



Expanding Access to Reproductive Rights: Using the Law to Guarantee Sexual & Reproductive Health and Rights



Date: 9th & 10th November,
2019

Place: SIHFW, Patna (Bihar)



Report of State Level Consultation
On

Expanding Access to Reproductive Rights:
Using the Law to Guarantee Sexual &
Reproductive Health and Rights

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Acronyms:

HIV: Human Immunodeficiency Virus

AIDS: Acquired Immuno Deficiency Syndrome

ART: Anti Retroviral Therapy

SRHR: Sexual and Reproductive Health and Rights

PIL: Personal Interest Litigation

PCPNDT: Pre-Conception and Pre Natal-Diagnostic Techniques Act

POSCO: The Protection of Children from Sexual Offences Act

LGBT: Lesbian Gay Bisexual and Transgender

NHPS: National Health Protection Scheme

ORS: Oral Rehydration Solution

ABY: Ayushman Bharat Yojana

NHM: National Health Mission

PPP: Public Private Partnership

Introduction:

Health has been characterized as a state of complete physical, mental, social and spiritual well-being, and not merely an absence of disease or infirmity. However, it was soon realized that there are wide disparities within and across countries based on income, gender, locations and social segmentation which push vast majority of the citizens experience adverse health consequences. Therefore, health has become a political and governance issue but above all it is a fundamental human right.

The public health services are inadequate in India. Maternal mortality rates and infant mortality rates are declining is slower than the neighbouring countries. Pregnant women in villages and tribal areas are still not able to access medical care because the sub health centres, primary health centres and community health centres are not functional in the manner as they should be. Another important aspect of sexual and reproductive services is accessibility to safe contraceptive methods. Despite several options for contraception, there is a constant push to promote sterilizations, the whole burden of which falls on women. Quality parameters during sterelisation operations are often found to be below the par due to which large number of sterilisation failure and death cases are reported every year.

Only a very inclusive health policy can increase the status of health in our country and reduce MMR and IMR. Accessibility to good quality health care at affordable rates can help India achieve the goals set by the health policy. For this we need an increase in the health budget as well as demand for free medicines and diagnostics scheme which will reduce the burden on the families while getting medical treatment and will also help eradicate irrational medicines from the market. To attain the goal of universal health care, a separate law is needed to make public health a right. One of the most important aspects in increasing the health standards of a nation is improving the sexual and reproductive health services in the country.

Article 21 of the Indian Constitution provides “*Protection of life and personal liberty*” that clearly states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. Right to Life is one of the fundamental rights that encompasses right to health. One can achieve a good quality life only if she or he attains a high standard of health. Through legal intervention the constitutional mechanism can be used to bridge the gap between government assurances and the abysmal ground realities of the sexual and reproductive health delivery services.

Introduction to the Consultation

In light of the above evidences and indicators, it is very important to ensure that Sexual and Reproductive Health and Rights stay intact. With this objective, Prayas and Human Rights Law Network (HRLN) since past some years have been engaged in promoting sexual and reproductive health rights through varied advocacy measures, one of them being the legal route. In past about five years, Prayas and HRLN have identified more than a thousand incidents from different parts of the country citing diverse violations and denial of sexual and reproductive health and rights and through citizen-based advocacy and legal tool tried to claim justice in those cases. The National Consultation on ‘Sexual and Reproductive Health and Rights in India: Reviewing Laws, Policies and Practices’ jointly was organized by Prayas and HRLN at SIHFW, Patna on 9th-10th November 2019. Purpose of this consultation was an attempt to create a platform where the experience of interventions around SRHR through legal advocacy could be shared with other likeminded individuals and groups and at the same the current laws, policies and practices that impact SRHR can deliberated upon to identify gaps and areas where focused efforts are required. Around 110 participants were participated in this consultation like health activists, legal experts, civil society groups, women organizations, marginalized groups, doctors, lawyers, students, government representatives and media to help understand how using law accessibility to sexual and reproductive health and rights can be expanded.

