

FROM THE PRESS

Junagadh blood bank scandal

The Central Bureau of Investigation (CBI) is investigating a horrifying case of criminal negligence in Junagadh, Gujarat, where 23 thalassaemic children contracted HIV due to contaminated blood transfusions in 2011. The Junagarh government hospital did not screen the blood for HIV. The blood was obtained from the Sarvoday Blood Bank headed by BJP MLA Mahendra Mashroo. The blood bank was listed on the state government's official website in spite of being unregistered.

The first investigation, by Junagadh Superintendent of Police, Shobha Bhutada, was found unsatisfactory, and the Gujarat High Court ordered a CBI probe after the parents of the children filed a public interest litigation.

Observing that "no effective steps were taken during five months of [the police] probe and the system seemed supporting the private blood bank, which did not even have a license", the High Court asked the CBI to investigate.

Charges of culpable homicide not amounting to murder, causing hurt by means of poison, and abetment, were some of the charges filed by the Gujarat police, and retained by the CBI. Among those charged are the civil surgeon and pathology department officials of the hospital. Two of the children have since died.

Saeed Khan, Junagadh HIV case: CBI submits second probe report to HC, TNN December 6, 2012. Available from: http://articles.timesofindia.indiatimes.com/2012-12-06/ahmedabad/35646386_1_reports-on-further-investigation-status-report-hiv-through-blood-transfusion,DNA Correspondent, Junagadh HIV transfusion case: BJP MLA Mahendra Mashru in trouble? [dnaindia.com, July 12, 2012](http://www.dnaindia.com/india/report_junagadh-hiv-transfusion-case-bjp-mla-mahendra-mashru-in-trouble_1714089) http://www.dnaindia.com/india/report_junagadh-hiv-transfusion-case-bjp-mla-mahendra-mashru-in-trouble_1714089 TNN, Junagadh HIV case: CBI files status report in Gujarat high court, TNN October 6, 2012. Available from: http://articles.timesofindia.indiatimes.com/2012-10-06/ahmedabad/34293008_1_cbi-files-status-report-hiv-through-blood-transfusion-bjp-mla-mahendra-mashroo

Rotavirus vaccine in immunisation programme?

Medical experts have criticised the government's plans to include the rotavirus vaccine in the national childhood immunisation programme. They argue that available evidence does not support use of the expensive vaccine in a national

programme, and doing so will divert funds from other urgently required interventions. Two noted paediatricians, Jacob Puliye of St Stephen's Hospital, Delhi, and Joseph Mathew of the Advanced Paediatric Centre, PGIMER, Chandigarh, have argued their case in the *British Medical Journal*. They have also criticised the evidence and calculations that are used to justify the vaccine's inclusion in a national programme. For one, data from other countries are not necessarily applicable in India. Second, the vaccine does not prevent bacterial infection. Third, most rotavirus diarrhoea cases are "co-infections" for which the vaccine will be of no use. Finally, the Global Alliance for Vaccines and Immunisation supports immunisation campaigns initially and later backs out. This leaves developing countries to foot the bill for expensive vaccines. India's immunisation budget is \$240 million; the rotavirus vaccine alone is said to cost \$ 350 million.

Ramesh Shankar, Experts criticise govt move to include rotavirus vaccine in national immunisation programme, *Pharmabiz.com*, December 22, 2012. Available from: <http://pharmabiz.com/NewsDetails.aspx?aid=72845&sid=1>

Death by negligence

A string of acts of suspected medical negligence is being investigated by a three-member commission looking into the death of 65-year old Bhikhu Tambe at the government-run Gokuldas Tejpal (GT) Hospital in Mumbai.

The patient was initially admitted to St George's Hospital (also government-run) on December 4, 2012, complaining of breathlessness. He was referred to GT Hospital for a pulmonary CT angiography, as doctors suspected chronic obstructive pulmonary disease.

According to press reports, the patient died about an hour after undergoing the angiography at GT Hospital, but doctors from St George's Hospital took charge of the body and transferred it to their own hospital where they put the body on a ventilator for over two hours, before finally announcing the patient's death to his family.

It is alleged that the patient was sent alone to GT Hospital for the angiography despite being in obvious distress; he was kept waiting outside the imaging centre; his death was intentionally concealed from his family by using a resuscitator and ventilator after he had been declared dead; and no post mortem had been conducted before handing over the body to relatives.

The committee is investigating all these charges, as also the possibility of the patient's death being caused by a reaction to

a dye used for the purpose of the scan; or by an injection which was given to check a reaction to the dye.

