

MIRANDA LAW & POLICY REVIEW

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The Miranda Law and Policy Review is product of a successful collaboration between the Vidhik Sahayata Kendra (Legal Aid Centre), Miranda House and the Policy Centre and Gender Lab, Miranda House

Vidhik Sahayta Kendra (Legal Aid Centre), Miranda House: Miranda House, in collaboration with the Delhi State Legal Services Authority, has set up a Vidhik Sahayata Kendra (Legal Aid Centre) in its college campus to spread legal literacy and provide free legal aid to all students and faculty members in need. Every Friday, from 2pm – 5pm, a DSLSA appointed lawyer visits the Centre to consult those in need. Since its establishment on 5th January, 2024, the Vidhik Sahayata Kendra has organized several events like legal quizzes, speaker sessions on topics such as ‘Anti Defection Laws in India’, an audio-based certificate course on legal literacy, awareness session and walkathon on Cancer Awareness, a multiple certificate courses on legal literact in collaboration with DSLSA.

Policy Centre and Gender Lab, Miranda House: Policy Centre & Gender Lab at Miranda House is mandated to operate with the vision of creating a platform for budding researchers at the undergraduate level to ideate, incubate and innovate. This Centre provides training to students on research methodologies along with encouraging them to identify social and gender specific issues confronting society. The Centre has organised webinars and research skill development sessions with University of Birmingham, UK, University of Gottenburg, Sweden, University of Guleph, Canada at global level and Action Aid and Her World at the national level.

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Editorial

From the Principal's Desk

Dear Readers,

It is with immense pride that I present to you the inaugural issue of the Miranda Law and Policy Review. This new journal represents a significant milestone in our ongoing commitment to advancing the student-led discourse on contemporary legal and policy issues that shape our global society. The inaugural issue features a carefully curated selection of papers that reflect the diverse and profound nature of the field of law and policy. Each contribution has been rigorously double-blind peer-reviewed by distinguished experts from leading institutions to ensure that our publication offers fresh perspectives and critical insights into the complex landscape of policymaking and legal theory.

The inception of Miranda Law and Policy Review is rooted in our recognition of the urgent need to tackle pressing legal and policy questions with rigorous research and thoughtful analysis. Our dedicated faculty and a talented team of student editors have worked tirelessly to bring this vision to life, ensuring that our journal upholds the highest standards of academic rigor, innovation, and excellence. We extend our deepest gratitude to our partners, colleagues, and contributors who have provided invaluable support and collaboration.

Our goal with Miranda Law and Policy Review is to foster a rich scholarly dialogue and to inspire meaningful contributions from academics, practitioners, and students alike. We invite you to engage with the journal's content, challenge conventional thinking, and embrace the spirit of research and innovation in law and policy. To our readers, we hope you find the inaugural issue both educational and inspiring. Your feedback is invaluable to us as we continue to refine and enhance the Miranda Law and Policy Review.

We look forward to your engagement and contributions as we move forward on this exciting journey.



Principal

From the Faculty Editor

Dear Readers,

The Miranda Law and Policy Review was conceived in response to a pressing need for rigorous research and exploration of critical legal and policy questions. Each contribution in this issue provides valuable insights into the complex landscape of law and policy. We invite you to engage with our content, challenge conventional perspectives, and contribute to this vibrant field of research.

In this inaugural issue, we present a range of papers offering diverse perspectives on law and policy. Tasmita Sengupta and Debashree Hazarika's study, "Gendered Analysis of Gig Workers Under the Rajasthan Platform-Based Gig Workers Welfare Act," highlights the challenges faced by women in India's gig economy and calls for gender-sensitive policies based on gender-disaggregated data. Ananya Vinod evaluates two major global educational initiatives: the Global Partnership for Education (GPE) and the Global Education First Initiative (GEFI). Her assessment reveals GPE's success in promoting Universal Primary Education through an inclusive approach, while GEFI's UN-focused model has had less impact. Vinod emphasizes the need for inclusivity and transparency in global educational policies.

Khushi Aggarwal argues for a legislative shift in India from merely permitting medical termination of pregnancies to recognizing a woman's right to safe and legal abortion as part of reproductive autonomy, following the 2021 amendment and a landmark Supreme Court judgment. Aparna Bhatnagar advocates for a robust data protection framework in India, drawing from the US model. She emphasizes user education, collaborative policymaking, and effective responses to data breaches, advocating for data privacy as a fundamental right.

Ramanshi Dwivedi explores India's role in global migration, calling for data-driven policies that balance security and human rights. Shivani Yadav examines rural-urban migration trends in India to highlight the need for policies addressing migrants' rights and challenges. Vedaansh Uberoi discusses climate-induced migration and argues for a shift from national security to human security perspectives. Alankrita Jasaiwal emphasizes the importance of a written Bill of Rights, assessing its effectiveness in protecting human rights. Finally, Akshay Kumar Datta analyzes the resurgence of the

Japanese government bond market and its implications, including the effects of the Bank of Japan's monetary policy on both the Japanese and Indian bond markets.

We extend our deepest gratitude to our Principal for her steadfast support and guidance, to our advisors for their invaluable insights and expertise, to our esteemed peer review panel for their time and to the student editors, Nandini Parashar and Yashaswini Bahuguna, as well as the entire student editorial board for their commitment and hard work. Their collective efforts have been crucial in bringing this journal to fruition. To our readers, we hope you find this issue both enlightening and motivating, and we eagerly anticipate your feedback as we embark on this exciting journey together.



Prof. (Dr) Namrata Singh

Department of Political Science

Miranda House

From the Student Editors

We are grateful to have been called upon to be a part of the first peer - reviewed journal of Miranda House, right from its inception. It is often said that firsts are the most memorable because they are the beginnings - new beginnings of innovation, excellence, and creativity. Being in the first editorial board of MLPR was an extremely enriching experience which allowed us to learn the ropes of academic publication and research unlike anything else. However, successful outcomes such as the publication in-hand are often not the product of solitary efforts. Rather, each stage of the editing process is made possible only with the help of several hands joining together to collaborate and cooperate.

We would like to express our heartfelt gratitude to our respected Principal ma'am for her constant support. We also thank Prof. (Dr) Namrata Singh and the faculty editorial board, under whose guidance we learnt to break glass ceilings and fly towards the bright horizons. We are grateful to our esteemed peer - review board for taking our time from their busy schedule and reviewing our submissions with utmost care.

The Editorial Board, our back bone at every step of the way, was a microcosm at its best. Composing a diverse set of students belonging to various disciplines such as English, Political Science, Sociology, History, Economics, Physics and so on, allowed us to amalgamate multiple perspectives and outlooks throughout the editing process. Each editorial member diligently worked towards ensuring the quality of this publication, burning the midnight oil to edit, review and format all submissions received. We sincerely thank the Editorial Board, our backbone, for their untiring efforts in ensuring the successful publication of this journal.

Any publication is made to stand the test of time by the quality of scholarships it hosts. We thank our dear authors for trusting us with their hard work and effort.

At the genesis of Miranda Law and Policy Review lies a dream to democratize scholarship, encourage dialogue and progress research and development. Last but not the least, we thank our dear readers for their time in reading our publication and joining us in achieving our dream.

- **Nandini Parashar & Yashaswini Bahuguna**
Editors-in-Chief

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Gendered Analysis of Gig Workers Under the Rajasthan Platform-Based Gig Workers Welfare Act

Tasmita Sengupta¹ and Debashree Hazarika²

Abstract: India's expanding gig economy, shaped by technology and digital platforms, poses a complex terrain for women gig workers in the informal sector. Despite the flexibility it offers, challenges like job insecurity, absence of benefits, and gender-specific issues persist. The increasing involvement of women in gig jobs, encompassing household, care work, and assigned tasks, highlights the pressing need for equitable treatment, encapsulated in the 5 "F"s fair pay, fair conditions, fair contracts, fair management, and fair representation for blue-collar women workers. A notable stride has been made by the state of Rajasthan through the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, aiming to address social security through a welfare fee deduction mechanism. However, this paper exposes the act's shortcomings in tackling the precarious situation faced by female gig workers in the state, aggravated by a lack of gender-disaggregated data. Utilising qualitative analysis and the Feminist Southern Approach, the study meticulously examines the status and challenges confronted by platform-based female gig workers, specifically focusing on the implications of Rajasthan's Gig Workers' Welfare Act. The findings contribute to the ongoing discourse on the gig economy, shedding light on the distinct hurdles faced by women and advocating for more comprehensive, gender-sensitive policy interventions.

Keywords: Gig Economy, Gender, Rajasthan, Platform work, Social Security, Opportunity, Challenges.

Acknowledgement: We thank CUTS International for inspiring us to explore the gig economy through its project "Good and Better Jobs in India." (*Exploring alternate models of economic growth, inclusive finance and worker welfare [grow jobs-II]* 2023) It is with great pleasure that we acknowledge the pivotal role played by our previous study, titled "Rajasthan Gig Workers Act: Issues and Prospects," which laid the foundation for the current research. This earlier study was presented at the recent IHD conference, and we eagerly anticipate its publication by IHD shortly. The insights gained from this initial study significantly contributed to the development and direction of the current study on the gig economy.

Introduction

India, a global economic powerhouse, draws strength from its diverse landscape and rich cultural heritage. The nation's extensive and diverse labour force plays a pivotal role in propelling growth, fostering innovation, and driving overall development. However, despite being the most populated nation globally, gender disparities in labour force participation persist, with women's participation at 37 percent compared to men's at

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78.5 percent. (Ministry of Statistics & Programme Implementation, 2023) India's economic terrain has experienced notable changes, evolving from an agrarian society into a swiftly industrialising and services-focused powerhouse. The coexistence of formal and informal sectors is a hallmark, with approximately 80 percent of the population engaged in the informal sector, a critical driver of economic growth (Next IAS, 2023). Technological advancements and shifting consumer demands have ushered in a new era, giving a new dimension to the already existing gig economy, characterised by short-term, platform-based work arrangements.

The gig economy, as defined by the World Economic Forum, involves the exchange of labour for compensation through digital platforms, connecting service seekers with providers on a task-by-task basis (WEF, 2021). The gig economy has gained prominence, particularly after the pandemic, with sectors like transportation, food delivery, freelance services, and online marketplaces witnessing a surge in gig work. The gig economy's flexible, project-based approach has become an empowering avenue for women in India, offering an alternative to traditional full-time employment.

According to NITI Aayog, the gig economy in India comprised approximately 7.7 million workers in 2020-21, projected to escalate to 23.5 million by 2029-30. This anticipated growth suggests that the gig workforce will expand from 2.6 percent of the non-agricultural workforce to 6.7 percent in India by 2029-30 (India, 2022). This further underscores the sector's significance, emphasising the need to comprehend its dynamics, working patterns, and considerations for worker welfare. Nevertheless, this industry exhibits a dual character, providing heightened income opportunities while also subjecting workers—particularly women in blue-collar positions—to precarious circumstances characterised by a lack of job security, safety concerns and social benefits.

Recognizing the importance of gig workers, both central and state governments have been taking steps to address their challenges. The state of Rajasthan has emerged as a trailblazer by introducing the "Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023." This legislation, the first of its kind in India, focuses on the welfare of gig workers, aiming to provide social security through a mechanism for welfare fee deduction integrated with aggregator apps. This initiative, crucial for the three to four thousand individuals engaged as gig workers in Rajasthan, seeks to bolster the state's economy while ensuring the well-being of those contributing to the gig sector. As governments increasingly recognize the gig economy's role in economic growth, addressing the challenges faced by gig workers, especially women in blue-collar roles, becomes imperative for a sustainable and inclusive future.

Gender and Gig Economy

Despite India's growing economic prosperity over the years, its female workforce participation has fallen from 30 percent in 1990 to 19 percent in 2021. The decline in female labour participation has been notably significant over the past 15 years, as indicated by World Bank data. From 2005 to 2021, there has been a substantial drop, with female labour participation plummeting from 32 percent to 19 percent (Das, 2023). This latest trend confirms that women have been rapidly dropping out of the labour force to continue attending to their domestic duties. According to the Gender Gap Report 2023 of the World Economic Forum, India has been ranked 127 out of 146 countries (WEF, 2023).

Women, traditionally underrepresented in certain sectors of the economy, are increasingly participating in both traditional and non-traditional gig jobs. The gig economy brings flexibility in carrying

out their tasks which now comprise both, household and care work as well as assigned gig work (BCG and Michael & Susan Dell Foundation, 2021). An increasing body of research finds that women are drawn towards both kinds of digital platforms which provide them with traditional women-dominated employment opportunities like cooking and stitching as well as non-traditional jobs like ride-hailing and deliveries (Kelkar, 2022).

Historically speaking, women in India have been facing problems in accessing formal employment opportunities given the patriarchal setup of our society. The gig economy has provided them with new opportunities to actively break through from traditional workspace constraints (OLA, 2021). This has also helped them balance work and personal responsibilities and capitalise on their skills and talents. According to a report from the Asia Foundation, the future of work for women is in the gig economy, especially more in the platform economy, a subset of the gig economy (The Asia Foundation et al., 2020).

Despite the gig economy having the idea of flexibility and high returns, platform work in India has been precarious work for women marked by poor wages, unregulated hours of work and no social security coverage. Moreover, the algorithmic controls make negotiations even more difficult for women, many of whom are not even part of any union. Adding to this, it is often a difficult task to locate and reach out to women gig workers due to a lack of gender-disaggregated data (Ghosh, 2017).

In short, women gig workers have to juggle between work and care and their precarious situation calls for transformational interventions to support their entry, security as well as growth in the platform economy of India (The Asia Foundation et al., 2020). For example, within service sectors, where both genders participate in the labour market, such as ridesharing, it has been observed that, on average, men earn approximately 7 percent more per hour than women. This discrepancy can be attributed to various constraining factors, including geographical considerations (male drivers may be more inclined to offer rides in potentially more profitable but higher-crime areas, posing safety risks). Additionally, accumulated experience, evident in ride acceptance strategies and user ratings, contributes to this gender-based earnings disparity (Cook et al., 2018).

Literature Review

In the dynamic evolution of the Indian economy, contemporary frameworks strive to unravel the intricate dynamics governing employment and growth. The labour market showcases a distinct bifurcation, primarily driven by significant workforce migration. This shift involves a notable transition from agriculture to informal occupations in urban settings, deviating from a predominant move towards large-scale manufacturing. This dichotomy is evident through the informalisation of the formal sector, marked by prevalent casual and contractual labour arrangements. Despite the commendable economic growth indicated by a projected 6.3% real GDP growth rate in 2023 (International Monetary Fund, 2023), India faces formidable challenges akin to those identified in Lewis's foundational work (Verick, 2013).

A significant portion of the Indian workforce occupies low-paying positions in the predominantly informal sector, characterised by a lack of social security and job stability, as highlighted by Aggarwal, 2022. Existing literature highlights the informal sector's significance in employing a substantial portion of India's population, despite the insecurity and lack of safety associated with such employment (OXFAM, 2022). Paradoxically, there has been a swift proliferation of gig work facilitated by digital platforms in India over the

past few years (India, 2022). The Indian government's endorsement of narratives emphasising progress and job creation through digital platforms aligns with its development agenda, anticipating 'disruptive' changes from digital technology.

The gig economy's growth in India is fuelled by factors like widespread internet use, extensive mobile phone adoption, and a robust connectivity infrastructure (Graham & Lehdonvirta, 2017). While gig work traditionally existed in sectors like agriculture and daily wage construction labour in the informal sector (BCG, 2021), the current transformative trend results from tech-driven, efficient connection, and on-demand service provision at a significant scale.

The inherent connection of gig work to the informal economy contributes to its precarious nature, posing a significant challenge. Gig workers, predominantly labelled as 'contractors' rather than 'employees,' notably lack the social security privileges enjoyed by traditional employees (Pokharna & Abrol, 2023). Companies operating on digital platforms and employing gig workers often hesitate to extend such benefits, citing worries about heightened costs and potential impacts on their competitiveness. As a result, gig workers not only grapple with inadequate remuneration but also face difficulties in improving their societal standing, thereby reinforcing existing social disparities and adding to the multidimensional nature of inequality. (Morarka, 2023).

Contrary to the initial expectations in the platform economy, where gig jobs were anticipated to offer women a chance to balance domestic and care responsibilities with income-earning activities, the reality differs. Work assignments on app-based platforms often exhibit gendered patterns, directing women towards professions like beauty and massage services or formalised care work such as nannies and nursing (Digital Future Society, 2021). Despite the gig economy's growth, it fails to alleviate economic penalties linked to care work for women, and equal opportunities and pay remain elusive.

Stigmatised as "pink-collar jobs," care work often becomes the designated path for women, contributing to the persistent gendered occupational roles. This division is reflected in the gender pay gap prevalent in India's gig economy. The underrepresentation of women in gig work symbolises a broader challenge—the declining female workforce participation, exacerbated by limited access and opportunities (IWWAGE, 2020). Additionally, women face a significant barrier to entry into gig work due to restricted access to digital technologies; only 16 percent of Indian women are reported as mobile internet users (GSMA, 2019). This digital divide further hinders women's active involvement in the gig economy.

In India's gig economy, persistent concerns revolve around women's safety, the need for fair labour practices, and equitable access to benefits and insurance. Achieving a gender-inclusive economy in the gig sector is a formidable challenge, notably underscored by the limitations of the existing Code on Social Security. Previous legislation, including the Unorganised Workers' Social Security Code (2020), has overlooked gender-based issues, hindering the establishment of a comprehensive social security net for the informal sector. Rajasthan, known for its patriarchal traditions, grapples with deeply ingrained social practices, contributing to high rates of child marriage and the country's lowest sex ratios (Ronaq, 2023). The state has always shown discriminatory behaviour when it comes to opportunities enjoyed by women as compared to men.

Given the context, Rajasthan took a pioneering step in July 2023 by enacting the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, making it the first Indian state to establish a legal framework for gig workers. This legislation aims to provide social security and associated benefits. The Act

covers 'primary employers' and 'aggregators,' defining a 'gig worker' closely in line with the Code on Social Security, 2022. It includes individuals working under contracts specifying payment rates, encompassing all piece-rate labour. (Correspondent, 2023)

The Rajasthan government allocated an initial fund of Rs 200 crore to the Rajasthan Platform-Based Gig Workers Social Security and Welfare Fund. A 'welfare cess' not exceeding two per cent but not less than one percent of the transaction value is imposed on aggregators or primary employers to enhance rights and facilities for gig workers (MISHRA, 2023). The Act establishes a welfare board for formulating schemes, providing financial assistance in emergencies, and facilitating health insurance coverage.

Globally, the surge in the gig economy has prompted countries, including the United States and some European nations, to address gig workers' welfare concerns. The Biden administration in the United States introduced a draft rule in October 2022, potentially broadening the classification of gig workers as full-time employees, with proposed rules under the Fair Labor Standards Act assessing six factors to determine worker status (Krishna, 2023). The Netherlands and France through recent court decisions have recognised gig workers as employees (Kwok, 2021). In Spain, legislation known as Rider's Law mandates that food delivery platforms must categorise couriers as salaried staff with entitlements, including collective bargaining rights (CATER, 2021).

The UK Government Employment Tribunal introduced several regulatory changes to protect gig workers in 2017. These include clarifying employment status, ensuring access to minimum wage and benefits, implementing health and safety measures, and enforcing transparency and accountability among gig employers. These new regulations bring much-needed improvements to the rights and protections of gig workers (Cunningtons LLP, 2017).

In comparison to legislative developments in other countries, the enactment of the Act by Rajasthan is commendable; however, there are certain facets of the legislation that require reconsideration to enhance both its coverage and implementation. Notably, the situation is more concerning for women. Even in many foreign nations, there is a lack of distinct provisions tailored for women, exacerbating their vulnerability within the gig economy.

Despite the enactment of Rajasthan's Gig Workers' Act, it falls short of addressing the intricate challenges associated with cross-jurisdictional issues. Gig workers commonly operate across multiple jurisdictions (Faheem, 2023), presenting complexities in coordinating accountability and policy implementation among different states or countries (Butani, 2023). Furthermore, a noteworthy concern lies in the Code on Social Security, which incorporates gig workers but fails to explicitly include or identify domestic workers, leading to conflicts, particularly affecting women's interests.

The unavailability of gender data from platform aggregators poses a challenge in identifying and capturing the experiences of women gig and platform workers, creating a disparity when compared to their male counterparts. However, Rajasthan's act takes a positive stride by encouraging platforms to share their data, addressing this gap and potentially enhancing their visibility.

The inclusion of a provision mandating that one-third of the nominated members on the board must be women in the bill is a positive step towards achieving greater gender balance in decision-making within the state (Ghosh et al., 2017). However, the absence of specific provisions for representation from both the

aggregator and gig worker sides highlights a gap in addressing gender inequality comprehensively. This aspect calls for further consideration to ensure a more inclusive and equitable representation across all stakeholders involved in the gig economy.

The entry of women into India's gig economy has been impeded by persistent structural barriers, marked by systemic challenges such as gender bias, restricted opportunities, and unequal access to resources (Kasliwal, 2023). Women service providers in this sector often face an increased risk of harassment, encompassing verbal abuse, stalking, or bullying (Ghosh et al., 2017). Additionally, gender pay gaps are prevalent among gig workers, exacerbated by algorithmic surveillance that diminishes transparency in the relationship between platforms and workers. Unequal access to digital technologies further hinders women's participation in gig work (Kasliwal, 2023). Notably, the Rajasthan law lacks specific provisions for gender-focused incentives, necessitating further considerations to address these gender-based challenges comprehensively.

Stakeholder Mapping

Stakeholders were initially identified through secondary research as individuals or organisations with a direct interest in or influence on women's involvement in the platform economy of Rajasthan. However, our primary survey revealed that women's participation in platform-based gig work in Rajasthan is virtually negligible. While there is evidence of non-platform-based women gig workers, such as domestic helpers and those in the construction sector of Rajasthan, our study specifically centres on platform-based gig work, aligning with the focus of the new act. They are broadly classified into three categories to have a holistic understanding of the Act and its implementation across genders. The categories were: a) Aggregators/ platform and allied businesses (10 respondents); b) gig workers (75 respondents); and c) experts who were a part of the committee that contributed to Rajasthan's Gig Workers Welfare Act (5 respondents).

The primary survey for aggregators in the study includes a sample size of **ten**. Table 1 below illustrates the distribution of aggregators and their respective platforms selected.

Table 1: Number of aggregators interviewed

Name of the Company	Number of aggregators interviewed	Gender
Tata 1MG	1	Male
Amazon	1	Male
Delivery	2	1Male, 1Female
Swiggy Instamart	2	Male
Swiggy	2	Male
Sakha Cabs	1	Female
Apollo	1	Male

Profile of Gig Workers Interviewed for the Study

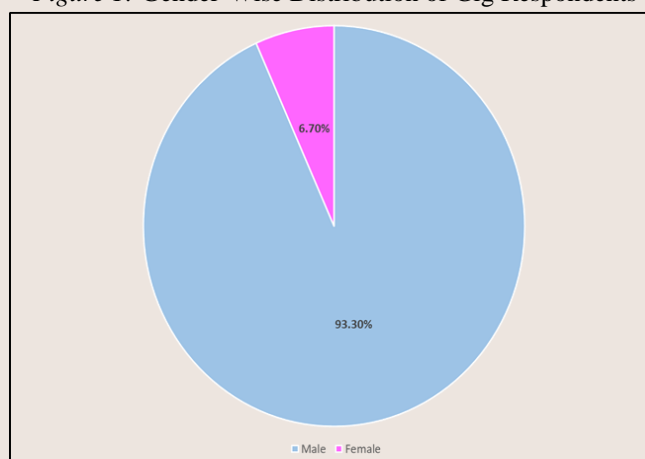
A comprehensive survey was undertaken to explore the profiles of gig workers, encompassing both male and female participants engaged in the platform economy. The primary focus of the study was to assess the pertinence of the Gig Workers' Welfare Act and its implications on their working conditions. The study also aims to document and analyse the gender-specific experiences encountered by gig workers.

A total of **seventy-five** responses were received from the platform-based gig workers in Rajasthan. Maximum responses were from men because, in Rajasthan, platform-based gig workers are mostly men except for Sakha Cabs and Urban Clap. Table 2 provides the details of the number of gig respondents per company and Figure 1 represents the gender-wise participation of gig respondents.

Table 2. Profile of Gig Respondents

Sectors	Company Name	Number of respondents	Percentage breakup
Transportation	Uber	5	6.7
	OLA	5	6.7
	Rapido	5	6.7
	Sakha Cabs	5	6.7
Food Delivery	Swiggy	5	6.7
	Zomato	5	6.7
	EatSure	5	6.7
Grocery	Big Basket	5	6.7
	Swiggy Instamart	5	6.7
	BlinkIt	5	6.7
Logistics	Amazon	5	6.7
	Flipkart	5	6.7
	Delivery	5	6.7
Pharmacy	Tata 1MG	5	6.7
	Apollo	5	6.7
Total		75	100

Figure 1: Gender-Wise Distribution of Gig Respondents



Most of the respondents were from the age bracket of 25-34 years, followed by respondents that were 18-24 years, 35-44 years and then 45-54 years age brackets as Table 3 shows.

Age bracket	Number of respondents	Male	Female	Percentage break-up
18-24	20	17	3	27
25-34	40	38	2	53
35-44	10	10	0	13
45-54	5	5	0	7
Total	75	70	5	100

Table 3. Age-wise Distribution of Gig Respondents

Table 4 shows the educational attainment of the gig respondents: most studied till secondary school (class 10) which resulted in 42 respondents, followed by those who studied till high school (class 12) which resulted in 23 respondents. 10 respondents underwent some vocational training or did their bachelor's. The gig economy has become an important avenue for work for people who have studied only till high school or secondary school and otherwise would have had difficulties in finding jobs in traditional organised employment sources.

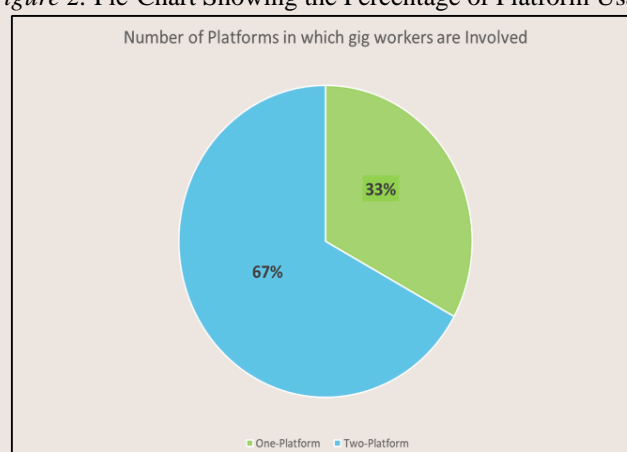
Table 4. Educational Qualification of Gig Respondents

Educational Qualification	Number of respondents	Male	Female	Percentage break-up
Secondary (till class 10)	42	39	3	56

Educational Qualification	Number of respondents	Male	Female	Percentage break-up
High School (till class 12)	23	21	2	31
Bachelor's/vocational	10	10	0	13
Total	75	70	5	100

In Figure 2, it is evident that the majority of respondents, comprising 62%, engage with two platforms, as represented by the blue colour. Conversely, those involved with only a single platform are highlighted in green, accounting for 33%. The data underscores that a significant portion of food delivery workers and ride-hailing professionals opt for dual-platform involvement, underscoring the flexibility inherent in the gig economy. Notably, exceptions to this trend are observed in the cases of Rapido, Sakha Cabs, and EatSure.

Figure 2. Pie-Chart Showing the Percentage of Platform Usage



Profiling of Key Informant Interviews/ Experts

The study also involves interviews with experts who played an important role in implementing the Gig Workers Welfare Act in Rajasthan. The sample size for KIIs accounts for five in number and their background is shown in Table 5 below.

Table 5. Profiling of Expert Respondents

Background of Experts	Number of Respondents
Lawyer	1
Gig Union Leader	1
Aajeevika Bureau	2

Background of Experts	Number of Respondents
The Employers Association of Rajasthan	1

Methodology

This study adopts a qualitative research methodology to empirically explore the gig ecosystem, following May's (1997) framework. Qualitative research, characterised by inductive reasoning, facilitates a nuanced understanding of individuals' experiences, emotions, and statuses within the gig economy. Unlike quantitative methods, which are rigid and numerical, the chosen approach employs open-ended survey questions and Key Informant Interviews (KIIs) with aggregators to delve into the intricate aspects of the subject. This qualitative stance allows for the construction of nuanced concepts and theories, enabling a richer interpretation of the data. By prioritising depth over breadth, the research aims to uncover insights that might be overlooked in a more structured quantitative approach, thereby contributing to a more comprehensive understanding of the gig ecosystem in Rajasthan.

- ***Open-ended Questionnaire:***

The open-ended questionnaire sub-section was incorporated into the survey administered to gig workers and aggregators. Open-ended questions allowed respondents to express their experiences, concerns, and suggestions freely. This method facilitated the collection of detailed and qualitative data, ensuring a comprehensive analysis of the gig workers' perspectives within the thematic framework.

- ***Key Informant Interviews (KIIs):***

The KII section involved semi-structured interviews with aggregators, providing insights into the perspectives of platform-based companies. These interviews explored the perspectives of company policies, concerns, and their impact on gig workers. The KIIs complemented individual narratives, offering a holistic understanding of the gig ecosystem from both worker and aggregator viewpoints.

- ***Thematic Analysis:***

Thematic analysis was employed as a systematic method to distil meaningful patterns and themes from the qualitative data. This method involved a meticulous process of coding and categorising responses, allowing for the identification of recurrent themes across different narratives. Thematic analysis was chosen for its flexibility and adaptability, aligning with the exploratory nature of the study and the diverse dimensions of gig work explored through varied qualitative methods.

- ***Integration of the Feminist Southern Approach:***

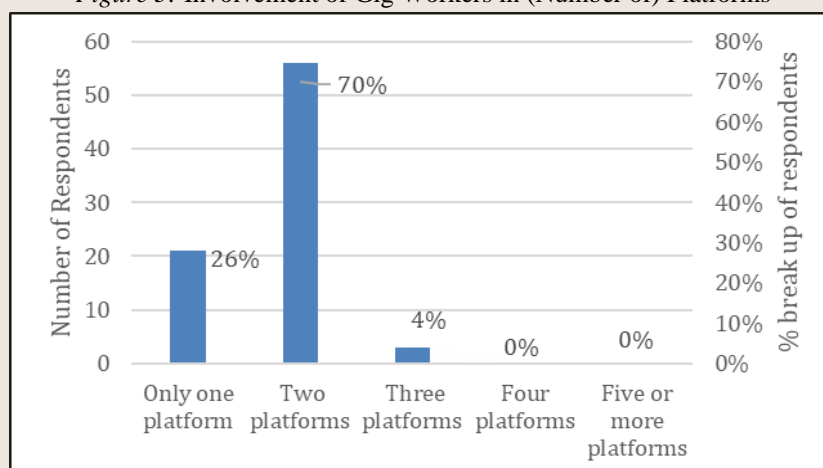
The research methodology is imbued with the principles of the Feminist Southern Approach, recognizing the limitations of traditional Northern theories in capturing the intersectionality inherent in the global South. The Feminist Southern Approach acknowledges the unique experiences of women in the Southern context, considering the interplay of economic, patriarchal, and identity dynamics. This methodology is particularly crucial in Rajasthan, where women navigate not only the challenges of gig work but also the intricate interactions of economic pursuits, patriarchal norms, and multifaceted identities.

In essence, the qualitative methodology adopted for this research encompasses an inductive and contextually sensitive approach, integrating the Feminist Southern Approach to address the unique challenges faced by women in the gig economy of Rajasthan. The systematic use of thematic analysis, combined with varied qualitative methods, including KIIs and open-ended questionnaires, ensures a comprehensive exploration of the multifaceted dimensions of gig work in the region.

Survey Findings

In Figure 3, a majority of respondents (70%) reported involvement in two platforms, while 26.25% indicated engagement with a single platform. Merely 3.75% stated their involvement in three platforms.

Figure 3: Involvement of Gig Workers in (Number of) Platforms



It is noteworthy that 26.2% of these respondents were women relying solely on one platform, highlighting the additional challenges women face due to their dual responsibilities, constraining their time for gig work.

This disparity between male and female gig workers underscores the impact of the double burden on women's ability to commit more time to gig work.

