

Revisiting Medical Termination of Pregnancy Act, 1971: A Debate on Abortion



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In This Issue

LEAD ESSAY:

- Revisiting Medical Termination of Pregnancy Act, 1971: A Debate on Abortion

HEADLINE OF THE WEEK:

- The Long Overview Shake-Up of the Indian Railways Has Begun

SECTION 1: ECONOMY

- Economy: RSS- affiliated trade union says it will join protest against Modi government
- SEBI tries to fix the HFT issue without closing the NSE probe
- Leave Small and Medium Businesses Out of the GST Regime.

SECTION 2: GOVERNANCE AND DEVELOPMENT

- **Politics and Governance** : Narendra Modi's Independence Day speech: Fighting talk, but no battle plan.
- **Development**: Those who get bruised by water: How residents of the sinking Munroe Island in Kerala live, Amaravati, an Example of Flawed Urban Policy.
- **Health**: Chhattisgarh's policy of feeding tuberculosis patients is paying off, When policy attention is the best remedy, The Illegal Organ Trade Thrives in India – And It Isn't Likely to End Soon.
- **Urban**: Urban poverty can't be dealt with in isolation.
- **Transport**: A Large Number of Indian Pilots are either too Tired or too Drunk – But Why Are They Still Flying?

SECTION 3: SOCIETY

- **Casteism**: Freedom from Social Oppression
- **Gender**: Govt mulling over maternity benefit scheme for unorganised sector
- **Demography**: Reaping demographic dividend

SECTION 4: INDIA AND WORLD

- **India In The World**: Pokémon Go spawns policy and legal puzzles
- **East and South East Asia** : Pakistan to continue to support Kashmir's 'freedom', says Abdul Basit
- **Americas**: Most States allow Religious exemptions from Child abuse and neglect laws

SECTION 5: Opinions/Books

- **Rape and Rakhi** – Patriarchal-Communal Narratives

Lead Essay

Revisiting Medical Termination of Pregnancy Act, 1971: A Debate on Abortion

Introduction: The recent Supreme Court and High Court Judgments

The Supreme Court on 25th July 2016 granted permission to a rape victim to abort her 24 year old foetus on the basis that it would cause harm to both her physical and mental health. The victim identified in her petition as Miss X obtained relief under an exception in section 5 of the Medical Termination of Pregnancy Act, 1971, which allows abortion after the permissible 20 weeks in case it “is immediately necessary to save the life of the pregnant woman”.¹ In another case the Delhi High Court intervened and directed medical examination for fitness for abortion to a 16 year old girl who was sexually abused by her kidnappers for two years and finally abandoned by them at the Delhi University campus. In this case the court suggested a panel from AIIMS to be constituted and the foetus can be aborted provided the girl’s life is not endangered². Last year a 14 year old rape victim from Gujarat had appealed and been granted permission by the Supreme Court for abortion, though the 20 weeks gestation period had been crossed.³ These judgments and the fact that the cases reached the Supreme Court and the High Court raises significant questions and urges us to take a closer look at the existing Medical Termination Pregnancy Act, 1971 and also understand where we as a nation stand in terms of law making and morality in the process of recognizing the conditions of rape victims in India.

The Medical Termination of Pregnancy Act, 1971

Unlike the West, the enactment of the Medical Termination of Pregnancy Act, 1971 in India did not witness much of debate and the process was fairly smooth citing health and family planning concerns. The Medical Termination of Pregnancy Act, 1971 which was the first step in India to legalize abortion laid down several provisions. An understanding of the Act highlights the following:

- Registered medical practitioners with training in gynecology and obstetrics can terminate pregnancies under the prescribed conditions⁴:
 - When the length of the pregnancy does not exceed 12 weeks
 - When the length of the pregnancy exceeds 12 weeks and not 20 weeks and the abortion can be conducted, after two medical practitioners are of the same opinion that the continuation of the pregnancy would risk the mother’s life or the child to be born would incur severe mental and physical disabilities

The Act explains that the mental health of the woman will be considered in the case of a rape victim or by the failure of any device which has resulted in the unwanted pregnancy. The Act not only legalizes abortion but also specifies circumstances and methods to regulate abortion. The Act was amended for the first time in 2002 and the responsibility of the approval of the MTP facility was shifted from the State to the district level to prevent delay in approval of the service delivery points.

