and AIDS into core social responsibility policies of the tea companies to ultimately establish the business case for a policy on HIV and AIDS prevention for the Assam tea sector. Toward the end, the paper explores on how the tea companies in Assam can incorporate HIV and AIDS into their core activities of CSR by encouraging workplace prevention programmes for HIV and AIDS and extending appropriate care as well as support wherever needed.

Key words: Assam, Corporate Social Responsibility, HIV/ AIDS, Tea Garden

Introduction

The Indian state of Assam is world famous for its tea but the industry responsible for producing the renowned brew is increasingly under the looming shadow of HIV and AIDSⁱⁱⁱ. Tea is an agro-based industry directly dependent on manpower resources to sustain its operations and it is essential to assess the future impact of HIV and AIDS on the indispensable human resources at an early stage. Assam is

the largest single tea growing region of the world where it contributes nearly one sixth of the total global tea production (Economic Survey, Assam, 2015; Tea Board India, 2016). Nearly half of the total Indian tea production comes from Assam's 750 estates and 100,000 smallholder plots (Tocklai Tea Research Institute, 2016). The tea sector employs approximately 1.2 million workers in Assam (Trustlaw, 2015). They have different ethnic, linguistic and religious backgrounds as they originally migrated to Assam from different parts of the country. The workers' literacy rate is lower than average in Assam and school dropout rate is high in the tea garden areas of Assam. According to Assam State HIV Prevention Society, about 17 per cent of the labours are temporary, and they migrate seasonally to the neighbouring high HIV prevalent states^{iv}.

Moreover, tea is the backbone of Assam's economy, its only organised industry and the largest employer in the state^v. Ever since the introduction of the tea plant in Assam 1823, the impact of the tea industry on the state could hardly be overestimated. It was the remarkable growth of the tea industry under the British rule that proved the foremost factor in the increasing prosperity and significance of Assam. Mr. Robert Bruce discovered the local tea plant in the upper part of the Brahmaputra valley in the early 19th century. After initial doubts about the authenticity of the Assamese tea plant, it was eventually acknowledged to be a variety of the true tea plant marking the rapid rise of the local tea industry. Despite several setbacks on the way, today Assam is a leading tea producing region globally as a considerable percentage of the world's tea comes from Assam's numerous tea gardens. In the Indian context, Assam is considered the heartland of the Indian tea industry as the state's tea production accounts for about 55 per cent of the country's total tea output.

The rise and the success of the tea industry in Assam would not have been possible without the tea estate labourers. It was clear from the very beginning of tea cultivation in the state that the local labour force was not adequate to cater to the growing need for tea garden labourers. Assam had very few landless labourers and, after introducing a series of facilitating legislation, the Assam Company started hiring labour force from Bengal. The legislation introduced between 1863 and 1901 had a two-fold aim – ensuring that the employer could use the services of the imported labourers for long enough periods to recover the costs of recruiting and transport to the tea garden, while the labourer would be protected against fraudulent recruitment and provided adequate remuneration for the duration of the labour contract^{vi}.

In Assam tea industry, three categories of labour are commonly found. Permanent worker category denotes those who reside inside the tea estate and whose names are entered in the estate roll of workers; outside worker resides outside the estate, but whose name is entered on the estate roll of workers; seasonal or temporary worker, who has been engaged for work in the tea estate which is of an essentially temporary nature likely to be finished within a limited period. The majority of workers in the Assam tea sector reside in the tea garden together with their dependents. The outside workers generally come from the nearby places to work in the tea garden. The key issue today in most of the tea gardens is managing surplus labour. The main reasons for surplus labour are seasonal surplus due to an increase in non-working dependents; surplus as a result of a high birth rate; and surplus as a result of settlement of a portion of recruited emigrants in villages near the plantations in Assam.

Locating HIV and AIDS in the Indian Tea Industry

As per the UNAIDS Country Assessment record for India, the first HIV infection case was documented in Chennai in 1986. In 2019, almost 23.48 lakh cases have been reported to the National AIDS Control Organisation (India HIV Estimates 2019). In the Indian context, HIV is transmitted predominantly via heterosexual route, followed by injecting drug use^{vii}. According to the National AIDS Control Organisation HIV Status Report 2019, HIV prevalence among adult males (15-49 years) was estimated at 0.24 per cent (0.18-0.32%) and among adult females at 0.20 per cent (0.15–0.26%). However, the National AIDS Control Organisation highlights the wide gap between the reported and estimated figures because of the absence of epidemiological data in major parts of the country. The epidemic is concentrated in few states out of twenty-eight Indian states, including three Northeastern states of Mizoram, Manipur and Nagaland, neighbouring states to present Assam. As per the India HIV Estimates Report (2019), the states with the highest adult HIV prevalence from the Northeastern region are Mizoram (2.32%), Nagaland (1.45%), Manipur (1.18%), Meghalaya (0.54%) and Assam (0.09%). In the Northeastern states, the dominant mode of transmission is injecting drug use as opposed to heterosexual route in southern states.

As the AIDS epidemics is rapidly spreading across international boundaries, the social and economic impact of this grave public health disaster can be felt in Northeast India, one of the less economically developed parts of the country. Northeast India has been subject to growing concerns about spreading HIV and

AIDS and its leading state of Assam is no exception. The National AIDS Control Organisation of India (NACO) characterises Northeast India as a high threat area for HIV and AIDS and tea industry as one of the most vulnerable sectors to HIV and AIDS. Of the estimated workforce of approximately 12 lakhs in the Assam tea sector, almost half is made up of temporary labour. Women constitute nearly 51 per cent of the total workforce of Assam tea industry^{viii}. Studies on the state of health of the tea workers have revealed that malnutrition and disease are only too common among the tea workers and a large number of man-days are lost because of sickness (Misra, 2002). This implies that tea industry in Assam would be an especially sensitive zone to the spread of the fatal epidemic.

The incidence rate and destructive impact of HIV and AIDS on the tea industry has been previously explored in several tea producing countries other than India. A study done by Boston University's Centre for International Health shows that, in Kenya, the daily difference in tea leaves plucked by a healthy worker and a tea plucker with AIDS in the last three months of his/her life. The study quantifies the cost of AIDS in terms of lost productivity and gives employers involved in similar labour intensive agricultural ventures an idea of how the epidemic could affect them economically. The cost of AIDS included both direct costs, such as benefit payments, medical treatment and recruitment, and indirect costs, such as reduced productivity and increased absenteeism. The study confirmed that HIV and AIDS is having a serious and debilitating effect on the tea industry, with compound AIDS-related costs which were as high as 9 per cent of some firm's profits. This is also the case in other business sectors – for example, a South African sugar mill found that its HIV-positive employees took, on average, fifty-five additional sick days during the last two years of their lives^{ix}.

For instance, the tea industry in Malawi, one of the countries at the core of sub-Saharan Africa's HIV and AIDS epidemic, is losing millions of US dollars because of AIDS. The government of Malawi, Africa's second largest tea producer behind Kenya, has estimated that about one million Malawians have already been infected with the HIV virus. Tea garden owners say worker absenteeism has grown because of AIDS-related illnesses. Thus a combination of factors, including AIDS, prevents Malawi from achieving its goal of harvesting more than 80,000 tonnes of tea annually^x.

Some large tea companies in India have already expressed their awareness of the impact of HIV and AIDS on the human resource of the tea industry and adopted a

policy to combat the disease. For example, TATA Tea Ltd. was one of the first companies in India to develop its own workplace policy on HIV and AIDS following the 5th International Congress on AIDS in the Asia and the Pacific in 1999 in Malaysia. The Congress declaration, signed by TATA Tea, called for developing partnerships with private and public sector, non-governmental organisations and communities in order to foster better social responsibility^{xi}. TATA Tea policy on HIV and AIDS and the workplace commits the company to a number of measures designed for effective HIV and AIDS prevention and dealing with HIV and AIDS in the workplace. The policy complies with the state, company and local legislation on HIV and AIDS but goes beyond the minimalist approach. The policy specifies a number of non-discriminatory measures such as a ban on pre-employment HIV screening, ordinary workplace contact and employee protection from stigmatisation and discrimination by co-workers, condom distribution, STD care and, importantly, continuation of employment and up-to-date education on HIV.

At state level, action to introduce HIV prevention activities in the tea gardens in Assam has been undertaken by the Assam State AIDS Control Society (ASACS). The ASACS believes that HIV prevention through peer intervention is most appropriate and most effective for the sector due to the low literacy rates of the workers and their dependants. In 2002, the ASACS held advocacy meetings with management, tea association, trade unions and NGOs working in the tea gardens. The meetings were followed by training peer educators from sixty tea gardens on the topic of HIV prevention. The main initial constraint, the ASACS reported, came from the indifference of the management and the tea workers themselves. So far there has been no authentic survey as admitted by ASACS on status of HIV and AIDS conducted among the tea garden population.

Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a *nom de jour* today globally and it has now been catching up in India too. CSR is a comparatively new study field in Asia, whereas a great deal of research has already been conducted on CSR in Western countries (Chapple & Moon, 2005). Chapple and Moon (ibid) argue that although the concept of CSR has existed in business and business research and education for many decades, it has recently enjoyed something of a revival as noted even by those sceptical of the concept. There is no single universally accepted definition of CSR and to date many global companies differ in their

understanding and, consequently, implementation of corporate social responsibility activities. CSR was initially defined as the social involvement, responsiveness, and accountability of companies besides their core profit activities and beyond the requirements of the law and what is otherwise required by government. However, this definition is becoming more and more problematic; as various business cases for CSR are being made, governments began deploying incentives for CSR, and compliance with the law in a variety of global jurisdictions is emerging as a CSR issue (ibid). In general terms, CSR refers to business decision-making that takes into account ethical values, respect for people, communities and the environment. CSR is more than pure philanthropy or a collection of one-off handouts motivated by marketing and public relations but, rather, a comprehensive set of policies and practices integrated into daily business operation. Thus, CSR is a constant commitment by the corporates to integrate social and environmental concerns in their business strategy.

In India, the understanding of CSR reflects a dichotomy of extreme views. Either CSR is viewed as the bare minimum of operating business within the legal boundaries or as purely one-sided philanthropy with no returns on the company's investment. Despite long tradition of philanthropy in India, Indian companies practice corporate social responsibility that is mostly ad hoc and driven by top management. The general picture is that of emphasis on philanthropy as opposed to making it an integral part of the business. However, with the implementation of Section 135 in the Companies Act 2013, India became the first country of the world to have statutory obligations of CSR for specified companies^{xii}. There is a lot of evidence that CSR is gradually gaining ground as an essential component of the business-society relations. The development of a range of business coalitions to advance CSR such as the Global Business Coalition on HIV/AIDS is another illustration, to report on CSR such as the Global Reporting Index also testify to the growing awareness of the key role of CSR in the business world.

However, as this study shows, most of the medium-size tea garden companies operating in Assam do not have a specified CSR policy and hence there is need for action, considering the future impact of HIV/AIDS.

Initiatives: Global and Local

There have been a number of initiatives, both at state and international levels, tackling socio-economic conditions of tea garden labourers and some specifically

targeting HIV and AIDS. The government of India has occasionally taken special measures for improvement of the socio-economic conditions of tea garden labourers, but with little success. The following problems have been commonly identified – wages are inadequate for sustainable livelihood; housing conditions are unsatisfactory; inadequate medical and welfare services and required substantial improvement and expansion; lack of education, etc. The last two factors are especially crucial with regard to HIV and AIDS situation in the Assam tea industry, as will be discussed later.

After the independence, the Plantation Labour Act, 1951 was a significant step toward ensuring socio-economic development of the tea garden labourers. This Act had provided extensive provisions for overall welfare of the labourers. Under this Act, the government of Assam passed a series of rules to regulate the working conditions of the tea garden labourers including the Assam Factory Rules, the Assam Industrial Disputes Rules, the Assam Minimum Wages Rules, 1952; the Assam Plantation Labour Rules, 1956; the Assam Plantation Provident Fund Scheme, 1959; and the Assam Maternity Benefit Rules, 1965.

Today the practice differs from garden to garden but, in general terms, the workers are provided with the following facilities and benefits. The long list of benefits includes free housing, free medical facilities, education for children up to the age of fourteen, free fuel to be collected and cereals at subsidised rates, land to cultivate on a very nominal rent, free grazing land for the workers' cattle, free water supply, free sanitary arrangements, equipped crèches for workers' children with attendants, canteens on 'no-profit' basis, recreation centres, free liquid tea while on duty, free dry tea in some estates after realisation of excise duty, benefit of fishing in various gardens drains, ponds, maternity benefit allowance, sickness allowance, bonus to workers, leave with wages, repatriation where labourers are recruited from outside state.

However, health was one sector that did not perform satisfactorily. The Assam Plantation Rules of 1956 provide for two types of hospitals, garden hospitals and group hospital. Every employer is required to provide a garden hospital in his plantation according to the standard laid down in the rules. A minimum of fifteen beds is to be provided in every garden hospital per 1000 workers. Each hospital should have permanent infrastructure including a general ward for males, females, maternity, family planning, T.V. & V.D. Clinics, out-patient department, consulting room, minor operation and dressing room, dispensary and drug store.

Group hospitals are to be established wherever necessary only after consultation with the Medical Advisory Board. The group hospitals are required to have a minimum 100 beds and at least three beds per 700 workers.

In addition to the government schemes, the Tea Board also has a unit responsible for welfare activities of tea garden labourers under the Tea Act. The unit carries out various welfare programmes and provides financial assistance to a range of schemes including financial assistance for extension of existing facilities in hospital; financial assistance for setting up of welfare centres; assistance in procurement of milk powder, butter, and oil; and assistance in finding employment.

Initiatives tackling specifically HIV and AIDS have also come from international organisations such as the United Nations. The United Nations believes that multiform approach constitutes the best response to the global challenge of AIDS. UN agencies are increasingly teaming up with other stakeholders as businesses globally are also coming together in their joint realisation of the scale and destructive impact of HIV/AIDS on their operations.

In January 2006, UNESCO and the Global Business Coalition (GBC) on HIV and AIDS signed a partnership agreement to reinforce mobilisation against HIV and AIDS. The Global Business Coalition against HIV and AIDS is an alliance of 200 international companies, employing more than 54 million people worldwide. Founded in 1997, GBC encourages its members to commit themselves to the fight against the AIDS pandemic and helps them develop HIV and AIDS policies adapted to their specific needs, globally and locally, for the benefit of employees, families, and, in some cases, communities. The agreement, in effect from 2006 to 2010, aimed at rallying the entire spectrum of corporate stakeholders to integrate HIV and AIDS prevention education into the global development agenda, adapt preventive education to the diversity of needs and contexts, encourage responsible behaviour, and stimulate public-private partnerships at the local level between GBC member companies and UNESCO partners.

One of the aims of the study to be discussed in full below is to map the awareness of tea garden managers of the available global initiative to tackle the issue of HIV and AIDS at local level. The following global initiatives were included into the survey: Millennium Development Goals (MDG) which ended in 2015 and Sustainable Development Goals (2015-2030); the ILO Code of Practice on HIV

and AIDS and the world of work; International Guidelines on HIV and AIDS and Human Rights (UN); Global Reporting Initiative (GRI) – a framework for sustainability reporting on economic, environmental, and social performance by all organisations; UN Guiding Principles on Business and Human Rights.

Rationale and Aim of the Study

This study examines the risk of HIV and AIDS among tea estate workers in Assam and the potential of addressing the issue through the channel of corporate social responsibility initiative. HIV and AIDS prevention in the workplace is especially urgent in labour-intensive markets where public resources are constrained. The study seeks to address on how the tea companies in Assam can incorporate HIV and AIDS into their core activities of CSR by encouraging workplace prevention programmes for HIV and AIDS. This study examines the risks posed by HIV and AIDS to tea sector workers and to assess the feasibility of incorporating HIV and AIDS into core social responsibility activities of the tea companies to ultimately establish the business case for a policy on HIV and AIDS prevention for the Assam tea sector.

Moreover, most of the documented evidence on CSR as a component of business-society relations refers to North America, Western Europe, Australasia, and Japan. There has been relatively little research on the rest of Asia including Northeast India (Chapple & Moon, 2005). The same can be said of the tea sector as a whole. However, there has been growing interest in establishing the business case for HIV and AIDS prevention through CSR channels and several pioneering studies were conducted in the tea sector in Kenya and Malawi. In this backdrop, the study develops the following hypotheses for conducting the research as – Assam tea sector is particularly sensitive to HIV and AIDS due to the nature of the industry, in particular its labour-intensive character; partial reliance on migrant workforce and low literacy rates among the workers; research proves the links between HIV and other communicable diseases such as malaria and TB in labour intensive industries.

The Survey Methods

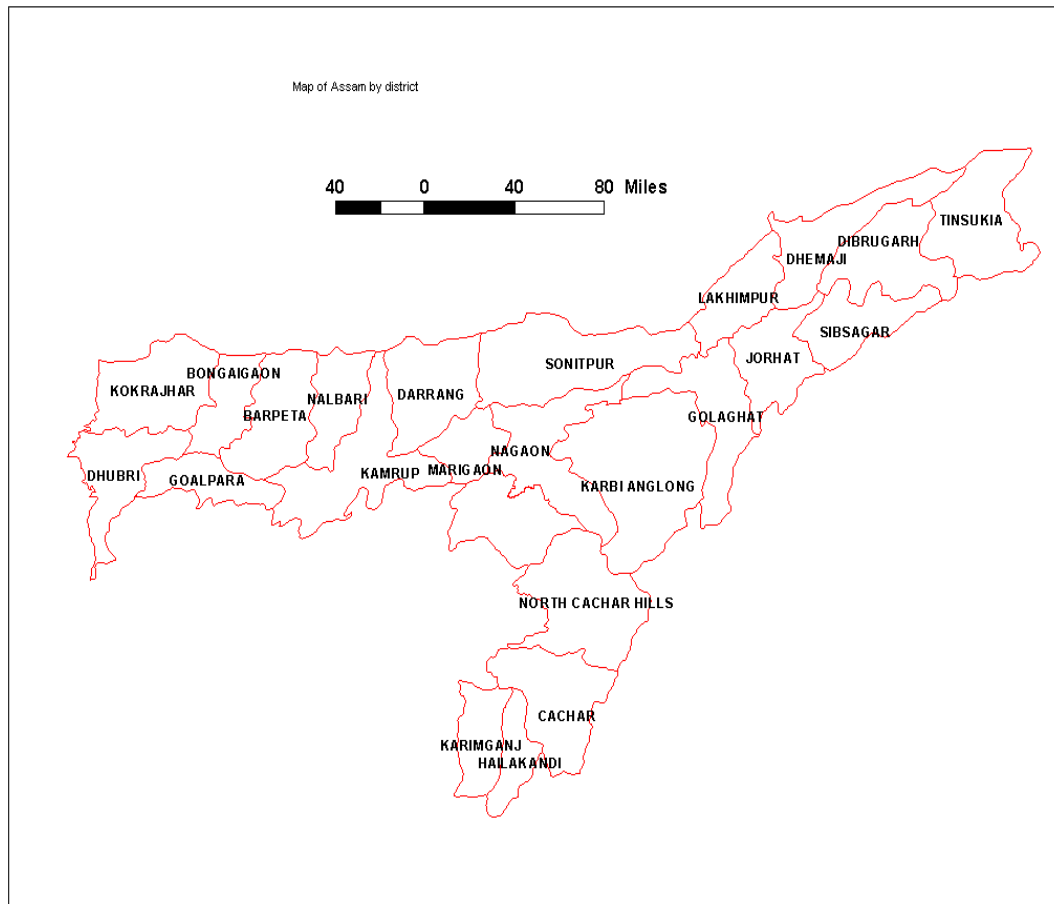
The survey instrument, consisting of five sections with an intent to collect information covering largely the time period between 2010-2020, was developed for the said research purpose. Section A addressed general information on the tea estate in question including the number of permanent tea workers and their

distribution into age groups. Section B addressed the essence of the study mapping the company's understanding and practice of CSR. In the third section C, the survey turned to probe the company's view of and strategy towards HIV and AIDS. Section D, correspondingly, mapped existent activities on HIV and AIDS and welfare schemes run by the tea companies. The final section E covers the business strategy of the tea gardens.

The primary criteria for selecting tea estates for the study have been their membership in the Tea Association of India (TAI). Of twenty-five tea gardens selected for the study, only three were not members of the TAI – Margherita Tea Estate, Greenwood and Dewan Tea Estates. Thus, the majority of tea gardens were randomly selected from the medium-size members of TAI, deliberately excluding large companies. The required information was gathered through contracting the selected tea gardens with the help of the TAI office in Jorhat, Assam. The fieldwork was conducted through visiting some of the tea gardens in person, interacting with tea garden managers/officials and administering questionnaire through postal services.

Map of Assam by District

The tea gardens participants in the study are located in the districts of Jorhat, Dibrugarh, Golaghat, Sibsagar, Sonitpur, Nagaon, Lakhimpur, Darrang, Cachar, Tinsukia (see map below).



Data Analysis and Explanations

Section A: General Information

The information on CSR policies and HIV and AIDS from the twenty-five tea gardens of Assam has been gathered through interviews based on the questionnaire. The majority of the tea gardens were members of the Tea Association of India (TAI) with the exception of Margherita Tea Estate, Greenwood and Dewan Tea Estates. The surveyed tea gardens are all located in the state of Assam with the number of permanent employees ranging from 342 to 1736. Of twenty-five surveyed tea gardens, eight failed to provide the number of their permanent employees.

As per the India HIV Estimates Report (2019), the high risk group for HIV

infection is the young sexually active adults between the ages of 15-49. In a majority of the surveyed tea gardens, majority of the workers belonged to the 30-39 age group, while in a minority of the tea estates, workers belonged to the 40-49 age group. Only two gardens – Namdang and Dewan – had majority of its workers between the ages of 20-29. Thus, one may conclude that the overwhelming majority of the tea garden employees are in the risk group for the spread of HIV and AIDS. According to NACO statistics, fewer women are infected with HIV and AIDS in India than men. All tea gardens had a substantial proportion of female workers. This characteristic of the labour forces goes back to the establishment of the tea industry in Assam, when women were perceived as particularly well suited to the delicate business of plucking tea leaves with their fingers.

Section B: Corporate Social Responsibility (CSR)

As for a formulated CSR policy, eleven tea gardens out of twenty-five did not have a policy document. Those which had a CSR policy in place had introduced over a long span of time ranging from 1969 at the earliest and as later as 2019. Nevertheless, some of the tea gardens that did not have a CSR policy had at their disposal a number of policy instruments tailored for individual issues such as, for example, health and safety, tuberculosis and malaria. The employers have various options for communicating their policies to the employees. Most commonly, the tea garden managers communicated their policies through a representative of the workers, while displaying policy texts on the notice board was the second most popular option. However, other alternatives such as written communication and workshops were also used by some tea gardens.

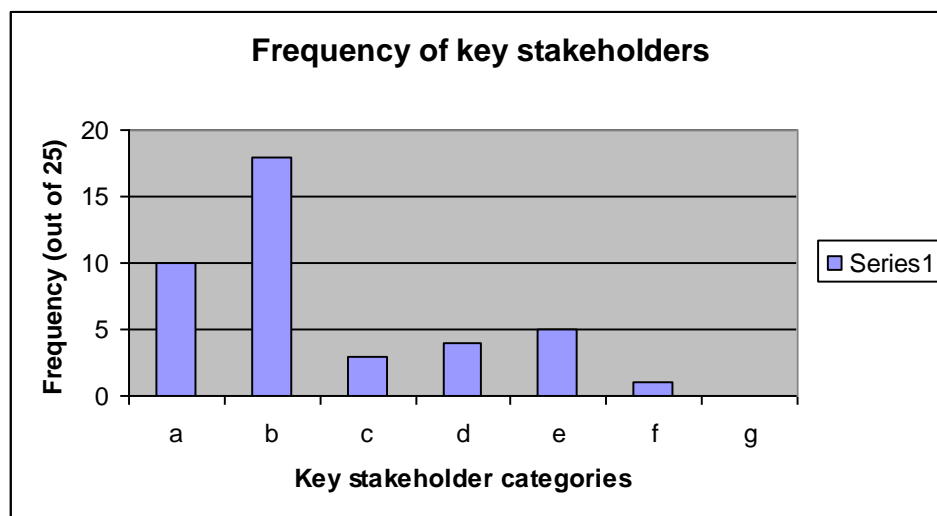
It clearly emerges from the replies to the questionnaire that absolute majority of tea garden managers view the workers and their families as the key stakeholders. Strikingly, none of the tea estates identified any non-governmental or civil society organisations as their key stakeholders.

TABLE 1: PERCEPTION ON KEY STAKEHOLDERS IN TEA GARDENS

KEY STAKEHOLDERS	FREQUENCY
a) Workers	10
b) workers and their families	18

c) supply chain	3
d) community	4
e) government agencies	5
f) multilateral agencies	1
g) NGO or civil society organisations	0

Figure 1: Frequency of Key stakeholders in Tea Gardens



The majority of the surveyed tea gardens did not cover their supply chains or value chains in implementing their CSR activities or extending their existing welfare schemes. Still, eight tea companies out of twenty-five did extend their CSR policies to supply/value chains. One potential explanation for why very few tea gardens considered their supply or value chains as their stakeholders may well lie in the fact that the responding managers did not fully understand the concept of stakeholders and/supply chains.

Section C: Risk Management

Risk management is essential for running industries such as the tea sector which are highly labour intensive and, according to research, also due to the nature of

the work and working conditions prone to various health risks such as malaria and, notably, HIV and AIDS. Most companies surveyed in this research had a risk management policy in place, which reflects the need for risk management strategy in the field. However, four tea gardens out of twenty-five did not have a risk management policy.

Most of those tea gardens that did have a risk management policy included multiple factors in their business risk assessment procedures. Social risks were most often mentioned as risk factors included in the business risks, followed by the environmental risks. Several tea gardens also noted the risk to their reputation and supply chain.

The perceptions on what constituted major risks to the workforce and to the business were then investigated in more detail.

TABLE 2: PERCEPTION ON MAJOR RISKS TO THE WORKFORCE

HEALTH ISSUES	YES
Malaria	10
TB	8
Cholera	0
Typhoid	0

It is alarming to see that six tea garden managers/officials did not consider any of the above diseases as a risk to their workforce or business. The remaining nineteen tea gardens considered either malaria or tuberculosis or a combination of the two as major risks to the employees. Six tea garden managers viewed both malaria and tuberculosis as eminent risks to their work force. However, cholera and typhoid were not named by any of the respondents. These findings raise the following questions: Do these results point in the direction of lacking awareness of the tea garden management of the health status of their workers? Are the results indicative of the actual state of affairs or, rather, illustrative of the manager's perception of the state of affairs?

Most interestingly for the purposes of this study, the response concerning the

perception of HIV and AIDS as a potential threat to the labour force has been almost evenly divided: while twelve tea garden managers did not consider HIV and AIDS as a potential risk, thirteen managers did. In comparison to the other diseases discussed earlier, this clearly demonstrates that HIV and AIDS is viewed as by far most potent threat to the work force in contrast to ten tea garden managers considering malaria the major risk in the previous category of other diseases excluding HIV and AIDS. All of the surveyed tea gardens had a health care centre, according to the questionnaire responses provided by the managers.

Section D: Activities on HIV/AIDS and Welfare Schemes

Once again, the surveyed tea gardens were divided into two almost equal groups on the basis of whether they ran any HIV and AIDS awareness raising activities: while thirteen tea gardens did not practice such activities, twelve tea gardens did run activities with the intention of raising awareness of the epidemic. Most curiously, some of the tea gardens which did not consider HIV and AIDS a potential threat to their work force or to the tea industry as a whole still chose to run awareness activities on their premises. Most of the tea gardens running such activities targeted them specifically at the employees and their family members. However, individual tea gardens also mentioned targeting the whole supply chain, the community as a whole or all of the listed options.

The surveyed tea gardens employed a wide array of methods to carry out the HIV and AIDS awareness work and many of the responsible managers indicated that they used several methods. Only one tea estate – Muttrapore – mentioned using peer education as a method of awareness-raising; three tea gardens – Rungagoga, Radhabari and Margherita – run their awareness raising activities through an NGO, and in the case of the Margherita tea estate, the NGO in question was the only method of awareness-raising. A considerable proportion of the twelve tea gardens that were involved in HIV and AIDS work were using a combination of two or more methods.

However, the picture changes drastically once we turn to formal training on HIV/AIDS and/or STDs. Only four of the surveyed twenty-five tea gardens had implemented a formal training programme on HIV and AIDS for their employees. Hence, there is a striking gap between informal awareness raising activities and formal training with the emphasis on the former. This is not surprising considering formal training not only requires resources but also expertise and

trained personnel. All four companies that offered formal training to employees also extended it to the other stakeholders.

Section E: Business Strategy

It emerges from the study that the tea sector companies in Assam are slowly awakening to the looming threat of HIV and AIDS to their workers and, ultimately, to their business. Of the twenty-five tea gardens surveyed, five have already completed an assessment of the financial impact of HIV and AIDS on their business, while three tea estates were in the process of undertaking such a study. This clearly indicates some awareness and interest on behalf of the tea garden management of the potential impact of HIV and AIDS. Again, paradoxically, a few tea gardens have undertaken a study of the financial impact of HIV and AIDS while not considering it a risk to the labour force or the tea sector as such.

Similar results were revealed in terms of evaluating business opportunities and benefits of engaging into HIV and AIDS awareness-raising and prevention activities. While four tea gardens were in the process of evaluating business opportunities and benefits of fighting HIV and AIDS, only three tea estates have already undertaken such an evaluation, leaving the majority of tea gardens as not considering HIV and AIDS in these terms.

Many of the surveyed tea companies were either involved in philanthropic activities or were making community investments: eleven tea garden managers/officials indicated such involvement, but that still leaves us with the majority of fourteen tea estates not involved in any philanthropic activities. In terms of collaborating with any governmental, non-governmental or multilateral agencies on the issue, five of the surveyed tea gardens were involved in such partnerships.

The areas of cooperation were multiple ranging from at least two to the maximum of five areas of cooperation. A very few tea gardens are at present working on issues of HIV and AIDS in cooperation with an external partner, National Rural Health Mission (NRHM). However, even the leading tea garden did not follow any of the available global initiatives such as Millennium Development Goals (2000-2015), the ILO Code of Practice on HIV and AIDS, etc. Not surprisingly, none of the surveyed tea gardens used any of the available global initiatives as

reference framework.

However, thirteen tea garden managers/officials considered incorporating sustainable HIV and AIDS prevention activities into their core business strategy as a competitive business advantage – clearly indicated the scope for work in this area. The study shows that while the initiatives are currently lacking, especially in terms of formal training for HIV and AIDS prevention and awareness raising as well as usage of existent global guidelines on HIV and AIDS, there is a potential demand and understanding on the part of the managers that incorporating HIV and AIDS may be good for their business and even necessary in the long run.

The study has concentrated on small and medium-sized members of the Tea Association of India. For example, TATA Tea, one of the largest players in the Indian tea sector, has implemented a variety of welfare projects for its employees and their families, who – according to TATA – are drawn from ‘the weaker section of society’. In Assam, the range of programmes includes a referral hospital and research centre, providing free care not only to the workers and their families but also to the poorer sections of the community; special health camps for eradication of malaria in the tea estates of Assam; mobile health clinics and other ‘community upliftment’ initiatives. For example, TATA Tea has also been pioneering HIV and AIDS workplace programmes in cooperation with other partners such as the Indian Medical Association and other allied agencies of the state. Last but not the least, we must remind ourselves that the survey results reflect the opinions of the tea estate management, not the workers. The viewpoint of the tea garden workers may be different considering the unequal relationship between the management and the workers.

According to Assam Branch Indian Tea Association (ABITA) database of tea garden medical facilities, not a single case of HIV infection has been found among the tea workers, but the association was not confirmed about the testing procedure. Also, TAI did not perceive HIV and AIDS as an immediate risk to the garden workers, but acknowledged it as a potential risk to the workers and to the community in near future. On the other hand, for example, TATA Tea recognised HIV and AIDS as a major risk to the employees and has been implementing various measures towards preventive actions. TATA Tea has developed an action plan to address the issue related to HIV and AIDS among the employees but the company was more interested on developing an action plan towards prevention of HIV and AIDS than conducting any intervention study to evaluate the

vulnerability of workers.

It has been suggested that tea estates are especially vulnerable to the impact of AIDS as they employ large numbers of people. Apart from the statutory benefits like bonus, provident fund, gratuity, etc., the tea worker is supposed to be provided with free housing, medical facilities, education for the children, adequate arrangement for sanitation, etc. With a few exceptions, most of the gardens have no proper medical facilities, sanitation, and housing facilities. Every year water-borne diseases take a heavy toll of life in Assam's tea gardens due to the bad sanitation and the lack of drinking water in the gardens. Only a few years ago, hundreds of tea labours of Assam's tea gardens died due to gastroenteritis epidemic, inviting organised protest from the trade unions to highlight the shocking state of sanitation and medical facilities in most of the gardens affected by the epidemic^{xiii}. Of late, the Covid -19 infections have spread across almost all the tea estates of upper Assam. This epidemic has badly affected the health of several thousands of tea workers including death of more than 20 labours^{xiv}.

Conclusion and Policy Recommendations

India is the largest producer and consumer of tea in the world, but in recent years both the production and export of tea has shown a declining trend, and the Assam tea industry is no exception. While reasons for the decline are multiple, the state of health of the tea workers emerges as a key factor for the productivity and long-term viability of this labour-intensive and risk-prone industry. The vulnerability of the tea garden labour force to HIV and AIDS as well as other communicable diseases is, however, unmatched by measures designed to tackle this vulnerability with very few exceptions among the surveyed medium-sized companies. At the same time, some individual companies and large companies such as TATA Tea have shown their awareness of the detrimental potential of HIV and AIDS and chose to incorporate prevention and awareness-raising activities into their already existent CSR schemes.

This study aimed to provide an overview of selected tea company characteristics in Assam. Ignoring HIV and AIDS, and not analysing the risks that it presents to a business or taking no action may prove to be the biggest risk. It is, therefore, important to identify where risks are highest to the business. Having information on the company's processes and their potential vulnerabilities is important in focusing on company prevention efforts.

The survey results clearly show that there is an alarming lack of awareness and, consequently, concern among tea estate managers of the potential health threat to their workforce. While all surveyed tea gardens had health care arrangements, only a couple were running programmes specially tailored to tackle HIV and AIDS. The Economic and Political Weekly commented on the piecemeal nature of corporate social responsibility activities by saying that, 'Surely, a sense of involvement cannot be brought about by an occasional dole for a sports complex or a literary prize. What is needed is the participation of the industry in the effort to bring about an overall improvement in the quality of life of the common people. This does not necessarily call for huge amounts of money but it does call for some degree of sensitivity to the plight both of the tea worker as well as of the villagers living next door' (Misra, 2002, p. 3031).

On the basis of the survey findings, several policy recommendations can be made. However, ultimately, due to vast differences between existent practices in the surveyed tea gardens it can be concluded that, for any HIV and AIDS prevention to be effective, it will need to be specifically tailored for the needs of each individual company on the basis of its existent capabilities and preparedness for action.

Firstly, as all tea gardens have health care facilities, HIV and AIDS prevention and awareness-raising programmes must be integrated into the already existent schemes in order to achieve cost effectiveness as well as long-term sustainability.

Secondly, HIV and AIDS education has an absolutely crucial role and it has to be extended to the local community in addition to targeting the tea labourers and their families. As emerges from the survey, a large proportion of tea garden labourers are of the age group most vulnerable to HIV infection in India. Research shows that the impact of health education has distinct advantages and potentially powerful impact in terms of its relatively low cost and great effectiveness. In addition to incorporating health education for tea garden workers, the questionnaire responses of the tea garden managers demonstrate the lack of awareness of HIV and AIDS threat, and thus, call for specifically designed education programme for managerial staff as well as key people among the labour force, such as workers' representatives, trade union leaders and welfare officers.

Thirdly, as the survey has revealed vast differences between the tea gardens in terms of awareness and existent CSR schemes as well as HIV and AIDS

prevention activities. Therefore, it is essential to assess the needs base of each tea estate individually before designing a suitable intervention programme. The assessment must focus on the target population of tea garden labour force, their families and local communities. The impact of introduced prevention and awareness programmes has to be regularly reviewed in order to fine-tune and frame future strategies for intervention.

Integrating HIV and AIDS into corporate social responsibility in the Assam tea sector is clearly a challenge for the medium-sized companies as their CSR activities are yet to take developed shape. However, the looming threat of HIV and AIDS to the tea garden workforce is a development that needs to be arrested in its course in order to allow sustainable growth of the industry. There is a clear business case for integrating HIV prevention into the CSR framework of the Assam tea sector. Two issues must be addressed in order to facilitate such incorporation and build a convincing business case – raising awareness of the management of the costs and benefits and development of corporate social responsibility as a whole.

Notes:

ⁱ As per Report on India HIV Estimates (2019), approximately 23.48 lakh/2.348 million people have been affected with HIV at national level. However, a declining trend of HIV infection since 2010 has been recorded in India HIV Estimates (2019).

ⁱⁱ 37.7 million people globally were living with HIV in 2020 estimates by UNAIDS 2021.

ⁱⁱⁱ The terminology has moved on in the past years to using ‘HIV and AIDS’ as standard. See p.8 in the UNAIDS Guidelines [UNAIDS Terminology Guidelines - 2015](#)

^{iv} Bhuyan, N. (2004). *HIV prevention intervention among the tea garden workers in Assam*. International AIDS Society.

^v Tea and trouble. (2005, December 1). *The Shillong Times*.

^{vi} This historical fact can be ascertained from *A History of Assam* by E. Gait, E. (2004, p. 341).

^{vii} See UNAIDS India Country profile at http://www.unaids.org/en/Regions_Countries/Countries/india.asp

^{viii} Report on *Capacity Building Program on International Trade towards Enhancement of Competitiveness of Indian Agriculture* by Ministry of Agriculture, GOI & Indian Institute of Foreign Trade <http://agritrade.iift.ac.in/html/Training/ASEAN%20E2%80%93%20India%20FTA%20Emerging%20Issues%20for%20Trade%20in%20Agriculture/Tea%20Export.pdf>

^{ix} Family Health International (2002): *Workplace HIV/AIDS Programs: An Action Guide for Managers*.

^x AIDS sows ruin of Malawian tea industry. (2005, July 20). *China Daily*. Retrieved from http://www.chinadaily.com.cn/english/cndy/2005-07/20/content_461608.htm

^{xi} For TATA Tea policy on HIV/AIDS, see Rafique (2002).

^{xii} As per the Act, Companies with a net worth of Rs 500 crore or more, or turnover of Rs 1,000 crore or more, or a net profit of Rs 5 crore or more during a financial year need to spend 2 per cent of the average net profits for the subsequent three years on CSR activities.

^{xiii} For detailed impact of epidemic, see Misra (2002).

^{xiv} 350 tea estates in Assam hit by COVID-19. (2021, May 30). *The Hindu*. Retrieved from <https://www.thehindu.com/news/national/other-states/350-tea-estates-in-assam-hit-by-covid-19/article34683248.ece>

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Article: Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam

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Census as a Site of Contestation: Identity Politics among the Plains Tribes in Colonial Assam

--- Suryasikha Pathak

Abstract

Many historical studies of the census use the corpus of demographic knowledge as a part of ethnographic inquiry. But recent studies have brought into focus the politics of numbers, or the political arithmetic, because unlike in the 19th century, quantitative approaches are no longer enmeshed in a scientific attitude which is now regarded as naïve empiricism. The census admittedly was a document of great ethnographic value. But the question of numbers also becomes important from the 20th century onwards. Early colonial censuses were ethnographic classificatory exercises, but such concerns did not begin with the census. These issues and ideas were already a part of the administrative thinking by the 1850s. The census has also been an important historical source as a part of ethnographic inquiry, but it has also become important to inquire into the relationship between quantitative and qualitative definitions of populations. Though census enumeration and its awareness led to certain rigidity in defining collective identities to a considerable degree, it also set into motion controversial mobility of nationalist, ethnic, communal and other identities. This paper attempts to relook at the early censuses and the debates it generated within the purview of identity articulation. The situation in terms of enumeration and classification was complex in Assam, where the diversity of communities combined with remarkable fluidity in demographic structure made it challenging to pin down communities. Within such complexities reified identities took shape and articulated their politics.

Key words: Colonial census, Enumeration, Languages, Religion, Tribes/Castes

Introduction

Census as an exercise, especially colonial census was a ‘unique project’, because numbers, classification, explanation, all became a document which could be used in manifold ways (Padmanabh, 2011). Social sciences have gleaned much data from census as the corpus of the demographic data was one of kind, before other

surveys of more specific nature evolved. But recent studies and politics makes census as much qualitative as it is quantitative, the politics of numbers, or ‘the political arithmetic, because unlike in the nineteenth century, quantitative approaches are no longer enmeshed in a scientific attitude now regarded as naive empiricism’ (Kreager, 1997, p. 154). The census was admittedly a document of great ethnographic value and the ‘1881 census was the mother of colonial ethnography’ (Singh, 2011, p. 57). But the question of numbers also became important from the censuses of the 20th century. Early colonial censuses were of course primarily ‘ethnographic classificatory exercises’, originating ‘in the need for information about people to facilitate their governance and to expedite the exploitation of their skills and resources’ (Singh, 1996, p. 138). But ethnographic concerns did not begin, as often presumed, with the census. These issues and ideas were already a part of administrative thinking by the 1850s. The consolidation of colonial rule over an agrarian society of great diversity gave rise to systematic revenue collection and required comprehensive land register, which ensured maximum collection of land revenue, at a very local level (Kreager, 1997, p. 165). Colonial knowledge production geared towards governance of a large territory with diversity was the reason that ‘census was symptomatic of the Victorian urge to “know”, “classify” and “count”’ (Meeto, 2007, p. 43).

The ethnographic aspect of the census was always most dominant, and a number of studies do draw extensively upon the census data. Grierson, who compiled the Linguistic Survey of India, 1903, claimed that it was essentially based on figures from the census of 1891 (Meeto, 2007, p. 166). As Bernard Cohn remarks in his seminal essay, ‘(I)t would not be an exaggeration to say that down until 1950 scholars’ and scientists’ views on the nature, structure and functioning of the Indian caste system were shaped mainly by data and conceptions growing out of the census operations’ (Cohn, 1990, p. 242). The census has also been an important historical source as a part of ethnographic inquiry, but it has also become important and necessary to inquire into the relationship between quantitative and qualitative definitions of population.

Census classification and enumeration and its effect on the indigenous population, its ‘consciousness of caste and the use of census for validation of claims to new status within the caste system’ have been studied in great detail (Cohn, 1990, p. 242). As observed by Kenneth Jones, there was an increasing realisation that the critical relation between the census and political identity cannot be denied. The census was used in various ways by the subjects of the colonial state who were in

fact the subjects of the census itself. The census and the subject were involved in a complex relation and each defined the other and attempted to control it. But as mentioned by Arjun Appadurai and others, such an exercise was totally appropriated or conversely, ‘democratic’ politics came to be ‘adversely affected by the idea of numerically dominated bloc voting ...’ (Appadurai, Breckenridge & Veer, 1993, p. 331). So, although ‘the census did lead to certain rigidity in defining collective identities to a considerable degree, it also set into motion controversial mobility of nationalist, ethnic, communal and other identities’ (Kreager, 1997, p. 166).