Objectives of the Consultation

- To create a forum for sharing and discussing good practices, lessons, as well as the barriers and constraints in realizing sexual and reproductive health and rights in India
- To review the existing policies, programmes, schemes and legislations (including international obligations) related to sexual and reproductive health in India
- To deliberate on achievements, challenges and processes in claiming sexual and reproductive health and rights using law
- To sensitize and build capacity among judicial and legal fraternity around sexual and reproductive health and rights
- To equip CSOs and NGOs, especially those working in marginalized communities, with tools and information to make effective use of law in advocacy for sexual and reproductive health and rights
- To identify and draw consensus on issues and agenda for further advocacy, research and action around sexual and reproductive health and rights, especially using law

Welcome and introduction of participants:

Adv. Deepak Singh, State Legal Coordinator HRLN, Patna (Bihar)

The introductory session began with Adv. Deepak Kumar Singh, State Legal Coordinator HRLN, Bihar, articulating the rights of reproductive health and the importance of informed choices with its potential impact on indicators of maternal and child health. He emphasized the need for proper implementation of new schemes for mother, adolescents and reproductive health, with the awareness spreading as a pivotal step. After extending a warm welcome, he briefed the details on coming sessions and the consultation process to be followed.

He set the expectations from the 2-day program as following-

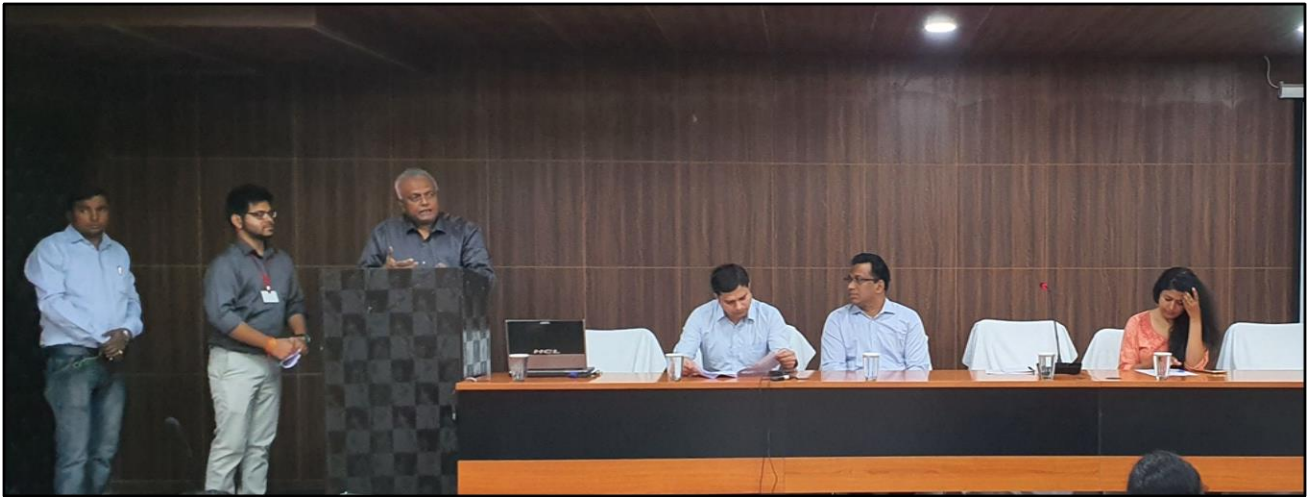
1. Know the programmes and schemes that support Mother, Children and Adolescent sexual and reproductive health in a range of situations.
2. Collation of suggestions and challenges faced in the ground-level implementation of schemes.



Opening Session:

Mr. M. K Sahni, President, BVHA,

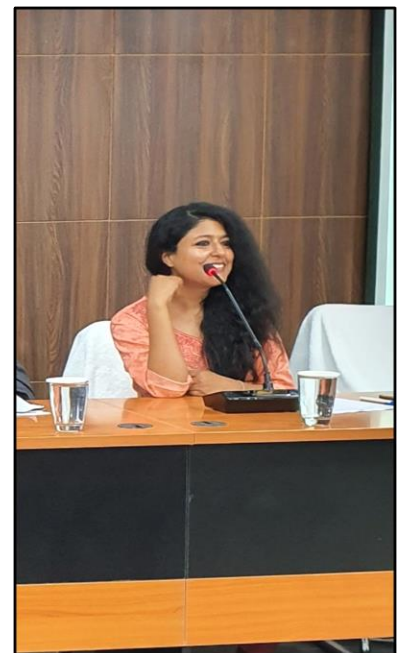
Getting the audience into the perspective of the wellness, disease, and rights, Mr. M.K Sahni, President BVHA, describes how the mere absence of disease is not health and there is more to it in terms of joy, happiness, and peace. He specifies the role of spiritual and mental well-being for desired health, ending with the conclusion that the efficiency to work and perform to our fullest potential is what should define having good health.



