

Abortion and Sex-selection: Contentious Issues in the Campaign Against Sex - Selection

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Introduction:

Pre-natal and pre-conception sex selection to prevent the birth of females is an issue that has gained tremendous attention in recent times. The 2011 census has revealed that for every 1000 males in India, there are only 940 females. For children under 6, there are only 914 girls per 1000 boys as compared to 927 girls per 1000 boys in the last census. While the 2001 census too registered a steep decline in the child sex ratios, the phenomenon was seen in certain states that were known to practice infanticide. The 2011 census shows that the practice has also spread to other states that were previously not affected. The State of Jammu and Kashmir, for instance registered a decline in child sex ratio from 941 in 2001 to 859 in 2011. These revelations from the census have highlighted that the issue is indeed a grave one. It is believed that a major cause for skewed sex-ratios lies in prenatal sex-selection, a practice which has been banned, but still continues to flourish. Given the panic over the steep fall in the sex ratios, policy makers are proposing all sorts of measures to curb the practice of sex-selection – from restricting access to abortion, to treating sex-selective abortion at par with murder. Many of the suggestions and actions taken by the State as well as by civil society organizations, however, need some deliberation. While the issue of skewed sex-ratios is an important one, it is equally crucial to ensure that in our zeal to correct one problem, we do not infringe on other rights. This article raises concerns around some of the strategies being used by campaigners as well as policy makers to curtail sex-selection, while simultaneously suggesting a future course of action.

History

The problem of sex-selection was brought to the fore by the health and women's movements in the early 1980s. The roots of this problem lay in the inferior status accorded to women in Indian society and hence a traditional preference for a male child. Feminists considered sex-selection as a form of gender-based discrimination and opposed it on those grounds. They raised concerns about the role of the medical profession in colluding with the practice by using medical technology like ultra-sonography, amniocentesis and chorionic villus sampling, to determine the sex of the foetus for expectant parents, who would subsequently abort if the foetus was revealed to be female. The issue was, therefore, framed as one of misuse of medical technology to assist gender-discrimination. After relentless efforts to bring the issue into public consciousness and influence policy makers to see the problem as an important one that warranted action, the Pre-natal Diagnostic Techniques Act (PNDT Act) was passed in Maharashtra state in 1988 and later by the Centre in 1994. The law banned pre-natal sex-determination and made it a punishable offence. Until the year 2000 however, the act had not been implemented effectively and consequently no cases were filed. Simultaneously, there was also rapid growth of technologies which allowed sex-determination at the pre-conception stage. There was, therefore, a need to regulate these new technologies as well. These concerns led a group of people and organizations committed to women's rights, women's health and ethical medical practice, to approach the Supreme Court with a Public Interest Litigation in the year 2000. The objectives of the litigation were two-fold. The first was to activate the Central and State Government

machinery to implement the PNDT legislation and the second was to amend the law so as to bring newer technologies into the purview of regulation. The PIL was successful as far as these objectives were concerned. It resulted in formulation of rules for operationalizing the Act and also setting up of State and Central Supervisory bodies. The ambit of the Act was also widened to include pre-conception techniques (the name of the Act was amended to The Pre-Conception and Pre-natal Diagnostic Techniques Act or PC-PNDT). Along with the judgment on The PIL, the census of 2001 was also released and together, they brought the problem of skewed sex-ratios into the limelight. For the first time, the role of the medical profession was questioned with the Supreme Court calling upon professional organizations such as the IMA and FOGSI to take action against erring doctors. The two professional bodies also issued statements denouncing the practice of sex determination and urging their members not to indulge in it. After the amendment of the law, several efforts were made by government as well as civil society to ensure its implementation. Cases of PCPNDT were filed under the Act and were closely monitored. Awareness material was developed to increase visibility of the act and let people as well as health professionals know that the practice of sex-determination was illegal. Until 2010, however, no convictions took place under the act. A study carried out by CEHAT showed that until 2007, of the 57 cases filed under the Act, only 18 had been settled and the rest were still pending. Of those who were successfully prosecuted, most were related to non-registration of equipment or of the facility and involved imposing of fines. Inordinate delays were seen at the level of judiciary and several irregularities in the functioning of implementing bodies. The 'Appropriate Authority' who is the chief implementing officer under the Act was not notified even as late as 2007, which resulted in loss of some decoy cases. The Advisory Committees and State Supervisory Boards, although set up after the formulation of Rules under the Act, were largely inactive except in a few districts where civil society was active and was able to put adequate pressure on the local administration.