Provisions of the new Medical Termination of Pregnancy (Amendment) Bill, 2014

The existing MTP Act, 1971 in recent years has been a part of various debates and discourse and has been subjected to criticism from several corners, ranging from public health experts, activists and human rights organizations. In particular the debate garnered a lot of attention nine years back when Harish and Niketa Mehta had petitioned the Mumbai High Court to allow them to abort their 26 week old foetus which had been diagnosed with heart defects.

¹<http://indianexpress.com/article/explained/abortion-law-rape-victim-terminate-pregnancy-supreme-court-20-weeks-pregnant-2935481/> Date Accessed: 9.8.2016

²<http://www.thehindu.com/opinion/lead/a-tricky-debate-on-abortion/article8934071.ece> Date Accessed 9.8.2016

³<http://www.livemint.com/Opinion/q9WenNvGVVnCWotNeLskSP/Late-abortion-is-not-murder.html> Date Accessed: 9.8.2016

Lead Essay

However the plea of the Mehtas was turned down on expert advice.⁴ Nonetheless it was observed that only the Court could arbitrate and determine the legal limit of abortion, suggested that the re-evaluation of the MTP Act, 1971 was required. The amendments proposed under this Bill (made public on October 2014) attempts to address some of the major gaps which are important for the rights and choice of women:

- The proposed Bill recognizes the shortage of medical practitioners and grants permission to Ayurveda, Unani and Sidha (AYUSH) to conduct abortions through medical means.
- Relying on advanced technology the Bill has allowed abortions to be conducted even in the third semester and increased the time period from 20 to 24 weeks.
- The section of penalties and offences in the existing Act of 1971 has been increased which seeks to regulate the service providers, conditions of abortion and health of the women.

Implications of the changes to the MTP Act

While certain amendments have been suggested, however it is important to note and understand the consequences that the modified law will have on the lives of individuals and their families. The amendments suggested in to the Act indicate that number of concerns have not been taken into consideration. Though the recommended amendments make the process of access to abortion service providers easier, however the choice of the woman is not included. The women can undergo abortion, provided the medical practitioner's approval. In particular even though more health service providers have been granted permission for termination of pregnancies, their experiences, training and background have not been indicated in the amendments. Abortion is viewed as a complex procedure because it involves ethical and moral aspects with religious dimensions in all countries. Though it is an issue of human rights it perpetually gets combined with cultural attitudes and lack of family support. Legal and medical experts suggest that a change in the legal limit of abortion is long pending and requires immediate attention. Fetal abnormalities show up only after 18 weeks and hence a two week notice would be too short for parents to decide whether they wish to keep the baby or not. Even for the medical practitioner it is a very short time to advice parents regarding this extreme step. In addition with an increase in the time gap and advanced technology, there is also a chance of increasing sex selective abortions. Hence while the time gap has been increased a closer monitoring of the reasons behind abortion should be administered. This monitoring is particularly important because the lack of legal approval does not prevent abortions; instead it increases the risks of unsafe abortions which take place in unhygienic conditions conducted by unauthorized health practitioners. A report suggests that in India a woman dies due to unsafe abortion practices every two hours. Some experts say that the number of abortions could be nearly 7 million and many of them are done by inexperienced practitioners leading lifelong complications and even death.