Objectives of the consultation:

Ms. Chhaya Pachauli, Director, Prayas

Ms. Chhaya, Director Prayas, cited the process of having the issue of reproductive health turned from personal to societal matter and stress on the urgency to implement the law on reproductive rights to protect the mothers and adolescents. She explained how the need for sexual and reproductive rights emerged from traditions like having several children with nil involvement of mother in making the decision, bringing several negative implications on both mother and children's health. The need then evolved to keep the age and gender neutrality under the laws, while using the law as a weapon to demand better health facilities. She emphasized the role of traditions and societies in the implementation of the rights, with a pressing need for awareness programs to sensitize society about the dignity and value of a mother or would-be mother, irrespective of her age, caste, or status. She invited more participants, thereafter, into an open discussion on how to achieve this.



An overview of SRHR

Mr. Jose Thomas, SRHR Alliance

Adding with concern and some insights on the dismaying state of health care for mothers and expected mothers; Mr. Jose Thomas, State Health of SRHR Alliance, shed light on form of



non-physical violence that curbs the rights to reproductive health in poor communities, bringing the audience into the perspective of the reproductive health law. He expressed caution against the violence on the delivery table, harsh behaviour in handling mothers, absence of a proper mechanism supporting the provision of informed choices and the disturbing attitude that put young mothers in question on exercising the rights for pregnancy. The session sensitized participants by relating the rights of reproductive health with the on-ground reality in the health system.

Thereafter, the forum opened for Q & A session, where panellists answered many interesting questions put forth by participants ranging from the barriers in societal acceptance of the law to how to sensitize the health care providers and more.



Session 2: Cases filed on Reproductive Health Rights in the last five years by the HRLN Patna unit: Achievements and Key Challenges:

The next round of panels comprised of lawyers and managers contributed with their observations on ground level functionalities helping more participants to get the benefits of acknowledgment to their insights by more sharing in the session.

Adv. Deepak Singh, State Legal Coordinator HRLN, Patna (Bihar)

Adv. Deepak brief again about the session outline and shared how the several cases filed under the law has induced landmark judgments like of petitioner Devika Biswas.

Adv. Shashwat, taken over from here to share the statistics of cases filed and resolved. He mentioned that between 2015 to 2019 in total around 100 cases have been filed under several



categories like child labour, maternal death, malnutrition, HIV/AIDS, and more. He explains the process involved in the case resolution by citing the case studies of Indrajeet Vs. NACO for ART centre issues.

Mr. Dinesh Kumar Yadav, State Social Coordinator Prayas, Patna (Bihar)

Mr Dinesh Yadav started with the sharing on the success story of the case *Dhaulti Devi vs State of Bihar* resolving the issues of *Anganwadi* in the region of the lower caste community. He then added personal observations about the apprehension in the community especially from the lower castes and poorest among the poor to exercise their rights, and challenges faced in arranging the documentation to reach out to the court.

He ended by quoting that the remarkable success of the case cited above demonstrates the possibilities if all the efforts are taken. The session was concluded with a round of discussion around PIL and the process involved.

Session 3: Theatrics Play on Save the Girl Child:

An intriguing yet powerful theatrical performance followed the session. Organized by the students of the Central University of South Bihar, Gaya, the short to-the-point play highlighted



the societal pressure for early age marriages and the abuses of women's rights in different phases of life.

Session 4: Rights of Women against Violence and Gender Based Violence:

Ms. Ranjana Das, OXFAM India

The session four opened by Ms. Ranjana Das, Oxfam, mentioning about the consequences of gender differences on the implementation of acts and laws like PCPNDT, POSCO, Child Marriages, Maternal Child health, sexual harassment. The further discussion revolved around the difference between the designing of laws and implementing them, along with the challenges faced by several laws like rights to the female body, right to equality, freedom from discrimination in fundamental rights, etc.



Ms. Deepika, Director of Mashal:



Ms. Deepika, Director Mashal, helped participants to understand how the rights have evolved and the contribution of several movements like *Arya samaj* and *Brahmao Samaj* in the struggle to bring constitutional provisions on the fundamental rights of women, in India.

The session was followed by questions and answers on domestic violence, marital right, and family planning practices.