The inclination of gig workers to participate in multiple platforms is likely driven by a strategic effort to diversify income sources and mitigate the risks associated with potential disruptions in one of the platforms.

When asked whether respondents have read or received information about the functions of the Board as outlined in the Act, including the formulation of specific schemes and the registration process, all the respondents replied in the negative, i.e., they have not (Figure 4).

Figure 4: Respondents' Awareness of the Act



Table 6 includes suggestions by the respondents on the specific aspects of the Act that require further consideration ranked, in order of frequency: A greater number of gig workers have said there should be awareness, generation and capacity-building sessions by the government on the Act than other aspects. This reflects that most workers were not aware of the existence of the Act or its features.

The women gig workers especially emphasised the need for the acknowledgement that women gig workers are not all present which is a huge letdown felt by them.

Table 6: Aspects of the Act Requiring Further Consideration or Improvement

Responses
Awareness and capacity-building sessions on the Act for gig workers
Clear guidelines on availing welfare measures
Registration cards to gig workers to avail the benefits provided to them
A pension system to help accumulate savings now to use in the post-employment phase
Recurring meetings with the welfare board, which gig workers participate in as well
Strict measures for companies who do not abide by the provisions laid by the board
Provisions on the Safety aspect of gig workers, especially for women, should have been considered.

Table 7 includes responses to a question on the ways the government could help gig workers ranked in order of frequency. On the top of the list is the demand for accidental insurance, which also reflects the fact that a number of the respondents were drivers who work with taxi aggregators. There were also responses that reflect the respondents' wish to have greater job security and stability (e.g. in asking for treatments similar to regular employees, steady remuneration, safeguard for drivers/ other employees, increasing remuneration) as well as demand for more information and awareness generation activities from the government.

The gendered response to the question was that Women felt that the government should help them in skilling bike driving programs etc., so that we can join the gig workforce.

Table 7: Ways in which the Government Could Help Gig Workers

Responses
Women-based Skilling Training
Accidental insurance
Employment stability similar to regular employees
Steady remuneration to drivers
Safeguards to ensure the well-being of drivers: e.g. the delineating procedure of termination of drivers' engagement.
Compensation when petrol prices are hiked
Increase remuneration paid by the companies
Explicitly detail welfare schemes in the e-Shram portal
Publicity on the Act, for example, through WhatsApp messages

Figure 5 includes the respondents' responses on any health challenges faced as part of gig work: an overwhelming number (75 people, 93.8 percent) said no and five (6.3 percent) replied in the affirmative. This reflects the fact that gig workers who were interviewed were not engaged in hazardous jobs.

Figure 5: Health Challenges Faced as Part of the Gig Work

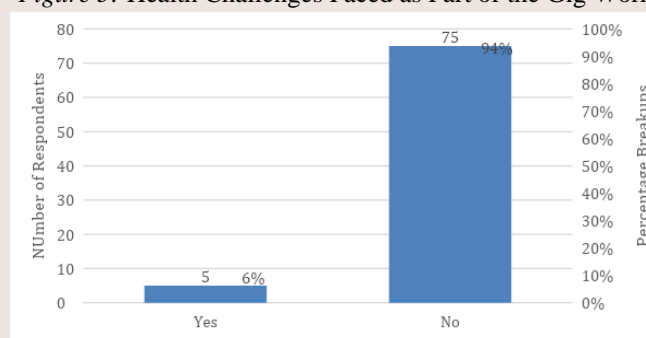


Table 8 details the health troubles of the five respondents: these include issues because of the nature of work (long hours, heavy items for carrying) and irregular time to have meals. These responses emphasise the need to have a more stable and predictable working environment for gig workers, which would enable them to take breaks and have their meals in a regular manner.

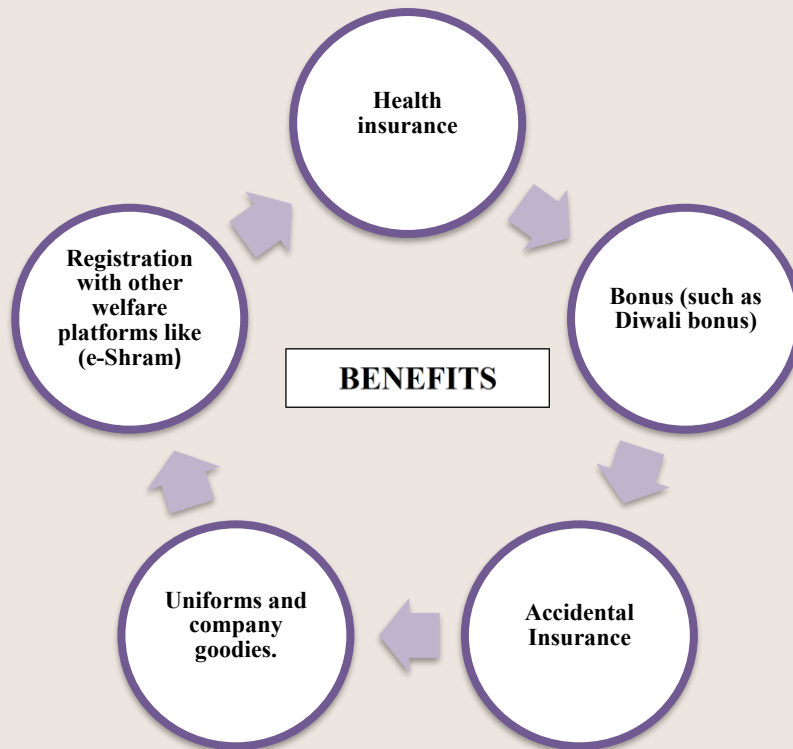
The absence of no female toilets makes it very difficult for women, which creates both physical and mental strains on women.

Table 8: Elaboration on Health Challenges Face

Responses
Losing weight because of the nature of work/ work pressure/ timings
Gastric issues because irregular time for meals
Body ache because of long hours of work/ carriage of heavy items often over several flights of stairs
No provision for female toilets which makes it very difficult for women

When asked about the benefits obtained through gig work, the majority of respondents indicated that they did not receive any, with only ten respondents acknowledging such benefits (see Figure 6). This aligns with the findings of our literature review, suggesting that gig workers lack awareness of available benefits or may not be provided with any by platform-based companies. Among the ten respondents reporting benefits, two mentioned having health insurance packages from their companies, five mentioned receiving company uniforms and promotional items, two stated receiving assistance for registration and information about available welfare schemes such as the (e-Shram) portal, and one respondent cited receiving bonus payments (refer to figure 6).

Figure 6: The Kind of Benefits Received through Gig Work



Among the respondents, two were females who claimed to have accessed information through the e-Shram portal, which they had no knowledge of. The female participants expressed a perception that platforms do not actively support or provide benefits for them. One female respondent articulated this sentiment by stating (Figure 7):

Figure 7: Extracts from a 23-year female gig worker working in a big basket

"They do not consider our welfare; the interaction is minimal. It's challenging for us to voice our concerns, so we tend to overlook the availability of benefits."

Respondents were asked for suggestions regarding changes or improvements needed in the Gig Work Environment in India.

Table 14: Changes or Improvements Requested in the Gig Work Environment in India

Tag	Responses	Count
Payment and Compensation Issues	Concerns about insufficient payments, lack of adjustment during fuel price increases, and a call for increased payments.	10
Training and Skill Development	Requests for in-person training on app usage, safety measures, and additional skill-based training, highlighting gaps in current knowledge and the need for continuous development.	8
Accident Coverage Schemes	The desire for companies to provide accident coverage schemes is due to the inherently accident-prone nature of the job.	6
Physical Offices for Grievance Redressal	Requests for physical offices of gig platforms for direct communication, grievance redressal, and addressing issues.	5
Job Security and Dignity	Concerns about job security, arbitrary blocking of IDs, and the need for dignity and respect in the gig work environment.	5
Platform Fee and Deductions	Concerns related to high platform fees and deductions by companies, suggesting a desire for fair compensation and reduced platform cuts.	5
Gender-Based Violence and Safety	Specific concerns about violence during night shifts and a call for companies to address safety issues.	5
Order Distribution and Algorithm	Issues related to uneven order distribution, the surge in orders during the first month, and concerns about the fairness of algorithms.	3
Health Insurance Coverage	Calls for comprehensive health insurance coverage, especially for accidents, to address current limitations in existing health coverage.	3
Merchandise and Additional Benefits	Requests for free merchandise and refraining from charging for items, highlighting a desire for additional benefits beyond monetary compensation.	2
Complaints Redressal	Requests for an effective complaints redressal mechanism, especially for customer misbehaviour and general grievances.	2
Timely Payments and Fixed Schedule	Desire for fixed payment schedules and timely compensation, emphasising the need for financial stability.	1

Table 14 includes the respondents' comments on an open-ended question on changes or improvements they would like to see in the gig work environment in India ranked in order of frequency. The responses have been tagged in terms of themes. Payment and compensation issues and training and skill development issues rank towards the top followed by accident coverage schemes and the presence of physical offices for grievance redressal. From the responses, it is apparent payments and fees-related issues, benefits and matters related to the dignity and stability of jobs rank quite high in gig workers' minds.

Due to the limited number of female participants, their suggestions were not on top of the above-mentioned frequency table. However, a recurring concern among female respondents was the absence of adequate safety provisions for females. Many female participants expressed shared apprehensions, emphasising that in Jaipur, where there is a scarcity of female workers, they often become targets of eve-teasing. When reporting such incidents to aggregators, they reportedly provided no effective response and simply advised them to resign from their work.

This section includes an analysis of the results of the KIIs of fifteen respondents. This segment delves into a comprehensive examination of the Key Informant Interviews (KIIs) involving fifteen respondents, offering a nuanced exploration and interpretation of their insights, perspectives, and experiences.

The Respondents were asked about their opinion on the Rajasthan Platform-based Gig Workers' Act.

Figure 8: Respondents' response on their opinion on the Rajasthan Platform-based Gig Workers' Act

Common Concerns:

Participants express shared apprehensions about the financial implications of the welfare cess.

Representation Focus:

There is a consistent call for fairness and balanced representation, especially from the aggregator's viewpoint.

Cost-Cutting Sensitivity:

Sensitivity to ongoing cost-cutting efforts and potential business cost increases is a recurring theme.

Lack of Clarity:

Respondents highlight the need for improved clarity and understanding, particularly concerning aggregators and third-party engagements in the act.

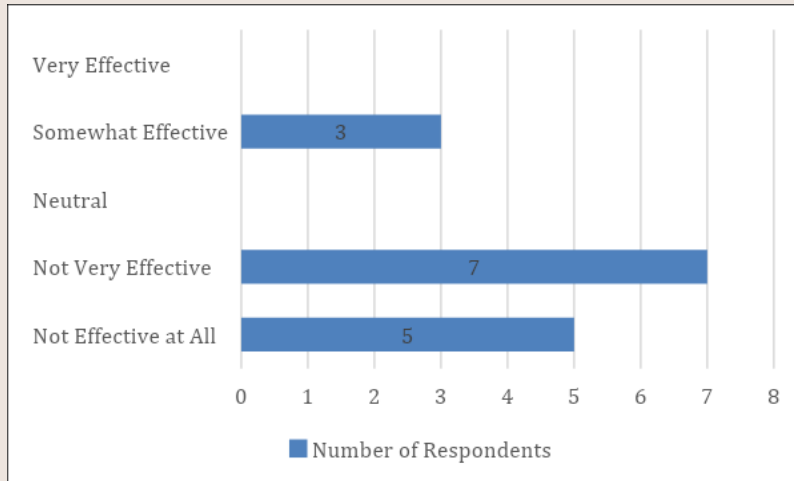
Gender Oversight in Gig Work Laws:

The act lacks a gender perspective, as it fails to acknowledge the unique position and vulnerability of women gig workers, resulting in the absence of any provisions specifically addressing their needs.

From the highlights of the responses from KIIs presented in Figure 4, it is clear that platform-based companies have certain concerns about the Act, in particular its financial implications and clarity of information. The companies are also worried about whether their viewpoints will be considered in the implementation of this Act.

The experts expressed the view that aggregators were inadequately represented in the act, emphasising the need for a balanced representation, however, they mentioned the importance of incorporating the provision for a welfare cess, pointing out that platforms had long evaded the responsibility of offering welfare benefits or safeguards to their gig workers.

Figure 9: Effectiveness of the Welfare Board in Addressing Gig Workers' Concerns



The aggregators believed the welfare of the proposed welfare board will be not effective as Figure 10 shows: while three respondents felt the proposed board will be effective, the other twelve felt it will not be effective.

When asked why they feel so, the responses were like:

- *“This welfare board which has no clear provisions cannot be of any use”*- A 34, Senior Amazon HR official
- *“The welfare act doesn’t take into account the ground realities of the workers, which is really disappointing, especially for female gig workers.”*- A 40-year-old lawyer.
- *“The welfare board has no clear provision for our role, what is our say in the board”*-A 30-year-old Swiggy executive.

Figure 10: Benefits given to Gig Workers by Companies

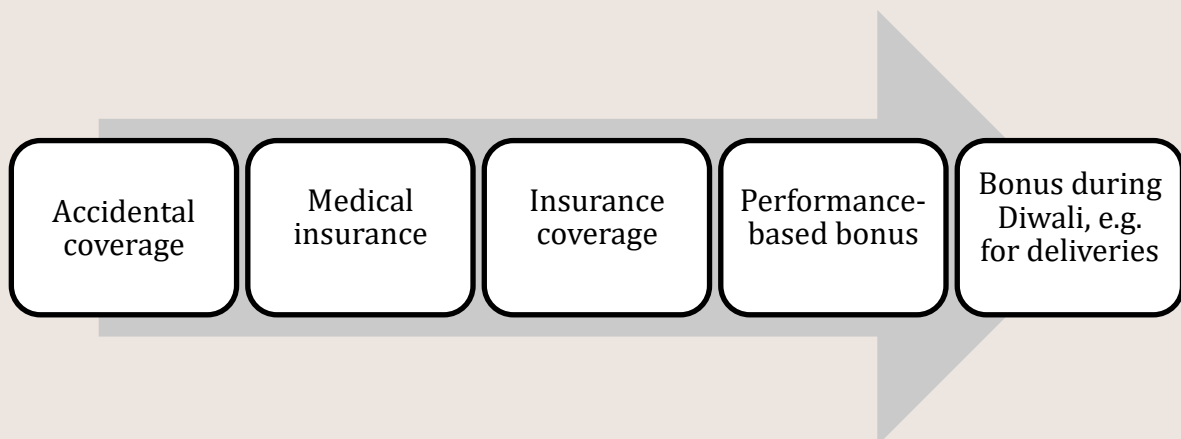


Figure 11 includes responses on the kind of benefits the platform-based companies have for their gig workers. This should be read with the responses by the workers in which they have either said they do not receive adequate benefits or would like certain other benefits from companies, as there is a divergence between the two sets of responses.

The respondents were asked whether specific aspects of the Act require further consideration or improvement. Figure 11 includes their responses, which show the representatives' discomfort with the Act,

specifically the cost implications or the benefits companies provide their gig workers, which previous responses also show.

The aggregators also pointed out the lack of any safety mechanism for female gig workers. One of the gig workers mentioned that:

“It is absolutely necessary to provide female gig workers with safety provisions for women, surprising how the government had a complete oversight to this matter.” -A 30-year-old Amazon executive.

Figure 11: Whether any Specific Aspects of the Act Require Further Consideration or Improvement

The board should note that Swiggy provides accidental insurance, making the proposed welfare cess an added financial burden for our company.

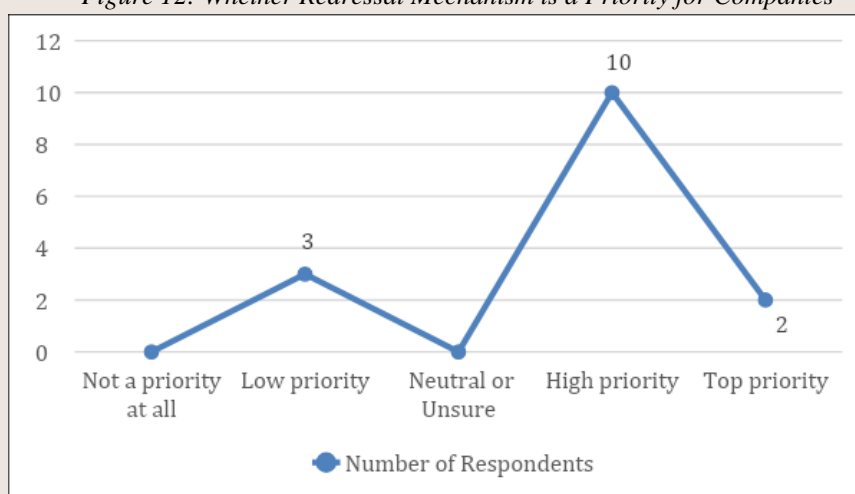
It is unjust that the government is imposing the welfare cess on us, considering our ongoing efforts in cost-cutting initiatives. The government should be more sensitive to our current circumstances.

The hastily drafted Act lacks clarity, especially regarding the welfare cess, causing confusion for aggregators with unclear accounting procedures, transaction thresholds, and responsibility for losses in returned deliveries, posing a significant burden.

The Act ought to include a representative from the aggregators' side to ensure a balanced approach. The welfare cess should not be imposed to our detriment.

The act should stipulate specific provisions for female gig workers such as compulsory emergency button provisions in apps for safety.

Figure 12: Whether Redressal Mechanism is a Priority for Companies



Yet another instance of divergence in responses between gig workers and platform-based companies is on the question of Redressal mechanisms in the companies.

While the companies say this is a priority for them (Figure 12), earlier responses indicated gig workers do not feel satisfied with the kind of Redressal mechanism that exists.

All the KII respondents have said the Redressal mechanism is a high or top priority.

Figure 13: Respondents were inquired about the reasons for the low representation of female gig workers in Jaipur:

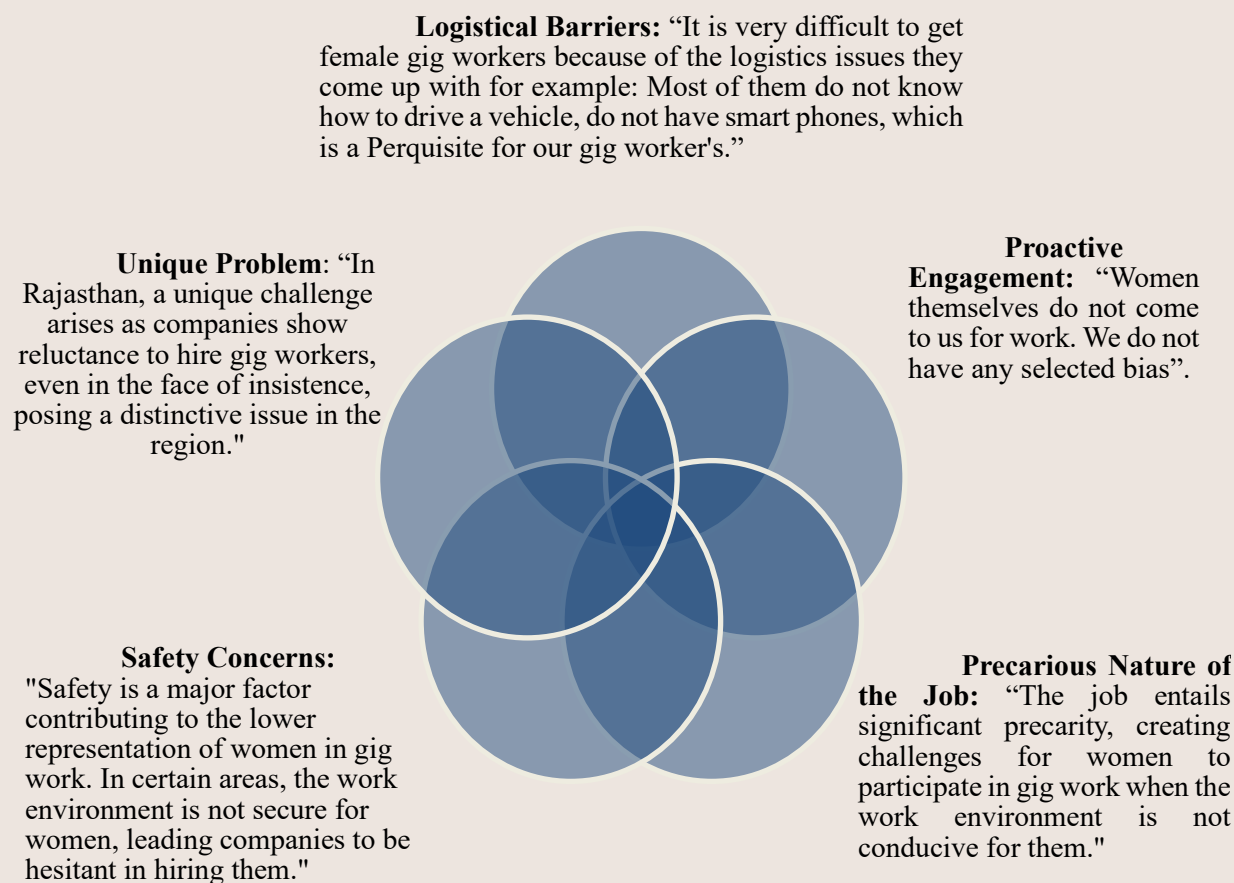
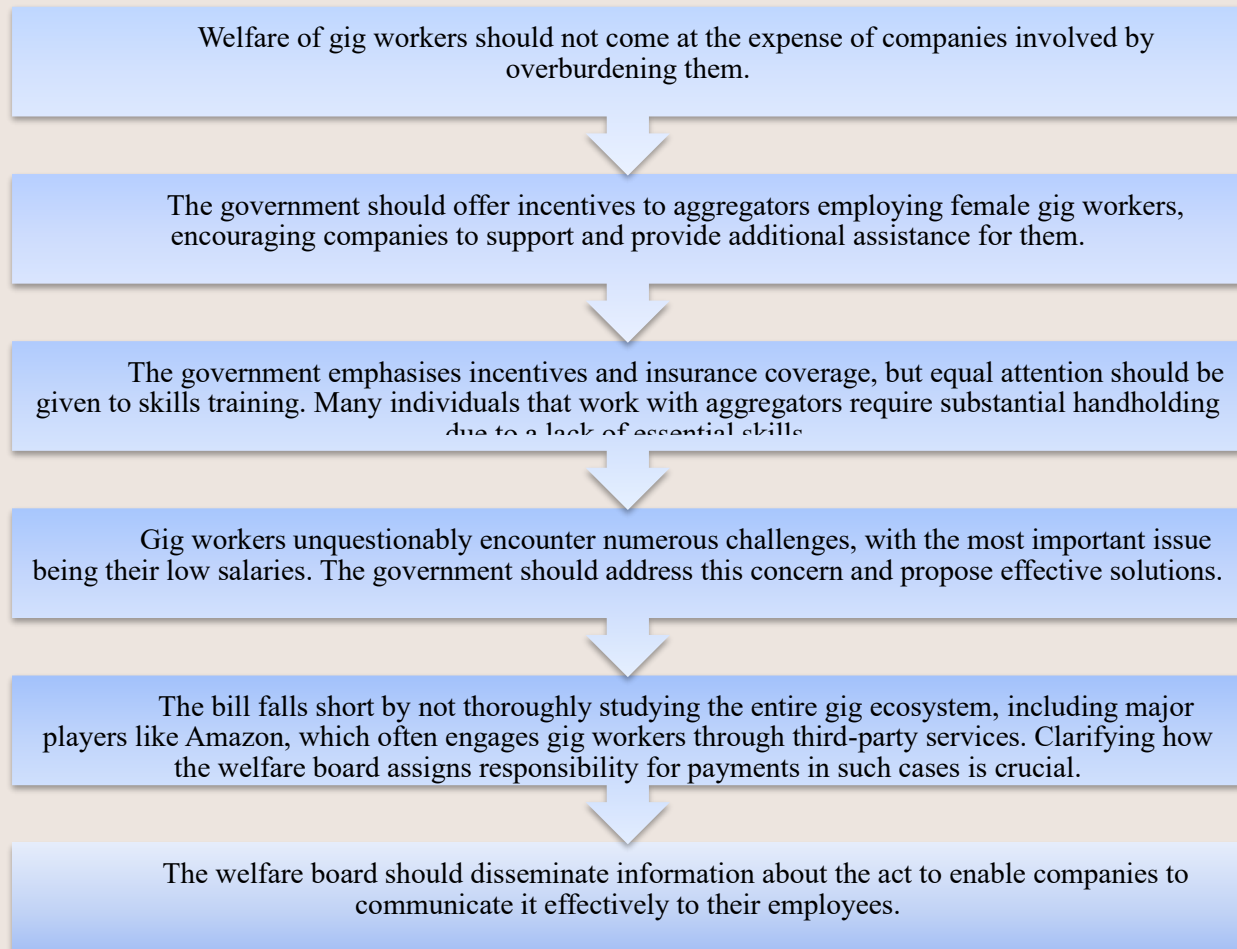


Figure 13 depicts why there are fewer female gig workers, mainly from aggregator responses. The aggregator responses exhibited consistent recurring themes, illustrated through quoted extracts. Socio-cultural factors, logistical barriers, safety concerns, and regional dynamics hinder female entry into the gig workforce. Targeted interventions and awareness programs are crucial to address these challenges.

Figure 14 includes a few comments by the representatives of the platform-based companies, which reflect their concerns with the Act. The respondents seem to emphasise the need for balanced measures to avoid burdening companies. Suggestions include government incentives for aggregators employing female gig workers and an equal focus on skills training. The overarching challenge is low gig worker salaries, urging effective government solutions. Criticisms are directed at the bill for not fully understanding the gig ecosystem, especially in cases involving major players like Amazon. Lastly, there's a plea for the welfare board to actively disseminate information about the act to aid companies in communicating effectively with their employees.

Figure 14: Other Comments by the KII Respondents



Feminist and Southern Approach Theories to Understand Multidimensional Inequalities:

This study employs an intersectional Feminist Southern Theoretical framework to intricately examine the welfare of gig workers in Rajasthan, a socio-cultural context deeply entrenched in patriarchal and caste-based structures. The findings reveal a pervasive lack of awareness among gig workers regarding the Gig Workers Act, indicative of the broader gendered specific neglect within the gig economy. The intersectional lens underscores the importance of targeted interventions and capacity-building programs that account for the nuanced experiences of women gig workers, acknowledging the intersectionality of gender. The absence of female toilets, stringent safety measures, and health challenges underscore the complex interplay of patriarchal norms and caste-based disparities, emphasising the differentiated experiences within the gig economy. Moreover, the study's key informant interviews unveil a disjuncture between gig workers and companies, exposing potential gender and caste-blind spots in policy formulation and implementation. Bridging this gap necessitates not only recognizing power differentials but actively integrating a nuanced understanding of gender dynamics into policy frameworks and organisational practices for a more equitable gig economy in Rajasthan.

The subsequent findings find support in both Feminist and Southern Approach theories

- **Awareness and Capacity-Building:**

The study identifies a palpable need for awareness and capacity-building sessions on the Gig Workers Act. From a feminist Southern perspective, this underscores the broader gendered ignorance and lack of acknowledgement. Women gig workers, as highlighted, face a distinct form of marginalisation within the gig economy, reflecting the socio-cultural norms that contribute to their invisibility and diminished recognition.

- **Governmental Measures:**

Clear guidelines, registration cards, and pension systems are proposed welfare measures. The feminist Southern lens highlights the need for an intricate understanding. Women gig workers emphasise skilling programs, reflecting the necessity to address gender-specific needs, such as training in bike driving.

- **Safety Provisions:**

While the study suggests strict measures for non-compliant companies, the feminist southern lens brings attention to the safety aspects, especially for women. The absence of female toilets is identified as a significant challenge, impacting both physical and mental well-being. This resonates with feminist Southern theories that emphasise the material conditions and infrastructure necessary for ensuring the well-being of women in the workforce.

- **Health Challenges:**

The analysis of health challenges reveals the need for a stable and predictable working environment. The absence of female toilets is a pressing concern, causing physical and mental strains on women gig workers. This aligns with feminist southern perspectives, emphasising the importance of gender-sensitive infrastructure.

- **Divergence in Perspectives:**

A noticeable divergence exists between gig workers and platform-based companies. While gig workers emphasise safety and redressal mechanisms, companies prioritise these aspects on paper, revealing a gap in understanding and implementation. This reflects a power dynamic where companies may not fully grasp the lived experiences of gig workers, especially women.

- **Gender Disparities:**

The low representation of female gig workers is attributed to socio-cultural factors, safety concerns, and logistical barriers. The feminist southern lens underlines the need for targeted interventions, awareness programs, and government incentives to address these challenges.

Conclusion

In conclusion, the enactment of the Rajasthan Gig Workers (Registration and Welfare) Act 2023 represents a significant stride in the gig economy's regulatory landscape. However, gender-specific shortcomings, the absence of classifying gig workers as permanent employees and establishing links with social security schemes, warrant attention. The lack of clarity surrounding the implementation of the welfare cess amplifies gender disparities, particularly impacting female gig work.

Survey findings underscore an awareness gap among gig workers, posing heightened vulnerability for female workers due to insufficient information on the Act and available welfare schemes. This necessitates inclusive dialogues to enhance clarity on welfare measures and benefits.

Platform-based companies' concerns, elucidated in Key Informant Interviews, highlight potential economic ramifications. However, the gendered impact of increased costs on female gig workers must not be overlooked. The decision of gig workers to intensively engage in gig work is intrinsically linked to job security, compensation, and flexibility, holding particular significance from a gendered perspective. Policymakers should address these gender-specific nuances to ensure the holistic well-being and empowerment of all gig workers.

Recommendations

The paper concludes with the following recommendations:

- **Comprehensive Legislation Assessment:**

States and the central government should conduct a thorough evaluation of the Rajasthan Gig Workers (Registration and Welfare) Act 2023, considering its impact on gender dynamics. The assessment should focus on issues such as the classification of gig workers, welfare measures, job conditions, and the implications of any cess for companies.

Ensuring gender-sensitive provisions within legislation and policies is imperative to address the unique challenges faced by female gig workers.

- **Information Dissemination and Awareness Initiatives:**

The Rajasthan state government, along with companies and the central government, should collaborate to organise gender-specific information dissemination and awareness campaigns. Specialised training sessions, seminars, targeted social media messaging, and pamphlets should be designed to inform female gig workers about welfare schemes, the provisions of the Act, and relevant regulations.

Such initiatives would empower women gig workers through increased awareness and accessibility to available benefits.

- **Gender-Inclusive Skills Training:**

Prioritise gender-inclusive skills training sessions that address the specific needs and demands of women gig workers. Both governmental and private sector entities should actively participate in identifying skill gaps and organising systematic training programs. Companies, in collaboration with state and central governments, should lead in providing diverse training formats, including classroom-based, on-the-job, and residential options, ensuring that female gig workers benefit equitably from these opportunities.

- **Social Dialogue Inclusivity:**

Develop a structured system of social dialogues inclusive of gig workers, platform-based companies, governments, trade unions, and industry associations.

This platform should facilitate gender-sensitive discussions, ensuring the participation of women gig workers in the drafting and implementation. This collaborative approach will contribute to a smoother implementation of laws, adopting inclusive and sustainable economic growth.

- **Incentive Systems Tailored for Gender Inclusion:**

Establish an incentive system that is responsive to the priorities and motivations of female gig workers. This tailored approach should consider gender-specific needs, thereby enhancing women's earnings, productivity, and overall well-being. Additionally, aggregators should re-evaluate benefits and grievance redressal systems, addressing concerns specific to women gig workers. These measures will create a mutually beneficial scenario, promoting gender equity and economic sustainability for both workers and companies.

- **Protection against Harassment for Women Gig Workers:**

Propose the extension of workplace harassment protections to explicitly include women gig workers. Recognizing the unique challenges faced by women in non-traditional work settings, this step is crucial for fostering a safe and inclusive working environment for female gig workers.