Sumitra Deb Roy, Panel uncovers series of errors in hospital death, *Times News Network*, December 19, 2012. Available from: http://articles.timesofindia.indiatimes.com/2012-12-18/mumbai/35890229_1_junior-doctors-ct-scan-patient
Sumitra Deb Roy, Doctors kept dead man in ICU as cover-up, *Times News Network*, December 18, 2012. Available from: http://articles.timesofindia.indiatimes.com/2012-12-18/mumbai/35890229_1_junior-doctors-ct-scan-patient

Need to preserve privacy in facilities for the HIV-positive

Thousands of HIV- positive individuals in India must travel long distances for essential antiretroviral therapy (ART) provided by the government. It is for this reason that, two years ago, the Tamil Nadu government launched a scheme providing free bus passes for travel to ART centres. Yet there are few takers for the essential facility.

This is because the special passes, which sport a red ribbon logo, and contain details of the patients' treatment centre, are used by nosy conductors to harass pass holders, often in a bus full of their neighbours. Patients, who are already travelling long distances, spending more than they can afford to avoid recognition, find the government's gesture costly. Rights activists have asked for awareness raising among transport staff. Tamil Nadu State Transport Corporation authorities state that a circular has been issued to service staff on the matter, but this has not made any difference.

Olympia Shilpa Gerald, Fearing stigma, people with HIV miss the bus, *thehindu.com*, December 19, 2012 Available from: <http://www.thehindu.com/news/cities/Tiruchirapalli/fearing-stigma-hiv-patients-miss-the-bus/article4214462.ece>

Irish law on abortion to be amended

The Irish Government has announced plans to amend the law on abortion, and permit it as a last resort, "where there is a real and substantial risk to the life, as opposed to the health, of the woman". This is in response to widespread popular protest after the death of Indian-born Savita Halappanawar of septicaemia related to a miscarriage. Savita was refused an abortion when her baby was miscarrying, apparently on the ground that the foetus' heart was still beating. Her husband reported that staff told him an abortion was not permissible as "Ireland was a Catholic country".

Abortion is banned in Ireland in all circumstances. Though the country's Supreme Court permitted it in the case of a 14-year-old rape victim, when the woman's life was at risk, including from suicide; the legislation does not reflect this decision. It is, however, embodied in the Irish Medical Council's guidance on the issue: "Abortion is illegal in Ireland except where there is a real and substantial risk to the life (as distinct from the health) of the mother. Under current legal precedent, this exception

includes where there is a clear and substantial risk to the life of the mother arising from a threat of suicide."

Critics have accused the government of "shirking its responsibility to provide legislative clarity on the issue".

Tim Edwards, Irish abortion debate reignited by pregnant woman's death, *The Week*, November 15, 2012. Available from: <http://www.theweek.co.uk/health-science/50119/irish-abortion-debate-reignited-pregnant-womans-death>
First Reaction, Ireland to legalise abortion when mother's life is at risk, *The Week*, December 19, 2012. Available from: <http://www.theweek.co.uk/world-news/abortion/50697/ireland-legalise-abortion-when-mothers-life-risk#ixzz2GmoPTT1F>

Horrific gang rape stimulates debate

The brutal gang rape and torture of the young medical student in Delhi, followed by her death, aroused an unprecedented storm of public protest, and debate in the media. Some of the issues raised were amendments in the law on rape and other forms of oppression of women; how far the police and other authorities implement the existing laws; the punishment and demands for its revision; and the cultural mindset that allows oppressors to get away with impunity, encouraging a repetition of such crimes. Some reports covering these issues are summarised below:

Doctors question ethics of airlifting patient

"The shifting of the victim who had suffered irreversible brain damage, after two consequent cardiac arrests and septicemia was ethically and morally wrong," said Dr Deepak Agarwal, senior neurosurgeon at the AIIMS trauma centre. He dismissed the government's claims that Mount Elizabeth Hospital was selected as it has a state-of-the-art organ transplant facility. "The fact is a patient with two cardiac arrests and septicemia cannot undergo transplant. She was at best an organ donor not a recipient," said Agarwal. However, Dr Yatin Mehta, chairman of the Medanta Institute of Critical Care and Anesthesiology, said the patient "was flown to Singapore in a last-ditch attempt to try and revive her in a set-up that was far better than Safdarjung Hospital."

Meanwhile, a senior doctor at Safdarjung Hospital told the newspaper that the shifting was done under "direction from the top (government)". He added that the patient had suffered irreversible brain damage in the early hours of Wednesday, 22 hours before she was airlifted to Singapore.

This criticism was echoed by the Indian Medical Association (IMA) President, Dr K Vijaykumar, who told the press that a doubt arises in everyone's mind whether the country's premier institutes and hospitals lack the infrastructure to treat such patients. Both the President and Honorary Secretary of the IMA demanded that the government come out with criteria and norms to be followed with regard to cases of transfer of patients to other hospitals. Several members of the profession

have questioned the shifting, with some directly stating that it was a political move.

