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INDEX

1. *The Coaching Culture Conundrum* 3
2. *Hysterectomy, Commercialisation of Health* 4
3. *Law Commission of India (LCI) and the Debate on Age of Consent* 6

SHANKAR IAS ACADEMY

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FEBRUARY 2023

1. THE COACHING CULTURE CONUNDRUM

What is the issue?

The Guidelines for Regulation of Coaching Center issued by the Ministry of Education, Government of India (GoI), in January 2024, first in many ways, make the grey shadow education market legal.

What does the National Education Policy (NEP) say?

- This is the first time the GoI recognizes and legalizes the coaching culture, which the National Education Policy (NEP) 2020 acknowledges as having harmful impacts.
- The NEP 2020 squarely puts the blame on the nature of secondary school exams, including board exams and entrance exams for such harmful coaching cultures.
- It therefore recommends reforms in the current pattern of the examination system to eliminate the need for undertaking coaching.

What does the guidelines say?

- The new guidelines tend to legalize the very coaching culture.
- These guidelines suggest that the coaching culture is irreversible and that it will continue unabated, but with a few regulatory measures.
- The guidelines do acknowledge the presence of such dummy schools.
- A happy and contented child is indeed a hallmark of a happy society and nation.

How does the guidelines fare in today's context?

- It was expected that a more proactive reforms in the arena of secondary school examinations as well as entrance requirements for getting into higher education institutions will be taken.
- However, surprisingly the new guidelines tend to legalize the very coaching culture by granting recognition to coaching centres, by suggesting minimum standards to run a coaching institute.

- These guidelines suggest that the coaching culture is irreversible and that it will continue unabated, but with a few regulatory measures.
- They, thereby, let the coaching or shadow education institutions continue to flourish, now with formal recognition from the government.
- Previously, coaching institutes were registered with the commercial taxes department, but now they will possibly be given recognition by the department of education.
- While it rightly points out what is wrong with the coaching culture, it gets entrapped by the same culture, which propagates coaching as a common sense among parents and children for success in entrance exams.
- This common sense leads parents to forego precious childhoods and experiences of senior secondary school education.
- They place their children in controlled environments of coaching institutes, isolating the child from their peers, family and other social environments, which are necessary ingredients for an enriching childhood and youth hood.
- Coaching institutes which disguise as schools, as in the case of states like Rajasthan, Andhra Pradesh, Telangana, etc. Usually, these schools are referred to as dummy schools, a term used to denote schools on paper.
- Once a child is registered in such a dummy school, most of their time is spent in coaching for entrance examinations that are scheduled five to seven years down the line.
- The guidelines does acknowledge the presence of such dummy schools, however it is silent as to what to do to regulate, abolish and eliminate such illegal practices.
- The document recognises the fact that the number of unregulated coaching institutions has grown in the absence of any clearly laid-down policy, leading to undue pressure on children.
- This results in an increase in incidents of self-harm or suicide, propelling a large number of students to lose their precious lives.

- The documents states that, classes in coaching institutes shall not be conducted during school hours and at the same time allow these institutes to run classes up to 5 hours after school hours.
- This confines the student in the classroom set up for 13 hours more or less continuously, leaving out no time for self-study, sporting activities or peer socialization.
- Even more interesting is the fact that investments pour into these coaching institutions from venture capitalists not just from India but from abroad too.

What is the conclusion?

- One needs to understand why these coaching institutes flourish at the cost of belittling the formal structures of schooling is the fact that the entrance examinations are highly competitive.
- Many more issues mentioned in the guidelines require serious debate and discussion among the stakeholders, parents, and children, teachers, coaching institutions, state policymakers and educationists.
- Without such an engaging discussion, one may get the impression that these guidelines are a mere lip service rather than any robust and sincere effort to address the grey area of shadow education and its harmful impacts on the students and the education system in India.

2. HYSTERECTOMY, COMMERCIALISATION OF HEALTH

What is the issue?

The increasing prevalence of hysterectomies among young women in various states of India over the past decade has raised significant concerns.

What is hysterectomy?

- Hysterectomy is the gynaecological procedure, wherein the uterus is surgically removed.
- It is performed for benign (not fatal) and malignant (cancerous) indications.
- The National Family Health Survey (NFHS)-5 data states that 3% of women under the age group of 15–49 years had undergone hysterectomy in 2019–21.

- In April 2023, the Supreme Court of India ordered all states and union territories to follow the guidelines formulated by the Ministry of Health and Family Welfare to monitor unnecessary hysterectomies being performed in the country.
- Due to several serious instances, hysterectomy has received enormous attention in the health policy debates in India in the past few years.

What are the issues associated with hysterectomy?

- Approximately 90% of hysterectomies are performed for benign conditions, such as fibroids causing abnormal uterine bleeding.
- There is an unusual surge in the number of women undergoing hysterectomy in many parts of the country, with a significant number of cases involving young premenopausal women from poor families.
- In India, community-based cross-sectional studies, conducted mostly in rural settings in different age and population groups, estimate the prevalence of hysterectomy between 1.7% and 7.8%.
- A large proportion of the hysterectomies performed were medically unwarranted; private doctors were using highly suspicious diagnostic criteria based on a single ultrasound scan; and medical records were incomplete, flawed and, in several instances, manipulated.
- The issue extends beyond the financial strain, encompassing the challenges and consequences experienced by the families, which has a notable impact on women's well-being.