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Evaluating the Effectiveness of Global Partnership for Education and Global Education First Initiative

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Abstract: This essay critically examines two prominent Global Public Policy Initiatives (GPIs) in the education sector – the Global Partnership for Education (GPE) and the Global Education First Initiative (GEFI). Positioned within the evolving landscape of global education, these initiatives play vital roles in shaping policies and practices. GPE, established in 2002, focuses on achieving Universal Primary Education, employing a multi-stakeholder approach to transform education in lower-income countries. On the other hand, GEFI, operational from 2012 to 2017, aimed at enhancing political support and global movements for quality education. The essay evaluates these GPIs based on input, throughput, and output criteria. In terms of input, GPE's partnership approach, involving diverse actors from civil society, private and public entities, contrasts with GEFI's more centralised structure with a significant reliance on UN agencies. Throughput analysis reveals GPE's transparency, accessibility, and inclusive decision-making, while GEFI leans towards a more centralised and UN-centric model, potentially impacting its effectiveness. The examination of output criteria highlights GPE's tangible achievements, including increased enrolment and gender parity, attributed to its pro-poor bias and constituency-driven mechanisms. However, challenges arise in assessing the impact, as both initiatives operate in a complex global education landscape where multiple actors, funding channels, and varying policy focuses coexist. GPE's allocative outputs in financial aid are contrasted with GEFI's ideational outputs, emphasising conferences, skill development, and global advocacy. The comparative analysis underscores GPE's efficacy in delivering a substantial impact through globally targeted objectives compared to GEFI. This claim is substantiated by examining performance indicators such as representativeness, transparency, legalisation, and the ability to act as a problem-solving catalyst. The essay concludes by emphasising the lessons learned from GPE's success, emphasising the significance of adaptability, inclusivity, and a rights-based approach in navigating the intricate landscape of global education policy.

Keywords: Global Partnership for Education, Multi Stakeholder Approach, Education, Policy Analysis

Introduction: About the GPIs

Global Public Policy Initiatives (GPIs) in the field of education have been recently conceptualised as a 'global agora' (Jakobi 2009) since research specifically linking education and learning at an international level have gathered increasing attention as compared to its relevance in the past few decades. Others like Deacon (2007) have underlined the growing internalisation of education in connection to current globalisation processes as a significant contributor in widening the scope of this subject from the national to the global framework. This essay dwells into 2 such GPIs that have been important variables to the development of education policies as larger agents of change. These initiatives have been instrumental in shaping educational

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policies in the discursive terrain and have both provided a structural and individual depth to this matter through the neo-liberal precept.

Launched in 2002 to accelerate progress towards the Millennium Development Goal Universal Primary Education, the Global Partnership for Education (GPE) was initially called the Education for All-Fast Track initiative prior to 2009. For the past two decades, it has been the largest global fund dedicated to transforming education in lower income countries using a multi stakeholder approach (of civil society, private and public entities) so that all children, irrespective of their gender, have ‘hope, opportunity and agency’ (GPE 2020). Their primary focus is to improve access and equity to education by reaching goals to marginalised and vulnerable children facing extreme poverty or conflict dilemmas. As of 2021, Charles North acts as its chief executive officer.

The Global Education First Initiative (GEFI) was a 5-year programme launched in 2012 by the then United Nations Secretary General Ban Ki-Moon while ceasing its operations in 2017. The main objectives of this initiative were to strengthen the political profile and behind-the-scenes movements that help to achieve quality education of all countries. Beyond these priorities, it aimed at fostering a sense of global citizenship by putting every child in school and transforming the way people think and act. Through partnerships with other multilateral organisations, GEFI sought to inculcate skills in all actors of different stages in national education sectors and to re-establish education as the new normalcy.

As we have read above, disseminating quality education across governance and various systemic pedagogies form the core features of these 2 significant GPIs working in the same arena. They are focused on an international dimension of policy processes that are categorised as a ‘boundary-crossing practice’ (Peck et. al 2005) which transfer benefits within and across countries. This essay will argue that the Global Partnership for Education has been more successful in delivering an enormous impact through its globally targeted objectives than the Global Education First Initiative. This claim will be based on a comparative analysis of these 2 GPIs through the following performance indicators- characteristics and nature of representatives, actors, issues, throughput criteria narrowing on legalisation, deliberation and procedural functions, and output variables as a problem-solving catalyst. The structure of this essay will flow using the above considerations in order while also supplementing itself with the legitimacy of evidence applied to support the following arguments.

Input Criteria: Unveiling the Foundations

Education systems are complex because they are composed of multiple actors at different levels who must work together to facilitate a set number of objectives. No array of hegemonic standard actors present in an educational policy dialogue scenario can push motivations to achieve goals (Rizvi and Langard 2009) due to the intricacy of constituents involved. This is the reason why GPE principles itself around the notion of ‘partnership’ where, as a global fund granting machinery, it collectively brings various donors such as multilateral institutions, teacher representatives, civil society groups, philanthropic foundations, and private sectors behind national government plans. Similarly, GEFI partnered itself with ‘champion countries’ that were themselves targets as well as beneficiaries who led by example. Along with these countries, several civil society organisations like Brookings, Inter-Agency Network for Education in Emergencies and Plan International worked in association with Private Sector GPIs such as the UN Global Compact to mobilise businesses towards global education challenges. All these actors are those that are either affected by educational contests themselves or those who are required to empower the affected through its resources.

A striking feature of GEFI however can be observed in how the partnership was placed i.e., the positional relevance of actors despite discarding the hegemonic organisational set-up. It is clear that as a UN agency, the importance of its sister UN multilateral organisation presides before subsequent partners. A large dependency on communications support was specifically seen through its campaigns placed via UNICEF and UN Women as GEFI had utilised their youth advocacy groups for 80% of media sources. Other agencies like UNDP, UNESCO and UNFPA were employed to coordinate movement and momentum of progress made. The World Bank was also a committed partner that provided resilience and financial support during shocks and dips in the implementation stages. Civil society organisations and private sectors, in addition to the UN agencies mentioned above, were only operated as secondary agents in order to employ guidelines, frameworks and periodic suggestions to policy revisions in conferences. As Donini (1995) quoted, such organisational developments are often a by-product of the 'UN Solar System' that ignores private actors evolving around the 'NGO Galaxy.'

The bureaucratic structure of the UN affects how ideas are percolated and linkages are created resulting in a vantage point that looks at private actors as fonts of admiration and irritation while reluctantly recognising their involvement in state matters. Contrastingly, GPE operates through an equally footed lens. It also incorporates targets (teacher representatives) that are closer to its ultimate beneficiaries (children) in lower income countries across all the stages of its operating model. GPE also identifies these actors as vital accelerators that bring forth funding requests to boost transformation (implied via the Education Out Loud Scheme). Engaging with such grassroots actors that have the capacity to infiltrate at the local level, strengthen enabling capabilities and bring forth context specific needs and reforms (Seyfang and Smith 2007) different from the mainstream. Often, when one engages with only macro 'global institutions' at the helm, micro 4 community supported social innovations go amiss leading to a huge gap between envisaged output and real impact.

The expertise brought about by GEFI as professed above largely depended on mechanisms fostered by sister UN agencies. As such, the quality of expertise was shared between the Steering Committee members - a high-level body that provided strategic direction and expertise to the programme. Out of 15 of its constituent members, 11 were executive directors of UN agencies. Only 3 members were part of civil society groups and one from the clergy. Periodic meetings (duration of which is unclear), end with a vote for each member. A secretariat recruited from the central UN axis provides support to the Steering Committee. Compared to this, GPE is governed by a Board of Directors that have representation of all its stakeholder groups with an independently recruited Secretariat, containing a diverse panel of staff to guide policy making, and take charge of communications and finance. These Board of Directors represent 20 constituencies comprising of a total of 40 members with a proportionate distribution between developing country members (25%), multilateral agencies and regional banks (25%), NGOs and private companies (equally comprising of members from developed, developing countries and the teaching profession- 25%) and donor country partners (25%). The Secretariat, in this case, forms an autonomous unit that depends on the Board of Directors for direction, almost emulating the concept of stakeholder theory of businesses (Jansson 2005). Here, stakeholders, whose interests are the most influenced by the activities of the organisation, are directly involved with organisational tasks and actively participate with asset management. We can observe that in terms of independence and representativeness, GPE does an exemplary job in understanding the sovereignty of its targets and incorporating them in inclusive decision-making processes while GEFI primarily rests itself with the role of internal actors to gather momentum for its directives, showing a lack of grit usually envisaged for a separately instituted GPI.

GEFI and GPI both consider children to be its ultimate programme beneficiaries. With GEFI, the targets whose behaviour needs to be altered are concentrated on national governments who are member states. Since it's a globally formulated project, as discussed in the sections above, 16 champion countries who are themselves members located in the global south help to develop the annual plan of activities which other socially cautious member countries with rates of high gender inequality (ranking above 150 according to the GII UNDP) commit to with the help of GEFI. Here, champion countries are enthusiastic targets that catalyze political and financial support for education with cautious actors riddled with communal agencies promoting child labour and sexual violence on young girls as a means of livelihood (UNICEF 2021). There is a notion of harmony game since member states provide opinions and knowledge base to countries willing to accept it at their end though it is unclear about the consequences of the same under the funding aspect. According to Whiteford (2014), a large group of northern countries like Australia have been included in the list of states that support this programme financially.

Nevertheless, according to both these GPIs, via harmony game, they help targets to share knowledge useful for more effective policy design and the GPI can be a way to channel resources from other actors to aid targets lacking material resources to change its behaviour in the desired way. With GPE, targets are not just countries as a whole that request assistance (since GPE grants must align with the ministries of education 5 plans) but GPE even directly funds civil society members that lead a broader impact at the system level via equitable domestic education financing plans or evidence based sectoral grants. If we look at education as a public good, GPE resonates with Kollocks notion of Public Good Dilemma (1998). Towards the end of its 5year strategy (2015-2020), an accelerating production function that produces growing returns as contributions increases dominates the agenda. A raise of 2.5 million USD to 5 million USD allocated under the implementation road map towards countries like Bhutan and Fiji have led to 29% increase in national financial absorption rates (GPE 2022) from 32 Donor actors composed of governments and foundations. Such similar trends can be observed in other constituencies that produce a multiplier effect of financial returns. Of course, it is another matter as to whether these returns translate to qualitative effects in the ground level which will be discussed in the subsequent sections.

Since different problems require different solutions even under similar thematic connotations, both GPE and GEFI frame their issues through a multitude of lenses. Framing is 'a way of selecting, organising, interpreting, and making sense of a complex reality to provide guideposts for knowing, analysing, persuading, and acting' (Rein and Schön, 1993). One can argue that it is most suitable to be termed under the category of sustainability under a social justice perspective because key areas here become subject to eliminating discrimination by fostering reallocation of resources to the least benefitted. Additionally, these programmes emphasise a prerogative to Millennium Development Goals (used by GEFI) and Sustainable Development Goals 4.5, 4.3 and 5.1. Linking gender equality, health, economic opportunities, and environmental growth, both these GPIs aim at lifelong learning to unleash human potential.

Throughput Criteria: Navigating the Process Dynamics

GPE prides itself in being a GPI where its decisions and operational activities are accessible as public information. It believes that public oversight will increase support and understanding while protecting its reputation and integrity by building public trust (Policy on Transparency Report GPE, 2015). GPE also follows the World Bank's Policy on Access to Information about all deliberative processes undertaken by the Board and the Secretariat. Annually, the Secretariat discloses internal committee papers that include policy aspects on budgets, procurement and services rendered at the country level which is circulated between all its members and potential benefactors before a fund request. Absence of information on its website also does not indicate

confidentiality as GPE is open about submitting requests to its governance department. Hence, targets wishing to engage and who are already engaging with GPE as well as other beneficiaries can access information about its past, planned and ongoing functions. As GEFI is a GPI that aids in policy draft and dialogue, events and conferences form part of its core functions.

There are resources about the same divided under its 3 priority areas- access, quality, research & foresight. However, they are not clear about internal procedures by way of meetings, management of technical products and material resources that help in achieving its proposals. Perhaps, this difference in transparency can be observed due to ‘accountability’ being at the forefront of GPEs grants and core commitments. The GPE Charter (2019) itself enumerates 8 principles including “promoting mutual accountability and transparency across the partnership”. This feature is also decentralised in the sense that roles and responsibilities are delineated into risk and ownership between its actors. Since ownership ordains a certain degree of freedom to its individual agencies responsible for collective action (Bellver and Kaufmann 2005), its activities are fed back to the Board where who’s accountable for whom and how becomes part of its regular feedback mechanism. As this mechanism allows the GPE to become self-reliant using its own modalities, it performs better as a transparent GPI.

One can also further imply that decisions taken by GPE are fairer and clearer than GEFI using the facts given above. Following an extensive analysis by the consultants of Oxford Policy Management (2018), the firm outlined that GPE identifies options that inform representatives of key grant agents about the country level model. This is inclusive of dialogue, appraisal, approval, implementation and enforcement of grant related processes. For example, once a grant agent is selected at the country level, they prepare both a concept note and scoping note which establishes clarities on expectations upstream. Decisions are then taken by an independent panel that consolidates suggestions into one final report which is guided by the BoD decision making rulebook. This reduces duplication of quality assurance across multiple levels of GPE, excluding unwanted checks from other actors that otherwise increase complexity. Redress mechanisms, however, for unachieved targets and lack of progress cannot be found. This is mainly because donor supply of funds is voluntary in nature. As voluntary and deliberate aid becomes a main variable upon which goals are set, funding agents have control determining the direction of organisational objectives though target actors have a say in monitoring decisions. It is further ramified by the ‘three hope’ educational aid channel which GPE follows. Donors give money to pooled funds (i.e., GPE) which is then given to other programmes in lower income countries (CGD 2021), often administered by the World Bank or UNICEF. The upside is that GPE gets to choose who administers the programme through consensus decision making where at least one vote in favour of the action agenda must be given by each of its stakeholders.

Another key aspect to be noted is in the process of deliberation. The education policy domain is frequently fragmented in nature. This is because a diverse nature of actors, from civil society, national governments, local actors, GPIs and international organisations programmes fill the space. This often creates a conflictive scenario when specific issues within the global educational policy domain are addressed. As GPE functions through a multi-stakeholder approach, conflicting interests of stakeholders play at a disadvantage. The policy area of Private Schooling is an example of this situation. Within GPE, a slowdown was compounded over a three-year lag between approvals and disbursements during the period of 2014 and 2018, resulting in a fall of grant allocation from 11.2 to 6.4% (UNESCO Policy Paper 41, 2020) because private sector led country programmes were held up due to objection from civil society representatives. This is avoided in the scenario of GEFI as it revolves around a highly centralised UN body. Though deliberation, which comprises rational understanding, empirical arguments and consensus is a key feature of GPE, it

refrains such a quality only within certain sections of the educational policies. Success of deliberation is highly dependent on the nature of issue for which the grant is disbursed.

Perhaps this feature also percolates to the sort of delegation practised. Though both GPIs do not contain instruments of hard law or impose sanction for its violators, repercussions for inaction are instituted by other international organisations such as the World Bank that practise a high degree of delegation through agenda setting, and evaluation (Zuhr et al. 2021) for non compliance with programme obligations. As target country governments are signatories to many programmes advised and supported financially by GPE and GEFI, they are subject to grievance mechanisms if they form part of IGO administered projects. Yet, as indicated from the input section of this essay, neither GPE nor GEFI as separate entities are hard law GPIs since both depend on local experiences and diversity to be relevant informants of revision processes. It is also unclear as to whether there is any correlation to the coverage and demandingness of these GPI's with legalisation. GEFI has a wider coverage since it's a global initiative envisaging all countries on a needs based requirement. Though the same principle applies with GPE, the targets covered comprise 77 members located as lower and middle income countries who are of dire need in educational reforms. GPE and GEFI have members higher in number than other initiatives in similar domains like IDA (CGD 2021). It is doubtful as to whether the lack of hard law GPIs drive high coverage in this specific case though one can assume that lower legalisation can attract larger coverage using studies supplemented from the environmental domain (Bernauer et al 2013). Here, in the case of both GPE and GEFI, high coverage can be a consequence of less specific obligations, substituted by broad themes and less precision found in its demandingness.

Output Criteria: Assessing Achievements and Deliverables

The type of output mainly conditioned by GPE is allocative in nature because they obtain financial resources and distribute them. The outputs have been in the form of giving grants to maintain and build educational facilities, support research and projects in countries with a low completion rate. As of 2021, 7500 million USD has been given towards implementation grants in all its member countries. GEFI is oriented towards more ideational outputs. During its active period, it has completed around 48 world conferences engaging with national governments and ministries that aimed at training, skill impairment, and annual summits that launched advocacy toolkits. As a large-scale initiative, GEFI has also been a phenomenal influence advocating for the incorporation of comprehensive education in SDG 4 (Educate A Child 2012). As of assessing the outcome, 155 million more children are in schools in partner countries since 2002 due to GPE goal advancements with 69% of partner countries obtaining gender parity in primary education. 80% of the implementation grants were on track to meet targets (GPE 2022). GEFI accounts for placing over a billion children in school with 70 % of countries achieving gender parity from 55 % to 70% in 2015 (Global Education Monitor Reporting Team UNESCO 2015).

Most members are compliant to implement grants. However, under GPE, certain sections like teacher training only obtain 77% of compliance rate by all member countries while other targets pertaining to equity and gender inclusion perform well with 83% willing to improve equity index substantially. Across countries, systematic monitoring also faced challenges because certain objectives were given more importance than others. Moreover, it is difficult to assess the real impact of GPE and GEFI separately. This is because as financial assistance machinery, many of the funds are channelled through bi-lateral aid between country governments or countries take concessional loans from agencies like the World Bank. Some resources under GPE themselves claim that the real impact of gender equity in accessibility is a result of asymmetric channels of funds to specific innovative solutions. For example, aids are pooled for sanitary facilities which encourage young adolescent girls to enrol in higher secondary schools and not necessarily because of the higher ratio of

teachers to students (GPE Synthesis Report 2018). Similarly, though GEFI says its global and demonstrates data indicating certain percentages of improvements in student enrolment, it does not show a country profile to truly incorporate the ‘globalness’ of such a global impact.

Under GPE and GEFI, every entity under the funding chain shares overhead costs. GPE charges 5% overhead each year for its administrative costs. Grant agents coming from other agencies also charge their own independent rates (eg. UN charges 7% whereas other civil society organisations charge 6% in agency fees and 18% in supervision fees). These fees are used to run programs. However, one cannot precisely point out the worth of expertise per dollar spent. Even with such costs substantiating to benefits, it is important to understand that impact does not translate to problem solving (GV4K8 lecture on Outcomes). In this analysis, GPE does not displace behaviour or base itself on faulty factual assumptions. This is because, relative to GEFI, GPE allocates more of its money to lower income countries, specifically towards basic education. With this pro-poor bias, GPE includes additional weighting for fragile and conflict driven locations. GPE also has a constituency driven mechanism that gives less control to rich countries as compared to Education for All where 10.2% holdings lie with the U.S. (CRS).

Limitations of the Essay

The data used in this essay has been borrowed from various reports and documents found in their respective websites. The search for such data is also highly constricted by the time period within which both these GPIs operate. GEFI is an initiative that ceased in 2016-2017 and periodic revision to websites have resulted in loss of insights regarding past activities. For example, the ‘Stories’ pages mention a lot of key players but not what is being done at a grassroots level. Most of the resources are borrowed from other policy institutions that have GEFI’s records in hand. It is also vital to consider the difference in scope of both these GPIs. GEFI is a forum that brings together actors to advise and motivate countries to put every child in school whereas GPE incorporates the same through the primary means of directing financial assistance. While the latter focused on MDGs, the former revolves around SDGs. Both these GPIs have broader outputs and outcomes envisioned, therefore, only certain examples that specifically demonstrate key concepts have been illustrated. The course of both these GPIs do not coincide absolutely and thus hold its own limitations with comparative analysis. The purpose of this essay was to evaluate factors that affect the performance of the GPIs and the comparison was only held on account of showing how one GPI can perform better in lieu of certain indicators in place.

Conclusion

In conclusion, delving into the nuanced dynamics of the Global Partnership for Education (GPE) and the Global Education First Initiative (GEFI) has provided a captivating exploration of how these two entities, despite sharing common interests and stakeholders, adopt distinct methodologies and focal points. GEFI emerges as deeply rooted in robust intergovernmental institutions, strategically positioning itself to garner attention and support from developed nations. In contrast, GPE exhibits a pronounced commitment to the grassroots, aligning its efforts with the needs of developing countries and local communities.

The success of GPE, evident in its consistent track record, underscores the effectiveness of its human rights-driven principles. As an aid-administering body and knowledge initiative, GPE has demonstrated notable achievements, marked by its commitment to representativeness, openness, transparency, positive cost-benefit ratios, sovereignty, autonomy of targets, and the implementation of high-quality procedural

mechanisms. By placing a strong emphasis on the local and ensuring a balanced and inclusive approach, GPE has emerged as a pivotal player in the realm of global education policy.

The juxtaposition of these two initiatives prompts reflection on the diverse strategies employed by global entities to address shared objectives. As we navigate the complexities of global education policy, the lessons gleaned from GPE's success underscore the importance of adaptability, inclusivity, and a genuine commitment to the principles of human rights. In charting the future course of global education initiatives, it becomes apparent that a holistic and locally sensitive approach, as exemplified by GPE, holds the key to fostering sustainable and meaningful progress on the global stage.

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Medical Termination of Pregnancy: Moving Towards a Rights-Based Approach

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Abstract: The abortion related legislation in India was amended in 2021 to expand access to abortion and the Supreme Court in a landmark judgement recognized a woman's right to safe abortion within the ambit of Right to Life and Personal liberty under article 21. This paper argues that the country needs a shift from a legislation that allows medical termination of pregnancy to a legislation that recognizes women's right to safe and legal abortion under a women's right to reproductive autonomy.

Keywords: Reproductive Autonomy, Women's Rights, Legal Framework, Right to Life

Introduction

In 2015, India had an unintended pregnancy rate of 70.1 per 1000 women aged 15 to 49, and one-third pregnancies resulted in termination of pregnancy (Parsekar et al., 2021). The reasons for termination of pregnancy vary from women wanting to end unintended pregnancies, limit the size of their family or have spacing between births (Parsekar et al., 2021). This paper seeks to examine the status of women's ability to access abortion which is essential to understand the extent of the realisation of women's right to reproductive autonomy in India. Moreover, abortion is also a crucial healthcare service and findings will have implications for policies relating to women's health and development.

Women's Reproductive Autonomy

The International Covenant on Civil and Political Rights recognizes women's right to equality and privacy. According to literature by international organisations these rights encompass a woman's right 'to make autonomous decisions about her own body and reproductive functions' (United Nations Human Rights Special Procedures, 2017, p.1). This includes 'access, without discrimination, to affordable, quality contraception, including emergency contraception' (UNHRSP, 2017, p. 1).

Further, the right to freedom to make reproductive choices has also been recognized under the fundamental right to liberty in India by the Supreme Court of India:

There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. (Suchita Srivastava v Chandigarh Administration, 2009, para. 11). In 2017, the court further recognized decisional

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autonomy under the fundamental right to privacy including the right to make intimate personal choices such as those governing reproduction (Justice KS Puttaswamy and Ors vs. Union of India and Ors).

International Context

Internationally, there has been support for women's right to abortion. Given the recent U-turn in abortion rights litigation in US judicial history, with the reversal of *Roe v. Wade* and the resultant denial of abortion rights in nearly half of the states, abortion rights have become a matter of international discussion (National Public Radio, 2022). According to the Centre for Reproductive Rights 75 countries globally allow abortion on request with the most common gestational limit for countries in this category being 12 weeks, 48 countries permit abortion on the basis of health or therapeutic grounds and 13 countries permit abortion under a broad range of social or economic grounds. It has been noted that in countries where women have the right to terminate pregnancies and have access to different contraceptive choices as well as information about these methods, the rates of pregnancy termination are the lowest (UNHRSP, 2017).

The Medical Termination of Pregnancy Act

The Medical Termination of Pregnancy Act (hereafter, the MTP Act) was adopted in 1971 'to provide for the termination of certain pregnancies by registered medical practitioners' (MoHFW 1971). Section 3 of the MTP Act provides for certain situations where registered medical practitioners may terminate pregnancies without being guilty of offences under the Indian Penal Code (IPC) with regard to causing miscarriage and foetal death. This includes situations where in the opinion of the medical practitioner the continuance of the pregnancy would involve a risk to the life or cause a grievous injury to the physical or mental health of the woman concerned. Section 3 of the act also considers pregnancies arising as result of failure of contraception as causing 'a grave injury to the mental health of the pregnant woman' (MoHFW 1971). Section 4 specifies the places where pregnancies may be terminated. Section 5 provides for cases where section 3 and 4 do not apply and provides for the privacy of the woman whose pregnancy is being terminated.

Recent amendments made to the MTP which came into force from 25 March 2021 were hailed as a 'historic move' to increase access to safe and legal abortion for women in India (World Health Organization 2021). This amendment expanded the access to abortion to unmarried women and increased the upper gestation limit for abortion from 12 weeks to 20 weeks. It also provided for an increased upper gestation limit from 20 to 24 weeks for special categories of women as defined by the government in rules applicable to the legislation. The 2021 amendment was made after a Supreme Court's judgement making unmarried women also entitled to seek abortion calling the distinction between married and unmarried women "unconstitutional" (Business Today).

Interpreting the MTP from a Rights-based perspective

The MTP Act does not frame abortion from a women's rights or reproductive autonomy perspective. This means that a woman's right to terminate a pregnancy is conditional on the opinion of the medical practitioner in all cases. A refusal by a registered medical practitioner to provide abortion services leaves little recourse to the woman concerned except approaching courts which involve litigation costs and are also time consuming. In 2022, a landmark Supreme Court judgement interpreted the MTP in coherence with the intention of the legislature in amending the MTP in 2021 which was to ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy (*X vs. The Principal Secretary*, 2022). It interpreted the MTP within a rights-based framework, viewing termination of pregnancy as an exercise of

reproductive autonomy. The court linked reproductive autonomy to bodily autonomy within the right to privacy. It stated that the right of women to make reproductive choices is a dimension of personal liberty under Article 21. The court held that “Reproductive autonomy requires that every pregnant woman has the intrinsic right to choose to undergo or not to undergo abortion without any consent or authorization from a third party.” It also expanded the definition of rape to include marital rape when it comes to the MTP Act 2021, enabling women to undergo an abortion beyond a gestational period of 20 weeks and before 24 weeks if they become pregnant as a result of marital rape. Moreover, the judgement recognizes that the framing of the MTP Act as an exemption from the IPC leaves medical practitioners fearful of prosecution. The Supreme Court stated that, ‘A fear of prosecution under this complex labyrinth of laws, including linking of the MTP Act with the IPC, acts as a major barrier to safe abortion access, by having a chilling effect on the behaviour of RMPs (X vs. The Principal Secretary, 2022).

According to the Centre for Reproductive Rights, medical practitioners as a common practice insist on compliance with conditions such as obtaining the consent from the family of the woman seeking abortion, certain documents, or records of judicial permission for abortion. This is due to a lack of awareness and misconceptions about laws regarding MTP and also the fear of prosecution under the Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT Act) which prohibits sex determination but does not regulate abortion on any grounds. Such requirements are extra-legal and the Supreme Court has stated that “RMPs must refrain from imposing extra-legal conditions on women seeking to terminate their pregnancy in accordance with the law (X vs. The Principal Secretary, 2022).

Barriers to Accessing Safe and Legal Abortion

According to the Comprehensive Abortion Care: Training and Service Delivery Guidelines 2018 issued by the Ministry of Health and Family Welfare, the Maternal Mortality Ratio (MMR) for India is 130/100,000 live births and unsafe abortions account for 8% of the MMR. The guidelines recognize multiple factors contributing to unsafe abortions. This includes social factors such as a lack of awareness about the legality of abortion, the social stigma related to abortions, a lack of awareness about the availability of healthcare facilities as well as gender discrimination and the low status of women in society. It further states that women are reluctant to seek services from male providers and the judgemental attitude of service providers reduces access to safe abortion services. It also identifies certain policy factors contributing to unsafe abortions including a scarcity of qualified providers for safe abortion services, inadequate equipment and supplies essential to provide services and insistence on acceptance of a particular contraceptive method during abortion care.

According to Rural Health Statistics 2019-20, there is a shortfall of 69.7% of Obstetricians & Gynecologists at the Community Health Centres as compared to the requirement based on existing infrastructure. (Ministry of Health and Family Welfare 2020).

Need for a Reproductive Autonomy Based Abortion Legislation

As discussed above, in light of the recent judgement of the Supreme Court there is no doubt about the recognition of women’s right to reproductive autonomy which includes not only the right to safe abortion, but also the exercise of liberty in making decisions regarding reproduction, including but not limited to whether they want to have children or not, the number of children they wish to have, whether they want to undergo abortion or not, and what contraceptives they wish to use.

In this brief I will be arguing that there is a need for legislation foregrounding the right to reproductive autonomy, with specific provisions on the right to safe abortion. Such a legislation would imply that any

restriction to women's right to reproductive autonomy would have to be reasonable and satisfy the threefold test of legitimacy, lack of arbitrariness and proportionality. As we have observed above the court has stated that medical practitioners must not impose extra-legal restrictions on women seeking abortion. However, legislation must take this further and recognize any extra-legal restrictions imposed as violations of the individual woman's rights and consider it a punishable offence. The right to reproductive autonomy must be available against both the state and private entities. There is misconception that surrounds abortion related laws even among the medical practitioners, in addition to the social stigma surrounding abortion. Therefore, the prospects of the Supreme court judgement bringing an end to the extra-legal documentary requirements for abortion are quite limited.

Such legislation would also have implications for abortion permitted in the act beyond 20 weeks and before 24 weeks. As we have seen, the medical practitioner's fear of prosecution makes it difficult for women to seek abortion beyond twenty weeks even though such abortions are legal for rape survivors and in cases of fetal impairment. For each woman or girl who seeks such an abortion, the denial of safe and legal abortion carries serious and foreseeable risks to her physical and mental health by forcing the continuation of pregnancy or leading her to resort to an illegal and unsafe abortion. A legislation that makes safe abortion a legal right would imply that delays caused due to the time taken in approaching courts would be seen as a violation of women's rights.

In such cases, decisions are often made from a pro-life lens, advocating for the need to preserve life and ensure the safety of the foetus. The Centre for Reproductive Rights argues that there is a need to clarify that women's rights must take priority over interests in foetal survival which has already been recognized by the Supreme Court (*Meera Santosh Pal v. Union of India*, 2017).

Need for a Rights-Based Reproductive Health Care Policy

In order to make the right to reproductive autonomy available to women from diverse socio-economic backgrounds, the government would have to see it as a positive right that has to be protected. This would mean increased accessibility of safe abortion both at private and public health care facilities. Research by BMJ Global Health found that amongst their study population in India, 67% of the abortions conducted were 'unsafe', with this proportion varying considerably across the states from 45.1% to 78.3% (Yokoe, Roe & Choudhury, 2019). It further found that vulnerable and disadvantaged groups in the country were at a disproportionately higher risk of unsafe abortion. Therefore, even though abortion is legal in India, it has not resulted in complete access to safe abortion. There is a pressing need to address limits to accessing safe abortion. It is noteworthy to mention here that the BMJ Global Health research also found that women who did not have any male children were more vulnerable to unsafe abortions compared to women with at least one male child. This was found to be consistent with existing findings that female selective abortions are sought from providers who are neither registered with the government and not qualified to provide abortion services due to the illegality of prenatal sex determination in India (Yokoe, Roe & Choudhury, 2019). Therefore, a comprehensive policy addressing women's reproductive autonomy would go hand in hand with existing policies to prevent pre-natal sex-determination and improve the status of women in society.

Given the social stigma surrounding abortion and the domination that women face in a patriarchal society, the need for awareness is very pressing. It is of utmost importance that medical practitioners are aware of not only the legality of abortion, but the recognition of access to safe abortion as an undeniable right. A further awareness of women's right to choose their own contraception is also important to end non-consensual or even forced surgical sterilisation of women. The Indian government has been criticised for imposing sterilisation programs primarily targeting women after the widely criticised mass sterilisation of men during

Indira Gandhi's emergency regime with agents often not following required safety measures. (Kudekallu, 2022). In order to truly exercise reproductive autonomy, women need to be informed about their reproductive rights as well as the various methods of contraception available to them so that they make informed decisions. Given the deep-seated stigma surrounding contraception, government action is needed to create such awareness.