Session 5: Abortion Rights & Sterilization in view of Supreme Court guidelines

Ms. Devika Biswas:

Session 5 on Abortion Rights & Sterilization in view of supreme Court guidelines, commenced with Ms. Devika Biswas talking about her observations on programmes for women sterilization violating several women's rights on reproductive health. The societal mindset, according to her, needs more changes as it is biased towards women and throws barriers in the functioning of laws, thus, imploring for more activism in spreading the awareness.



Mr. Khurshed Ji BVHA:

Mr. Khurshid E. Ansari, Senior Programmer officer, BVHA - Patna, delivered his lecture with the aid of a power point presentation on abortion rights, pulling questions on provisions of punishment under the abortion act. Demanding the attention in the association between abortion and maternal deaths due to improper or blurred understanding of the rights, leading to several deaths due to unsafe abortions. Clarifying the doubts raised after the presentation he elucidated that the privacy, confidentiality, consent is the part of the law and any girl under 18 years of age can come with a friend or guardian and any girl over 18 years of age can come on her own for abortion if required.



Session 6: Access to Contraceptive Services, Sexual Minority and Gender Rights Initiative:

Ms. Chhaya Pachauli, Director, Prayas:



Post-lunch session was about detailing the proper family planning choices. Bringing the focus to various form of contraception, Ms. Chhaya, make the participants aware about the violation of women rights on her body when hospitals undertake operations as the only resort, often with the intention of income generation. She throws cautions towards frivolous surgery and unnecessary surgical removal of uterus for sterilization (Hysterectomy), quoting that hysterectomy has become the highest number of the surgical process that happens in India.

Reshma Prasad, Dostana Safar:

Whereas, Ms. Reshma Prasad, Dostana Safar, enlightened the participants about several laws on different types of sexual acts and relations. She explained in detail the issues related to LGBT rights and sexual minority.



Session 7- Child Marriage:

Ms. Gazala Shahin, Save The Children:



Ms. Gazala Shahin, expressed her concern on the alarming number of child marriages still happening and how the provision of the right to education if implemented strictly, can help change the situation. She establishes the relation between education and age of marriage when the school, who cannot deny the right to education for age 6 to 14 years, make sure there is all-inclusive supporting culture for child development irrespective of their caste or status, can put pressure on the parents in refraining from shoving their the kids into child marriages or child labour.

Session 8 : Right to Education initiative

Mr. Rajeev, adding more to the issues, invited participants to take cognizance of the education system in Bihar state which is facing the repercussions of making education a commodity, adding more to the difficulties in affording a quality education in government schools. He also discussed about *Vidyalaya Siksha Samiti*.

The session pulled several questions from the participants like where to enquire, where to complain and how to raise voice for the right to education act.

Session 9 : Hunger, Malnutrition & Right to Food in Bihar: In view of recent deaths of children in Bihar:

Panel of Mr. Rupesh Koshish, Mr. Pramod Kumar and Mr. Sanjeev joined with the right to food campaign, declaring how the poor nutrition resulting in weak citizens and sick mothers. The session focussed on the role of environment and nutrition, briefly clarifying the doubts and



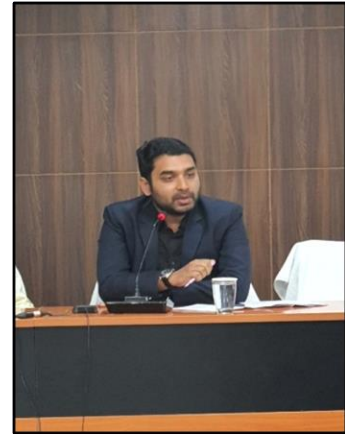
information on PIL for the food security act. Mr. Sanjeev explained how to use the law for writ petition to raise complains. He cited the instance of petition used against the unavailability of ORS, glucose and other mandatory drugs in the recent episode of child deaths due to fever in Bihar.

The panel kept their focus, throughout the session, on importance of associating health with the nutrition.

Session 10 : Public Interest Litigation during these challenging times: How to do a PIL

Adv. Kumar Shanu (WHIP)

Adv. Kumar Shanu, gave insights on the provisions of law, rights and process that to be taken when raising the complaints.



Adv. Dinu Kr, High Court, Patna

Adv. Dinu Kr., Patna High Court, explained in detail how the PIL is beneficial with Adv.Kumar Shanu, WHIP, adding more details on how to file a PIL. He also touched upon the power of RTI to access any required documents from the government.