What is the linkage between gynaecological morbidity and hysterectomy?

- Certain gynaecological illnesses can result in severe symptoms and complications that pave way for hysterectomies.
- Gynaecological morbidities are major causes of illness and mortality worldwide, specifically in lower- and middle-income countries.
- The symptoms include white discharge, heavy bleeding, prolapse or fibroids or cysts, lower backache, dysmenorrhoea, lower abdominal pain, burning micturition and irregular menstruation, reproductive tract infections, menopause, and the cancers of breast, cervix and uterus.

- These disorders can prove detrimental to the female reproductive ability.
- They often lead to loss of productivity, absenteeism from work, physical, mental, and social stress, and a large economic burden on families and individuals.
- As a treatment for a range of gynaecological morbidities, hysterectomy has emerged to be the most popular of all kinds of other treatment modalities.

What led to increase in hysterectomy in India?

- In the majority of the cases where women underwent hysterectomy, they were completely unaware of their illness.
- They were only told that their issue would lead to cancer, in the future.
- This fear of cancer sowed in their minds created a passive demand for hysterectomy.
- Mostly women could only understand that their uterus is damaged and they need surgery as a treatment.
- In the study, fear of cancer served as one of the most predominant causes for women showing compliance to hysterectomy.
- Irregular bleeding for a prolonged period of time was one indication while uterine prolapse was also reported to be one of the most common conditions for which women sought hysterectomy.

How does the weak healthcare system in India add to the woes of hysterectomy?

- In 2018, the Indian economy was estimated to be the seventh largest in the world by nominal GDP and the third largest in purchasing power parity (PPP).
- Although robust economic growth over the past two decades has contributed to a decline in mass poverty, improvements in other indicators of well-being, such as access to healthcare, continue to struggle.
- The National Sample Survey (NSS) of 2019 points out that the use of Outpatient Department (OPD) care in public facilities was extremely low.
- Despite government hospitals being the second-most utilized healthcare providers in India, the shortage of human resources in these

facilities resulted in a significant proportion of deaths.

- Approximately 60% of these are attributed to conditions that could have been effectively treated with timely healthcare interventions.
- Poor infrastructure, limited availability of drugs and consumables, and poor staff motivation, low-quality care, and long waiting time served as reasons for low utilization of public healthcare facilities.
- Gaps in the availability of essential infrastructure can limit the ability of health workers to manage common diseases.

What is the role of the private sector in healthcare?

- Statistics indicate that the private sector dominates the contemporary healthcare system in India, providing approximately 60% of inpatient care and 80% of outpatient care in 2016.
- This sector includes a wide spectrum of unqualified medical practitioners operating in rural areas, quacks, single-doctor clinics, nursing homes, small hospitals, charity hospitals, and multi-specialty corporate hospitals.
- The choice to use the private sector facility is essentially guided by not only quality or cost but also because of the inhibition to visit a public health facility.
- The growth of this industry over the decades has led to a scenario wherein the informal and formal private sectors play a greater role in framing women's reproductive choices, health experiences and outcomes than the state-owned health sector.

How the commercializing of hysterectomy happened?

- The lacunae in the existing health policies, along with the mushrooming of private healthcare entities, lead to a higher number of unwarranted hysterectomies.
- The socio-economic condition, poverty, combined with hard domestic work significantly restrict women's reproductive choice.
- Lack of trust in government hospitals combined with willingness to opt for private healthcare providers, despite the cost incurred, is a process of passive privatization.

- The unethical and greedy behavior by the medical practitioners, taking advantage of the information asymmetry, power asymmetry and fear psychosis leads to the growing number of unwarranted and unethical hysterectomies happening all over the country.
- Given that most women come from impoverished backgrounds, they carefully considered the complete treatment package, including doctor's fees, hospitalization expenses, and other miscellaneous charges, comparing these options before deciding.

What is the conclusion?

- The poor and lower-middle-class women face significant barriers in accessing healthcare and encounter difficulties in locating suitable health facilities to address their gynaecological issues.
- The standardization and control of the private sector in health-related problems remains a contested topic, as there are variations in treatment provided by various health facility settings, such as private clinics, polyclinics, small private hospitals, corporate hospitals, or state hospitals.
- Despite the rise in private sector investment across all regions, there is no proper regulation or required standard of care.
- The institutional mechanisms for promoting accountability are weak in both public and private sectors.
- Expansion and strengthening of the public healthcare sector, while ensuring its accountability and responsiveness to communities, is the most crucial step for controlling the exploitative practices of the private sector.

3. LAW COMMISSION OF INDIA (LCI) AND THE DEBATE ON AGE OF CONSENT

What is the issue?

In its 283rd report released in September 2023, the Law Commission of India (LCI) commented on the highly complex issue of the age of consent for sexual interactions.