An approach centered on women's liberty and autonomy would also need to relook into the provision for mandatory reporting of crimes of sexual assault against a minor by medical practitioners under Protection of Children from Sexual Offences Act of 2012 since it also brings into its ambit consensual relationships between minors. Moreover, it also prevents parents of minors from accessing safe abortion for their child since this would mean the mandatory reporting of a sexual offence. The social stigma surrounding sexual offences often means that parents either do not seek abortion for minor girls or seek illegal and unsafe abortion. However, the matter involves an evaluation of the Protection of Children from Sexual Offences Act which is beyond the scope of this paper.

Conclusion

In light of the recent recognition of women's right to safe abortion by the Supreme Court, there is a deep-seated need for legislation that recognizes women's right to safe abortion. Such legislation can give impetus to policy to expand access to safe abortion by making the required infrastructure and medical practitioners available throughout the country especially in remote and rural areas. The policy also needs to be expansive in its scope, recognizing not only the right to abortion but reproductive autonomy as a whole paving the way for a future where women's right to liberty and dignity are truly upheld.

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Shaping a Rights-Based Protection Framework: Insights from USA's Transformative Approach

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Abstract: This article explores the lessons that Indian policymakers can glean from the United States' data protection paradigm in the contemporary digital landscape. Emphasizing a delicate balance between 'harms-prevention' and 'rights-protection,' the insights draw attention to the evolving recognition of data privacy as a fundamental human right. Policymakers are encouraged to prioritize user empowerment and consent within the digital sphere, fostering a culture of responsible data handling akin to the U.S. approach. The article advocates for the integration of transparency and accountability principles into policymaking, aiming to build trust among users and entities. Furthermore, it highlights the significance of comprehensive federal privacy laws, drawing parallels to the U.S., and underscores the need for effective cross-border data transfer mechanisms. Lessons from the U.S.'s experiences post the EU-U.S. Privacy Shield invalidation provide valuable guidance for Indian policymakers in shaping international data flows. The article also underscores the importance of user education, collaborative policymaking, and efficient data breach response mechanisms, concluding with a call for alignment with global best practices to fortify India's standing in the global landscape of data protection.

Keywords: Data, rights, comparative, transparency, accountability

Introduction - The Data Dilemma: Unravelling the What, Why, and How?

What is Data?

Data transcends mere numerical representations, although it is frequently simplified as such. The term implies distinct units of evidence that hold the potential to be aggregated for the purpose of identifying patterns and extracting meaning (Toonders, 2014). It encompasses a diverse array of elements, ranging from testimonies and geographic delineations to genetic sequences and even extensive literary collections like Shakespeare's complete works. Nevertheless, it remains imperative to establish a precise legal definition of the term "data." OECD defines data as "*In the pursuit of knowledge, data is a collection of discrete values that convey information, describing quantity, quality, fact, statistics, other basic units of meaning, or simply sequences of symbols that may be further interpreted*" (OECD, 2008, p. 119). Data can be distinguished from 'information' in the sense that when data undergoes processing, interpretation, organization, structuring, or presentation to render it meaningful or valuable, it transforms into information. "Data" and "information" are intricately tied together, whether they are used interchangeably depends somewhat on the usage of "data" - its context and grammar.

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The Invisibility of the Data Economy

Data invisibility refers to the condition in which data exists within a system or organization but is not readily visible or accessible to users, applications, or the general public. This invisibility can occur for various reasons, such as inadequate data management, security restrictions, or data silos (Hillersdal, 2018). When data is invisible, it becomes challenging to use, analyse, or make informed decisions based on that data. In most cases, consumers are unaware of the extent to which their data is being collected, used, and shared. Furthermore, marginalized groups face an elevated risk of potential data breaches due to their limited awareness and the concealed nature of data transactions, which significantly undermines data privacy (Taylor, 2017). As data flows between numerous third parties, there is not only an increase in companies profiting from this information but also a rise in the potential for data breaches that can have real-world consequences.

Why should data be protected?

The significance of data protection becomes evident in light of numerous instances of data privacy infringements. One such case involved the alleged disclosure of information from an advertiser linked to the dating app Grindr, which was used to reveal a priest's identity (Carlisle, 2021). There have been reports of the U.S. government purchasing location data from a prayer app (Virginia, 2020), and researchers have discovered that opioid addiction treatment apps have been sharing sensitive data (Page, 2021). Therefore, data should be protected for several crucial reasons. First and foremost, data contains sensitive personal and confidential information, and safeguarding it is essential to prevent identity theft, financial fraud, and privacy breaches. Additionally, data protection is vital to maintain trust and confidence in digital transactions, as individuals and organizations need assurance that their information is secure (Rodotà, n.d.). Beyond individual concerns, data protection is also critical for national security and safeguarding intellectual property, ensuring that a country's economic and political interests are not compromised. Lastly, data plays an increasingly vital role in decision-making and innovation, making its integrity and availability paramount for businesses and research endeavours.

How should data be protected?

When contemplating the safeguarding of data, it is imperative to consider four pivotal factors that should serve as cornerstones in the regulatory framework. These factors are not only essential in fortifying data against potential threats but also play a crucial role in establishing a resilient and ethical foundation for data governance. The following are the key aspects to be kept in mind:

- i. **Data Collection and Sharing Rights:** Fundamental to the principle of data protection is the provision that individuals have the right to access and understand the data collected about them by various entities. This includes the ability to request the deletion of their data and the freedom to transfer their data from one service to another. Moreover, individuals should be endowed with the power to restrict companies from selling or sharing their data with third parties. Policymakers should aim to empower users, providing them with greater control over their personal information and fortifying data security.
- ii. **Opt-In Consent:** Opt-in consent should be considered as a central tenet of data protection laws. This approach would necessitate companies to seek explicit permission from users before sharing or selling their data to third parties. The pivotal shift here is that users should not be compelled to expend significant

effort opting out of data collection across various services; instead, the default should be predicated on acquiring user consent.

- iii. **Data Minimization:** The World Bank Guide on Data Protection and Privacy Laws underscores the importance of mandating companies to abide by the principle of data minimization (World Bank, n.d.). This principle advocates for the collection of only the information strictly indispensable for delivering the services users are utilizing. Its overarching goal is to curtail the unnecessary accumulation of personal data, promoting a more focused and privacy-conscious approach to data management.
- iv. **Non-discrimination and No Data-Use Discrimination:** Policymakers should incorporate principles that prohibit discrimination against individuals exercising their privacy rights. This includes preventing companies from imposing higher fees on privacy-seeking individuals or offering discounts to those willing to disclose more data (Drechsler, 2018). Additionally, regulations should encompass civil rights protections to prevent discriminatory practices by advertisers based on specific attributes or characteristics of users (Beduschi, 2019). These principles aim to ensure fair and unbiased treatment in the utilization of personal data.

USA’s Journey of Data Protection Laws: From A ‘Harms Prevention’ To A ‘Rights Protection’ Paradigm

Evolution Data Privacy Laws in Europe

Germany emerged as a trailblazer in the development of data privacy laws, instituting the world’s inaugural data protection law in the state of Hesse in 1970—a pioneering move that predates the widespread use of the Internet and the World Wide Web. Following this landmark step, in 1978, Germany adopted its Federal Data Protection Act, and in 1983, the German Federal Constitutional Court affirmed every individual’s constitutional right to “informational self-determination” (Solove, 2006). By 2016, the European Union recognized the need for modernizing data privacy regulations in the face of advancing information technology and the global interconnectedness of personal data. As a result, the GDPR was introduced and became enforceable in 2018. This comprehensive regulation codified essential principles rooted in a “rights-based” philosophy, firmly establishing the concept of data privacy as a fundamental human right.

Championing a “Rights-Based” Approach in the European Union

The European Union has steadfastly championed a “rights-based” data privacy regime. Under this philosophy, data privacy is regarded as a fundamental human right. In this framework, individuals effectively assert ownership of their personal information, granting them the legal right to determine who can access and use their data (Labadie & Legner, 2019). The historical roots of this perspective are deeply embedded in Europe’s painful past, particularly the widespread data collection by the Nazis, which was used to commit heinous atrocities. Similarly, the former East Germany’s secret police also engaged in data collection, reinforcing the necessity of regulating the collection, storage, and usage of personal information (Green, 2020).

The evolution of data privacy laws in Europe has been marked by significant legislative milestones, driven by a commitment to enhance the protection of individuals’ personal data and privacy rights.

Commencing with the Data Protection Directive in 1995 (European Parliament & Council, 1995), European Union (EU) member states sought to harmonize data protection laws, establishing fundamental principles for the processing of personal data and the rights of individuals. A pivotal moment came with the introduction of the General Data Protection Regulation (GDPR) in 2018, representing a paradigm shift in data protection (Tiku, 2018). The GDPR addresses the challenges posed by technological advancements, introducing stricter rules on consent, reinforcing the rights of data subjects, emphasizing accountability, mandating the appointment of Data Protection Officers (GDPR, 2018a), and imposing significant penalties for non-compliance (GDPR, 2018c)

Parallel to the GDPR, discussions and proposals for the e-Privacy Regulation have unfolded, aiming to complement the GDPR by providing specific rules for electronic communication services and imposing more stringent regulations on cookies and electronic marketing. The EU-U.S. Privacy Shield was established to facilitate transatlantic data flows (European Commission, 2016), ensuring an adequate level of protection for personal data transferred from the EU to the U.S. However, the Schrems II case in 2020 rendered the Privacy Shield invalid, highlighting the necessity for robust safeguards in international data transfers (“EU-US Privacy Shield for data struck down by court,” 2020). Continued adaptations and amendments underscore the dynamic nature of European data protection laws. Authorities and institutions respond to emerging challenges, technological changes, and legal interpretations by issuing amendments and guidance on specific issues, including data breaches, privacy impact assessments, and the use of artificial intelligence.

How GDPR influences the US Approach to Data Protection

The GDPR introduces a series of rights for individuals concerning their personal information, including access (GDPR, 2018d), correction (GDPR, 2018b), data portability (GDPR, 2018e), erasure (GDPR, 2018f), consent (GDPR, 2018a)), and the right to appeal (GDPR, 2018g)). These rights depend on the type of data, especially highly sensitive information. The GDPR also sets forth governing principles, which include privacy by design, record-keeping, data minimization, transparency, the role of data protection officers, adherence to best cybersecurity practices, mandatory data breach notifications, employee training, and the inclusion of appropriate contractual language to ensure vendors and contractors uphold data privacy standards (GDPR, 2018h).

The influence of the General Data Protection Regulation (GDPR) in Europe has spurred a significant shift in the United States’ approach to data protection (Butterworth, 2018). The GDPR’s focus on transparency, accountability, and responsible data practices has resonated in U.S. discussions, influencing a re-evaluation of corporate data protection practices and advocating for a more rights-centric approach. In response to the GDPR’s impact, U.S. conversations are increasingly centred on concepts like privacy by design and data minimization. The emphasis on limiting data collection to what is necessary aligns with the GDPR’s core principles and has become integral to ongoing discussions on responsible data management in the U.S. Furthermore, the GDPR’s influence extends to considerations about cross-border data transfers, with discussions on the need for a robust framework aligning with European standards. As high-profile data breaches elevate public scrutiny, the GDPR has played a pivotal role in shifting the narrative, emphasizing data protection as a fundamental right and pushing the U.S. towards a more comprehensive and rights-centric approach to safeguarding personal information.

Shift in Data Privacy Regulations in the USA: Towards a Rights-Centric Paradigm?

In the past, data protection laws in the United States were predominantly based on mitigating harms associated with the use and handling of personal information. The Privacy Act of 1974, for example, focused on safeguarding individuals' records maintained by federal agencies, emphasizing protection against potential harms that could arise from unauthorized access or misuse of government-held information (“Overview of the Privacy Act of 1974”, U.S. Department of Justice). Similarly, the Electronic Communications Privacy Act (ECPA) of 1986 aimed at addressing harms in the digital age by regulating government access to electronic communications and preventing unauthorized interception (Doyle, 2012). These laws aligned with the “*harms-prevention-based*” philosophy, being primarily aimed at preventing specific types of harms, such as breaches, unauthorized access, and identity theft, reflecting a reactive approach to emerging challenges (Solove, 2006).

In contrast, present data protection laws in the USA exhibit a notable shift towards a more rights-centric paradigm. The California Consumer Privacy Act (CCPA) of 2018 marked a turning point by empowering individuals with greater control over their personal information. The emphasis shifted from merely preventing harms to acknowledging and upholding the inherent rights individuals have over their own data (Lucarini, n.d.). Users gained the right to know what personal information is collected, the right to request deletion, and the right to opt-out of the sale of their data. The California Privacy Rights Act (CPR) of 2020 further exemplifies this shift by building upon CCPA and introducing comprehensive rights for consumers, placing a greater emphasis on the individual's control and agency over their personal data. Additionally, the proposed federal legislation, the Consumer Online Privacy Rights Act (COPRA) of 2019, underscores the importance of user consent and rights in the digital landscape.

This evolution reflects a contemporary understanding that extends beyond mitigating specific harms and recognizes individuals' fundamental rights to privacy, control, and transparency over their personal information. The present laws seek to empower individuals within the digital ecosystem, aligning more closely with a proactive, rights-based approach to data protection.

Social Media Intermediary Regulations In USA: Approaches and Problems

What are Social Media Intermediaries?

Social media intermediaries, also known as social media platforms or online intermediaries, are digital services and websites that facilitate user-generated content, interactions, and the sharing of information within online communities (González-Tosat & Sádaba-Chalezquer, 2021, p. 77-99). These platforms play a central role in connecting people, organizations, and content in the digital realm. Common examples of social media intermediaries include Facebook, Twitter, Instagram, LinkedIn, YouTube, and TikTok, among others.

Approaches to Regulation of Social Media Intermediaries

- i. **Awareness or “Actual Knowledge” Approach:** In this approach, intermediaries are held liable for content only when they have actual knowledge of illegal or infringing material on their platforms. This means that intermediaries are not expected to proactively monitor content, but when they become aware of problematic material, they are obligated to take action, such as removing the content or disabling access to it (Balkin, 2021). This approach is often seen as providing a degree of flexibility to intermediaries, allowing them to operate without constant monitoring while holding them

accountable when they have knowledge of illegal content. It promotes self-regulation while ensuring they respond swiftly to reported violations.

- ii. **Notice and Takedown Approach:** Under the notice and takedown approach, intermediaries are not held liable for the content on their platforms as long as they promptly respond to notices from users or rights holders about infringing or illegal content. When they receive such notices, intermediaries are required to investigate, and if the content is indeed in violation of the law, they must take it down or restrict access to it (Linke & Zerfass, 2013). This approach places a significant emphasis on the role of users and rights holders in identifying and reporting problematic content, encouraging an interactive process of content management.
- iii. **The “Mere Conduit” Approach:** The mere conduit approach is a more protective stance for intermediaries. It holds them liable only in exceptional cases where they are actively involved in creating, modifying, or curating content, rather than acting as a mere conduit or passive transmitter of data. This approach generally shields intermediaries from liability for the transmission of content and is in line with principles that emphasize the importance of the open flow of information on the internet, promoting innovation and access to information (Linke & Zerfass, 2013).

How does the US Regulate Social Media Intermediaries?

In the United States, the Digital Millennium Copyright Act of 1998 (“DMCA”) stipulates that an online service is shielded from liability for third-party content that infringes upon copyright law if it “promptly removes or disables access to the material” upon gaining knowledge or awareness of the infringement. Notably, the DMCA introduces two conditions under which an intermediary is obliged to take action. Firstly, when it has “actual knowledge” that the material or an activity involving the material on the system or network is infringing (DMCA, 17 U.S.C. § 512 (c) (1) A). The second condition involves being “aware of facts or circumstances from which infringing activity is apparent,” often referred to as the “red flag knowledge” provision (DMCA, 17 U.S.C. § 512 (c) (1) B). As mentioned earlier, the DMCA in the United States integrates both an actual knowledge provision and a “red flag” provision within the context of copyright law. The former comes into effect when an online service identifies infringing material on its platform, while the latter is activated when the service becomes aware of activities suggesting copyright infringement.

The DMCA also institutes a notice and takedown process, which serves the purpose of allowing copyright owners to inform online services about third-party content that infringes upon their rights, thus enabling the service to remove the offending content (DMCA, 17 U.S.C. § 512 (g) (1)). In response to a valid notice, an online service is obligated to promptly eliminate the infringing content to avoid potential liability. In the event that the individual who originally posted the content contests its infringement, they can file a counter-notice stating that the content is not in violation of copyright law. If the individual who submitted the initial notice takes no further action within a 10-day window, the service must then reinstate access to the content.

How Do Intermediary Regulations Aid in Data Protection

In a world where data privacy is an ever-pressing concern, intermediary regulations play a pivotal role in bolstering data protection efforts. While these regulations may primarily address issues such as copyright

infringement and online content moderation, their impact resonates significantly in the broader context of data protection. The convergence of intermediary regulations and data protection is, indeed, a symbiotic relationship that yields substantial benefits. However, current privacy laws often miss important data concerns, such as algorithm transparency and government use of facial recognition. Notification fatigue is a common issue due to the opt-out system. Experts suggest implementing an opt-in consent model and “privacy by default” concepts. Ashkan Soltan’s Global Privacy Control (GPC) proposal simplifies data opt-out at the browser or device level and has gained support from various browsers and publications (California Privacy Protection Agency, 2021). These evolving privacy laws aim to restore a sense of protection for individuals engaged in online activities, counteracting the belief that “privacy is dead.”

USA’s Framework on Data Privacy

Current Landscape of Data Protection Laws in the USA

Presently, privacy laws in the United States constitute a convoluted array of regulations, typically addressing specific data types or particular demographics. As Amie Stepanovich, Executive Director at the Silicon Flatirons Centre at Colorado Law notes, these laws span federal and state jurisdictions and encompass various acronyms, including HIPAA, FCRA, FERPA, GLBA, ECPA, COPPA, and VPPA (Stepanovich, 2021). Despite this intricate web of legislation, there isn’t a unified federal law that comprehensively covers all forms of data privacy. Consequently, many companies handling everyday consumer data operate with substantial autonomy in the absence of federal oversight, except in states with their own data privacy laws. For example, the Health Insurance Portability and Accountability Act (HIPAA) is primarily focused on regulating communications between individuals and “covered entities,” such as healthcare providers, leaving everyday health data like fitness tracker information unprotected. The Fair Credit Reporting Act (FCRA) is tailored to govern credit reports and their access. Similarly, the Family Educational Rights and Privacy Act (FERPA) pertains to the privacy of student education records. The Gramm-Leach-Bliley Act (GLBA) obliges financial service providers to outline data sharing practices but doesn’t restrict data use as long as it’s disclosed.

The Electronic Communications Privacy Act (ECPA), crafted in 1986, addresses electronic communications and wiretaps but is considered outdated in today’s digital landscape. The Children’s Online Privacy Protection Rule (COPPA) aims at limiting data collection for children under 13. The Federal Trade Commission Act (FTC Act) authorizes the FTC to take action against privacy policy violations and deceptive marketing language but is limited in scope (Klosowski, 2021). With the complexity of this legal framework, it is understandable that individuals are often perplexed about their privacy rights. To further complicate matters, numerous state-specific privacy laws exist alongside these federal regulations.

Limitations of the Current Framework

In the majority of states, companies can collect, utilize, or distribute personal data without informing individuals. This lack of standardized notification requirements hinders consumers from being promptly informed if their data is compromised. Furthermore, if a company shares an individual’s data, even sensitive information like health records or location data, with third parties like data brokers, these third parties can subsequently sell or distribute the data without any obligation to notify the affected individual. The overall lack of transparency regarding data practices makes it difficult for consumers to fully comprehend how their data is being utilized.

In stark contrast to the United States, the European Union's General Data Protection Regulation (GDPR) establishes rigorous data protection measures. The GDPR requires companies to seek explicit permissions to share data and empowers individuals with rights to access, delete, or manage the use of their data (Wheeler, 2022). In contrast, the U.S. features a mosaic of laws designed to address specific data categories and often apply to outdated contexts.

The Paradigm Shift in the U.S. Data Privacy Laws in 2023

The year 2023 is a turning point in the landscape of data privacy laws in the United States. The implementation of GDPR-inspired statutes at the state level reflects a transition from a “harms-prevention-based” approach to a “rights-based” framework, dramatically altering how personal data is collected, used, and safeguarded (Bellamy, 2023). Understanding these new laws and their philosophical foundations is imperative for individuals, businesses, and policymakers as data privacy regulations continue to evolve rapidly in the United States and globally. The shift towards recognizing data privacy as a fundamental human right signifies a significant stride towards the protection and empowerment of individuals in the digital age. These laws are designed to provide comprehensive data privacy protection, transcending sector-specific regulations.

1. **California Privacy Rights Act (CPRA):** Effective from January 1, 2023, the CPRA, an amendment to the California Consumer Privacy Act (CCPA), introduces individual rights modelled after the GDPR. It also establishes a new state agency responsible for enforcing data protection laws.
2. **Colorado Privacy Act (CPA):** Effective from July 1, 2023, the CPA incorporates GDPR-like individual rights, mandates data security measures, contractual provisions for vendors, and assessments for “high-risk” data processing.
3. **Connecticut Data Privacy Act (CDPA):** Similar to Colorado's law, the CDPA comes into effect on July 1, 2023. It introduces GDPR-inspired individual rights, requirements for data minimization, data security, and assessments for “high-risk” data processing.
4. **Utah Consumer Privacy Act (UCPA):** Effective from December 31, 2023, UCPA introduces certain GDPR-like individual rights, data security measures, and contractual provisions. However, it does not explicitly require risk assessments.
5. **Virginia Consumer Data Privacy Act (VCDPA):** Effective from January 1, 2023, the VCDPA grants GDPR-like individual rights, replacing the “right-to-delete” with the right to opt out of certain processing in 2022.

These new state laws contain exemptions for data already protected under other legislation, such as HIPAA. They vary in scope based on factors such as business revenue thresholds, the number of residents, consumers, households, or devices with data within the state. Each statute has distinct characteristics in terms of scope, requirements, potential liabilities, penalties, and enforcement mechanisms.

Conclusion and a Blueprint for Indian Policymakers

Policymakers in India can derive valuable lessons from the United States' data protection approach as they navigate the challenges of the digital age. A fundamental lesson is the importance of striking a nuanced balance between 'harms-prevention' and 'rights-protection.' Recognizing data privacy as a fundamental human right, similar to the U.S. shift, policymakers can prioritize empowering users and ensuring their consent is central to data governance. Emphasizing transparency and accountability, as demonstrated by the U.S., should be integrated into policymaking to foster a culture of responsible data handling, building trust among users and entities.

Additionally, policymakers should consider the U.S.'s move towards comprehensive federal privacy laws, providing a cohesive and standardized framework for data protection. Learning from the U.S.'s experiences in cross-border data transfers, especially post the EU-U.S. Privacy Shield invalidation, can guide the formulation of effective mechanisms for seamless and secure international data flows. Investment in user education and awareness initiatives is critical for policymakers to empower individuals to actively participate in safeguarding their personal information. Encouraging collaboration among government, businesses, and civil society becomes essential for shaping robust data protection regulations and industry standards in India. Lastly, policymakers should prioritize the implementation of efficient data breach response mechanisms and aligning data protection practices with global best standards to strengthen India's position on the international stage.

In conclusion, as India charts its course in the realm of data protection, it becomes increasingly evident that embracing a 'rights-based' understanding is not just a choice but a necessity. The lessons gleaned from the U.S. underscore the significance of prioritizing individual rights, transparency, and accountability within the digital landscape. By cultivating a regulatory environment that empowers users, respects privacy as a fundamental right, and adapts to the evolving technological landscape, India can forge a robust and resilient data protection framework. In a world where data plays an increasingly pivotal role, recognizing and safeguarding the rights of individuals stands as the cornerstone of a progressive and ethical approach to data governance in the Indian context.

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Deciphering India's International Migration Landscape

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Abstract: The terrain of India's international migration is a complex web of societal, political, economic, and historical nuances. This investigation threads across the many dimensions of migration, highlighting India's central place in the world story. India's migration story reflects its complicated past and changing socio-economic landscape, from waves of emigration that span centuries to modern trends in education and labour mobility. Important subjects like political upheavals, economic imperatives, educational goals, and integration challenges are highlighted in the abstract. It emphasises the necessity of complicated policies based on actual data in order to manage the difficulties of global human movement. It also explores the relationship between migration and problems like terrorism, highlighting how crucial it is to handle security concerns while respecting human rights. Furthermore, the abstract also addresses the role that national and international migration laws have in regulating migration and defending the rights of migrants. It emphasises the need for all-encompassing immigration policies that adhere to international norms and standards and take into account aspects like social cohesiveness, economic opportunity, and security concerns.

Keywords: Refugee, Migration, Human Rights, Security

Introduction

In the intricate tapestry of human migration, India emerges as a focal point, encapsulating a myriad of narratives that span political upheavals, educational pursuits, economic imperatives, and societal transformations. This exploration navigates through the diverse facets of migration, shedding light on the challenges and opportunities inherent in this global phenomenon, with a keen focus on India's pivotal role in this narrative. From the upheavals during partition that forced millions to become refugees in their homeland to the surge in students pursuing education abroad, India's history is deeply intertwined with the complex tapestry of global migration. The shadows of political instability, as witnessed during Bangladesh's independence in 1971, and the persistent movements fuelled by socio-economic and political unrest underscore India's deep-rooted connection to international migration. The dynamics of integration take centre stage, exploring how Indian migrants assimilate into the socio-economic, political, and cultural fabrics of host countries. Return migration, a phenomenon marked by differential impacts across skill categories, is emblematic of India's evolving position in the global economic landscape. Economic dimensions come to the fore as we unravel the significance of remittances, constituting a vast sub-economy crucial for India's economic sustenance. Moreover, the looming challenges of climate-induced migration and the intersection with terrorism further underscore India's intricate role in navigating global issues within the realm of human mobility. Against this backdrop, the need for a comprehensive international migration regime becomes evident, with India standing as a pivotal player. This introduction sets the stage for a profound exploration of how India, with its rich history and diverse socio-economic landscape, navigates the intricate web of global migration, requiring nuanced policies grounded in empirical indicators. As we embark on this journey, the spotlight remains on India, a dynamic player shaping and shaped by the complexities of migration on the

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global stage. Examining the historical trajectory of migration from the Indian subcontinent over the past two centuries reveals four discernible waves of significant emigration. The inaugural wave, commencing in the 1830s and spanning slightly beyond a century, was characterised by the predominance of Indian labour meeting supply gaps in British and other colonies' plantations, including Mauritius, South Africa, Malaya, Fiji, and various Caribbean nations. Subsequently, the second wave, notably post-World War II, witnessed the majority of Indian migrants gravitating toward industrialised nations in Europe and North America. The third wave unfolded in the 1970s, marked by Indian emigration to the Gulf, driven by the extraction of petroleum products and ensuing construction boom. The fourth phase, gaining momentum in the 1990s and persisting into the 21st century, comprises a substantial migration of Indian software professionals to Western countries, particularly the United States. However, contemporary migration patterns from India denote a paradigm shift. Beyond traditional destinations like the UK, the US, Australia, Canada, and the Gulf, an increasing number of countries within the European Union, Africa, and Asia have emerged as significant destinations for Indian emigrants. Moreover, India is not merely perceived as a source of manpower; it has become a coveted destination for renowned international educational institutions seeking to attract Indian students, contributing to foreign exchange for these institutions and enhancing students' educational and economic profiles. Foreign degrees obtained by Indian students also serve as gateways to entry into the labour markets of respective countries, unless immigration laws impose restrictions. The migratory trends of the past two centuries have been shaped not by a comprehensive policy framework from the Indian state but rather by push factors at home and unstable demand-supply dynamics in recipient countries. While the Emigration Act of 1922 aimed to regulate the recruitment and emigration of low-skilled agricultural workers, it remained silent on issues of exploitation and the emigration of individuals with technical or professional expertise. Post-independence, international migration did not receive considerable policy attention until the enactment of the Emigration Act in 1983. This legislation, mandating clearances for certain workers categorised under Emigration Check Required, aimed to protect emigrant workers from labour market abuses. Presently, India not only experiences emigration but also attracts a diverse inflow of individuals from Africa, Asia, and even Western nations. The characteristics of immigrants significantly differ from Indian emigrants, encompassing education, socio-economic composition, and motivation. India has also become a destination for multinational companies outsourcing operations, and medical tourism has emerged as a new facet of immigration to the country. The evolution of immigration policies in destination countries is influenced by demographic imbalances, labour shortages, internationalisation pressures, competition in the global market, and security concerns related to undesirable immigrants and terrorism. Countries now focus on skilled migrants, favouring their temporary stay. For example, France aims to recruit more skilled workers while restricting family reunion categories. Considering emigration, India's policy stance confronts paradoxical questions: Is increased outmigration beneficial and should be encouraged, or is it detrimental and hence should be discouraged? The assessment of its impact extends to the country as a whole, the migrants, accompanying families, and those left behind. Determining an optimum rate of outmigration and deciding which emigration to support or restrict poses complex challenges with no universal answers. A migration policy addressing these questions must exhibit implicit or explicit flexibility to accommodate amendments in response to changing circumstances and paradigms. In the realm of migration policy, there exists a general absence of emigration policies globally due to the fundamental right to leave a country being considered absolute and challenging to regulate. Consequently, most countries focus on immigration policies that control and monitor the influx of people across borders. India's migration policy cannot be developed in isolation; it must align with both destination countries' immigration policies and India's own immigration policy, necessitating a comprehensive and holistic approach to address all aspects of the phenomenon.

Political Migrants

A political migrant is an individual compelled to leave their home country not driven by economic motives but due to the fear of persecution in their homeland. Frequent instances of political, ethnic, religious, and regional upheavals, coupled with natural environmental disasters, have prompted affected individuals to abandon their homes and seek asylum elsewhere. Throughout history, people have fled their homelands during times of political turmoil, with the 20th century witnessing unparalleled human suffering due to conflicts between nation-states and the pursuit of political identity based on geography, religion, ethnicity, or ideology. The 20th century, in particular, saw millions of people becoming refugees, forced to leave their homes and endure extended stays in refugee camps. In 2000, global estimates indicated 17 million refugees, constituting 9.7 percent of all international migrants, a significant increase from 4.5 million or 5.5 percent in 1970. India faced severe crises arising from political instability during the partition, leading to millions becoming refugees overnight in their own homeland. The 1971 independence of Bangladesh from Pakistan similarly resulted in millions of refugees seeking shelter in India, causing financial hardships and political instability. Violent movements persisted in India throughout the later decades of the 20th century, compelling many to seek refuge elsewhere. In 2003, India ranked among the top ten countries with 13,553 claims lodged for asylum in developed nations. Addressing the plight of refugees necessitates enhancing protection and assistance in the regions of origin. Nation-states and international bodies must recognize that piecemeal efforts are insufficient to prevent refugee and asylum seeker movements. A comprehensive regularisation policy should be devised, considering the factors generating human suffering and forcing people to flee, extending beyond monetary compensation. The 'Agenda for Protection' outlined by the United Nations High Commissioner for Refugees (UNHCR) emphasises that the institution of asylum should not be undermined by states' efforts to curb irregular migration. As per Article 31 of the 1951 UN Refugee Convention, refugees should not be penalised for illegal entry or presence, provided they promptly present themselves to authorities and demonstrate good cause for their entry or presence. Law enforcement officers, including police, in any nation-state are expected to uphold UNHCR conventions both in letter and spirit.