Issues of Concern Related to Abortion

A challenge that has continued to plague the campaign ever since the 80s is one of how the issue is framed. Sex-selection is indeed an important issue of gender-based discrimination. It results from the devaluation of women in society and perpetuates the notion that giving birth to a girl child is a burden. What it is NOT, is an act of violence against the foetus – which is how it has often been framed. Sex-selection is not a violation because the act results in the 'murder of a girl child in the womb'; instead, it is the aversion towards daughters that is faulty and unethical. Yet, a lot of the 'human rights' discourse as related to this practice revolves around preserving the 'right to life'. Some have even gone to the extent of defending the 'rights of the unborn child'. This is directly in contradiction with the reproductive rights of women, particularly the right to abortion, and must be categorically opposed. For several decades, feminists have fought to regain control over their bodies and for the right to abort an unwanted child. They have argued consistently that the foetus cannot be given the status of a child and that abortion is not tantamount to 'murder'. By the same reasoning, it would be inconsistent, to call sex-selective abortion an act of violence against the foetus.

Instead, it is important to constantly bring back into focus the fact that the practice of sex-selection is discriminatory because it perpetuates son preference and reinforces superiority of men in society. The impact of sex-selection is seen on the entire society that resists birth of the girl child. It furthers marginalization of women and is therefore an issue of discrimination rather than violence.

In the zeal to check the problem of sex-selection, the campaign against sex-selection has often encroached upon the right to abortion, both inadvertently and intentionally. It is the practice of sex-determination which was prohibited by the law, but the focus has invariably shifted to sex-selective abortion. All efforts are directed towards restricting sex-selective abortions rather than sex-determination per se. Even now, with the release of the census, there are several knee-jerk reactions which are directly in contradiction with the MTP law and the right to

abortion. Some of the ways in which this is happening are discussed below:

Restricted access to abortions: Because the sex of the foetus can be determined by ultra-sonography after 12 weeks, all second trimester abortions are being looked upon with suspicion. Although very few second trimester abortions are sex-selective, the notion that women routinely access abortion with the purpose of sex-selection is predominant among health care providers. Even health care providers in public facilities are reluctant to offer second trimester abortions. In a situation where abortion facilities are difficult to access anyway, the concern over sex-selection has restricted access even further. Recently in Nagpur and Latur districts of Maharashtra, the Municipal Corporation issued an order that expected abortion clinics to take permission from the Corporation prior to performing an abortion (Times of India, 13th July 2011). There has also been news that the time-frame for abortion will be reduced to 10 weeks, ostensibly to check sex-selective abortions. Firstly, such measures will only impede women's access to safe and legal abortion. Such a move will exclude the most vulnerable women – those who were unaware of their pregnancy status or were unable to reach services – from the purview of safe abortion services. Out of desperation, women will be pushed towards unsafe methods, thereby endangering their health and survival. Secondly, there are several other sex-determination (including pre-conception) techniques available which make sex-determination possible even sooner than 10 weeks and hence reducing the time frame of abortion is redundant. However, the lines between right to abortion and prevention of sex-selection seem to have blurred. The zeal of 'saving the unborn girl child' has, wittingly or unwittingly, impinged upon the right to abortion, thus proving counterproductive to achieving the vision of gender justice of which the right to control one's own body is an integral part.

Mixed messages in awareness material: In the attempt to highlight and impress upon people the seriousness of the issue, often inadvertently, campaigners tend to use anti-abortion language. The term 'foeticide' for instance, is rampantly used to refer

to sex-selective abortions even though it is clearly anti-abortion. It suggests that sex-selection is 'wrong' because the girl child is being 'killed'. Terms such as '*kanya bhrunhatya*' (killing the girl child in the womb) are considered effective because they are sensational. However, they send out the message that abortion is equivalent to killing a fetus and this causes confusion. Moreover, while awareness regarding the prohibition of sex-selection is great, there is little awareness about the legality of abortion. Posters, pamphlets, campaigns around the legality of abortion as defined in the MTP law are negligible as compared to those available for sex-selection. Field level interactions with women and girls in communities suggests that they have very little information about the circumstances under which abortion may be sought, the legal period within which it can be sought, and facilities that are authorized to perform the procedure. This underscores the importance of ensuring that abortion, which is already difficult to access, is not made even more difficult to access.

Limitations of the PCPNDT ACT

While the PCPNDT Act is a progressive legislation that, in spirit, has taken a stand against a discriminatory practice, it cannot ensure that sex-selection does not occur. In fact, within the boundaries of a doctor-patient relationship, it is impossible to ensure that the sex of the foetus is not revealed to the expectant parents. Apart from decoy operations or installation of spy cameras, that have ethical issues associated with them, there is almost no way of doctor being 'caught in the act'. Currently, abortion is being targeted because it is the only concrete 'outcome' that can be monitored. Not only does this impinge on the right to abortion as has been discussed at length, but also, it is practically impossible to establish the link between sex-determination and a subsequent abortion.

