

POLICING THE UTERUS

How State Paternalism Threatens Women's Sexual and Reproductive Health

By Namrata Raju

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In *Brave New World*, Aldous Huxley describes a world where technology reigns supreme and natural birth no longer exists, with the entire process of reproduction residing under the architecture of the state.¹ Huxley's muddled ideals were often mirrored in his novel. While some readers might sympathize with Huxley's take on the evils of mass consumerism, others could criticize him for his unconcealed dread of sexual expression. Yet, alarming parallels exist between his illusory universe and present-day scenarios, which are both riddled with excesses of state paternalism in women's access to sexual and reproductive health. There is a strong argument to be made that placing increased restrictions on women's sexual and reproductive health risks the creation of a dystopic alter-universe, not unlike that depicted in *Brave New World*.

When these excesses of state paternalism wholly overwhelm individual human rights in sexual and reproductive health, a real-world depiction of Huxleyan dystopia is born. While this piece shall proceed to focus on a specific policy in India, the Huxleyan analogy is one that is transferable to restrictions on sexual

and reproductive health even in Western contexts, such as that of the United States.

STATE PATERNALISM AND ANTI-ABORTION EFFORTS

In the Global North, one does not have to venture far into the realm of women's sexual and reproductive health to come across heavy arguments in favor of excessive state paternalism. The common argument used to push for a paternalistic state to ban abortion is the view that ending the life of a fetus—which these advocates consider a full-blown life—is an act of moral depravity. The author-journalist Patrick Tomlinson provides a fictitious scenario to counter the claims of this pro-life stance. In a tweet that went viral last year, Tomlinson presented the following: "You are in a fertility clinic when the fire alarm goes off. Before you escape, you have the option to save either a five-year-old child who is pleading for help, or a container of 1,000 viable human embryos. Do you a) save the child, or b) save the thousand embryos?" Tomlinson says that in the last ten years that he has been posing this question to anti-abortion advocates, individuals have been massively conflicted, since

they invariably choose to save the child, contradicting their belief that an embryo is the same as the life of a child.²

There is an entirely different angle as well, in which excessive state paternalism is promoted on the grounds of practicality. Unlike in much of the Global North, where arguments for increased restrictions on access to abortion might don a philosophical hue, some nations in the Global South additionally grapple with the practical arguments, which involve questions such as, “in environments with high rates of female feticide, should abortion be permissible?”

A similarly paternalistic 2016 policy proposal in India claimed that female feticide could be reduced by placing increased restrictions on women’s reproductive rights³ and makes for an apt example of how even well-intentioned restrictions on these rights can backfire. We examine this proposal shortly—but first, some context.

SEX RATIOS, ABORTION, AND PRENATAL SEX DETERMINATION IN INDIA

The Indian state has long been beleaguered by female feticide, infanticide, and skewed child sex ratios, which plummeted from 927 females to 1,000 males in 2001, to a far smaller 919 in a mere decade.⁴ While on the one hand, female feticide is a demographic malice, it is also a morally abhorrent practice, according greater value to the life of a male child than that of a female child. Sex-selective abortion in India stems from multiple causes, several of which can be attributed to the gender roles played by men and women in society, with the former being the customary breadwinners. As per custom in different parts of the country, the male child is viewed as beneficial to the family, whether owing to economic reasons or simply in name, while the girl child is often considered a financial obligation, with practices such as dowry payments furthering this narrative.⁵ Given the vast and complex

fabric of Indian society, these practices vary drastically by state, city, and urban-rural differences.⁶

It was hence in an effort to combat female feticide that the country *banned* prenatal sex determination in 1994, via the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act.⁷ It is thus currently illegal for a woman to enquire after the sex of a fetus in India, although illegal ultrasounds remain ubiquitous, with the medical community aiding the practice.⁸

On the other hand, abortion in India is legal up to 20 weeks into a pregnancy, though only under specific conditions, which include when the life or health of either the mother or the child is at risk. A 2017 *Huffington Post* piece critiquing the 20-week abortion limit provides a good synopsis of the abortion law: “In its current form, the Medical Termination of Pregnancy (MTP) Act permits abortion after consultation with one doctor up to 12 weeks [of pregnancy]. Between 12 to 20 weeks, a woman seeking abortion needs the medical opinion of at least two doctors. Exceptions are made to the 20-week ceiling if continuing the pregnancy poses a threat to either the mother or the baby’s life, but only after approval from courts.”⁹