Illegal Migrants

Illegal migration has become a focal point in global migration discussions, with numerous countries, both developed and developing, grappling with substantial inflows of undocumented migrants, often originating from neighbouring nations. For instance, Bangladesh and Nepal, sharing physical borders with India, are notable sources of illegal migration to India. This phenomenon introduces various challenges within local communities and may have far-reaching effects on the socio-demographic profile of the receiving region or state. Issues such as employment opportunities for locals are impacted, with illegal migrants sometimes accepting jobs at rates well below prevailing wages. Illegal migrants can be categorised into legal migrants who lost their legal status due to overstaying, those who infiltrated voluntarily, and forced illegal migrants brought through perilous routes like trafficking. These categories differ in terms of their socio-economic profiles, education, employment, and motivations. Consequently, migration policies should address key questions, such as the origins and motives of illegal migrants, their operational areas, arrival details, and potential impacts on the local population. Regardless of the causes and nature of illegal migration, migration policies should strive to minimise or curb illegal migration in all its forms. Governments employ various mechanisms to address illegal migration, with deportation being one approach. However, despite its apparent simplicity, deportation is challenging to implement effectively. For instance, India has pursued a deportation policy for an extended period without achieving enthusiastic results. Enhancing pre-emigration orientation, focusing on introducing prospective emigrants to the socio-cultural ethos and legal systems of host countries,

could prove beneficial. Given that a significant portion of illegal migration occurs through border infiltration, robust surveillance and rigorous immigration checks at borders are imperative. Implementing a border surveillance system that maintains records of all migrants, facilitated by online satellite contacts with destination countries, could be explored. In recent decades, bilateral agreements between affected countries have gained acceptance as a comprehensive tool to manage the flow of people, including illegal migration, across borders. Countries like the UK and France, facing high numbers of illegal migrants, have entered into several bilateral readmission agreements. Moreover, these countries encourage illegal immigrants to voluntarily return home by offering lump sums and benefits to facilitate their reintegration. However, this policy may inadvertently incentivize illegal immigrants to return temporarily to capitalise on financial incentives before resuming their presence.

Educational Purposes

The cross-border mobility of students seeking higher education has witnessed a significant surge over the past four decades, reflecting a broader trend of internationalisation in higher education across many nations. The count of international universities has escalated from approximately 238,000 in the 1960s to a staggering 2.5 million in 2004. A substantial portion of international students hail from countries like China, Japan, and India, with a pronounced preference for advanced nations such as the US, the UK, Germany, France, Australia, and Japan. Indian students, too, contribute notably to this global phenomenon, with over 150,000 tertiary-level students leaving India annually to pursue higher studies abroad, making the US their favoured destination. However, the contemporary mobility of Indian students extends beyond traditional destinations, encompassing countries like Australia, Germany, France, Canada, New Zealand, and Singapore. For numerous universities in developed countries, the recruitment of international students has transformed higher education into an export commodity, constituting a crucial source of income as the majority of international students are full-fee paying. Universities place substantial emphasis on marketing strategies to attract students, often deploying agents or representatives to countries of origin, such as India. These representatives offer counselling, expert guidance on course and university selection, assistance with logistics like ticketing and foreign exchange, as well as orientation programs. Education fairs serve as platforms where university representatives meet students, providing information on courses and opportunities, and some universities even offer spot admissions during these events, often held in reputable hotels to enhance credibility. Despite the allure painted by these representatives, caution is warranted, as some universities may have low rankings in their home countries but appeal to students in nations like India, where a foreign degree is often perceived as superior. To address this, regulatory authorities should compile and periodically publish a list of accredited foreign universities and educational institutions authorised to recruit students from India, complete with international rankings. Monitoring seminars and education fairs organised by education agents or international representatives is crucial to detect any false promises or misleading information, with penalties imposed on universities and agents engaging in malpractices. Indian High Commissions in destination countries can play a role by tracking Indian students, collecting feedback, and building networks with student bodies to address their concerns effectively.

Economic Migrants

Economic migrants, denoting individuals departing their home country to engage in labour within another nation, span various occupational categories, including high-skilled, semi-skilled, and low-skilled workers. Entry into the destination country is facilitated by visas, conferring legal stay for a specified duration. Nation-states establish statutes and laws to regulate the entry, working conditions, wages, remuneration, and integration of foreign nationals within their territories. While a majority of economic migrants opt for legal

channels, a substantial number resort to illegal means, facing repercussions from the host state, restricting their participation in economic activities. The primary motivation for migration lies in economic incentives, as individuals seek to enhance their financial prospects or respond to extreme poverty and unemployment, prevalent in several South Asian countries. Economic migrants congregate where employment opportunities abound, migrating away from regions experiencing a contraction in economic prospects. Silicon Valley in the US serves as an illustrative example, emerging as a focal point for IT professionals during the late 20th century due to its expansive opportunities, attracting skilled workers globally. Economic migrants contribute to employment generation and the economic prosperity of host societies, although their impact on domestic economies may be underestimated or subject to political considerations. Economic migration constitutes a significant portion of global migration, accounting for approximately 25 to 30 percent of permanent migration on average. The waves of emigration from India throughout history have been catalysed by economic opportunities worldwide. The Ministry of Overseas Indian Affairs notes that there are around five million overseas Indian workers globally, with over 90 percent concentrated in Gulf countries and Southeast Asia. A substantial proportion of these migrants, particularly those in Gulf countries, are temporary unskilled or semi-skilled workers, often returning to India after the expiration of their contracts. In contrast, economic migrants heading to developed countries such as the US, UK, Canada, Australia, exhibit higher educational and skill levels. A noteworthy percentage of them aspire for permanent residency in their destination countries. However, due to improved economic conditions in their home countries and stringent immigration policies regarding citizenship rights, an increasing number of migrants to developed countries also contemplate returning to their home country or seeking opportunities in alternative nations.

Family Migrants

Family reunification stands as a paramount category within permanent immigration, constituting a substantial 45 to 60 percent of total migration flows (OECD, 2007). Economic migrants, driven by the pursuit of improved employment and earning prospects, often harbour long-term considerations, desiring the accompaniment or subsequent joining of family members, including spouses, parents, and siblings, depending on the family reunification laws of the destination country. Migration, therefore, triggers additional migration. Receiving countries exhibit varying levels of leniency regarding the ability of different migrant categories to bring their family members, with individualised mechanisms for evaluating immigrants aligned with the host country's requirements, attitude towards migrants, and immigrants' intentions to stay. Laws governing family reunification are not universally standardised, varying according to factors such as the labour needs of receiving countries and their stance on granting long-term or permanent residency rights. For instance, countries with historical ties to Asian and African nations, like the UK, and those benefiting significantly from skilled migrants, such as the US and Canada, witness substantial migration induced by family reunification clauses in their migration policies. In contrast, in receiving countries where the grant of long-term or permanent visas is severely restricted, if not outright prohibited, family migration remains minimal. Economic migrants in such countries often operate on short-term labour contracts, necessitating their return to their home country upon contract expiration, except in cases of contract extension. Family migration holds profound implications for both the host and home countries. While it is commonly assumed that family migration facilitates better integration into the host society by providing emotional support to primary migrants in adapting to the new environment, evidence suggests potential adverse effects on integration when immigrants form distinct clusters and adhere strictly to their original norms and traditions. Additionally, family migration may prompt other family members to engage in economic activities within the host society, thereby influencing local labour markets. Furthermore, family migration can lead to a decrease in remittances flowing to countries of origin, as migrants allocate more funds in the host country and save less. This shift is discernible

in the remittance patterns India receives annually from developed and Gulf countries, where migrants in the Gulf, often less skilled and earning comparatively less than their counterparts in developed nations, allocate a significant proportion of their earnings to support family members remaining in their home country.

Integration & Re-Integration

The issue of integration stands as a central and extensively debated topic in migration literature, referring to the engagement of migrants in the social, economic, political, and cultural aspects of the destination country. It revolves around the adaptability of migrants in their new environment, examining how they assimilate into the social and community life while preserving their socio-cultural identity. Successful integration depends on various factors, including socio-political conditions at the destination, the diasporic presence from their home country, prospects of obtaining permanent residential rights, the potential for return, and other push-pull factors. Divergent socio-cultural or religious practices may lead to clashes of values between migrants and host communities, causing tensions in society with ripple effects on state policies. Social cohesion, crucial for economic success, offers both migrants and citizens an opportunity to contribute to the host country. To maintain cohesiveness and harness the benefits of migration, active support for integration is essential, as highlighted by the Global Commission on International Migration. Integration processes should receive support from local and national authorities, employers, and civil society, emphasising non-discrimination, gender equity, and fostering cultural diversity. While nation-states retain the sovereign right to formulate policies, it is desirable for integration policies to align with international human rights principles. Recognizing migrants as integral members of society promotes their sense of belonging and encourages their full contribution to the adopted country. Equal attention should be given to all migrants, including temporary workers and asylum seekers, without compelling them to forsake their own culture and assimilate entirely into the majority culture. Key considerations to foster social cohesiveness and cooperation between migrants and the host society include:

- Facilitating naturalisation within a reasonable and flexible time frame.
- Expanding dual citizenship to encompass a broader spectrum of migrants.
- Establishing mechanisms to ensure migrants can access social security benefits such as healthcare, insurance, and pensions.
- Re-evaluating policies of countries that temporarily employ migrants and subsequently deport them when the need diminishes.
- Addressing language-related issues by providing facilities for migrants aspiring to learn the new language.
- Encouraging policies that empower members of society, including migrants, to express their cultural values and beliefs in alignment with common social values.

In the era of globalisation, marked by instant communication and affordable travel, both nation-states and migrants increasingly favour frequent returns between home and host countries. Modern migrants, particularly those seeking economic opportunities, prioritise prospects irrespective of geographical location, emphasising safety and security considerations. Furthermore, the rise of job opportunities at home, spurred by economic liberalisation, has led many highly skilled individuals, who initially migrated for better educational and

professional prospects abroad, to return to their home countries. Source countries like India, which historically viewed the migration of educated individuals as brain drain due to their inclination for permanent settlement abroad, have shifted their perspective. The current scale of migration, including that of highly skilled individuals, is now seen as less concerning, as a significant number of people choose to return home after gaining foreign exposure. This return migration is perceived as advantageous for the source country, as returnees bring back enhanced levels of knowledge and technical skills, contributing to increased human capital. However, the impact of return migration on the domestic economy hinges largely on the skill category of the migrants. The return of highly skilled professionals from developed countries can be highly beneficial, as they bring the latest knowledge and skill components, potentially generating more employment opportunities at home. On the other hand, the return of unskilled migrants may not yield the same benefits. Nevertheless, the state should welcome every individual desiring to return with open arms. To harness the potential benefits of return migration, a comprehensive approach that integrates all categories of return migrants into the socio-economic structure is essential. Building confidence in the home country is crucial, making the prospect of 'homecoming' a positive and appealing experience for potential returnees. Gaining the trust and confidence of the Indian overseas diaspora is paramount, ensuring that they perceive returning to the home country as a worthwhile and promising endeavour.

Domains

In the current era, the global migrant population has reached unprecedented levels, with more people living outside their country of birth than ever before. A noteworthy shift is the increasing representation of women in this migrant population, constituting nearly 50 percent. Unlike historical patterns where women predominantly migrated for marriage, a substantial number are now moving for employment opportunities. In some Asian countries, including the Philippines, Sri Lanka, and Indonesia, the number of women migrating for work has surpassed their male counterparts. The largest driver of international women labor migration is domestic work, with women often sending a significant portion of their earnings back home. Remittances from these women play a crucial role in poverty reduction and development. While migration offers new opportunities for women to enhance their lives and support their families, it also exposes them to vulnerabilities, including precarious legal status, abusive working conditions, health risks, and the perception of being the weaker sex. Instances of trafficking and exploitation of women by agents have led some source countries to impose restrictions such as age limitations and mandatory male guardian consent. Bangladesh, India, and Indonesia, for instance, implemented minimum age restrictions in the early 1990s. The Indian government has navigated a delicate balance between protective measures and economic imperatives, with periodic adjustments to age restrictions for women migrating abroad for work. Despite being a significant source country, India lacks comprehensive information on women migrants. Gender-focused studies on international migration from India, particularly in diverse regional contexts, are limited. Bridging this gap is essential, necessitating empirical research on women migrants' experiences, considering the intersecting factors of immigration, gender, and profession-specific challenges. The unique circumstances faced by women, whether migrating as immediate relatives or economic migrants, merit in-depth investigation and equitable treatment.

The rise in labour mobility has resulted in a significant increase in the volume of international money transfers, as migrant workers send a substantial portion of their earnings back to their families. Remittances form a crucial sub-economy that many nations rely on to sustain their gross domestic product (GDP). Over the past six years, remittances have more than doubled, reaching \$318 billion in 2008, with \$240 billion coming from migrants in developing countries. Notable recipients of remittances include India, China, Mexico, and the Philippines, with the United States and Saudi Arabia being major sources of remittance outflows. The World

Bank reported India receiving \$27 billion, making it the largest recipient. A significant portion of remittances, around 80-90 percent, is used for consumption, reflecting the role of migrant breadwinners supporting families back home. While policymakers often aim to divert more remittances towards investment, it's crucial to acknowledge the positive impact of consumption. Even remittances used for consumption contribute to poverty alleviation by preventing families from facing financial hardship. When spent on locally produced goods or services, remittances stimulate the economy and create employment opportunities for low-skilled and semi-skilled individuals. Despite the benefits, the cost of transferring remittances can be high. Efforts, such as those taken by the Government of India with banks like AXIS Bank and the State Bank of India, have aimed to reduce transfer costs. Providing exclusive rights to certain banks and informing migrants about transfer rates can be additional measures to enhance the efficiency of remittance transfers. Dr. Thomasingar, Deputy Director of National Intelligence for Analysis and Chairman of the National Intelligence Council, highlights the potential risks in South, Southeast, and East Asia due to reduced agricultural productivity caused by increased flood and drought risks. By 2025, cereal crop yields are expected to decrease by 2.5-10 percent. The impact of harsh climatic conditions may lead to economic refugees fleeing their homes, moving within countries, and seeking refuge in neighbouring developing nations, with subsequent migration to more developed countries. However, these receiving nations may lack the resources and interest to host climate-induced migration. Global warming consequences, such as rising sea levels and changing precipitation patterns, are anticipated to contribute to destabilising events worldwide, including ethnic violence and illegal immigration. The US National Intelligence Council predicts that climate change will exacerbate existing issues like poverty, social tensions, environmental degradation, ineffective leadership, and weak political institutions. The most severe effects are expected in sub-Saharan Africa, the Middle East, and Central and Southeast Asia. India, experiencing its own climate changes, should assess the potential impact of climate-induced migration, considering possibilities, risks, and strategies to manage such situations effectively.

Terrorism

The rise of separatist movements and extremism associated with certain religions or sects poses a serious threat to peaceful coexistence globally and has significant implications for international migration. The 2020 Project Report of the National Intelligence Council underscores the persistent factors fueling international terrorism, particularly the spread of radical Islamic ideology, deepening solidarity among Muslims engaged in separatist struggles, and the exploitation of informal networks for recruitment. The report predicts that by 2020, al-Qaida may be surpassed by similarly inspired Islamic extremist groups, forming alliances with local separatist movements. Information technology facilitates decentralised terrorist threats, allowing for virtual training, coordination, and fundraising online. India, having experienced transnational terrorism, faces challenges such as economic losses, destruction of property, and harm to cross-border movement of people, including international tourism. The linkages between migration and terrorism have been acknowledged by Indian authorities, highlighting instances where illegal migrants have been involved in terrorist activities. India emphasises the need for a comprehensive global mechanism to address this threat and has raised the issue at various bilateral and multilateral platforms. Building confidence in its anti-terror mechanisms is crucial for India on the international stage.

Migration Law: National & International

Putting the international refugee regime aside, there is little international cooperation on migration at the global level, and to date, no truly international migration regime exists. Longstanding but under-subscribed conventions of the International Labour Organization (ILO), limited cooperation on high-skilled migration under the General Agreement on Trade in Services (GATS), and increasing cooperation on illegal migration,

human smuggling, and trafficking within the context of the United Nations Convention on Transnational Organized Crime are notable. As policymakers recognize that economic development in many source countries depends largely on migrant remittances and that destination countries increasingly depend upon immigration to support ageing populations, there has been more discussion around establishing a regime to facilitate the international movement of labour, similar to the international trade regime on which the General Agreement on Tariffs and Trade, and subsequently the World Trade Organization, is premised. The fundamental obstacle to international cooperation on labour migration, as Ari Zolberg (1992) and James Hollifield (1992) have pointed out, is that migrant destination countries have little incentive to join such a regime because foreign labour, especially low-skilled labour, is in abundant supply. If labour shortages develop during periods of economic growth, nation-states can get as much labour from abroad as they choose, either through bilateral agreements or simply by opening up labour markets to migrants, at the same time avoiding any commitment to keep these markets open during economic downturns. A global migration regime may make sense for reasons such as increasing economic efficiency worldwide, ensuring poor migrant source countries' access to the wealthier migrant destination markets, and for the sake of international development and reducing global inequalities. Due to the shortage of labour in many developed countries, there has been increasing competition among them to attract skilled labour from developing countries. This tendency to fulfil labour shortages in developed countries by imported manpower poses challenges and opportunities for source countries like India.

Considering the demographic shifts and India's own position in producing human capital, two possible scenarios emerge for India:

- a. **India Losing Out:** According to the World Population Council, the productive population of India, i.e., people belonging to the age group 15-60, will stop increasing in the coming years, stabilising at 64 percent of the total population from 2025 to 2050 and decreasing thereafter to 62 percent of the total population in 2050. This may lead to a shortage of skilled labour in India if the present rate of migration from the country continues unabated. The government is focusing on the immediate benefits associated with emigration, but the pattern of emigration shows that migrants belong to high-skilled categories such as scientists, engineers, doctors, management and IT professionals, academicians, who are already in short supply, potentially leading to a decline in productivity. Additionally, the education system may face a severe shortage of teachers and researchers, resulting in poor-quality students passing out from educational institutions.
- b. **India Gains:** The second scenario postulates that India, along with China, would emerge as a major global player, having an immense impact on the geo-political landscape. India is well positioned to become a technology leader in the coming decades. Sustainable high economic growth, expanding military capabilities, and a large demographic dividend will be contributing factors to the expected elevation of the country. Knowledge and technology involving the convergence of nano-, bio-, information, and material technology could further its prospects in the forthcoming global economy. Substantial enhancement of financial resources in the social sector, especially in education and research, would help India become the largest source of knowledge professionals in the world. The two scenarios described are based on recent indicators of economic performance and potential for future growth. However, projections provide food for intellectual engagement and help move ahead with a certain degree of expected outcomes. Projections should be given due importance in policy perspectives if they are based on solid empirical indicators. Migration policy in India should, therefore, be based upon vital datasets of social and economic importance.

Conclusion

The discourse on migration encompasses multifaceted dimensions, ranging from political refugees seeking sanctuary to students pursuing higher education internationally. The narratives explored the plight of political migrants, underscored the surge in cross-border student mobility, delved into challenges posed by illegal migration, and scrutinised the intricate dynamics of integration. Return migration and the evolving role of women in migration were also analysed, emphasising the need for nuanced policies. The paper extended its purview to the economic ramifications, emphasising the pivotal role of remittances and their potential to alleviate poverty. The impending challenges posed by climate-induced migration and the ominous intersection of terrorism with migration were discussed. The absence of a comprehensive international migration regime was highlighted, emphasising the need for global cooperation. As the global landscape undergoes profound changes, migration remains a linchpin in shaping societies and economies. The future trajectory of migration presents both challenges and opportunities for countries, necessitating well-informed policies rooted in empirical indicators. India, a significant player in the migration landscape, must craft policies cognizant of demographic shifts, economic imperatives, and global geopolitical dynamics. In doing so, the nation can harness the potential benefits while mitigating challenges, fostering a balanced and inclusive approach to the complex tapestry of human mobility.

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Lives in Transition: The Dynamics of Rural-Urban Migration

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Abstract: This article delves into the intricate dynamics of rural-urban migration in India, amalgamating insights from the cinematic portrayal in “Disha”, directed by Sai Paranjpye and pertinent scholarly literature. Tracking migration trends from the 1970s to the present day, this study dissects the aspirations and hurdles faced by millions seeking a better life in urban settings. Utilising Evert Lee’s migration theory, it illuminates the interplay between push and pull factors governing migration decisions. The article delineates diverse migrant characteristics, including influences by economic constraints, social stratification, and seasonal dynamics. Structural issues like agricultural distress, infrastructural inadequacies, and limited rural opportunities emerge as pivotal forces propelling migration. Highlighting the pivotal role of social networks in facilitating and supporting migration, it underscores their influence on migration trajectories. The study emphasises the harsh realities encountered by migrants in sub-standard living conditions, such as exploitative work environments, and limited access to essential services. Evaluating governmental and market responses to provide social security, it critically appraises existing legislative measures while advocating for comprehensive policies to safeguard migrants’ rights. Reflecting on transformative changes spanning decades, from economic reforms to initiatives like MGNREGA, the article identifies enduring vulnerabilities and political challenges faced by migrants in urban spaces. In conclusion, drawing from cinematic narrative and scholarly discourse, this comprehensive analysis underscores the pressing need for robust policies and effective implementation to address the nuanced complexities of rural-urban migration in India.

Keywords: Rural, Urban, migration, living conditions

Introduction

"The road from village to city is paved with the stones of dreams, each representing a migrant's aspiration to build a better life."

Every year, India experiences massive internal migration, with rural residents moving to metropolitan towns with nothing but uncertainty in sight. In India, every year, millions of migrants travel from rural and distant areas to cities with aspirations in their eyes, in search of a better life and livelihood, with little to no idea of what is awaiting them at their place of destination. Either dragged by aspirations, or pushed by poverty, rural residents are often compelled to abandon native villages in search of urban economic opportunities. Sometimes dragged by aspirations and other times forced by compulsion due to structural problems in rural areas, these individuals are forced to leave their native villages and travel to cities to look out for better economic opportunities. According to the decennial Census held in India, 9.3 million migrants relocated from rural areas to urban areas between the time period of 1971-81, 10.6 million made this journey between 1981-91, and 14.2 million joined those who already lived in cities between 1991 and 2001 (Census of India, 1971;1981;1991;2001).

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Since the 1991 liberalisation reforms, India's economy has experienced substantial growth. The 2001 Census shows that domestic migration significantly increased in the 1990s. Long-distance migration, or interstate migration, has grown faster than short-distance or intrastate migration. Due to India's 1991 implementation of a new economic policy, migration grew dramatically. Both proponents and opponents of new economic policies thought that internal migration would rise as a result of economic reforms. The apprehension that LPG changes would dent cottage industries, and perpetuate rural poverty, has turned out to be true. (Kundu, 1997). The argument put out by the opponents was that economic changes would have a negative impact on small businesses and cottage industries, impoverished rural residents, and accelerate rural-urban migration, which turned out to be a reality of contemporary times (Kundu,1997).

The movie "Disha," directed by Sai Paranjpye released in 1990 before the enactment of LPG reforms. The film draws attention to the struggles and hardships faced by those who move away from their hometowns in search of better opportunities and means of surviving in the city. The movie follows the story of two migrant workers, Soma and Vasant, as they navigate through the complexities of urban life in an effort to improve the situation of their native households. When Soma asks for his elder brother Parsaram's permission to migrate to Bombay in search of work, his brother apprehensively asks - But is there work in Bombay? Soma replies to it by saying that-

"Thousands of people go to Bombay every day; that cannot be all in vain."

This conversation between Soma and his elder brother draws attention to Evert Lee's theory of migration (1965), which describes the push and pull factors as the two most crucial forces of migration that operate at the place of origin and place of destination, respectively, and their interplay that affects rural-urban migration in India. Poverty, a lack of employment choices, low agricultural output, sluggish agricultural growth, a lack of development of non-farm activities and resource depletion are all push factors (Bandyopadhyay, 2017). On the other hand, better employment prospects, higher income, better working conditions, and access to amenities like education and healthcare act as pull factors in inducing rural-urban migration (Hoffman et al., 2019; Singh & Parmar, 2020).

As the discussion continues in the movie, the elder brother, still apprehensive about the living conditions of migrants in the city, hesitates to send Soma to Bombay. However, Soma convinces him by telling him, *"they have all earned money"*, to which the brother eventually concedes. As per the Harris and Todaro Model, to explain migration across regions, the expected income differentials are cited as a driving force for people relocating from low-income areas to comparatively high-income areas (Harris & Todaro, 1970). This model aptly fits the movie context wherein Soma and Vasant shift to town, in search for higher incomes.

According to Moskal and Tyrell, to understand the migration decisions of a family, one needs to understand the structural drives of migration, household tactics, and family networks. The subsequent section of the article will explore the structural causes for migration from rural to urban regions, who all migrate, what are the characteristics of those who migrate, the function of social networks, and the working and living situations of migrant labourers at the place of destination.

Methodology

This article employs a qualitative research approach, combining cinematic analysis with a review of scholarly literature, to explore the dynamics of rural-urban migration in India. The primary data source for this study is the movie "Disha," directed by Sai Paranjpye, which offers a cinematic portrayal of the challenges and aspirations of rural migrants in urban India. A detailed analysis of the movie was conducted to identify key themes, dialogues, and character interactions related to migration. Additionally, a comprehensive review of scholarly literature on rural-urban migration in India was conducted, utilising academic databases such as JSTOR and Google Scholar. The literature review focused on identifying key concepts, theories, and empirical findings related to migration dynamics, push and pull factors, social networks, and structural issues. Insights from both the cinematic analysis and scholarly literature were synthesised to provide a comprehensive understanding of rural-urban migration in India, highlighting the need for robust policies to address the complexities of migration and safeguard the rights of migrants.

Characteristics of Rural-Urban Migrants in India

Rural-urban migration is a complex process that involves people moving from rural areas to urban centres in search of better economic and educational prospects, and this process introduces us to a diverse cohort of individuals (migrants) that possess distinctive characteristics resulting from various factors like their place of origin, motivations, and interactions. In this section, we shall try to comprehend the diverse characteristics of the individuals who migrate from rural to urban areas, whilst keeping in mind the commonalities they possess leading to migration. Migrants from rural to urban regions typically come from places with minimal economic possibilities and insufficient facilities, which results in a shortage of employment opportunities and low earning potential in their place of origin (Andini & Rao, 2017; Imran et al., 2013; Obikwelu et al., 2017). Hnatkovska and Lahiri (2015) analysed the rural-to-urban migration in India from 1983-2008 by examining India's NSS data over the years, it was found that migrants tend to be younger, more likely to be married, more likely to work part-time, have regular jobs, less probable to be self-employed, and have migrated to urban regions predominantly due to employment-related reasons (Hnatkovska & Lahiri, 2015).

A different study understanding the characteristics of migrants through another lens says that migrants are primarily from better-off segments of Indian society rather than the destitute and disadvantaged, who are not travelling as often. The study also showed a robust correlation between per capita income and the rate of in-migration, with a moderate association with the out-migration rate (Bhagat, 2009). The study also emphasised that there is an inverse correlation between rural poverty and the in-migration rate, which justifies why there is such a high rate of out-migration from villages like Bakuri, as shown in the movie, to urban areas. Another study conducted by Thapa and Yadav analysed the characteristics of migrants, in which it was found that, as per the NSSO (2007- 08) survey, notably, the social category "others" displayed the highest rate of migration. The analysis also reflected that social categories like SCs & STs have the lowest rate of migration, which implies that an individual's social class plays a crucial role in determining their ability to migrate. The social group individuals belong to, plays a crucial role in determining who is better facilitated to migrate. In rural areas, with the increase in MPCE (Monthly Per Capita Expenditure), the propensity to migrate increases (NSS, 64th round). When it comes to seasonal migrants or short-duration migrants, most of them are found to be landless. The movement patterns of the seasonal migrants are influenced by the seasonality of agriculture (Singh, 2016). In urban areas, these short-term migrants mostly work as hawkers, rickshaw drivers, and

bricklayers, none of which provide any kind of social protection. Male rural-urban migration is primarily due to employment-related reasons, while female migration, on the other hand, is primarily driven by marriage.

Structural Issues in Rural India: Drivers of Migration to Urban Centres

There are a lot of structural problems as well in rural India, due to which people are forced to migrate to cities. The primary factors driving migration to urban regions from rural India include structural issues, such as undernourishment, illiteracy, unemployment, poverty, and a lack of basic infrastructure. According to research done in Uttar Pradesh, India, economic issues, including prospects for employment, poverty, low agricultural output, fragmented land ownership, and debt, were the main causes of migration from rural to urban regions (Singh & Parmar, 2020).

Agricultural hardship is a significant structural problem in rural India, as farmers mainly rely on the monsoon for water and lack the funds to build their own irrigation infrastructure (Rao & Veena, 2018). It is an ironic situation that although 69% of Indians live in rural areas and depend on agriculture as their primary source of income, the sector still only accounts for 18% of India's GDP, which describes the tale of landless farmers' poverty. The data, thus, narrates the story of why the rural farmers with small-land/no-land who depend solely on agriculture for sustenance fall prey to poverty.

Because of the loss of crops, rural inhabitants of rural regions are compelled to move to cities in quest for better employment prospects (Astige & Jane, 2014). This situation was also seen in the village of Bakuri, where farmers were experiencing a water deficit due to a lack of infrastructure. Parsaram, Soma's elder brother, was involved in digging a well for the village for 12 years, yet there was no sign of water for the farmers. Having realised the hard prospects of farming, Soma moves to the city. Soma eventually decided to move to the city to find employment and improve the family's financial status after realising how tough it was for the household to make ends meet solely via farming.

Migration is also influenced by the decline of rural regions' conventional economic activity in the absence of new opportunities (Naik & Kaushik, 2018). In the movie "Disha", there were no economic opportunities in the village of Bakuri. Most of the people of the village were involved in farming and were agricultural labourers, which caused much disguised unemployment. The only economic opportunities in the village were agriculture, rearing livestock, and a Bidi-making factory, which employed the females of the nearby villages. These reasons forced the young males of the household to migrate to cities in search of better employment opportunities. In the 1990s, there was no employment guarantee act to prevent distressed migration; however, in contemporary times, MGNREGA has been enacted that prevents at least distressed migration from rural to urban areas by providing at least 100 days of guaranteed employment. The village had no formal institutional mechanisms for lending credit, which trapped the poor farmers in debt traps like Vasantha's family. The situation from the 1990s to contemporary times has significantly changed as government institutions like NABARD (National Bank for Agriculture and Rural Development) have now become more robust, offering to provide institutional credit even in India's most remote rural areas. Self-help Groups (SHGs) have also become more active in the villages to provide credit.

Role of Social Networks in the Process of Migration

The process of migration is profoundly influenced by social networks, and they play an important role both before and after migration. They serve as an informational channel and a means of financial and social assistance. Social networks act as routes for informational flow after migration, improving access to

employment and thereby influencing the consequences of young people's movements (Wünsche & Fischer, 2020). To provide social assistance, migrants prefer networks that are interconnected and where friends have mutual friends (Munshi, 2020). For instance, Vasantha left the village Bakuri to migrate to Bombay, as he already had a social network and a friend, Soma, residing in Bombay, so the flow of information was smooth. In order to secure urban-based jobs, caste, family ties, and other types of village networks assist rural job seekers (Banerjee, 1986). In the movie 'Disha', when Vasantha wants to migrate to the city, Soma, his friend from the village who has already migrated to Bombay, helps him secure a job and find a place to stay.

Working and Living Arrangements of Migrant Labourers at the Destination

The struggles of a migrant do not end when they leave their native place but only begin when they arrive at their place of destination. India's rural-urban migrants deal with difficult living and working situations. Many migrants reside in "non-notified slums" or squatter homes that are devoid of essential services like clean restrooms and metered electrical connections (Babu et al., 2017). These adverse living conditions of the migrants in cities are also depicted in the movie when Soma first enters the slum shelter where he is supposed to live and depicts it as a poorly lit and congested building where multiple people live and sleep-taking shifts. One of his fellows welcomes him by quoting that –

"This place is housefuland there is your nook to sleep peacefully. However, you can use it only for 8 hours until the other shift guy arrives."

This statement reflects how precarious the living conditions are in these informal settlements for these migrants, who cannot afford better housing in the city. The lack of intervention by the state is one of the reasons for why these migrants are forced to live in such dilapidated living conditions. In the same research, the authors also find that the access of these rural-urban migrant workers to important documents like ration cards and voter identity cards is limited. The study recommends that governments identify migrants as a vulnerable population and carry out targeted initiatives to enhance their living circumstances and access to basic services. Along with other challenges, migrants also need to cope with issues like poor pay, unsafe working conditions, and restricted access to healthcare and education (Varna & Sudhakar, 2019). Therefore, the role of the state becomes very crucial in providing a basic level of social security to the migrants in order to protect them from the exploitative forces of the market. A minimum level of provision of formal credit, basic wage, and working conditions can be ensured. Due to the excess availability of workers in the market and little to no social protection, the market starts exploiting them by lowering their wages and making them work under inhumane conditions. For example, the cotton mill in which Vasantha and Soma worked did not provide a safe environment and many people contracted diseases like tuberculosis due to inhaling cotton particles in the cotton mills while working.