The panel cleared the participant's doubts related to the litigation processes.

Day 2-

Session 1: Prison Rights Initiative: Conditions of health, hygiene and sanitation in Prisons and its impact on SRHR & Challenges

Mr. Santosh Upadhyay, Bandi Adhikar Sangharsh Samiti

Day 2, commenced with the sensitization of women's reproductive rights in prisons. Mr. Santosh Upadhyay, Bandi Adhikar Sangharsh, shared the deplorable situation of Indian prisons and appalling conditions that inmates have to live in. He raised several questions against the conduct towards human and mothers in jails, and the immense requirement of voices/advocates for this cause.



Adv. Santosh Kumar, HRLN

Adv. Santosh Kumar, HRLN, then implored the participants to think about the mental health of jail inmates and their family, as he shared his efforts of freeing 50 prisoners from Beaur prison, spotting at least 15 of them as mentally unstable.

The session completed with a discussion on unmet needs of mental health, children born in jails, adolescents in jail and status of schemes implementation for prisoners.

Session 2: Atrocities on marginalized & minorities and its impact on SRHR

Prof (Dr.) Parijat Pradhan, Central University of South Bihar, Gaya

Prof. Parijat Pradhan, Central University of South Bihar, discussed the repercussion of the caste system and how it makes the rights to sexual and reproductive health extremely challenging for the community in the lowest ladder of social system in India. Bringing the need of the homeless in this perspective, Mr. Aman Biradari, Center for Equity Services, explained the growing cases of homeless people in proportion to the urbanization making women and children extremely vulnerable to threats like trafficking, communicable diseases, crimes, violence, malnutrition, etc. The panel shared the amassing of efforts to protect the basic rights of homeless humans while answering several queries raised by the participants.



Session 3: Disability Rights & Women and Challenges

Ms. Vaishnavi , Bihar Vikalang Adhikar Manch

The session on Disability rights of women and challenges was taken by Ms. Vaishnavi, Bihar Vikalang Adhikar Manch, with her personal experiences on working with disabled people. She shared observing the violation of their rights, particularly by the bureaucrats and her success of filing PIL for the disabled rights, with judgment on her side.



Session 4 National Health Protection Scheme:

Dr.Shakeel and Ms. Chhaya Pachauli, Director, Prayas:

Dr.Shakeel and Ms. Chaya, in session four then disseminated the details about several government programmes like Ayushman Bharat Yojana (ABY), National Health Protection

Scheme(NHPS), *Swasthya Bima Yojana*, National health mission (NHM). They shared the worrisome trends that hospitals are adopting due to the advantage of loopholes in schemes under private-public partnership model (PPP), which demands better regulation.



Session 5 : Child Rights, POCSO and Child Trafficking

Mr. Y.K. Gautam (CCST) & Mr. Mukhtarul Haq (BBA)

The panel of Mr. V.K Gautam, CCST, Mr. Mukhtarul Haq, BBA invited participants to be aware of child trafficking, the most inhuman trend afflicting the state and need for all organizations to work together to stop this vindictive crime. Endeavors are taken to identify, rescue and rehabilitation of the children under threats and urgency to create schools as all-inclusive secured places for children, was also discoursed.



The last session was a platform for Sr. Dorothy to talk about the housing rights and plight of pregnant women in case of homelessness due to demolition/eviction. The worsening plight of homeless people due to displacement, government schemes, old age or domestic violence also needs immediate attention. She revealed that *Aaashray Abhiyan* is filling PIL for the government to look into the issue.

The two-day programme ended with a detailed discussion and collection of issues by HRLN that the participants felt needed a judicial intervention and would like to put under PIL.

Annexure:

Agenda

Time	Session	Speaker/Resource Person
Day 1: 09.11.2019		
09:30 am-10:00 am	Registration	HRLN & Prayas Team
10:00 am – 10:15 am	Welcome and introduction of participants	Adv. Deepak Singh, State Legal Coordinator HRLN, Patna (Bihar)
10:15 am -10:50 am	Opening Session: Objectives of the consultation An overview of SRHR	Ms. Chhaya Pachauli Director, Prayas Mr. MK SAHNI, President, BVHA, Mr. Jose Thomas, SRHR Alliance
11:50 am-11:00 am	Discussion	
11:00 am-11:20 am	Cases filed on Reproductive Health Rights in the last five years by the HRLN Patna unit: Achievements and Key Challenges	Adv. Deepak Singh, State Legal Coordinator HRLN, Patna (Bihar) Mr. Dinesh Kumar Yadav, State Social Coordinator Prayas, Patna (Bihar)
11:20am-11:30 am	Discussion	
11:30am- 11: 40 am	Tea	