But these trends concretised into a politics that depended on ‘representation’ and ‘representativeness’, and established the ground for present day communal and ethnic conflict in South Asia. On the question of identity politics, caste-based or communalised or tribes, ‘the most significant moment in the formation of fixed identities in the subcontinent was the introduction of the colonial census’ (Meeto, 2007, p. 128). The focus of Appadurai and others is caste, it being the crucial category to understand Indian reality (Appadurai et al., 1993, p. 331). This paper attempts to understand a similar situation – the contemporary ethnic situation in Northeast India. Particularly, in tribal communities, the demands for autonomy and separate statehood became very decisive within this framework of the politics of numbers. Here too, along with other means of articulation, census enumeration gave rise to an identity where demographic numerical strength played a determining role in the emerging notion of politics and identity. As mentioned by Appadurai, identities constructed by such a process, necessitated by the colonial state, ‘transformed not just into imagined communities but into “enumerated communities”’ (Appadurai, 1993, p. 331).

Notions of identity emerged since the first census because of its classificatory and enumerative role. This is evident in the increase and decrease in the numerical strength of the ‘tribal’ communities, seen through markers of religion and language. Census officials took an interest in the changes that they observed or in the question of how other communities related to the caste Hindu hierarchisation. As remarked by K.S. Singh, census officials were ‘prone to describe tribal religion as raw material for Hinduism’ (Appadurai, 1993, p. 142). They focused on the process of socio-cultural assimilation of tribal societies into Hinduism. Hinduism was a primary category for understanding ‘tribal’ societies, and Risley and others saw such a process as a negative marker for authentication of such communities (Census of India, 1891, Assam, Vol-I). Risley and Gait, who had

defined the basic principles of categorisation, thought that tribes all over India were gradually losing their identity and becoming 'Hinduised' in a movement from 'tribe' to 'caste' (ibid). The officers of the colonial administration presumed that the phenomenon of Hinduisation was an inevitability in the tribal world, but as remarked by B.B. Chaudhuri, the process was far more complex, especially where it was immediately linked with the radical agrarian movement (Chaudhuri, 2002, p. 34).

Constructing 'Tribe' and 'Caste' in Colonial Census

The situation was much more complex in the province of Assam, where the diversity of communities was much higher and there was a remarkable fluidity in the demographic structure. The region had experienced migrations from both east and west for centuries, and it was a trend predicted likely to continue. In fact, it was quite difficult to pin down communities; as admitted by B.C. Allen in the 1901 census. He says, 'There is, in fact, no absolute test by means of which we can divide the inhabitants of Assam into those who are Assamese and those who are not' (CoI, 1901, p. 17). The ambiguous or the fluid identity of the Assamese indicated that there was a thin line of differentiation between the Hindus and the non-Hindus or between tribe and caste. Hence in the Brahmaputra Valley, in order to differentiate between various communities – the caste Hindus and the 'tribal' communities – the colonial census authorities resorted to indices like religion and language, qualified by notions of purity, prescription and proscription. Therefore, the question of 'Hinduisation' and Hindu influences was critically intertwined with the increase and decrease in numbers of followers of animistic practices and these communities. This was especially the case in the Brahmaputra Valley where the colonial officials felt that the tribal communities were particularly susceptible or vulnerable to such influences. Simultaneously, they accepted that whether it was even possible to classify the animistic tribes of the province adding that even to 'the most casual observer, the Assam range must be an object of interest' ethnographically (ibid, p. 120). Animism itself was a negative category for classification, because, only 'those who had no recognised religion were shown in the column of the schedule for religion under the name of their tribe' (CoI, 1911, p. 36).

Since there was an ambiguity of definition, and the census officials perceived 'Hinduism' and 'Animism' as two opposite ends of a spectrum of faiths connected by the path of conversion, the problem of classification was

compounded. 'A large numbers of such people have already been converted to Hinduism and many of them now are as near the border line that it is difficult to say what they are' (CoI, 1911, p. 36). The problem was not as easily resolved as observed by the census enumerators; practices co-existed and these communities were reluctant to give up their old customs and food habits, and proscriptions were not usually successful. Therefore, certain differences in lifestyles and practices persisted, which demonstrated the nature of still extant community identities and challenged the construct of a homogenous 'Assamese' identity.

Gradually, the numerical strength of communities changed with the growth of political consciousness among various communities. Also, any seeming ethnographic clarity among the colonial officers of course was coupled with a certain political idea about the interplay of communities in the fluid demographic situation, as it was in the Brahmaputra valley during the early decades of the 20th century.

The first regular census of Assam was attempted in 1872, and at that time, the several districts forming the Chief Commissionership of Assam were under the Bengal government. Till 1878, the question of taking a new census was mooted by the government. The 1881 census marks the debates regarding understanding tribes and caste in colonial Assam, under the guidance of the Superintendent of Census, Denzil Ibbetson. There is no clear distinction established between tribe and caste before the 1901 census and that led to confusions regarding categories and their enumeration. The category 'Hill Tribes' was used 'arbitrarily to designate certain of the non-Aryan tribes, which are more decidedly hostile to Hinduism than others. Tribes like Abors, Daflas, Garos, Khasis, Syntengs, Kukis, Mikirs, Miris, Mishmis, and Nagas are included under this head; while many other tribes which are classed as aboriginal, such as Kacharis, Hajongs, Lalungs, and others, were entered in the Religion tables as Hindus' (CoI, 1881, p. 34). The Hindus in the hills, like the 'Kacharis' or Dimasas of North Cachar, the 1881 census observed that they were 'hardly more right to be classed among Hindus than Kukis or Mikirs have' (ibid, p. 35). It marked the increase in the numbers of 'hill tribes' as communities were no longer classified as Hindus but as 'aboriginal races'.

Categorising Religion: Hinduism and Animism, Caste and Tribe Connection

The 1891 census acquired importance since religion was classified separately

from caste and tribe to remove the confusion regarding ‘Hinduised’ tribals. In the 1881 census, the classification simplistically assumed that the ‘tribes on the frontier which were altogether beyond Hindu influence were shown to be Animistic, and those which were beginning to come under that influence as Hindu’ (CoI, 1891, p. 82). So, classification was hinged on hills-plains divide, further influenced by the biases of the local enumerators. The later censuses too are not objective in their classification but segregation led to contestation and claiming of certain categories. Animism was characterised as ‘a religion of a very low type’, thought to be ‘professed by the most backward tribes of the province’ (ibid, p. 94). Though the absence of comparative figures showing the spread of Hinduism since 1881 leaves a lot of ground for speculation, Gait claimed that work of proselytisation was steadily going on (ibid, p. 83). And the twin process of spread of education and the influence Hinduism gradually affected the number of people clinging to ‘their (ancestral) superstition of their forefathers’ (ibid, p. 94).

From the 1901 census to 1911, there was an increase in the numbers of Animists by 16 per cent. The increase in the Brahmaputra Valley was attributed to the greater accuracy in recording the religions; in Darrang, the increase registered was 38 per cent, in Sibsagar nearly 42 per cent, and in Lakhimpur nearly 32.7 per cent. Nowgong, where immigration was not a factor, showed an increase of over 35 per cent. However, in Kamrup the growth was less than 12 per cent and conversions to Hinduism were presumed to be the cause. There was a sharp decrease in Goalpara, which was due to conversion to a new faith, the Brahma, which should not be confused with the Brahma Samaj (CoI, 1911, p. 37).

Conversely it was claimed that the percentage of growth for Hindus was not equally encouraging. Colonial officials established an inverse relationship between Hinduism and Animism. As was stated explicitly in the census, ‘we see that in every district of the Brahmaputra Valley except Goalpara the proportion of Hindus has fallen owing to the increase of Animists and, to a small extent, of Muhammadans’ (CoI, 1911, p. 39). All this information was juxtaposed mainly against the Muhammadans and in a lesser degree against the Christians to locate the demographic transformations. However, the census also acknowledged that there was a certain ambiguity in defining Hindu and Hinduism. The 1911 census quoted Sir Alfred Lyall, lecturing in Cambridge in 1891:

If I were asked for a definition of Hinduism, I could give no precise

answer... For the word Hindu is not exclusively a religious denomination, it denotes also a country, and to a certain degree a race... Religion, parentage and country... (CoI, 1911, p. 39)

According to colonial officials, such ambiguity gave rise to complexities and fluidity. Though there was an accepted idea of mobility among the people in the plains, it was difficult to ascertain when new converts ‘definitely became Hindus’. Even the latter censuses abound in examples of the ensuing confusion. As J. Mc. Swiney comments in the 1911 census, ‘In the Brahmaputra Valley it is hard to say when the new converts definitely becomes Hindu, especially as many of them cling to their old habits of eating and drinking’ (CoI, 1911, p. 41). This kind of impression was drawn primarily from the ‘tribal’ communities, who progressively became ‘Hinduised’. For example, the Mishings, who he encountered in the east of Darrang, had continued eating fowl and drinking liquor, though they had come under the tutelage of a *Gossain*. Such proscription of food was strictly adhered to when the *Gossain* was present. The reasons stated for the conversion were mostly social and economic, ‘that they were strangers in a strange land, and unless they made some arrangements with the gods of the place or their representative, there was no knowing what evil might befall them’, meaning that they were attempting to adjust to the environment, to avoid alienation (ibid). So, they placed themselves under the religious patronage of *Gossain* and ‘paid him his annual fee in order to be on the safe side’ (ibid). He also remarked that, during that period the missionary efforts of the Vaishnava *Gossains* of the Brahmaputra valley had been very successful among the tribals.

By the 1921 census, it was reported that ‘accretion to the ranks of the Hindus from the aboriginal tribes has continued steadily but by no means evenly in all district’ (CoI, 1921, p. 50). Of course many of these claims and counter claims were individual and some of these were also influenced by the local enumerators and politics. Though the Hindu Mahasabha was not active in Assam during the early 1920s and the Tribal League was not formed, the *Sattradhikars* were strong spokesmen of Hinduism and equally active were the nascent associations among the tribes, especially the Kacharisⁱ. But there were also instances when orthodox Hindu enumerators refused to enumerate some animists’ plains Kacharis of Brahmaputra Valley as Hindus (ibid). Similarly, a section of the Kacharis in Nowgong aiming for caste mobility of being a ‘regular Hindu’ wanted to be classified as Saktas (ibid).

The local belief systems were fluid and ‘primitive practices so often continued side by side with Hindu ceremonies’ that uniformity could not be maintained by the enumerating staff (CoI, 1921, p. 50). So the census officers attempted to simplify the enumeration process by stating that if subjects claimed so, they must be entered as Hindus, and in other cases, people who held under and paid rent to a Gossain were to be entered as Hindus, according to customary definitions (ibid).

But political and social movements for the annihilation of caste and tribal barriers were, as observed by the census authorities, at most, superficial and were ‘still in domain of talk and not of practice... And it is noteworthy that Hindu and aboriginal recruits to recent advanced political views had generally to be obtained by promises of materials benefit...’ (CoI, 1921, p. 51).

Politics of Numbers: The 1930s and 40s

The issue of conversion to Hinduism among tribes becomes more important in the context of relative increase and decrease in the Hindu and Muslim population. For in 1921, there was an increase in the numbers of both Hindus and Muslims. And again it was observed that in ‘Kamrup, Darrang and Nowgong large increases of Hindu corresponds with decrease among the Animists; the new converts are chiefly plains Kacharis, Karbis and Mishings’ (CoI, 1921, p. 52). Therefore, in the Brahmaputra Valley, the increase had sharply dropped from the 1911 figures of animists.

This relation between numbers and politics led to the growing concern among the Assamese caste-Hindu middle class of a ‘Muslim invasion’ and change in the political pattern. So the numbers of the plain tribes was essential to the Hindus to maintain a majoritarian position in the province, and it was also a political necessity for the Congress, who considered its mass base – the caste Hindu peasantry – essential to counter the Muslim League. The Muslim population had increased by 16.8 per cent by 1921 in the province.

The 1931 census laid the strange base for further communalisation of demographic politics. It traced the growth of the immigrant population in the province, especially the East Bengal peasants from Mymensing district. According to Mullan (the census superintendent), the figures ‘illustrate the wonderful rapidity with which the lower district of the Assam Valley are becoming colonies of Mymensing’ (CoI, 1931, p. 50). The immigrants were

compared with vultures attracted to a carcass, in their hunger for land.

The 1931 census and the period prior to it saw the emergence of very strong propaganda efforts by the Hindu Sabha of Assam, which strengthened the movement of the Vaishnava Gossains and Satradhikars. The census authorities saw it as an extension and reflection of a nation-wide movement, like the missionary efforts of the Hindu Mahasabha, or the Hindu Mission, whose activities were confined among the tribals of Bihar, Bengal, Orissa and Assam laying claims on the 'aboriginal'. Perceiving changes in the returns of the census, the census superintendents felt that 'the propaganda work of the Hindu Mission' was certainly a great success in Assam from their point of view and had an enormous influence on the tribal people in the grey area between Hinduism and Animism. It was felt that such a claim was a recent development in the practice of Hinduism, and was an effect of the census. Unlike the earlier efforts, there was no attempt to formally convert or admit people to the Hindu fold and caste hierarchy. The Assam Provincial Hindu Sabha presumed that the tribes of Assam, like the Garos, Khasis, Mundas, Santals, Karbis, Mishings, Mishmis, Lushais, Tiwas, Rabhas, Kacharis, Meches were 'really Hindus' (CoI, 1931, p. 188).

It was protested that the 1921 census classified such communities as well as castes like Kaibarttas, Chutiyas, Koches, etc. as Animists. The notice was issued in the interests of those who loved the Hindu religion. It was Hindu Mahasabha's response to the threat that was felt by the 'tide of conversion to Christianity'ⁱⁱ. By being 'saviors' to these communities, 'the simple men and women', who were being converted to Christianity by various missionary societies, the mission claimed to have brought back the aboriginal within the fold of Hinduism. Their arguments too largely drew from the notion of unilinear influence of Hinduisation, which considered these communities to be 'naturalised Hindus by long and close contact with their Hindu neighbours' (CoI, 1931, p. 189). It was claimed that the misleading propaganda by Christians and colonial notions about caste and tribe gave rise to misconceptions. This propaganda encouraged the 'Animists' to return as 'Kshatriyas', and claimed that the absorption was more than shown in the census report of 1931. 'The newly initiated Animists wanted to be returned as Kshatriyas' but as mentioned earlier, enumerators, who were mostly upper caste Hindus were not convinced of such claims and returned them as animist (ibid). So there were instances of claims and counter claims on the issue of enumerating and classifying by such communities and fluidity of practices led to complexities and sometimes over simplification of the situation.

The census Superintendent and District Commissioners always presumed the naiveté of these ‘tribal’ communities and suspected that enumerators, nearly all of them being Hindus were naturally biased. As the Deputy Commissioner, Darrang, commented, ‘the Hindus enumerator (and they are nearly all Hindus) tends to record all animistic and aboriginal tribes, such as Kacharis, Karbis, Mishings, Mundas and Santhals, as Hindus. Even if the enumerator fails, the supervisor or checking officer tends to keep him up to the scratch. An instance was brought to my notice at Halem where the enumerator had written Mishing, but the checking officer changed it to “Hindu Mishing”’ (ibid, p. 190).

The official categories and classifications were often questioned and checked by the agency and consciousness among these people, ‘animists’ and ‘aboriginal’. Mullan himself claimed to have ‘received several petitions from Kacharis in Kamrup stating that they had returned as Hindus in the census schedules and that they objected to the action of the enumerators recording their religion as Hindu’ (CoI, 1931, p. 190). The propaganda campaign by Hindu Sabha produced many fold effects – some Kacharis willingly returned as Hindus, others were convinced by the enumerators to accept that category, and in some cases the enumerators’ took advantage of confusion or ignorance to record them as Hindus. Because in some cases, where there were no definite name for indigenous faith, there was genuine confusion. Some Tiwas came to see Mullan in Nowgong in January 1930 and asked his advice as to ‘how they should return their religion’. He was convinced after questioning them, and ascertained that it was a ‘purely tribal religion’ and advised the Tiwas to tell the truth (ibid). Thereafter, the Tiwas resolved in a meeting that the community should return their religion as Tiwa. But during enumeration, ‘inspite... of this resolution the vast majority of Tiwas returned themselves as Hindus, in many cases, voluntarily’ (ibid). Mullan suspected that in many cases enumerators influenced by the Hindu propaganda entered ‘Hindu’ names of ‘tribal’ people ‘who found it difficult to state precisely what their religion was and often in such cases Hinduism got the benefit of doubt’ (ibid). The relative success of Hindu propaganda was evident in the increase in the number of Hindus, which was conflated ‘owing to the inclusion of animists such as Kacharis, Mishings and aboriginal tea garden coolies’ (ibid).

Goalpara, among all the districts in the Brahmaputra Valley, showed remarkable increase (38 per cent) in the numbers of ‘Animists’. A large number of people in the Kokrajhar thana of that district returned ‘both their religion and their caste as Boro’ and the growing numbers of the Santhali settlers added to it (CoI, 1931, p.

193). It could be attributed to growing political consciousness. It is interesting to note that it was in the same area in the earlier decades that there was an attempt of religious reformation among the Bodos and it was a primary location for the various Associations of the Bodos.

Tribal Identity and the Census

The reaction to census politics saw the emergence of revivalism, strongly articulating the imagination and construction of a notion of 'tribal identity'. The census of 1931 quotes Rupnath Brahma, an accepted spokesperson to the Bodo community, and the authenticity of their claims is reiterated by the qualification of 'who himself belongs to the Boro community' (CoI, 1931, p. 194). He made a definite political statement by saying that the Bodos should speak for themselves. He claimed that Boros or Bodoshad 'a distinct state of civilisation of their own... also a distinct form of religion which they have been retaining' and were definitely not 'idol worshippers' (ibid). He asserted that despite Hindu influences, 'The Bodos had a separate society of their own and never allowed their tribal peculiarities to be merged into the Hindu society' and that they did not recognise the Brahmanical supremacy of caste hierarchy (ibid).

The people who followed the Vedic religion of 'Brahma' cannot be treated as Animist. But Rupnath Brahma also stated that proximity of religious practices was overridden by other considerations, because 'according to their views, they would be losers thereby in the *social and political spheres*' (CoI, 1931, p. 194). Therefore, political consciousness was decisive in the decision to enumerate as Bodos. By the 1930s, the administration too had clearly accepted the discourse of the tribal politics: 'They are in favour of having a separate representation of their own in councils and other government departments and they are not in favour of allowing their tribal interests to be merged with those of the Hindus. With these objective in view many of the Bodos, especially those of the Kokrajharthana, returned themselves as Boro by religion and Boro by caste. They say that considering the strength of their population in the whole province they have a rightful claim to have a separate category as Boro or Bodo in the census report' (ibid).

The question of numerical strength of communities had become important by then and the Bodos had been officially striving towards 'separate representation' since the arrival of the Simon Commission. So the 1931 census had the instrumental

role in the further franchise reforms that was to be constituted. The assertion of the plains tribes was also very evidently attributed to processes initiated by representative communitarian politics. The intensity was perhaps not equal to the Hindu-Muslim tension because of these communities 'autochthonous' status and also because of the fluidity of identities that existed. But there was a mounting pressure on the question of identities and politics, which led to colonial policies regarding various communities in the sphere of representational politics and that affected Congress balance of politics in the province.

Maintaining a 'tribal' identity had become important for that purpose mainly. By the 1931 census, the connection between *political power*, *representation* and *community identity* was very obvious. Census superintendents were also asked to compile lists of the Depressed and Backward classes and for Assam, Mullan compiled a list of communities based on social divisions –

- (a) Hindu exterior castes.
- (b) Indigenous backward tribes.
- (c) Tea garden cooly castes.

Indigenous backward tribes of Assam were the aboriginal communities – 'either living in the hills like the Naga tribes – quite untouched by Hinduism' or 'living in the plains – like the Tiwas or Mishings – and influenced to a greater or less degree by Hinduism' (CoI, 1931, p. 204). The criteria or qualification for this category, especially in the case of aboriginal tribes living in the Brahmaputra plains, was that 'such tribes should still be aloof from the main body of Hindus and should still be generally regarded as a separate community rather than as a Hindu caste. In deciding this, the fact that they still speak a Tibeto-Burmese tribal language may be of importance' (ibid).

Therefore, the colonial state did widen certain fissures in the Brahmaputra valley, especially on the question of representation in the various bodies and institutions and generally on the question of social and political power.

Language and Tribe: Speaking Assamese and Being Tribal

Another interesting aspect of identity was language – dying tribal dialects, growing bilingualism and the convergence of the use of Assamese language with emerging notions of a monolithic 'Assamese' identity. Infact, the task of classifying was not easy if the marker of being a backward and depressed 'tribe'

was indigenous religion, as accepted by various officials. The Tiwas, Rabhas, Kacharis, Meches, Mishings were under various degrees of Hindu influence and it was generally agreed upon that, 'In spite of partial conversion to Hinduism they still remain tribal people' (CoI, 1931, p. 21). Even the caste Hindu Assamese middle class, though eager to include them in the fold of Hinduism, still found it difficult to accept them as proper Hindus because they kept 'pigs and fowls' (ibid). Therefore, the question of tribal identity hinged not only on the definition of religion and the movement of tribal to caste by conversion, but segregation from the caste Hindu hierarchy and language were considered important too. Therefore, the Kacharis were a backward tribe but the Ahoms were not, because the latter, 'though in many ways a separate community – (had) been for so long completely Hinduised' that they (were considered) a racial caste (ibid). The Kacharis though 'nominally Hinduised' were considered 'more a tribe' than 'caste' (ibid). Preservation of one's own language and also the social and cultural distance maintained from the 'general development of Assamese culture' distinguished the 'tribe' from the 'caste' and therefore 'backward' from the privileged (ibid). Therefore, the backward tribes of Assam were divided into two sections, 'the real hillmen and those living principally in the plains who have been Hinduised to a greater or less extent', like the Kacharis, Mishings, Tiwas, Rabhas, Hojongs, Tiparas of Sylhet and Deoris of upper Assam, those who had preserved their tribal languages (ibid).

As observed above, adopting the Assamese language was often not perceived as a mere linguistic shift, it often signified conversion to 'Hinduism', ushering in a transformation in culture and mother tongue. The 1891 census thought that the Bodoⁱⁱⁱ (Kachari) language was dying out because the Bodo (Kacharis) were 'gradually being converted to Hinduism, and when this process is completed, many adopt Assamese as their parent tongue, at least as soon as they drop their distinctive racial name' (CoI, 1891, p. 159).

There was a general concern about the disappearance of various languages of the Bodo group or about the decrease from the 1881 figures. The comparison shows a sharp decrease especially in the case of Tiwas and more so for the Rabhas. The loss was in favour of Assamese, because these tribes which for centuries had retained their languages, had been rapidly taking to speaking in Assamese. The colonial authorities expressed surprise and thought that changes like 'better communications... and the greater amount of trade and travel' put people to greater exposure. As observed by E.A. Gait, 'Thousands of Kacharis leave their

home they must perforce speak Assamese... The process will doubtless continue at an annually increasing rate, and entire extinction of all these languages... is probably only a matter of very few years' (CoI, 1891, p. 163).

From 1910 to 1921 the trend of decrease continued, but the indigenous tribal languages continued to survive and did not disappear as predicted 30 years back. The decrease continued because of 'contact with others, i.e. practically, contact with the Aryan languages of the plains' (CoI, 1921, pp. 122-123). Aryan languages did not mean Assamese alone; in many cases, Bodos and Dimasas who returned their caste as Kshatriya, also returned languages as Bengali, as it happened in the North Cachar Hills and Goalpara (ibid). But the languages most affected by external influences in the plains were the Chutiya, Tiwa, Kachari and Rabha. The period till the 1920s experienced the gradual but penetrative influence of Hinduism. But as acknowledged by J.W. Mc. Swiney, the 'superior Aryan civilisation' continued to exert influence and pressure, and according to the 1921 census, many may not have lost their mother tongue, and a great number of them being bilingual, therefore 'the usual feeling of superior civilisation conferred by Aryan speech must have influenced them concurrently with the move towards Hinduism' (ibid, p. 123).

By 1931, officially there was a more organised effort to enumerate languages and dialects more accurately and scientifically by collapsing the social, ethnic map with the linguistic map. And so by 1931, political awareness among certain tribal communities led to a consciousness distinctive enumeration. Therefore, 1931 census showed a 9.5 per cent increase in the speakers of the Assam-Burmese branch, i.e. the Bodo group which comprised of the Garo, Rabha, Chutiya, Boro or Bodo (Kachari), Dimasa (Hill Kachari) and Tiwa (CoI, 1931, p. 172). Mullan remarks:

In 1911 the number of Rabha speakers numbered 28,000 so that the 1921 census figures for this language were apparently too low, (Rabha speakers now number 27,000 against 22,000 in 1921) Chutiya speakers who now number 4,315 show a slight increase over the 1921 figure... Bara, Bodo, Mech or plains Kachari which increase over the 1921 figure.... Bara, Bodo, Mech or plains Kachari which showed a slight decrease in 1921 shows a considerable increase at this census in the number of its speakers- from 260,000 to 283,000. (CoI, 1931, p. 172)

In the earlier two censuses, i.e. 1911 and 1921, the question was whether the tribal languages were disappearing as a result of contact with others, and this had caused some alarm. But it was evident that those languages were not dying, and as mentioned earlier, there has been an increase in their numbers. Therefore, the notion that Assamese was successful in hegemonising over other dialects was erroneous. These communities were undoubtedly the only real bilingual people but they were conscious of ‘holding their own in a wonderful manner’ (CoI, 1931, p. 181).

The Tribal League and 1941 Census

Though the ethnographic aspect of the census was given up in the 1941 census, where caste ceased to be a category of enumeration, the ‘idea of politics as the contest of essentialised and “enumerated” communities had already taken firm hold of local and regional politics and thus no longer required the stimulation of the census to maintain its hold on Indian politics’ (CoI, 1931, p. 331).

Therefore, though the 1941 census was not an elaborate ethnographic exercise like the 1931 census, with data presented of only a limited number of communities at the district level such as the scheduled castes, scheduled tribes and other castes, it created political tension regarding number (Singh, 1996, p. 143). It generated controversy about categories and numbers, particularly because by then representation in the Legislative Councils and Assemblies was totally driven by the logic of politics of numbers and ethnographically defined communitarian politics. 1941 census evoked strong responses from various sections of the Assamese society and led to a debate in the Assembly and in the newspapers. The Congress criticised the government for manipulating the census operation so as to conceal the correct figures of the followers of different religions. The Congress moved an adjournment motion to discuss the census operation^{iv}.

The cause of discontent and tension was the changed basis of classification, a shift from religion as a matrix of classification to one based on community. Compilation for communities was done with reference to ‘race, tribe and caste’ and not religion as it was in the case of the 1931 census. The Congress and few others accused the United Party government of tampering with date compilation and deviating from the rules followed by the census authority of India. It was under the Assam provincial government’s instance that Mr. Marar, the Census

Superintendent, issued a special circular to the Deputy Commissioners and Census Officers in Assam to compile data on the basis of 'community'. He wrote:

The basis for community is answer to questions 3, but generally the communities are unavoidably mixed up and where community cannot be ascertained in answer to question 3, answer to question 4 will be the basis; e.g. If a Kachari has not in answer to question 3 mentioned that he is a Kachari, and is returned under question 4 as Hindu, Muslim or Christian, he will be shown as Hindu, Muslim or Christian as the case may be, but if he is returned as a Kachari against question 3 he will be entered such irrespective of his religion. (ALAP, 1941)

The government stated that the purpose of clubbing communities professing different religions was to create a 'separate entity under the constitution for the purpose of franchise'^v. Siddhi Nath Sarma, for instance, clarified that as the tabulation would be done on the basis of 'community', and not on religious lines, it would simplify the problem of treatment or classification of the primitive tribes. He added that in this way their total number regardless of their religion could be recorded (ibid). These efforts on the part of the colonial government to seek out community identity corresponded to the Tribal League's own efforts to project community identity as one tribal people. And for this purpose the Tribal League carried out propaganda. As Bernard S. Cohn has observed, such active interference in the process of census enumeration, because of growing 'consciousness of the significance of the census operation had reached a point where Indians were not merely content to petition and to write book: some group set out to influence the answers which people would give in the census' (Cohn, 1990, p. 249). A bulletin of the Tribal League was taken out in 1940 with the main objective of instructing the 'tribal' people – Bodo, Kachari, Mech, Rabha, Tiwa, Mishing, Karbi, Deuri, etc. – about the politics of census enumeration^{vi}. The importance of the census for preservation of 'tribal identity' and interests was reiterated. The political aspirations of the Tribal League were molded by government policies, which were correspondingly influenced by these political aspirations.

There was a growing reliance on the census for supporting data for articulating political aspirations, which resulted in the convergence between the census and the world it sought to describe. By 1941, the census became very closely

interlinked with political issues like proving the existence of a community to validate the creation of a separate constituency. 'Enumeration on the basis of community would show as a distinctive community which would enable us to demand special provisions in education and in the socio-economic spheres'^{vii}. It was also emphasised by the Tribal League that if special measures were not taken to ameliorate their conditions, they would remain backward forever. The Tribal League's definition of 'tribals' was broad based and included those who were otherwise classified as 'Hinduised'. Religion was a secondary aspect of the identity. The essence of 'tribalness' was the existence of distinctive rituals and customs, rules and regulations, which were retained, therefore aiding the preservation of a distinctive lifestyle often in totality and some cases partially (Deuri, 1940, p. 4).

Further, the Tribal League also emphasised the separateness and difference of the social structure of the 'tribals' and the caste Hindu Assamese. The Tribal League persistently opposed various moves by more conservative circles and the Congress to categorise them as a part of the Hindu society. Such a projection was a simplistic depiction of a complex social reality. It is difficult to say whether the 'tribal' leaders comprehended the complexity and how far politically motivated was the invention of the notion of two polarised societies. But in giving it a concrete shape, at least in politics, the census aided the crystallisation of identity.

In conclusion, the census enumeration made the identity of the plains tribes a political reality. It became a site for contestation and redefining of identity because of the official legitimacy it conferred on communities. The apparent connection once established between the census and political rights contributed to the communitarian politics of the 1930s and 1940s. However, it also demonstrated that identities are never fixed and often situationally motivated, and there are several layers to one visible and tangible identity.

Notes:

ⁱ The nomenclature Kachari was loosely used for various communities like the Bodos, Dimasas, Sonowals and such groups.

ⁱⁱ As stated in the pamphlet quoted in the Census of India, 1931, p. 189.

ⁱⁱⁱ The nomenclature Kachari was used for the Bodo tribe and Dimasa tribe alternatively.

^{iv} *ALAP*, December 4, 1941: Adjournment motion in connection with the conducting of the last census operations in Assam brought by Siddhi Nath Sarma.

^v Classification of communities according to Appendix II, prepared by the Assam Government, was as follows : (1) Assam Valley Hindus; (2) Assam Valley Muslims; (3) Surma Valley Hindus; (4) Surma Valley Muslims; (5) Scheduled castes ; (6) Tribals people, Hills; (7) Tribals people, Plains; (8) European and Anglo-India.

^{vi} Deuri, B. (1940). *The Assam Tribal league*, 2(1).

^{vii} Deuri, B. (1940). *The Assam Tribal league*, 2(4).

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**Article: Are Contractual Employments Rendering Maternity Benefit Act, 1961
Toothless? A Case Law Analysis of Supreme Court of India and Delhi High
Court**

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**Are Contractual Employments Rendering
Maternity Benefit Act, 1961 Toothless?
A Case Law Analysis of Supreme Court of India and Delhi High Court**

--- Kimsi Sonkar

Abstract

The Maternity Benefit (Amendment) Act, 2017 which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper through the various Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper it has been attempted to analyse how the type of ‘employment contract’ namely, the permanent and contractual type (also known as fixed term), and ‘employment status’ (whether regular, temporary, ad-hoc or on daily wage basis and casual basis etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women.

Key words: Ad-hoc, Case laws, Contractual, Maternity Benefit, Maternity Leave

Introduction

In India, industrialisation started in the pre-independence era. With the increase in industrial workers also grew union movement, and there were demands for improvement in the working and living conditions of workers. Thus, social security legislation which provided the workers with benefits designed to insure them against the risks associated with their employment, to support them when unable to earn, and to revive them to gainful activity gained momentum. At International Labour Organisation (ILO) Conference in 1919, India participated

but did not give its assent to the clause of maternity benefit. First the Maternity Benefit Bill was proposed by the then Labour Union Leader N.M. Joshi. After this there were several maternity benefits acts which were adopted in pre-independent India like in Bombay (1929), Madras (1934), Uttar Pradesh (1938), West Bengal (1939), and Assam (1944). The first central enactment related to maternity benefit however was in the form of the Mines Maternity Benefit Act, 1941, but with a limited application as it was applicable only in mines. In independent India, after the constitution was formulated and adopted in 1950, the Fundamental Rights and Directive principles of the state policy provided impetus to consolidate and enact such legislations which would protect women's right. Thus, a central legislation in the form of the Maternity Benefit Act, 1961 was enacted. The Maternity Benefit Act, 1961 is a part of such a social security legislation in India. However, there are many legislations which provide social security to women against risks associated with maternity.

In this paper, only Maternity Benefit Act, 1961 as amended in 2017 has been taken into consideration in which liability for payments of maternity benefit has been placed on the employers. Such legislations which were considered to be measures of social security to the women workers are thus found to be inadequate as the employers found out ways to either avoid it completely or come to an undocumented compromise with the employees. The present paper deals with the cases in Supreme Court of India and Delhi High Court in which maternity benefit was denied to women workers, and examines how the ideals of social security namely, human dignity and social justice is meted out.

The Maternity Benefit Act, 1961 is a law that regulates the employment of women in certain establishments for certain period before and after childbirth. The Act extends to the whole of India and covers female employees in any shop or establishment employing 10 or more persons. According to the section 5(3) of Maternity Benefit Act, 1961 as amended in 2017, a female employee is entitled to twenty-six weeks of maternity leave, of which not more than eight weeks shall precede the date of her expected delivery. Further, as per section 5(2) it is required that she has actually worked in an establishment of the employer from whom she is claiming maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery. The Central Government is responsible for administration of the provisions of the Act in Mines and in the Circus Industry, while the concerned State Governments are responsible for the enforcement of the Act in factories, plantations, and other

establishments. The Central Government has entrusted the responsibility of administration of the Act to the Chief Labour Commissioner (Central) in respect to the Circus Industry. Concerning payment, the Maternity Benefit Act states that a female employee shall be paid at the rate of her average daily wage by her employer when she is on maternity leave. It is, according to the Act, unlawful for an employer to discharge or dismiss an employee during or on account of maternity leave. If a woman is deprived of maternity benefit or medical bonus or discharged or dismissed during or on account of maternity leave, she can approach an Inspector appointed under the Act. She can also file her case in court within one year if she is unsatisfied with the orders passed by the Inspector, or if a larger question of law is involved. The Maternity Benefit Act makes clear that an employer shall not employ a woman during the six weeks immediately following her delivery. An employer shall also not make a woman do arduous work, or work that interferes with her pregnancy, during the month before her expected delivery.

As enlisted in the above paragraph, the law provides for its implementation to all the establishments irrespective of type of employment. But as the subsequent sections would show, beneficiaries of the Maternity Benefit Act, 1961 have approached the court for its implementation in their respective cases. Like the Section 5(2) which deals for the right to payment of maternity benefits has also put forth a criterion that a woman is entitled to maternity benefit only if she has worked with the employer from whom she claims maternity benefit for a period of not less than eighty days in the twelve months immediately preceding the date of expected delivery. Apart from such criteria which are specifically mentioned in the act, the contractual employment often has a fixed term after which the contract has to be renewed. Thus, the continuity of employment is broken, and entitlement becomes difficult to be claimed. It is worth noting how such beneficial legislation is either not implemented fully or a partial fulfilment of it is done taking the route of some of these loopholes. In fact, Chhachhi contends that, 'Protective legislation for working women has always been viewed as double-edged-laws for providing women with better working conditions in response to their specific needs have often been used against them and at times become an obstacle to their work opportunities' (1998, p. 21).

The judgements are analysed keeping in mind the different type of 'employment contract' namely, the permanent and contractual (also known as fixed term), and 'employment status' namely, regular, temporary, ad-hoc or on daily wage basis, either directly or through an agent, including a contractor, with or without the

knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise. The text of the judgements is analysed for the arguments which are put forth both for providing and not providing the maternity leave to women who are employed on contractual and temporary basis. Often the denial of maternity leave to such women are based on the statute governing maternity benefit (as there are various other acts apart from Maternity Benefit Act, 1961 which also provide maternity benefit like The Employees State Insurance Act, 1948; The Beedi Workers Welfare Fund Act, 1976; The Beedi and Cigar Workers (Conditions of Employment) Act, 1966; The Advocates' Welfare Fund Act, 2001; The Payment of Wages Act, 1936, to name a few) in the organisation where the women is employed.

The following judgement analysis would substantiate this argument further as often contractual employment is taken as a ground for not providing women with maternity benefit that is the paid leave and other associated benefit. Women are often compelled to leave their jobs on account of their pregnancy. D'Cunha (2018) has argued that the increased maternity benefit by the latest amendment can have unintentional effect such as replacement of women by male labour, reduction in women's wages and labour force participation as employers have been made fully responsible for providing maternity benefits. On similar note, Uma and Kamath (2019) have also argued that women workers were particularly vulnerable to arbitrary and sudden termination when they declared their pregnancy citing reasons like poor performance, attendance, loss of projects, overall downsizing, etc. Many cases are not even recorded as they either do not have the capability to approach for justice or they settle for a compromise evading their immediate difficulties.

The structure of this paper is as follows: first section is case law on maternity benefit in which a detailed analysis of three case laws namely, first in Supreme Court, *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.*ⁱ in 2000, second and third in Delhi High Court, *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.*ⁱⁱ, and *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.*ⁱⁱⁱ, in 2013 and 2020 respectively, is done to explicate the main argument made; then in the next section a general overview of the analysis of the case laws on maternity benefit with some statistics collected regarding the number of case laws is provided to further the main argument and finally a concluding remark is provided with a way forward. In this paper, three judgements are selected on the basis of their relevance for a detailed discussion,

while the thorough analysis of judgements covered in the timeline form the basis of the main argument put forth.

The Case of Female Workers on Muster Roll^{iv}

In the year 2000, Supreme Court gave its landmark judgement in *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.*, in which it held that maternity benefit should also be given to workers on muster roll like the regular workers. In this case, the appellant, Municipal Corporation of Delhi, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the Delhi Municipal Workers Union, the union concerned, espoused their cause. Consequently, a reference was made to the Industrial Tribunal to adjudicate upon the question: ‘Whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?’ The union claimed that the workers on muster roll were recruited perennially and were engaged on the same nature of duties and responsibility as regular workers, yet denied maternity benefit under the Maternity Benefit Act, 1961, while the Corporation argued that since the workers on muster roll were on daily basis, they could not be granted maternity leave under the Act. The Industrial Tribunal allowed the claim of the female workers (muster roll) and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster-roll workers who were in continuous service of the Corporation for three years or more. The Corporation’s writ petition and writ appeal were dismissed by the High Court. The subsequent litigations and the issues involved: whether the Corporation comes under the definition ‘undertaking’ and ‘industry’ or not as per the Industrial Dispute Tribunal Act?

Before the Supreme Court, the Municipal Corporation contended that since the provisions of the Maternity Benefit Act, 1961 had not been applied to the Corporation, such a direction could not have been issued by the Industrial Tribunal. The Corporation further contended that the benefits provided by the Maternity Benefit Act, 1961 could be extended only to work-women in an ‘industry’ and not to the muster roll women employees of the Municipal Corporation. The Supreme Court upheld the decision of Industrial Tribunal that Municipal Corporation was an industry under the Industrial Disputes Act, 1947 and all the statutory provisions applicable in Industrial Law including Maternity Benefit Act, 1961 would be applied. The judges were of the view that as per the

Maternity Benefit Act, 1961, there is no provision which says that only the regular employees are entitled to maternity benefit and not those on casual basis or on muster roll on daily-wage basis. The court finally affirmed what the Industrial Tribunal had directed the Municipal Corporation of Delhi, that is to grant the maternity leave to muster roll workers who were in service for more than or equal to three years. It is important to note the reasoning given in the judgement as it explains the underlying philosophy of maternity benefit. The excerpts:

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation, and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear, of being victimised for forced absence during the pre- or post-natal period. (Municipal Corporation of Delhi vs. Female Workers and Ors., para 30)

The Case of Contractual Paramedics^v in Government Hospitals

In *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.*, the Delhi High Court itself has pointed out how the employees working on contractual basis are having grievances in terms of denial of entitlements of wages and other benefits, including the maternity benefits. However, they have taken a consistent view that the contract appointed employees could not be equated with regular employees. It is worth noting here that in the judgement it is mentioned how the Government of NCT of Delhi had issued an office order directing that the contract appointed

paramedics would be entitled to the various leaves including maternity leave for 135 days for delivery and paternity leave for 15 days. Further, the judgement gives the excerpts of a circular by the Government of NCT of Delhi on November 19, 2012, which was issued enclosing therewith 'Proforma of consent' to be accorded by those who were engaged on contract basis, condition No.10 which expressly said that Maternity Benefit Act, 1961 would be applicable to them.

The court had further cited the judgement by itself in 2013 in the writ petition Government of NCT of Delhi and Anr. vs. Suman Singh that a female contractual employee who is working for eleven years would be entitled to maternity leave, while a male contractual employee to paternity leave. However, the point to be noted here is that it neither went into the reasoning for taking the eleven years, and not ten or nine years. The discretion and consequently the arbitrariness in deciding the time period of the court on case-to-case basis without providing a reasoning would interfere with the laws uniform application and the precedent would be subsequently followed. The quote:

A lady contractual employee who is working for 11 years would certainly be entitled to maternity leave and so would a male contractual employee to paternity leave. (Government of NCT of Delhi and Anr. vs. Suman Singh, para 12)

The court has directed for one-time policy of regularisation in which existing contractual employees shall be considered for appointment to these new posts. It is worth noting that if such a direction could be made in some sectors of service, why the same has not been implicated in education sector where huge number of ad-hoc professors are appointed in Higher Education Institutions (HEIs) and consequently denied the other benefits including the benefit of paid maternity leave.