A Critical Overview: State and Market in Providing Social Security Benefits to Migrant Workers

The government and market, however, do interact to provide social security benefits to migrant workers. Researchers have critically examined this relationship in India. Experts believe that India's social security policies for unorganised employees are glaringly inadequate when compared to international norms and ILO conventions. Unorganised workers endure severe neglect while the organised sector receives advantages, including Employees' State Insurance Corporation (ESIC), maternity leaves, and disability &

illness support. Current laws favour only lump sum payouts in the event of death or permanent disability, which shows a clear disdain for their welfare (Hoda & Rai, 2017). The vulnerability of migrant workers is exacerbated by the state's and the market's inability to provide essential protections, highlighting a concerning mismatch between pledges and their harsh reality. To safeguard the welfare of unorganised employees, legislative measures, including the Minimum Wages Act, the Employees Compensation Act, and the Maternity Benefit Act, have been put into place (Keshava, 2014). These rules, however, largely benefit organised labour, which creates a dual labour market and a casualisation of the workforce (Delgado & Halik, 2018). Collectively, a demand arises for innovative strategies to rectify the inadequacies in social security offerings for migrant labourers in India (Mander, 2015).

Conclusion

The movie "Disha" is set in the timeline of the 1990s; three decades have passed now, and in contemporary times, the conditions of migrant workers have undergone a few changes, but the level of ignorance regarding their vulnerability in the urban areas remains the same.

With rapid urbanisation and increased rural-urban migration, more people have started working for a regular wage, which has resulted in a reduction of poverty throughout both rural and urban regions (Mitra, 2019). Internal migration inside India has substantially increased, and seasonal relocation is now a common occurrence, with seasonal migrants being more prone to illnesses than regular migrants. The employment guarantee scheme launched by the Government of India in 2006 MGNREGA, has controlled the distressed migration from rural to urban areas. Despite these positive changes, migrant workers now face various political challenges in cities. Unfair political representation, prejudice on the part of urban politicians, and systematic disenfranchisement are some of the political difficulties experienced by those migrating from rural areas to urban areas. Rural-urban migrants frequently encounter barriers to housing, healthcare, and education as they attempt to assimilate into their new city (Gaikwad & Nellis, 2021).

To conclude, the condition of rural-urban migratory labourers in India reveals a dual story of aspirations and vulnerability. The state's responsibility to protect their rights becomes crucial when people move from rural to urban areas in quest of a better life. Their difficulties are shown in the movie "Disha," which emphasises the necessity of comprehensive regulations that guarantee reasonable pay, secure working conditions, and accessibility to essential services. While progress has been achieved, more focused efforts are needed to close the gap between legislative purpose and successful execution. Only then will a future where rural-urban migrants are protected from exploitation and accorded the dignity they deserve be created.

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An Escape from 33 Years of Deflation: The Japanese Financial Securities Market's Grand Upswing with Special Reference to Japanese Government Bonds

Akshay Kumar Dutta⁸

Abstract: Emerging from the shadows of a protracted deflationary era, Japan's financial securities market is experiencing a remarkable resurgence, signalling a potential escape from the economic stagnation that has plagued the nation for over three decades. This upswing is fuelled by a confluence of factors, including the Bank of Japan's (BOJ) unorthodox monetary policies, a weakening yen, and a revitalised global economy. The Nikkei 225 stock index has surged to multi-decade highs, while Japanese government bonds (JGBs) have maintained remarkably low yields. These developments have instilled a sense of optimism among investors and policymakers, suggesting a potential turning point for Japan's economic trajectory. The BOJ's steadfast commitment to its unconventional monetary policy, known as "Abenomics," has played a pivotal role in stimulating the Japanese economy. The central bank's massive asset purchases and negative interest rates have injected substantial liquidity into the financial system, driving down borrowing costs and encouraging investment. This accommodative stance has been instrumental in weakening the yen and boosting exports and corporate profits. Amid a synchronised global economic recovery, Japan has benefited from robust external demand. The country's export-oriented industries have thrived as global trade has rebounded, bolstering corporate earnings and fuelling investor confidence. Additionally, the depreciation of the yen has made Japanese exports more competitive, further bolstering the trade surplus.

This paper seeks to understand the factors that contributed to the Japanese government bond market resurgence and evaluate how the preferences of investors have shifted in response to the changed JGB market conditions. It also looks at the limitations and potential adverse consequences of the monetary policy of the Bank of Japan (BoJ), and its effects on the Indian as well as Japanese bond market. The paper concludes by shedding light on the prospects of the Japanese financial securities market and the role of JGBs within it.

Keywords: Resurgence, Japanese government bonds (JGBs), Unorthodox monetary policies, Fiscal sustainability, Yen depreciation, Investor confidence.

Introduction

In the annals of financial history, Japan's prolonged tryst with deflation serves as a cautionary narrative, a stark reminder of the perils of economic stagnation. For over three decades, Japan, one of the world's economic powerhouses, grappled with a persistent and debilitating deflationary malaise. This protracted ordeal cast a long shadow over the nation's financial and economic landscape, curbing growth, sapping vitality, and challenging the conventional wisdom of economic policy. However, in recent years, the rising sun of

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optimism has begun to illuminate this seemingly endless night of deflation. The Japanese financial securities market is experiencing a renaissance, a remarkable upswing that beckons to cast off the shackles of stagnation.

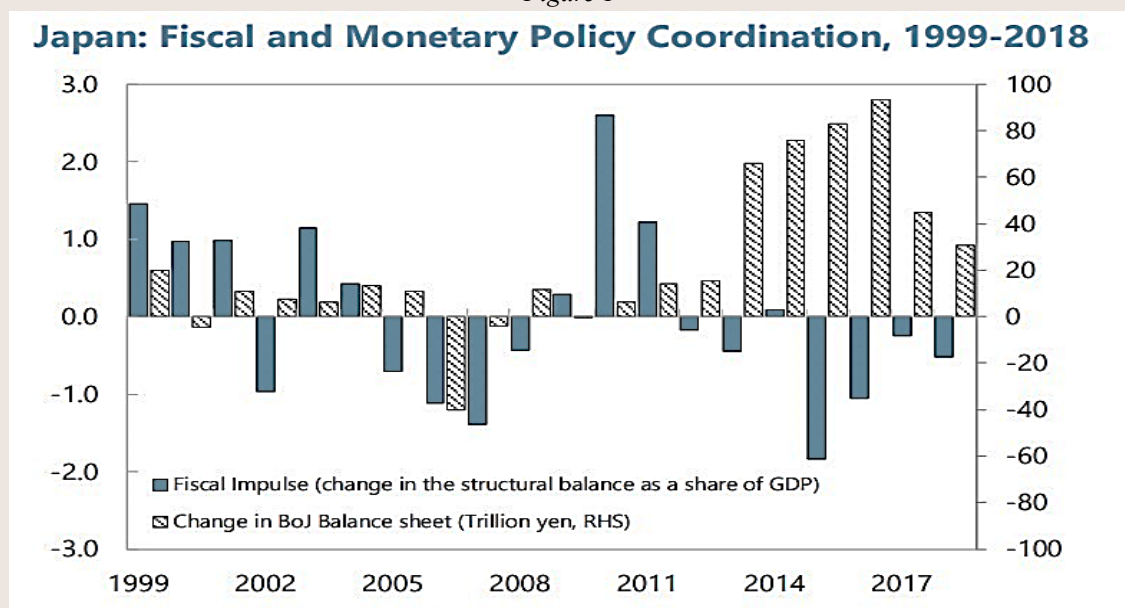
This paper embarks on a comprehensive exploration of this momentous transformation, delving into the intricate dynamics, the confluence of factors, and the pivotal role played by Japanese Government Bonds (JGBs) in orchestrating this escape from the doldrums of deflation. While deflation might be a global economic concern, Japan's case is unique, marked by a prolonged period of stagnation that has not been witnessed elsewhere. Therefore, it serves as an intriguing and vital case study with implications far beyond its shores. The resurgence of Japan's financial securities market, epitomised by the exuberance of the Nikkei 225 stock index, soaring to multi-decade highs, is, undeniably, a testament to the transformation that is afoot. Japanese Government Bonds, often in the shadows of the global financial stage, have played an instrumental role in this resurgence. The perpetually low yields of JGBs might have escaped the global spotlight, but they have been pivotal in reinvigorating Japan's financial landscape, driven by a multifaceted tapestry of interconnected factors that has woven this revival. The unorthodox monetary policies implemented by the Bank of Japan (BOJ) have been a cornerstone of this revival, spearheaded by the bold initiative known as "Abenomics." The BOJ, committed to breaking the shackles of deflation, embarked on a massive program of asset purchases and introduced negative interest rates. These unconventional strategies injected a substantial dose of liquidity into the financial system, driving down borrowing costs and spurring investment while concurrently weakening the yen, enhancing export competitiveness, and boosting corporate profitability. Furthermore, as Japan embarked on its quest for economic rejuvenation, a fortuitous global economic recovery synchronised its stride with the nation's aspirations. Japan's export-oriented industries, critical to its economic fortunes, were reinvigorated as global trade rebounded. Amid this resurgence, a depreciation of the yen rendered Japanese exports more competitive, further buoying the nation's trade surplus and augmenting its economic resilience.

While the Japanese financial securities market's renaissance is undoubtedly noteworthy, it does not come without its challenges. The ongoing conundrum of balancing economic growth with fiscal sustainability remains a paramount concern. Therefore, as this paper navigates through the various facets of Japan's escape from deflation, it will also explore the imperative of nurturing a robust and resilient financial ecosystem. The exploration of this transformation in the following pages will not merely provide insights into Japan's economic trajectory but also offer a valuable case study for economists, policymakers, and investors worldwide. It is a testament to the capacity of nations to adapt, evolve, and transcend the most daunting of economic challenges, and it underscores the indispensable role of financial instruments like JGBs in shaping a nation's financial destiny.

The Significant Role of Monetary and Fiscal Policies in Japan's Deflation

Monetary Policy: The Bank of Japan (BoJ) pursued a policy of low interest rates and quantitative easing (QE) to stimulate economic growth. However, the effectiveness of these measures was limited by a "liquidity trap," where nominal interest rates were close to zero, and conventional monetary tools became less impactful. The prolonged period of near-zero interest rates reduced the incentive for households and businesses to borrow and spend, leading to weak demand and deflationary pressures.

Figure 1



Source: Haver and IMF Staff Estimates

https://www.mof.go.jp/english/policy/jgbs/publication/newsletter/jgb2023_01e.pdf

Fiscal Policy: The Japanese government implemented various fiscal stimulus packages to boost economic activity, including public infrastructure projects and tax cuts. However, these efforts often led to mounting public debt without substantial improvements in economic growth. The large debt burden, coupled with demographic challenges (an ageing population and a shrinking workforce), limited the government's ability to sustain fiscal expansion. As a result, the impact of fiscal measures on demand and inflation remained subdued.

The Joint Statement in 2013 by the government of Japan and the BoJ was an important attempt to address this coordination failure. However, the effort has not panned out as hoped.

Japanese Government Bond (JGB)

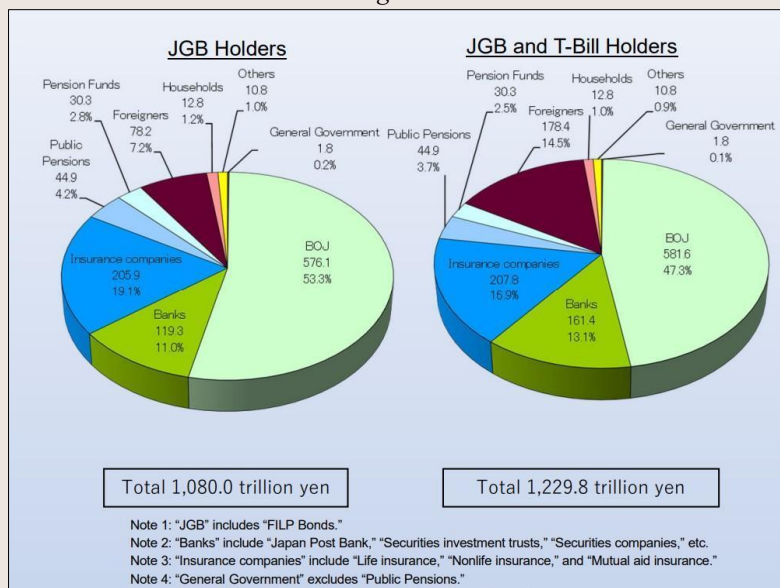
Key Participants of JGBs

The Japanese government is the issuer of JGB to domestic Investors, foreign Investors, commercial banks and central banks (Bank of Japan), intermediaries like brokerage firms, credit rating agencies, and regulatory bodies such as Japan's Financial Services Agency (FSA).

Distribution of Japanese Government Bond (JGB) Holders:

According to the distribution of Japanese Government Bond (JGB) holders as end of March 2023 was the Bank of Japan (BOJ) held 53.3 percent, Domestic banks held 11 percent, Foreigners held 7.2 percent and the other holders included insurance companies held 19.1 percent, pensions held 2.8 percent, households held 1.2 percent, etc.

Figure 2

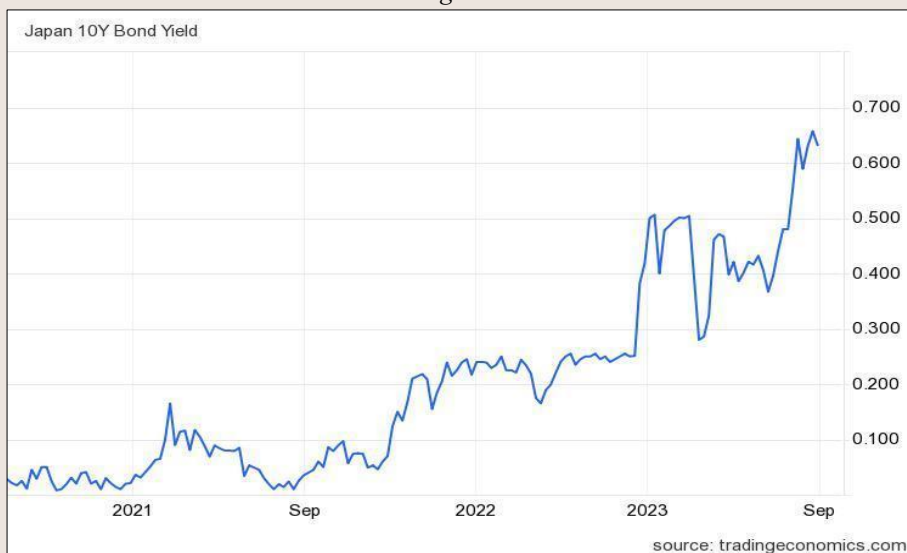


Source: Bank of Japan "Flow of Funds Accounts (Preliminary Figures)

Recent Surge of JGB

The yield on 10-year Japanese government bonds (JGB) rose to 0.65% on Thursday, August 03, 2023, 08:05 AM IST, the highest since April 2014, after the Bank of Japan loosened its grip on yield curve control last week. The Bank of Japan now owns half of outstanding Japanese government bonds (JGBs) issued in the market, data showed Monday, a sign the bank's aggressive buying to defend its 0.25% yield cap is bloating an already huge balance sheet.

Figure 3



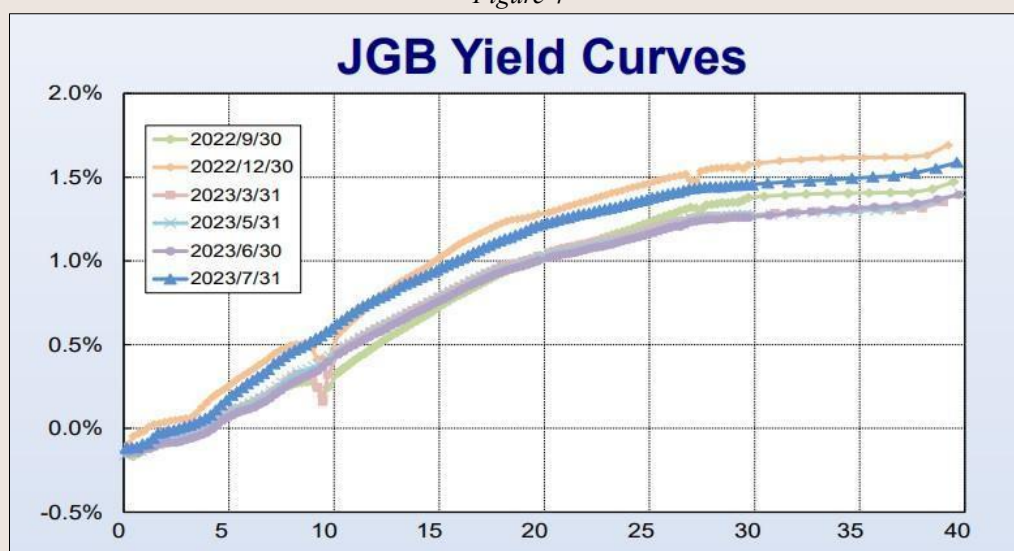
Source: tradingeconomics.com

In its statement, the bank said it would maintain its current inflation target until it could be maintained in a "stable manner," adding that it would "not hesitate to take additional easing measures, if necessary".

Literature Review

The Japanese financial landscape has long been characterised by the spectre of deflation, a persistent economic anomaly that has perplexed policymakers and investors for over three decades. In this review of literature, we delve into the historical context and pivotal developments that have led to Japan's escape from deflation, with a particular focus on the resurgence of the financial securities market and the role of Japanese Government Bonds (JGBs).

Figure 4



Source: Japan Bond Trading Co., Ltd.

- 1) The catalyst for change arrived with the advent of "Abenomics," the economic revival strategy championed by Prime Minister Shinzo Abe in late 2012. At its core were "Three Arrows" - monetary easing, fiscal stimulus, and structural reforms. The first arrow, monetary easing, was launched by the Bank of Japan (BOJ) under the leadership of Governor Haruhiko Kuroda. The BOJ introduced unorthodox monetary policies, including quantitative and qualitative monetary easing (QQE). This policy, also referred to as "Kurodanomics," marked a decisive departure from traditional monetary strategies. The impact of QQE was multifaceted. It included the massive purchase of government bonds, thus driving up their prices and suppressing yields. This move not only helped to reduce borrowing costs but also influenced the broader financial market by injecting substantial liquidity. The JGB market, in particular, experienced significant changes, with low yields reflecting the central bank's commitment to achieving inflation targets. The BOJ's determination to combat deflation was evident in its adoption of negative interest rates in 2016, further affecting the landscape of the JGB market.
- 2) Japanese Government Bonds (JGBs) have remained a linchpin in the country's financial system, bearing a unique significance within the context of Japan's financial resurgence. The JGB market is one of the largest and most liquid in the world, attracting both domestic and foreign investors. The historically low yields on JGBs have been crucial in influencing borrowing costs across various sectors of the economy, underpinning a climate of affordability. JGBs are instrumental in shaping Japan's fiscal policy. They serve as a benchmark for interest rates, influencing not only government spending but also private sector investment decisions.

Furthermore, the BOJ's massive purchases of JGBs have provided a channel for monetary policy transmission, fostering liquidity and influencing broader financial markets.

- 3) To comprehend the significance of the recent resurgence, one must first fathom the depth of Japan's deflationary quagmire. The nation's encounter with deflation began in the early 1990s, following the burst of its asset price bubble. The consequences of this protracted period of deflation were manifold, characterised by falling prices, weak consumer demand, and sluggish economic growth. Numerous economic policies were attempted, but Japan remained ensnared in this deflationary trap.

The literature review underlines the intricate interplay of historical, policy, and global factors that have contributed to Japan's escape from deflation. It sets the stage for a deeper exploration of the resurgence of the Japanese financial securities market, with JGBs as a linchpin, and offers critical insights into the transformation of Japan's economic trajectory. It also emphasises the interdependence of domestic policies and the global economic environment, illustrating that Japan's escape from deflation is not an isolated phenomenon but a part of the broader economic landscape.

Investor's Preferences

The shifting preferences of Japanese investors in response to changing Japanese Government Bond (JGB) market conditions have been influenced by a variety of factors, as follows -

1. Japanese investors, including institutional players like pension funds and insurers, are now seeking alternative investments that offer higher yields to meet their income requirements. This search for yield has led them to explore foreign markets, including emerging markets like India, where higher yields can be found. Japanese investors are increasingly recognizing the importance of diversifying their portfolios to manage risk and enhance returns. The concentration of holdings in JGBs exposes them to interest rate risks and limited capital appreciation potential. As a response, investors are looking beyond their domestic market to include a broader range of assets, such as equities, foreign bonds, and alternative investments.
2. Regulatory body changes, both domestically and internationally, can impact investor preferences. Japanese authorities' policies and regulations related to overseas investments can influence the ease with which investors allocate capital to foreign markets like India. Tax considerations, such as withholding taxes on foreign investment income, can also influence decisions. As well as financial institutions, including banks and security firms, are affected by changing investor preferences. These institutions may need to adapt their product offerings and strategies to align with the evolving demands of their clients.
3. Japan's ageing population and declining birth rates have implications for its investor landscape. Pension funds and insurers, which cater to these demographics, face challenges in generating sufficient returns to meet their liabilities. This encourages a broader search for higher-yielding assets beyond the JGB market.

The Impact on Indian Financial Market

The resurgence of the Japanese financial securities market, as illuminated in the study, "An escape from 33 years of deflation: The Japanese financial securities market is experiencing a grand upswing with special reference to Japanese Government Bonds," carries implications that reverberate far beyond the shores of Japan. This resurgence holds the potential to exert a discernible impact on the Indian financial market, even though the two nations might seem, at first glance, to be disparate players in the global economic theatre.

Firstly, the Japanese upswing, with a revitalised global economy as a backdrop, provides an expanded avenue for Indian investors to diversify their portfolios. As Japan's financial securities market regains its vibrancy, it may become an attractive destination for Indian investors seeking to allocate their resources into international assets. A dynamic and stable Japanese market can offer a haven for Indian investors in times of global economic volatility. Moreover, the resurgence of the Japanese financial market, underpinned by the Bank of Japan's (BOJ) unorthodox monetary policies, can impart important lessons for Indian monetary authorities and policymakers. The BOJ's commitment to combat deflation, accompanied by its massive asset purchases and negative interest rates, offers insights into the toolkit that India's central bank, the Reserve Bank of India (RBI), can potentially employ to address its own economic challenges. The study, by shedding light on the effectiveness of these policies, can inform the RBI's future strategies. The study's emphasis on the role of Japanese Government Bonds (JGBs) is particularly pertinent for Indian policymakers. As India navigates its own fiscal and monetary policies, it can draw valuable lessons from how JGBs have been leveraged as financial instruments to stimulate Japan's economy. This includes the influence of JGBs on borrowing costs, which can guide Indian policymakers in their management of domestic government securities. Furthermore, the study's exploration of the global economic context and its impact on Japan's resurgence underscores the interconnected nature of international markets. As the Indian financial market remains integrated into the broader global economy, Japan's revival has implications for the prospects of Indian exports and the overall health of the Indian economy. The synchronised global economic recovery, as witnessed in the study, can augur well for Indian trade and industry. The Resurgence of the Japanese financial securities market, detailed in the research paper, casts a substantial shadow that touches the Indian financial landscape. From offering diversification opportunities for Indian investors to serving as a source of policy insights and lessons, the study underscores the interwoven nature of global financial markets and how events in one nation can cascade across borders, influencing financial dynamics in seemingly distant regions like India. As such, the study serves as a valuable resource for Indian financial analysts, policymakers, and investors navigating the intricate world of international finance.

Limitations

The comprehensive analysis of Japan's departure from a protracted era of deflation and its subsequent financial resurgence, with a specific focus on the Japanese Government Bond (JGB) market, is a subject of considerable significance. However, it is imperative to acknowledge the inherent limitations that temper the scope and depth of this study. This research relies on historical data and information sources, which may possess limitations in terms of accuracy and comprehensiveness. Data availability, especially for specific timeframes and precise financial transactions, can be constrained. The absence of real-time data may further restrict the paper from capturing the most recent developments and their immediate impacts. The complexity of financial markets, especially one as multifaceted as Japan's, presents inherent challenges. The multitude of interrelated factors influencing market behaviour may not be exhaustively explored in this study, potentially

overlooking subtle nuances. Additionally, the intricate dynamics within financial markets can make it challenging to establish definitive causality, and the study may only unveil correlations. The generalizability of the findings may be limited. While the research strives to shed light on Japan's unique economic trajectory, extrapolating these findings to other nations or regions might oversimplify the complexities of different contexts. Japan's unique historical, cultural, and economic attributes might render its experiences less applicable to other economies.

The dynamic nature of financial markets is subject to change, potentially rendering certain conclusions in this study outdated. Financial markets are susceptible to frequent fluctuations and unforeseen events, which may significantly alter the trajectory of Japan's financial securities market. Unforeseen events and exogenous factors can exert profound influences on financial markets. This study does not account for unforeseen events, such as geopolitical conflicts, natural disasters, or global economic crises, which can disrupt market dynamics. Lastly, changes in government policies and regulatory frameworks can substantially affect financial markets. This study assumes a relatively stable policy and regulatory environment, potentially overlooking the impact of future shifts in government policies or regulatory approaches on Japan's financial securities market. While this research paper contributes valuable insights into Japan's escape from deflation and the revitalization of its financial securities market, with a special reference to Japanese Government Bonds, it is imperative to recognize the inherent limitations that are intrinsic to such studies. These limitations underscore the complexity and ever-evolving nature of financial markets and the necessity for future research to build upon and refine our understanding of these intricate dynamics.

Conclusion

The revival of the Japanese Government Bond market, driven by the Bank of Japan's policy adjustments, has had far-reaching effects on investor preferences and foreign markets like India. Expectations about future inflation can impact bond yields. Higher inflation expectations tend to lead to higher yields, as investors demand compensation for eroding purchasing power. Significant shifts in global bond markets, including JGBs, may influence the Reserve Bank of India (RBI)'s monetary policy stance and its decisions regarding policy rates and liquidity measures; otherwise, large-scale withdrawal of Japanese investment from Indian bonds can experience spillover effects on other segments of the Indian financial markets, including equities and currency markets.

Citi Bank has quoted that the BOJ will eliminate YCC before the end of 2023, *“We expect that the Bank of Japan will purposefully exit its ultra-loose monetary policy, which could take place in the second half of this year. If this happens, the yen has room to strengthen further,”* says CitiBank. However, the case study also underscores the limitations and potential side effects of the BoJ's monetary policy on the bond market. It is essential for policymakers and banks to carefully navigate these challenges while seeking to achieve stability and growth in the bond market, or else investor sentiment can quickly shift in response to unexpected events, such as the bankruptcy of Silicon Valley Bank. If investors become less optimistic about economic stability, they may revise their expectations for central bank actions, including the BOJ's policy on JGB yields. It can also affect geopolitical events, including trade tensions, political instability, and global conflicts, can create uncertainty in financial markets and influence investor behaviour of Japan and India. This interplay between policy, investor behaviour, and market dynamics highlights the complexity of modern global financial systems.

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The Climate-Induced Migrant Discourse

*Vedaansh Uberoi*⁹

Abstract: This paper delves into the discourse surrounding climate-induced migration, which originated in the 1980s as a theoretical possibility, but as climate change intensifies, it has become a reality. It examines two approaches to environmental migrants, minimalism and maximalism, arguing for the adoption of minimalism due to its consideration of the complex decision-making process of eco-migrants. The paper explores the intersection of far-right ideologies in the West, particularly the EU, with environmental concerns, termed ecofascism, tracing its historical roots in the Germanic ideologies of Volk and Heimat. The paper highlights how far-right parties adopt a maximalist approach and evoke neo-Malthusian fears of climate-induced 'mass migration' to instrumentalize environmental issues and justify restrictive immigration policies. Through the lens of Tuvalu, a Pacific nation facing existential threats due to rising sea levels, the paper also critiques the maximalist narrative of 'climate refugees.' It discusses how the reductionist label can oversimplify complex socio-economic factors and strip agency from migrants, particularly in the case of Tuvaluans, who maintain strong connections to their homeland despite migration. It instead calls for a transition from a national security approach to a human security and global citizenship perspective, which prioritises the socioeconomic context of migrants and amplifies their voices in the discourse. In conclusion, the paper emphasises the importance of understanding the discourse surrounding climate-induced migration and challenging hegemonic discourses perpetuated by eco-fascist agendas. It calls for a shift away from alarmist narratives towards more nuanced ones, centred on vulnerable communities' agency and rights, and solutions that address root causes and empower affected populations.

Keywords: Environmental refugees, Far-right politics, Tuvalu, Minimalism and Maximalism, Volk and Heimat, Eco Bordering

Introduction

For the longest time, climate change and climate-induced migration have been futurologist because of the epistemological challenge posed by their knowledge's speculative and future-conditional nature. Long before becoming fully materialised or experienced, climate change was discovered scientifically, and the discourse around climate change-induced migration originated in the 1980s as a theoretical future possibility when concerned scientists and environmental activists argued that unchecked environmental and climate change could lead to mass displacement (Baldwin et al., 2014). Over the years, as the impacts of climate change have intensified and living conditions have gradually worsened, resulting in water scarcity, declining crop productivity affecting food security, and sea-level rise endangering livelihoods, climate migrants have become a reality. Most ongoing migration, however, "occurs in response to fast-onset events, such as extreme weather, and usually results in short-term displacement within the person's own country." Temporary displacements, which are recurring in nature, can, however, result in permanent displacement as living

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conditions in certain areas gradually worsen due to climate change, forcing people to leave their home countries (Cho, 2021).

This paper seeks to explore different discourses surrounding climate-induced refugees that have emerged, especially over the last few decades, when the effects of climate change have become more apparent than ever before. The paper will briefly discuss the two approaches to environmental migrants, namely, minimalism and maximalism, and argue that minimalism is a better approach to adopt as it takes into account the complex nature of the eco-migrant's decision-making process. Further, through the use of the real-world case study of Tuvalu, this paper will argue that a more holistic approach needs to be taken towards climate 'refugees', and critically evaluate the climate-refugee narrative imagined by maximalists. This paper will also talk about how the misrepresentation of the extent of the 'environmental refugee crisis' has been weaponized and securitized to promote the political agendas of the far-right in the West by delving into the anti-immigrationist tracks of eco-fascism in Europe in historical and contemporary times and its manifestations in eco-bordering. It is important to study this discourse as a potential outmigration of people as environmental degradation is shaped by and shapes the international relations between the origin and destination countries. Moreover, framing this discourse in the language of security by states has made such an analysis all the more important to understand further, the economic, political, societal, and environmental implications originating from the climate-migrant crisis.

The Case of Tuvalu

While there aren't many historically recorded cases of cross-country migration due to climate change, one such instance evoked to illustrate such a movement is that of Tuvalu, the fourth-smallest nation in the world. Popularly imagined as the homeland of the world's first climate change refugees, Tuvalu is a low-lying Pacific Island country and microstate in the Polynesian subregion of Oceania with a population of approximately 11,000 inhabiting nine islands and atolls. Comprising a total land area of 26 square kilometres with its highest elevation at just 15 feet above sea level, Tuvalu is particularly vulnerable to the consequences of a warming world, rising seas, and coastal erosion, which have already swallowed eight Pacific islands, forcing the residents to migrate, and are estimated to overtake 48 islands by 2100 (Cho, 2021). With two of the archipelago's nine islands already on the verge of going under, scientists predict Tuvalu could become uninhabitable in the next 50 to 100 years, with locals predicting this to be much sooner as the erratic sea movement has made the daily lives of the locals extremely difficult (Roy, 2019).

The rising ocean has contaminated the underground water supplies, making Tuvaluans dependent on rainwater and susceptible to droughts. Porous, salty soil has rendered the ground uncultivable, destroying crops, decreasing yields, and increasing food import expenses. Consumption of reef fish results in ciguatera poisoning due to coral bleaching, and a myriad of climate-related illnesses and risks have increased on par with the changing weather. As a result, out of the majority of young people who leave Tuvalu to study, only a few return (Roy, 2019). The imagination of Tuvalese as climate refugees was further pronounced when a Tuvalu family was granted New Zealand residency in 2014 after claiming it would be affected by climate change if it returned home, marking the first successful application for residency on humanitarian grounds featuring climate change and branding them "The World's First Climate Change Refugees" (Nuwer, 2014).