THE PATERNALISTIC PROPOSAL FOR PRENATAL SEX DETERMINATION CENTERS

The efforts to restrict women’s sexual and reproductive rights can don a variety of guises. These range from the more direct, such as outright bans on abortion, to the indirect, such as increasing the hurdles to acquiring one. In February 2016, India’s Union and Child Development Minister Maneka Gandhi put forth a new proposal that falls into the latter category of indirect restrictions on women’s sexual and reproductive rights.¹⁰ Ms. Gandhi proposed that for every pregnancy in the Indian state, prenatal sex determination

would be made mandatory. In her view, this would help the state clamp down on sex-selective abortion and revive the country's skewed sex ratios. To do this, she advocated for prenatal sex determination centers (PSDCs) to be set up across the country. These centers would first determine the sex of the child in every pregnancy and subsequently track each pregnancy through to term.^{11,12} On the purpose of her proposal, she said, "the woman should be compulsorily told whether it is a boy or girl child [to] whom she is going to give birth. [The pregnancy] should be registered to be able to check whether they have given the births or not."¹³ Unfortunately, it was never clarified whether the policy was intended to reduce female feticide owing to women having to justify aborting a female fetus or simply due to tracking efforts. Although Ms. Gandhi emphasized that her proposal arose from the desire to address sex-selective abortion, it is an unequivocal blessing that her PSDCs never came to fruition.

The proposal is reminiscent of a profoundly paternalistic Huxleyan dystopia. This is especially true with respect to Huxley's description of reproduction, where he envisaged babies born via a production line, with five main castes: Alphas, Betas, Gammas, Deltas, and Epsilons, which were determined from birth. Each caste is allocated different attributes, with the state assigning immense importance to the constant maintenance of this engineered social hierarchy.¹⁴ The monitoring of every Indian pregnancy and birth via PSDCs is vastly similar, given the exercise of state control over personal liberties, freedoms, and choices (violating Article 21 of the Indian Constitution, "the right to life and personal liberty" and "the right to privacy").¹⁵

Ms. Gandhi's proposal to restrict abortion via PSDCs is additionally ludicrous given the counter-argument repeatedly posed by human rights campaigners, wherein increased efforts to police abortion result in

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women resorting to unsafe methods. This could easily cause what the World Health Organization (WHO) has previously called "a preventable pandemic."¹⁶ About 47,000 women die each year from botched abortions via unsafe means. Implementing this proposal or others that involve increased policing could contribute to higher maternal mortality rates.¹⁷

Aside from this obvious concern, however, what are the other possible ills of this proposal?

THE EXCESSES OF STATE PATERNALISM ON REPRODUCTIVE RIGHTS DURING THE EMERGENCY

India has wrestled with the issue of policing reproduction in a large way once before—during the 1975-77 Emergency, under the stewardship of Prime Minister Indira Gandhi. Akin to the PSDCs approach, forced sterilization was introduced during the Emergency under the banner of curbing population growth, which was perceived as a socio-economic harm.¹⁸ Prime Minister Gandhi's son, Sanjay Gandhi, instituted a forced sterilization policy, under which an appallingly high number of men—6.2 million—were sterilized in a mere year, reportedly "15 times the number of people sterilized by the Nazis during World War II." Two thousand men died from botched sterilization attempts in this period.^{19,20,21}

Columbia University professor and population control expert Matthew Connelly states this well in his notes on the period: "It has

become emblematic of everything that can go wrong in a program premised on 'population control' rather than on reproductive rights and health. This included time-bound performance targets; a preference for methods that minimized the need for sustained motivation; disregard for basic medical standards; incentive payments that, for the very poorest, constituted a form of coercion; disincentives that punished nonparticipation; and official consideration of compulsory sterilization, which, even if never enacted into law, signaled that achieving national population targets might override individual dignity and welfare."²²

Still, many might be tempted to say that Maneka Gandhi's proposal to track fetuses via PSDCs is a far cry from physically hauling citizens into sterilization camps, as was common practice during the Emergency. Naysayers might argue that PSDCs are most certainly not the same as a forced sterilization policy, because the proposed PSDCs are targeted at countering female feticide, which is a social harm. However, forced sterilization was similarly touted under the rubric of battling a social harm, all the while providing the state with complete jurisdiction over individual rights.

Should the unbridled power of the state ever be left unchecked? The question of

uninhibited state paternalism seems even more pertinent in an age when women are still consistently denied their sexual and reproductive rights. India's macabre history of forced sterilization additionally prompts the burning question of the full reach of allegedly democratic governments that arrogate authoritarian decision-making, a manifestation of which is apparent in the recolonization of female rights.

INDIA: SEVERAL NATIONS IN ONE, GOVERNED BY A SINGLE MOVE?