Specifically the Act also enables parents to terminate a pregnancy in case the child is diagnosed with disabilities. This again brings up the raises the question of whether a child with disabilities should be allowed to be born or not? The other question that also arises is the mental and physical capability of the mother to look after a child. In the case of Suchitra Srivastava (2009) who was a mentally retarded rape victim in a protection home of Chandigarh was denied the right to abortion as it would further affect her mental health. Even though the larger question was who would look after the child, the Court did not grant permission for termination.⁵

Conclusion: To churn out a Middle Path

Since the major debate surrounding abortion is life versus life, it is important to understand if a middle path can be designed and followed to protect the right of the woman as well as the right of the foetus to survive. The only difference is that the foetus cannot exercise an option, while the mother can. Nonetheless what needs to be stressed and emphasized upon is that rape victims should be allowed to terminate their pregnancies and not have to seek the Courts

⁴<http://www.thehindu.com/todays-paper/high-court-rejects-niketas-plea-to-terminate-pregnancy/article1308624.ece> Date Accessed: 10.8.2016

⁵<https://lawandotherthings.blogspot.in/2009/07/suchitra-srivastava-v-chandigarh-admn.html> Date Accessed: 10.8.2016

Lead Essay

permission for their rights. However in the larger perspective, the Bill also needs to take into consideration the various taboos associated with abortion in India. For instance abortion is considered as murder and the termination of the pregnancy is considered to be destroying God's gift and disrespect to life. Hardly few Indians discuss abortions openly. Rarely do women discuss concerns surrounding abortion. The major reason being the lack of family support and guilt that women receive because of abortion that it continues to remain a prohibited topic. However in the case of rape victims, the family would be keen for an abortion, thus highlighting the paradoxical nature of abortion. It is important to note that rape victims in India should be given priority and they should not have to go to court to seek special status. In this case it needs to be noted that while the amendments make provisions for later abortions and with better medical access, however the notions surrounding abortions are hardly dealt with. In Germany the law permits abortion post counseling and a three day waiting period. Instead of making abortion a criminal offence the law in Germany focuses on financial securities, health concerns, family support and wellbeing of both the mother and the unborn child⁶.

In India counseling of women and their family members who wish to undertake abortion should be mandatory as it will provide them with the opportunity to know more about the process, the laws in India regarding abortion and also they will become more aware of their health concerns. The process of coupling counselling with abortion, will not only result in creating more awareness but will also specifically benefit rape victims to be more cognizant of their rights in the Indian society.

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⁶<http://www.un.org/en/development/desa/population/publications/policy/world-abortion-policies-2013.shtml> Date Accessed: 10.8.2016

Headlines

The Long Overview Shake-Up of the Indian Railways Has Begun

(The Wire, August 13, 2016)

The minister of railways has commenced the restructuring and recasting process. But recalcitrance will soon rear its head if vested interests of departments, petty suppliers, contractors and their local Mafiosi are not nipped.

commissioner Sanjoy Mukherji, who has a fine, distinguished record has put in his papers (leave preparatory to retirement, perhaps). The Indian Railways (IR) budget is being merged with the general budget. The chairman of Railway Board has been given an extension of two years. The board's structure is being reconstituted service-wise (infrastructure, rolling stock etc.) instead of department-wise. The lateral induction of an expert for suggesting ways of resource mobilization has been initiated. All this is according to news reports.

Read More:<http://thewire.in/58781/the-long-overdue-shake-up-of-the-indian-railways-has-begun/>

Date Accessed: 16.8.2016

Economy

RSS- affiliated trade union says it will join protest against Modi government

(Scroll, August 15, 2016)

The Rashtriya Swayamsewak Sangh-affiliated Bharatiya Mazdoor Sangh has aired its differences with the Bharatiya Janata Party-led Central government, announcing on Sunday that it would join several other central trade unions in a one-day all-India strike on September 2 to oppose amendments to labour laws. These changes will dilute workers's rights and protection, the joint forum of central trade unions says.

The Bharatiya Mazdoor Sangh said that it had decided to join the strike because of the government's "anti-worker decisions".