However, the tribunal granting the application noted that the family in question had three generations of relatives living in the country, and as a rule, New Zealand is wary of "opening the floodgates to other climate change refugee claims" (NZ Herald, 2020). This was demonstrated by the rejection of another climate

change refugee's application earlier that year. The UN's Refugee Convention also does not recognise victims of climate change as refugees yet (NZ Herald, 2020). The New Zealand Government does, however, accept up to 75 Tuvaluan migrants per year through the Pacific Access Category scheme, which, combined with other work placement programmes, helps many Tuvaluans become New Zealand residents. While it is an economic rather than a humanitarian migration policy and does not originate from any consideration of climate change impacts in the Pacific islands, such programmes may indirectly alleviate pressures in Tuvalu that arise from climate-induced environmental changes such as loss of land and reduced availability of water resources (Farbotko & Lazrus, 2012; Marino & Lazrus, 2015).

Minimalists and Maximalists

There is a range and complexity of interactions between the drivers of migration in Tuvalu—limited education and employment prospects on the island, social networks in different countries, climate-induced environmental changes, etc.—and while they may play a big role, it will be virtually impossible to distinguish individuals for whom environmental factors are the sole driver, at least yet. Suhrke (1994) terms this a minimalist view where environmental change is treated as a contextual variable affecting the economic, social, and risk calculations and decision-making of the potential migrant (Suhrke, 1994; Baldwin et al., 2014). Primarily migration experts, minimalists such as Richard Black (et al., 2011) and Richard Bilborrow (1992), adopted this approach because of the difficulty in empirically isolating the impact of climate change on outmigration and the lack of historically recorded cases of marked climate change, since for a long time, migration effects of predicted global warming lay in the future. Also known as the “sceptical” approach, minimalists are wary of equating populations at risk with displaced populations and present the migration decision as multi-faceted, recognising the non-linear manner in which populations act and considering the role of power relations in structuring social relationships in varied socioeconomic, political, and cultural contexts, influencing the decisions of diverse persons, households, and communities differently (Diallo & Renou, 2015; Baldwin et al., 2014).

In contrast, the maximalist or “alarmist” view first appeared in the writings of environmental analysts and extracted the environmental variable from a cluster of causes, positing that environmental degradation is a direct cause of large-scale displacement and outmigration of people (Jacobson, 1988; Schmelz et al., 2011). Maximalists claim that in the absence of preventative measures, environmental stresses can trigger the displacement of significant numbers and propose neo-Malthusian approaches (Myers, 1993; Westing, 1992; Ramlogan, 1996) to posit a crunch of available resources due to an increase in the global population and the intensification of climate change, leading to increased population vulnerability. Coined by well-known maximalist El-Hinnawi (1985), maximalists use the controversial term ‘environmental refugees’ to describe individuals displaced by climate change as those “who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardized their existence and/or seriously affected the quality of their life.” (El-Hinnawi, 1985, p. 4), which may not always be an appropriate or well-suited strategy (Diallo & Renou, 2015; Baldwin et al., 2014).

Maximalists, or “alarmists,” tend to cast alarming numbers about these future climate refugees, such as Norman Myers and Jennifer Kent (1995), who argued that by 2050, there could be almost 200 million environmental refugees, a number that has been cited in multiple publications on the subject and continues to be referenced as a fact. While minimalists also recognise the existence of climate migrants, by highlighting the complexity of the issue, they criticise the estimates and projections produced by maximalists, disputing

the quantitative reasoning and asking for a more holistic analysis. Baldwin et al. (2014) point out that over the years, the minimalist account has won the academic debate as academics have strayed away from making alarming quantitative predictions, and The Foresight Report on Migration and Global Environmental Change (2011), the most authoritative scientific account of the relationship between climate change and human migration, has argued that environmental and climate change are among many variables driving migration, embedded in complex socio-economic and political contexts. Despite the overwhelmingly minimalist view of policymakers and academics, the popular representations of climate-induced migration are maximalist in nature. Large parts of public and political debate are painted with alarmist tones and utilise overestimations about the eco-refugee crisis, criticised for being methodologically unsound, in political assessments; documentaries such as *Climate Refugees* (2010) and *Meet America's First Climate Change Refugees* (2019) echo these alarmist tones.

This maximalist approach is increasingly being adopted by far-right parties. Even though the ecological movement (and subsequently any climate-change discourse) is considered to be a left-wing issue in popular understanding, the natural environment has long played a role in nationalist, fascist, and far-right political thinking, ranging from "a full-blown ecological worldview which stresses the interconnectedness of flora, fauna, the nation, and its homeland, including the naturalisation of social relations and the significance of 'the land' for the reproduction of the people to the aesthetic idealisation of certain elements of the communities landscape." (Forchtner, 2020, pp. 1-2). This nexus between the extreme right and the natural environment is what is often referred to as 'Ecofascism', "a radical blend of ethnonationalism and authoritarianism, rooted in a belief that the land and the people form an organic whole" (Forchtner, 2019). The sections below historicize this concept and explore its relation to anti-immigration stances far-right parties increasingly articulate towards climate-induced migration.

Germanic Legacy of Volk and Heimat

The 21st century has witnessed a surge of far-right parties in the West, especially in the EU. These parties are often populist, also labelled as "right-wing populist, the radical right, alt-right or anti-Liberal Democratic parties" (Forchtner, 2020, p. 22). Despite the phenomenon gaining strength and reach in recent years, right-wing populism (RWP) has always been a long-standing feature of politics in continental Europe (Lockwood, 2018), advocating nativist policies such as the exclusion of immigrants and a return to a traditional society dominated by white people. Some of these parties have gained support via flaunting and ambivalent relationships with fascist and Nazi pasts (Forchtner, 2020). This linkage is crucial to understanding how the radical right envisions the environment and draws on the distinct ideological legacy of their fascist forebears, a lot of which originated in Germany, where they forged a peculiar synthesis of naturalism and nationalism.

Wodak (2015), acknowledging context-dependent socio-political and historical differences, specifies four dimensions that can be generalised as typical elements of the far right's ideology: nationalism/nativism/anti-pluralism, anti-elitism, authoritarianism and a charismatic leader, and conservatism/historical revisionism. The first dimension, nationalism, is enacted through the stipulation of "a seemingly homogenous ethnos, a populum" (Forchtner, 2020, p. 26). This notion of a 'community' is derived from the German conception of a Volk, evoking romantic nationalism, romantic racism, and mystical nature-worshipping. Much more than 'people', Volk "signified the union of a group of people with a transcendental essence". This mythos was fused to man's innermost nature, representing "the source of his creativity, his depth of feeling, his individuality, and his unity with other members of the Volk" (Biehl & Staudenmaier, 1996, p. 21; Werther & Hurd, 2013).

This Volk occupies a Heimat, or a homeland; its description is filled with imagery of nature and the natural environment and has played a role in the nationalist imagination. The homeland is evoked as a place where a mutually beneficial, symbiotic relationship between the terrain and its people (Volk) has been taking shape over generations. There is a nationalistic regionalism that mystically ties a region's traditions and language to this 'ancestral' landscape. These poetic ethno-spaces are symbolically charged and connote "a turn towards the past, an anti-urban mood, a familiar community, and proximity to nature" (Biehl & Staudenmaier, 1995, p. 22). They link the past, present, and future; memories are attached to sites, and communal beings are projected onto them. These sites, which include natural sites, forests, rivers, mountains, and lakes, are attributed with meaning and "become a matter of identity" (Forchtner, 2020, p. 3). Hence, the Volk and their identity are tied to the Heimat, which is inextricably linked to the environment (Werther & Hurd, 2013).

The contemporary extreme right takes "Blood and Soil" as its ideological baseline, which defines this spiritual link between man and nature, a quasi-mystical connection between 'blood' (the race or Volk) and 'soil' (the land and the natural environment) specific to Germanic peoples so that German blood engendered an exclusive claim to the sacred German soil (Werther & Hurd, 2013; Macklin, 2022).

Anti-Immigrationist and Far-Right Agenda

The recently resurged strong radical right-wing populist parties and movements in the West, especially the EU, have developed their argumentation utilising these Germanic ideologies. Far-right actors employ the mechanism of 'scapegoating'—using intentionally deceptive arguments, politicians deny and justify their failures, finding someone else to blame. These scapegoats are cast as 'others', defined by their race, religion, or language. Dramatised and exaggerated conspiracies are constructed through the narrativization of unreal scenarios, and lies and rumours are spread to "denounce, trivialise and demonise 'Others'" (Forchtner, 2020, p. 30).

Heimat is a part of one such conspiracy; it is perceived to require protection from dangerous invaders. And since the Heimat goes hand-in-hand with the Volk, a threat scenario is constructed in which "the homeland or 'we' is/are threatened by others" (Forchtner, 2020, p. 26). Immigrants are a part of this, and one such danger that they pose is that natives are outnumbered. The uncontrolled fertility of the migrant, the native fears, may lead to an estrangement from the cultural tradition. A multicultural society would change the homely nation's cultural character and challenge its social and cultural cohesion. There is a projection of the homely nation or homeland into the past, where a traditional version of the family produced and held together a "golden past of social and cultural cohesion around a unified national identity" (Erel, 2018, p. 174). Projecting memories is also intended to create nostalgia for an undisturbed homeland, as captured by the conservatism or the historical revisionism dimension of far-right ideology. "Sentiments of nostalgia, the loss of time bygone—of 'not feeling at home anymore' ...is translated into belonging in ethnic and national terms." (Elgenius & Rydgren, 2019, p. 584).

After fear-mongering and scapegoating the immigrant, a 'saviour' appears in the third step, and a new positive narrative is created that raises the people's hopes of returning to an ethnically homogeneous patriarchal society founded on an anachronistic longing. The saviour, who is the right-wing party's leader, advertises this new vision and is ready to "solve the problems identified in a simple manner, for instance by closing borders, deporting so-called legal migrants, etc.," saving the population from the dreaded apocalypse

(Forchtner, 2020, p. 27). This perceived threat against national identity, coupled with the immigration frame, has been an effective frame to attract voters (Elgenius & Rydgren, 2019).

The fascist quest for a national identity advances a notion of ‘ethnonationalism’ and ‘ethnopluralism’ “that seeks for all cultures to have sovereignty over themselves and their environment” (Biehl & Staudenmaier, 1995, p. 22) and nationalism justifies it using ecology. There is a conflation of the supposed threat of foreign species in particular ecosystems, seemingly stable and orderly with different species in different habitats, with the perceived threat of foreign races and cultures to the native populations of their countries. The basic building blocks of race and nation then rest on the assumption that the Heimat is separated by natural borders within which the unique Volk native to the homeland resides. This nation requires defence from the plunder of the ‘invasive species’ or immigrants coming from outside (Biehl & Staudenmaier, 1995, p. 5).

“The resulting proximity between the discourse about the nation and the discourse about the environment, between the protection of the homeland and the protection of the environment, easily leads to a rejection of so-called invasive species” (Forchtner, 2020, p. 5). Hence, nature and nationalism are intrinsically tied, and ecological arguments are drawn upon to disguise the racially coded opposition against Third World immigration. An ‘ecologized’ Heimat in which the Volk is biologically embedded becomes a useful tool against immigration and foreigners. This ethnonationalism, deployed by far-right actors, takes on an exclusionary tone when membership in the nation, and thereby access to its environmental resources, is linked to biological, racial, and cultural traits (Biehl & Staudenmaier, 1995; Forchtner, 2020).

Instrumentalizing Climate Change

Nationalism and ecologism both reject the perversion of the universal and defence of the particular, stressing the significance of the local (Forchtner, 2020, p. 5). Hence, while nationalism and far-right politics have been concerned with the land and the countryside, they have been staunch deniers of climate change and environmental degradation, which concern the international, casting it as “a conspiracy designed to benefit ‘globalist elites’ or undermine national sovereignty via multilateral agreements” (Turner & Bailey, 2021, p. 1). However, recent decades have seen a growing discourse on the securitization of the environment and climate change—a threat multiplier being discussed in forums such as the UN Security Council (UNSC 2007). It is in this discourse that sovereignty and ethnonationalism have started to play a central role, and RWP is starting to view climate change not just as “a hoax to install a ‘one world government’ or to increase the European Union's powers” (Forchtner, 2020, p. 9) but as recognising the possibility of climate change-induced migration.

Turner and Bailey (2021), through their analysis of European far-right parties, or EFRPs, identify a new trend of ‘eco bordering’ in environmental politics. Parties such as the Swiss People’s Party (SVP), the British National Party (BNP), and the National Rally in France, realising the securitizing discourse around climate change, have changed their rhetoric from climate denialism to a selective and invidious approach to ecological issues by weaponizing environmental issues to bolster anti-immigration agendas (Turner & Bailey, 2021). EFRPs evoke, through ‘speech acts’, maximalist neo-Malthusian fears of climate-induced ‘mass migration’ resulting in the consumption or plunder of natural resources on a large scale. They couple these anxieties with eco-fascist ideologies by stoking nativist ideas of belonging and stewardship of the European ‘homeland’, which needs to be protected exclusively from the migrants coming from the Global South who are deemed ‘inferior’ and not deserving of the same rights to land, custodianship, and resources.

Hence, eco bordering casts immigration from the Global South not just as an attack on the cultural identity of the Volk by promoting multiculturalism but rather as a threat to the local or national environment. Turner & Bailey (2021) specify two imaginaries of the migrant are formed to stoke fears among the native population: ‘migration as environmental plunder’ and ‘migrant as environmental vandal’. The ‘migration as environmental plunder’ ideology posits that “immigration will deplete national ecological resources (land, water, food, etc.) and exacerbate local environmental issues.” (pp. 2–3). The ‘migrant as environmental vandal’ narrative imagines these Global South migrants as active threats to environmental sustainability, migrating from lands impacted by climate change precisely because of their inherent incapability or unwillingness to manage natural resources or protect the natural world. They are depicted as “environmentally irresponsible ‘hordes’ with no aptitude for managing natural resources (unlike ‘native’ custodians)” (p. 3). This is due to the migrant’s lack of ‘belonging’ to or ‘investment’ in a local area, viewed as nomadic with no rootedness or bond with their host country. They lack the essential connection through “blood and soil” in the classic Nazi parlance and are despoilers, not preservers of nature, caring little for the natural environment of the country (Macklin, 2022; Biehl & Staudenmaier, 1995).

Environmental “Refugees” Narrative

While the right employs the maximalist viewpoint to frame the displaced as a potential national security threat in public discourse, “liberal and left-of-centre parties and governments have often been complicit in legitimating or apathetic in contesting” this (Turner & Bailey, 2021, p. 6). Contrastingly, the left uses the maximalist approach to frame the plight of climate refugees as “a consequence of ecological imperialism and the massive carbon debt owed by the advanced capitalist countries to the global South” (Faber & Schlegel, 2017, p. 9). Moreover, by using the term ‘environmental refugee’, climate-vulnerable populations are positioned as helpless victims who have been forced to migrate due to ecological degradation. While terming migrants as “refugees” could be intended to aid in their formal recognition and assistance, it can result in several other implications that are more detrimental than helpful. This has been observed in the case of Tuvalu, where government and non-governmental agencies withdraw infrastructure investment based on their identification as “victims” of climate change or “high-risk” areas. Hence, even before the place has become uninhabitable due to ecological conditions, development decisions negatively impact adequate living conditions in these areas (Marino & Lazrus, 2015).

The term “refugee” implies the idea of a forced displacement resulting from immediate risk. This strips the agency of the migrant, whose move could be an institutional and human response, as well as the economic or social circumstances of the population at risk, all of which are taken into consideration by the minimalist approach. Moreover, the possibility of going back is often eliminated in the case of a refugee, but back-and-forth migration is part of everyday life in Tuvalu, “whose economy is characterised by its reliance on migration, remittances, aid, and bureaucracy” (Farbotko & Lazrus, 2012, p. 387). Family obligations and desires are met by generating remittances to the islands by Tuvaluans living, studying, and working overseas, not exercising individualistic opportunism but acting in the national interest. Hence, the migration is not the result of some immediate flooding imperative and “can be considered a source of economic and social strength for Tuvaluans adapting to climate change in the long term, rather than, necessarily, a chronic ‘problem’ to be ‘solved’.” (Farbotko & Lazrus, 2012, p. 388).

Additionally, Tuvaluans living off-island also maintain strong identities and connections to their home island, observing customs and practices and maintaining social relationships and family lineages. They express the ability to return home of paramount importance, demonstrated through the continuous to-and-from flow

of people, goods, and ideas between Tuvalu and the destination country. While this constant movement raises additional issues concerning citizenship and national identity, it is crucial to Tuvaluans, and permanent migration as an adaptive alternative is not viable and too simplistic a solution because of this sociocultural demand (Marino & Lazrus, 2015).

Furthermore, the label of “environmental refugee” is unproblematically applied to entire nationalities of people and is detrimental to the community strength and resilience of Tuvaluans. It results in producing an assumption that for islanders, sea level rise inevitably implies refuge and evokes “a particularly narrow range of subject positions for inhabitants of Tuvalu—either a helpless victim or a climate hero—in a dependent relation with powerful groups in the developed world” (Farbotko & Lazrus, 2012, p. 386), tending towards environmental determinism. The image of the imminent climate refugee is also seen as a symbol of a particular ‘crisis of nature’ for Western evidence-hungry environmental activists wanting to save the planet while simultaneously shifting “alternative perspectives on climate effects, voiced and experienced by vulnerable populations themselves, to the periphery.” (Farbotko & Lazrus, 2012, p. 383). The Tuvaluan civil society itself calls for a rejection of the reductionist climate refugee narrative, emphasising it as the last resort for Tuvaluans in adapting to climate change. They instead wish “for a reframing of the debate on the future of their country in terms of human rights and global citizenship.” (Farbotko & Lazrus, 2012, p. 388).

Critique and Conclusion

While the aim of this paper is not to give any international policy or security recommendations to states dealing with out-migration due to climate change or those who are receiving an influx of eco-migrants, an analysis of the discourse surrounding climate refugees is crucial to further understanding the economic, political, societal, and environmental implications originating out of the climate-migrant crisis. Popular in public and political discourse, the maximalist approach produces empirically unsound quantitative predictions and adopts a narrow, unidimensional relationship between environmental degradation and outmigration. Its sensationalization of waves of refugees has been utilised by far-right parties to portray “effects as causes and further normalise racist border practices and colonial amnesia within Europe” (Turner & Bailey, 2021, p. 1), exploiting the potency of fusing border security and climate issues to provide another rationale for security officials and electorates anxious about immigration and the effects of climate change (Turner & Bailey, 2021).

Tactics like 'eco-bordering' allow for a gradual ‘greenwashed’ injection of security imperatives into the interdiction of immigration by politically constructing security and environmental threats and risks posed by climate migrants in the face of uncertainty. They encourage reactionary nationalistic responses to the environmental crisis through “relying on fallacious depictions of migrants, an ignorance of the material economic drivers of ecological degradation, and a narrow focus on ‘national’ nature.”. The border practices include “visa restrictions, military operations in the Mediterranean Sea, refugee camps, reducing rights to asylum, and coercive integration strategies.” (Turner & Bailey, 2021, p. 3). The racialized migrant families face economic exclusion from access to welfare and policies target their ability to reproduce with dignity (Erel, 2018).

The far-right viewpoint is, however, laden with hypocrisies as it portrays the Global South ‘refugee’ as an unsustainable environmental vandal and depoliticizes the environmental impacts of ‘native’ Global North populations and economies. One could alternatively view immigration as a form of reparation. Colonial empires such as those of Western Europe and the United States have a moral obligation to aid climate refugees as a form of reparations for colonial exploitation and reconciliation for their disproportionate damage to the

environment. Those in the Global North are least exposed to ecological degradation despite benefiting most from the global economy, the primary cause of environmental degradation. On the other hand, “the populations that remain peripheralized in the global economy are set to be the geo-political inheritors of displaced ecological risk” (Turner & Bailey, 2021, p. 15). Enabled by “resource extraction, dispossession, slavery, exploitation, and dispossession of colonised people” (Turner & Bailey, 2021, p. 15), these ‘winners’ and ‘losers’ of the global economy are structural legacies of European colonialism and industrialization, inducing migration in the first place (Agard, 2021).

Moreover, while RWP promotes ethnopluralism, they simultaneously rationalise the dispossession of indigenous inhabitants through European colonial and settler projects, such as in North America. By propagating an imagination of the ‘New World’ as pristine and ‘empty’, white settlers were perceived as the only appropriate stewards of the ‘new frontier’. The native “non-European and indigenous peoples were depicted as poor custodians of their land or ‘savages’ in a state of arrested development and thus too close to nature and animals wilderness” (Turner & Bailey, 2021, p. 5). However, the Europeans engaged in and relied on extractivism and ecological degradation, prioritising the imperial capitalist projects of the European empire over its role of stewardship (Turner & Bailey, 2021). The Global South migrant specifically poses a challenge to right-wing Europeans because they view themselves as “custodians for the future of the nation's legitimate, i.e., white, heterosexual, children” (Erel, 2018, p. 174). The white, hegemonic masculinities and femininities are under threat by the immigrant and nativist policies that only work in the European case, an attempt to return to a traditional society dominated by white people rather than anything else.

The imagination of a certain ‘refugee’ islander is also naturalised and projected to whole island nations in the Pacific under the maximalist approach, determining their inevitable destiny. And while refuge is narrated as their only recourse, they are reduced to being necessary recipients of the compassion and protection of the West, doomed as fearful aliens in their only place of salvation. Hence, these narratives, while protecting the interests of national security in the West, increase rather than address fundamental issues of social inequality. There is a need to transition from a national security approach to a human security and minimalist approach that understands the socioeconomic context of these migrants and their predicament as a product of historic and contemporary processes that produce and reproduce wealth inequalities. There needs to be an end to climate refugee discourses, which entrench vulnerable communities in inequitable power relations, further redirecting their fate from their hands. More importance needs to be given to the voices of these migrants themselves, and understanding the discourse is the first step.

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The Significance of Having a Written Bill of Rights in the Constitution

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Abstract: As the nineteenth and the twentieth centuries brought about democratisation around the world, most countries chose popular sovereignty and enshrined the principles of freedom in a grund norm called the constitution which contained a “Bill of Rights” to ensure that the human rights of the people do not get violated. While some nations chose a written and codified constitution, the others preferred the flexibility of an unwritten one. Whichever the case, a Bill of Rights has always defined the dimensions of power beyond which the government of a nation cannot infringe on any individual’s freedom. In this paper, the author has attempted to carve out the importance that a written Bill of Rights has. The author has attempted to argue for the need for a “written bill of rights’ in a nation’s grund norm: its constitution. She has also made endeavours to link the need for a written bill to be backed by a competent judiciary that has enough force to ensure that the legislature does not misuse its power in the exercise of its functions. The author has cited examples of various nations which are governed and not governed with a written charter and analysed the effectiveness of such measures in safeguarding basic human rights. Due to constraints, detailed accounts of the human rights situations have not been presented but an effort to explain the enforcement mechanisms has been made. The primary focus of this paper is on the need for and importance of written charters in written constitutions.

Keywords: Rights, comparative, constitution, governance

Introduction

From the eighteenth to twentieth centuries, there was a shift from colonialism to a democratic form of governance around the world. In these countries, as democracy became the regime, power was vested in the people, and popular sovereignty was chosen over parliamentary sovereignty. Having seen an easy shift of power from their regional monarchy to imperialism, these nations understood well the need to protect their inalienable rights. Hence, these states patterned the model of their democracy on a system of governance of ‘We the People’ and gave themselves a constitution to safeguard their interests. Most such states incorporated a ‘Bill of Rights’ into their constitutions and vested in it the authority to ensure that rights in the charter were not violated.

On the other hand, many major countries, such as the United Kingdom and its dominions like New Zealand, have an ‘unwritten’ (uncodified) constitution and prefer the flexibility of their systems. However, as it has been seen time and again, people have propagated for a ‘written’ (codified) document owing to the power imbalance and issues of accountability. For example, consider how the decision on Brexit was left hanging in the air for a long time until the question regarding parliamentary approval was resolved. This is not to say that countries not deriving their rights from a single written document are fragile democracies, but rather to argue that written rights in the ‘grund norm’ clearly define the scope, length, and breadth of power

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and responsibility in a nation, thus providing a safeguard against possible tyranny and curtailment of the rights of the citizens.

Understanding the Bill of Rights and the Significance of its Documentation in the Constitution of Nations

A Bill of Rights is a document in which the fundamental rights of humans are enshrined. The evolution of rights from the Greek philosophy to the ‘Jus Naturale’ philosophy of the Romans only diversified as more European nations inculcated the ideas. The ‘Magna Carta’ of King John of England (1215) became the United Kingdom’s Bill of Rights (1689), recognising that certain rights are essential to humankind and that not even the king was above the law. Post the revolutions of the eighteenth century, the ‘French Rights of Man and Citizen’ and the ‘American Bill of Rights’ came into existence and established the modern concept of rights. (Jasaiwal and Mishra, 2020). Most post-colonial nations that established liberal democracies gave themselves a Bill of Rights preserved in a constitution as their custodian. Countries like the United States, South Africa, India, and many others follow this model where the sacred rights of the people are derived from the constitution, which is the basis of popular sovereignty. So, what does a Bill of Rights do?

The answer essentially is that it is a safeguard against the authoritarian attributes that a state may display. Proponents of negative liberties like Isaiah Berlin and Hayek argue that the states must refrain from initiating any interference in the lives of their citizens. This argument is based on the presumption that state action will infringe on the liberty of individuals and hamper their right to choose. This implies that there is a fear inherent that states will often misuse power and hamper the liberty and freedom of individuals. A Bill of Rights ensures that the state is unable to do so. An important factor, however, concerning the bill is that its mere existence is not enough. Time and again, it has been observed that a shift from democratic regimes to tyrannical ones often leads to the amendment of the Charter of Rights and causes mass deprivation of liberty. Thus, rights that protect require immunity from serving the fate of an easy suspension like the German Basic Law (Brennan, 1989). The longevity of the Magna Carta, designed to protect against the king’s powers, as opposed to the much more recent French Rights of Man and Citizen, is owing to the former’s mechanism of enforcement and the latter’s failure to remedy infringements (Brennan, 1989). Thus, a Bill of Rights can be a guardian of liberty only if it is created in a manner that complements the protection of rights against the governing authority. It is interesting to note that at the international level, various instruments confer rights on all the people of this world, but still, such a bill is violated day in and day out because they are just aspirational, non-binding documents. Consider, for example, the Universal Declaration of Human Rights. While a large number of states have agreed to implement the declaration, it has no mechanism to hold the states accountable (Soken-Huberty, 2021). So, the problem is how to ensure that these rights of individuals are implemented and not diminished by states. Is there a method that can regulate the conduct of states and guarantee people their essential rights?

Most nations that attained self-determination from colonial domination had ascertained this problem beforehand, and thus, as a solution, they chose to safeguard their rights by incorporating them into their constitution. But alongside being a guarantee in the constitution, these rights must be protected in such a manner that they cannot be suspended or easily amended. India, for example, has enshrined the rights of its people in Part III of its constitution as ‘Fundamental Rights’. To ensure that these fundamental rights are not violated, a mechanism is provided in Article 13 of the Indian Constitution. This method of judicial review can strike down acts of the parliament as unconstitutional whenever they conflict with the fundamental rights. The Supreme Court in the landmark case of *Kesavananda Bharati v. Union of India* (1973 4 SCC 225) established

the famous ‘Basic Structure Doctrine’ and ruled that the parliament can amend any provision of the constitution other than its basic structure. It further found the fundamental rights in Part III to be a part of the ‘basic structure’ and held that the parliament, under its wide amending powers under Article 368, could not amend them. (Tungekar, 2021). Judicial review empowers the courts to maintain checks and balances on acts of the legislature and enables the court to endorse the charter of rights in the Constitution. Similarly, when these fundamental rights are violated, the High Court and the Supreme Court have the writ jurisdiction (The five writs are - Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo-Warranto) to hear matters and issue directions for the rights of individuals to be upheld.

It is pertinent to note here that not even the laws made by the parliament or legislature can supersede the fundamental rights guaranteed to our citizens, and the laws that do so can be struck down. Thus, we, the people of India, and not the parliament, are sovereign. Since the constitution is the custodian of the soul of our democracy, any act that is against the fundamentals of the constitution is invalid. This pattern of checks and balances that gives the judiciary powers to validate or invalidate the laws made by the legislature has been borrowed from the American system. The American Supreme Court in *Marbury v. Madison* laid down the competence of the federal court to declare acts of Congress against the constitution as void. This power is derived from Articles III and IV of the Constitution of the United States (Bartley Law Office, 2022). The underlying principle is that judicial competence can be exercised while interpreting an act of congress, and if the alleged act is *ultra vires*, it can be struck down as unconstitutional. This power to set aside acts of the legislative body is purely of American growth and has wholly been derived from the written constitution established there (Kent, 1872).

Thus, after observing how the liberty of the nations of India and the United States has been preserved by a Bill of Rights enshrined in the constitutions of these countries, it can be said that both India and the States have a coinciding factor that safeguards the rights of their citizen, and that is a written constitution-more so, a written Bill of Rights in the constitution. An argument that is crucial to note here is that these constitutions have judicial review and enforceability of the rights, but it cannot be denied that these safeguards are easy to implement when these rights are well defined in clear written texts. Consider, for instance, what would be the case with these countries had there been no written texts to help the judges interpret acts of the legislature and understand whether they are *ultra vires* or not. Or if there were no fundamental rights but mere oral rights delinked from the Indian constitution? Would judicial review have succeeded then? Now, imagine more so: had rights been absent from the constitution, would it have been possible for the judges scrutinising certain legislation to realise that the legislation violates a core fundamental right and strike it down? Exceptionally, it is possible, yes, but in most cases, it would have led to confusion and chaos. The lack of an authoritarian declaration to ascertain what fundamental principles shall guide these judicial decisions would lead to the assertion of an indefinite power and expose constitutional law to uncertainty and disaster (Kent, 1872). Charles Kent in his article argues that legislature, while legislating, would transgress someone’s or the another’s notion of proper government, and when this happens in the absence of written fundamentals that ought to be protected, all is at risk of being set aside (Kent, p. 736). Thus, a written bill holds great significance. A written charter of rights backed by the power to enforce them authorises the judges to uphold the liberty of individuals against political and oppressive majorities. The evolution of legal systems in countries like America has proven the fact that paper protections are a need, especially in times of crisis (Brenan, 1989). As former Associate Justice of the American Supreme Court William Brennan puts it, “A judge armed with pure reason cannot stand against a frenzied mob” (Brenan).

The pattern of development showcased by the Indian Supreme Court in interpreting the ambit of fundamental rights from its decision in the *Shankari Prasad v. Union of India* (1952 SCR 89) to the translation of the same interpretation in a broader sense as held in the *Kesavananda Bharati* judgement is a reflection of the fact that written provisions can enable the judiciary to understand the same subject in different light with changing times. The Apex Court in the former case held that the parliament could amend any part of the constitution under Article 368, but in the latter, it took the view that the powers of the parliament are unlimited as long as they do not change the basic structure. Another instance can be seen in the variation in the judgments of our Supreme Court in *A.K. Gopalan v. State of Madras* concerning the scope of Article 21 and wider articulations of the same article in the later decisions. The charter of rights of any nation, or more essentially, its constitution should be an evolving document to look through the lens of time and still uphold the liberty of its individuals. The aim of a Bill of Rights is not merely to always be relevant at a time but. It is a reasonable form of collective self-restraint to protect minorities from majoritarian passions (Brenan, p. 432).

Some states, like South Africa, have adopted the same model as the United States and India. The Bill of Rights is codified and inherent in Section 2 of the Constitution of South Africa. It accords certain rights to both citizens and non-citizens alike. The Bill of Rights includes the rights to equality, human dignity, freedom and security of persons, and freedom of religion and expression, which are enforceable against the state. These are, hence, check on state tyranny.