What is the background of the issue?

- The Protection of Children from Sexual Offences Act (POCSO), 2012 and the Indian Penal Code, 1860 both peg the age of consent at 18 years.
- This means that all persons under the age of 18 years are uniformly defined as children and the consent of any child, so defined, is deemed irrelevant in law.
- POCSO makes it mandatory, to report any sexual interaction involving a minor, notwithstanding its negative impacts on the minor or the duty of medical professionals to maintain the confidentiality of their patients.
- This means that offences under the POCSO have, so far, been statutory rape offences, that is, offences in which the wrong underpinning criminalization is not the absence of consent, but the presumed incapacity to consent.
- The LCI report recommends that in limited cases, the genuine consent of the de jure victim ought to give special courts the discretion to award a sentence lower than the prescribed statutory mandatory minimum.
- This applies where the age difference between the de jure victim and the accused is not more than three years.
- Whether consent is genuine or not is also to be determined by the special court, based on a set of guidelines recommended by the LCI.
- This is aimed towards ensuring that the consent was not manipulated, coerced, or induced through undue influence.

What is the relevance?

- The issue of the age of consent has continually been a matter of public debate and concern because of the bright-line approach taken by the POCSO.
- This does not account for the fact that older children, or adolescents, can and do engage in de facto consensual relationships, not all of which are abusive or exploitative.
- Socially, the emergence of adolescent sexuality is recognised in India through increasing controls over the dress and movements of girls after puberty, as well as through the social normativity of adolescent marriage.

- Recognition of the emerging capacity of adolescents to make their own decisions, including sexual decisions, is also implicit in the United Nations Convention on the Rights of the Child, 1989.
- In the context of abortion services, the Supreme Court of India noted that the chilling effect of such a provision prevents adolescents from seeking, and medical practitioners from providing, safe and essential abortion services.

What is the complexity of the issue?

- The LCI report correctly identifies the key concern with reducing the age of consent, which is that the token of consent given by the minor may be used by the accused as a defence in a criminal charge of rape or sexual assault.
- This is because the consent of the minor would now become relevant in law.
- The claim that a sexual relationship was romantic or de facto consensual may then be used to mask cases in which the minor is actually being trafficked by their lover or spouse.
- The report also captured the practical reality that sexual relationships frequently channel minors into life trajectories, such as early marriage and pregnancy, which might cause or worsen intergenerational poverty and underdevelopment.
- However, the solution suggested by the LCI does not appropriately address this concern.
- Furthermore, criminalising de facto consensual sexual interactions, especially where the minor does have the capacity to consent, is not the appropriate way to prevent early marriage or pregnancy.
- The real cause of early pregnancy is poor information about and use of contraceptives.
- The latest National Family Health Survey-5 (NFHS) data indicate that only 58.5% of people (of all ages) in urban areas and 55.5% in rural areas use any modern methods of contraception.
- This problem is better remedied by increasing awareness of reliable methods of contraception and providing comprehensive sex education aimed at destigmatizing and normalizing the use of contraceptives in schools and universities.

What are the reasons behind the problem-solution mismatch?

- There are two main parts to the solution suggested by the LCI report.
- First, there ought to be guidelines in place to allow special courts to assess whether the consent of the de jure victim was genuine, in that, it was more than just a token induced by coercion, pressure, manipulation or influence.
- The guidelines suggested by the LCI to this end are aimed in the right direction but are not always and entirely clear.
- Similarly, another guideline requires the special court to consider whether there was an element of deceit perpetrated by the accused (or anyone on their behalf) against the child.
- This raises more questions than it answers.
- Therefore, to include a requirement to consider deceit when assessing the genuineness of a minor's consent, without properly considering these related issues, only complicates the matter further.
- The bigger problem, however, is in the second part of the LCI's recommendation.
- The report recommends that the special court may award a sentence lesser than the mandated minimum sentence in the statute.
- This applies where the de jure victim is 16 years or older, the age difference between the parties is not more than three years, and the consent of the de jure victim is assessed to be genuine as per the guidelines suggested.
- In the context of penetrative sexual assault, for instance, it could mean anything between no imprisonment to imprisonment for nine years and 11 months.
- The recommendation of the LCI is problematic as it fails to appropriately communicate the aim of the criminal prohibition and it creates scope for the accused to be exposed to undeserved censure because it does not meet criminal law's fair labelling requirement.
- There are two further problems with the report of the LCI that deserve mention.

What is the conclusion?

- The suggestion to link the genuine consent of the de jure victim to the sentence of the

accused, rather than the guilt or innocence (and therefore, the underlying wrongfulness of the conduct) of the accused, is theoretically incoherent.

- It also fails to communicate, with sufficient clarity, the aim of criminal prohibition and is incapable of correctly apportioning and assigning moral and social blame because it does not meet the requirement of fair labelling.
- It is argued that the LCI report captures the complexity of the issue before it reasonably well, but its solution fails to address the problems identified by it.
- This, in turn, is because the solution lacks theoretical coherence and fails to consider its practical implications.