ReadMore:<http://scroll.in/article/814068/rss-affiliated-trade-union-says-it-will-join-protest-against-modi-government>

Date Accessed: 16.8.2016

SEBI tries to fix the HFT issue without closing the NSE probe

(Sucheta Dalal, *moneylife.in*, August 15, 2016)

Six years after it allowed the National Stock Exchange (NSE) to introduce high frequency trading (HFT) and algorithmic (algo) trading without any debate, rules or regulations, the Securities and Exchange Board of India (SEBI), on 5th August, put out a discussion paper on "Strengthening of the regulatory framework for algorithmic trading & co-location". The paper is interesting, for several reasons. It comes in the aftermath of a detailed investigation into three letters from a whistle-blower which pointed to serious irregularities in the HFT and algo trading at the NSE. Yet, there is no mention in the discussion paper about the series of events and investigations that were triggered by the publication of these allegations and have led to the attempt to fix HFT and algo problems.

ReadMore:<http://www.moneylife.in/article/sebi-tries-to-fix-the-hft-issue-without-closing-the-nse-probe/47829.html>

Date Accessed: 16.8.2016

Leave Small and Medium Businesses Out of the GST Regime

(The Wire, August 16, 2016)

There has been no attempt so far to design a comprehensive tax policy for medium and small enterprises, which would take all direct and indirect taxes into account and provide a clear, low-compliance-cost, fair policy option.

Read More: <http://thewire.in/59265/to-make-make-in-india-a-success-leave-mses-out-of-gst/>.

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Governance & Development

POLITICS AND GOVERNANCE

Narendra Modi's Independence Day speech: Fighting talk, but no battle plan

(Praveen Swami, *The Indian Express*, August 15, 2016)

Prime Minister Modi's language marks a grim cul-de-sac in his thinking, which has traversed the distance from a hawkish polemic before he took office to mawkish Bollywood band-baja-baraat when he visited Lahore last December.

Read More: <http://indianexpress.com/article/opinion/web-edits/pm-narendra-modi-independence-day-speech-pakistan-balochistan-pok-red-fort-2976773/>

Date Accessed: 15.8.2016

DEVELOPMENT

Those who get bruised by water: How residents of the sinking Munroe Island in Kerala live

(Neelima Parvathi, *Scroll.in*, August 15, 2016)

The last attack of the high tide was two weeks ago, forcing Rajan and his wife to step into a pool of water in the middle of the night. "We are used to this now – cooking, cleaning, doing everything in ankle-high water," said Rajan's wife Achamma nonchalantly. Like the rest of the islanders, the couple too had requested the government for rehabilitation, but have not received any aid till date. Eight out of their nine children have already moved out of the island.

Read More:

<http://scroll.in/article/813850/those-who-get-bruised-by-water-how-residents-of-the-sinking-munroe-island-in-kerala-live>

Date Accessed: 15.8.2016

Amaravati, an Example of Flawed Urban Policy

(Nandini Majumdar, *The Wire*, August 16, 2016)

Andhra Pradesh's new 'world-class' capital city will require enormous amounts of energy and resources to build and to run, while destroying precious natural environments and local livelihoods.

Read More: <http://thewire.in/58016/amaravati-an-example-of-flawed-urban-policy/>.

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HEALTH

Chhattisgarh's policy of feeding tuberculosis patients is paying off

(Menaka Rao, *Scroll*, August 15, 2016)

A non-profit collective of doctors called the Jan Swasthya Sahyog runs a low-cost rural hospital in Ganiyari village in Bilaspur district in north Chhattisgarh. In 2013, the doctors here conducted a study that found strong links between undernutrition and deaths due to TB. Their research showed that a body mass index of 16 is associated with double the odds of death in men. This study became the talking point for the call for a statewide nutrition programme for TB patients.

Read More: <http://scroll.in/pulse/812151/patients-gain-in-weight-and-health-in-the-supplementary-nutrition-programme-at-chhattisgarh>

Date Accessed: 16.8.2016

Governance & Development

When policy attention is the best remedy

(Vidya Krishnan, *The Hindu*, August 12, 2016)

“Diseases affecting poor get proportionately less funding. Except for communicable diseases like HIV or Ebola that are scary to people because they cross boundaries,” says Dr. Soumya Swaminathan, Director General of the Indian Council of Medical Research (ICMR).