Countries like the United Kingdom, governed primarily by parliamentary sovereignty rather than the sovereignty vested in its people and qualified by an un-codified and non-compiled constitution, rely on domestic legislation for the protection of their people's liberty. The Human Rights Act, passed by the British Parliament in 1998, is the current Bill of Rights document for the United Kingdom. The courts in the U.K. declare the actions of anybody invalid when they surpass its authority or act *ultra vires* to the powers conferred on them. It is interesting to note that only agencies acting out of their powers are subject to judicial review, not the parliament or its enabling legislations (Edlin, 2009). The courts work under the assumption that parliament would not pass a law against the principles of the constitution (Eldin, 2009). In cases where the parliament enacts legislation contrary to the Human Rights Act, the courts simply declare that the two are not in consonance, and the parliament enacts subsequent legislation to counterbalance the deviation. Here, a question arises: what exactly protects the fundamental rights of the people of the U.K. from being violated, and how is liberty ensured without a written constitution? Well, the mechanism provided by the various sources of law and the acts of the parliament has so far worked favourably for the nation. But demands for a written constitution have been observed for quite some time. Proponents of a constitution increased substantially during the Brexit debates when issues that could not be resolved with the existing laws came to the surface. Lord Bingham, the former Chief Justice of England and Wales, famously quoted: "Constitutionally speaking, we now find ourselves in a trackless desert without map or compass" (Subramaniam, n.d.). The redressal of this problem that many feel this powerful nation severely faces could have been solved by codification. Rights that a written constitutional document provides are beyond the amending powers of the legislature, at least by a simple majority (Subramaniam, n.d.). Ambiguous or anti-democratic parliamentary laws cannot supersede a written charter of rights with effective enforcement as people are more aware and have access to documentary evidence due to its codification. Those who are seeking a written constitution in the U.K. advocate that the accountability of the parliament to the people would increase, and a check on the unrestrained power of the parliament would ensure that the rule of law and the rights of citizens are upheld more fairly. Though it seems unlikely, at least currently, a change in the model of governance of the United Kingdom may inspire nations across the world that have patterned their sovereignty on its design. Dominions

like Australia, whose constitution lacks a charter of rights, may incorporate them, and this may cause a ripple effect on the other states.

Conclusion

Isaiah Berlin, in his ‘Two Concepts of Liberty’ states, “I am normally said to be free to the degree as to which no man or body of men interferes with my activity.” (Berlin, 1969) This statement individually holds good even with the modern welfare states and their conception of liberty. As long as one is their own master in thoughts, words, and actions, they experience unhindered freedom. Liberty has been recognised as the essence of human life. People have rights that coincide with their liberty. Since these two go hand in hand, safeguarding the rights of individuals is the first step towards protecting their liberty. The governance to which the people of nations have surrendered their rights must ensure that they do not hamper them by majoritarian populism or totalitarian measures. These inalienable rights must be protected, and the public must be aware of these protections. While various bills and charters are available, they are only effective if they are enforceable. And enforceability is a matter of how much power is held in the hands of those who run the nation. A system of checks and balances is necessary to protect rights and prevent violations. Therefore, these charters need to derive their legality from a clear and primary document that can serve as a source of all rights and duties in a state: a constitution. This constitution must be such that it is not at the mercy of those who hold power but maintains scrutiny of their actions. In the words of AC Grayling, “a constitution not at the whim of any current administration is a sterner guardian of rights and liberties than a constitution malleable to partisan and passing interests.” (Subramaniam, 2022) Only a document backed textually can maintain its effectiveness against states’ arbitrary measures, and when the rights of individuals flow from such a written ‘grund norm’, they are difficult to tamper with. A written Bill of Rights in the constitution of any state empowers the public and arms them with checks on the conduct of their governments when assisted by a capable judiciary. A written Bill of Rights complements the written constitution as its integral part, and a written constitution makes these written bills of rights indispensable. Together, they add to each other’s significance.

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Some Aspects of The Criminal Tribes of Rajputana with Special Reference on The Working of Criminal Tribes Acts

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Abstract: This paper attempts to investigate how the discriminatory Criminal Tribes Act of 1871 perpetrated grave injustices against nomadic groups across British-ruled India. Specifically, it scrutinizes the Act's dehumanizing rationale in classifying entire indigenous communities like the Sansis, Berias, Minas and Bawarias of Rajputana as "born criminals", restricting their movement, enabling heightened surveillance over them, and forcing them into coercive labor - thereby inflicting severe and lasting hardship.

Keywords: Tribes, Refugees, Rajputana, Criminal Tribes Act, nomadic

Introduction

On the seventy-first commemoration of Vimukta Day, a day marking the abolition of the infamous Criminal Tribes Act of 1871, Justice K.V. Viswanathan delivered a stark and potent keynote speech. He stated that: "The shadow of the British-era Criminal Tribes Act still looms large over India today, almost seven decades after its repeal". This statement demands more than mere acknowledgement; it necessitates a critical examination of the Act's enduring legacy and its continued impact on the lives of millions. (Khanna, 2023)

The Criminal Tribes Act, a draconian instrument of colonial control, unleashed state-sponsored oppression against over two million Indians belonging to nomadic and semi-nomadic indigenous communities. Branded as "born criminals" under this discriminatory legislation, entire tribes suffered the stripping of their dignity, the throttling of their mobility, and the devastation of their lives under a relentless regime of surveillance, harassment, and displacement. The Act's stain extended beyond its immediate victims, etching itself onto the societal fabric of India, leaving behind a legacy of stigma and marginalization that continues to cast a long shadow even today.

The paper analyses the oppressive impacts of the controversial Criminal Tribes Act (CTA) of 1871 and subsequent legislation that criminalized and marginalized nomadic communities across the princely states of Rajputana. This paper examines how the Act's provisions enabled the branding of entire tribes as "criminal by birth", the restriction of their movement, heightened surveillance over them, and forced labour - all of which inflicted sustained misery. For a better understanding of the acts and their impacts, the geo-cultural territory defined for this paper is the Rajputana region. The paper will also highlight the provisions used to target mobile indigenous groups, like the Sansis, Berias, Bawarias, and others, in the Rajputana region in western India. Additionally, the paper explores the rationale behind bringing these formerly autonomous communities under the ambit of such a draconian law.

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The aim of this paper is to understand the most oppressive aspects of the Act along with how its provisions unleashed state-sponsored marginalization of vulnerable groups in Rajputana. It also highlights the enduring social, economic, and humanitarian impacts of this injustice on the native people.

Historical Background of the Nomadic Tribes in the Indian Sub-Continent

Nomadic communities have been referenced across Indian literature, from ancient governance treatises like the Arthashastra to epic texts including the Ramayana and Mahabharata as well as Buddhist Jataka tales. Historically, many of these mobile groups were involved in oral storytelling, acting, singing, and other performative arts. Specifically, the *Suta* were wandering bards and genealogists who maintained royal dynastic records before the Puranic age. Additionally, these tribes served as soldiers, healers, and horse and elephant handlers - crucial roles across medieval kingdoms. (Thapar, 2013, p.123)

Early Indian texts on governance were apprehensive of nomadic communities, advising kings to keep a close eye on their movements and limit their activities. (Olivelle, 2014, p. 110-115) Village life and the economy were tightly controlled by the state, and nomadic groups were often seen with suspicion. Kautilya's Arthashastra, a key text on politics, suggests barring performers and entertainers, like actors, dancers, and musicians, from entering villages entirely. (Thapar, 2013, p. 123)

Nomadic and semi-nomadic communities that were criminalized under The Criminal Tribes Act 1871 and subsequent legislation were very diverse communities and followed the diverse socio economic and cultural practices. During medieval times in India, a few of the nomadic communities occupied important economic roles, especially the Banjaras. (Chaudhary, 2018) Much of the trade within the subcontinent depended on the caravans operated by these wandering groups. They were pivotal in facilitating long-distance commerce and carrying food grains from agricultural surplus areas to deficit regions, including during famines. The communities acted as merchants themselves while also serving as carriers for other traders and dealers. (Bhukya, 2010, p. 232)

As research on oral histories shows, groups like the Lambadas (formerly called Banjaras) had a long-established presence across Indian political regimes - from the Delhi Sultanate and Vijayanagara empire in the 13th-15th centuries, through the Mughals in the 16th-17th centuries, to the Nizam and British in the 18th century. The presence of banjaras in the North - West part of the subcontinent can be traced from the work of Manisha Chaudhary, which elaborates how apart from being the traders and suppliers, Banjaras were also important strategically as they were the important for the food and ordnance need of the army and to take goods to the imperial camp and capital. The role of Banjaras was important not only in the economic sense but also because they contributed immensely to the culture and settlement pattern of the places they were travelling for trade and related activities of transportation. (Chaudhary, 2018) They were the primary transporters of commodities and provisions throughout pre-colonial India. Their mobility and transport skills made them vital allies for military campaigns across the subcontinent's kingdoms as well, with armies utilizing them as baggage trainers and food supply carriers through harsh terrain. (Bhukya, 2010)

Moving ahead in this direction, researchers have also indicated that certain sections of some of the group/tribes that were declared criminal followed trading and raiding or agriculture and raiding, dacoity etc. as case maybe. (Chaudhary, 2021) In some cases a certain section of the community began to regard raiding as a hereditary calling and had developed an elaborate code of discipline, formalities, and even, rituals. They

lead more or less a nomadic life and wander from place to place in search of opportunities. There were numerous examples of piety crimes, road robbery, and dacoity in the medieval period. Even the Farman of Jahangir talked about the thieves and robbers carrying away people's goods in isolated places and pressed on the need to populate the *qasbas* by arranging water tanks, *sarais* and masjid at the uninhabited and "wasteland". (Sinha, 2008, pp. 1-33) The modus operandi of crime of these people differs from tribe to tribe and from locality to locality. The specialization in certain crimes by a tribe in a particular area depends very much on the local conditions or the surroundings and environments of the place concerned. (Bhargava, 1949, pp.1-65) Particularly, in Rajasthan the raids conducted on the traders, settled people or caravans for animals, treasure and other items are significant to prove that raids were norms due to absence of the settled economic activities. (Chaudhary, 2021)

Mapping the Nomadic Tribes in the Rajasthan Region

There is limited definitive historical information about the origins of the Criminal Tribes of the Rajputana region. However, most of these tribes trace their ancestry back to Rana Pratap of Chittorgarh. They generally point to the siege of Chittorgarh by Alauddin Khilji in 1308 AD as the time when their social status began to decline. According to their oral histories, their nomadic lifestyle developed primarily as a strategy to evade persecution, save themselves, and preserve their religion in the face of advancing Islamic conquests in the region. (Bhargava, 1949, pp. 1-65)

The Bawariyas were a prominent nomadic and tribal group located in the mainland of present-day Rajasthan. They are said to be divided into three subgroups: the Bidawatis originally from Bidawar village in Jaipur state, who now reside in Bikaner; the Kalkataliyas of Punjab's Ferozepur and Sirsa districts, who are black blanket weavers by occupation; and the Kaparias near Delhi. Of these, the Kalkataliyas and Kaparias have retained their traditionally nomadic lifestyle, sustaining themselves by hunting while constantly on the move from place to place. (Bhargava, 1949, pp. 1-65)

Certain subgroups among these tribes were notorious for brazen crimes like dacoities (armed robberies) in broad daylight, theft from government officials' encampments, and "*nakabazi*" - gaining access into buildings by breaking holes in walls to steal goods from the interiors. (Bhargava, 1949, pp. 1-65)

The Harburas were another major tribal group in Rajasthan. (Bhargava,1949) Folklore among the Harburas states that one of their forefathers named Rig cruelly hunted and killed a hare. Upon witnessing this cruel act, Sita (the wife of Lord Rama) cursed Rig and his descendants to eternally lead degraded lives begging, stealing, and hunting for survival. This myth of divine condemnation has been culturally woven into the Harburas' identity. (Bhargava, 1949, pp. 1-65)

According to William Crooke, the nomadic tribe "Kanjars", is derived from the Sanskrit words "Kananchara", meaning wanderers of the forest. The Kanjars living in Punjab and Rajputana claim they originally served as bards (Bhats) for Jat and Rajput patrons. Over time as that occupation became less lucrative, they had to supplement their income through other means. Some still remember the ancestral lineages of the families they served and receive customary payments. Colonel Tod wrote that the Kanjars performed menial jobs for various castes, gradually developing exclusive service relationships - effectively causing sub-divisions among them based on which caste they served. (Bhargava, 1949). This is further evidenced in Rajasthan where Kanjar subgroups align with specific castes - the Bamnavats serve Brahmins,

Bhangawats serve the sweeper caste, Shedawats serve the Rawat warriors, Jalfawats serve the Koli fishermen, and Thiyawats serve the Ahir cow herders. (Bhargava, 1949, pp. 1-65)

The nomadic tribe "Sansi" is thought to derive from the Sanskrit word "Shvasa" meaning breath or life. (Bhargava, 1949). The Sansis trace ancestry to a founding figure called Sahasmal. Some scholars classify related communities like the Berias, Haburas, Bhatu and Kanjars as Sansi sub-groups. Their claimed place of origin is Bharatpur, where they supposedly served as bards and minstrels for the Jat patrons. The Sansis have two broad divisions - the Kalkas considered pure Sansis, and Malas deemed mixed-ancestry since only one parent was Sansi. In Sialkot, Sansis state that once a king banished his immoral daughter who then birthed an illegitimate male child named Sansi. (Bhargava, 1949, pp. 1-65)

This Sansi grew up to be a notorious criminal with two sons, Baindu and Mala, who fathered 23 Sansi gotras (clans). In Rajputana and Bengal, the core ancestor is said to be Sahasmal, a famous dacoit from Lekhi jungle. Sansis in Jhang, Punjab claim descent from Panwar Rajputs. In Rohtak, they are called Kanjar-Sansis. While Sansis in Gujranwala and Gujrat are Muslim, elsewhere in Punjab they are Hindu. (Bhargava, 1949, pp. 1-65)

Minas are another important tribal group and stand out as a particularly significant community dominating much of the state's current demography and landscape. Historically, they split into two groups - the Zamindari (landowners) and Chaukidari (watchmen). This happened after the fall of the Mina kingdom of Ambar. Those Minas who surrendered to invaders were granted lands, while rebels were dispossessed. Eventually, some of the deprived rebels resorted to crime. The authorities appointed certain Minas as village watchmen (chaukidars) to curb offenses and catch offenders from their tribe. Over time, these watchmen also got labeled "Chaukidari Minas". Further, even some among them who were entrusted with guard duties ended up being declared as criminal tribes due to habitual crimes. Their main tactic was disguising themselves as mendicants, woodcutters, or grass sellers to gain people's trust and survey target areas before robbing them when opportunities arose. (Bhargava, 1949, pp. 1-65)

Thus, these designated tribes encompassed individuals from diverse backgrounds, comprising both men and women hailing from nearly all castes, tribes, and social strata. Nevertheless, certain commonalities can be discerned among these groups. Predominantly, the majority of criminal tribes originated from underprivileged backgrounds, lacking land ownership, formal income, economic sources, or a recognized standing within the caste system (Satya, 2011, p. 1-5). Many among them were descendants of communities compelled to abandon their traditional lands and occupations, a consequence of subjugation by dominant powers.

These communities were brought under the purview of the British colonial administration's Criminal Tribes Acts (CTAs) of 1871 and 1924, leading to the categorization of these nomadic communities in Rajputana as "criminal tribes." The implementation of these Acts marked a significant chapter in the history of social regulation, as they brought under legal scrutiny and categorization various groups that were often marginalized and already grappling with socio-economic challenges.

Understanding the Criminal Tribes Act

Even before the enactment of the controversial Criminal Tribes Act in 1871, certain indigenous groups had already been branded as "criminal tribes" by administrations in British India. The Thuggee and Dacoity

Department established in 1835 was one such measure under which occupiers of property were made responsible for the movement of “predatory tribes” (Didwal, 2021b, p. 162). Specifically, the Judicial Commissioner of the Punjab as well as the Local Government of the Northwestern Provinces and Oudh had issued orders during the second half of 1850s and 1860s regarding the registration, detention or strict monitoring of nomadic tribes they deemed as habitual offenders. (Didwal, 2021b, p. 162))

Scholars have also tried to relate the criminalization of the Banjaras with the simultaneous introduction of railways in the northern part of the subcontinent. as with the growth of railways (a organized and monitored transport system) there was no more need of the Banjaras (Who were heterogeneous and not easy to monitor) for the transportation (Chaudhary,2018). Also it was the British rule that considerably changed the ecological, social, political and economic system of the rural India, due to which many communities lost their traditional means of livelihood and resorted to illegal activities such as resort to theft, stealing and other criminal activities. (Didwal,2021a, p. 161)

The Criminal Tribes Act (Act No. XXVII, 1871) or the Act for The Registration of Criminal Tribes and Eunuchs was legislated as the name suggests for the registration, surveillance and control of certain criminal tribes and eunuchs. This act was majorly applicable to the Northwest Province, Punjab and Chief Commissioner Province of Oudh (CTA Sec. 1) but with the criminal tribe amendment act 1897 (Act No. II, 1897) a provision was added that allowed for the extension of the Criminal Tribes Act of 1871 to any local government (means British Indian provincial/commissioner province), “provided that any local government with the previous sanction of the Governor-General in Council, can declare the application of the all or any provisions of the act applicable to the whole or part/parts of territory under its government in the local official Gazette. (CTAA Sec. 2)

With the passage of the Criminal Tribes Act 1911 (Act No. III, 1911) which replaced the Criminal Tribes Act 1871 and amendments to it, the law was made applicable to the whole of British India. (Sec. 1(2), Criminal Tribes Act) Some more changes to the act were made in 1924 through the Criminal Tribes Act 1924 (Act No. VI, 1924), which continued to be in force till the repeal of this act through The Criminal tribes (Repeal) Act, 1952 (Act No. XXIV, 1952). (Lok Sabha Secretariat, 2024)

The Criminal Tribes Act, of 1871

This act was divided into two parts and 31 sections of which part one and section one to section twenty-three deal with the criminal tribes while part two and remaining sections had provisions related to Eunuchs.

In this act, if the local government has reasons to believe that any tribe, gang or class of person is addicted to the systematic commission of non-bailable offenses, it may report the case to the Governor General in Council and request their permission to declare such tribe, gang or class to be a criminal tribe. (Sec. 2, The Criminal Tribes Act, 1871). The report shall note down the reason for addiction to the crime and the nature and circumstances of the offense in which the tribes concerned are involved. (Sec. 3, The Criminal Tribes Act, 1871). The local government shall also see if the tribe has any fixed place of residence or not and check whether the place of stay or occupation is just for the pretext of committing the crime or real. (Sec. 4, The Criminal Tribes Act, 1871). If the Governor General in Council is satisfied with the report of the local government to declare a tribe, gang or class as a criminal tribe, he may authorize the local government to declare such tribes, gang or class as a criminal tribe with publication in the local gazette notifying the same.

(Sec. 5, The Criminal Tribes Act, 1871). The notification declaring the tribe, gang or class as a criminal tribe cannot be questioned in a court of law. (Sec. 6, The Criminal Tribes Act, 1871.)

The act also had provision that proposals should be made for the settlement and livelihood of the tribe, gang and class in the report to the Governor General in Council for the declaration as criminal tribes (Sec. 3&4, The Criminal Tribes Act, 1871). This provision imposed additional burden and responsibility on the part of the government which many times hindered the implementation of act in case of certain tribes. Due to this it was relaxed in the future amendment to the act.

Through simple reading of the above provisions, it can be gazed that the aim of the act was to control the crime by keeping watch on the member of the tribe, gang or class and to help them to reform and rehabilitate themselves. but as can be seen form the actual working of the act, it was the surveillance and punishment which took precedence over resettlement. (Didwal, 2021c, p. 167)

After declaring the tribe, gang or class as a criminal tribe in the local gazette by local government, the District Magistrate has to make a register of all the members of such tribe, gang or class (Sec. 7, The Criminal Tribes Act, 1871). The members of such tribes have to come to register themselves at the designated place failing which without lawful excuse they have to face action under the IPC 174 (Non-attendance in obedience to an order from public servant) or 176 (Omission to give notice or information to public servant by person legally bound to give it.) or 177 (Furnishing false information) as the case may.(Sec. 8&9, The Criminal Tribes Act, 1871.)

The register made was kept with the District Superintendent of police who shall report to the district magistrate for the alteration by erasure or addition in the said register. (Sec. 10, The Criminal Tribes Act, 1871). No alteration was made to the said register except by order of the District Magistrate. (Sec. 11, The Criminal Tribes Act, 1871). The complaint of an aggrieved person who feels their name ought not to be there was taken by the district magistrate who has the power to erase, add or retain the name of the aggrieved person. The appeal against the order of the district magistrate can be taken by the Divisional Commissioner who has the power to review the decision of the District Magistrate. (Sec. 12, The Criminal Tribes Act, 1871.)

Any tribe, gang or class declared as criminal tribe, which has no fixed place of residence may be settled by the local government to a place specified by the local government (Sec. 13, The Criminal Tribes Act, 1871).and the criminal tribes with residence can also be removed to any other place of residence. (Sec. 14, The Criminal Tribes Act, 1871). Before doing so, the local government has to make arrangements for settlement or removal to another place with the concurrence of the Governor General in the Council. (Sec. 15, The Criminal Tribes Act, 1871). The local government may also put the tribe, gang or class declared a criminal tribe in the reformatory settlement. (Sec. 17, The Criminal Tribes Act, 1871.)

Local government also has the power to prescribe the extent of the area to which a person registered as the member of criminal tribe can reside(Sec. 18(4), The Criminal Tribes Act, 1871), the condition on which a pass can be given to such person to go beyond the specified area(Sec. 18(5), The Criminal Tribes Act, 1871.), the condition for answering roll call to see whether a person has been residing in a designated place or not (Sec. 18(7), The Criminal Tribes Act, 1871.), for the inspection of the residences of criminal tribes (Sec. 18(8), The Criminal Tribes Act, 1871), control and supervision of reformatory settlement. (Sec.

18(11), The Criminal Tribes Act, 1871). The people in the reformatory settlement were also made to work at the wages determined by the local government. (Sec. 18(12), The Criminal Tribes Act, 1871.)

Through this control measures local government compelled the members of criminal tribes not to wander without permission, thus by means of registration, pass, roll call and inspection make them under perpetual surveillance of the state machinery.

Anyone not following the above rules made by the local government were subjected to the punishment of rigorous imprisonment which may extend the 6 months, or with a fine or with whipping or with all or any of the two punishments. And on the second conviction on the breach of these rules, the punishment shall be rigorous imprisonment which may extend to one year, or with a fine or with whipping or with all or any of the two punishments.

If person registered under this act was found anywhere in British India without valid pass or run away from reformatory settlement, that person has to be arrested without a warrant by police officer or village watchman and must be taken before district magistrate who after checking all the facts shall order the removal of such person to the district to which he ought to have resided or the reformatory settlement from which he has escaped. (Sec. 20, The Criminal Tribes Act, 1871.)

It was the duty of village headmen, village watchman and occupier of land in which such a tribe, gang, or class of person who has been notified as criminal tribe dwells to inform the nearest police station if that person hasn't appeared or given information for registration under section 8 of this act and departure or arrival of such person from/to village. (Sec. 21, The Criminal Tribes Act, 1871). Failing this village watchman, headman, and occupier of land can be prosecuted under part 1 of section 176 of IPC (Sec. 22, The Criminal Tribes Act, 1871.)

The act provided too much discretion to the local government and district magistrate from making rules to categorizing a band or tribe as criminal and registering the members of such a tribe. Many times, this led to generalization and blanket declaration of the whole community as criminal, although this was not always the case as shown by some scholars. Research on tribes and their related aspects is not easy due to the lack of relevant data. The research related to tribes in Rajasthan is mostly related to the social and cultural aspects of the tribes. The internal differences within the large communities such as Mina tribes of Rajasthan were easily blurred under such scenarios. The Mina community in the Eastern Rajasthan was primarily agriculturist while Minas of Marwar and Shekhwati were into banditry and Chowkidari. Historians such as Suraj Bhan Bhardwaj has criticized the reliance of historians on British state agencies' data that categorized the whole community as a criminal tribe under the Criminal Tribe Act of 1871. He has thoroughly analyzed the presentation of the tribal structure of Minas during the early phase of the Kachhawa – Mina struggles beginning from the 10th century. (Bharadwaj, 2022, pp. 22- 35)

Further Changes to The Act

The Criminal Tribes Act was amended in 1897 which not only allowed for the extension of the criminal tribe act 1871 to the whole British territory by the permission of Governor General in Council (Sec. 2, Criminal Tribes Amendment Act, 1897) but also made provisions that empowered the local government to establish separate reformatory settlements for children (aged 4-18) away from the reformatory settlement for the parents

- who belong to tribe, gang or class (or portion or members of it) declared as criminals. (Sec. 17A (1), Criminal Tribes Amendment Act, 1897)

The 1897 amendment also enhanced punishment for certain offenses, second convictions, and violations of the rules of local government. (Sec. 19&19A, Criminal Tribes Amendment Act, 1897) Mere suspicious circumstances were enough to punish the member of the criminal tribe for the reason that they might be there to commit theft or robbery and was punishable with imprisonment that may extend to 3 years and also liable for a fine. (Sec. 19B, Criminal Tribes Amendment Act, 1897)

The criminal tribes act 1911 made the law applicable to the whole of British India. This act repealed the previous Criminal Tribes Act of 1871 and amendments (1876 and 1897) to it, although a major portion of this act was similar to the previous legislation. Through this act, the local government was empowered to declare the section or part of a tribe, gang, or class as a criminal. (Sec. 3, The Criminal Tribes Act of 1911). Application of the Act of 1871 involved certain practical difficulties which the new Act of 1911 was designed to remove. One of the objectives of the Act of 1911 was to enable the local governments to proclaim criminal tribes by their own authority and provide for the registration of their members without reference to the question of settlement or the provision of the means of livelihood as necessitated by the old legislation. (Neela, 2015)

It also empowered the Governor General in Council and local government to establish industrial and agriculture settlements along with reformatory settlements. (Sec. 16, The Criminal Tribes Act of 1911) For the children of criminal tribes industrial, agricultural, and reformatory schools were established through this act, away from the parents. (Sec. 17, The Criminal Tribes Act of 1911) the age of children was however changed this time to 6 to 18. The children in the reformatory school were "youthful offenders" and were placed under the guardianship of a superintendent under sections 18-22 of the Reformatory School Act of 1897. The decision of the Governor-General in Council and Local Government regarding the declaration of criminal time, restriction on their movement, and addition of area to the restriction cannot be "questioned" under any court of justice. (Sec. 18, The Criminal Tribes Act of 1911)

The Criminal tribe act 1924 which replaced the Criminal Tribes Act 1911 and amended it made certain new provisions like the power to take a finger impression of any registered member of the criminal tribe. (The Criminal Tribes Act, 1924 Sec. 9) person belonging to the notified tribe have to report themselves to the authorities at fixed intervals. (The Criminal Tribes Act, 1924 Sec. 10(a)) and notify their place of residence, intended change of residence, and absence and intended absence from residence. (The Criminal Tribes Act, 1924 Sec. 10(b))

The criminal tribe act was repealed after independence on the recommendation of the Ananthasayana committee by the criminal tribe's law (Repeal) Act, 1952.

Criminal Tribes Act, A Colonial Tool for State Machinery

The British administrators essentially viewed these so-called "criminal tribes" as entire communities predisposed by culture and ancestry to criminality, rather than as individual law-breakers or deviants in an otherwise law-abiding society. Colonial sources described these communities as hereditary "guilds of felons" who were innately committed to the robber's trade by upbringing and bloodline. (Piliavsky, 2015, p. 323 - 354)

In the early 1870s, J.F. Stephen, a British official on the Viceroy's Council in India, characterized the so-called "Criminal Tribes" in the following manner (Piliavsky, 2015, p. 323 - 354):

“The caste system is India's distinguishing trait. By virtue of this system, merchants are constituted in a caste, a family of carpenters will remain a family of carpenters for a whole century from now, or five centuries from now, if it survives that long. Let us bear that in mind and grasp quickly what we mean here by professional criminals. We are dealing here with a tribe whose ancestors have been criminals since the very dawn of time, whose members are sworn by the laws of their caste to commit crime ... for it is his vocation, his caste, I would go to the extent of saying his faith, to commit crimes (from Fourcade 2003)”

Under British rule in India, the Criminal Tribes Act of 1871 labeled over two hundred communities as 'criminal tribes' in an effort by the British to consolidate control over entire regions. H.L. Williams's "The Criminal and Wandering Tribes of India," offered through the lens of a British Raj police officer, presents a nuanced perspective on the colonial rationale on the nomadic tribes of India.(Smith, 2012-2013) In his description of the Bhanu tribe, originally residing between Aravalli Hills and Indus, he seemingly acknowledges their criminal activity with the statement, "The tribe is atrociously criminal," yet subtly undermines this generalization by noting "this criminality is attributed to a band of young bloods" who operate outside the main community. This distinction is crucial, as it suggests that the Criminal Tribes Act, rather than addressing genuine widespread criminality, served as a tool for exerting colonial control over nomadic communities as a whole. (Smith, 2012-13, p. 130)

Furthermore, Williams recognizes the tribe's diverse occupations. Some members, he notes, are skilled artisans, crafting brushes, sieves, and winnowing baskets. Others, particularly in Jat communities, fulfill specialized roles as genealogists, bards, and minstrels. This highlights the internal heterogeneity of the Bhanu and underscores the dangers of making sweeping generalizations based on the actions of a subset of individuals. (Smith, 2012-13, p. 130)

Such ethnographic insights showcase that the Criminal Tribes Act served as a pivotal tool within the state machinery, strategically employed to reinforce and perpetuate the colonial state's dominance in India, the legislation was instrumental in advancing the agenda of the colonial administration by asserting control over specific communities deemed as "criminal tribes". The legislation was instrumental in advancing the agenda of the colonial administration by asserting control over specific communities deemed as "criminal tribes."

According to historian Nicholas Dirks the British colonial administrators arrived in India with an orientalist worldview aligned to their mission of domination. Anthropology in colonial India was officially a project to manage information about Indian social life. Even senior police officers were being appointed as anthropologists. Data became the basis for the marginalization and stigmatization of many communities, especially in the periphery of mainstream society. (Dirks, 2015, pp. 105-106)

The arbitrary notion of 'criminality' was unjustly imposed upon ethnic groups, divorcing the label from any actual criminal behavior. Among the more than two hundred communities subjected to this unfair classification as so-called "criminal tribes" by the British Raj, the Bawariyas, Minas, Sansis etc. The ramifications of the Criminal Tribes Act extended beyond mere categorization, significantly impacting the lives of nomadic tribes by depriving them of basic rights and criminalizing their traditional livelihoods and way of life. (Bhargava, 1949, pp. 1-65)

This oppressive legislation not only targeted specific communities but also delved into their traditional livelihoods, movements, and habitats, providing a framework to further marginalize them. Rooted in dubious anthropological theories, entire communities, including the tribes in the Rajputana region, witnessed the stripping of their dignity as they were branded innately criminal. The far-reaching consequences of such unfounded categorizations affected not only individuals but also entire generations, leaving a lasting impact on the socio-cultural fabric of these communities. Radhakrishna Mina's work sheds light on the historical injustice perpetuated by the Criminal Tribes Act and underscores the need for a nuanced understanding of the complex dynamics that unfolded during this period. (Radhakrishnan, 2001, p. 133)

Conclusion

The Criminal Tribes Acts imposed by British colonial rulers in India stand out as a stark example of state-sponsored oppression, enabled by dubious anthropological theories, that deliberately targeted indigenous communities. In the Rajputana region, tribes like the Sansis, Berias, and Minas are still facing the consequences of this injustice. Driven by questionable anthropological theories and ethnographic profiling, the British administration unleashed state-sponsored oppression that deprived entire communities of basic rights.

By branding native tribes as inherently and hereditarily criminal, the Acts enabled restrictive measures like registration, surveillance, confinement, and forced labor which shredded tribal autonomy and inflicted misery. The fallout was not limited to direct victims - the legislation also etched a lasting stigma into the socio-cultural fabric that continues to marginalize tribes to this day.

While the Acts were eventually repealed after independence, their shadow still lingers. The injustices enabled by the state machinery have crippled generations and entrenched inequality that manifests even now through continued harassment and socio-economic vulnerability for these communities. There is an urgent need for substantive measures focused specifically on uplifting tribes that faced historical persecution under British rule. Affirmative actions, along with legal protection, are key to restoring dignity and enabling vulnerable tribal groups to shape their destinies.

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