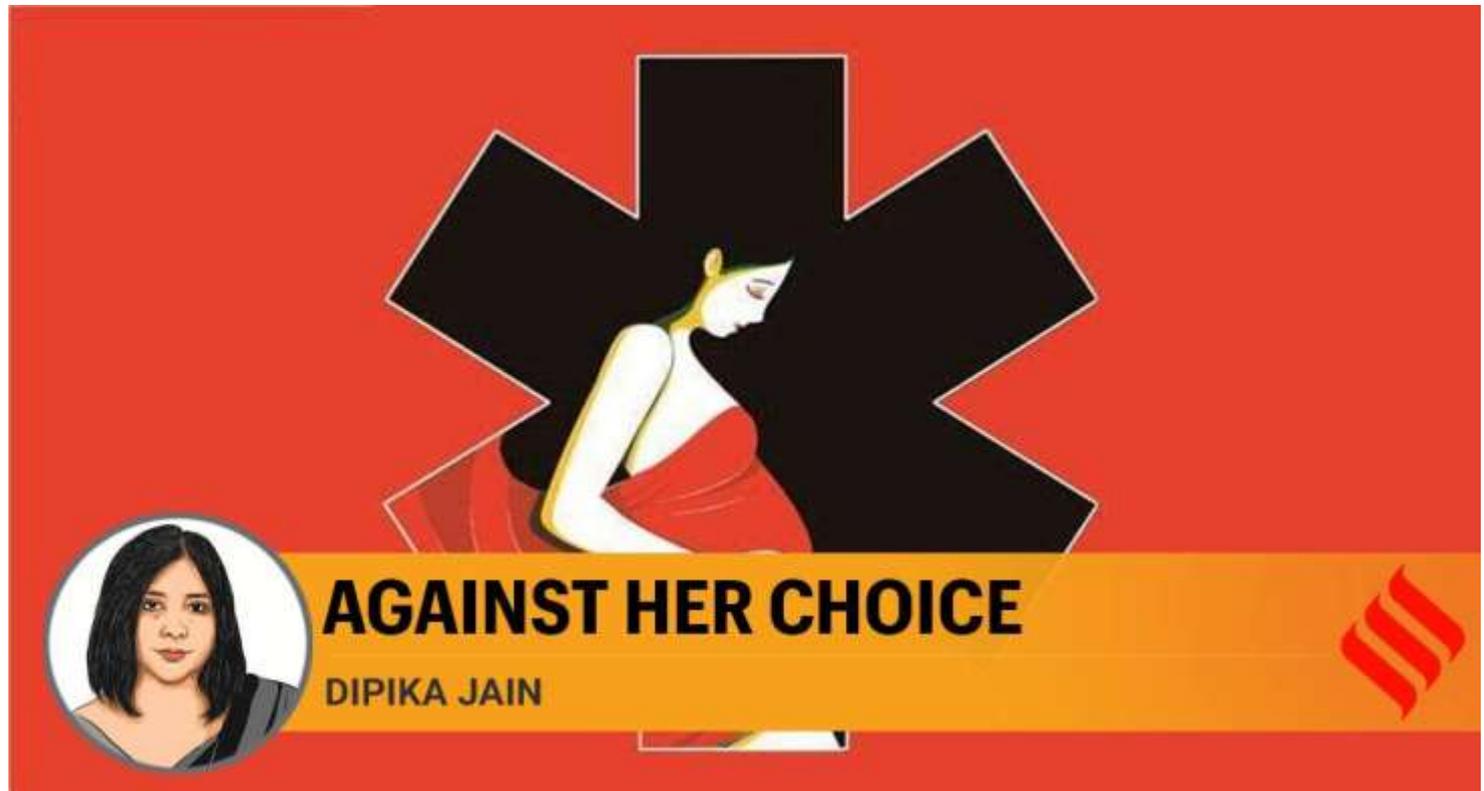


MTP law's patriarchal bias

By passing MTP bill, state continues to control women's reproductive and sexual rights while wielding the argument of 'progress'.

Written by [Dipika Jain](#)

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The persistent notion that women are “natural” mothers, as reiterated in the Rajya Sabha debates, furthers the paternalistic idea that women need hand holding in making decisions related to their sexual and reproductive rights.