Despite the above mentioned point, the court in Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors. deciding on the writ petition of petitioners, who are paramedics in different hospitals established by the Government of NCT of Delhi working as contractual employees for over a decade and a half over, the grievances that they are not being extended the benefit of the law declared by a Victoria Massey case^{vi}, directed that all contract appointed employees shall be paid wages by the Government of NCT of Delhi and shall be entitled to leave of all kinds including maternity and sick leave. It further directed that the

Government of NCT of Delhi to carry out a personnel requirement assessment in all its departments, sanction the number of posts as are necessary, thus, framing a one-time policy of regularisation amending the existing rules in different departments and considering the existing contractual employees for appointment to these new posts. The legal reasoning in this case thus came out to be that if personnel were recruited in service in accordance with the recruitment rules, they were entitled to regularisation.

The Case of Ad-Hoc Assistant Professors in University of Delhi

In *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.*, the petitioner, who was employed by the University of Delhi on ad-hoc basis since 2013 and completed tenure of more than five years with the University, of which tenure of four and a half years are at Sri Aurobindo-Evening College, the respondent No.1, through the writ petition sought directions quashing the impugned letter of termination dated 29.05.2019 issued by the respondent No.1 – the college, and the direction to the respondent No.1 to reinstate the petitioner to the post of Assistant Professor on ad-hoc basis from 20.03.2019. The court noted the petitioner's counsel argument that the petitioner's contract, which had a specific term of four months each, had been continuously renewed from 2014-2019, after a working day's break, till the end of every academic session; but when she proceeded to go on her maternity leave, the college removed the petitioner from the rolls of the college. However, the single judge bench court dismissed in limine^{vii} the petition^{viii} stating that the petitioner's contract with the respondent – college was with effect from 19.11.2018 to 18.03.2019, which had already ended, and she was no longer on the rolls of the respondent; therefore, no question arose for allowing the petitioner to resume her duties unless the period of contract was extended by the college.

When the petitioner filed an appeal against single judge bench judgement dated on 20.08.2019 via *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.*, the Division Bench Court quashed the termination order and directed the respondents No. 1 & 2/College to appoint the appellant/petitioner forthwith to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointments.

The court specifically noted that the reason for the denial of the petitioner's re-employment as an Assistant Professor on an ad-hoc basis in the respondents No.1

& 2/College, despite being the senior-most and no issues raised on her performance as a teacher, to be only that she applied for maternity leave from the respondents No. 1 & 2/College to take care of her newborn.

The judgement further mentioned the AC Resolution which stated the rule of the university which excluded 'maternity leave' from the list of admissible leaves, wherein the court itself had pointed out that there were other kinds of leave which could have been granted to her 'such as half pay leave on medical grounds, casual leave and earned leave'^{ix}.

The judgement still further mentioned how extension was granted during the entire five years of her service with at least one day break and that declining the extension was not on the basis of her proficiency and ability. It also noted how similar ad-hoc and guest appointments were continued thereby highlighting the arbitrariness and whimsicality of the administrative authority of the college. Unlike other cases discussed so far, the court in this case noted that denial of maternity leave could not be said to be on the argument that the ad-hoc appointment contract was not liable to extension as their very own engagement of the petitioner and other ad-hoc Assistant Professors made clear that the extension was also required and the need for appointment of professors was also there.

The court in its decision denied the ground for declining the extension of tenure to be legitimate, and stated that when the petitioner needed such leave, the denial would mean penalising a woman for choosing to become a mother together with her employment. The court also mentioned that it would violate the basic principle of equality before law and equality of opportunity enshrined in Articles 14 and 16 respectively and also her right to employment and protection of reproductive rights as a woman enshrined in Article 21 of the Constitution of India. The excerpts:

...Such a justification offered by the respondents for declining to grant an extension to the appellant/petitioner as she had highlighted her need for leave due to her pregnancy and confinement would be tantamount to penalizing a woman for electing to become a mother while still employed and thus pushing her into a choiceless situation as motherhood would be equated with loss of employment. This is violative of the basic principle of equality in the eyes of law. It would also be tantamount to

depriving her of the protection assured under Article 21 of the Constitution of India of her right to employment and protection of her reproductive rights as a woman. Such a consequence is therefore absolutely unacceptable and goes against the very grain of the equality principles enshrined in Articles 14 and 16. (Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors., para 17)

However, it is to be noted that since the present appeal was not concerned with the regular appointment of the appellant/petitioner to the post of Assistant Professor with the respondents No. 1 & 2/College, the court did not decide upon it and merely mentioned that the process had already commenced, and the appellant/petitioner would be entitled to participate therein. The court finally quashed the termination order and directed Aurobindo College-Evening to reinstate Manisha Priyadarshini to the post of Assistant Professor in the English Department on an ad-hoc basis till such time that the vacant posts were filled up through regular appointment.

Socio-legal Observations on the Judgements

A careful analysis of judgements from Supreme Court of India and Delhi High Court was done from the year of passing of the Act that is 1961 till 2020. The judgements which involved the benefits of maternity as per the Maternity Benefit Act, 1961 or any related legislation having the provisions of it were analysed. The contractual appointment here covers all, variously referred as contract-basis, casual-basis, daily-basis, and ad-hoc basis. The number of cases in which the women involved were employed on contractual or casual or daily basis was numerically higher than the number of cases which involved other issues of contention^x. When compared with other cases, a clear trend could be seen that the majority of the women who did not get maternity benefit were either employed on contractual basis or casual or daily basis. They were either given termination letters when they applied for maternity leave or denied any maternity benefit at all, irrespective of the fact whether they were employed in public or private sector. However, the judgements related to public sector in which permanent employment was the case, the issues involved were clearly different namely, related to the calculation of period of maternity leave or amount of leave and the likes. Apart from these issues, the contractual employment cases had a common matter related to the contract period of their employment which either did not

coincide with the maternity leave sought or wrongfully terminated so that maternity benefit could not be availed on account of non-fulfilment of the criteria given in the Act.

From the above discussion, it is clear that despite the fact that court itself in Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors.^{xi} interpreted that the Maternity Benefit Act, 1961 to be applicable to all establishments, irrespective of the nature of employment, whether tenure, contractual or of a kind which has acquired a status but only in relation to such establishments as which falls within the definition of 'Establishment' in Section 3(e) of the Act.

Further as discussed above, though it had been settled in the Supreme Court of India that workers on muster roll having same responsibilities as regular workers of Municipal Corporation of Delhi were entitled to maternity benefits, yet a number of cases had been filed which involved contractual workers and employees being denied maternity benefit. Often in the contractual, non-regular, casual, or daily wages employment, the woman is terminated when she applies for the maternity leave as was also established in *Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors.*^{xii}; *K. Chandrika vs. Indian Red Cross Society and Ors.*^{xiii}; *Vishakha Kapoor vs. National Board of Examination and Ors.*^{xiv}; *Vandana Shukla vs. Indian Institute of Public Administration and Ors.*^{xv}, etc.

The court in many case laws is cautious of the real motive being different than what is cited for termination in case of probationary or contractual appointments, especially when an event has followed related to the person concerned which might warrant any other motive. This is clear when the court observes in *National Board of Examinations vs. Rajni Bajaj and Ors.*^{xvi} that it is 'open to court to lift the veil'. The court has itself held that merely the form of order cannot be conclusive of its true nature.

Similarly, in many cases, the maternity leave was not given due to expiry of contract like in *Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors.*^{xvii}; *Kavita Yadav vs. The Secretary, Ministry of Health and Family Welfare Department and Ors.*

Has Maternity Benefit Act, 1961 been Rendered Toothless by Contractual Employment?

Considering what women go through during their pregnancy, paid maternity leave and other facilities like crèche needs to be given to women irrespective of their type of employment and status of employment. The 2017 amendment made it mandatory crèche facility for every establishment having fifty or more employees and four visits to the crèche including the interval for rest allowed to her^{xviii}. The requirement of minimum number of employees is important to note for two reasons: first, this makes the claim of women working in establishments with less than fifty women employees to crèche entitlement difficult to make, and at the mercy of employers in such organisations as they have no statutorily sanctioned requirement to be fulfilled. Also, this would discount the efforts to realise the objective of Maternity Benefit Act, 1961 ‘to protect the dignity of motherhood by providing maternity benefit for the fuller and healthier maintenance of woman and her child when she is not working’^{xix}. Second, that the Act is unclear on the eligibility as it does not specify on the number of female workers for crèche to be provided unlike The Factories Act, 1948 which mentions it to be thirty or more female workers as per section 48. However, this could also be read as progressive legislation since by making it only minimum criteria to be fifty workers, it would help in making childcare more gender-neutral.

There are other issues regarding the implementation of the crèche facility, as pointed out by D’Cunha (2018), that the Act neither defined common facilities nor gave guidelines governing crèche accessibility, infrastructure design standards, child enrolment and retention ages, competence standards for personnel and care. He has further argued that the crèche provisions do not consider the childcare support from the extended family in middle-class Indian families and the domestic workers help. He argued that the Act also overlooked the physical and monetary costs of transporting children to and from worksites nor did it make provision for subsidising the cost for childcare support by domestic worker. Even similar arguments were made by the respondents in the field study on the need of crèche. Not only the crèche facility but feeding room at every public place was suggested by many respondents. The maternity benefit which comprises paid leave and crèche facilities should be available to working women in each and every sector at each level. However, as it can be seen from the overall analysis of judgements, this is not the case despite legislation of a separate Act for the same namely, Maternity Benefit Act, 1961.

Most of the cases in which maternity leave was denied pertained to contractual appointments. This was the trend even after the landmark judgement by the Supreme Court in *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Anr (Supra)* in which the apex court held that even workers on muster roll are eligible for maternity benefits. To take an example of HEIs where a trend of ad-hoc appointment to teaching positions is followed, thereby effectively denying women maternity benefits on account of being non-permanent employment status. The ‘Absorption Demand’^{xx} by the Assistant Professors of Delhi University is a testimony to the agonies faced by such ad-hoc female assistant professors. The process of regular appointment or what is called permanent employment, in which maternity benefits comes under other benefits to be given to the employee, is decreasing, and if at all they are happening, the process is extremely slow. In such a situation, the judgement in *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.*, wherein the termination order was quashed and reinstatement on an ad-hoc basis as was done earlier. Such judgements are anything but a norm. They come as exceptions and often leave us to think as to why at all a statutorily given right needs to be enjoyed by fighting a lawsuit? There can be no straight jacket answer to this. The Act puts the obligation of payment of maternity benefit solely on employer and an employer running a business wants to increase its profits. The measures adopted for increasing their profits involve reducing their expenditure and payment of maternity benefit in the form of paid maternity leaves is an expenditure they want to surely cut on. Since this cannot be done statutorily, the mechanism is not direct but through some loopholes, in this case it is a contractual employment of short durations. So, then, are contractual employments rendering Maternity Benefit Act, 1961 toothless for formal workers^{xxi}? Indeed, the trend shows some evidence to answer this in the affirmative.

Table 1 below illustrates the number of cases related to maternity benefit in Supreme Court and Delhi High Court as given on Manupatra^{xxii} from the year 1961-2020.

TABLE 1: NUMBER OF CASES IN SUPREME COURT AND DELHI HIGH COURT (1961-2020)

Name of the Court	Total No. of Cases for Word Search 'Maternity Benefit'	No. of Cases Actually related to Maternity Benefit	Employer/Maternity Benefit Granting Authority		Nature of Employment		
			Public Sector	Private Sector	Permanent	Contractual /Temporary	Students
Supreme Court of India	56	8	2	6	0	2	0
Delhi High Court	69	34	31	3	1	17	8

From Table 1 it is clear that most of the cases in Delhi High Court involve the Public Sector as an Employer/Maternity Benefit Granting Authority and contractual type of employment.

The point to be noted is that, contrary to the assumption^{xxiii} that employees are granted maternity benefits in public sectors easily as compared to private sector, here we see a trend that majority of the cases involved the public sector as an employer. The point further to be noted is that a mode of contractual employment is increasingly taken in public sector where most of the contention related to maternity benefit relates to. All these strengthen the main argument that contractual employment is rendering Maternity Benefit Act, 1961 toothless.

The Maternity Benefit Act, 1961 categorically puts the burden of maternity benefit to be paid to women employees on the employers. From hindsight, it is logical to assume that the employers, whether in public sector or private sector, are always trying to reduce their cost and expenditure. In a mixed economy like India, though the government is guided by welfare of its citizen, it has also embarked on downsizing economy and efficiency in its governmental functioning and increasingly seeing the viability of its economic undertakings, which makes them look for ways to reduce cost and expenditure. In India, the social security provisions are given in various statutes comprising both pre-independence as well as post-independence statutes. To name a few, The Factories Act, 1881; The

Mines Act, 1901; The Workmen's Compensation Act, 1923; The Trade Union Act, 1926; The Payment of Wages Act, 1936; The Employees' State Insurance Act, 1948; The Industrial Disputes Act, 1947; The Industrial Employment (Standing Orders) Act, 1946; The Factories Act, 1948; The Minimum Wages Act, 1948; The Employees' Provident Fund and Family Pension Fund and Deposit-Linked Insurance Fund Act, 1952; The Payment of Bonus Act, 1965; and The Maternity Benefit Act, 1961. Approaches to Social Security as per ILO is, 'The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his country's welfare should be given protection against certain hazards'^{xxiv}. Though there is no dearth of social security legislations in India, as the statutes listed out would show, yet the workers are denied in many instances. As in this case, one would discern from the analysis of judgement that even court has noted that regularisation of employees needs to be done by proper manpower assessment and giving them social securities. However, we see that contractual employment as a type of employment is increasingly being opted by the employers in every sector of economy, be it public or private, where the employer has found out a loophole to avoid such social security payments like maternity benefit which tend to reduce the burden on them. As explained through the three case laws, Maternity Benefit Act, 1961 is rendered toothless with the contractual type of employment.

Conclusion

The Maternity Benefit (Amendment) Act, 2017, which provided for twenty-six weeks of paid maternity leave, though progressive in nature, has not been able to fully address the issues associated with its implementation aspect as discussed in the paper by analysing three case laws from Supreme Court and Delhi High Court judgements for the period ranging from 1961 till 2020. Through this paper, it has been attempted to analyse how the type of 'employment contract' namely, the permanent and contractual type (also known as fixed term) and 'employment status' (whether regular, temporary, ad-hoc or on daily wage basis and casual basis, etc.) involved in the cases has affected the claim to their maternity benefit, and often denial of maternity benefit, if the employment type is contractual and employment status is temporary, ad-hoc, daily wage basis or casual basis. Both the government and private employers are parties to the judgements analysed, and both have denied maternity benefits on the ground of contractual employment.

This paper argues for a need of legislative amendment by inclusion of text clearly

mentioning the employment types and statuses in section 3 (o), which defines 'woman' as a woman employed, whether directly or through any agency, for wages in any establishment, so that its reading is not left to the employer to decide and giving a scope of discretion to deny maternity benefit. This paper also argues that the judgement pronounced in *Manisha Priyadarshini vs. Aurobindo College-Evening and Ors.* related to maternity benefit claim of an Assistant Professor working on ad-hoc basis is a landmark judgement for the contractual employees who are often denied maternity leave on the ground of their contractual employment type and ad-hoc, temporary, casual, daily basis of employment status. This paper has also attempted to show through the excerpts of the judgements how contractual period has been used as a tool to cut down on the maternity benefit entitlement of working women. This paper has argued overall that keeping in line with the objectives of the Maternity Benefit Act, 1961 'to protect the dignity of motherhood' would be achieved only when every working woman is provided with maternity benefit irrespective of type and status of employment.

Notes:

ⁱ *Municipal Corporation of Delhi vs. Female Workers (Muster Roll) and Ors.* (08.03.2000 - SC): MANU/SC/0164/2000.

ⁱⁱ *Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors.* (06.11.2013 - DELHC): MANU/DE/4116/2013.

ⁱⁱⁱ *Manisha Priyadarshini vs. Sri Aurobindo College-Evening and Ors.* (20.08.2019 - DELHC): MANU/DE/2695/2019.

^{iv} Muster roll worker is a worker on daily wage rate basis whose attendance register is maintained by the establishment.

^v The paramedics are specialist healthcare professionals who provide emergency medical treatments and work with diagnostic tools like X-rays and ultrasound etc., in testing labs. In this case, the paramedics referred to are working as Nursing Attendants, O.T. Technicians, Laboratory Assistants, E.C.G. Technicians and Junior Radiographer in different hospitals established by the Government of NCT of Delhi.

^{vi} On July 23, 2008, deciding O.A. No. 1330/2007, the Full Bench of Tribunal held that contract employees working in various hospitals established by the Government of NCT of Delhi as also Municipal Corporation of Delhi would be entitled to wages at par with the regular employees including increments. However, this decision was modified by a Division Bench of this Court on May 22, 2009, when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey was decided. The Division Bench held that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments. This decision was challenged in Supreme Court but was unsuccessful, consequent upon which on November 19, 2012, the Government of NCT of Delhi had issued an order which is challenged in the present case.

^{vii} The Latin word *in limine* mean at the threshold. Here, used by the High Court as it did not even consider the case worthy of being discussed in the first place.

^{viii} W.P.(C) 8518/2019

^{ix} *ibid* at note 3

^x See Table 1

^{xi} Chief Secretary, Govt. of NCT of Delhi and Ors. vs. Satish Kumar and Ors. (01.11.2013 - DELHC): MANU/DE/4963/2013.

^{xii} Bharti Gupta vs. Rail India Technical and Economical Services Ltd. (Rites) and Ors. (09.08.2005 - DELHC): MANU/DE/1055/2005.

^{xiii} K. Chandrika vs. Indian Red Cross Society and Ors. (24.04.2006 - DELHC): MANU/DE/1807/2006.

^{xiv} Vishakha Kapoor vs. National Board of Examination and Ors. (03.03.2009 - DELHC): MANU/DE/0971/2009.

^{xv} Vandana Shukla vs. Indian Institute of Public Administration and Ors. (14.09.2018 - DELHC): MANU/DE/3330/2018.

^{xvi} National Board of Examinations vs. Rajni Bajaj and Ors. (10.02.2012 - DELHC): MANU/DE/6348/2012.

^{xvii} Artiben R. Thakkar vs. Delhi Pharmaceutical Sciences and Research University and Ors. (08.02.2018 - DELHC): MANU/DE/0614/2018.

^{xviii} As per Section 11A, sub-section (1) and (2) of Maternity Benefit (Amendment) Act, 2017.

^{xix} The objective of Maternity Benefit Act, 1961 as described by Labour Commission Government of NCT of Delhi.

^{xx} In the field study, assistant professors, who were ad-hoc appointees in various colleges of the Delhi University, were interviewed, who were running the Absorption Campaign during January-February, 2020 near the Vice Chancellors' house where the demand was essentially to regularise them and give them the social security benefits prominently the maternity benefit.

^{xxi} According to the Ministry of Labour and Employment, formal workers are all those workers who are employed in an enterprise with ten or more workers. It also includes all government workers as formal workers.

^{xxii} Total no. of cases for word search 'Maternity Benefit' has been taken from Manupatra. Though same word, search has been done for triangulation from two other sources namely, SCC Online and India Kanoon, which revealed different number of cases. Through a careful reading of the same, it was ascertained that only the number of cases which were given on Manupatra were relevant for this study.

^{xxiii} In a field study done on 'Maternity Benefit in Higher Education Institutions in India', the respondents mentioned that maternity benefit was easily available to public sector employees than the private sector employees.

^{xxiv} Report of National Labour Commission, 1969 (p. 162) cited ILO's Approaches to Social Security.

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K. Chandrika vs. Indian Red Cross Society and Ors. (2006-DELHC): MANU/DE/1807/2006.

Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors. (2013-DELHC):
MANU/DE/4116/2013.

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MANU/DE/0971/2009.

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Article: A Life in the Shadow of the Mountains: An Empirical Study of the Lesser Known Speech Community of *Dhimal*

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**A Life in the Shadow of the Mountains:
An Empirical Study of the Lesser Known Speech Community of *Dhimal***

--- Nishit Ranjan Chaki

Abstract

The Constitution of India makes provision for a heterogeneous and multi-cultural society. A reading of Parts III and IV reflects broad differentiation between provisions empowering the individual and the community. Articles 29, 30 provides for Cultural and Educational Rights for communities. Articles 21, 21A champions individual rights and liberties. Thus, we come across a dichotomy between the individual and the group (community) aspirations, requirements and probable choices. The modern State deals the more obvious dichotomies legally (e.g. rules of marriage, family, inheritance). However, subtle dichotomies manifests as social processes, and must be carefully recognised (e.g., language erosion). Leaving them to the mercy of the dominant social identities will impact the redistributive goals of justice, a primary concern of the law. Language has to be preserved if multiculturalism is to be preserved. Education (perhaps the only subject mentioned in all the Parts III, IV and IV-A) involves questions of mother tongue, medium of instruction and inclusive growth. Dhimals, a lesser known speech-community in the Indian Terai-Himalayan region, have been facing the dominant social identities of Bengali, Gorkhali and Rajbanshi since long. The paper discusses how their cultural identity and language are at stake and may proceed to the path of extinction as most of the constitutional and legal benefits are directed to the other linguistic communities in the region while Dhimals are not even legally recognised as a tribe.

Key words: Dhimals, Identity-crisis, Linguistic-minority, Rights

What moves us, reasonably enough, is not the realisation that the world falls short of being completely just – which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate.

– Amartya Sen (2009)

Introduction

The normative foundationⁱ of the Constitution was decided by the Constituent Assembly, and though the Constitution has often been amended, yet, the normative foundation is to be preservedⁱⁱ. The Preamble reflects this foundation and the *society* that it wills into existenceⁱⁱⁱ, in which the principles of *Justice, Liberty, Equality* and *Fraternity*^{iv} are secured to all the citizens. Thus, the Constitution ensures, amongst other ends, social and economic justice, liberty of thought and expression, equality of opportunity and dignity of the individual. The value of justice and equality^v are the primary subject of this essay; however, certain aspects of the value of liberty will also be inquired into.

In our heterogeneous society^{vi}, languages like Tamil, Telegu, Odia, Bengali, etc. have always been popularly cherished with strong social presence. The provincial-committee reorganisation of the Congress party in the 1920s (Krishna, 1966) gave a boost to linguistic identities and language nationalism. Soon after independence, the federal division was redrawn in 1956 primarily on the linguistic basis (Choudhry, 2009) which henceforth dramatically changed the sociological effects of now federally entrenched linguistic identity^{vii}. Hence linguistic identity can be singled out for the basis of analysis between various competitive constitutional values.

Being a unique social and constitutional problem, legally languages are diversely classified as Classical Languages, Scheduled Languages, Official Languages, Mother Tongue and Other Languages. Language is an instrument of upward social mobility and also has overtones of emotional attachment and individual identity. Evaluating^{viii} an occurrence or practice as constitutional or unconstitutional forms an integral part of any understanding of constitutional law and thus, it necessitates the examination of the actual effect of the Linguistic Rights in developing the society promised. The concerned constitutional provisions^{ix} are primarily found in Part III and Part XVII respectively.

The small linguistic communities^x in India have a much heightened form of complex relationships with the present form of language classification referred above. Very often, small-languages are relegated to the informal domain of the home/family and may be perceived as an inferior language^{xi} which is to be avoided in the general social interactions. It is important to explore this maze of language rights from a constitutional perspective and a socio-legal empirical

approach seems to better calibrate this exploration with the ground-reality. Within this theme of identity crisis, the present paper seeks answers to the following research questions with respect to the *Dhimals*:

RQ 1: What is the perception of the community on the role of Dhimal language in shaping the cultural identity of an individual?

RQ 2: What necessitates the people of Dhimal community to adopt the language of other linguistic communities?

RQ 3: What role does the law play in facilitating or restricting the learning, use and preservation of Dhimal language *vis-à-vis* other languages?

RQ 4: How far are the specific demands of the Dhimal community in so far as language is concerned in competing with other linguistic communities and is constitutionally compatible?

The specific focus of this essay is on the Dhimals in relation to the other dominant communities, yet, the findings will serve greater purposes in similar contexts. It is expected that this paper will attempt to provide an understanding of the social-psychological impact of the constitutional and legal provisions^{xii}. The question of language is studied at the very bottom of the social structure, as it is realised and experienced in day-to-day life and education. In this respect, this essay makes one of the first attempts to study and understand the effects of law on a social question with respect to the Dhimals.

An Account of the Dhimals

The Dhimals live in close vicinity to the dominant linguistic community of Bengali (this term refers to West Bengal Bengalis only) and share their neighbourhood with the other community of *Rajbanshis* (the North Bengal development department website specifically mentions the districts of Jalpaiguri, Cooch Behar, Darjeeling, Malda and Murshidabad in West Bengal as home to the speakers' of this language). It was found that the latter have been increasingly occupying the immediate neighbourhood of the Dhimals and thus directly affecting the language used. Further, many words from the *Gorkhali* community have entered into and are widely used in the Dhimal community. This provides an interesting account of the interplay of the various socio-legal aspects connected to the issue of language preservation. These other linguistic groups have had a history of language-development, language-movement and West Bengal has time and again seen separatist movements from the Gorkhas and the Rajbanshis. Thus,

the Dhimals become more vulnerable to language and identity dilution whereas the minority groups referred to above have been given protection as castes and tribes and thus gains from the substantive equality principle.

Dhimal^{xiii} is a community in Northern part of West Bengal (popularly known as North Bengal) residing in nearby three villages of the Naxalbari region (popularly known as *Dhimal Basti*, known as *Ketugapur* in the Dhimal language) of the Darjeeling district. Though a small section of Dhimals can be found in Nepal also, but their only major concentration of population is in this place in India which further accentuates their vulnerability. It is found that the approximate population of Dhimals are 1000 (Lahiri, 2016), however, during the present enquiry, the number was suggested (by the participants) to be approximately 2000. Dhimals prefer to conduct marriages within the community itself, claiming that inter-community marriages are generally prohibited or looked down upon. Yet, during the present study it was reported by one of the participant (Ganesh Mallick, name changed) that such marriages do take place and in most of such cases, the bride or the groom take up the identity of the other community, mostly being Rajbanshis and/or Gorkhalis and this shows the level of vulnerability prevalent.

However, the situation is slowly becoming favourable as more and more persons from the Dhimals become aware of the language and shows interest in learning and preserving the same. One of the participants of the present study was the first graduate from the community (have been a school teacher) who recalls a life-long struggle to preserve his mother tongue.

Dhimals are one of the oldest inhabitants of the region right from the first census of 1872, and along with *Meches*, are said to be the early chief inhabitants due to their not being affected by the then unhealthy nature and climate (Khasnobish, 2012). This was also corroborated by the participants who claimed that the population that resides in Nepal have migrated from here due to a number of reasons like the unwillingness to work as tea-plantation labourers, breach in traditional forest-dependant lifestyle and limited interaction with the huge influx population that came when the tea industry evolved. The Dhimals of Nepal are at a relatively beneficial position due to the favourable circumstances (Biswas, 2008) and this further creates incentives for migration.

Interestingly, the Dhimals were placed at the mercy of the colonial laws of forest conservation, tea-garden establishment, etc. which affected their practice of *jhum*

cultivation and made them depend on other sources of livelihood. Gradually they migrated from their home and went on to other territories, leaving behind their home to many of the influx population. One of the participants in the present study even pointed out that their identity is often mixed with that of Rajbanshis, Meches, etc. and this can be corroborated by the historical documents studied by earlier scholars (Biswas, 2008). This respondent stated that this community was treated all along as a tribal community, and yet due to some reason they did not end up being a tribe in independent India and thus as a beneficiary of the constitutional protection.

Research Design

The fact of limited educational attainments and potential likelihood to understand and respond to the interview in a meaningful way was kept in consideration while preparing the research design. The first respondent was selected on the basis of his educational attainments and role in language protection. Thereafter, snowball sampling was resorted to for identifying the other participants. The sample size was decided based on the data saturation that was reached based on suitability of the studied participants on basis of their characteristics like age, gender, education, and language proficiency to answer the interview questions. The following six participants were interviewed for 30-40 minutes each in consecutive sessions in Bangla:

- a. Ganesh Mallick (GM) (name changed, age sixty-plus, retired teacher);
- b. Ruchi Mallick (RM) (name changed, tentative age twenty, college student in Bangalore). She dressed up in traditional attire before presenting herself for the interview;
- c. Krishno Mallick (KM) (name changed, age seventy-five, farming);
- d. Raju Mallick (RM2) (name changed, age twenty-four, unemployed school dropout);
- e. Kanti Mallick (KM2) (name changed, age fifty, farming)

The interview was a semi-structured one with open-ended questions. These interviews were audio-recorded, translated and then analysed as per the required data-set.

Individual Identity Formation in Dhimals

This section will explore the role of the Dhimal language as perceived by the

community in individual identity formation (the focus of Research Question 1).

GM emphatically says, ‘...they (the Nepali-Dhimals) say about their forefathers belonging to West Bengal/Jalpaiguri, Assam, etc. However, we never hear of vice-versa’. He further states that this claim can be supported by their practice of offering prayers in East-West direction and naming of deities reflecting terms from this region. Population pressure seems to be one of the most important direct reasons of linguistic vulnerability. Due to the larger social presence of the other languages, individual Dhimals community are practically forced to learn and borrow terms from those languages. For example, RM states^{xiv} that, ‘Dhimal is less than 1000 and thus the language use and learning gets affected, especially we don’t even have a school in our language. We study in Bengali, Nepali, etc. and thus our language gets lost day by day due to non-usage’. Various sociologists have often highlighted this process of adoption of the dominant culture (Muysken, 1999) and language often plays a dominant role in this social process (Appel & Muysken, 2005). Further, it was stated that unfortunately even their surname *Mallick* is often confused with a so-called lower caste of the Bengali community and also with the Muslims.

The relation of language with education is reflected when RM says that their ‘home-language’ comes into conflict with their ‘school-language’ and this can be easily avoided. GM says that, ‘Without language no one can live, this being our greatest identity and is like the “mother’s milk”’. Thus, the role of a common language in primary socialisation with the immediate ethnic community is well understood by the Dhimals. Here it can be said that they are well aware of the role of language in forming the identity and strengthening the relationship between small groups of people^{xv} (Mamadouh & Ayadi, 2016). In fact, Dhimal children have to withstand the challenge of learning three languages in minimum from an early childhood (for home, general interaction and education, respectively).

On the positive side, due to life-long struggles for language, GM states that, ‘Our children proudly wear their identity and introduce themselves as Dhimals. However, this was not the case even thirty-five years ago from now... We speak in our language with other Dhimals when we meet at Naxalbari. Every age group does that today’. The veracity of this statement can be ascertained from the earlier sociological studies of this community (Lahiri, 2018). Again, KM2 states that, ‘I don’t know to read and write in Dhimal language but my children can. New generation is slowly taking up the language’.

It is a principle of justice that the burden of social co-operation should be uniformly distributed in a multicultural society. On a minimum note, the legal system *should not institutionalise any discrimination* between the various constituent groups on the basis of arbitrary differences. Thus, in every multicultural society having a democratic set-up, we find the existence of principles of rule of law, equality of opportunity, substantive equality, etc. Specifically, Articles 29 and 30^{xvi} of the Constitution of India reveals that since this right is a community based right, hence the deep association of language and culture can be presumed in every case. In fact, language is the tool through which culture of any community is transmitted from one generation to another^{xvii}. The language and its association with culture are aptly recognised at all levels of the normative order^{xviii}. Cultural rights are in consonance with the liberal conception of justice and also the various territorially based societal cultures^{xix} grounded on a common language ‘*must be institutionally embodied – in schools, media, economy, government, etc.*’ (Kymlicka, as cited in Kumar, 2013). Bhikhu Parekh (2006) states that conflicts in any society can be intra-cultural or inter-cultural; however, there exists *equality of culture* in multicultural society and a mere plurality of cultures in societies that have multiple cultural groups.

Now, owing to values of the Preamble to the Constitution, it can be said that to characterise the Indian society as multicultural would be the very apt characterisation. In this respect, it must be emphasised that Articles 29 and 30 forms part of the Part III of the Constitution which is immune from the parliamentary interference by virtue of Article 13 and the principle of judicial review. Even this protection of linguistic communities did not lead to the omission of State-led efforts as we find that Constitution (Seventh) Amendment Act, 1956 inserted Article 350A in Part XVII of the Constitution of India, which mandates adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups within a state.

However, despite the laudable constitutional protection of linguistic identity, the Dhimals are facing the obvious opposite when they are forced to take up another language due to implementation bottlenecks. There is acute shortage of education generally and educational materials and command over the technical Dhimal language in particular (to be used for reading and writing). As regard to the constitutional provisions, the participants did not have technical knowledge, but were broadly informed of such provisions. It should be noted here that a

knowledge of the constitutional provisions, especially that of the respective fundamental rights (Articles 29 and 30) and that of Article 350A would have empowered them better in presenting their cause to the government. This owes to the possibility that grounding of their cause in specific constitutional provisions would have highlighted the fact that due to some practical considerations^{xx}, they are unable to enjoy the benefits provided by their own constitution!

Although the community is financially constrained to exercise the right under Article 30, they reported to have formed organisations for cultural preservation and have taken active steps like petitioning, applying, etc. to both State and Union governments highlighting their problem. They are continuously conducting workshops and programmes for preserving their language and culture. They are aware of the need to recognise their linguistic identity and are actively learning the language and also spreading awareness of this language, culture, etc. (Lahiri, 2018).

Dhimals Adopting Other Languages

This section will explore the process of socialisation of Dhimals with the other communities, namely Bengalis, Rajbanshis and Gorkhalis (the focus of Research Question 2).

The unique situation of Dhimial language is cited by the participants to be the cause of the present need to learn other languages. First, this language doesn't have any similarities with the other languages spoken in this region. Second, the population of the language community being very less, the consequent social presence and restricted individual use (within the speakers of the language) limits the overall language use. GM states that even from pre-nursery, the children are being taught languages like Bengali, Hindi, Nepali and English. He recalls that, 'When I was a child, the population of Dhimals was much larger, even in my primary school (Ketugapur) we had a large number of Dhimial children'.

The new generation speaks Dhimial within the community itself and often in the home-setup. However, there are unique challenges even to this situation as the use depends on the locality of the household. Thus, while Rajbanshis abound in GM's neighbourhood, it is Gorkhali in RM's neighbourhood^{xxi}. In such a situation, the use of Dhimial by any individual, especially the learning of the language by children gets affected as the language becomes virtually useless even in the

immediate neighbourhood.

The participants cite the educational process and lack of educational and other resources^{xxii} in their language as another reason for adoption of other languages. This uniformity in thinking reflects a common understanding of the linguistic problem and appreciation of a common solution. Dhimal language becomes a special case because the population of the speakers is very low and thus, language crisis may easily cause language extinction. GM aptly states that, ‘...even financially we cannot promote our language by writing and publishing’. On this note, RM states^{xxiii} that, ‘While I was here, I used Bengali, Rajbanshi, Nepali and sometimes English’.

The participants however cited different orders of languages when posed with the question of which of the said languages influence them most in social interaction^{xxiv} and educational processes^{xxv}. Thus, on a societal level the order reported is that of Gorkhali, Rajbanshi, and Bengali, while from the point of education^{xxvi}, the order reported is that of primarily Bengali, and also Hindi.

The ground reality is very shocking as far as linguistic rights of such people are concerned. GM states that, ‘Our children know who they are, but not their very own history!’ This community has represented themselves even at Delhi (along with other communities like Kurmi, Tamang, Mech, Lepcha, etc.) and petitioned for tribal status^{xxvii}, apart from petitioning the State government in 2021 for a Cultural (development) Board^{xxviii}. During the course of the interviews, it was revealed that such efforts have not yet yielded positive result. In 2011, *Bhasha Research and Publication Centre* acknowledged one Sri. Garjan Mallick, an eminent member of the community, as ‘one of our most valuable associates’ in the *People’s Linguistic Survey* mission undertaken collectively with the latter. In its aspiration for tribal status, Garjan Mallick had written a book in Dhimal language but with Bengali script, as the original Dhimal script is claimed to be very difficult to learn and since Bengali script may positively impact the reach of the book. This example shows that a part of linguistic identity has already been affected (since the original Dhimal script is not used even by Garjan Mallick, who is respected widely in the community for his life-long struggle for the preservation of this language) and further damage is possible if it is not stemmed legally, especially when the requisite provisions do exist under the present constitutional structure. From the personal archives of Garjan Mallick (accessed during the research), it was learned that in 2009, an answer to a *Rajya Sabha*

Unstarred question stated that proposal for inclusion of Dhimal in the State's list of Scheduled Tribes have been processed. In 2014, pursuant to the report of the Cultural Research Institute (Govt. of W.B.), the State of West Bengal recommended the inclusion of Dhimals in the list of Scheduled Tribes of West Bengal. Further, in 2016, a Committee was constituted in the Ministry of Tribal Affairs to examine and recommend the granting of ST status to 11 communities, including Dhimals. In 2020, the Member of Parliament from Darjeeling had expressed (in a letter to Garjan Mallick) his hopes that the government will take positive step in this regard. In 2021, in response to a representation made by *Gorkha Janjati Kalyan Samiti*, Darjeeling, the Under Secretary to the Government of India wrote that the matter is under examination as per modalities. However, the ground reality is that the inclusion is yet to be made and despite high hopes, the formal processes mentioned are still underway.

The word 'minority' is not defined in the Constitution, however, in the landmark case of case of *In Re: The Kerala Education Bill... v. Unknown* (1959 1 SCR 995), the Supreme Court held that 'minority' means a community which is less than 50 per cent of the total population^{xxix}. The Constituent Assembly Debates reflect that the language provisions were not dealt with in a formal legal sense, but was addressed from the personal and emotional connect the members had with language in a way that this sensitive issue may not otherwise hamper the functioning of the Assembly. Even after the guarantee of Articles 29 and 30, the language question loomed large on the Indian democracy. This led to the continuous additions to the 8th Schedule and the other classifications of language referred to above. With 1956 States-reorganisation, each major language was given a specific area of authority^{xxx} and this entailed their relative dominance over other languages of the region. It was to stem this dominance of one language over the others that Article 350A^{xxxi} was inserted in the same year. Article 350A is complementary to Articles 29 and 30, the effort in the former being State led, in the latter being privately led. Further, implementation of Article 350A necessitates various practical considerations and hence this is only a constitutional provision and not a fundamental right. However, the substantive equality^{xxxii} principle of the Constitution may be used to give special treatment to the present language community, especially since this is on the verge of possible extinction from the country.

Law, Social Processes and Dhimals

This section will explore the role of law in preservation of the Dhimial language (the focus of Research Question 3) and the compatibility of the demands of the Dhimial community with the present constitutional structure (the focus of Research Question 4).

Today the formal education system is dominant over any other education system and hence, the language of this system directly affects the language preservation of any community. This prompted recognition of ‘*Cultural and Educational Rights*’ and guaranteeing the establishment and administration of educational institutions of choice as a fundamental right. Even under the pretext of Article 15, the State cannot make an inroad on the right enjoyed under Article 30 of the Constitution. However, the Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A^{xxxiii} and the subsequent Right of Children to Free and Compulsory Education (RTE) Act, 2009 mandates education for a specific age-group. The implementation of the latter right is indirectly making inroads^{xxxiv} into the linguistic minority rights and also is at crossroads with the State responsibility under Article 46^{xxxv} of the Constitution.

The Dhimals have a few persons who continue their education beyond the secondary and into undergraduate programs. A Bengali newspaper report of *Sangbad Pratidin* (2007, June 11) accessed from the personal archive of Garjan Mallick stated that the first Dhimial girl to have passed secondary education (2007) joined the family occupation of agriculture and could not continue further studies. In 2008, Dhimals presented a mass deputation to the *Siliguri* administration demanding tribal recognition and making a case for educational benefits. In 2018, a *Dhimial Community Existence Preservation & Welfare Society* document reported the dismal picture of 80 per cent people living as day labour, mere eighteen to be in Class X, fourteen in Class XII, four B.A. pass, one B.Sc. pass and one M.A. pass, respectively. The present study found that the participants are of the opinion that cognitive development in tribes takes place at a later stage than general population and linguistic demands placed over the child makes her education more exhausting.

GM recounts a childhood-incident as:

Our English teacher (a Bengali) once asked the meaning of ‘cat’.

My friend said 'cat means meu-khao'. He was beaten up and he never returned to the school! My first realisation with the school system revealed that even if the medium of instruction is different, if the teacher knows the local-language, then education will be much fruitful, children can be reached out to.

Participants are of the opinion that at least primary education from the age of five to ten years should be in their mother tongue^{xxxvi}. RM states that she faces difficulties in speaking and vocabulary for English due to use of Dhimal language in home and Bengali in school. She further states that books and teachers in Dhimal will surely aid the language preservation. RM2 could not complete secondary education due to language problem, though he states that his teachers took great care in teaching the concepts to him. This is in fact the primary reason for low educational achievements in the community. The prevalence of girls to be married off at some point, and hence not educating them is challenged by the likes of RM who has hopes of higher education and getting a job. KM2 states language to be the cause of children not learning beyond class IX. Further, he states that non-recognition as tribe and mere OBC status places them at a competitive disadvantage with respect to the other communities and aids in their backwardness. To this situation is added the fact that now OBC is also not being granted to first-generation applicants due to a technicality in the procedure!^{xxxvii}

The constitutional position and its violation become even more clarified when a mention is made of certain other provisions which indirectly promote and preserve distinct linguistic identity^{xxxviii}. Article 347 provides for a possibility for the recognition of any language used in any state as one of the official languages by virtue of a Presidential direction. Chapter IV of Part XVII housing Articles 350, 350A, 350B and 351 read with Articles 29 and 30 of Part III tend to protect multiculturalism in India. Article 350 authorises the redress of grievances in any language used in the Union and the State, whereas Article 350B provides for Special Officer for Linguistic Minorities.

Hence, a rights-based mother tongue education system is being argued in order to stem the growth of language defection^{xxxix}. Instead of making it optional on the States to provide mother tongue education, a right to such education, howsoever minimal may go a long way to educate younger generations on their own language.

Summary and Way Forward

Linguistic conflicts^{xi} can be said to be subtle conflicts, as the individual is much more autonomous, and the effect of the dominant linguistic community is much pronounced. However, these have an impactful effect on the redistributive goals of justice^{xli}, which is a primary concern of the Constitution. The gradual assimilation of such identities will certainly run counter to the constitutional values mentioned above. In this reference, it can be said that the various principles mentioned in the Preamble and then supported by the provisions under Part III like those mentioned above are ought to be non-negotiable.

Even within the rich mosaic of language diversity, the social reality differs from one region of India to another. Though the Census of India, 2011^{xlii} reports that 96.71 per cent of Indian population have one Scheduled Language as their mother tongue, the speakers' strength reflects Hindi (43.63 %) at the top, Bengali (8.03%) as second and Tamil (5.70 %) as last in the top 5. North Eastern States are rich of speakers of 'Other Languages', the percentage ranging from 26.36 per cent in Sikkim to 88.13 per cent in Nagaland. West Bengal (99.47 %) has one of the highest speakers of Scheduled Languages. Hence, one-formula-fits-all approach in case of linguistic rights may be futile even if we accept the above data to be completely authentic^{xliii}. Thus, although the rights under Article 30 are to be privately enforced and although the provision of Article 350A is not worded as an enforceable right, yet, specific unique social circumstances may warrant an alternate reading of these. If this alternate reading is not afforded, then, the small linguistic communities (for example, Dhimals) will not be able to preserve their language and script. In such a case, these communities will be stripped of their linguistic identity due to technical legal reasons, and the constitutional provisions (including one fundamental right) which seeks to preserve the rich linguistic diversity of India will be rendered practically useless (as the communities will be adopting other languages). Devy (2021) states that every language is a unique world view and source of unique knowledge, thus is to be preserved.