The Cambridge economist Joan Robinson, alluding to India's vastness and sheer complexity, once remarked, "Whatever you can rightly say about India, the opposite is also true."²³ This complexity is reflected in India's sex ratios, which differ drastically across the country. This variation between states calls into question the fact that the PSDC proposal was instituted at a blanket national level. In addition to the PSDCs being problematic in theory, their lack of consideration for large regional, state-to-state, and urban-rural differences also makes them ineffectual on the implementation front.²⁴

Take, for example, sex ratios in the following states, as per statistics from the 2011 Census of India:²⁵

STATE	SEX RATIO (ADULT)*	CHILD SEX RATIO (0-6 YEARS)*
Kerala	1084	964
Puducherry	1037	967
Tamil Nadu	996	943
Andhra Pradesh	993	939
Delhi	868	871
Chandigarh	818	880
Dadra and Nagar Haveli	774	926
Daman and Diu	618	924

*Females per 1,000 males

A good way to benchmark these figures would be to consider what is termed the natural sex ratio—the ratio that would prevail if female feticide did not exist. The WHO explains, “In the human species, the ratio between males and females at birth is slightly biased towards the male sex. The natural ‘sex ratio at birth’ is often considered to be around 105. This means that at birth on average, there are 105 males for every 100 females.”²⁶ Converted to the standard ratio of females to males, that constitutes a ratio of 952 females to every 1,000 males.

While the union territory of Daman and Diu has an abysmally low sex ratio of 618 females to 1,000 males, Kerala’s sex ratio of 1,084 is higher than even some of the much-celebrated Scandinavian states.²⁷ Herein exists an extreme problem. A uniform pan-national policy instituted by the Indian state may not even be applicable for places as vastly different as Kerala, and Daman and Diu.

THE STATE PATERNALISTS GOT IT WRONG, BUT HERE’S WHAT WE CAN DO INSTEAD

If policing sexual and reproductive health is not the solution to end sex-selective abortion, what is the solution?

The key finding from a recent study by the Guttmacher Institute reads, “We estimated that 15.6 million abortions (range 14.1 million–17.3 million) took place in India in 2015... 12.7 million abortions (81 percent) were medication abortions... 2.2 million abortions (14 percent) were by surgical methods, and 0.8 million abortions (5 percent) were done outside of facilities by methods other than medication or surgical abortion...”²⁸ In addition to this, the study underscores that nearly 50 percent of pregnancies in India are unintended and that nearly one-third of pregnant women get abortions.²⁹

In other words, a large part of India’s problem with abortion is not simply that it exists,

but that women get pregnant without intending to do so. Hence, what the Guttmacher report highlights is the dire need for us to step up contraceptive access and awareness.

Furthermore, I submit that the issue of sex-selective abortion will never be solved via denying women their rights—a notion that is inherently counter-intuitive, considering that the girl child’s right to life is protected at the cost of a woman’s rights. Instead, concerted efforts towards creating a more gender-equal society, which places greater value on the life of the girl child, are likely to have a far greater impact.

These efforts range from ensuring that women are absorbed into the workforce in larger numbers, to educating young girls, making neighborhoods safer for women, and shifting social norms surrounding the gender of the breadwinner of a household. One of several examples in this regard is the association between rising levels of female employment, the absorption levels of women into the workforce, and reduced female feticide rates.³⁰ Additional examples include the political empowerment of women at the grassroots level, a realm in which research indicates that such a move would not just serve women but also prove for better policy outcomes.³¹ A World Bank study makes an interesting point in this regard, when discussing China:

“The market reforms in China since the early 1980s may have reduced the disincentive to have daughters. Girls can now earn wages, and while they are unmarried their earnings contribute to their parents’ household expenses and their wedding expenses. If they continue to earn wages after marriage, they are also better placed to help their parents even after leaving home. However, the market reforms may also be contributing to reinforcing women’s marginalization. Firstly, women in the new

market economy are not protected as they were before, and are vulnerable to being terminated when they marry or have children. Secondly, the boom in commerce and trading has revived traditional ways of forming business networks and contacts through family and personal connections. Women are consequently disadvantaged, because they lose their father's lineage networks when they marry, and it takes time for them to develop new connections based on their husband's family connections."³²

The study strikes at the very core of what is needed to eradicate the canker that is female feticide—the well-rounded combination of social, political, and economic empowerment of women. India's current Prime Minister Narendra Modi's "Beti Bachao, Beti Padhao" campaign, targeted at raising social awareness on issues such as female feticide and the need to educate the girl child, hints at an understanding of these needs at the central government level. However, the extent of the campaign's impact is yet to be seen.³³ In addition to indirectly combating female feticide by addressing the problems at a macro-level, efforts such as awareness and advocacy campaigns are the call of the hour.

All in all, while the Indian context is both highly convoluted and particular, the lessons from the PSDC proposal are easily transferable to the anti-abortion debate the world over, including in the United States. The time is nigh for us to truly construct a "brave" new gender-equal world, and not one of a Huxleyan variety, where the rights of the woman are recolonized by an overwhelmingly paternalistic state.

NOTES

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