Read More: <http://www.thehindu.com/sci-tech/health/policy-and-issues/malady-nation-neglected-diseases-when-policy-attention-is-the-best-remedy/article8975660.ece?homepage=true>

Date Accessed: 16.8.2016

The Illegal Organ Trade Thrives in India – And It Isn't Likely to End Soon

(Priyanka Vora, *Scroll*, August 15, 2016)

On July 15, the Mumbai police claimed to have busted a kidney racket where a patient who was on dialysis for six years was allegedly buying a kidney for a transplant. According to the police, Brijkishore Jaiswal, a resident of Surat, produced fake documents to establish that Shobha Thakur, a woman unrelated to him, was his wife. Family members can donate organs with the approval of a hospital authorisation committee. But buying or selling of an organ is in contravention of the Transplantation of Human Organs and Tissues Act, a central legislation that governs organ transplants in the country.

Read More <http://scroll.in/pulse/813993/the-illegal-organ-trade-thrives-in-india-and-it-isnt-likely-to-end-soon> Date of Access: 16.8.2016

URBAN

Urban poverty can't be dealt with in isolation

(S.Parasuraman, *The Hindu*, August 1, 2016)

Overall, there has been very little theoretical and empirical social science research about how the public policy challenges posed by slums may be addressed. A research agenda on slums that can be addressed by inter-disciplinary social science could focus on three distinct sets of methodological and policy questions.

Read More: <http://www.thehindu.com/news/cities/mumbai/urban-poverty-cant-be-dealt-with-in-isolation/article8927400.ece>

Date Accessed: 16.8.2016

TRANSPORT

A Large Number of Indian Pilots are either too Tired or too Drunk – But Why Are They Still Flying?

(Mayank Jain, *Scroll*, August 16, 2016)

The air safety regulator, Directorate General of Civil Aviation, has initiated action against 63 SpiceJet pilots for flying beyond the maximum hours permissible, the Parliament was informed on Thursday. The regulator also suspended 11 pilots from Jet Airways and two other airlines for flying below the maximum permissible hours.

Read More <http://scroll.in/article/814001/a-large-number-of-indian-pilots-are-either-too-tired-or-too-drunk-but-why-are-they-still-flying> .

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Governance & Development

LAW AND JUSTICE

Freedom from colonial-era Forest Management Law

(Down To Earth, August 11, 2016)

Forest policies in India have always alienated people from the forests. Rights of the rural communities living close to forests were taken hostage by the government after the Indian Forest Act (IFA), 1927 came into effect. It gave absolute power to the forest department to take control over forests. Millions of forest dwellers who counted on forest resources for livelihood became illegal settlers under the law.

Read More: <http://www.downtoearth.org.in/coverage/freedom-55250#0>

Date Accessed: 15.8.2016

Society

CASTEISM

Freedom from Social Oppression

(Aarefa Johari, *Scroll.in*, August 11, 2016)

On Monday morning, thousands of people gathered in Una in South Gujarat for an Independence Day rally to mark the culmination of a ten-day march to protest the brutal assault last month on four Dalit youths in the town. There were stirring songs and rousing speeches. But hours later, the event met with a violent backlash by non-Dalit groups on the highway near Samter village, around 12 km from Una.

The attacks were aimed at Dalits from other parts of Gujarat who were returning home after attending the rally. Eyewitnesses and survivors claimed stones were thrown at them, that some people were beaten, that the panes of cars were smashed and that at least one motorbike was set on fire. At least 12 Dalits were reportedly injured, one of whom was shot in the back of his thigh. This person has been taken to a hospital in Junagadh. Three police personnel were also injured.

Read More: <http://scroll.in/article/814104/what-justice-can-we-expect-gujarat-dalits-returning-from-una-rally-are-beaten-vehicles-attacked>

Date Accessed: 16.8.2016

GENDER

Govt mulling over maternity benefit scheme for unorganised sector

(*Firstpost India*, August 15, 2016)

The Ministry has geared up to provide this sustenance to women in the unorganised sector after Rajya Sabha passed the Maternity Benefit Bill 2016 unanimously to provide 26 weeks of leave to working mothers in the formal sector last week.