One of the constitutionally mandated processes of education targeted to achieve better individual enrichment is that of mother-tongue education, and in the present case, Dhimals are demanding just that. This community barely has a population size of 1000-2000 and thus is a long way from the governmental gaze. However, Dhimals being limited to this region^{xliv} and facing continuous onslaught of social process, systematic non-implementation of Article 350A will certainly erode

away their language, identity and culture in the long run. Apart from school education and social base, the other languages are used widely, in job, public places, courts, administration, etc. The Dhimals however are unable even to read, write and educate their own children in their own language at a mass level, in their own country!

Notes:

ⁱ The term normative foundation is used here to refer to the foundational values that were decided by the Constituent Assembly of India while drafting the Constitution. For example, the decisions and qualities decided for India, like that of Democracy, Republican government, and the goals of Justice (particularly in three different forms), Liberty, etc. These values and qualities once decided were meant to be achieved and perfected in the newly formed Republic.

ⁱⁱ In the landmark case of *Kesavananda Bharati v. State of Kerala*, (1974) (4 SCC 225), the ‘Basic Structure doctrine’ was evolved to judge the constitutionality of Parliamentary legislations. A number of the constitutional values expressed to be a part of this doctrine are reflected in the Preamble. Later in the case of *S.R. Bommai v. Union of India*, 1994 AIR 1918, the Supreme Court held that, ‘The preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution’.

ⁱⁱⁱ Every provision of the Constitution is a ‘means’ to achieve the ‘end’ that the Preamble champions.

^{iv} These general words are made certain and particular with the specific mention of certain attributes. These mentions of attributes animate the general words with particular constitutional meanings which are to be pursued as a goal.

^v With respect to the cultural co-existence, the Constitution sought to preserve and promote the cultural heritage of India and the concept of *Unity in Diversity*.

^{vi} The Constitution of India recognises religious minorities, gender minorities, caste-based minorities, linguistic minorities, etc. (See, Constitution of India, Arts 15-17, 24-30).

^{vii} Report of the States Reorganisation Commission (1955) dedicates the Chapter I of Part IV of the report to highlight the problems for linguistic minority groups in different States.

^{viii} In interpreting the Constitution, two approaches that are often found at strong disagreements with each other are that of ‘the living tree doctrine’ and ‘the original intent doctrine’. Recently, this conflict came to the forefront in the discussions related to the *Sabarimala judgement (Indian Young Lawyers Association v. The State of Kerala, 2018 (8) SCJ 609)* which held the prohibitions based on gender and biological processes that were imposed over the women to be unconstitutional. Specifically, Article 17 of the Constitution was held to be encompassing any form of untouchability and not to be restricted to the caste-based forms only (which would have been the only form of untouchability covered under the Article if the other approach to constitutional interpretation was to be adopted).

^{ix} Education connects these various forms of rights so as to conserve and preserve the distinct linguistic traditions of various communities. *Education of the language* promotes the sociological function of language preservation, while *education through the language* facilitates the language preservation through constitutional means.

^x The Constitution supports preservation of linguistic identity; yet, the harsh social reality often relegates such rights to the background and makes communities vulnerable to the onslaught of linguistic dominance and identity crisis.

^{xi} Apart from the language classification, English has established its own social relevance as a language of social mobility. *The India Skill Report* published by the CII and Wheebox states that English is among the top 3 skills employers look for.

^{xii} This paper is based on the premise that social enrichment occurs when every culture is cherished and the rich cultural heritage of India is preserved.

^{xiii} The Scheme for Protection and Preservation of Endangered Languages (SPPEL), Govt. of India, classifies it as an endangered language of the 'East Central Zone'. The word *Indian Dhimal* is often used to differentiate these people from the eponymous community residing in the neighbouring country of Nepal. The term broadly translates into 'son of the mountains'.

^{xiv} An instance of marketing in nearby city of Siliguri was recalled here to humorously refer to the situation when this language was spoken to a shopkeeper who only understood Bengali.

^{xv} The participants stressed on the reality of losing the language every moment and the unfortunate instances of being identified as Rajbanshis or Gorkhas, the same communities from which they face linguistic dominance.

^{xvi} Text of Articles 29 and 30 of the Constitution of India are as follows:

Article 29: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30: (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

^{xvii} Pappas and McKelvie (2021) quotes Cristina De Rossi, an anthropologist at Barnet and Southgate College in London, who states that culture includes religion, food, what we wear, how we wear it, language, marriage, music, and also what we believe is right or wrong, how we sit at the table, how we greet visitors, how we behave with loved ones, and a million other things.

^{xviii} The UNESCO rightly identifies the linguistic crisis by stating that with the loss of each language, there is an irreparable loss of a unique cultural set-up, traditional knowledge and value systems, etc. In the international scenario, the vulnerability of any language is defined on the basis of the number of speakers and the inter-generational transmission of the language.

^{xix} Kumar (2013) quotes Kymlicka, according to whom a societal culture provides its members with meaningful ways of life throughout the full range of human activities which includes social, educational, religious, recreational and also economic life while including both the public and private spheres.

^{xx} For example, funds are required for the establishment of educational institutions under Article 30 and Dhimals may have requested funds citing this provision (though this financial aid is not part of the right), as otherwise their population and economic capacity renders this right useless. Similarly, Article 350A may have been invoked to draw attention to this crisis and necessary state intervention requested citing the very low population figures and resultant narrow language base.

^{xxi} RM who can also read and write in Dhimal, says that she picked up Bengali with great difficulty and the latter community appreciates this, but at the same time understands that her accent is different and sounds similar to the way Gorkhali people speak Bengali language.

^{xxii} In 2021, it was reported that the State school education department would inspect 200 informal schools which use Rajbanshi language as medium of instruction and consider their conversion into formal schools (Push for Rajbanshi, 2021). It was further reported that the State had announced language academies, allotted funds and instructed them to prepare syllabus and schoolbooks for primary schools. Earlier, in 2017, two cultural boards, namely 'Kamtapuri Bhasa Academy' and 'Rajbanshi Development and Cultural Board' were announced while Rajbanshi Bhasa Academy continued to function (Bhattacharya, 2017).

^{xxiii} At present in her studies at Bangalore and also for primary interaction, she uses English language. The recent stress on online education also required her to depend on the English language exclusively for academic purposes.

^{xxiv} Gorkhali (also called Nepali) have been a medium of instruction in schools while Rajbanshi may soon be one. Further, Cooch Behar Panchanan Barma University has been named after Thakur Panchanan Barma, a Rajbanshi leader. These factors, in addition to more populous linguistic communities, account for the social perception and hierarchy. Further, Dhimals have more social interaction with these two communities than Bengali, because of their inhabitation in nearby areas.

^{xxv} From educational point of view, Dhimals are more in favour of educating themselves through the medium of instruction of Bengali and Hindi due to the greater usefulness and reach of these languages, apart from the factor of educational resources.

^{xxvi} With *English* education being opted presently in very few cases, and that too up to Class V at most (due to financial constraint).

^{xxvii} The community is also part of an 11-community *Gorkha Janjati Kalyan Samiti* who is fighting for similar claims. The name of this organisation ironically dilutes the specific identities of the constituent groups into the broader Gorkha identity. But, financial constraints are to be blamed for this dilution as the separate communities are too weak to individually pursue their claims.

^{xxviii} This Board is looked upon by the community as a source of financial security to preserve their language through various efforts till the time they receive their actual entitlements under the Constitution. A newspaper report in early 2021 stated that the Dhimals are disappointed over the delay in grant of tribal status and will be seeking a development board (Ghosh, 2021).

^{xxix} It may be noted here that recently in 2019, the Supreme Court has dismissed a plea which sought guidelines to identify and define religious minorities in every State, this because linguistic minority rights are considered on a State-wise criteria and the religious minority is considered on a pan-India criteria.

^{xxx} This is due to the operation of State Official Language provisions under Part XVII of the Constitution of India and Official Languages Act, 1963.

^{xxxi} Text of Article 350A is as follows:

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

^{xxxii} This principle was adopted by the assembly to give protection to those individual and group interests which may otherwise be at the mercy of the majority community. For example, Article 14 incorporates the principle of equality, whereas Articles 15-18 is more grounded on the principle of substantive equality. The Cultural and Educational Rights and other provisions of Language Rights are based on this principle.

^{xxxiii} In the classic case of *Re: The Kerala Education Bill... v. Unknown* (1959 1 SCR 995), it was held that even free education should not be resorted to at the cost of minority rights.

^{xxxiv} This inroad also affects the conception of justice as mentioned in the Preamble of the Constitution.

^{xxxv} Article 46 states that, 'The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation'.

^{xxxvi} Interestingly, the National Education Policy 2020 also stresses upon the role of mother-tongue especially in the formative years of a child's education.

^{xxxvii} Participants have revealed that OBC status was not sought for due to very few advantages when it was originally granted. Hence, when it is claimed now, documentary proofs of caste identity are required which the applicants do not have because of being first-generation OBC applicants.

^{xxxviii} Further, one of the themes in the present study was the almost unanimous perception of English as the most dominant language in terms of social mobility. This adds another point of concern as individual liberty may dictate the adoption of this language and relegation of the mother tongue as inferior, then either the community will be educated in this language or will give-up education in face of linguistic pressure from other communities.

^{xxxix} While the Three Language formula has been there in the policy documents for long, yet, in spirit, it was not implemented.

^{xl} Making the case for re-organisation of the States on linguistic lines, it was observed that it will enhance internal cohesiveness due to language being a vehicle of communication of thoughts, to ensure real consciousness of identity of interests amongst the government and the people under a democracy, ensuring proper education through regional languages and also *political and economic justice*. Such considerations, howsoever trivial due to negligible numeric strength is equally convincing in case of the local languages that became minority in the face of regional dominance of the regional languages.

^{xli} The broad theme of Equality of Opportunity and the sub-questions of medium of instruction and that of education itself is intricately connected with survival of language and the linguistic community itself. Education enriches individuals and communities and thus evens out the fruits of development throughout the population.

^{xlii} This information is taken from the *Census of India 2011* prepared by the Office of the Registrar General, India.

^{xliii} Devy (2021) states that since 1971 several languages have been subsumed under the Hindi language and a population of 10,000 was necessary for their mother-tongue to be listed in published data. Further, fifty-three languages were shown as sub-sets of Hindi in the census of 2011.

^{xliv} GM says that, 'We are facing identity loss and identity crisis at every phase of life! Our language is going extinct bit by bit every day. This ought to be preserved if not to become extinct permanently'. The respondent further recollects that villages of Hatighisa, Moniram (Kilaram, Ketukapur, etc.) have Dhimal population, but when marriages are conducted with other communities (love-marriage, since arranged marriages in this respect does not occur), specially Gorkhali and Rajbanshis, individuals relocate to other villages like the nearby Balason basti and

take up different surnames like Singh and Roy to change their identity completely. The present researcher is aware of localities named after Dhimals in the nearby vicinity also, and the participants stated that only the name remains, as the inhabitants from those localities have migrated to Nepal. It was further noted by the participants that Assam had a large number of Dhimals but they got assimilated in other languages in that area.

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Article: COVID-19 and National Food Security Act, (2013): Analysing Experiences of Food Security in Assam, India

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COVID-19 and National Food Security Act, (2013): Analysing Experiences of Food Security in Assam, India

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Abstract

Availability, access, stability, and sustainability of food are four pillars of food security. The pandemic has challenged these pillars, particularly for the most vulnerable and poor population. Scenes of empty shelves, long queues outside the fair price shops (FPS), community workers being jailed for questioning the siphoning of rice from the FPS stores, were widespread in the news channels and social media. They told of the anxieties surrounding glaring food shortages and supply lapses. The National Food Security Act, 2013 (NFSA) was supposed to take care of them. People were worried: Will and from where and how will the food come? Based on a study in Assam, the key objective of the paper is to identify the impact of COVID-19 lockdown on the food security of women in the informal sector, within the broader context of the NFSA (particularly its Targeted Public Distribution Scheme [TPDS]). The findings of the study suggest: firstly, the state's decision of providing a few kilos of rice and pulses looks like an active and planned site of defining a dehumanised citizen, meant for large-scale governance policies; secondly, there is a calculated attempt of the state to slowly do away with its responsibility of distributing and delivering food, by shifting the task to non-government entities.

Key words: Citizen, COVID-19 lockdown, Food relief packages, NFSA, NGOs

Introduction

A nationwide lockdown was implemented to tackle the first wave of COVID-19 on March 25, 2020ⁱ. This was one of the most stringent lockdowns in the world, seeing a complete shutdown of all forms of livelihood generation. Many of those livelihood avenues have completely disappeared. As a result, by the end of March 2020, a food crisis was brewing in India. In the north-eastern Indian state of Assam, where the study is located, the government announced 5 kg of rice per month per member to those without ration cards (Singh, 2020). This was part of

the direct ration benefit scheme launched under the National Food Security Act, 2013 (NFSA) to mitigate challenges of complete lockdown during the first wave of COVID-19. But given India's weak food supply chain, these direct relief packages did not reach the desired hands. Nor did the additional free 5 kg of food grains reach those who had ration cards.

Availability, access, stability, and sustainability of food are four pillars of food security, as per the Food and Agricultural Organisation (FAO) (World Food Summit, 1996). *Availability* of food in each country or household through any means (for example, production, import or food-aid); *access* to food by people or household through market purchases, own stock/home production, gifts, or borrowing; food utilisation, the actual processing and absorption capacity of the supplied nutrients by the body; *stability and sustainability* over time. COVID-19 has challenged these pillars, particularly for the most vulnerable and poor population. Scenes of empty shelves, long queues outside the fair price shops (FPS), community workers being jailed for questioning the siphoning of rice from the FPS stores, were widespread in the news channels and social media. They told of the anxieties surrounding glaring shortages and supply lapses, that was supposed to be solved through the NFSA. People were worried about the country's food infrastructure: Where and how will the food come from?

This paper builds on anthropological works, like Melissa Cladwell (2002), Neringa Klumblyte (2010), that examines food as not a neutral entity, but rather a fact intimately bound up with politics around production, supply and consumption of food. Affordable food has always been an important part of the social contract between the government and the citizens of India. The NFSA was a culmination of this social contract that hinges on the universal right to food. In India, thus, the food contract goes beyond the question of merely universal affordability. Providing subsidised food and an abundant landscape of rights around food was a means through which the state gained legitimacy. Mentioned within NFSA are sections that demand that people of India should receive food security allowance in circumstances where food supply was disrupted. Secondly, that there should be transparency regarding how food is decided, procured, supplied and distributed. Thirdly, nutrition should be considered while deciding the food products to be subsidised within the NFSA.

On the ground, however, the NFSA had operational flaws. The first wave of COVID-19 infection and the following lockdown highlighted the issues. Firstly,

as per the NFSA Chapter III, the state government should provide food security allowance when food supply is disrupted. During the COVID-lockdown when the disbursement of the regular food security benefits was irregular, the state should have opted for allowance as per NFSA. But it went on to announce direct food benefits despite being aware of the lopsided supply scene in the country. I argue thus that the state by deciding to provide some kilos of food grains, instead of the stipulated allowance, is dehumanising citizens by debarring them from availing their constitutional guarantees. Second, one could observe a diminishing role of the state and greater responsibility on the non-government entities to deliver food to the needy. This goes strictly against Chapter VIII of the NFSA which clearly states that transportation and distribution of food grains will happen both through central and state governments and their agencies, and not through any non-government parties. In the course of the paper, we will contextualise the NFSA and elaborate on my arguments.

A Brief Contextual Note on NFSA

With a recommendation from the FAO, the Indian state had introduced the Public Distribution System (PDS) with three categories of ration cards based on economic status: extreme poverty (Antyodaya), below the poverty level (BPL), above the poverty level (APL). On July 5, 2013, when the NFSA came into effect to ensure ‘food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live with a dignity’ (GOI, 2013), it provided legal entitlement (or ‘right to food’) of subsidised food grain to 75 per cent of the rural population and 50 per cent of the urban population of India. NFSA replaced PDS with the Targeted Public Distribution Scheme (TPDS), merging the APL and BPL categories. It was decided that under TPDS, the merged category will be entitled to 5 kg of food grains (wheat/rice/coarse grain) at a subsidised price. The Antodaya category under Antodaya Anna Yojana (AAY) remained as it is with beneficiaries receiving 35 kg of food grains per household at a subsidised price.

To an extent, as planned the PDS has been able to improve food security status and reducing poverty. At all Indian levels, the PDS has been estimated to reduce the poverty-gap index of rural areas by 18-22 per cent. These figures are further encouraging in larger states with well-functioning PDS. Tamil Nadu and Chhattisgarh marked reduction of poverty gap as high as 39 per cent and 57 per cent respectively (Dreze & Khera, 2013). Particularly after being developed as

TPDS, there is an increased purchase of subsidised grains recorded from fair-price shops and diversification of food baskets of poor households (Kishor & Chakrabarti, 2015). Thampi (2016) too underlined that TPDS was able to ensure dietary diversity and longer-term nutritional indicators. The NITI Ayog (2016) report underlines that TPDS was able to ensure more nutritional security to the Antodaya category.

Nonetheless, there is a long way for TPDS to achieve the four pillars of food security. This is primarily due to large scale anomalies targeted within the TPDS scheme which weakens its effort. Khera (2011), and, Gulati and Saini (2015) had referred to large scale leakages in the food distribution scheme. Khera had conducted her field data from Rajasthan, wherein there was low utilisation of the subsidised food grains and households were seen purchasing wheat from the market at higher prices before exhausting their subsidised quota. Under-purchase is mainly due to supply constraints. Gulati and Saini underlined that the per cent share of total leakage increased with states where the greater per cent of India's poor resided (five states of the Uttar Pradesh, Bihar, Madhya Pradesh, Maharashtra and West Bengal). Home to close to 60 per cent of India's poor, they accounted for close to 50 per cent of the total grain leakage. These disruptions in the supply chain had made many think that cash transfers are the way forward.

Researches, however, have time and again proved that citizens prefer food over cash benefit, even where the supply chain is decent. Some amount of leakages are bearable it seems (Muralidharan, Niehaus & Sukhtankar, 2011; Chanchani, 2017). In tribal areas of Uttar Pradesh, TPDS has not helped to provide food security to the vulnerable household in absence of assured regular income (Shankar, 2004). Others pointed out that while subsidies did change the consumption pattern, it does not have any effect on nutrition measured by per capita calorie intake, per capita protein intake, and per capita fat intake hinting (Kaushal & Muchomba, 2015). All these studies highlighted that even after revisions, the current food subsidy scheme needs changes to be able to reach the NFSA goals.

The COVID-19 situation has further highlighted these anomalies. Studies like Ahmad (2021), and, Boss, Pradhan, Roy & Saroj (2021) point out the issues of food security during COVID-19 arising from the malfunctioning of the NFSA. They question issues of eligibility and lack of commodity choices. None however show that analysing food security measures in COVID-19 does much more. It highlights the nature of the state and its citizens. This paper is an attempt to do so.

Methodology

Data for this paper is drawn based on the primary survey conducted in the north-eastern Indian state of Assam. The survey was led by Assam based feminist organisation – the Women’s Leadership and Training Centre (WLTC). Coordinating the survey on behalf of the WLTC, we surveyed women working in a range of informal sectors – like poultry, animal husbandry, weaving, domestic worker. The survey was limited to female workers of the informal sector as the pre-survey food relief drive suggested them to be the hardest hit of all. The absence of strong legislation (like flexible contracts and work hours) looking over the Indian informal sector were to be blamed. Even before the lockdown, these women were a vulnerable and under-represented working group. They were paid low and income was highly insecure. These workers found it hard to meet their food needs (Gopichandran, Claudius, Baby, Felinda & Mohan, 2010). The lockdown just exacerbated the situation.

Data was collected by 13 field researchersⁱⁱ across 14 districtsⁱⁱⁱ of Assam between April-May 2020, for four weeks. A total of 244 responses were collected, out of which around 25 per cent of responses were from the Kamrup (Metro) district. Half of our respondents were married. 30 per cent of our population were between the age group of 25-35. On average, the household was four to six members. The survey aimed to put together information about how COVID-19 lockdown affected women located across age groups, marital status and geographies; within existing structural, social and economic vulnerabilities – wherein food security was one of the focus areas.

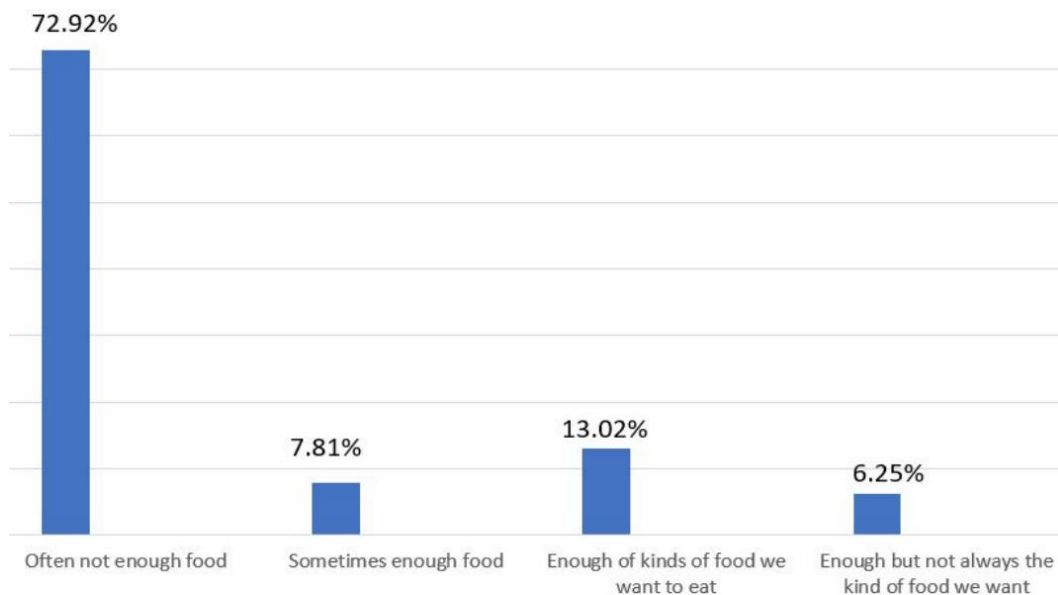
Findings

To identify the impact of COVID-19 lockdown concerning access to food, we asked three questions: (a) Was there enough food for the women and the family? (b) Have they received any food support? (c) From where did they get food support?

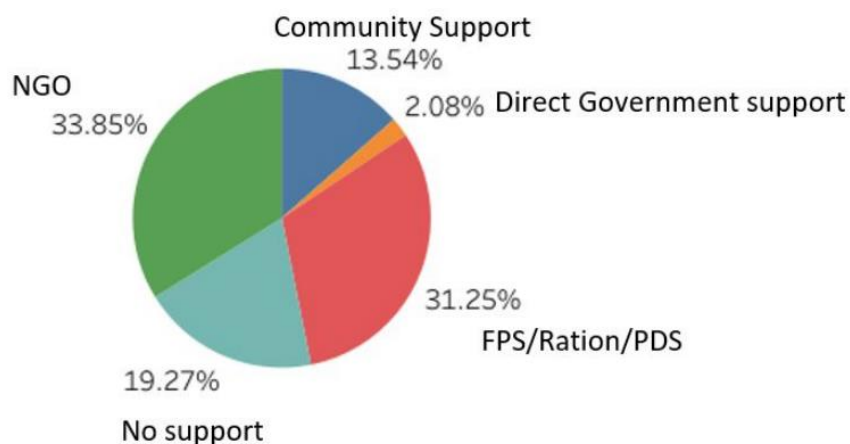
The direct ration benefit scheme launched to manage COVID-lockdown was supposed to feed this section of the marginalised citizens. But as high as 80 per cent of women in our survey responded about food shortages (Figure 1). There was just not enough food. Firstly, they complained that the fair price shops did not have enough subsidised food for everyone like them. Secondly, even when there was information on food availability, the strictness of the lockdown meant that

they were harassed when trying to avail any subsidised food. There are numerous cases of police harassing women when they stepped out of their houses to procure food. Women highlighted the additional burden of arranging food during the lockdown. Many were forced to forage food from the wild patches near their homes, as government schemes seemed distant. Foraging was additional work the women had to do in the event of sky-high prices of edibles during the lockdown (PTI, 2020). It was a choice between hunger and harassment for these women.

Figure 1: Availability of food



The food security services in Assam or the fair price shops were never efficient. Despite the prevailing TPDS and the newly announced direct food benefit, half of our respondents were dependent on civil society means to meet their food needs – the NGOs and community support (Figure 2). A major chunk of women, i.e. 19 per cent were without any support whatsoever – be it government or non-government. None of them had a ration card. They were eligible for the COVID-19 special direct ration benefit but received nothing. Overall women pointed out the glaring food shortage. They felt that NGOs and community support can only provide additional help. It was the government's job to provide food security. As providers of food, women were left in severe distress.

Figure II: Sources of Food Supply

Analysis

a) *Food relief and the dehumanised citizen*

But what about cooking oil? Spices? Vegetables? Milk for the child? Detergent? Do we have savings? How do we survive with just 5 kg of rice? Today I cooked jackfruit. Our neighbour gave it to me. I can cook another meal of jackfruit, but how many more? Does the government think that one can survive with just 5 kg of rice a month? – A respondent from Barpeta, Assam (May, 2020)

The state by deciding to provide some kilos of food grains, instead of allowance, is defining a standardised dehumanised citizen which is devoid of the ability to make choices. As noted scholar James Scott (1998, p. 346) outlines, the state machinery has always been defining generic subjects ‘who needed so many square feet of housing space, acres of farmland, litres of clean water, and units of transportation and so much food...’. These citizens have no idea of gender, tastes, history or opinions. Those building on Scott’s ideas like Martin Hall (2020) or Jeremie Sanchez (2020) also attested that the state’s imagination of its citizens was singularly abstract. The citizens should have no idea of tastes and needs. They are characterised by only those traits that the state deems relevant for their large-scale planning exercise. Such attempts at bracketing the population result in needless dehumanisation. It also goes against the very promise of NFSA which guaranteed that citizens would be allowed access to food that eventually will

enable them ‘to live life with dignity’ (GOI, 2013). Looking closely at the items given in the food relief packages illuminates how food is an everyday medium through which the state imagines its citizens.

The Indian state, when ascertaining the COVID-19 food relief packages, neglected the ‘absorption (nutrition)’ component of food security underlined by FAO. They just gave a few kilos of rice and pulses. Social anthropologist Graeme MacRae (2016) outlined that the state resonates with the view shared by multinational food corporations, like the World Bank, that the only realistic way to deal with food scarcity is through large-scale, high-tech and input-invasive methods. These processes come under the umbrella term of food security, instead of working with the idea of food sovereignty. The latter is a bottom-up approach to tackle food needs, that relies on understanding the specific food cultures and building agricultural systems towards supporting these food cultures, shared by target vulnerable communities and built on foundations of local and practical knowledge. Advocating the idea of food security, the Indian state categorises its vulnerable population as those who could sustain through the paltry amount of rice and pulses. The culinary imagination of its citizens by the state falls short on the ground. It stands in complete opposition to what our study has seen on the ground. ‘We cannot just eat rice, can we? It is just not enough. I will go looking for some ferns’, said one of our respondents. Studies in Bihar, Odisha and Uttar Pradesh too have reported that direct food benefits during COVID have been inadequate (Boss, Pradhan, Roy & Saroj, 2021).

A cursory look at the food security measures highlights how the Indian state perceives its vulnerable citizen as dehumanised abstracted citizens. A case in point is the falling per capita calorie intake for the rural population from 2240 kcal per day to 2047 kcal per day, and the urban population from 2070 kcal per day to 2021 kcal per day, from 1983 to 2004-05. This is much less than the norm of 2400 calories in rural areas and 2100 in urban areas. In the same period, per capita protein consumption declined from 63.5 grams to 55.8 grams per day in rural areas, and 58.1 grams to 55.4 grams in urban areas (Suryanarayan, 1996). All of the above metrics are decided by the Indian Council of Medical Research (ICMR). Another case would be the falling rank of India in the Global Hunger Index (GHI), which captures three dimensions of hunger – insufficient availability of food, shortfalls in the nutritional status of children and child mortality. The 2021 GHI score of India has witnessed the country slipping from 94 to 101 rank amongst 132 countries, clearly faltering on the FAO principles India aspired to

follow by introducing the NFSA.

As anthropologist Samson Bezabeh (2011) argues, such patterns of marking and dehumanisation are rooted in the logic of the modern nation-state. These dehumanisation practices are part of the ongoing negotiations and contestations that produce and maintain statehood all over the world. They occur through various institutionalisation and social relations involved in them. In this case, we see it as how it pans out in the provision of food security.

b) State responsibilities versus NGO goals

Unlike others, I do not have a ration card. I did not receive the 1000 rupees government was supposed to give us. No sight of the five kilograms of rice from the government. Someone in the contractor might have taken our share, who knows. Like always. The government should take care. They are the ones to lock the country. They should also be the ones to provide food. An NGO gave us a one-time food package of rice, pulses, soybean, sugar, mustard oil, biscuits, etc. Many like us are dependent on such NGO packages to survive now. The PDS shopkeeper says he has no idea about my share of rice. But, how long can we sustain on packages of NGO? They come on occasionally. Hunger is permanent. If the lockdown continues, I am sure we will die not out of the disease but hunger. I do not know about others but surely, we cannot manage any longer without regular government assistance! – A respondent from Sonitpur, Assam (May, 2020)

Second, the state is relying on non-governmental organisations to feed the poor. This goes against Section 12 of the NFSA which aimed for shifting management of the food distribution from private owners to public bodies such as women's bodies under the TPDS. The responsibilities seem to have barely shifted, given our survey revealed that 33.85 per cent of women relied on NGOs for providing food during the lockdown. Various newspapers had also reported that when the state was unable to provide any food to the vulnerable during the initial period of lockdown, it was the NGOs who stepped up to provide relief (Mazumdar, 2020). In fact, in some regions, NGOs had outperformed the government in feeding the vulnerable (SRD, 2021).

The long history of the takeover of various socio-economic activities by NGOs for the vulnerable population – including food, education, microcredit, and so on – has led to a situation in which the government can avoid its obligation to deliver food security services to the vulnerable communities. This primarily has to do with the post-cold war era developments that saw the rise of the market-based neoliberal ideology that tends to de-emphasise the role of the state and highlight the role of non-state actors. Political scientists, like John Clarke (1995), Shamsul Haque (2020), have shown that neoliberal beliefs in market-led solutions, less state intervention and a greater role for non-state actors have considerably increased the reliance of developing countries on NGOs. Elsewhere regarding north-eastern India, it had pointed out that the inadequacy with state services strengthens the rationale for partnership with NGOs to deliver basic services (Das, 2019).

This trend towards replacing the obligations and responsibilities of government with those of NGOs has adverse implications for the rights of citizens towards basic services. It also points to a direction where the social contract between the state and citizens is being redrafted due to the expanding role of NGOs replacing the state's obligation to deliver even essential services. Earlier, the vulnerable population had the right to hold public servants responsible; now this ability is only limited to paper. Instead, they have to rely on the charity or goodwill of the NGOs. It seems as if the rights of the people are steadily replaced by charity or goodwill. That the state was mulling to rely on NGOs for lack of better food relief distribution highlights the growing capillaries of the non-state actors (Hazarika, 2020).

This excessive dependence on NGOs however means that society has to rely more on stop-gap measures substituting the much needed structural changes. Sociologist James Petras (1997) had written how in countries like Bolivia, Chile, Brazil and El Salvador, the coming of international NGOs have reduced government accountability on one hand, and pursuing a neoliberal role to commercialise and depoliticise the public. Political scientist Julie Hearn (1998) underlines the long term dependence of the Kenyan state on NGOs for its health services. By placing excessive importance on NGOs, citizens are made to ask for social welfare. There is a depoliticisation of the public and push towards a pro-market agenda. They disunite people into receivers and non-receivers of credit, relief, and so on.

The shift privileges interest of the particular (individual or specific group) over the well-being of the general. For the state, the development goals are for the wider society, but for the NGOs it community-specific. For the latter, certain fortunate communities may experience an improvement in their living standards, here food security, while the rest of the society remains stagnant. Fragmentation is thus built into the NGO goals, with the provision of services or attempt to equity. NGO goals are targeted for survival, which goes against the very promise of the NFSA that promises a dignified life for all.

Ending thoughts

Fearing another lockdown in the coming weeks due to the third wave, some of our respondents still await the food packages government had announced in the first wave. In between, news of food contractors siphoning of food meant for COVID-19 quarantine facilities have further crushed their spirit. Their 'right to food' enshrined in the NFSA 2013 looks non-functional.

The lockdown more glaringly revealed that in terms of food relief, government supply systems are broken and NGOs are not entitled enough to provide for everyone. Anxieties about food and hunger prevail. This anxiety about food is part of the more generalised anxiety that the government does not care about the vulnerable anymore. Years of broken political promises add to this anxiety. The handling of the food relief packages just made it obvious. As such food emerges as an everyday medium through which imaginations and ideologies of the state are articulated and circulated.

Women in our study tried to meet their food needs through the support of other women, within the family and otherwise. Community foraging also became the central means to feed themselves and their family. Wild food, like varied ferns and stems, which otherwise is seen as unpalatable, developed as an alternate local food system. In these performances of solidarity, sharing food was important. Emerging from the common experience of vulnerability, it was necessary for women to defend themselves against exploitative and numbing conditions of the pandemic. Their ways are marked with resourcefulness, openness, and responsiveness to healing modes. But these solidarities can only do so much. They are limited in character. The only way out was to hold the state accountable.

As economist Jean Dreze (2018) outlines, for policies to be successful on the

ground, the state must listen more to its citizens. This is much in line with what James Scott (1998) propounded years ago, that the only way towards owing its responsibility, successful governance and reducing dehumanisation is by developing the spirit of mutuality. Mutuality will allow taking into cognisance the views of the common citizens. In this case, it will enable a bottom-up approach of understanding the specific food cultures and building agricultural systems towards supporting these food cultures, shared by vulnerable communities and built on foundations of local and practical knowledge. Perhaps why within the country, a state like Kerala, by exercising its federal rights did a better job managing the food crisis. Precisely because it tried to take into account the needs of the target population (Pothan, Taguchi & Santini, 2020). It did so by decentralising power and finances, which enabled the local self-government institutions to think and plan effectively at ground level. The Kerala model of tackling COVID-19 showed us that it requires proactive steps by the state to keep the marginalised from starving, for the civic bodies can do only so much. They are ancillary agents and cannot be made responsible for ensuring food security which is the prerogative of the state.

Notes:

ⁱ The lockdown starting from March 25, 2020 went on to May 31, 2020. Thereafter, the lockdown remained for certain high risk 'containment zones'. In a steady process, of over sixteen phases, sector-wise 'unlock' began.

ⁱⁱ Anjuman Ara Begum, Asma Khatun, Bhaotina Mushahary, Hirmelim Beypi, Manjuwara Mullah, Mina Sutradhar, Nur Nasreen, Padumi Kalita, Rajida Kalita, Sanju Shaw, Shahida Khatin, Shahnaz Parvin, Silsila Das.

ⁱⁱⁱ Kamrup (Metro), Kamrup (Rural), Barpeta, Karbi Anlong, Sonitpur, Kokrajhar, Darrang, Dhemaji, Udalguri, Golaghat, Chirang, Tinsukia, Jorhat, Dibrugarh.

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Article: Anti- Love Jihad Law: An Analysis of Women's Religious and Marital Rights

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Anti- Love Jihad Law: An Analysis of Women's Religious and Marital Rights

--- Snehal Sharma

Abstract

In November 2020, Uttar Pradesh government enacted an ordinance – ‘Prohibition of Unlawful Religious Conversion Ordinance, 2020’. Since the ordinance has made the process of religious conversion and interfaith marriage complicated and prolonged in the state, it is commonly known as ‘anti- love jihad law’. This paper analyses and lays out the potential impact of this ordinance on inter-religious marriages, and how it conflicts with women's religious, marital, and bodily autonomy. Here the author discusses the procedures of anti-conversion ordinance along with the Special Marriage Act (1954) and personal laws related to marriage to assess their impact on inter-religious couples and their prospect of getting married. The paper focuses on ‘opindia.com’, a self-proclaimed liberal right news portal that publishes news, current affairs, and opinion pieces from Hindu right-wing perspective, and it is frequently cited on social media by groups and people who believe in the conspiracy of love jihad in order to understand the discourse on love jihad and demand for anti-conversion law in various Indian states.

Key words: Demographic-dystopia, Love Jihad, Religious-conversion, Right to Religion

Introduction

Right-wing movements across the world have used the fear of ‘demographic dystopia’ and the ‘great replacement’ to mobilise people against their enemies. Though the phrase demographic dystopia was coined by Steven Gardiner only in 2006, the concept has been in use for centuries. Gardiner writes that the concept of demographic dystopia essentialises the racial, religious, linguistic, and other social constructs as the basic forms of self, social and national identification and ‘it is reified as a basis for fear mongering’ (2006, p. 75) among their communities. The community is made to believe that their total population is being reduced

because the population of ‘others’ (people who are different and belong to other caste, race, religion, nationality, etc.) is increasing and soon they will be outnumbered by them. The ‘great replacement’ is also a similar concept that suggests that a certain community is being replaced by the ‘others’. John Feffer (2019) claims that the concept of the great replacement is ‘insidious’ as it infiltrates the government and social institutions, changes the culture and society, and demands people to give birth to more children to save their community. He further informs that the idea of great replacement was introduced in France by Renaud Camus (a French white nationalist and novelist) in 2010, and since then it has been adopted by several right-wing nationalist groups across the world. In the same year, Mohan Rao wrote in the context of India that ‘[b]y engendering fear and anxiety about the future, what saffron demography successfully does is insidious: it evokes complicity in morally offensive policies among people’ (2010, pp. 7-8).

In the decade of 2010, the world has seen a high influx in right-wing movements and, as a result, several democratic countries have elected right-wing parties and leaders as head of their nations. Demographic dystopia has been used as a major mobiliser by the right-wing separatists, nationalists, and supremacists across the nations. As Feffer (2019) argued, these right-wing organisations/parties use the fear of the great replacement to urge their communities to have more and more children through endogamous marriages to maintain or grow their population. To retain their status as the majority population, these groups want to control the bodies of their community’s women, in the name of purity of their nation, religion, caste, race, etc. (Sarkar, 2018; Belew, 2018; Chan, 2019). Similarly, in India, Hindu right-wing organisations, and their followers have assumed the responsibility to maintain the purity of Hindu women. One of such measures taken by these groups is generation of ‘public awareness’ against ‘love jihad’ among Hindu families to ‘save’ the women of their families and communities from Muslim men (Huffington Post India, 2015, as cited in Strohl, 2019, p. 28). As per the anti- love jihad campaign, some international Muslim organisations (terrorist organisations like ISIS) recruit Indian Muslim men to lure Hindu women (underage or in early twenties) in romantic relationships. Further, the propaganda claims, these romantic relations are formed by trickery, as the Muslim men pose as Hindus to deceive Hindu women. Once the men trick Hindu women in their ‘love-trap’, they either try to get married or have sex with them with the aim of impregnating them. As soon as these women become pregnant or marry these men, they reveal their real Muslim identities to the women. These Hindu women

are then forced to convert to Islam and remarry according to Islamic rituals (*nikah*). The propagandists insist that the idea behind love jihad is to increase the Muslim population through Hindu women's wombsⁱ (Sarkar, 2019; Tyagi & Sen, 2020).

The propaganda is supported by a consistent movement against love jihad, especially on social media. People and organisations involved in this movement have demanded for law against love jihad and conversion for marriage at both state and national level constantly for a couple of years now. As a result, various Indian states are in process to bring a law to regulate interfaith marriages and religious conversion. In November 2020, Uttar Pradesh (UP) government enacted an ordinance, named – 'Prohibition of Unlawful Religious Conversion Ordinance, 2020 (PURCO)'. The ordinance is projected as a saviour of the vulnerable population of the state from fraudulent and forceful religious conversion. It enforces stricter rules for conversion along with familial, social, and state surveillance on any religious conversion. This ordinance has complicated the religious conversion process by adding several steps and procedures before a person could convert from one religion to another in the state. At the same time, breaking this law or not fulfilling its requirements can result into severe carceral and monetary punishments. On the superficial level, it appears that the ordinance treats all religions equally, as this law applies to the people of all faiths in UP. However, this ordinance is commonly as 'love jihad law' by Indian and international media, as its main aim is anticipated by various media houses to curb the 'forceful conversion' of women from Hinduism to Islam in the name of love and marriageⁱⁱ.

This paper analyses the ways in which the propaganda of love jihad and subsequent enactment of laws/ordinances like PURCO have impacted the right to marry a person of choice and right to profess any religion, especially for women in the states like UP. The paper assesses the potential impact of this ordinance on inter-religious marriages, and how it conflicts with women's religious and bodily autonomy. I have used the discourse circulating on social media platforms related to love jihad to understand the demand and popularity of laws that restrict interfaith marriages, mainly between Hindu women and Muslim men. In this context, the paper discusses the Special Marriage Act, 1954 – the constitutional provisions related to inter-religious and inter-caste marriages and recently enacted UP's anti-conversion ordinance, and their impact on interfaith marriages in UP.

Methodology

The paper uses discourse analysis as the primary method to examine the recent online discussions and debates around love jihad that allows to situate the context of love jihad and forceful conversion in current socio-political context. The piece focuses on a couple of articles published by OpIndia, a right leaning, self-proclaimed ‘liberal right’ online blog. The artifacts (texts and images) collected from OpIndia’s website have been examined in its historical, political, and social context to discuss their affective impact on the readers. The rationale behind analysis of OpIndia’s articles is based on the website’s popularity among people, as the blog has a strong presence on twitter with 5,706,000 followers. It is bilingual (English and Hindi) and one of the most frequently cited news and opinion blog by people on the topic of love jihad. The focus of the analysis will be on OpIndia’s article titled - ‘Anti-Conversion law: Yogi government approves ordinance against unlawful religious conversions, violations to attract up to 10 years in jail’ (2020) that celebrated the enactment of PURCO in UP. The article was also posted by OpIndia on their twitter account and attracted decent readership and responses in the form of likes, retweets and commentsⁱⁱⁱ. The paper will analyse the response to the twitter post to understand how publication and circulation of such materials in online spaces impact people in offline worlds. Reading online published articles and response to those articles on twitter helps to understand how such messages ‘reverberate between spaces, bodies and psyches, producing unexpected effects’ which impacts the ‘real’ life and incidents in physical world through circulation of hatred, suspicion and ‘opportunities for resistance’ (Kuntsman, 2010, p. 300).