On March 16, the Rajya Sabha passed the Medical Termination of Pregnancy (MTP) Amendment Bill 2020 despite much opposition and calls to send the Bill to a Select Committee. The Lok Sabha had passed the bill last year. Some relevant objections in the Upper House included the lack of consultation with stakeholders, raised by Ameet Yajnik of the Congress, lack of inclusion of transgender people within the MTP framework, raised by Fauzia Khan of the [Nationalist Congress Party](#), the lack of emphasis on centring women's autonomy, raised by Binoy Viswam of the CPI. The fact that medical boards would constitute violations of privacy, and cause inordinate delays in abortion access due to lack of specialists, and lack of time limits for decision-making, ambiguous representation of women, and the extensive procedural hurdles, were raised by Yajnik, Khan, Priyanka Chaturvedi of the [Shiv Sena](#) and P Wilson of the DMK. Unfortunately, the government did not pay heed to these objections.

Union Minister of Health and Family Welfare Harsh Vardhan insisted that the government had “held extensive consultation process with experts representing a range of stakeholders from central ministries and departments, state governments, NGOs, academic institutions, professional bodies and associations like the Federation of Obstetric and Gynaecological Societies of India, that is, FOGSI, Indian Medical Association, Indian Nursing

Council, and, of course, the legal professionals also.” He also said that the Bill was cleared by an Ethics Committee and a “Group of Ministers headed by Shri Nitin Gadkariji, and there were very senior ministers in this, including Smriti Iraniji and many other female ministers also”. We also had consultations with the Law and Justice Ministry, he said. The minister emphasised that there are several models of abortion regulation globally, one of which includes abortion on request. However, abortion under the MTP Amendment Bill will not be allowed at the request of a pregnant person, but is conditional on authorisation by the doctor. This goes against the Supreme Court’s jurisprudence on reproductive autonomy and bodily integrity. Further, the Bill will allow for abortions without any upper gestation limit only for foetuses with “abnormalities”, thereby fostering the ableist rationale of the State. The Bill is also overwhelmingly cis-heteronormative, with only cisgender women being contemplated in it, and not persons with other gender identities.

The Bill calls for the mandatory setting up of Medical Boards in every state and Union Territory which rely on inconsistent criteria for approval of abortions. This could cause severe delays in the abortion process; people living in rural areas in large parts of the country could find these Boards inaccessible. Over the last year, concerns have been voiced by the disability rights movement, health rights and feminist groups, and other civil society groups on the regressive and impractical provisions of the Bill. Failure to carry out substantive consultations with communities actually affected by the law gives a telling picture of how the Central government has been drafting and enacting laws that are harmful to the people they affect the most.

One example of this is the Indian Agriculture Acts of 2020 (Farm Bills), whose enactment sparked one of the largest protests in the country’s recent history. The government claimed that it consulted farmers before passing the Farm Bills, with Law Minister Ravi Shankar Prasad claiming that “extensive consultations, training and outreach programmes (were) conducted on the Agriculture Laws with stakeholders” and that 92.42 lakh farmers had participated in webinars conducted by them. However, all these interactions with farmers’ groups took place only after promulgation of the Ordinances in June 2020. This meant, first, that no pre-drafting consultations took place, and, second, that any suggestions which may have emerged during subsequent consultations were not incorporated into the Bills.

The process of drafting and enacting laws in a democracy must necessarily involve consultations and deliberations with representatives from civil society and grassroots organisations, all of whom have a stake in the implementation of such laws through their lived experiences. The equating of “stakeholders” with elite groups of healthcare professionals, bureaucrats and politicians – as mentioned by the health minister – and the exclusion of important civil society actors and marginalised groups whose lives are likely to be substantially affected by the law raises questions over the consultative process. Passing laws without a robust pre-legislative, consultative and deliberative process often leads to aspersions being cast on the legitimacy of these laws, rendering them increasingly subject to constitutional challenges and judicial interventions.

In passing the MTP Amendment Bill, the State continues to control women's reproductive and sexual rights while wielding the argument of "progress". The narrow understanding of women's rights, which underpins the legislation, serves to explain much of the hetero-patriarchal regulatory orientation of the law. The co-option of "women's rights" in the rhetoric to promote the Bill is ironic, as its provisions continue to criminalise abortion, and perpetuate harmful stereotypes and stigma around reproduction, sexuality and motherhood. The persistent notion that women are "natural" mothers, as reiterated in the Rajya Sabha debates, furthers the paternalistic idea that women need hand holding in making decisions related to their sexual and reproductive rights.

This article first appeared in the print edition on April 1, 2021 under the title 'Against her choice'. The writer is professor, Jindal Global Law School