11:40am- 12: 00 pm	Theatrics Play on Save the Girl Child	Law Students CUSB, Gaya, Bihar
12:00 pm - 12: 30 pm	Rights of Women against Violence and Gender Based Violence	Ranjana Das OXFAM India and Sr. Deepika, (Director of Mashal)
12:30pm- 12: 40 pm	Discussion	
12:40pm- 01: 20 pm	Abortion Rights & Sterilization in view of Supreme Court guidelines	Ms. Devika Biswas, Mr. Khursheed Ji BVHA, Adv. Ansul, High Court, Patna
01:20 pm- 01: 30 pm	Discussion	
01:30pm- 02:15 pm	Lunch-Break	
02:15 pm- 03: 00 pm	Access to Contraceptive Services, Sexual Minority and Gender Rights Initiative	Reshma Prasad (Dostana Safar), Ms. Chhaya Pachauli, Director, Prayas
03:00pm- 03:10 pm	Discussion	
03:10 pm-03:55 pm	Hunger, Malnutrition & Right to Food in Bihar: In view of recent deaths of children in Bihar...	Dr. Shakeel CHARM, Mr. Rupesh KOSHISH, Mr. Pramod Kumar (HFB)
03:55 pm-04:05 pm	Discussion	
04:05 pm-04:35 pm	Child Marriage and Right to Education initiative	Mr. Rajeev (RTE), Ms. Gazala Shahin Save The Children
04:35 pm-04:45 pm	Discussion	
04:45 pm- 05:15 pm	Displacement of Indigenous People and Labour Rights and its impact on women's reproductive health and Rights	Mr.C. Ashok Priyadarshi Jan Sangarsh Vahini Mr. Pramod Kumar (Forest Rights Activist)
05:15 pm- 05:25 pm	Discussion	
05:25 pm-06:05 pm	Public Interest Litigation during these challenging times: How to do a PIL	Adv. Dinu Kr. High Court, Patna,

06:05 pm-06:15 pm	Discussion	Adv. Kumar Shanu (WHIP)
06:15 pm	Closure of the day	

Day 2: 10.11.2019

Time	Issue	Resource Person
09:30 am-10:00 am	Welcome and recap	Mr. Dinesh Yadav State Social Coordinator Prayas, Patna (Bihar)
10:00 am-10:30 am	National Health Protection Scheme	Dr Shakeel (CHARM), Ms. Chhaya Pachauli Director, Prayas
10:30 am-10:40 am	Discussion	
10:40am-11:25am	Atrocities on marginalized & minorities and its impact on SRHR	Prof (Dr.) Parijat Pradhan, Central University of South Bihar, Gaya, Mr. Asgar Sharif Aman Biradari
11:25 am-11:35 am	Discussion	
11:35 am-11:45 am	Tea	
11:45am- 12:15pm	Child Rights, POCSO and Child Trafficking	Mr. Mukhtarul Haq (BBA),
12:15 pm-12:25 pm	Discussion	Mr. Y.K. Gautam (CCST)
12:25pm-12:55pm	Disability Rights & Women and Challenges	Ms. Vaishnavi and Mr.Deepak (Bihar Vikalang Adhikar manch)
12:55pm-01:05pm	Discussion	
01:05 pm-01:35pm	Prison Rights Initiative: Conditions of health, hygiene and sanitation in	Mr. Santosh Upadhyay (Bandi Adhikar Sangharsh Samiti),

01:35 pm-01:45pm	Prisons and its impact on SRHR & Challenges Discussion	Adv Santosh
01:45 pm – 02:30 pm	Lunch	
02:30pm-03:00 pm 03:00 pm-03:10 pm	Housing Rights and plight of pregnant women in case of homelessness due to demolition/eviction Discussion	Sr. Dorothy, (Aashray Abhiyan), Adv Ansul, High Court, Patna
03:10 pm-04:00pm 04:00pm-04:10pm	Plan of Action and issues to take forward Discussion	Deepak Kr. Singh, Mr. Shashwat, & Mr. Vishal, HRLN, Patna
04:10pm-04:15pm	Vote of thanks and closure of the consultation	