The History of Love Jihad

In October 2009, a young women named Anitha Moolya from Karnataka went missing. Some local Hindu right-wing organisations suggested that ‘she was the latest victim of “Love Jihad” – a name given to the belief that Muslim youths were luring Hindu women away and converting them to Islam’ (The Telegraph, 2011). However, later that month, police found out that she was killed by her lover, a Hindu serial killer who may have killed twenty women. This was the time when the idea of ‘love jihad’ was coined. Later in 2014, the concept of love jihad gained popularity through the anti- love jihad campaign during the state election in UP. Though, when the concept emerged, the phrase love jihad was being interchangeably used with Romeo jihad^{iv} in the initial couple of years. However, it was only during the televised coverage of Hadiya case^v in 2018 that made love

jihad became a commonly used phrase while Romeo jihad was dropped out from the vocabulary.

Since 2017, the Hindu right-wing organisations and right leaning online media such as OpIndia.com have continuously published on the topic of love jihad. Frequent publications on this subject matter have made it a major topic of national discourse on Indian twitter and other social media platforms. The articles published by OpIndia over the years related to love jihad have used the affective language to spread the feelings of insecurity and demographic dystopia among Hindus. Some of the articles' titles read as – 'In-laws rape and murder Hindu woman after she refuses to convert to Islam' (OpIndia Staff, 2017); 'Hadiya's father's fate awaits all Hindus if they don't wake up to cultural challenges' (Bhattacharjee, 2018); 'India needs to address the issue of protection of its women with utmost urgency' (Dosapati, 2019); 'Love Jihad is not a figment of the "right wing" imagination, it is a real and present danger' (Goyal, 2019); 'Malappuram's Love Jihad factory: Missing girls, conversions, marriages and ISIS exports' (Sanghamitra, 2020); 'Law against "Love Jihad" does not violate anyone's fundamental rights: Smashing the "liberal" arguments with truth' (Nayak, 2020); 'It is time to free India from the evils of conversion: VHP demands nation-wide enactment of anti-conversion law to get rid of "conversion-jeevi"' (OpIndia Staff, 2021), and so on. All these articles have been posted on twitter as well and have been used as resources and evidence by people who have been advocating for law against love jihad and forced religious conversion.

Though the phrase love jihad was coined in the late 2000s, the narrative of abduction, forced marriage and conversion of Hindu women by Muslim men is not new. Charu Gupta (2009) has traced the history of this storyline to the 1920s. During this period, Arya Samaj used the bodies of Hindu women to map the communal boundaries between Hindus and Muslims. As per Gupta's analysis of Hindi novels and stories published during the late 19th and early 20th century, many Hindu writers have depicted Muslim male characters generally have '[I]nchance behaviour, high sexual appetites, a life of luxury, and religious fanaticism' (ibid, p. 14). Paola Bacchetta argues that in the early literature of Rastriya Swayamsevak Sangh (RSS), Muslims were categorised in two groups – 'Muslims-as-Foreign-Invaders' and 'Muslims-as-ex-Hindu-Converts' and both categories were seen as anti-nationals and a threat to Hindu women (1996, p. 151). Gupta uses the image of Muslim men in popular culture during this era to discuss how the image of Muslim men as rapists and abductors of Hindu women

is created. Both Bacchetta and Gupta have indicated that the basis of such negative image of Muslim men was literature of this era instead of any concrete cases and well researched newspaper reports. Declaration of Muslim men as abductors of Hindu women also helped to dismiss any assertion by women over their own bodies and major life decisions like marriage. In the storyline that was circulated in the 1920s, women were seen as passive victims who were ‘abducted’ and ‘coerced’ in an interfaith relation, hence they needed to be ‘saved’ by men of their community (Baccetta, 1996; Gupta, 2009; Sarkar, 2019). In this case, women were stripped of any agency they had over their decision of conversion and marriage, as well as on their own bodies. Then it was unimaginable for men that women can challenge the patriarchal norms of their families and communities. Hence, any interfaith marriage between Hindu women and Muslim men automatically fell into the category of ‘forced marriage’.

Learning from the History

In the post 9/11 world, where Islam is frequently equated with terrorism, Hindu right-wing fundamentalists have utilised the image of Muslim men as ‘terrorists’ to further their own agenda of ‘Hindu nation’. Several newspapers and magazines affiliated to Hindu right-wing organisations regularly circulate ‘fictitious stories’^{vi} about Hindu women being forcefully/deceitfully converted to Islam, raped, or killed by Muslim men. Similar to the 1920s, today’s love jihad theory is accompanied by another rumor that suggests – the Muslim population is increasing exponentially, and they will outnumber the Hindu community in the next 100 years^{vii}. Resultantly, Muslims will gain political and economic power over the Hindu community and curtail their religious rights. Such propaganda invokes anxiety and fear among Hindus and makes them suspicious about interfaith marriages, especially between Hindu women and Muslim men (Rao, 2010). Inter-caste and inter-religious marriages have always been discouraged and opposed in India, often times with violence. Such violence in the name of families’ and communities’ dignity are generally referred as ‘honour crimes’ which include murder, physical and mental torture, kidnapped within one’s own house, and forced marriage. Amnesty International argues that ‘[t]he regime of honour is unforgiving’ because once the shame is brought upon the family and community by a woman, the only ‘socially acceptable’ way to gain back the respect ‘is to remove the stain on their honour by attacking the woman’ (*Broken bodies, shattered minds*, 2001, p. 9). In 2015, a daily English newspaper reported a ‘792% spike in honour killing’^{viii} cases, UP tops the list’ that translated into total

251 registered honour killings all across the nation in 2015 compared to total 28 killings in 2014 (Hindustan Times, 2016).

In the context of marriages in India, Uma Chakravarti and Maithreyi Krishnaraj (2018) write that ‘endogamous marriage is ubiquitous’, and it is followed across religions (including non-Hindus)^{ix}. She argues that the cultural, social relations and hierarchy in a caste-based society is very much depended on ‘specific marriage structures’. Any change to such marriage practices not only affects the marriage system, but it also challenges the caste-based hierarchical social relations. Hence, ‘love’ as the basis of marriage is seen as a threat in such societies because it has the potential to challenge the social hierarchy and relation based on caste and religion. In such cases, elopement and civil marriage are common ways chosen by inter-caste and interfaith couples (Chaudhari, 2018, p. 7). Many times, such marriages are never accepted by the families or communities and could lead to honour crimes against the couple. Up until the decade of 2000s, despite all the opposition and violence, such marriages were commonly referred to as ‘love marriage’ as opposed to arranged marriage (Mody, 2006, pp. 225-226). However, in the past decade, most romantic relationships between a Muslim man and a Hindu woman are categorised as love jihad and are seen as ‘religious terrorism’ by Muslims against Hindus. The allegations of love jihad at inter-religious marriage changes the meaning of such relations as ‘ordinary life is transformed into a feverish kind of fantasy in which a seemingly impulsive interaction-flirting-could turn out to be part of a jihadi that demands intervention from the state conspiracy’ (Gökarıksel, Neubert & Smith, 2019, p. 572). In past as well, families and communities have joined hands with the state against ‘wrong sexual unions’ in the aftermath of partition (Das, 2007, p. 33). However, ‘the coming together of state police, family controls and Hindutva organisations to destroy such love’ is new (Sarkar, 2018, p. 10).

The coming together of state police, family and Hindu right-wing organisations also indicates that they are serious about ‘saving’ Hindu women. However, unlike the 20th century campaign against Muslim abductors, the anti- love jihad campaign of 2010s recognises the agency of women over their decisions and bodies, and so, they are involved in awareness generation campaigns against love jihad across the country with a focus on adolescent girls and young women (for more details, see Tyagi & Sen, 2020). Interestingly, on one hand they are aware that women have the right to marry anyone, despite religious and caste differences. While, on the other hand, they project women in such relationships as

‘gullible’ and ‘love-blind’ who cannot see that their boyfriends do not want to marry for love, but only to further their religious agenda. This assumption that women need protection of the men of their families, communities, as well as from the state, because they are intrinsically incompetent to make ‘right decisions’ is aptly proved in Hadiya’s case. In this case, not only her family but also the High Court proved this point by putting an adult woman into judiciary supervision and annulling her marriage that was by no means legally invalid. The campaign against love jihad has ‘also exposed grave anxieties and fears over women’s independent and individual expressions of love, desire and intimacy’ (Gupta, 2016, p. 294; Tyagi & Sen, 2020, pp. 105-106).

Liberal Right Narrative: OpIndia

OpIndia claims to be a ‘liberal right’ news portal that does not mirror the Indian mainstream media. Its editorial board writes that they believe in the right to free speech, but in their editorial guideline they have mentioned that they ‘won’t entertain the usual left-liberal narrative’ as they are not obliged to do so (OpIndia, 2015). The ‘about us’ page of OpIndia informs its readers that it is ‘a news and current affairs website’. They put their scope of work as – ‘We publish opinion articles, analysis of issues, news reports (curated from various sources as well as original reporting) and fact-check articles’ (OpIndia, 2020). The portal was founded by Rahul Raj and Kumar Kamal in December 2014, the same year when Bharatiya Janata Party (BJP) came in power (May 2014). Rahul Raj left the organisation in 2019 because as per him, OpIndia has become the mouthpiece of BJP. Raj explained this in a tweet posted on August 9, 2019 (see the tweet given below).



Rahul Raj @bhak_sala · Aug 9, 2019

Replying to @bhak_sala

My stand was clear when I became a part of OpIndia. I wanted to write against lies and propaganda spread by media. I wanted to expose the hypocrisy of LW. I wrote it. Later when OpIndia became a blind mouthpiece of BJP, I distanced myself. Popularity was not my priority (3/n)



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Image 1: Rahul Raj explained on twitter the reason to leave OpIndia

The screenshot shows the OpIndia website homepage. At the top, there is a navigation bar with the OpIndia logo and menu items: POLITICS, OPINIONS, FACT-CHECK, MEDIA, VARIETY, SPECIALS, MORE..., SUPPORT US, and ओपइंडिया. Below the navigation bar is a large yellow banner advertisement for the Uttar Pradesh government, featuring the text "1.41 Crore Households Electrified" and "Soch Imaandaar Kaam Dumdaar" with a photo of a man. The main content area is divided into three columns. The left column, titled "Latest news", contains several short news items. The middle column, titled "In Focus", features a large article about India administering 100 crore coronavirus vaccine doses, with a sub-headline "Here is how 'Sarve Santu Niramaya' manifested itself". The right column, titled "Editor's Picks", features an article by Tulsi Gabbard condemning violence against Hindus in Bangladesh. Below the main articles are several smaller news reports and advertisements, including one about a BJP MP writing to CEAT Tyres and another about sugarcane prices in Uttar Pradesh.

OpIndia | POLITICS | OPINIONS | FACT-CHECK | MEDIA | VARIETY | SPECIALS | MORE... | SUPPORT US | ओपइंडिया

1.41 Crore Households Electrified
Soch Imaandaar Kaam Dumdaar

Latest news

- UP Police arrests three for raising 'Pakistan Zindabad' slogan during Eid procession, Imam of Noida Jama Masjid distances himself: Details
- Chhattisgarh: Durgesh Devangan arrested in Kawardha violence case, had objected to removal of Saffron flag
- Facebook Inc to rename the company to signify that it is no longer a one-app entity
- Hinduphobic Cow Urine jibes, 'Jashne-' events and more: The world of FabIndia digital partner's Managing Director
- Madhya Pradesh: Six months on, Congress MLA's rape accused son is still absconding. Here is all you need to know about the case
- 'Things getting complicated': Harish Rawat to request Congress leadership to relieve him from charge of Punjab so that he can focus on Uttarakhand

In Focus

India administers 100 crore coronavirus vaccine doses in less than 10 months: Here is how 'Sarve Santu Niramaya' manifested itself

News Reports

Jinit Jain - 21 October, 2021

India on October 21, administered over 14 lakh vaccine doses by morning as cumulative vaccination coverage crossed 100 crore

Editor's Picks

Tulsi Gabbard condemns violence against Hindus in Bangladesh, asks 'supposedly secular' Hasina Govt to take action against Jihadists

OpIndia Staff - 20 October, 2021

'Chunavi Hindu' Rahul Gandhi says Ramayana author Valmiki gave the 'idea for India's constitution'

OpIndia Staff - 20 October, 2021

Read all the latest news

4.50 lakh Youth Got Govt Jobs
Soch Imaandaar, Kaam Dumdaar

BJP MP Anantkumar Hegde writes to CEAT Tyres to make ad showcasing nuisance of namaz on roads, loudspeakers in mosques: Full text of letter
OpIndia Staff - 21 October, 2021

Bangladesh: Man who triggered communal violence against Hindus by placing Quran at Durga Puja venue identified as Iqbal Hossain
OpIndia Staff - 20 October, 2021

Sugarcane Prices Hiked to ₹25 per quintal
Soch Imaandaar, Kaam Dumdaar

Image 2: OpIndia's homepage with Three Advertisements of Uttar Pradesh government's Achievements

Advertisements seem to be the major source of the portal's income (see image 2). Along with advertisements, the portal also appeals for financial support to its readers. In their 'support us' appeal they write:

Whether NDTV or "The Wire", they never have to worry about funds. In the name of saving democracy, they get money from various sources. We need your support to fight them. Please contribute whatever you can afford. (OpIndia, n. d.)

They further claim that – 'The mainstream media establishment doesn't want us to survive, but you can help us continue running the show by making a voluntary contribution'. Unlike mainstream news portals, OpIndia does not ask its readers to subscribe to their newspaper to access its contents. As a result, anybody can access all their articles, archives, reportages, editorials, etc. without any subscription. The support us message further clarifies that the amount paid to them is not a donation but financial support from readers who value their work. Their support us appeal is based on the rhetoric of 'fighting with others'. They write that their business model is based on presenting a different narrative than the mainstream media, and they emphasise that the people who believe in their side of the story/narrative as opposed to the mainstream media, should consider paying them for the content they read on their website (check OpIndia's support us page - <https://www.opindia.com/support/>).

Another important message that is projected on almost all pages of the portal is an appeal to Hindus to share the stories of discrimination and persecution they have faced due to their religion and 'prevalent Hinduphobia.' It appears, OpIndia constantly uses the victimhood framework to attract its reader base. The message given in the poster suggests that Hinduism and Hindus and Hindu temples are under constant attack. Even forceful conversion of Hindus to Islam is rampant. It generates an affective atmosphere of fear that may result in frustration and anger among the readers. At the bottom of the right-hand side, the poster shows a tied hand just above the ground as the background image that indicates the struggle of Hindu people, who according to the poster are being persecuted due to their religion (see image 3). The hand also represents the effort of the Hindu community that is trying to break free from their oppressors (Muslims and even secular Hindus and people who believe in equal rights for everyone). The poster has also appropriated the slogan 'Black Lives Matters' and 'Dalit Lives Matters' by writing 'Hindu Lives Matters' at two places (on the right side in white font).

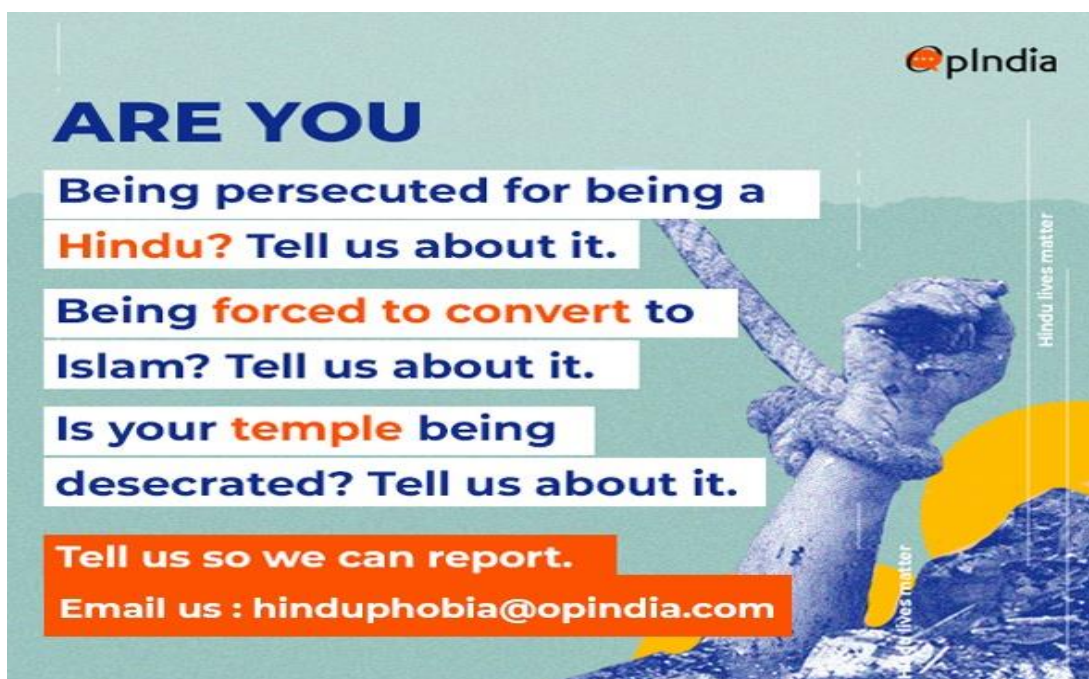


Image 3: Poster shared on OpIndia about discrimination against Hindus

Demand for Anti- Love Jihad Law

A tweet about a Hindu girl from Mumbai was shared in November, 2019 by a twitter user, Shefali Vaidya. She writes:

Sameer Khan seduced Hindu minor Neha Vishwakarma, encouraged her to steal her mother's jewellery and then killed her because she did not steal enough! And they say #LoveJihad doesn't exist. But what is it with Hindu girls? Why do they fall 4 guttersnipes?

This tweet was liked by 3000 people, 1.9 thousand people retweeted it and 120 people commented on it. Mahesh, a commentator, blames Hindu parents and film industry for such mishaps. He writes, '[b]ecause we Hindus have stopped giving sanskars to our children...'. In similar reply, another commentator Swadeshi writes:

[C]an we spend a moment on how less these girls are educated about reality? And how less they know about Indian history and

the faith from other side? Some pay the price of parents' secularism while others of media houses.

Another tweeter user @muthuShiv asks for some ideas and plan on, *[h]ow to prevent young Hindu girls who are in schools & colleges #LoveJihad & #LoveConversion pervert vultures?*

There were 5 comments on this tweet. One of the commentators suggested that children should be informed about love jihad and conversion since young age and parents should keep close eyes on their children, act on any sudden changes in children's behavior and if possible, mothers should sleep with their daughters in same room. Another twitter user recommended that children should be taught about Hindu religion and its superiority to other religions to stop conversion from Hinduism. Other commentators have discussed the availability of sexual contents on the internet and its impact on 'hormonal youths', and the need to educate parents about Hinduism so that they can develop capability to pass on good moral and religious values to their children.

These tweet and comments mentioned above are just a sample of persistent discourse on social media related to love jihad. People who believe in this conspiracy have continuously demanded for solutions to deal with it that includes the demand for a law that can control love jihad. To understand this demand, I used the key words 'need of love jihad law' on twitter search bar. As a result, plenty of tweets appeared that demanded such law. It can be said that the persistent demand for anti-conversion/anti- love jihad law was fulfilled by the UP government in 2020. They passed 'the Prohibition of Unlawful Religious Conversion Ordinance' on November 24, 2020 and promulgated on November 27, 2020. On the same day (November 24), OpIndia published an article named – 'Anti-Conversion law: Yogi government approves ordinance against unlawful religious conversions, violations to attract up to 10 years in jail' (OpIndia Staff, 2020). The article is 311 words long and gives basic information about the ordinance and provisions of punishments under this ordinance. The subheading of the article – 'Home Dept of the Uttar Pradesh had earlier sent a proposal to the law ministry to bring strict law against Love Jihad', suggests that it is framed as a weapon to tackle incidents of 'love jihad'. The first paragraph of the article describes what love jihad is and how it impacts the Hindu community and especially through Hindu women's forceful conversion to Islam. At the end, the article highlights that Allahabad High Court announced that any conversion just

for the sake of marriage will be invalidated and UP Chief Minister has warned Muslim men against indulging in the crime of love jihad.

Same day, the article was also posted on twitter (OpIndia.com, 2020) where it received 1,629 likes. It was retweeted 397 times (fifty-two times with quotes/comments) and it had a total of forty-three comments. Out of these forty-three comments, twenty-two were in favour of the ordinance, eleven were against it (four tweets are from the same account/person) and one was unrelated (self-promotion). For some reason (may be the accounts are private or deleted^x) only thirty-four comments were visible. Twenty-two comments have welcomed the ordinance and praised the UP Chief Minister (CM) Yogi Adityanath for bringing this law. Three hashtags^{xi} have been used multiple times to praise him that loosely translate as – ‘Confidence is there because of Yogi’; ‘Because of Yogi ji daughters are safe’; ‘Trust is there because of Yogi’. All these slogans like hashtags show the support for the ordinance, as well as for Yogi Adityanath led BJP government in UP. However, among these the first hashtag – *#Yogi_hain_to_yakin_hain* (confidence/trust is there because of Yogi) is very popular on twitter, mainly in the context of upcoming UP state election.

Fundamental Rights vs. Cultural Rights

As per the Constitution of India, ‘right to life’ is one of the fundamental rights granted to all Indian citizens. This right cannot be alienated from Indian citizens without proper legal procedure. As an extension to the right to life, people of India have the right to family and marriage. Additionally, the Indian law recognises and allows marriages of interfaith and inter-caste couples. The Special Marriage Act of 1954 has made provisions for such exogamies. As per this act, any adult (women should be at least 18 years of age and men 21 years old) can get married to a person from different caste/religion by registering their marriage in court under this act. To get married under the Special Marriage Act, people do not need to convert to their spouse’s religion, and it upheld their right to profess any religion they want to. However, under all Indian personal laws, one can marry only with a person of same religion. Consequently, the only legal way to get married for any inter-religious couple is to register their marriage under the Special Marriage Act. However, registration of marriage under this act is neither an easy nor a fast-track process. According to the regulations of the Act, a couple needs to fill an application for the registration of marriage and submit it to the marriage registrar. Once the application is approved by the registrar’s office, a

public notice is posted for thirty days outside the office that provides details of the couple. If no one objects to the marriage, the couple can get married after thirty days. But if someone objects, the registrar will investigate the matter that can delay the marriage for at least a couple of months (Choudhary, 1991, p. 2981).

The wait period of minimum thirty days is often risky for an interfaith or inter-religious couple who wants to get married against their families' will. Since the notice of marriage is published on a public notice board, it is very easy for the families and relatives of the couple to know about their intention of elopement and marriage. This regulation makes it difficult for such couples to get married without letting the news spread that could put their freedom and safety in jeopardy. In such cases, many women fear that either their parents will imprison them in the home or will forcefully marry them to someone else chosen by the family. There are very high chances that the family and relatives of the bride and groom will use violence against them. There have been plenty of cases where lovers have been killed or a false police case of abduction and rape has been filed against the man (Mody, 2002; Sarkar, 2019). Perveen Mody writes that one of her informants told her about the Hindu right-wing cells that function as vigilante public (Banaji, 2018) and regularly scan the list of marriage applicants to keep an eye on Hindu-Muslim weddings. This act of meddling with law and its beneficiaries is described by Mody as 'a wholesale political appropriation of the law' (2002, p. 256). The rule of publishing the couples' information in public puts the onus of safety on the petitioners themselves and they will be rewarded with the marriage by the law if they survive the waiting period.

Due to such provisions under this act, desperate couples are left with only one option – getting married as per the personal law that needs both persons to belong to the same faith. In such cases, many times one person converts to another person's faith for the sake of getting legally married (Mody, 2013, p. 52). Here the important point is – when a Hindu woman, who gets married by converting to Islam to make the process of marriage faster, could be seen as a victim of forced conversion. As a result of conversion in today's communally polarised situation, the marriage could be interpreted as a case of love jihad. The provision of personal laws as well as Special Marriage Act do not leave many options for the couple because without being legally married, they cannot seek legal protection, especially if the girl can be proved to be a minor in terms of age (less than 18 years of age).

In addition to the rules of Special Marriage Act, enactment of the Prohibition of Unlawful Religious Conversion Ordinance, 2020 has made the process of interfaith marriages lengthier and riskier. If any person wants to convert their religion or get married to someone of another religion, then they have a minimum wait period of two months. The ordinance clearly states that any religious conversion for the sole purpose of marriage will be unlawful and such marriages will be legally void. The ordinance mandates that if a person wants to change their religion, they need to apply for it to the District Magistrate (DM) of their area at least sixty days in advance from the intended date of conversion. Simultaneously, the religious convertor who is doing the conversion procedure also needs to file a separate petition thirty days in advance. Once the application procedure is completed by both parties, the DM will investigate the case with the help of local police to ensure that the conversion is willful and does not violate any of the rules and provisions of PURCO. Meanwhile, DM will publish the notice of conversion in the public (on their office building's notice board) for a period of sixty days, and any family member or relative can object to conversion during this period. If the investigation satisfies the need, the DM will overrule the objection and give the permission for conversion to both the person who is being converted and the converter. If not, the DM may deny the conversion petition. In case of success, the applicant who has converted needs to appear in front of the DM within twenty-one days of conversion to confirm their 'identity and the contents of the declaration'. Failure to do so will invalidate their conversion.

Similarly, in case of an interfaith marriage, a couple needs to apply at least sixty days in advance if either man or woman wants to convert to the religion of their spouse before or after the marriage. They also need to follow the same steps as mentioned in the previous paragraph for religious conversion. If the procedures are not completed as directed in the ordinance, or during the investigation if there is a sign of misrepresentation, force, undue influence, coercion, allurements, or fraud, the marriage and conversion will not be permitted. If the conversion or marriage has already taken place, it will be considered void. In addition, people who have been part of conversion/marriage will be charged as parties to the offence and burden of proof will lie on them, as the offence under the ordinance is cognizable and non-bailable. Usually, the crimes that fall under cognizable cases in India are serious offences like, murder, rape, theft, culpable homicide, etc. Fraud and cheating are considered non-cognizable offences. However, under PURCO, the conversion/marriage due to fraud is placed under cognizable offence.

When we read the rules of PURCO along-side the guidelines of the Special Marriage Act, 1955, it becomes clear that the ordinance has taken away any fast-track means of getting married for inter-religious couples. Now they can marry only after thirty days waiting period if they decide to marry in the civil court or after sixty days, if one of them wants to convert their religion. In both processes, the information about the marriage or conversion will be posted in public and that can create a life-threatening situation for interfaith couples, as marriage is still a very contentious issue and a matter of family and community's honour and dignity. Though the Constitution of India guarantees the right to profess any religion, this ordinance in UP creates hurdles in the way to do so, mainly in cases when a person wants to follow a religion in which they are not born. The ordinance allows any relative by blood, adoption, or marriage to file a complaint against religious conversion and interfaith marriage, which gives immense power in the hands of family members who can use these legal maneuvers if needed.

If a man from non-SC or ST community is converted from one religion to another by force, greed, or fraudulent means, then the offender can be imprisoned for 1-3 years. However, in the case of conversion of women, and people from Schedule Castes (SC) and Scheduled Tribes (ST), the provision of incarceration is even more stringent. If it is proved that any woman, SC, or ST people have been converted through misrepresentation, force, undue influence, coercion, allurement, or fraud, then the offender can be imprisoned for 2-10 years. Special provision for these three categories of state population indicates that these people are 'infantile' and 'naïve' in the eyes of lawmakers. Despite the legal right to personhood, the provision of PURCO gives priority to religious and community rights over individual rights by allowing other people of the family to file complaints against one's marriage or religious choices. The ordinance indicates that women, SCs and STs are inherently incapable of making right decisions for themselves and need special provisions and protection from the government. The religious and cultural relations have traditionally treated upper caste men as intellectually superior, while women of all castes and men from SC and ST communities as intellectually less capable, and the UP's anti-conversion ordinance seems to adhere to that tradition.

Conclusion

The title of an article published in NDTV indicates how PURCO has started negatively affecting interfaith couples. The title, 'How UP's new anti-conversion

law is being used to harass Hindu-Muslim couples: The law, which came into force in the form of an ordinance on November 28, is seen as giving legal teeth to the BJP's battle against so-called "love jihad", makes it clear that the ordinance is being used by Hindu vigilantes to restrain the ability of getting married of interfaith couples at local level. The case study given by the author of the article shows that a couple got married in July 2020, four months before the enactment of the ordinance. Still, the woman's husband and brother-in law have been arrested on the basis of the complaint filed by the woman's mother of forceful conversion. As per an article by Indian Express, within one month of enactment of the ordinance in UP, fourteen cases were registered and forty-nine people were arrested under PURCO. Out of these fourteen cases, only two were filed by the women themselves.

Women's right to profess a religion or to marry a person of their choice has always been at odds with their community. To settle the communal and ethnic identity conflict – 'women are the ones who are often targeted first', as the community and state regulate their sexuality to map the differences between communities (Kandiyoti, 1991, p. 443, as cited in Menon, 2005, p. 59). Ritu Menon argues, '[f]amily, community and state emerge as the three mediating and interlocking forces determining women's individual and collective destinies, and religious identity and sexuality as determining factors in their realisation of citizenship and experience of secularism' (2005, p. 60). Till date, family laws are followed in India in matters related to marriage, divorce, inheritance, adoption, etc. These laws are still rooted in the traditional morality, colonial interpretation of religion and custom. Women are not able to access the constitutional rights to equality in most spheres of life in their individual capacity. Hence, when we discuss the case of love jihad and PURCO, we need to highlight the underlying assumption behind such laws that gives priority to community over individual women.

The narrative of horrible married life with a Muslim man is created to control Hindu women and to define the category 'other'. People who spread such stories of conservatism and cruelty of Muslims have created the image of Hindus as victims who have been exploited and converted by Islam for centuries, and now it's their chance to fight for 'justice'. As Sara Ahmed argues that emotion of hate helps to create the ordinary people as victims – in this case, Hindu population in India believe in their victimisation by others whose mere presence is sufficient to harm the ordinary people. She finally claims that '[t]he bodies of others are hence

transformed into “the hated” through a discourse of pain’ (Ahmed, 2004, p. 118). Along with the discourse of pain, the discourse of fear is also at work in this context. Gokariksel et al. (2019) define this fear as ‘demographic fever dreams’ (p. 562), because like a dream during fever, the discourse of demographic dystopia and the great replacement also lack coherence and play on emotions to appeal for political actions against the others to save their race, religion and the nation. Such imaginations distort the data and facts and obscure the real condition of ‘demographic patterns of migration, birth, or mortality to dismiss or undermine class tensions and create fictitious communities of homogeneity’ (ibid, p. 563).

The creation of endogamous Hindu society to establish moral and religious superiority of Hindus over Muslims and other minorities is a priority of vigilantes involved in anti- love jihad campaign. Muslim men, who are already under constant surveillance by the state, due to association of Islam with terrorism, are now additionally surveilled by the society. For example, in December 2017, a Hindu man hacked a Muslim man and then he burnt him because of the suspicion that he is ‘planning to commit love-jihad’ (Singh, 2017). The culprit filmed the whole incident and then put it on social media (Facebook). Such violent incidents clearly show the impact of the circulation of affective materials between the digital world and the real world. The recent development on social media against love jihad and in favour of PURCO in UP and various other states are meddling with the fundamental rights of right to marry and right to religion. It looks like, soon there will be no space for love, romance, and marriage for people of different communities. This is an attack on people’s everyday experiences, as well as on their intimate relations and spaces.

Notes:

ⁱ See newspaper articles published by Hindu right-wing media. For example, ‘Love Jihad is not a figment of the “right wing” imagination, it is a real and present danger’ by Shashank Goyal published in OpIndia on May 2, 2019, <https://www.opindia.com/2019/05/love-jihad-is-not-a-figment-of-the-right-wing-imagination-it-is-a-real-and-present-danger/>

ⁱⁱ See some sample news articles that discusses the enactment of the law. For example- check ‘UP Home Department Proposes Tough Law Against “Love Jihad”: Report’, <https://www.ndtv.com/india-news/up-home-department-proposes-tough-law-against-love-jihad-report-2328251>

ⁱⁱⁱ Twitter is a micro-blogging and social media website that allows to exchange short messages known as tweets. Anyone can follow any person who is a twitter user and messages posted on twitter are public unless a person has made their account private. Tweets are now 240 characters long. Photos and videos can also be posted as tweets. Twitter users can retweet (share) someone else’s (anybody) tweets to promote that message or comment on any tweet to express their feeling and opinions. In July 2021, India ranks third in terms of twitter users with total 22.1

million active twitter users ('Leading countries based on number of Twitter users as of July 2021, Statista'). Please visit the following link for more details: <https://www.statista.com/statistics/242606/number-of-active-twitter-users-in-selected-countries/>

^{iv} See the article 'Anti-Romeo & Love Jihad: Experiments in moral policing in Uttar Pradesh,' published in Indian Express for more details on the emergence of the concept love/Romeo jihad in 2014, <https://indianexpress.com/article/explained/anti-romeo-love-jihad-experiments-in-moral-policing-in-uttar-pradesh/> The information can also be found on Wikipedia page – 'Love Jihad' - https://en.wikipedia.org/wiki/Love_Jihad

^v In 2017, Hadiya married to a Muslim man named Shafin Jehan, whom she met through a marriage portal. Due to the judiciary surveillance, the newlywed couple appeared before the High Court of Kerala in May 2017 and informed about their marriage. In response, the court annulled their marriage without any reasonable excuse, and forcefully sent Hadiya to her parents' house. Subsequently, Jehan appealed against the judgement in the Supreme Court of India. In the attempt to determine the case, the Supreme Court appointed the National Investigation Agency (NIA), a government organisation that investigates cases of terrorism, to investigate this case. The NIA presented some vague evidence and claimed it to be a case of love-jihad. In March 2018, Hadiya's marriage was reinstated due to her statement about her willful conversion and marriage, the immense pressure from women's rights organisations across India, and the absence of any concrete evidence from the NIA.

^{vi} I have cross-checked various such cases published in OpIndia. Most of these cases were not reported in any local or national newspapers. The ones that were reported have given very vague evidence and there was no follow-up article on such cases. For example, check this news - <https://navbharattimes.indiatimes.com/metro/mumbai/other-news/he-killed-with-whom-he-escaped/articleshow/71996573.cms>. There is no follow-up report that suggests what happened next or about the trial of the case in the court. I also couldn't find the case published in any other newspaper.

^{vii} In the past decade, there have been numerous occasions when the right-wing Hindu organisations and people affiliated to them have appealed Hindu families to reproduce more children to maintain the majority population status of Hindus in India. Please see the following link for news related to such appeals – 'India MP Sakshi Maharaj: Hindus must have more babies' (BBC News, 2015) <https://www.bbc.com/news/world-asia-india-30706431>
'Hey Hindus, the VHP wants you to have more babies to save the nation!' (Dutta, 2015) <https://www.india.com/viral/hey-hindus-the-vhp-wants-you-to-have-more-babies-to-save-the-nation-342813/>
'Produce more children, RSS tells Hindu couples' (The Hindu, 2016) <https://www.thehindu.com/news/national/other-states/Produce-more-children-RSS-tells-Hindu-couples/article14582028.ece>
'BJP MLA urges Hindus to produce more babies at population control event' (News18.com, 2018) <https://www.news18.com/news/india/bjp-mla-urges-hindus-to-produce-more-babies-at-population-control-event-1670877.html>

^{viii} Honour killings are a category of murder that is committed by family, relatives and community in the name of family's and community's honour.

^{ix} Also see, PEW Research Center's survey – 'Religion in India: Tolerance and Segregation'. It depicts that most Indians believe that they need to stop interfaith marriages. As per the report, 'Roughly two-thirds of Hindus in India want to prevent interreligious marriages of Hindu women (67%) or Hindu men (65%). Even larger shares of Muslims feel similarly: 80% say it is very important to stop Muslim women from marrying outside their religion, and 76% say it is very important to stop Muslim men from doing so', <https://www.pewforum.org/2021/06/29/religion-in-india-tolerance-and-segregation/>

^x If a twitter account is private, then the content posted by that account will not be visible to the general public. Only

people who follow the account can see and react to the tweets posted by that account. In case, if a twitter account is deleted, their posts will not be visible.

^{xi} ‘A hashtag—written with a # symbol—is used to index keywords or topics on Twitter. This function was created on Twitter, and allows people to easily follow topics they are interested in’ (Help Center, n.d. <https://help.twitter.com/en/using-twitter/how-to-use-hashtags>)

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Article: Unemployed by Design: ‘Migrated Indian Wives’ and Deterring Immigration Laws in the U.S.

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Unemployed by Design: 'Migrated Indian Wives' and Detering Immigration Laws in the U.S.

--- Tasha Agarwal

Abstract

In India, a large number of women travel to different parts of the world post marriage. The experience of such international migration, for the spouse migrant, is to a large extent dependent on the immigration policies of the destination countries, here USA. The immigration policies, like any other policies of the nation, are embedded in the socio-psychological and cultural norms of the state. This sets the tone for defining the criteria of identifying 'spouse' and defining their experience of being in the destination country. Taking the particular case of women on H4 visa, based on primary data collected through telephonic interviews with thirty women with H4 visa, the paper concludes that by the design of immigration policies, the women are forced out of labour market and the state redefines their role which is confined to the domestic space, hence impacting their lived experiences.

Key words: H4 visa, Immigration, Labour market, Law, Women

Introduction

Marriage migration has often been contested in policy discourse of various countries, where some countries such as Malaysia, Germany, etc., do not allow family integration, and hence restrict marriage migration of spouses. However, some other countries such as the USA, UK, Australia, and some European countries often allow the spouses of a citizen for family integration, hence allowing permanent settlement of spouses following marriage migration. The policymakers in different countries often use marriage migration as a policy tool in order to manage the flow of migrants. The often-cited reasons for not allowing spouse migration in some countries is to discourage permanent settlement, reduce the burden on the government's resources which would have to be spent on dependent members of the family, maintain ethnic homogeneity in the society, and so on.

Spouses, mostly women, are the ones who are most affected by such policies which discourages family integration. In a scenario of transnational marriages, where two countries are involved, the role of the respective government becomes all-pervasive to manage or create platforms that can minimise the vulnerability of the individual. Gender inequality being deeply rooted in India's social and cultural practices, the role of government becomes even more critical to facilitate a conducive ground for females to make such long-distance travel away from family.

As per the immigration laws of many developed countries such as the US, the spouses are welcomed in the destination country only by beholding 'dependent' status. The dependent status carries a set of nuances that completely redefines how a spouse, primarily women, is supposed to live in a destination country. Hence, through its immigration laws, the state reinforces the already deeply rooted gender inequality into a further deeper level with a higher magnitude of vulnerability. It is a dual vulnerability in which women position her. First, as being spatially distanced into a new place with a new set of rules and regulations which takes years to understand and adjust into, and secondly, to dwell into the same old social practices which predefined roles and responsibilities of women of being confined to the domestic space; all these being reinforced by law.

These women are mostly unaware or unprepared for the *packaged roles* designed for them. Hence the problem arises when these women travel on dependent visas after marriage. There have been many instances where these women who hold high academic qualifications and equivalent work experience are confined to remain out of the workforce because the immigration law restricts them. It dramatically impacts their career aspirations and adds to their economic vulnerability in the destination country. The inability to join the labour force is also associated with losing confidence, impinging upon their identity and belongingness. Because of the dependent visa's vulnerability, Banerjee (2012) has used the term *vegetable visa* as synonyms for dependent visa¹.

This paper will look into such immigration laws and how it impacts the experiences of spouse migrants and their daily lives. The paper is divided into four sections. The following section discusses the understanding of the legally sanctioned marriage as per the United States Citizenship and Immigration Services (USCIS), which is framed predominantly on the Hindu upper caste cultures and norms. Thereafter, the next section discusses how the idea of control

and coverture penetrates from the personal law in the US to the immigration laws concerning foreign nationals. With this understanding of the laws about marriage in the US, the section that follows discusses the specific visa, i.e. H4 visa, which is the subject of the study, and through this visa, we try to understand how law permeates control. The last section presents anecdotal evidence on the experiences of the women on H4 visas and the psychological and social impact of the same.

Understanding ‘Spouse’ in US immigration

Immigration laws, like any other laws, are embedded in the socio-psychological and cultural norms of the state. This sets the tone for defining the criteria for identifying the law’s subject, here ‘spouse’. The laws on immigration are even more complicated as there are other nations involved, and hence the criteria for identifying ‘spouse’ are not just based on a common interpretation of the term in the destination country but also on those recognised in the country of origin. Therefore, any symbolic identity markers, symbolising marriage as per the cultural norms of the origin country, are adopted as the norms for authenticating the real marriages as against fraudulent cases.

The problem arises when the marriages take place beyond the conventional norms of the society, thereby facing difficulty to authenticate the same for immigration purposes. For example, same-sex marriages were not acceptable in the immigration laws granting the spouse visa until 2013. Till 2013, the Defense of Marriage Act (DOMA) of 1996 defined the institution of marriage and the legal definition of ‘spouse’ and ‘marriage’. This act emphasised the usage of the term ‘marriage’ and ‘spouse’ to imply only the opposite sex. The law states ‘the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife’ (Cornell Law School, 2020).

In 2013, the case of *United States v. Windsor* challenged such narrowly defined terminology of marriage as a result of which Section 3 of the Defense of Marriage Act, which emphasised the usage of the term ‘marriage’ and ‘spouse’ to imply opposite sex, was declared unconstitutional, declaring same-sex marriage as a valid marriage based on the place-of-celebration ruleⁱⁱ (USCIS, 2021; Cornell Law School, 2020).

Apart from the socio-cultural aspect determining the state's policy, the state is also governed by the power hierarchy where the destination country's laws are still considered supreme. Even though the immigration service predominantly emphasises the place of celebration rule to validate a marriage, it does have a specific set of criteria that is considered unacceptable as per the state's law. Therefore, in a scenario where the place of celebration rules and the US admission criteria clash, those in sync with the US criteria are deemed applicable (Calvo, 2004).

According to USCIS (2021), a marriage is not considered as valid in the following scenario, even if it is valid in the place of celebration:

- Polygamous marriage
- Civil unions, domestic partnerships, or other such relationships are not recognised as marriages in the place of celebration
- Relationships where one party is not present during the marriage ceremony (proxy marriages) unless the marriage has been consummated
- Certain marriages that violate the firm public policy of the state of residence of the couple

Thus ideally, as per US immigration laws, the spouse is considered as those who are monogamous, not incestuous and are in a legally sanctioned relationship (Calvo, 2004).

Transcending the Idea of 'Control' from Personal Law to Immigration Laws

Historically, immigration in the US had been predominantly female, which derives disproportionately from women being a significant component of family migration (Fitzpatrick, 1997). Even after a decade, spouse migrants to the US continues to be predominantly female (Balgamwalla, 2014; Calvo, 2004). Therefore, any laws concerning spouse migration directly impact women.