Durgesh Nandan Jha and Prithvijit Mitra, Doctors question move to shift girl to Singapore, *The Times of India*, December 30, 2012. Available from: <http://timesofindia.indiatimes.com/city/delhi/Doctors-question-move-to-shift-girl-to-Singapore/articleshow/17814206.cms>

NGO recommends strict implementation of current laws

In an analysis of rape cases in the Delhi district courts, Shakti Vahini, an NGO, found that poor investigation led to a large number of acquittals. Executive Director Ravi Kant said: "Changes in legislation or enhancing the punishment is not the answer, but the proper implementation of current laws and making the system efficient is." Among the major lacunae revealed are:

- The accused were arrested, released on bail, and then went missing.
- Persons who provide surety for bail for the rape accused are only fined if the accused abscond.
- Inadequate protection to witnesses and victims prompted them to turn hostile.
- In some cases, no effort was made to involve vital witnesses in the trial.
- Evidence related to important events which form a part and parcel of the crime was routinely overlooked by investigating officers.
- Medical examinations of victims were conducted after the stipulated limit, rendering the evidence invalid.

Faizan Haider and Neelam Pandey, NGO sheds light on shoddy rape probe, *Hindustan Times*, December 27, 2012. Available from: <http://www.hindustantimes.com/India-news/NewDelhi/NGO-sheds-light-on-shoddy-rape-probe/Article1-981657.aspx>

Revamping the "justice" system

Much debate on the case has centred on increasing the quantum of punishment, and the infrastructure in the justice system. An article by Indira Jaising, Additional Solicitor General of India, discusses what needs to be done to revamp the legal system. Some of her observations:

- For a man to rape his wife is not an offence, as her consent is assumed in marriage. This is where the problem starts
- The principle that sexual intercourse without consent is unacceptable, whether it is with a wife or a stranger needs to be established.
- It is the impunity with which vested interests abuse the law, and the complete indifference to women who have been sexually abused, that result in delays, not the lack of infrastructure. An approximately 40% increase in the

number of judges between 2005 and 2012 did not produce a corresponding reduction in the number of pending cases.

- Though at least 50% of law students are women, a patriarchal judiciary and legal system ensure that the number of women lawyers and judges is low. Even this minority is discriminated against in terms of appointments, designation as seniors and promotions.
- Under the existing law, a man found guilty of rape can be given a life sentence. Ms Jaising points out that in her entire career of over 40 years as a lawyer, she has not seen a single case where a rapist has been given a life sentence.
- For increased accountability of the police, a complaints procedure needs to be set up where a complaint can be lodged for non-performance of duties. When the non-performance of duties involves a junior, the senior officer must be made accountable. When the non-performance emerges as a trend, the accountability must be that of the head of the police, and of the political establishment.
- The performance of the judiciary should also be monitored, and a mechanism be set up to examine whether the content of their judgments meets the constitutional goal of equality.
- Standards must be put in place as to how judges should behave with women lawyers and litigants. No judge, let alone a Supreme Court judge, must ever be permitted to use sexist language in judgements or during proceedings in court.

Ms Jaising concludes:

"This is what the 23-year-old was trying to tell us, before she died. "I want to live," she said, not die of shame. She changed the way society looks at rape — from blaming the victim to focusing on the rapist. All law reform must move in that direction, asking how we can build a new life-sustaining legal culture, a more equal culture, with justice for all."

Indira Jaising, Blind to what, Your Honour? *The Times of India*, December 29, 2012. Available from: <http://timesofindia.indiatimes.com/india/Blind-to-what-Your-Honour/articleshow/17814966.cms>

Chemical castration cannot be a penalty option

Among the early responses to the murderous assault on the young student in Delhi, have been demands for surgical castration, chemical castration and the death penalty for rape. A lead article in *The Hindu* argues that the demand for chemical castration "is largely misplaced because it misunderstands the nature of rape as a crime. Rape is not about sex. Rape is about power, violence, intimidation and humiliation. Attempts to reduce the incidence of rape by controlling the sexual urge of men are bound to be ineffective because they invoke a very shallow and inadequate understanding of rape."

Explaining that "Chemical castration involves injecting anti-androgen drugs that suppress the production of testosterone

as long as the drugs are administered," the author says the therapy, which is reversible when discontinued, "would require state governments to put in place a strictly implemented system of providing therapy for it to be a constitutional option. Given the condition of state healthcare services in India, citizens are entitled to be sceptical about the feasibility of providing such therapy." Again "a law that would require indefinite administration of anti-androgens for sex offenders is likely to be unconstitutional".

No meaningful attempt to protect women from sexual oppression can succeed without striving to change "gendered notions of power entrenched in our families, our marriages, our workplaces, our educational institutions, our religions, our laws, our political parties and, perhaps, worst of all, in our minds. There are many violent manifestations of these entrenched

patterns of power in our society and while rape is certainly one of them, it would be a great disservice to empowerment of women in this country to not attach the same kind of urgency and significance to gender violence beyond rape," the writer concludes.

Anup Surendranath, Castration is not the right legal response, The Hindu[Internet]. December 24, 2012. Available from: <http://www.thehindu.com/opinion/lead/castration-is-not-the-right-legal-response/article4232547.ece>

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