Moreover, it must be remembered that PCPNDT is a legislation that seeks to regulate medical technology, and in a country which has the largest and least regulated health sector, it is unreasonable to expect that regulation for one single procedure will be adhered to. While pushing for better implementation of the Act, it must, therefore, be kept

in mind that other strategies will have to be devised to address the problem. Indeed, for any law to be effectively implemented there is a need for changing the aspirations of the people it regulates.

The Way Forward

Previous endeavours to tackle the problem of sex-selection have shown that until the root cause, that is, son preference, is not dealt with, the practice will continue to exist. While legal action is necessary, a more fundamental reform of social values is required. It is therefore time to look upstream and challenge this ideology, if we want to achieve gender justice and curb the practice of sex-selection. As Rainuka Dagar explains in her article "*Rethinking Female Foeticide: Perspectives and Issues*", "*Social processes and the web of structural and cultural institutions have to be dismantled to allow the empowerment project to root out gender hierarchies.*" If we want to make real, sustainable change, it is these '*structural and cultural institutions*' that will have to be dismantled. It is not just the productive worth of women in society that needs to be increased, but also the cultural and social worth.

It would be pertinent to recall that the campaign against sex-selection began as a feminist one. Despite some of its anti-abortion language, it sought to address sex-selection as one form of discrimination among many others such as dowry, domestic violence, rape and inheritance. The call today, then, is for realigning the current campaign on sex-selection. The campaign against sex-selection must be integrated with others that seek to reform patriarchal structures. It must look beyond the problem of sex-selective abortions and join forces with other campaigns that seek to address the root causes of son-preference and daughter-aversion. There must be a move towards targeting sensitive and long standing practices such as dowry, women's rights to inheritance, domestic violence, pre-determined gender roles and gendered division of labour, if we want to truly empower women. Inheritance laws need to be implemented effectively, particularly the amendment to the Hindu Succession Act that granted women equal share in their "Joint Family Property" which was previously accorded only to

sons. It challenged the patrilineal system of inheritance that exists in Hindu society and was a tremendous break-through after over two decades of struggle by the women's movement. Even though this piece of legislation was not the result of the campaign against sex-selection, it did strike at the root cause that eventually leads to this practice. However, there is little awareness about the amendment, and its implementation is inadequate. Further, the Anti-Sex-Selection campaigns, to which the issue should have been pertinent, have overlooked this important victory and failed to capitalize on it. Similarly, there was the campaign against Dowry which also created awareness about the illegality of the practice. However, this campaign has not been able to stop the giving of dowry. It only changed forms of violence that are inflicted on a bride who does not bring dowry from burning to something more covert and insidious. Today, dowry is not even looked upon as an issue that needs to be addressed. In 2005, the government of India passed the Protection of Women from Domestic Violence Act (PWDVA), which the campaign against sex-selection can use to its benefit – by repositioning the issue of sex-selection as one of violence against the woman who is being pushed to produce a son. This is recognized by the law as a form of domestic violence. This would shift the burden of preventing sex-selection from the women themselves and make families accountable. There is hence a need for revival of the campaigns of the feminist movement in India which must be integrated with the fight against sex selection, for they all seek to abolish the system that perpetuates gender discrimination in all forms.

If we want to challenge the existing mindset of male supremacy in society, it is essential to start with that section of society that is an important actor in the practice of sex-selection – the medical profession. As discussed before, collusion of doctors with parents and their unwillingness to partake in the fight against sex-selection was one of the main reasons for failure of the PCPNDT Act. It indicates the level of commercialization of the medical profession, which views the practices as a profitable business. It is also clear that if any legislative measure is to make a difference to the falling sex ratios, there must be a

buy-in from the medical community. There is, hence, an urgent need to build the perspective of gender into medical education so that doctors, who are not just the people who perform the procedures that eventually lead to sex-selective abortions but also highly respected members of society can play a role in dismantling the structures that oppress women. Further, doctors must realize that while they are required to not abet sex selection, they also have the responsibility to inform women who are being pressurized to bear a male child, of the Protection of Women from Domestic Violence Act. This responsibility has been accorded to them as per the law and must be recognized.

Lastly, it is imperative that the campaign continues to pressurize the government to implement the PCPNDT Act and punish erring doctors. Flaws in the system such as laxity of Appropriate Authorities, Advisory Committees and Courts must be highlighted and efforts made to minimize them. At the same time, there is a need to advocate for regulation of the private health sector in general. As long as the sector operates without any accountability and without minimum standards, it will be impossible to ensure that a single legislation is implemented rigorously in isolation.

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