Different studies have discussed the nature of US immigration laws, which ignores the gendered aspect of policy domains and how it has an unequal impact on different groups of people (Olivares, 2015; Banerjee, 2012; Manohar, 2009). It is believed that by making immigration laws gender-neutral, the lawmakers are doing more harm because the structural constraints faced by women already

delimit their capacity to a large extent. Therefore, immigration laws ought to be gender-sensitive rather than gender-neutral. In the words of Fitzpatrick,

...Gender is an organising principle, not a simple variable, in-migration, and the experience of the United States as a receiving state is no exception to this pattern... (1997, pp. 24-25)

The immigration laws concerning spouse migrant or dependent migrant is one such policy tool that leads to the production of power hierarchy and concentration of dependent migrants by the principal visa holder. Even though the visibility of females has increased over the years, it has not transcended down to the immigration laws to address the specific need, concerns and risks of the female immigrants (Fitzpatrick, 1997). The immigration laws, which allege to establish coverture, ultimately lead to the chastisement of women by their husbands (Calvo, 2004).

Coverture is defined as a legal arrangement where post marriage, the existence of women are incorporated and consolidated with that of the husband. A woman is not considered to have an existence of their own, and their identity is wholly based on the existence of their husband. This kind of arrangement is further facilitated by state law, where the woman is under the 'cover' of the husband (Ballgamwala, 2014). In the words of Calvo,

Coverture is a legal notion that husband and wife are one, and the one is the husband. (2004, p. 160)

Coverture entitles a husband to have an ownership right over his wife, including the movable and immovable property owned by her. A social contract implies disciplining the wife to obey her husband after marriage, and the law enables the husband to file suit against her. However, a similar right to file suit against the husband is not available to a woman. Children born out of such marriages are also considered to be belonging to the husband, and as per law, the mother has no right whatsoever (Calvo, 2004). This has been a part of the familial discourse in the US, where marital law and social norms played a vital role in subordinating women's position in society.

Until the late 19th century, coverture was socially and legally acceptable, where the husband had the legal right to chastisement (Siegel, 1995). Any corporal

punishment to discipline the wife was deemed acceptable unless it does not leave permanent physical damage to the person. Later with feminist uproar concerning changes in marital and family laws, the laws regarding chastisement were repudiated. However, it was replaced by other new forms of control wherein the cases concerning domestic violence were veiled under the concept of 'family privacy' aimed towards the promotion of 'domestic harmony' (Siegel, 1995). Siegel calls such an attempt towards the maintenance of the status quo as 'preservation through transformation'. She describes:

...When the legitimacy of a status regime is successfully contested, lawmakers and jurists will both cede and defend status privileges - gradually relinquishing the original rules and justificatory rhetoric of the contested regime and finding new rules and reasons to protect such status privileges as they choose to defend. (1995, p. 2119)

The immigration laws concerning family migration, in general, and spouse migration, in particular, seems to be transcending from the family laws governing US citizens. Hence, the regulations on wives imposed by the family law are pretty evident in the immigration policies regulating the dependents of the principal visa holder, right from the inception (Zaher, 2002). Citizenship was always considered a male domain, so much so that before World War II, married women often travelled on their husband's passports (Ballgamwala, 2014). Thus, females were often assumed to be carrying the citizenship of that of their husband. The immigration laws governing families in the 1920s gave male citizens and male permanent residents the legal right over the immigration status of their wives. However, the same was not available to females, i.e. a female citizen or female permanent resident could not have legal rights over her foreign-born husband. The immigration laws of 1952 rectified the gender-biased language adopted in its policy document, thereby correcting the gender differentiation in its functioning. However, the subsequent immigration law of 1965, though not explicit in terms of gender-biased language, but implicitly reinforced their idea of coverture through their visa policies concerning principal visa holders and their dependents; where the principal visa holders are predominantly male while their dependents are predominantly female (Ballgamwala, 2014). This has been made possible through specific sets of rights for the principal visa holders and restrictions for the dependents.

Such an idea of control commences with controlling their participation in the labour market, thereby curtailing their economic independence. As per USCIS, the H4 visa holders are not authorised to participate in the labour market. This policy automatically creates a filter for the entry of thousands of women into the labour market. Most of the women who travel to the US on H4 visas are highly qualified with degrees in medicine, engineering, law, architecture and work experience of working in leading companies in India before migrating to the US on an H4 visa. Their academic degree and work experience make them equally skilled to participate in the labour market. However, with restrictive policy, they are confined at home and are dependent on their partner. However, this has been severely critiqued on the ground that females are always at work. It can be any one of the three cases – ‘paid or recognised’ or ‘paid but non-recognised’, i.e. kept off the records, or ‘unpaid and unrecognised’. In any of these cases, the women are always at work. Therefore the ‘dependency’ may not be real and absolute as the westernised understanding of ‘dependent’ is concerned (Morokvasic, 1984).

About H4 Visa

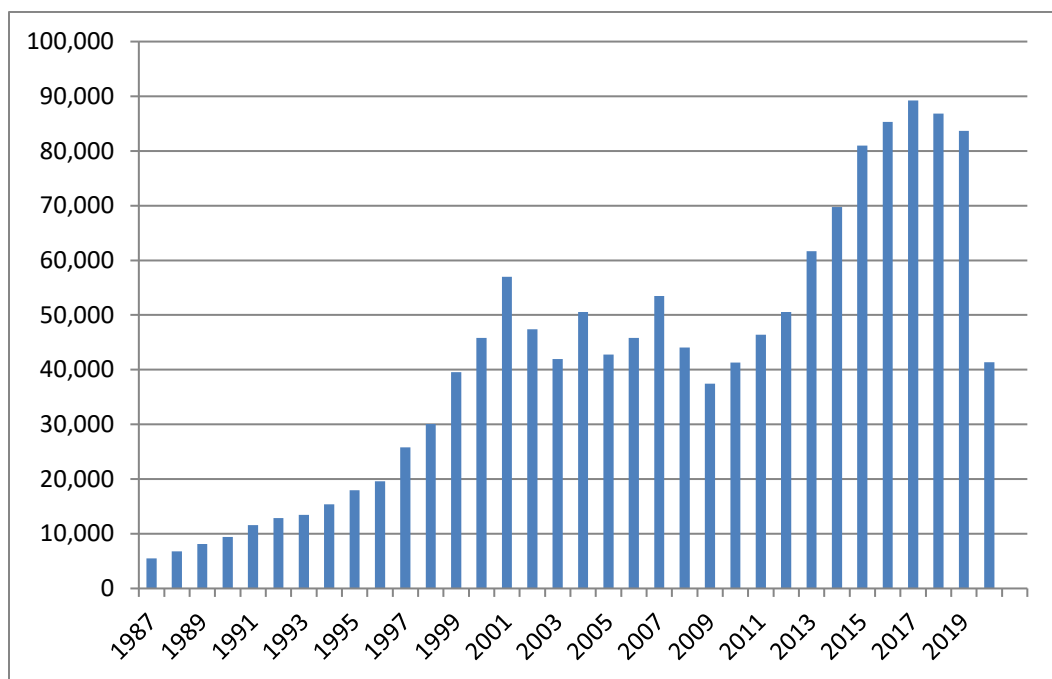
H4 visas, also known as dependent visas, are provided to the spouses and children of H-visa holders; this may include H1B, H2A and H2Bⁱⁱⁱ. Since both H2A and H2B are seasonal, it does not generally lead to the migration of the family members. Therefore, most of the H4 visas are allotted to the family of H1B visa holders. H4 visa holders can move to the US only when the H1B visa holder has got his/her visa approved. Therefore, the entry in the US and their continuity of being in the US is contingent on their primary visa holders, i.e. H1B. The validity to stay in the US for the H1B visa holders is two terms of three years each, i.e. six years in total. After six years, if the employer considers the H1B employee an asset for the organisation, they can apply for the Green Card. Simultaneously, for those on H4 visas, if they are willing to receive the work authorisation, H4 EAD^{iv} will also be filed for the upgradation of status.

Under the presidency of Obama, the US administration brought changes in the H4 visa to include the H4 EAD category in order to facilitate the participation of women in the labour market. In order to upgrade from H4 to H4 EAD category, one must have spent at least six years working in the USA and must be holding an approved I-140 petition^v. Once the Green Card application has been filed, it permits them to extend their stay for a year, renewed every year until the Green

Card is issued. If the H1B holder runs out of status during the process, then both H1B and their corresponding H4 visa holder need to leave the country.

The issuance of H4 visas by the US has increased considerably over the last few decades (See Fig. 1). The majority of these visas are allotted to dependents from India, China and Mexico. As per the Department of Homeland Security (DHS), 80-90 per cent of the H4 visas are allocated to Indians (Bier, 2020). Thus, Indians form a significant chunk of the group receiving the H4 visa from the US. For those applying for H4 EAD in the last five years, 91 per cent are Indian nationals (Bier, 2020). Most women applying for the H4 visas are highly educated with adequate work experiences in diverse fields (Banerjee, 2012).

Figure 1: Number of H4 visas allotted by the US in different years



Source: Department of Homeland Security (different years)

Of the thirty women interviewed, all women had higher education with work experience of at least a year before moving to the US (Table 1 & 2). Most of these women were engineers and had qualifications equivalent to their husbands. These women are already the ones who can be considered ‘skilled’ workers; however, by the design of the immigration laws, these women are barred from entering the labour market.

TABLE 1: EDUCATIONAL QUALIFICATION OF THE RESPONDENTS

Educational Qualification	Number of Respondents
Graduate (B. Tech/B.Com/BBA/BA)	17
Post Graduate (M. Tech/M. Com/MBA/MA)	8
MPhil/PhD	2
Other Professional Degrees	3

TABLE 2: WORK EXPERIENCE OF THE RESPONDENTS

Work Experience (in Years)	Number of Respondents
0-1	4
1-2	7
2-5	11
5+	8

Few researches have studied the economic contribution of those individuals who have received their H4 EAD visa and their labour market contributions. As per research conducted by Brannon and McGee (2019) on the cost-benefit analysis of repealing the H4 EAD, it was brought out that the H4 holders are highly employable and contribute substantially to the US economy. According to their estimate, approximately 75 per cent of all people who applied for work authorisation are employed and contribute approximately \$5.5 billion annually to the US economy. The median wage offered to the H1B and H4 EAD visa holders show just a slight variation, with the median wage being \$113,022 for H1B and \$111,632 for H4 visa holders (Bier, 2020). Hence, it is well established that the H4 visa holders are also among the highly skilled individuals to contribute equally to the US economy. Had these H4 visa holders not have to wait for at least six long years for the work authorisation, they would have been able to join the labour force much before they did.

Dependence by Structure: Experiences of Indian Wives

Despite being educated, skilled and experienced, these women are out of the labour force primarily because of the intersection of the regressive policy of the state and the social norms of Indian society. The patrilocal norms of the Indian marriage system generate a structure where the women are expected to shift their residence to their husband's place, and any deviation from the same is deemed unacceptable. In such a scenario, even though a woman might be willing to wait for her H1B visa, there are lots of precarity involved. Women often find themselves trapped in providing the exact timeline of the 'waiting period', and hence, there is always a covert pressure to move to the US along with the husband.

The delimitations imposed by the US immigration laws significantly impact an individual's experiences moving on a dependent visa. When these women move on H4 visas, they often have a different experience to offer, providing heterogeneity to the much-celebrated homogeneous notion of the *American Dream*.

One of the significant dependencies created by this visa is that of economic dependency. A woman losing her financial independence and being utterly dependent on her husband for every single need has been one of the significant drawbacks discussed at length by the respondents.

Shruti (pseudonym), 28 years old, moved to the US after her marriage in 2016. Since the husband was already on an H1B visa in the US for the last few years, she received her H4 EAD a bit early, i.e. in 2019. Before she migrated to the US, she thought H4 visa holders could participate in the labour market, only to find out later that H4 visa holders cannot work. By profession, she is an engineer and was working with a reputed MNC in Bangalore. She describes her experience of moving to the US on H4, with no provision of engaging in the labour market, as:

I did not work for one year. So until January 2017 from January 2016, I was not doing anything. And I was going literally mad because in India I used to work from morning till evening. I used to be in the office. I then realised that I do not have any good hobbies and was going literally mad and really desperate to get a job. (Interview conducted on October 17, 2020)

Nandita (pseudonym), 34 years old, a Ph.D. holder from the University of Delhi discusses her experience as:

...after I came here for one week, I was just crying about why I had come here because there was nobody to talk to. My husband would leave in the morning and come back at night. I was alone the entire day with nothing to do. It was just me and the household chores. This was not something that I signed up to. Household chores have never been my thing. And here I am in the US handling the household chores. From outside it might look all fancy that I am in the US but here I know how it feels to stay without work and identity...What am I supposed to do with my PhD degree then?
(Interview conducted on February 16, 2021)

Medhavi (pseudonym), 31 years old, discussed how this forceful unemployment has impacted her not just financially, but also socially and psychologically. She got married after seven years of relationship with her husband. Even though she knew her husband pretty well before marriage, the dissatisfaction and frustration with economic dependence perpetuated down to her family life, impacting her marriage:

We both finished our studies together and worked as software engineers in different MNCs in Mumbai before he (husband) received his H1B visa and moved to the US. Initially it was all good when we were busy with our curiosity of a new place...Slowly, when you are more settled, you tend to reflect on what are you up to...I started questioning myself about everything. I started feeling impatient, losing all the confidence and hope. I used to be angry and frustrated most of the time. I just wanted to work. That's it...I wanted to go back to India, but he had a better job here. So I couldn't even force him, but I was losing myself too...Finally, it came down to the point where we thought of getting a divorce. I even went back to India to stay there for a few months. (Interview conducted on July 09, 2020)

In order to utilise their time more efficiently, it was often seen that these women would resort to exploring the alternatives to keep themselves updated and productive, which is often aimed towards future employment prospects. Many of

the women were seen to be engaging in unpaid freelancing work, volunteering with NGOs, pursuing higher education, or pursuing their hobby until they received their work permit.

There were few who went for higher education to increase their probability of employment in future. One of the defining factors for joining higher education institute in the US, apart from self-motivation, has been the support from the husband and the in-laws. Women often carry the baggage of social and cultural norms from the country of origin and often, the in-laws in India try to exercise control over the women in the destination country.

Bhavana (pseudonym), 34 years old, discussed her life in India, where she used to work in XYZ Company and then moved to the US after marriage. She plans to raise a family and take care of the kids in the coming year. She initially mentioned her lack of interest in higher education or work permit, but on further probing, she mentioned:

...See with pursuing higher education, there is some problem. My husband and I, we both are engineers. We both have done B. Tech. If I go for M. Tech, I will be the one with higher qualifications. My mother-in-law does not want this. My husband supports me, but we don't want to upset her...So we haven't thought about the work permit thing. Anyways I will have to take care of the kids.
(Interview conducted on February 18, 2021)

Those women who are willing to build a career ahead often find themselves positioned in the strange amalgamation of the restrictive state laws and the regressive social norms which transcends the geographical borders.

Even after one receives their H4 EAD, i.e. work authorisation, the recognition of such work authorisation in the labour market adds to the existing barrier. The employers are seen to be apprehensive about the work authorisation associated with an H4 visa, as an H4 visa is popularly understood as a dependent visa where one cannot work. This apprehension stems from the changes which are very recent, i.e. it was only in 2015 that amendments in the H4 visa were made and the provision of a work permit was granted to the H4 visa holders fulfilling specific criteria. Thus, many employers are not yet aware of such changes. Secondly, the volatility associated with the H4 visa; with the change of government in 2017,

there was a fear dwindling on the work permit of H4 visa holders. With frequent public discussions happening around immigration laws in general and a growing possibility towards the removal of work permits of the dependent visa holders, there was a lot of confusion and apprehensions surrounding the legality of the work permit of H4 visa holders and the possibility of continuity of such work permit in the then on-going political climate. All these deeply impacted the women, both who were on H4 visas, waiting to receive the work permit, and also among those who had successfully gained the work permit.

Shreya (pseudonym), 38 years old, mentions a similar account:

...Contrary to popular belief, it is not as easy to get a job on EAD because a lot of...like in the normal companies...like basic American companies, a lot of people don't know what H4 EAD is...So when you say EAD, people assume that it's a Green Card EAD...I mean, I learned the hard way after giving enough interviews. So today, assume that you're on the way to get a job and then you tell them, Oh no, it's an H4 EAD. And then they're like, Oh! What is that? And the worst part is H4 EAD has a very bad reputation. So imagine that you never heard of H4 EAD. You go and Google it. And the first thing you see is that it's going to be revoked. Nobody really wants to give a job with that kind of visa because you don't know for sure how long they'll be allowed to work for you. So although people may seem like, Oh my god, you have an H4 EAD so these jobs must be raining on you. It's not like that. (Interview conducted on March 30, 2021)

Even if someone manages to secure a job for themselves, it is like restarting one's career right from the beginning. The restart is because of the halt of 6 years in between, i.e. shifting from H4 to H4 EAD, sometimes due to non-availability of job which is in cognisance with one's education and experience, and most of the time due to a shift towards the social reproductive role adopted by the women and the lack of helping hand to share these responsibilities.

Kavita (pseudonym) worked for eight years after completing her MBA and was in a reputed MNC, heading a brand which is an international money transfer brand, in India. She moved to the US post marriage in 2013 and received her work

permit in around 2018. She narrates her struggle of looking for work after receiving the work permit:

...then I kind of just gave up looking for a job. I think the difference was that at that point, I used to think that I wanted a similar job as to what I did in India. So the same level...same type of...you know, like big scale, stuff like that. After struggling for almost a year, I kind of readjusted my expectations. And I was like, you know what, at this point, I think I just need a job. Beggars can't be choosers. So once I readjusted it, it was easier because then I was hoping to get a contractual job like an hourly wage job. It didn't matter how low the rate was because I needed a foot in the door. (Interview conducted on December 14, 2020)

Prerna (pseudonym), 30 years old, adds:

The worst part about this visa is you can't work. So then what do you do? You do all the household work like cooking, cleaning, washing, etc. I used to hate these household works and I still do. The worst part is – I can't even hire a help. It's not like in India here. Here, the house helps are damn expensive. I can't even ask XXX (husband) that I want them. Because then he will be like why do you need them? What will you do the entire day then? Blah blah blah...and now with kids around, there's hardly any time to get back to work. I can't even think of that now. (Interview conducted on September 27, 2021)

In a way, it can be said that the immigration law has altered the social, psychological and economic well-being of women at a larger level and has confined them in domestic space with the expectation towards the fulfillment of social reproductive role.

Conclusion

The laws of any country are framed by actors who are very much part of the same society. Therefore, to a large extent, the law reflects the social fabric of the society it belongs to. The notion of women and their role in family and marriage, which existed historically around the world, was manifested in the family and

personal law and was exhibited through the idea of control and coverture. The same idea of control and coverture further transcends down to the immigration laws concerning non-nationals, which is visible to date.

On the one hand, the H1B visa holders from India are welcomed in the US but their spouse's entry is conditional. The conditionality imposed is not just regressive but also places women in a vulnerable position. Through its immigration laws, the state redefines the role of these dependent women in society and creates boundaries restricting their movement in the destination country. This dual treatment of individuals belonging to the same family, legitimised by the law, has brought in much difference in how a person narrates their experience of being in the US, hence adding to the heterogeneity in understanding skilled migration to a developed nation.

The effort to integrate into the new land is often more challenging for these women than their male counterparts, who have access to avenues for social interaction and participation. Women with career aspirations often find themselves struggling with the situation where they try to manoeuvre within the existing frames of the immigration laws, trying to be productively associated with some activities which might add to their future career prospects. Amidst all these, their non-participation in the labour market often pushes them towards the social reproductive role, which many of these women are not prepared for or would have never been their choice.

Lack of financial independence, along with the push towards the social reproductive role, has brought in a plethora of issues ranging from economic dependence and loss of career aspiration to loneliness, identity crisis and belongingness, which often results in psychological distress. This distress further transcends beyond the individual level to affect the family, thereby creating a domino effect.

Therefore, laws framed with specific subjects in mind are not merely the binding principles guided towards governing them; it further transcends down to impact them socially and psychologically, disrupting their usual way of life.

Notes:

ⁱ Some other equivalent terms used are 'prison visa' and 'handicap visa'.

ⁱⁱ According to a place of celebration rule, any marriage recognised in the jurisdiction where the marriage took place will be considered valid.

ⁱⁱⁱ H1B visa is for skilled workers, H2A is for seasonal agricultural workers, and H2B is for other unskilled work, which is seasonal/temporary.

^{iv} EAD is an Employment Authorisation Document which dependent visa holders need to apply to the United States Citizenship and Immigration Services (USCIS) using the I-765 form if s/he has been living in the US for the last six years on a dependent visa and is now willing to get the work permit. EAD, however, does not ensure any job. It is just an authorisation from USCIS that the person is legally eligible to join the labour market.

^v I-140 is the application that transfers the status of H1B visa holders from temporary workers to Legal Permanent Resident availing Green Card.

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Research in Progress: Negotiating Legal Categories in Inter-Religious Marriages

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Negotiating Legal Categories in Inter-Religious Marriages

--- Gitanjali Joshua

Abstract

This paper examines two judgements which involve inter-religious marriages and conversion. Together they throw light on the ways in which religious personal law deals with the messiness of overlapping and intersecting identities. These cases have been chosen as ‘trouble cases’ in an attempt to study discretely imagined religious communities and the slippages between them when they are encountered by law. The cases demonstrate the way complex marital dispute is mapped on to categories such as ‘conversion’ within the judicial register. These categories are often used to enforce discrete notions of community and to subvert the individual’s access to marital choice when it transcends the bounds of community. They also demonstrate the way ‘monogamy’ as a category becomes intertwined with ‘conversion’ and invoked in ways that further the othering of Muslims, marking them out as traditional as against the assumed secularity of Hindu subjects.

Key words: Conversion, Inter-religious Marriage, Polygamy, Religious Personal Law

Introduction

Khushboo Jaiswal married Dilbar Habib Siddiqui in December 2009. According to her date of birth as recorded on her admit card issued by Board of High School and Intermediate Examination, she was eighteen years old at the time. Her parents opposed the marriage and filed a criminal case against Dilbar alleging that he had kidnapped Khushboo and compelled her to marry him. This F.I.R. claimed that Khushboo was only sixteen years old. Khushboo however replied to the court that she was a major, legally competent to enter into marriage and had married Dilbar without any threat or coercion. Dilbar and she claimed that they were living together happily.

The Allahabad High Court judgement, dealing with Dilbar’s Writ Petition which

sought to quash the criminal case of abduction against him, demonstrates the complex legal terrain that inter-religious marriages find themselves negotiating in India. The case presents us with one instance of the use of a diverse range of well documented legal strategies¹ to curtail a young woman's marital choice exercised against parental wishes.

The story of G. C. Ghosh and Sushmita Ghosh also invokes the category of conversion. G. C. Ghosh, a Hindu, approached his wife, Sushmita Ghosh, seeking a divorce. When Sushmita refused, he informed her that he had converted to Islam and intended to marry another woman, in any case. He advised Sushmita to file for a mutual consent divorce along with him, rather than 'put up' with a second wife (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000). Sushmita refused and sought legal intervention to prevent him from marrying. Their case along with three others animated the landmark *Sarla Mudgal* judgement (Smt. Sarla Mudgal, President, vs. Union of India & Ors., 1995), and was also taken up separately in the *Lily Thomas* judgement (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000).

While Khushboo's claim to have converted to Islam was made in order to marry a Muslim partner, G. C. Ghosh and his intended wife, converted from Hinduism to Islam in order to marry under Muslim Personal Law where polygamy is ostensibly permitted, given Sushmita's unwillingness to accept a divorce.

Even a bare reading of the situations recounted here suggests immediately that both conversions were a means to exercising marital choice. However both judgements dwell on the validity of the conversions and on the issue of polygamy, displacing choice of partner as the issue at stake, and mapping the disputes instead on to the categories of conversion, polygamy and monogamy within law. This paper, therefore, examines these two cases in an attempt to examine the life of the categories of conversion and monogamy/polygamy within the religiously differentiated legal regime governing marriage and divorce in India. Through this, we hope to gesture towards some sociological implications of the functioning of law in cases of inter-religious marriage.

Accessing these tales mediated through court judgements, these legal categories become implicated in producing the accounts themselves, obscuring and overwriting the individuals' own version of their actions. Thus, within most of these cases, marital disputes are mapped on to religion instead of caste or class. In

recounting these cases, I make no claims as to the ‘truth’ of the account presented. Instead, what is of interest to us is the way these categories of conversion, monogamy and polygamy play out within the judicial narrative.

Khushboo and Dilbar

As recounted above, Khushboo converted to Islam in order to marry Dilbar. The judgement recounts Dilbar’s argument against the criminal case filed by Khushboo’s parents against him. Dilbar alleges that, ‘because of lust and greed for economic benefit, parents of Khushboo Jaiswal wanted to solemnise her marriage with an aged individual and therefore Khushboo Jaiswal embraced Muslim religion and contracted marriage...’ with Dilbar (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 1). At the start, it is thus suggested that Khushboo’s parents are at least partly to blame for her transgression of conversion and marriage with Dilbar, through the invocation of their ‘lust and greed’ in arranging a marriage for her. The judgement also suggests that the marriage was inter-caste in addition to being inter-religious, further angering the parents into filing the criminal case against Dilbar (ibid). No mention of the castes of either Khushboo or Dilbar is made, however.

We see already the numerous transgressions of social order that this marriage has involved. Khushboo has ostensibly attempted to escape an arranged marriage – rendered marginally less appropriate by the description of the man as ‘aged’ – and has done so, marrying across caste and religion. Dilbar’s filing of the Writ Petition is an attempt to escape arrest for the alleged crime of kidnapping. Khushboo also appeared before the court to declare that she had married Dilbar without any coercion (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 1). Documentary evidence is available to prove that she was a major, competent to enter into a marriage (ibid).

The judgement recounts that during the hearing, Smt. Hassibunnisa appeared before the court claiming to be Dilbar’s first wife and adding an additional layer of complexity to the case. She brought along with her their three children, and argued against Dilbar being given any relief in the case. The judgement records that Hassibunnisa alleged that Dilbar ‘deals in human trafficking’ by leaving the various girls he marries, destitute (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 2). This very particular allegation of human trafficking is reported unsupported by any further evidence of multiple marriages and

subsequent desertion of the wives. It is also reported devoid of any insight into the process through which it was framed invoking the legally significant categories of human trafficking and destitution.

Though Dilbar's lawyer pointed out that as a Muslim, Dilbar was 'entitled to keep as many as four wives', as per Muslim Personal Law (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 2), the appearance of his first wife in court seems to weight the rest of the judgement against him. The judgement recounts that Khushboo's mother filed the F.I.R. three months after Dilbar had allegedly abducted Khushboo and attributes this delay in filing to Dilbar's 'dexterous manoeuvres and deceit' in not getting the F.I.R. registered during this period (ibid). It makes this claim with no supporting evidence.

Khushboo's conversion is deemed never to have taken place. Indeed no document is provided in court supporting the claim of her conversion, and the judgement dwells on the use of her name as 'Khushboo' instead of using an Islamic name – the use of which would presumably add weight to the validity of the conversion she claims – on the Nikahnamah (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 3). A verse from the Quran, as cited in a text book of Mohammedan Law, is quoted to establish that Muslims should not marry women who do not believe, that is, who do not have faith in Islam and the Prophet Mohammed. Islamic marriage is held within the judgement, to be both a contract and a 'sacred' or 'devotional act' (ibid). Further, a list of qualifications of a Muslim bride is cited to establish that for a valid Muslim marriage, both parties need to be Muslim (ibid). Based on the invalidation of Khushboo's conversion, and the conditions necessary for a valid Muslim marriage, their marriage is also held to be invalid.

The question of Muslim men being entitled to marry four times is dealt with by emphasising the directive from the Quran, cited in the text book of Mohammedan Law, that polygamy is sanctified conditional on the man's ability to 'do justice to orphans' (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 4). Indeed this condition has been regularly used by courts since the 1959 case of *Itwari vs. Asghari* (Itwari vs. Smt. Asghari & Ors., 1959), where the judgement deemed that taking a second wife could be construed as cruelty to the first wife and refused to uphold Itwari's suit for Restitution of Conjugal Rights.

Thus, in this judgement, a man like Dilbar, who has *not divorced* his first wife and

provided for her and their children, is deemed incompetent to enter into a second marriage (Dilbar Habib Siddiqui vs. State of U.P. & Others, 2010, p. 4). The judgement interprets his not having divorced his previous wife in order to marry Khushboo as his incapability to be fair to more than one wife. In effect, his polygamy is used to invalidate his capability to be polygamous.

Further, it holds that he had intentionally hidden the fact of his previous marriage and three children from the court. Khushboo's silence on the matter of his previous marriage is interpreted as her ignorance of this relationship, and the judgement holds this silence to indicate that she has been deceived. Further, despite her assertion and her school document proving her age, the judgement depends on the F.I.R. filed by her parents and declares that she is sixteen instead of eighteen and that she was taken out of the custody of her parents by Dilbar. In upholding her parents' claim that she is underage, the court renders her consent and participation in her relationship with Dilbar statutorily invalid.

Having thus rendered Khushboo legally incapable of exercising marital choice, and produced a narrative in which she was deceived, the court directs her to be released from the Nari Niketan – a government shelter for women – to the custody of her parents.

Sushmita and G. C. Ghosh

As described within the introduction, Sushmita and G. C. Ghosh had been married for roughly eight years, when G. C. Ghosh sought a divorce from Sushmita in order to marry Vanita Gupta – described within the judgement as a 'divorcee with two children' (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000, p. 1). G. C. Ghosh had in any case 'converted' to Islam along with Vanita Gupta, and they intended to marry (ibid).

Though in this case, the couple uses the 'Islamic' names, Mohd. Carim Ghazi and Henna Begum on their Nikahnama (Lily Thomas, Etc. Etc. vs. Union of India & Ors., 2000, p. 4), the judgements note that G. C. Ghosh's conversion is purely to enable this marriage and does not reflect a change of faith (ibid). The *Lily Thomas* judgement notes repeatedly stated that G. C. Ghosh does not practice Islamic rites, and that neither his name nor his religion has been changed in official identity documents or documents relating to property (ibid). Their son's birth certificate records the parents' names as G. C. Ghosh and Vanita Ghosh and both

their religions as 'Hindu' (ibid).

The *Lily Thomas* judgement therefore finds that this conversion is not the exercise of freedom of conscience, but instead is 'feigned' in order to enable G. C. Ghosh's second marriage and avoid criminal liability for bigamy which is emphasised to be strictly prohibited under Hindu Law (*Lily Thomas, Etc. Etc. vs. Union of India & Ors.*, 2000, p. 6).

In contrast, the *Sarla Mudgal* judgement declared that the continued existence of Muslim Personal Law was an 'open inducement to a Hindu husband, who wants to enter into second marriage while the first marriage is subsisting, to become a Muslim' (*Smt. Sarla Mudgal, President, vs. Union of India & Ors.*, 1995, p. 3). This judgement insists that monogamy is the law and is strictly enforced for Hindus, while Muslim law permits as many as four wives, ignoring the large body of case law that insists on the conditional nature of Muslim polygamy and regularly grants divorces to wives, construing such polygamy as cruelty. Hindu law, it is argued, is also sacramental in origin. Hindus along with Sikhs, Buddhists and Jains are described as having 'forsaken their sentiments in the cause of national unity and integration' where 'some other communities would not' (ibid, p. 12). Codified Hindu Law is thus associated with the Uniform Civil Code, ostensibly resisted by the minority religions. The judgement ominously notes that 'those who preferred to remain in India after the partition fully knew that... there was to be only one Nation... and no community could claim to remain a separate entity on the basis of religion' and resist the introduction of the Uniform Civil Code (ibid). The necessity for 'harmony between the two systems of law' as between the two communities is emphasised, suggesting that such harmony rests on each legal system occupying their respective ambits and not 'trespassing' on the personal laws of the other, as in this case (ibid, p. 10). The *Sarla Mudgal* judgement attributes this 'trespass' to the whole system of Muslim law, rather than to its misuse by individuals, as it is construed in the *Lily Thomas* judgement.

Both judgements hold G. C. Ghosh's second marriage void, relying on the conditions for a valid marriage under the Hindu Marriage Act (*Lily Thomas, Etc. Etc. vs. Union of India & Ors.*, 2000, p. 7), which continues to govern the first marriage between G. C. Ghosh and Sushmita Ghosh (ibid). His conversion does not serve to automatically dissolve their marriage under Hindu Law, and is instead a fault based ground for divorce available only to the unconverted spouse (ibid, p. 10).

Inter-religious Marriage in Law

Marriage in India regularly plays out along lines of caste, class and religion, maintaining family and honour and situating women within systems of patriarchal and familial alliance (Basu, 2015, pp. 169-70; Mody, 2008, p. 7). Marriages of choice exist in a grey zone marked as a departure from the norm as 'love marriages', disrupting the presumed natural order of marriage preceding love (Mody, 2008, p. 8). Despite the existence of the Special Marriage Act, a secular law under which individuals can solemnise marriage regardless of their religious affiliation, a large body of case law testifies to the regular use of conversion as a means to gain legal and familial acceptance of a marriage transcending religious community.

Unhappily, an established pastiche of legal strategies exists to either curtail or certify women's agency in choice of spouse. *Habeas Corpus* petitions sometimes coupled with allegations of statutory rape are levelled against the woman's partner to mobilise state machinery to track down the couple; and through a combination of custodial violence at the hands of the police or her natal family and illegal detentions in state-run institutions for women, their relationship is rendered illicit in law (Baxi, 2014, p. 236). *Habeas Corpus* petitions are also utilised by the husband, and at times 'collusive' cases of *Restitution of Conjugal Rights* are filed to legally certify the women's choice to marry (ibid). In several instances, protection orders from the court are secured against harassment by the natal families and this document is culturally seen as a means of certifying the marriage itself (Srinivasan, 2020, p. 106).

Against the backdrop of this legal terrain that often allies state power and resources to familial control, we have examined two cases of inter-religious marriage. In both cases, familial networks triumph. Khushboo, attempting to escape the marital union being organised for her by her parents, is returned to the custody of her parents, despite her evidence of being a major and her declaration of having entered into her marriage with Dilbar (however complicated that union may appear), willingly. Her silence on his existing marriage is read as evidence of her being deceived, further strengthening the narrative infantilising her. G. C. Ghosh, attempting to exit his marriage with Sushmita is thwarted through a variety of legal strategies which invalidate the relationship he has chosen to enter into with Vanita Gupta.

‘Conversion’ and ‘Polygamy’ in Judicial Discourse

In Khushboo’s case, the ‘conversion’ is claimed in order to marry across religious lines, whereas in G. C. Ghosh’s case, the ‘conversion’ is used to facilitate a second marriage. As we see, the judgements examine and deem invalid the conversions. The use of their ‘Hindu’ names – in Khushboo’s case on the Nikahnama itself, and in G. C. Ghosh’s case on various identity and property documents – is seen as proof of the insincerity of the conversions. This judicial scrutiny of motive for conversion is not matched by a similar scrutiny of ascribed religious affiliation. The burden of genuinity is brought to bear on conversion without any corresponding weight on religion itself, suggesting an assumed primordially to religious identity (Sangari, 1999, p. 39). While conversions may be claimed instrumentally by individuals for various reasons, it becomes evident that the law entering into evaluating the genuineness of the conversion has strong implications for ‘Freedom of Religion’. The assumed primordially allows courts to sort individuals into religious identities along lines of family and kinshipⁱⁱ, lending these networks state backing, strengthening these familial controls and sorting individuals into discretely imagined religious communitiesⁱⁱⁱ.

The existence of Muslim polygamy animates the denial of the validity of both marriages. In Khushboo’s case, we have seen how the continued existence of Dilbar’s prior marriage is used to invalidate his ability to contract a second marriage. In G. C. Ghosh’s case, we have seen that Muslim polygamy and the continued existence of Muslim law are read as incentive to Hindu men to convert and as threats to Indian Unity. Conversion in order to enter into polygamous marriage is read as a misuse of Muslim Law, and his marriage to Vanita is invalidated.

‘Conversion’ as a category within Indian law occupies a difficult position. On the one hand, it is arguably a right protected under Articles 25-28 of the Indian Constitution, commonly collectively referred to as the right to ‘Freedom of Religion’. On the other hand, several states have enacted laws curtailing conversions. The definition of a Hindu itself, within the Hindu Marriage Act (HMA), 1955, in its staggering catholicity specifically excluding only Muslims, Christians, Jews and Parsis, undermines an individual’s freedom to self-definition (Sangari, 1999, p. 30) and the potential of conversion as a means to unsettle or challenge caste norms.

Judicial engagement, in questions of conversion relating to entering into and exiting from marriage, implicates a history that stretches well into the colonial period. It demonstrates that conversion was a common strategy used by women to exit unsatisfactory marriages that began to be curtailed as a result of colonial processes of fixing law (De, 2010, p. 1013). The cases of *Vera Tiscenko* (Noor Jehan Begum vs. Eugene Tiscenko, 1941) and *Robasa Khanum* (Robasa Khanum vs. Khodadad Bomanji Irani, 1946) mark a change in the legal position, implicating the emerging Indian legislature and the passage of the Dissolution of Muslim Marriages Act (DMMA), 1939 in the changed legal position on conversion not automatically dissolving a pre-existing marriage (De, 2010). Instead, conversion is today treated as a fault-based ground for divorce available only to the unconverted spouse (Vilayat Raj Alias Vilayat Khan vs. Smt. Sunila, 1983), except under Muslim Personal Law, where conversion no longer affects the status of a marriage at all, since the passage of the DMMA in 1939.

Meanwhile, ‘polygamy’ as we have demonstrated, is in practice often denied to Muslim men within the Indian judiciary. However, it serves as a rhetorical device to contrast Muslim Law with disciplined codified modern Hindu Law. This framing ignores the long history and continuing prevalence of Hindu polygamy (most often, bigamy) as well as the strong opposition that sprang up against the codification of Hindu law precisely contesting the invalidation of Hindu polygamy^{iv}. These comments are not, of course, to suggest that polygamy does not exist or to argue in its favour, but to point out that when cases reach court, most often, polygamy is denied legitimacy whether to Muslim or Hindu men – as we saw in the two cases examined. Rather, polygamy functions as a rhetorical device to fuel criminalising legislation such as the recent Muslim Women (Protection of Rights on Marriage) Act, 2019^v or the more recent Prohibition of Unlawful Religious Conversion Ordinance, 2020 in UP^{vi} and the amendment to Gujarat’s Freedom of Religion Act, 2003^{vii}.

In the cases examined above we see that the categories of conversion and polygamy function together within law in a form of governance of religion to curtail marital choice across religious domains and instead to streamline marriage according to acceptable kinship networks producing discrete religious community identities. Further, we see that these categories are used to cast Islam as the traditional other associated with polygamy and detrimental to women’s rights, as against apparently secular modern monogamous Hinduism.

Notes:

i For a detailed look at some of these strategies, see Baxi (2006, pp. 59-78; 2014, pp. 174-283).

ii The case of Annapazham and Perumal Nadar whose marriage was arranged by their families across religions but within the same caste illustrates that courts can at times uphold conversion even when there is no evidence of it. As long as there is familial support for the marriage and acceptance by both communities, courts do assume conversion in order to hold a marriage valid. See *Perumal Nadar (Dead) by L.R.S Vs. Ponnuswami*, 1971 AIR 2352; 197R (1) 49 (Supreme Court, 1970).

iii In a strange contrast, ‘genuine’ conversion on the basis of piety is often read as coerced and instrumental as with the Hadiya case, also in ways that strengthen familial controls (see Sethi, 2019, p. 116).

iv See Agnes (1999, pp. 86-88), Basu (2015, pp. 41-48), Kishwar (1994) and Parashar (1992, pp. 113-15) on the resistance to ‘imposing’ compulsory Monogamy under the Hindu Marriage Act, 1955 and the criminalising of bigamy. The main line of the opposition to this ‘imposition’ of monogamy under Hindu Law was that polygamy remained valid under Muslim Law. Another argument was that polygamy should be permitted for the purpose of ensuring a male heir, necessary for performing the last rites of the parents. If the first wife could not conceive, a second could be taken in order to ensure a male heir. The combination of granting women divorce rights and enforcing monogamy was seen as a major detrimental interference in Hindu society and domestic life.

v Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 provides that a punishment of up to three years of imprisonment and a fine can be awarded to a Muslim man found guilty of pronouncing unilateral triple talaq or talaq-e-bidat. Section 5 awards the woman and dependent children a subsistence allowance, without considering that the man is likely to be incarcerated and therefore unable to earn and pay such an allowance. All of these provisions work together to make reporting such a divorce more detrimental to the woman than pursuing other avenues of securing support for herself and her children.

vi The Prohibition of Unlawful Religious Conversion Ordinance, 2020 was replaced by the Prohibition of Unlawful Religious Conversion Bill passed by the U.P. Legislative Assembly in February 2021 and is pending passage in the upper house and the approval of the governor. It is commonly referred to as the Love Jihad law. The Bill prescribes a jail term of up to five years and a fine of Rs.15,000 or more for those convicted of converting or attempting to convert a person from one religion to another using coercion, allurement or fraudulent means –including conversion for the sake of marriage. The punishment rises to imprisonment for ten years and a fine of Rs.25,000 if the person who converted is a minor, a woman or belongs to a Scheduled Caste or Scheduled Tribe.

vii The Gujarat Freedom of Religion Act, 2003 criminalises forcible conversion and conversion through any form of allurement or fraud or for material benefit (marriage is often read as a material benefit) and prescribes a punishment for such conversion of imprisonment for up to three years and a fine of Rs.50,000 with the punishment becoming more severe (imprisonment up to four years and a fine of Rs.1,00,000) in the case of the person converting being a minor, a woman, or a person belonging to a Scheduled Caste or Scheduled Tribe.

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**Research in Progress: Sexual Harassment in Indian Legal Profession:
Reflections from the Field**

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Sexual Harassment in Indian Legal Profession: Reflections from the Field

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Abstract

This paper is based on forty-eight in-depth interviews with first generation Delhi-based lawyers, for over a period of sixteen months between 2017 and 2019, on questions around a wave of legislations against sexual violence against women in the last decade. The aim of the interviews was to understand, in the Indian context, the supposed disjuncture between theoretical postulates and the everyday application of laws around sexual violence against women. While attempting to conceptualise this disjuncture through questionnaire-responses and interviews with lawyers, the responses directed towards the presence of sexual harassment within the legal profession. This paper, thus, focuses on the empirical evidences of existence of sexism within and outside Delhi courts, the dismissal or denial of which results in a cold-shoulder treatment to cases of sexual harassment. For this purpose, public statements of two defence lawyers in the 2012 Nirbhaya gang rape case are considered alongside interview responses of the Delhi-based first-generation lawyers practicing in various courts in Delhi. The paper extends the argument to establish that persistent passive sexism and active discouragement in reporting sexual harassment has resulted in alternate grievance redressal modes for victims within the legal profession.