ReadMore: <http://www.firstpost.com/business/govt-mulling-over-maternity-benefit-scheme-for-unorganised-sector-2956752.html>

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DEMOGRAPHY

Reaping demographic dividend

(K. Nageshwar, August 15, 2016, *The Hans India*)

The recently released Raghuram Rajan report categorised Andhra Pradesh state as a less developed state with the under development index values at 0.521. The White Paper on Human Resources and Social Development in Andhra Pradesh said the Human Development Indices (HDI) of Andhra Pradesh have not showed a great progress in terms of relative rankings among the States. In fact, Andhra Pradesh has not even marginally moved up from its position in 2004-05 as it remained at the same rank during 2011-12 HDI rankings. The Human Development Indices did not improve despite a strong growth performance in the economy. As the white paper observed, it is certainly a missed opportunity.

ReadMore: <http://www.thehansindia.com/posts/index/Candid-Comments/2016-08-15/Reaping-demographic-dividend/248643>

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India and World

INDIA IN THE WORLD

Pokémon Go spawns policy and legal puzzles

(Jaideep Reddy and Gowree Gokhale, *Live Mint*, August 16, 2016)

The Indian Information Technology Act, 2000, and the rules under it would require the company to implement “reasonable security practices and procedures” i.e., among other things, not collecting sensitive personal information unless necessary; not retaining such information longer than required; providing the user an opportunity to review this information for accuracy; and having a comprehensive documented information security program. Personal information that is not sensitive is also subject to some protection measures. The company would also be required to designate a grievance officer to address user grievances.

Read More: <http://www.livemint.com/Consumer/0eq0IJsM7KXVMMZPcH1GmI/Pokmon-Go-spawns-policy-and-legal-puzzles.html>

Date Accessed: 16.8.2016

EAST AND SOUTH EAST ASIA

Pakistan to continue to support Kashmir’s ‘freedom’, says Abdul Basit

(*The Indian Express*, August 14, 2016)

“As far as Jammu and Kashmir is concerned, we are dedicating this year’s Independence Day to the freedom of Kashmir. And we firmly believe that the sacrifices made by the people of Jammu and Kashmir will not go in vain. The ongoing unrest should be ended. Pakistan will continue to extend its full diplomatic, political and moral support to the valiant people of Jammu and Kashmir till they get their right to self determination,” Basit said.

Read More: <http://indianexpress.com/article/india/india-news-india/pakistan-to-continue-to-support-kashmirs-freedom-says-abdul-basit-2974808/>

Date Accessed: 14.8.2016

AMERICAS

Most States allow Religious exemptions from Child abuse and neglect laws

(Aleksandra Sandstrom, *Pew Research Centre*, August 12, 2016)

All states prosecute parents whose children come to severe harm through neglect. But in 34 states (as well as the District of Columbia, Guam and Puerto Rico), there are exemptions in the civil child abuse statutes when medical treatment for a child conflicts with the religious beliefs of parents, according to data collected by the U.S. Department of Health and Human Services.

Read More: <http://www.pewresearch.org/fact-tank/2016/08/12/most-states-allow-religious-exemptions-from-child-abuse-and-neglect-laws/>

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Opinions/ Books

OPINIONS

Rape and Rakhi – Patriarchal-Communal Narratives

(Kavita Krishnan, *Kafila*, August 11, 2016)

Even as the communal cauldron in UP is kept on the boil, there is news that the RSS has launched a campaign to tie Rakhis to lakhs of Hindu men, asking them to pledge to protect their sisters from Muslim men and “love jihad.” The VHP has been running a helpline urging Hindus to approach them “if your daughter is being harassed by Muslim boys.” And a khap panchayat in Muzaffarnagar has imposed a ban on mobile phones and jeans for girls, claiming that these result in ‘eve-teasing’.

Read More: <https://kafila.org/2014/08/11/rape-and-rakhi-patriarchal-communal-narratives-kavita-krishnan/>

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