Key words: CLA 2013, Delhi Courts, Indian Legal Profession, PoSH Act, Sexual Harassment

Introduction

Amendments to laws concerning sexual violence against women gripped the country after the *Nirbhaya* gang rape case in 2012ⁱ (Agnes, 2014). Resulting from a nation-wide agitation against the brutal gang rape and eventual death of a physiotherapy student in the national capital, Indian rape laws were thoroughly overhauled in 2013, leading to the Criminal Law (Amendment) Act, 2013 (henceforth, CLA, 2013). The year 2013 holds a special place in India's socio-

legal history. The first half of the year marked a significant milestone in the history and evolution of laws concerning sexual harassmentⁱⁱ in India. On February 26, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by the Rajya Sabha after sixteen years of constitution of the Vishaka Guidelinesⁱⁱⁱ by the Supreme Court. On March 21, 2013, Rajya Sabha passed the CLA 2013, which came with its share of criticism from the involved women's groups, academicians as well as members of the legal community. On the same date, Asha Menon, Member Secretary of the National Legal Services Authority, submitted a report on the matter concerning a petition filed by advocates Binu Tamta and Vibha Dutta Makhija on the status of sexual harassment complaint committees at various district and High courts in India.

The report stated that the committees existed only on paper, and had neither the guidelines to look into matters of sexual harassment nor the power to deal with the complaints^{iv}. Eventually, the Supreme Court formed a Gender Sensitisation and Internal Complaints Committee^v for women advocates who faced sexual harassment in terms of unwarranted physical, verbal or non-verbal sexual advances by their male counterparts within the court complex. This was a legally active start to the year when legislative and judiciary seemed to be working hand-in-glove to work towards, in however limited sense, protection of women from sexual violence.

The second half of 2013 also holds significance but only contrarily to the earlier developments. A law graduate from a reputed Indian law school levelled allegations of sexual harassment on a retired judge of the Supreme Court of India while she was his intern^{vi} in 2012. Within a week, she issued a statement^{vii} announcing that the Chief Justice of India (CJI) formed a committee to look into the allegation. A three-judge committee^{viii} formed by the then CJI P.G. Sathasivam *prima facie* held the accused, former SC judge, guilty^{ix} of sexual harassment and the police began preliminary inquiry into the matter^x, but the intern who had accused the former SC judge refused to pursue the case legally^{xi}. Another intern^{xii} accused the same judge for sexual harassment, but by then the SC had pulled out of taking up any such cases. Subsequently, two similar cases came to public notice: one in 2014 and the other in 2019. Both the cases were immediately dismissed by the court; the former with a prompt media gag^{xiii} and the latter with an outright rejection of the complaint^{xiv}.

While the country underwent an overwhelmingly crucial phase of jurisprudential churning in terms of anti-sexual assault laws (CLA and PoSH), the Indian legal community failed its own members who complained of sexual harassment at workplace. The paper is based on the premise that the problem lies not as much in the theory as in the application of the anti-sexual harassment laws. I argue in the paper that the legal community enables the re-affirmation and re-establishment of gender-based stereotypes into the everyday legal practice^{xv} despite a wave of legislative amendments^{xvi} in the 21st century. The paper establishes through empirical research that the ‘harmless’ sexist remarks that are periodically dismissed by the court and majority members of the legal community in the everyday courtroom conversations pave way for more grave and regressive statements against women in general, and victims of aggravated sexual violence in particular. Secondly, the paper argues that the constitutional guarantee of ‘equality before law’ (Article 14), prohibition of discrimination based on sex (Article 15), and legislative promises of affirmative action for women [Article 15(3)] stand in contrast to the tradition of deeply patriarchal legal system, the functioning of which deters the lawyer-victims of sexual harassment to seek legal remedies. Lastly, I empirically argue that the lawyer-victims, in order to avoid hurdles in their career, either ignore the issue, drop out of the profession, or resort to extralegal mechanisms of grievance redressal.

The paper is divided into two parts. The first presents the methodology for participant selection from among Delhi-based lawyers. The section envelops the process of data collection and difficulties overcome during the fieldwork. The second section establishes the existence of sexism within the Indian legal profession through the role of language within and outside courts complexes. The section proceeds to discuss how innate sexism within the Indian legal profession translates into a collective neglect (and sometimes covert affirmation) of incidents of sexual harassment within the legal community. Drawing from the experience of sexual harassment at workplace by women lawyers in Delhi, I argue that re-enforcement of gender stereotypes through everyday misogyny (ranging from sexism to sexual harassment) is not as much a jurisprudential debate as it is a question of practice of the law by the agents of law themselves. I discuss how the (mis)handling of reported cases of sexism and sexual harassment acted as deterrents for most participants into not seeking legal help and pushed victim-lawyers into opting for alternate means and modes of grievance redressal to continue their professional journey.

Overview of the Field and Selection of Participants

Between 2017 and 2019, I conducted fieldwork in Delhi courts – the six district courts^{xvii} and Delhi High Court, interviewing and observing first generation Delhi-based lawyers on their perception of rape as a crime, their understanding of the Indian rape laws and their opinions on the rape law amendments so far. This paper is a cumulative summary of the recorded behaviour, attitude and arguments of lawyers in sexual harassment cases before, during and after trial, inside and outside the courtroom through interviews, participant observation, group discussion and covert observation. The idea was to comprehend the perspective of Delhi-based lawyers on sexual violence on women and contrast it with the prevalent sexism within the courtrooms. Despite initial apprehensions and anticipations, I was welcomed at the courts complexes and was generously taken through the busy corridors of the district courts and the Delhi High Court.

In the initial phase there were focused group discussions within courts complexes and a questionnaire was prepared with open-ended questions that was sent to 359 lawyers based in Delhi, out of which 127 lawyers responded to the questionnaire in full. Of the 127 who responded to the questionnaire, forty-eight lawyers were shortlisted for interviews. Participants were selected if they were first generation lawyers practicing criminal law in Delhi with specialisation in handling cases of sexual violence against women and children. Another criterion was a practice of a minimum of seven years alongside an association with a senior. It was made sure that equal numbers of male and female participants were selected for interviews. Upon selection of the participants, rapport was built with each one of them in either courts complexes, or chambers/firms they are working at. After rapport formation, unstructured interviews were held at their respective courts of practice and open-ended in-depth interviews were conducted thereafter. All follow-ups were conducted either via telephone, or through Zoom/Skype/WhatsApp video call. Certain queries were raised and responded through e-mail.

By extending Bourdieu's (1987, pp. 808-809) rationale of studying structured behaviours and customary procedures alongside the legal written record – briefs, commentaries, judicial decisions and legislation, I proceeded to understand laws for protection of women against sexual violence as a socio-cultural process that affects, impacts and shapes the behaviour of the agents of the Indian legal profession. Bourdieu (ibid) deploys an extended notion of 'text' that goes beyond the written record – legislation, judicial pronouncements, ordinances, acts and

commentaries – and encompasses ‘structured’ behaviours and customary procedures characteristic of the ‘juridical field’. These behaviours and customary procedures, Bourdieu explains, are subjects of the same interpretive competitions as the codified texts themselves. This contention is explored in this essay with focus on Delhi-based first generation lawyers.

One of the major themes that evolved from the group discussions and observation of the everyday of the lawyers inside and outside the court complexes was that of the prevalence of gender-based discrimination and exploitation of women lawyers, of which sexual harassment was a part. Such discrimination is categorised under five sub-themes that emerged during the interviews – re-establishment of gender-based stereotypes, verbal discrimination, physical breach of boundaries, professional intimidation and sexual harassment. These are discussed in detail in the next section.

From ‘Subtle’ Sexism to Sexual Harassment

In March 2015, a BBC Documentary was set to be released covering various aspects of the *Nirbhaya* case including interviews with the defence lawyers, the prime accused in the case, and the parents of the deceased victim. The documentary was banned^{xviii} by the Indian government a few days ahead of its worldwide release on International Women’s Day, citing the statements of the defence lawyers as ‘problematic’^{xix}. The statements of the defence lawyers were found to be outrageous and sexist not just by the Indian government, but also by women’s organisations across the country, especially the Supreme Court Women Lawyers Association (henceforth, SCWLA). The SCWLA wrote a letter to the Bar Council of India to take strict action against the two defence lawyers. In response to this, the Bar Council of India issued a show-cause notice^{xx} to both the lawyers to explain why disciplinary action should not be taken against them. The Lok Kalyan Sanstha came in support of the SCWLA in demanding harsh punishment for the two defence lawyers for ‘making unwarranted statements outside the court premises’^{xxi}. Despite the seriousness, the matter is still pending.

▪ ***Calling out sexism within the legal profession***

In March 2019, Senior Advocate Indira Jaising wrote an open letter^{xxii} to the then Chief Justice of India baring the presence of deep-rooted sexism within the courtrooms and the subsequent plight of woman lawyers and judges. In her letter she contended, ‘... there have been multiple incidents where *sexist remarks being*

made by lawyers, go unnoticed by the Bench. Such tacit acceptance of sexist language in the courtroom and brushing it aside as *didn't mean any harm*, gives it a level of legitimacy, and a judge fails in their duty in protecting the fundamental right enshrined under Article 15 if they don't disapprove of and call out sexist language, remarks or comments made in their courtroom.' (first emphasis mine; second author's). She further wrote, 'Judgments of courts across the country enjoy the status of being the law of the land, but unfortunately *judicial language continues to use words and phrases which perpetuate patriarchy*, endorse stereotypes of women's perceived roles and behaviour and entrench biases that are detrimental to the status of women in our society.' (emphasis mine).

Iterating on the importance of language, Ms. Jaising pointed out at the prevalence of sexism in the courtrooms, and the inaction of judges to reprimand such usage. This inaction of the judges in not actively curbing the use of sexist language by lawyers and judges against their own counterparts reflects on the attitude of the judiciary towards ensuring and maintaining a healthy work environment for its women lawyers and judges. Taking this into consideration, I conducted intensive in-depth interviews with forty-eight Delhi-based lawyers to understand sexism and sexual harassment from the insider's vantage point.

▪ ***Sexual harassment at workplace: accounts of lawyer-victims in Delhi***

During the course of the fieldwork, I came across an 'internal practice' of a law firm in Delhi that did not hire female interns or lawyers. Upon inquiry from a participant who was a former intern at that law firm, it was found that the said firm considered the presence of women as a 'distraction'. The participant said that his former employee believed that 'women cannot take jokes, and men bear the brunt of the sexual harassment policy'. This is not a standalone case of gender-based professional discrimination where misogynistic comments are pushed as jokes and function as office banter among colleagues. Another participant shared that her senior had asked for her 'nude/semi-nude pictures after a brief discussion at his chamber in a Delhi court'. When she denied and said it was inappropriate, he said he could 'help her professionally and even recommend her to the Supreme Court' if she complied.

In another interview, a participant stated that she was asked to lead the orientation session of a new intern. While she was speaking, the lawyer 'shut his chamber's door at the courts complex and held the participant by waist'. She immediately

withdrew herself but the lawyer ‘insisted on holding her and asked the new intern to leave’. The participant immediately left the chamber and reported the matter to her brother who is also a lawyer, but he suggested that ‘she remained quiet about it’. So she moved to another court to work with another lawyer, a female senior this time.

In other cases, the participants shared that they were asked by their seniors to wear more make-up and ‘look pretty’, or were called by their employers at wee hours of the night and asked questions about their personal lives (if they had a boyfriend, etc.). A few participants also mentioned that they were told to wear attire that will ‘accentuate the figure’. The common thread that binds these experiences is the fact that none of the sixteen lawyer-victims of sexual harassment filed any official complaint. This can be explained by the dismissal of aforementioned reported cases of sexual harassment by the legal community.

▪ *Bargaining with misogyny*

As ‘agents of law’ in the Indian ‘juridical social field’, lawyers are responsible for professionally defined patterned activity (Bourdieu, 1987). During the course of my fieldwork, a sense of collective was observed among male participants in the form of sexist ‘banter’ about their female counterparts. The response of women lawyers to the everyday misogyny within legal community was recorded in terms of their coping mechanisms or alternate modes of grievance redressal to survive in a male-dominated profession. During the interviews, most female participants seemed either disturbed or embarrassed, and some blamed themselves for being ‘too polite’ or ‘cordial’ or ‘agreeable’. While none of them lodged any formal police complaint or filed a complaint at Internal Complaints Committee, they all had paved their way out. They either switched from litigation to arbitration with less interaction with seniors, or joined another senior (mostly female), or practiced independently. There were indirect mentions of fellow female lawyers dropping out of the profession^{xxiii} because of sexual harassment.

Such modes of bargaining with misogyny were explained as ‘careful steps to move forward in the male-dominated profession’. One participant (male) remarked that legal profession is competitive and only ‘thick-skinned’ survive. This statement was made in a group discussion and most participants agreed to it. It was observed that being silent is considered better than being called a ‘troublemaker who calls out on reputed and sought-after’ seniors.

Conclusion

The 2013 PoSH Act defines sexual harassment as ‘unwelcome acts or behaviours’ including ‘physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature’ [Section 2(n)]. Sexual harassment at workplace also holds ‘implied or explicit promise of preferential treatment in employment, threat of detrimental treatment in employment, threat about present or future state of employment, interference with the work, and humiliating treatment affecting health and safety of a female employee at her workplace’ under the ambit of sexual harassment. In this context, the paper presented empirical evidences of breach of sections of the PoSH Act by the employers within the legal profession.

Sexual harassment within the Indian legal community is not a new phenomenon (Sathe, 1992). It is also not peculiar to India (French, 2010). However, the Indian legal community has been considered ‘predatory’ (Raju, 2020, p. 2) and innately reliant on gendered notions of female sexual passivity and victimisation (Basu, 2011, p. 194) by members of the Bar themselves. This was concretised during the interviews since women participants considered some seniors in the profession as ‘voyeuristic’. They said that seniors either ‘stood too close’, or ‘hold inappropriately while clicking pictures’, or ‘hold by the waist’ during court briefings, or ‘tell us to behave around men and not chatter much’. MacKinnon’s (1979, p. 48) postulation that such cases go unreported because women tend to ignore harassment in a hope that the harasser will stop holds ground in this context.

We have seen that although all victim-lawyers knew they were being sexually harassed, they either found themselves guilty, or took refuge in either quitting or enduring as against being labelled ‘loud-mouth’. We have also seen that all lawyer-victims underwent experiences that both, the PoSH Act, and the IPC recognise as sexual harassment, but none of them reported the abuser. This paper is indicative of re-victimisation of lawyer-victims not based only on theoretical flaws in legislation on sexual harassment as contended by Raju (2020) but also on the application of the legislations by the legal community itself.

Notes:

ⁱ Drache and Velagic (2014, p. 11) mark that the *Nirbhaya* case has been the most extensively covered case of sexual violence in the recent Indian history. They established that rape reporting after the December 2012 incident had gone up by 30 per cent, out of which 50-80 per cent coverage was of this case itself. Not only national, but international media too got obsessed with the details of the case and the outcome of it (Chaudhuri, 2019).

ⁱⁱ Criminal Law (Amendment) Act, 2013 was the first rape law amendment since 1983, when the Indian rape law was modified for the first time since its inception.

ⁱⁱⁱ *Vishaka and Others vs. State of Rajasthan and Others* [JT 1997 (7). SC 384].

^{iv} *SC to consider draft rules on sexual harassment at apex court*. Retrieved from <https://www.freepressjournal.in/headlines/sc-to-consider-draft-rules-on-sexual-harassment-at-apex-court> on 27.02.2016

^v *SC forms sexual harassment committee for women lawyers*. Retrieved from <https://www.hindustantimes.com/delhi/sc-forms-sexual-harassment-committee-for-women-lawyers/story-YVSQhqrQDwr7RBhEkbBwM.html> on 27.02.2016 (Chapter II of the PoSH Act, 2013 lays foundation for constitution of Internal Complaints Committees).

^{vi} The Supreme Court intern posted her ordeal on November 06, 2013 in a blogpost. The blog was accessed on 14.02.2016 on <https://jilsblognujs.wordpress.com/2013/11/06/through-my-looking-glass/>

^{vii} In less than a week of posting details of the issue on her personal blog, Stella Jones, the victim, issued a statement confirming that the CJI had formed a committee to look into the matter, and that she would shortly depose before the court. Full statement can be accessed at <https://jils.co.in/statement-of-stella-james/>

^{viii} *CJI constitutes 3-judge commission to probe ex-SC judge sexual harassment allegation*. Accessed on 14.02.2016 on <https://www.legallyindia.com/20131124109/Bar-Bench-Litigation/cji-probe-into-3-judges> (The three judges constituting the committee were justices RM Lodha, HL Dattu and Ranjana Prakash Desai).

^{ix} *Law intern dismisses justice Ganguly's claim of innocence, hints at filing police complaint*. Accessed on 14.02.2016 on https://zeenews.india.com/news/nation/law-intern-dismisses-justice-gangulys-claim-of-innocence-hints-at-filing-police-complaint_898980.html

^x *Police begin inquiry into charges against former judge*. Accessed on 14.02.2016 on <https://www.thehindu.com/news/national/police-begin-inquiry-into-charges-against-former-judge/article5355419.ece>

^{xi} *Law intern not for pursuing charge*. Accessed on 14.02.2016 on <https://www.thehindu.com/news/national/law-intern-not-for-pursuing-charge/article5365253.ece>

^{xii} *The second intern alleged that she gained courage to speak out about her experience owing to the action taken by the Supreme Court in the allegations by the first intern*. Information accessed on <https://www.legallyindia.com/201311144114/Bar-Bench-Litigation/sc-intern-sex-harassment-another-interns-social-media-account> on 14.02.2016

^{xiii} *Gag order in Swatanter case mockery of the rule of law: Editors Guild*. Accessed on 18.05.2017 on <https://timesofindia.indiatimes.com/india/Gag-order-in-Swatanter-case-mockery-of-the-rule-of-law-Editors-Guild/articleshow/28977317.cms>; *Making the powerful accountable*. Accessed on 20.09.2017 on <https://www.thehindu.com/opinion/op-ed/making-the-powerful-accountable/article5627494.ece> (Entire media-gag order can be accessed at <https://indiankanon.org/doc/180037999/>).

^{xiv} The allegations were dismissed as soon as the news came out, even before the committee was constituted or the evidence provided by the complainant were evaluated. Details on <https://theprint.in/judiciary/bar-council-of-india-national-green-tribunal-condemn-allegations-against-cji-ranjan-gogoi/224288/> accessed on 02.01.2021. (Most members of the Bar Council of India not only condemned the allegations of sexual harassment against the accused, they also came in full support of the way the case was handled by the Supreme Court. Demands were also made to book the complainant for ‘false accusation’. For details, see <https://theprint.in/talk-point/is-supreme-court-handling-sexual-harassment-allegation-against-cji-ranjan-gogoi-correctly/225002/> accessed on 02.01.2021).

^{xv} A discussion on judgements in rape cases and their application as precedents suggests that despite amendments to rape laws, precedents continue to shape and affect judgements.

^{xvi} Protection of Children from Sexual Offences Act, 2012; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; Criminal Law (Amendment) Act, 2013; Juvenile Justice (Care and Protection of Children) Act, 2015; Criminal Law (Amendment) Act, 2018.

^{xvii} Tis Hazari courts, Karkardooma courts complex, Patiala House, Dwarka complex, Rohini courts complex and Saket courts complex.

^{xviii} Despite the ban, the documentary was released on various internet sites. The ban was opposed by women’s organisations while the Director of the documentary fled the country despite notices issued to her to stay in India for enquiry on the script and the way the documentary was shot. The documentary was a source of various other controversies that are beyond the scope of this paper.

^{xix} The statements of the two lawyers, one claiming that ‘there is no place for women in Indian culture’, and that if men see women roaming on the streets at night, ‘it will immediately put sex in his mind’, and the other stating that ‘he will burn his daughter and sister if they roam at night’ led to a nation-wide demand for revocation of their licences to practice at the Bar and an urge to the Supreme Court of India to put a ban on their entry on the court premises alongside strict punishment for their moral and professional misconduct, punishable under Section 35 of the Advocates Act, 1961.

^{xx} See *Bar council issues notices to defence lawyers for remarks in Nirbhaya documentary*. Accessed on <https://www.ndtv.com/india-news/bar-council-issues-notices-to-defence-lawyers-for-remarks-in-nirbhaya-documentary-744719>

^{xxi} See *Show-cause to lawyer for sexist remarks*. Accessed on <https://www.thehindu.com/news/national/showcause-to-lawyer-for-sexist-remarks/article5183036.ece>

^{xxii} Read the full letter at <https://thewire.in/law/open-letter-indira-jaising-to-cji-womens-day>

^{xxiii} A participant shared that her law college friend left litigation and went abroad to pursue LLM because she was not ‘as thick-skinned’ and ‘succumbed to pressure’.

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**Research in Progress: Is Endogamy Christian or Un-Christian? Tracing the
Knanaya Debate**

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Is Endogamy Christian or Un-Christian? Tracing the Knanaya Debate

--- Nidhin Donald

Abstract

Biju Uthup's civil suit catalysed a reform movement against blood marriages and expulsions in the Knanaya Catholic community of Kerala. This paper is a close reading of the Uthup judgement to highlight the conflicts between – the individual and the community on one hand, and global Catholicism and Knanaya customs on the other. Both petitioners and defendants position themselves as guardians of the Christian faith. Thus, a fight over the meaning of Christianity was inevitably pursued. This paper briefly explores these contentions and provides a glimpse of Knanaya community's competing social and legal discourses on endogamy

Key words: Caste, Christianity, Endogamy, Kerala, Knanaya Catholics

Introduction

Knanayaⁱ Christians (or Southists) are a mutli-denominational endogamous community who trace their origins to a fourth century Mesopotamian merchant – Thomas of Kana (Kulathramannil, 2000). They have existed in Kerala as an exclusive group without difficulty, owing to the caste affinities of their neighbours. In the early 20th century, they were successful in carving out a 'separate diocese' within Catholicism – the largest denomination in Kerala. This diocese or archeparchy is known as the Kottayam diocese. With this separation, the highest episcopal authority endured the notion of Knanaya endogamy. Pallath and Kanjirakatt (2011) trace the historical origins of the Southist Vicariate in 1911 and the conflicts that preceded it. They note that the changes in the administrative structure of the native Catholics in the 19th century meant – a withdrawal of European leaders, appointment of native bishops, creation of vicar apostolics and later eparchies for the Syrian Catholics and complete administrative separation from the Latin rite and Latin Christians. In this historical reordering, questions of high and low, noble and plebian, commensality and marriage were routinely discussed. The Catholic Church has historically

tolerated caste, never confronting it directly. This approach was embraced to avoid schisms and loss of revenue. Thus, we find the Catholics in Kerala administered along 'caste' and sectorial lines, though the Church maintains a display of caste apathyⁱⁱ.

By the late 20th century, thanks to transnational migration, a partial collapse of Knanaya endogamy became evident. Mobile members of this church migrated to new places and entered nuptial ties with other Christians of Kerala. This group of inter-married couples and their off-springs have come to represent the 'reformers' within the Knanaya Catholic Church. With their legal and cultural battles, they have argued against 'blood marriages'ⁱⁱⁱ. In 1990, Biju Uthup, a product of inter-marriage and now a retired scientist, was denied '*kalyanakuri*' (or ritual permission to honour a marriage within the home parish) by his Knanaya Church on the excuse that his grandmother is a 'Latin Catholic' (Annamma Chacko in Punnen et al., 2014, p. 15). According to the un-codified endogamy rules of the Church, both parents need to be Knanaya for the child to be considered one. This came as a surprise to the Uthups as Biju's siblings were married in Knanaya parishes.

Cross-over marriages were not completely uncommon among the Knanayites. However, the renewal of social conservatism among Knanayites in the late 1980s sought to problematise such marriages. Uthups became one of their 'victims'. In 1986, the Bishop of the Kottayam Diocese was served a notice by the conservatives, stating that Mr. O.M. Uthup (Biju's father) and his son-in-law had 'ceased to be Knanayites, owing to their marriages and that they should be excommunicated from the church'. Unhappy with the cold response of the Bishop, the conservatives approached the civil court and filed a relief for declaration in 1988 challenging the membership of Biju Uthup's family. Thus, the issue became a legal-communal problem, forcing the Kottayam Bishop and the local parish priest to 'deny' permission for Biju's wedding. Soon after, Biju Uthup approached the court seeking a 'mandatory injunction' to enable his wedding in the local Knanaya parish. With this began a new chapter on endogamy among Knanayites. Today, Uthup is the chairman of the 'Global Knanaya Catholic Reform Conference' – a movement which anchors the legal and cultural fight against endogamy-based expulsions. We also witness counter-mobilisation by the majority still in favour of the endogamy rule. From legal defence to cultural productions such as beauty pageants and short films – the mainstream of

this community has tried to fortify their position. I have engaged with some of these cultural productions in my doctoral work^{iv}.

The Knanaya case has a bearing on the jurisdictions of dioceses and church revenue – as this group is now a globally dispersed community. While most sociological and legal scholarship on endogamy in India revolve around the Hindu caste order, we do find spirited debates and legal battles on nuptial endogamy and reform among non-Hindus, as evidenced by the Knanaya Catholics^v. In the next sections, I would take a deeper look at the content of Biju Uthup's judgement. I have also drawn from my telephonic conversation with Mr. Biju Uthup to disentangle the human agency that animated the journey^{vi}.

The Legal Battle

As mentioned earlier, Biju Uthup filed a civil suit for a 'mandatory injunction' against the Parish Vicar (who denied him 'Vivah-kuri'^{vii}) and the Bishop of Kottayam Diocese in the Additional Munsiff Court of Kottayam in 1989. Knanaya Catholic Congress was impleaded as the third defendant in the suit, arguing that the relief sought by Biju would implicate the entire Church and the community. The Congress, formed in the early 20th century, was established to protect the purity and traditions of the community – much like the other caste associations of the period. In his petition, Uthup argued that 'being a true and faithful member of the parish, he cannot imagine his marriage being conducted in any other manner or in any other church' (Uthup vs. Manjungal, 1990, p. 3). Getting married elsewhere would be a cause of social stigma, agony and trauma to him and his family. The denial of kuri was argued to be an 'unchristian act' against the canons of the Catholic Church.

On the other hand, the defendants portrayed Biju Uthup's family as imposters. According to them – non-Knanayites can be baptised in a Knanaya church. However, this doesn't ensure parish membership. It only signals their entry into the Holy Catholic Church. For them the marriage of Biju Uthup's parents (O.M. Uthup and Annamma Chacko) in the 1950s was a 'mistake'. Allowing the Uthup family in the Church would hurt the community and its traditions. They argued that customs and practices have the 'force of law' for the diocese and the community.

Is Christian Marriage Civil or Communal?

Further, the defendants pointed out that ‘communal matters’ stand outside the jurisdiction of the civil court. Marriage (among Christians) was not a civil right but a ‘holy sacrament’ exclusively attached to the domain of ecclesiastical authority. According to them, a mandatory injunction under Section 39 of The Specific Relief Act, 1963 was impossible in such a matter. Mandatory injunction prevents the breach of an obligation, it necessitates the performance of certain acts which the court is capable of enforcing. The court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. However, such an intervention is possible only when the matter is ‘civil’ in nature. The Judge, George Oommen interpreted the question of church/parish membership as a matter of ‘civil right’, where the Kottayam Diocese of the Roman Catholic Church was held ‘synonymous to a voluntary association’ (Uthup vs. Manjunkal, 1990, p. 16). It also observed that if the bye-laws or rules of the association debarred members from invoking the jurisdiction of a civil court then the matter would have been interpreted differently. However, that wasn’t the case.

The question of jurisdiction, the court underlined, depended upon the substance of the plaint and the object of the suit. If a given ritual or ceremony has affect on the ‘civil rights of an individual or a sect’, then it is a dispute of civil nature. In the Biju Uthup case, the court observed that right to membership is a matter of civil right and if such rights impinge on the ‘customs and rituals of a community’, the latter would only be secondary to the court.

Is Biju Uthup a Knanaya Catholic?

Having settled the civil nature of the suit, the Court considered in great length whether Biju Uthup was a Knanaya Catholic or not. The family maintained that they were received as members in their present parish in 1977 and were never excommunicated. The defendants, on the other hand, argued that membership in a Knanaya Church is not subject to ecclesiastical discretion; rather, it is a matter of inheritance. In other words, no human agency has power over issues of membership in the community. The court observed that even when we assume that the Uthups are ‘transgressors’ in the Knanaya Church and by extension the community, the material facts and circumstances proved that they *lived* as its members and were accepted as such by the community for over thirty years before the present controversy erupted (Uthup vs. Manjunkal, 1990, pp. 41-42). It

should be noted that Catholicism being a hierarchical order with centralised authority, its members often possess an array of documents to prove their membership and contributions to a parish. A devout Catholic household gives away substantial amounts of its earnings to the Church as part of life-cycle rituals and other events. The Uthups could prove their membership with the help of this paper trail.

As per the evidence presented to the court, the Parish Vicar, Mr. George Manjungal, was willing to permit Biju's wedding in his parish till the case surfaced. Thus, exogamy (of at least a few) was always an open secret. The empirical contradictions of everyday life were tolerated and even accepted by the diocese. However, when the matter was brought under the gaze of a secular court – claims of strict endogamy were remobilised and asserted. The court observed that if Annamma Chacko, Biju's mother and daughter of a Latin Catholic, was granted membership due to mistaken identity, no evidence was presented by the defendants to prove this claim. The court distinguished the 'diocese' from the 'endogamous community' and ascertained the membership of the Uthups in the Kottayam diocese.

Is Endogamy a 'custom' among Knanaya Christians?

The court observed that the canon law defined marriage as a 'sacrament', and in case of Uthup's parents, there wasn't any dispute over the fact that they got married and had children. Further, according to the canon law, 'family' is a more vital unit than the individual. The wife assumes the affinities and affiliations of her husband after marriage – making caste or endogamy (and the individual) irrelevant. The defendants maintained that endogamy should be viewed as central to their ethnic identity and integrity. However, the petitioner argued that the custom of endogamy – as claimed by the Church – was never an established custom. Jews had no custom of endogamy prior to the period of 345 CE, the apparent year when the Babylonian ancestors of the Knanaya Community appeared on the shores of Malabar (Joseph, 2014).

The court held that since there was no reliable evidence on endogamy prior to 345 CE among Jewish Christians, it cannot be an established custom. A custom can have a legal force only when it is 'proved to the hilt' (Uthup vs. Manjungal, 1990, p. 49). Moreover, referring to oral accounts which claim that Knai Thommen had Nair wives, the court challenged the very existence of endogamy. Swiderski

traces the competing stories surrounding Thomas of Kana's wives to point out how Knanayites are alternatively attributed to be children of Thomas' West Asian or Nair wife. On the other hand, the Northists (or the more populous section among the Syrian Christians) are attributed to be children of his Nair or Mukkuva (fisher-folk) wife. Swiderski (1988) underlines that the identity of the wives and their apparent social distance from each other are decided by the identity of the storyteller. The contention that Thommen might have taken wives from the local community is a logical assumption put forth by historians.

The defendants relied on the ancient songs of Syrian Christians to underline the endogamous character of the community. According to them, settlers were given clear instructions that they should 'not change their [endogamous] moorings' on migration. The court, after going through the transcripts of ancient songs, observed that the instructions were not related to endogamy; rather they were concerned with the upkeep of the Ten Commandments and the Christian faith. Moreover, the Court argued that the Knanaya community attach missionary significance to their migration. If this were true, the court asked – 'how can you stay aloof and follow endogamy if you are missionary?' (Uthup vs. Manjunktal, 1990, p. 49).

The court observed that establishment of customary law must spring from a legal necessity and must not be immoral. It must not be opposed to 'public policy' or must not be expressly forbidden by the legislature (Uthup vs. Manjunktal, 1990, p. 56). The Court conceptualised Knanaya endogamy as an unsteady rule which did not decide the character of the diocese or the community.

Diocese ≠ Community ≠ Christianity ≠ Caste

The court ascertained that as per the canonical law, the diocesan bishop is vested with legislative, executive and judicial powers. Citing the Canon, the Judge defined parish as 'a certain community of Christ's faithful established within a particular church, whose pastoral care, under the authority of the bishop is entrusted to the parish priest' (Uthup vs. Manjunktal, 1990, p. 58). Thus, contrary to the stand of the defendants, the court stated that the bishop and the priest are juridical persons with specific powers to determine the membership. Moreover, it was held that 'community and diocese are not synonymous' and the creation of a new diocese (in 1911) didn't validate the custom of endogamy. The marriage rituals of the Knanaya community (clasping of bands by the uncles of the

bridegroom and the bride at the betrothal, ceremonial shaving, welcome, ululation, etc.) were perceived to have ‘no connection’ with the sacrament of marriage. It was noted that as per the liturgy – ‘a sacrament becomes an agreement binding throughout the life which starts and ends in the Church’ (Uthup vs. Manjungal, 1990, p. 60). In other words, the specificities of local Knanaya cultural expressions stood outside the realm of sacrament. Local cultures are not seen as essential or binding but simply as decorations. Clearly, the court delinked caste, community, diocese and Christianity from each other, which otherwise meant the same thing for the defendants.

With this, the court granted Biju Uthup a mandatory injunction and ordered the Parish Vicar to issue the Vivah-kuri. However, the defendants did not issue any Vivah-kuri. After completion of one month, the plaintiff filed an execution petition which was disregarded by the defendants. Finally, the court ordered the arrest and detention of the Bishop for the non-compliance of the decree. However, Biju Uthup withdrew his petition as he was an ‘ardent believer’ and didn’t want the Bishop arrested.

Biju’s marriage was conducted with the direct intervention of Apostolic Pro Nuncio who directed Metropolitan Archbishop of Changanassery, Mar Joseph Powathil to conduct the marriage without relinquishing his membership from Kottayam diocese. The defendants filed an appeal before the District Court, Kottayam and it was transferred to District Court, Ernakulam (AS 244 and 245/04) against the judgement of the lower court. Ashok Menon, the then District Judge, after an elaborate hearing, finally passed the judgment in 2008 and dismissed the appeal, upholding the previous judgement (Thomas in Punnen et al., 2014, p. 145).

The defendants then approached the High Court. Justice K. Harilal dismissed the appeal and upheld the previous judgements in 2017 (George Manjungal vs. Biju Uthup & Ors., 2017). The defendants then filed a review petition with the High Court of Ernakulam. Again, Justice Harilal upheld the decisions of his judgement but clarified that the observations on endogamy in the Munsiff Court’s judgement are binding only to the parties of the case and not the entire community. Thus, the High Court, invoking the principle of natural justice managed the spill-overs of previous decrees (George Manjungal vs. Biju Uthup & Ors., 2018, p. 50). Unhappy with the High Court, the defendants approached the Supreme Court, where Justice Arun Mishra and Vineet Saran ordered the High Court to hear the

review appeal afresh (George Manjungal vs. Biju Uthup & Ors., 2018, No. 10196-10197).

Concluding Note: Reflections on the Knanaya Conflict

With the Biju Uthup controversy and the reform movement which picked up soon after, we see the Syro-Malabar Catholics of Kerala come a full circle. In the late 19th century, when the Northists and Southists were fighting over separate administration, either group maintained that the divisions between them were insurmountable and cannot be resolved through ‘human agency’. They viewed each other as lowly, inferior and impure. Even those men who wanted to abolish caste distinctions among the Syrians were consistent in proving the ‘lower’ origins of the other (Pallath & Kanjirakatt, 2011). However, by the turn of the 20th century, we witness how individuals and their families built marital alliances (across caste divides) and displayed ‘human agency’ in overcoming the hitherto powerful divide. The reasons for such inter-caste marriages were hardly political. In other words, families (including the Uthup clan) didn’t marry non-Southists to prove a point or fight against caste divisions. Biju Uthup in his interview mentions that his father displayed all attributes of Knanaya racial pride and wanted his children to marry Southists, till the time the Church denied permission for his wedding. Such marriages, thus, were results of personal connections, class mobility, transnational migrations, dwindling numbers of Southists and even the proclivities of the dowry market among Kerala Christians.

The fight against Knanaya blood marriages is fashioned as an endogenous one – an inherent predilection to change within the boundaries of faith. The Uthup family or the reform party argue as ‘faithful Catholics’ who aim to end the rule of endogamy within the Kottayam diocese. The conflict is also postulated as one of values. The fighting groups contest the meanings of ‘Christianity’ and what it means to be a ‘Christian’; or more precisely – whether caste and endogamy are important to Christianity. The Indian judiciary has a consistent position on this question based on the precedence set by previous judgements and a modern ‘reinterpretation’ of Christianity which does not go beyond the 19th century. It perceives Christianity as a religion which militates against caste.

However, this ideology of ‘castelessness’ often goes hand-in-hand with that of caste, according to Lionel Caplan (1980). He notes that a vast majority of Christians are part of endogamous marriage circles. Even those with clearly

hybrid marriages and families hold on to an apical ancestor of high social station. Yet, the explanations for such practices are not derived from a Hindu past. Rather, as Caplan notes, they emerge from a certain convenient idea of Indianness and Indian culture (ibid). In case of Kerala Christians, Fuller (1976) has argued that Syrian Christians share a ‘common orthopraxy’ and ‘ideological conceptualization’ of caste. This point rings true even in recent studies (Thomas, 2018; Abraham, 2019). However, the story of Christian endogamy needs to be rescued from the simple argument that it is an offshoot of a Hindu past or an Indian feature. Groups such as Knanaya push the envelope.

We saw how the Knanaya Catholic Church failed in the court to make a case for endogamy as an age-old custom. The court honoured the written words of the Canon law more than the oral accounts of a ‘parochial’ custom. Thus, an interesting conflict between the global rules of Catholicism and the local rules of the faithful come to the fore. The pro-reform minority in the community attach themselves to the universal Canon Law as against the local custom. Finally, the case reviewed the immigrant myths, legends and founding documents of the Knanaya community in search of an uncontested history of endogamy. It was nowhere to be found. The entry of the ‘non-knanaya woman’ in the Kottayam diocese was not completely unheard of, though she becomes the root of the entire controversy in the 1990s. Surveillance, oversights and tacit forms of boycott and excommunication existed side by side without much public attention. The problem of the ‘non-knanaya’ woman became a well-framed issue only when it was made public in a constitutional court.

The Kottayam diocese has always told the unassuming public that they are a racially pure caste and have been one for centuries. Though folklore has its own way of punching holes into such claims, this was undisputedly the story that was repeated and recollected. But with Biju Uthup, this public face was tarnished. As a consequence, the discursive consciousness of the diocese (irrespective of empirical contradiction) stood challenged.

Notes:

i The term ‘Knanaya’ is a 19th century invention. Now, it has come to occupy a dominant position displacing the older term Southist. According to scholars, ‘Southists’ or its Malayalam equivalent – *Thekumbhagar*, was more commonly used in church documents. Similarly, the term ‘*Suriani*’ or Syrians was used as a common term for both Northists and Southists (For details, see Pallath & Kanjirakatt, 2011).

ii For example, the Syro-Malabar and Malankara divisions are predominantly upper-caste, on the other hand Latin Catholic division is mostly made up of converts from fishing communities who are included as 'Latin Catholics' in the Other Backward Classes list of Kerala.

iii Knanaya Catholic Reform Committee, which represents such families, has recently filed a case against the Knanaya Diocese demanding the re-entry of all members who were forced to leave due to inter-caste marriages.

iv This paper is a work-in-progress, drawn from my doctoral engagements with Knanaya cultural productions on endogamy. Biju Uthup's legal battle stood as a bone of contention in many Knanaya accounts.

v Parsi women married to non-Parsis have been fighting civil suits against ostracisation for some time (For an account on such excommunications, see Shelar, 2017).

vi The telephonic interview was conducted in the month of September, 2021.

vii *Vivah-kuri* is a necessary pre-condition for the conduct of betrothal and marriage among Kerala Christians.

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Research in Progress: Legally Sanctioned but Socially Opposed: Experiences of Navigating an Inter-faith Marriage

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Legally Sanctioned but Socially Opposed: Experiences of Navigating an Inter-faith Marriage

--- Ashwin Varghese and Aishwarya Rajeev

Abstract

This paper explores the contradiction between legal sanction and moral opposition to inter-faith relationships and marriages, and how couples try to navigate this conundrum. For this purpose, we draw from auto-ethnographic accounts of the authors, of their experience of choosing to marry under Special Marriage Act (SMA) as a Christian-Hindu couple. We examine how the opposition to inter-faith marriage manifests in the confrontation between couples, state and social institutions, along with what forms these oppositions take, and the gendered experience of blame, guilt and expectations that are disproportionately placed on women through the constitutive elements of a hetero-patriarchal 'family'. While the SMA offers an avenue for inter-faith couples to get married, it also forces social institutions to create mechanisms through which the danger of love, choice and desire is diffused by accommodating autonomy, as long as it is not in contravention to norms of endogamy and exogamy.

Key words: Auto-ethnography, Inter-faith marriage, Kinship, Love, SMA

...kinship organization expresses something completely different than genealogical relations, that it essentially consists in juridical and moral relations sanctioned by society, and that it is a social tie or it is nothing...

(Durkheim in Sahlins, 2011, p. 9)

...love marriages challenge parental authority and related notions of inter-generational reciprocity, filial duty and parental responsibility.

(Donner, 2002, p. 93)

Introduction

Sahlins (2011) notes a paradigmatic shift in conventional understanding of ‘kinship’ in Durkheim who views kinship as juridical and moral relations sanctioned by society. It reflects a paradigmatic shift from blood/genealogy to human unions. Even though kinship, through this conception, is still most prominently studied through marriage and affinal relationships, it nevertheless reflects a change in vantage point from lineage to social/human ties. Perhaps that is the extent to which Durkheim’s imagination could extend kinship to, given his social and political context. Sahlins (2011), acknowledging this shift, develops his own conceptualisation of kinship as ‘mutuality of being’ and ‘intersubjective belonging’. These are again informed by the transition in understanding kinship as ties of blood to kin/ship as relation/ship, engulfing all mutually constitutive relationships, from marriage to friendship and even more hitherto unexplored relations.

For this essay, we explore the idea of kinship as juridical and moral relations sanctioned by society, to mark a contradiction between the two. It is not necessary that human unions that enjoy juridical sanctions also enjoy moral and/or social approval or even recognition, inter-religious/caste marriages in India are a case in point. However, to understand this contradiction better, we must look at both legal/juridical and social/moral ties as dynamic and susceptible to change, which brings them to the domain of the everyday, to the daily behaviours and practices that overdetermine these legal and social relations.

In inter-religious marriages in India, we encounter a schism; while on the one hand, such unions receive legal sanctions through provisions under the Special Marriage Act, 1954 (SMA), on the other hand, they face the ire of social opposition by the vanguards of morality. This essay tries to explore the contradiction between juridical sanction and moral opposition of inter-religious marriage, and traces the forms in which social oppositions manifests themselves and the mechanisms available for inter-religious couples to subvert such oppositions in attempting to solemnise their marriage. For this purpose, we draw from an auto-ethnographic account of our experience of choosing to marry under SMA as a Christian-Hindu couple to unearth specific reasons for social opposition and trace the alternatives proposed.

Proposal

We had been friends and partners for about five years, and began discussing marriage as a possible means of co-habitation given personal circumstances in 2020, as the world reeled under the onset of the COVID-19 pandemic, and India progressively became more hostile to inter-faith marriages with the looming spectre of an ‘anti-love jihad’ law. Both our families hail from Kerala, with our paternal families from the same district; we both did our Master’s degree together, and are now pursuing our Ph.D.s from the same University. Despite these similarities, as an inter-faith coupleⁱ, we already knew that solemnising our marriage under the SMA and finding social acceptance would be difficult, since both of us wanted to retain our socio-religious identities and practices. Subsequently, the prospect of marriage was then pitched to respective families, objections were raised, negotiations initiated and actions were taken to subvert certain norms.

Aishwarya’s parents were happy about the decision, as they had known Ashwin for the past five years owing to their friendship, and liked him. However, her grandparents were reluctant about the idea of her marrying a Christian boy, predominantly because of their religious and caste practices, as well non-awareness of people in their community having married outside their faith. Some relatives also reacted very coldly to the news. However, since Aishwarya’s parents stood firmly in support, others eventually came around, albeit begrudgingly.

The opposition was more pronounced for Ashwin whose immediate family and community members were reluctant because Aishwarya belonged to a different religious community. His parents didn’t seem to have a problem with Aishwarya personally, so the proposed way forward was ‘Holy Matrimony’ in the Syrian Christian custom, for which Aishwarya would have to become a baptised member in Ashwin’s denomination.

This was proposed in the first meeting, in early 2021, when our parents decided to meet to discuss how to proceed further. After the initial pleasantries, once the conversation had moved onto the topic of marriage, Aishwarya’s family enquired, ‘how should we proceed?’ In response, Ashwin’s family explained the holy matrimony rituals practiced in their church, and added, ‘if they want to get married like that, Aishwarya would have to join our *sabha*ⁱⁱ first, only then would

it be possible'. This however, was not acceptable to Aishwarya's family, who were of the opinion that neither of us should have to give up our religion for marriage. After some back and forth, the issue of children was raised, where Ashwin's family asked, 'which religion would the child follow, if both the parents have different faiths?' This issue was resolved (temporarily) by everyone agreeing to revisit the topic when the child would be born. Ashwin's family reiterated that they wanted a church ceremony, and therefore Ashwin suggested a blessing ceremony instead of holy matrimony in another church, which could take place only after the court marriage. A blessing ceremony, unlike holy matrimony, is conducted in some denominations, specifically for inter-faith marriages solemnised under SMA. For this, one partner has to be a baptised Christian, and the other partner may be from any other faith. A prerequisite in this regard is the marriage certificate from the SMA registration. In effect, the blessing ceremony, as the name suggests, is a blessing of the civil marriage, and does not qualify for registration under the Indian Christian Marriage Act, 1872. This was acceptable to Aishwarya's family and it helped that the blessing ceremony accommodated a common ritual, i.e., the tying of the *thali/minnu*ⁱⁱⁱ. They were not insistent on a temple ceremony, and moreover the temple they went to, did not allow ceremonies for inter-faith marriages either. Ashwin's family also reluctantly agreed, finding no other alternative. It was thus agreed that the marriage would be solemnised through SMA followed by a blessing ceremony in church.

This situation has to be understood in its specificity. While an overarching generalisation may not be possible, certain anxieties do become apparent, which have a general character. The reluctance in accepting such marriages traversed predominantly two concerns; one, different faith-based practices, and two, anxiety over the child/children. Butler, while discussing the acceptability of non-heterosexual parents, notes that 'the figure of the child...becomes a cathected site for anxieties about cultural purity and cultural transmission' (2002, p. 23). Nandy through his framework of construction and reconstruction of childhood unpacks these anxieties in the modern world-view, and argues that 'there is greater sanction now for the use of the child as a projective device. The child today is a screen as well as a mirror. The older generations are allowed to project into the child their inner needs and to use him or her to work out their fantasies of self-correction and national or cultural improvement' (2011, p. 429). We could extend this anxiety over the figure of the child in this context as well, knowing full well that the anxieties derived from the child of an inter-religious heterosexual couple and that of a non-heterosexual couple are qualitatively different. Here we note

that the figure of the hypothetical child is used as a means of ‘self-correction’ of the ‘wrong’ of inter-faith kinship, through rigid and orthodox cultural assimilation. The argument here is that the figure of the child, owing to its specificity, is always a site of anxiety, contestations, and negotiations. In this case as well, it was a crucial site of anxiety and opposition.

Opposition

When Ashwin first spoke to his family about marrying Aishwarya, he faced initial opposition, and then a reluctant acceptance on the condition that Aishwarya agrees for a wedding as per their customs. Elaborating upon the reasons for opposition, they stated that after inter-religious marriages, for the spouse, who is born and brought up in a different custom, adopting another way of life is very difficult. Similarly, for Ashwin’s community, accepting a spouse from a different community is very difficult. To contravene this, marriage as per prescribed customs and practices of religion and patriarchy is proposed which is seen to accord the ‘value and recognition of a proper marriage’, as otherwise in a ‘registered marriage’ both the couple and the parents are perceived to have committed a grave mistake, subjecting the family to gossips and snide remarks by community members. Furthermore, a child born out of such a marriage is seen to be without religion, and ‘caste’^{iv} and therefore without a community.

While noting the compulsions stated by Ashwin’s family, connecting rituals and practices associated with marriage and birth, it is important to highlight the notions that, one, the woman goes into the man’s house after marriage, and two, consequently gives up her customs and practices, to be absorbed into the man’s family, were considered the natural order of things and sacrosanct. We argue that despite religious differences, these notions remain common across religious communities and smack of the acceptance of patriarchal, patrilocal norms of marriage. This was evident from comments that came our way, such as ‘they will convert her, she is going to his house, she will have to adopt their customs’, ‘naturally when a woman comes to the man’s house, she gives up her way of life and adjusts according to his customs and practices’.

Kinship studies have tried to understand such unions through the concept of ‘love marriage’, which face societal opposition because it entails the exercise of an individual’s autonomy in choosing a partner, as opposed to the socially sanctioned ‘arranged marriage’ where agency lies with the community. Underlying the

opposition to love marriage is the threat of individual autonomy in the choice of a partner, potentially contravening social norms of endogamy and exogamy, parental authority, filial duty and inter-generational reciprocity (Mody, 2002; Donner, 2002). In our experience the main oppositions were systemic, wherein, even if the parents were not morally opposed to such marriages, the communal system didn't allow it without assimilation. The caste-like nature of this community must be remarked upon here, wherein such practices maintain the norms of endogamy and exogamy. Anxieties over the child formed a crucial aspect of this. Assimilation therefore was seen by some as a means of contravening these norms.

The difficulty and violence that an inter-faith couple has to face is evident. The violence implied in cultural assimilation contingent on withdrawal of one's faith and customs for the purpose of marriage is recognised. The specificity however, of both social locations have to be kept in mind as well. We are both urban-educated, upper caste, middle class, cis-gendered heterosexual, young academics, born and raised in Delhi. Making use of our social capital and networks, we were able to navigate the bureaucratic, labyrinthine process of solemnising our marriage under the SMA with relative ease. Family members opposed to the marriage however belong to a generation of migrant settlers in Delhi from rural Kerala, who grew up with values keeping communal sentiment paramount, even at the cost of individual autonomy. The threat of ostracisation for Ashwin's parents for example, was much more real than for either of us. While the violence of an imposed ideology on Aishwarya may be acknowledged and recognised by most audiences of this story, the precarious position that the situation put Ashwin's mother in must also be remarked upon. Communal standards pitch keeping children in line as the primary duty of the mother. The blame of any act committed by children that went against community values is attributed to the mother, as 'she did not raise them properly'. The same is not attributed to the father as much. This mechanism of guilt and blame then puts the mother in a precarious position where she has to either stand against the norms and ideologies of the community she was born in and derives her identity from, to uphold her son's decision; or to oppose the son's decision and try to accommodate it through whatever means available to her. Whatever the choice, the process itself is inherently violent, predominantly because it attempts to contravene the norms of endogamy and exogamy.

Interruption

While SMA and blessing ceremony are generally not acceptable, and only seen as a last resort, in our situation it became relatively more acceptable because of the changed political climate created by the rhetoric around 'love-jihad' in 2020-2021. This rhetoric demonised inter-faith relationships and marriages so much, that there was also a fear of physical violence on the couple and family members by self-appointed crusaders of social morality. As community members feared being perceived as propagating 'love-jihad', SMA and blessing ceremony became more acceptable as a modality to both legally and socially sanction our marriage.

While we were predominantly concerned only about the SMA wedding, and agreed to give in to demands of social sanction through a religious ceremony, we only gathered the importance of the latter for Ashwin's parents when it happened. More than being ceremonial, it was seen as a 'real marriage' by people, despite being aware that the wedding had already taken place at the Sub Divisional Magistrate's office as per the SMA procedure. However, socially the legal documentation and juridical procedures are not seen as a wedding. A wedding was seen to be socially valid only through a social and religious ceremony, almost as a social stamp. In this way, it didn't matter whether the Government of India certified that we were married or not, but it mattered if they could tell a neighbour, a friend or a relative that we were married in a church. This harks back to Durkheim's observations that kinship organisations are social ties or they are nothing. These social ties however are fundamentally conditioned, in the Indian context especially, with diversity. As Uberoi asks, 'can one speak of an Indian kinship system, or are there several? And if there is more than one structurally distinct system of kinship and marriage, how does each relate to the other(s)' (2000, p. 45). These multiple forms of kinship structures function in a political hierarchy, where inter-faith kinship, as 'inter-faith kinship' not masked by cultural assimilation, presents itself as a problem. We note that an absence of a cultural ritual to sanctify such kinship on the one hand and anxieties over the child on the other are two manifestations of the problem of inter-faith kinship. Similar (yet different) concerns are also raised in the case of inter-racial couples, for example in the United States of America, wherein families express concerns over the social acceptability of such unions as well as the child born therein, implicitly underscoring a hierarchy along racial lines (Herman & Campbell, 2011; Osuji, 2019).

What we see here is the incompatibility of the juridical and the moral sanctions at two levels. First, while the SMA offered an avenue and a legal ceremony for a civil wedding, it was incapable of replacing the social and religious ceremonies that are accepted by the respective communities as 'wedding'. Second, social and religious norms of marriage were incompatible with the moral and ethical norms of the couple and supporting family members, who despite not being opposed to an inter-religious marriage personally, broach the issue cautiously because of the dominant social norms.

It is usually assumed that more examples of inter-faith marriages would make them more acceptable. While this may be true to some extent, we note that respective communities that are opposed to such marriages adapt and build new alternatives to keep the threat of inter-faith unions at bay. We argue that inter-faith marriage is not the only way to legitimise inter-faith kinship, for this a thorough diffusion of the marital institution is required. We draw a sharp distinction and note that inter-faith marriages do not give social legitimacy to inter-faith kinships, where couples chose associated living without adopting the institution of marriage. In our choice of marriage, we interrogate the idea of 'marriage' by noting that inter-faith marriages are not a radical alternative to, but rather an interruption in, the dominant ideas of marriage and kinship, especially in the current socio-political environment witnessing demonisation of such relationships, in addition to delegitimisation through anti-conversion laws.

Conclusion

Finally, we end with a note on the methodological difficulties in working on inter-faith kinship. Through our experience, we note that the threat of inter-faith unions is predominantly diffused through assimilation, and then eventual registration of such marriages under religious marriage acts like the Hindu Marriage Act, 1955, the Indian Christian Marriage Act, 1872, etc. This makes first the identification and estimation of existing inter-faith unions, where partners retain their social-religious identities, difficult. This feeds into the myth of inter-faith marriages as being 'rare' and 'abnormal'. Those who are able to register marriages through the SMA procedure usually have the social capital and material means necessary to navigate and persevere through the process^v. In many instances, the functionaries of the bureaucratic process also dissuade SMA marriages, as has been shown by Mody (2002). In our case as well, a lawyer suggested an Arya Samaj wedding as an alternative, which involved a *shuddhi* (purification) of the non-Hindu partner

as a prerequisite, which we refused.

This ability to persevere makes the universe of inter-faith couples, who are registered as inter-faith couples, skewed in favour of the privileged few, obscuring the stories of many who opt for other alternatives. Several couples and associated family members also shy away from being identified as inter-faith couples, and divulging their stories and struggles, fearing retribution from community and state, thus adding to methodological and ethical complexities in studying such forms of kinship.

While the legal sanction of the SMA offers an avenue for inter-religious couples to solemnise their marriage, it is not equipped to challenge the social norms of endogamy and exogamy. This incompatibility between the juridical and moral sanctions also forces social institutions, which oppose such unions, to create mechanisms, like ‘love-cum-arranged marriage’. This kind of marriage, ‘whilst predicated on the choice and agency of the couple-in-love, is nonetheless domesticated and brought within the purview of parental [societal] authority and control and the reciprocal obligations of the child’ (Mody, 2002, pp. 248-249). Increasingly, ‘love-cum-arranged marriages’, are accommodated and encouraged to an extent in both Syrian Christian and Nair communities where individuals chose their partners but from within their own caste/community. Following this choice, the respective families arrange the marriage mutually. Through such mechanisms the danger of love, choice and desire is diffused by not only accommodating but also promoting autonomy as long as it is not in contravention to norms of endogamy and exogamy. Indeed as Donner (2002) notes, the most common form of love marriage is one within one’s own caste or *jati*.

We note that normalisation and reflexive communal change is unlikely to happen on its own, unless the norms of endogamy and exogamy are consciously ruptured. This rupturing is an inherently violent process. Keeping in mind the caste-based practices of the Syrian Christian and Nair communities ensuring the maintenance of norms of endogamy and exogamy, the desire of normalisation of inter-faith kinship is reminiscent of Ambedkar for whom along with interdining, ‘the real remedy for breaking caste is intermarriage. Nothing else will serve as the solvent of caste’ as ‘fusion of blood can alone create the feeling of being kith and kin’ (1936, p. 31).

Notes:

ⁱ Ashwin is a Syrian Christian and Aishwarya is a Nair Hindu.

ⁱⁱ *Sabha* is used to denote the community that is formed by the church members of the same denomination.

ⁱⁱⁱ *Thali/minnu* is a nuptial pendant made of gold. Among Malayalis, tying of the *thali/minnu* is the main ritual in both Syrian Christian and Nair Hindu weddings.

^{iv} The term is used interchangeably with religion, community, etc. but reflects greatly on the caste-like nature of Christianity in India.

^v This essay is derived from an ongoing auto-ethnographic exploration of the everyday of inter-faith marriage.

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Conversation: Kalpana Kannabiran in conversation with Rukmini Sen

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Kalpana Kannabiran in conversation with Rukmini Sen

[Transcript* of the interview held on September 16, 2021]

Introduction

Kalpana Kannabiran is a sociologist (with a Ph.D. from Jawaharlal Nehru University, Delhi) and a lawyer (with Bachelors and Masters Law degrees from Osmania University, Hyderabad). She received the Rockefeller Humanist-in-Residence Fellowship, Women's Studies Program, Hunter College, City University of New York in 1992-1993. She received the VKRV Rao Prize for Social Science Research in 2003 for her work in the field of Social Aspects of Law and the Amartya Sen Award for Distinguished Social Scientists in 2012 for her work in the discipline of Law. Both these awards were conferred by the Indian Council of Social Science Research. Part of the founding faculty of NALSAR University of Law, Hyderabad, where she taught sociology and law for a decade (1999-2009), she was also Regional Director, Council for Social Development, Southern Regional Centre, a research institute recognised and supported by the Indian Council of Social Science Research, from 2011-2021. Alongside her academic career, she is co-founder of Asmita Resource Centre for Women, set up in 1991 in Hyderabad, where she has led the legal services and outreach and pro-bono counselling services for women survivors of violence and women in difficult situations. [Please check her [website](#) for details on her projects and publications]

Rukmini Sen is Professor, School of Liberal Studies, Dr B. R. Ambedkar University Delhi (AUD), and currently Director, Outreach and Extension Division and Centre for Publishing, AUD.

Rukmini Sen (RS): First of all, thank you very much for agreeing to do this, Kalpana. Given that this conversation will be part of an issue which will contain a special section on 'Sociology of Law', I was actually hoping to begin with interdisciplinarity. While there have been various efforts towards

* Rukmini Sen thanks Emil Skaria Abraham, a communication professional based in Thiruvananthapuram, Kerala for the transcription of the interview.

interdisciplinarity that has happened in different university spaces, yet somehow it just feels that it is still something that is extra, based on individual interest rather than naturally a part of the system. Despite the five-year law school model thinking about interdisciplinarity, despite even the discipline of sociology kind of always boasting that they are more interdisciplinary than other social sciences, and yet there is something amiss. I am kind of thinking through your own experience of – as student, during your student days, as a teacher, as well as in your activism – the different sides and the way in which you would have practiced interdisciplinarity.

Kalpana Kannabiran (KK): Thank you for asking me to do this, Rukmini. Speaking of my student days, it was just Sociology – both at the undergraduate and the postgraduate levels. At the undergrad, of course, I also had Economics and Geography, but I didn't do very much with either of those; in my mind it was Sociology and I wasn't actually thinking about interdisciplinarity at all at that time. But by the time I was in my final-year BA or so, the women's groups had started forming, I myself was part of one, so I would finish college and go off to demonstrations, and attend meetings of the dowry death investigation committees and those kinds of things. The Rameeza Bee incident happened around then, when I was in my BA, so one just got exposed to issues particularly related to violence against women – domestic violence, dowry deaths, rape – not that they were happening suddenly, but there was a lot of activity around those issues; resistance had built up. So, I think the beginnings were in a very obtuse manner thinking about the efficacy of law, the necessity of law, and trying to match what you understood, with what you were learning in classes with what you saw. Interestingly, MA was more insular than BA, because in BA I was also doing other subjects. But that insularity in my MA, in Hyderabad Central University, was kind of offset by the fact that I was more active in women's groups.

In my own mind I hadn't actually thought through the idea of interdisciplinarity but I was thinking along two tracks, you know, the activist track and the Masters track; and they didn't necessarily come together at the Masters level. In fact, I know there were teachers in Central University who actually resented the fact that I was in street plays on dowry deaths and would say they wished I put more time into my course, that kind of thing. Then I went in for an MPhil also in Central University and almost naturally my choice of research area was women in the unorganised sector. My MPhil dissertation was an ethnographic study of *beedi* makers in urban Hyderabad. For the dissertation, I didn't have too many

resources by way of readings in the Sociology department of the University. All my resources came from my feminist friends. But even there I don't think I was consciously thinking about interdisciplinarity. I just did things...I just went fumbling along and finding my way.

Then with my PhD, it was just a series of errors that again got me hurtling towards law without my planning it all. I planned to do a village study focussing on caste and gender. I chose a remote village in southern Tamil Nadu which has a predominantly Telugu population.

I must digress a bit here. The way I was socialised – I come from a Communist family three generations up, and I had married by that time, by choice. My father-in-law was a single parent who lived an austere life and was not really hooked onto religion or caste, etc. He was just focussed on his work and his daily walks. So caste was never really a question I grappled with in my personal life or outside – there were no barriers. Plenty of intermarriages across caste and religion, and we never really thought about these things growing up. But in Sociology it was a huge thing. Thus, there was this break between my personal life and sociological training.

When I went for fieldwork in Tamil Nadu to look at caste and gender, I suddenly found that people were decoding my speech, my accent, my language, my demeanour, and in less than a day, they had mapped my caste. We are Tamil immigrants in Telangana, and I married a Telugu person. I was bilingual, but far more at home with Telugu. So I was speaking to the people in the village in Telugu. I don't know how, but through my scattered Tamil speech they figured out everything and slotted me in their Vaishnava order. I was extremely uncomfortable. I did my fieldwork there for a year and a half, but each time I went it was getting more and more uncomfortable. And good old Professor Yogendra Singh, my supervisor, said, 'okay Kalpana, this is your last field visit. Come back in three months and write up your thesis'. I said okay but I came back from the last field trip completely traumatised and told him I didn't want to write a thesis on this subject – I did not want to write a thesis on caste where I was implicated in the caste system. I was not a resident of Tamil Nadu, I was not a resident of that village, I didn't belong to that ecosystem at all. Nor did I belong in that ideological framework. I was insistent on my refusal to continue with the research. He was very distraught and upset – he thought that here I was going to

finish my thesis – I had already spent three years on my PhD by then. But he was really good to me and agreed to go along.

I had actually fled the field and gone to Madurai. While I was browsing through the Madurai archives rather aimlessly, I stumbled upon a whole lot of Inam settlement records of *devadasis*. I photocopied the entire lot, came to Delhi and announced that I was going to work on Inam settlements of devadasis in Ramnad district. I had never studied History, and had no formal training. I had finished three years of fieldwork in Sociology, and now I wanted to step into a totally new area. Yogendra Singh asked, ‘where are you going to find devadasis to do your fieldwork?’ I told him archival materials are primary sources. He looked at me completely baffled, he said, Kalpana, in Sociology, archival is a secondary source. I made my first case for interdisciplinarity – but in History, it is primary.

I worked in Teen Murti Library and studied the Muthulakshmi Reddy papers and soon found enough material on the devadasi Inam settlements in Madras Presidency. I had come across two or three references to late 19th – early 20th century Madras High Court Reports, so I told my father that I wanted to work in the High Court library in Hyderabad. He was going to court very regularly at that time; this was in the late 1980s. He introduced me to one of his friends in the library, and they gave me access to the old reports. I would just go and sit in the High Court and either copy or photocopy all of the cases; about seventy-five cases between late-19th and mid-20th centuries. By this time, despite Professor Y. Singh’s insistence, I did not agree to do fieldwork with devadasis. I was looking at 15th, 16th century archaeological records of Tanjore, the epigraphic series of Travancore, the Tirupati Devasthanam epigraphic series, Inam settlements, the epigraphic records of military chiefs branding women who were then rebranded when they were transferred to another chief. There were all these kinds of records that kept floating up. I zeroed in on looking at political economy and social history through archival, archaeological, and judicial records. That was my primary data. But even then, I had not theorised interdisciplinarity.

Whenever there was a problem that interested or excited me, I didn’t let a disciplinary boundary fetter me or obstruct me from looking at other stuff. That was in fact the first time I looked at case law at great length. That was my tryst with interdisciplinarity, but until then I hadn’t actually studied Law. Meanwhile, just before I submitted my thesis, we had started [Asmita](#) in Hyderabad. Here I had my second encounter with law. With the pro-bono counselling we did in Asmita, I

found it impossible to deal with lawyers because they assumed you are illiterate where it concerns the law, you don't know anything about courtcraft, and they were reluctant to explain to a non-professional how and why they took the decisions they did, although the cases were cases you had entrusted to them. To get around this, I just told our counsellors – there were two of them and me – ‘why don't we take the law entrance? It's not a big deal, you know, we can just do the three-year law degree’. I was working full-time in Asmita at that time. So we took the entrance but I was the only one who finished. And I did it, like I said, for a totally different reason – to be able to keep our lawyers in check. After this I joined NALSAR, and did LLM, while I was teaching there.

I have never actually looked at myself as firmly located within Law. I identified as a sociologist. But I have never done traditional Sociology, either. Never. You know, none of my writing, none of what I do, has been in sociology alone. It has rather been kind of like a potted selection of a bit of this and a bit of that. So, like you said, I don't think interdisciplinarity was a choice. It just happened.

RS: Exactly!

KK: Why Law particularly? Because, like gender, law is never absent. I wonder how sociologists are able to narrate violence without invoking a sensibility of the law at all. I think the question is really the interconnections, and as feminists we can't afford to allow ourselves to be fenced in by boundaries – either disciplinary, or activism-academics...It doesn't make very much sense if you are engaged in certain kinds of work that intersects constantly.

RS: Right. I hadn't thought of this previously but as you speak, there is something which is coming to my mind which has also been there through my own readings around the Sociology of Law, etc. which is, I somehow found it strange that a discipline in the Indian university system – Sociology – which is doing village studies, and is doing caste and family studies, right, how is it even possible that that discipline is actually not engaging with law in a more direct way? I am just thinking, it was very poignant as you said, you think of yourself as a sociologist and yet you do not anchor yourself in the traditional way in which sociology is done. So maybe it is from there that I am curious to know what do you think, where was this amiss, why was this not done, the sociology engaging with caste and family and yet not engaging with the legal equation?

KK: I think it has to do with the idea that societies are to be studied in particular ways; in methodological questions about how you study societies and how you map the normative in societies; but the law has a very different normative protocol. There is, in a sense, the separation at both ends, because the Law also separates itself from other non-law disciplines like Sociology.

RS: But then if we think about it, then you find that even the normative in Sociology is constituted by a legal, moral sensibility. The legal and the moral are very closely tied. I mean, we can call it legal pluralism but that's still law, right?

KK: Take the example of village government – that's still law. But you don't feel comfortable talking very much about the law if you have not spent time familiarising yourself with the internal protocols of law. It makes a difference if you have handled cases, if you've counselled cases, if you've studied legal provisions, even if you haven't studied law. If you've studied and tried to understand legal provisions, it makes a huge difference. And of course, within the law, they just believe that they are totally autonomous. I remember the year that I taught Law & Poverty in NALSAR, that was only one year, the students said this is Sociology III. I said, well, you know, so be it.

RS: Do you look at law as something that connects people, citizens, state but it is also something that disrupts relationships or both connecting relations between people and institutions, but also that which disrupts, people, institutions, etc. Is that the reason why, in all your writings, law is the thread? Or you would want to call it something else?

KK: I actually don't think outside the space of law. It's perhaps a limitation, but I cannot actually frame a problem without recourse to law. Whether the law as disruptive or the law as restitutive, or the law as enabling, in whatever form, I can't actually frame a problem in absence of the law. And yet, my relationship with practice and courtcraft – formal law – is very tenuous. I can never be a professional lawyer. 60 years is a bit late to begin. I don't see myself standing in court and arguing. It's basically the professional protocols that I have simply not been schooled into.

RS: I was thinking of your own experience with the Equality Commission or in CEDAW (Convention on the Elimination of all forms of Discrimination against

Women); these would be closest to actually working and writing for an already given legal institutional framework that exists. So how would you reflect on that?

KK: They are two very different experiences. With CEDAW, my major contribution was to get people to write, bringing all of that together, editing it according to the required framework, making sure that all the nuances of a particular problem are in, rewriting parts where they needed to be rewritten, preparing the summaries – basically my work had to do with the preparation of the document. Because the thing that I really enjoy the most is writing. In both the CEDAW Committee meetings, in New York and Geneva, my task was quite clearly defined.

The fact of being in academics and at the intersection of Law came in very handy for me when I was part of the CEDAW effort. People had wonderful ideas, they had wonderful lobbying skills, but in terms of writing in a particular template – that was something I think that I did contribute to.

With the Expert Group on the Equal Opportunity Commission (EOC), it was a good experience for me working with a very diverse group – I was the only woman, and was added on later. Professor Madhava Menon chaired this group. It was an interesting exercise because I had never worked with the government before that. We used to meet in the Department of the Ministry of Minority Affairs; we did enjoy writing that report but nothing came of it. I was just kind of soaking in the experience. The following year, the Government of Kerala asked Professor Menon to devise a blueprint that would link all the autonomous and government law colleges and the national law college in Cochin, to a common curricular ecosystem. What the Education Minister wanted to get was a blueprint so that all law teaching institutions could be networked into a single system and have a common entrance, and students can choose to study close to home or far away depending on where they want to go, but all will offer roughly the same curriculum, maybe options would differ, but the base curriculum would be the same. This was a fantastic idea which can only happen in Kerala. Prof. Menon was all excited about this. And I made two or three trips to Kerala. It was most amazing. I think I visited every single Law Department, every single Law College in Kerala as part of that effort. We submitted a very detailed report on reform of legal education in Kerala to the Kerala Government. This was around 2008/09. So for me, the EOC effort is much more remembered because of the Kerala experiment.

RS: It's interesting that having done all my degrees in Sociology, till MA one didn't study Kalpana Kannabiran, but it was the teaching at the Law School which brought me to read you. BA was probably more spread out, I did History and Political Science together with Sociology so, therefore, there was some amount of interdisciplinary reading, but MA had nothing; and then after MA, I started teaching at the law school in Kolkata, and with Prof. Menon you are just forced to study the law, you just couldn't be at the law school without studying the law, and so in fact, the first book that I read of yours was the *Violence of Normal Times*, and then one eventually went towards *From Mathura to Manorama*, by that time, with also my own engagement with women groups in Calcutta had begun. But I was actually thinking today that when you wrote the *Violence of Normal Times*, I think what struck me most was the fact that we would always look at violence as something that is extraordinary or something that is episodic and not something which is constantly there, that one is actually living with it. One still did have the vocabulary of 'everyday' at that point of time. But then I was thinking how similar are the times that we are living in, how has fear and violence become normalised in our everyday life and yet, how is it that in our teaching we teach it or don't teach it. Violence, as courses actually do not exist, again, women sociology within law, we at AUD have an elective course on Sociology of Violence that we have been able to do only twice, and I don't know whether law schools actually even do a separate course around violence. So I was just kind of thinking about if you want to tie a few of these together through the book, of course.

KK: My earlier book which I co-authored with my mother was also on violence – *De-eroticizing Assault* – and so the spectre of violence was always kind of there and I never actually felt I could evade it. It's possibly because of work around questions of domestic violence within the movement. It's also possibly my very early exposure to state violence at very close quarters, seeing torture victims in our home there, which was also a safe house. With Asmita, I would have women coming, ever so normally, show me unimaginable injuries and asked me what they could do, and we talked about it or didn't talk about it or they just came to sit because they just wanted place out of that situation. There was something that was so eerily normal about the way survivors conducted themselves, about how not just violence but trauma was normalised as well. I had actually been processing cases, and it's from that experience I think that a phrase like *Violence of Normal Times* emerged, not consciously, but because everywhere around me, it was not

the extraordinary rape and encounter killing, it was the more everyday forms of violence, that were traumatic.

And also your other point on violence itself not being taught, that's actually true, it's not even taught in criminal law. Criminal Law teaches you the law of crimes but it never tells you that the crimes are violent, nor does it tell you that punishment is violent. It never tells you that the death penalty is violent. In fact you are taught to see the death penalty as punishment, not violence; so nothing – incarceration, death penalty, nothing within Criminal Law is framed in terms of violence, not even terror. On the one hand, you have the whole discourse on non-violence but you don't have the corresponding discourse on violence; the corresponding discourse is on law and order.

RS: So, as you were saying that there is a discourse on non-violence and we don't teach violence, is it also because there is a limitation in our understanding on how we even study violence. You know the methods of studying violence, I am kind of thinking about the early women studies writings around how difficult it is to do research on domestic violence. And from there, to how difficult is it to do research, let's say with death row prisoners, and you know one is thinking about the Death Penalty Project that National Law University Delhi has been doing, so I am wondering, does it also have to do with the fact that we are not training people with how to study violence.

KK: I think there are many layers in the study of violence. For instance, I have never been able to 'study' violence to this day. I have worked with survivors, I have worked with testimonies, I have worked with case law, which is one step removed, but I haven't actually ever, I think, interviewed a sample of women who are survivors of violence and published the findings. That is a balance that every researcher has to strike up. What is it that you will use, what are your own limitations, basically, the feeling in your gut; What can you deal with, what can't you deal with? Emotionally, how do you connect to a problem, how much are you able to distance yourself, and at what level are you able to distance yourself.

RS: And definitely involves questions on ethics...

KK: Ethics, of course, first of all. But once you cross the problem of ethics, or rather once you settle the issue of ethics, you still have a series of choices. On what your materials of study will be, and that can be any of a range. It can be

prisoners, under trials, survivors, victims' families, it can be any of a range of options, and with each then you have a fresh set of ethical questions that arise, except where you are looking at reported cases from the public record, where you only have to settle up your ethical question once. In a sense, it's a bit of an easy exit.

RS: As you're saying this, I'm finding a connection with this set of things that you said, you worked with testimonies, case laws, you've worked with survivors with public reports but not done detailed, in-depth interviews, or even if you have done cases, you've not used it. And these in some sense seem to be connected with your PhD thesis where you were being asked to find out and do interviews with devadasis but you were working with records and Imam Settlements and other kinds of written records.

RS: With the book *From Mathura to Manorama* one of the thoughts with the book's title that I had was why the names in the title? While, of course, one knew these names and yet one was also aware of all debates by the 2000s about anonymising, etc. But one of the thoughts that has remained with me is that if violence is actually everyday and normalised then why would we want to remember moments in women's movements? Mathura and Manorama, of course play very important roles as movements, legal transformations, etc., but still a certain kind of unease, I would think, I was just thinking that.

KK: If we just historicise the anonymising debate, both Rameeza and Mathura were prior to it, and if you don't say Mathura or don't say Rameeza, you don't know the case. If I say, Tukaram vs. State it may not ring a bell. Rameeza's name is even mentioned in the Justice Mukhtadar Commission Report that was tabled before the Andhra Pradesh Legislative Assembly. She is named as Rameeza Bee in the official records. All the rape law reform campaigns named Mathura in the late 1970s and early 1980s. It is a 'watershed' in the women's movement. Both the Rameeza and the Mathura cases cascaded into huge campaigns that forced the general public to take note of the fact that these are injustices. That is something that can't be forgotten. Thangjam Manorama had died. The protest of the Meira Paibis was unparalleled. Our focus was on the continuum of violence and on the continuum of protest against violence. Because this was a book on feminists organising against violence, so that's the reason why we said okay let's use these two historical moments, the campaign for justice for Mathura and the protest

against the murder of Manorama – the focus was on suffering and harm and importantly on feminist organising.

RS: The other questions that I had was around Telangana studies and as I was looking through, this was something that I just read in your website; I haven't followed the series, but the question that I was thinking about as a sociologist was that, how important do you think is studying specific political, cultural, spaces and context in India, and to what extent do you think that the discipline of Sociology does that, because we gave up village studies, we've shifted from there to doing urban studies; studying the cities is now becoming somewhat popular, going to the rural is another thing that we do. Some departments either in Sociology or in Women's Study tried to do north-east writings, etc. So keeping these as background in mind, what we still go on doing is Indian Sociology or Sociology of India, those are the kinds of courses that we still end up doing and as if we're also saying that the other courses there aren't India, it is in this course that you could do. So I think two kinds of things that I'm curious to ask, one is, why Telangana studies, two, where is the space of this kind of discourse within Sociology?

KK: Belonging to Telangana, the whole idea of the cultural specificity of Telangana is something that I grew up with. In 2007-09, when the movement for separate Telangana really picked up, a bunch of us just went off on a road trip to all the districts in Telangana talking to everybody on the streets. There were Joint Action Committees in every village, every town. So we just got into a jeep and went all over the state, in forest areas, outside, everywhere just asking people why they support the demand for a separate Telangana. And the responses we got were really amazing; we put it out in an article on EPW in 2009 called 'On the Telangana Trail'. Later I joined an ICSSR institute supported by the state government. There had to be a research partnership with the government. We had a rather friendly bureaucrat who had done his MPhil from SIS in JNU who was in charge of planning – BP Acharya. It was in conversation with him that the idea of putting out a Social Development Report for Telangana emerged. We brought in researchers from outside. We had Padmini Swaminathan, formerly with Madras Institute of Development Studies, and J. Jeyaranjan, who is now the Vice Chair of the State Planning Commission in Tamil Nadu – both economists – and me, coordinating this entire effort with other scholars involved as well. We put together two reports. The second Telangana Social Development Report (2018) focused on Gender Access and Well-being. In this report, we included crimes

against women as a social indicator of well-being. It's possibly the only report which has district-wise figures on crimes against women using data from NCRB, NSSO and census. So where the Telangana Studies is concerned, I think it was much more institutionally driven, it wasn't really something I was personally interested in. It definitely is a regional perspective and therefore important.

RS: Right, I think we have come to the last set of thoughts today, which is, your teaching, you as a teacher in the law school, and in your website you do write about the thesis that you have supervised, and there is one which is still ongoing, and I'm just wondering that you will not be a traditional Sociology teacher and you've not taught in a Sociology department, which itself is something very noteworthy, I think, and yet I am still trying to think about the kind of courses that you taught in the law school, curriculum building, as well as transacting these courses to law students. Given the resistance that would have remained in the way in which – you did mention about the Law and Poverty thing that we are doing Sociology 3 – and yet what is it that you would say as your role as a teacher who is not consciously doing interdisciplinarity and yet is using so many kinds of materials (which I thought is the most important thing). What are your reflections on teaching?

KK: The years that I spent in NALSAR were actually in terms of my teaching, the best. Because after that, I moved out of undergraduate and was only doing research supervision. I was teaching Introduction to Sociology and Sociology of Law. I also taught a bit of Labour Law for a couple of years, I shared the course on Criminal Law for a year or two. And then I did seminar courses for two years and taught the LLM Human Rights course. But the one that I enjoyed the most was teaching the Sociology course to the first year students because you're actually in a conversation where a new world is literally opening out. For them and also for you, because you haven't actually met eighty different young people who have come with a baggage of experiences. I was getting stories about discrimination on campus, discrimination by faculty members, by other students, homophobia, silences, battering at campus, battering at home, all kinds of things. I engaged with them in my lectures, because I was teaching the family, I was teaching caste, I was teaching social stratification. I had split the Criminal Law course with a Criminal Law teacher and I was teaching the sexual offenses chapter – offences against the body – and there was no censoring, we talked about everything, we talked about why something is rape, why something is not rape, how can something be outraging modesty, we had these conversations very

openly in class and I just said, everybody should participate. If you have a disagreement with me, you have to tell me and tell me why. Then came along a retired judge who was appointed Criminal Law teacher; when it came to offences against the body, he would teach murder and homicide, and the rest of it, he would say were not important.

Already in Sociology, I was teaching Article 17 because Constitutional Law never teaches you Article 17. I started sexual offenses in Sociology so my Sociology was a default setting. Nothing was really outside the domain of Sociology. Everything the kids felt was getting left out somewhere came into Sociology.

I was very strict in class – insisted that if you are in class, you have to listen, you have to engage. I am not giving you a choice on that, you can't just sit and do your own texting, you have to tune in. Even that was a gamble that worked. I mean they have to be willing to listen to you, they have to trust you enough to listen to you and I was just lucky. I got lucky many times over. In the fifth year, when I offered seminar courses, I had quite a few students opting for my seminar courses. And several of them are now practicing in Delhi. But if you are a social science teacher who is not familiar with law at all, then you don't have the basis for a conversation with these students. That was what I realised.

With the Council for Social Development, it was basically courses on research methods. I haven't supervised too many, I have supervised two LLM dissertations in Human Rights in NALSAR. At CSD, I had six PhD students, of whom five were in women's studies and one in social sciences. But even so, I found it kind of a good experience. Of the six, five students are from TISS. Of the four that have already been awarded their PhDs, they are all people who are much older, people who returned for a PhD quite late after a long gap. One of them finished when she completed 60 in 2019... Lata... She worked on women in the OBC movement.

RS: How endearing is that!

KK: The other student Vaishali, who also came in after a very long time in Human Rights and looked at Dalit women in employment and then there was Rimi, who was from Arunachal who did a wonderful thesis on Apatanis of Arunachal.

RS: The last question I have is at this juncture where social science teaching and practice is undergoing a huge transformation. It has been undergoing a transformation for long. So I necessarily don't see it happening only now through the NEP, it has been happening through, from the National Knowledge Commission, Yashpal Committee Report and all of that. What would you have to say to early-career researchers, teachers, as to what would be non-negotiables in teaching and research of social sciences?

KK: I think the first is certainly revisiting the canon. That we haven't begun to do, I mean we are still doing the fathers of sociology and then adding the mothers and other beings. We do need to revisit the canon, both in terms of materials that have emerged from the subcontinent historically, and materials and writings outside. For instance, Ambedkar, Tarabai Shinde, just to name two, would be absolutely central. But also Gloria Anzaldúa, Zora Neale Hurston, I mean, we need to look at the structuring of the canon differently. And then look for the criss-crossing of concepts, methods, and approaches to study. So we can actually look at different sets of people and read, conceptualise the key concepts, reformulate the key concepts, reformulate the canon, do a completely fresh curriculum that it is not meant to set the old one right but displaces the old one and put something radically different in its place, more contemporary.

A lot more literature is needed; creative writing does not enter the Sociology curriculum at all. And creative writing is just so rich in its possibilities of understanding socialities, resistance, emotions, all of which are a huge part of Sociology. We don't teach the sociology of emotions. How do you re-conceptualise your core and your electives in such a way that even if I don't take an elective, the areas of that elective already figure in the core. Because as of now, we may not study rural sociology at all, then if we don't take an elective in rural sociology we get out of the Masters without studying rural sociology. Rather than doing that, what are the spaces that we must cover – work, family, emotions, socialities, hierarchies, inequalities, boundaries, relationships, intimacy, citizenship. Reimagining the discipline is the key.

*Appendix***LIST OF REVIEWERS (JANUARY 2017 – DECEMBER 2021)**

- A. S. Shimreiwung, Assistant Professor, Department of Sociology, Tezpur University.
- Amites Mukhopadhyay, Professor, Department of Sociology, Jadavpur University, Kolkata.
- Amman Madan, Professor, Azim Premji University, Bengaluru.
- Ananya Goswami, Social Policy Specialist, UNICEF, Assam.
- Angel Habamon Syiem, Assistant Professor, Department of Law, Tezpur University.
- Anuja Agrawal, Associate Professor, Department of Sociology, Delhi School of Economics, University of Delhi.
- Anwasha Ghosh, Research Fellow, Institute of Social Studies Trust (ISST), New Delhi
- Bhaskarjit Neog, Assistant Professor, Jawaharlal Nehru University, New Delhi.
- Binod Bhattarai, Assistant Professor, Department of Sociology, Sikkim University.
- Biswamber Panda, Professor, Department of Sociology, North-Eastern Hill University, Meghalaya.
- Chandan Goswami, Professor, Department of Business Administration, Tezpur University.
- Chandan Kumar Sarma, Associate Professor, Department of History, Dibrugarh University.
- D. V. Kumar, Professor, Department of Sociology, North-Eastern Hill University, Meghalaya.
- Daisy Das, Department of Economics, Cotton University, Assam.
- Debarshi Prasad Nath, Professor, Department of Cultural Studies, Tezpur University.
- Debdulal Saha, Assistant Professor, Centre for Labour Studies & Social Protection, Tata Institute of Social Sciences, Guwahati.
- Dev N. Pathak, Assistant Professor, Department of Sociology, South Asian University, New Delhi.
- Dhruba Pratim Sharma, Associate Professor, Department of Political Science, Gauhati University.
- Dilip Gogoi, Associate Professor, Department of Political Science, Cotton University.
- Dolly Kikon, Senior Lecturer, School of Social and Political Sciences, University of Melbourne, Australia.
- G. Ram, Professor, Department of Sociology, Assam University.
- Holendro Singh Chungkham, Assistant Professor, Indian Statistical Institute, North-East Centre, Tezpur.
- Indrani Sharma, Assistant Professor, Department of Sociology, Cotton University.
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- Jaya Shrivastava, Assistant Professor, Department of English, National Institute of Technology, Srinagar.
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