

**GENDER DISCRIMINATION FUELS SEX SELECTIVE ABORTION:
THE IMPACT OF THE INDIAN SUPREME COURT ON THE IMPLEMENTATION
AND ENFORCEMENT OF THE PNDT ACT**

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India eliminates over half a million healthy girl fetuses annually—simply because of their gender. When the Indian parliament passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT) in 1994, it intended to curb the use of ultrasound machines for determining the sex of a fetus and, therefore, decrease the incidence of sex selective abortion. However, doctors, parents, law enforcement, and even government routinely ignored the PNDT Act.

In India, the widespread and inexpensive availability of prenatal medical technologies has led to pervasive sex determination followed by the sex selective abortion of healthy female fetuses. This practice, fueled by gender discrimination, has resulted in a dangerously skewed sex ratio in India—one that is progressively worsening as the number of girls per 1000 boys has gone from 962 in 1981, to 945 in 1991, to an all-time low of 927 in 2001. This is particularly disturbing because India, with a population over 1 billion, is the largest democracy and second most populated country in the world. Because of the sheer size of India's populace, the consequences of the skewed sex ratio are staggering.

Of the three prenatal sex determination options, ultrasound is the most popular because ultrasound machines are widely available in India in both urban and rural areas. The Medical Industry is perhaps the biggest player in the field of sex selective abortion, a practice which has grown into a business worth at least \$100 million. Some doctors post advertisements to promote ultrasound as a method of sex determination that read, "Pay Rs. 500 now rather than Rs. 500,000 later," referring to the high cost of dowry. Additionally, manufacturers like General Electric (GE) and others exploit Indian society's preference for sons by aggressively marketing and selling their ultrasound machines. While GE does not report sales figures specifically for ultrasound machines, its overall sales in India (including ultrasound machines and other diagnostic equipment) were \$250 million in 2006, up from \$30 million in 1995. While GE claims they stress to buyers that they should not use their machines for sex selection, in April 2007, prosecutors in the central Indian city of Hyderabad charged GE in criminal court with knowingly supplying ultrasound machines to unregistered clinics who were illegally performing sex selection tests.

There are many factors in Indian society that contribute to the prevalence of sex selective abortion. Some key causes are the dominant patriarchal family structure, the religious preference for sons, the high cost of dowries, the economic limitations on women, and various population control measures. Sons are preferred to daughters in India for numerous reasons. Sons have a higher wage-earning capacity, especially in Indian

agrarian economies, while girls are perceived as an economic burden because of the still-pervasive dowry system and its attendant high costs.

As a result of widespread sex selective abortion, there will be a twelve to fifteen percent excess of young men in India. These men, who will be unable to marry, will mainly come from the lowest socioeconomic classes, will be un- or underemployed, will live somewhat nomadically, will generally live and socialize with other bachelors, and will be ostracized by Indian society because of their inability to marry and have families. The negative consequences of the shortage of marrying-age women in India have already been documented and will only get worse in the coming years. Like in China, the shortage of women in India has already caused an increase in the trafficking of women and child brides. As marriageable women become scarcer, men will marry younger women. This will in turn lead to an increase in the numbers of child brides, further contributing to the poor status of women, as child brides are less likely to finish school or develop job skills before marriage. The low numbers of women available for marriage have also resulted in an increase in the number of commercial sex workers, which has the potential to lead to a rise in sexually transmitted diseases and HIV. When large numbers of young males can not find brides to marry, they are more likely to purchase sex and engage in riskier sex, which in turn tends to increase the spread of HIV.

Another consequence of an abundance of men who are unable to find wives is an increase in sexual violence against women and violence in general. The potential for increased organized aggression is likely to substantially increase where single young men congregate. Sexual violence toward women is already a problem, especially in cities where men have migrated from villages without their wives and families in search of employment. Violence towards women in the form of rapes and harassment occurs more frequently in areas where men outnumber women

In response to the lack of PNMT implementation and enforcement, clearly documented in a 1998 Public Interest Litigation (PIL) petition, the Indian Supreme Court responded by issuing clear and specific directives to the Central and state governments, ordering all government officials to implement and enforce the ban on sex selective abortion “with all vigour and zeal.” The Supreme Court’s rulings thrust the issue of sex selective abortion into the collective consciousness of the Indian public and spurred implementation and enforcement initiatives. As a result, two doctors have been convicted on substantive violations of the Act, and in one district in Punjab, the Chief District Magistrate has caused so much fear that the numbers of girl births are on the rise. The practice of sex selective abortion in India, however, continues largely unabated.

The only way to prevent sex determination and sex selective abortion in India is through a multi-faceted response that transforms society’s mindset from one that systematically devalues women to one that considers women equal stakeholders in society. While this statement is broad, the nature of the problem requires a fundamental shift in the way Indian culture views women. The critical stakeholders in this process are the medical industry, law enforcement, NGOs, the lower courts, religious leaders, and regular citizens. This comprehensive response practically hinges on whether law

enforcement consistently enforces the laws against sex determination and sex selection. Unless that change is effected, the scarcity of marrying-age females will only worsen, leading to a rise in bride sharing, child brides, sex trafficking, commercial sex work, sexually transmitted disease, AIDS, and violence against women, all of which will continue to plague India.

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REACTION FROM GRADUATE STUDENT

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The paper brings to light important social issues in India which is often swept under the carpet. Much like the caste system, the preference for boys is an ancient social structure in India that has become ingrained as a mindset and a state that most families struggle to grow out of. Realities are changing dramatically, both economically and socially, but attitudes aren't. Why is there such a strong need for a son? Answers to this question and which support the paper lie in some of these concepts:

The cost-benefit mindset: Girls are poor investments because they won't earn and hence won't refill the family coffers. This argument is hard to sustain because women are now working and many are more than willing to help out their aging parents financially.

The dynasty mindset: Boys are seen as the legitimate heirs to the family name. When a girl gets married, she becomes part of the boy's family.

The social pride mindset: The birth of a boy instills a sense of pride and achievement in the parents. It elevates the status of the mother, too.

Religion and social norms: It's been reported that the sex ratio at birth is far better among Christians and Muslims compared with Hindus, Sikhs and Jains. Here it is important to note that while the problem of sex selective abortions is more prevalent among Hindus, Sikhs, Jains, the preference for boys is not.

The law and the lawmakers: India has banned sex determination, but not abortion. The law has equipped doctors with the gadgets to commit the crime, but asking them to refrain from using them criminally. As the paper has rightly mentioned, the Medical Industry being perhaps the biggest player in the field of sex selective abortion, a practice which has grown into a business worth at least \$100 million.

The PNDT Act does announce the Indian government's acknowledgment that sex-selective abortions are having a negative affect on the male/female ratio in the country but it does neglect the reality faced by most of the population. With a large pro-selective abortion campaign in the country--consisting of women, health care workers, and government officials--effective legal action would seem difficult.

There is undoubtedly a great deal of public support in India from pro-sex selective abortion advocates who feel that these tools are helping families to cope with intransigent problems, especially dowry. Advocates also argue that selective abortion is the answer to population control. Another argument in terms of population control is that selective abortions will allow families to balance their desire for a daughter with one for a son. Proponents also feel that selective abortion helps women overcome some of their insecurities and burdens, noting that women who produce sons have marriages that are happier and less toilsome, and husbands who are more likely to stay with them.

The proliferation, and increasingly reported abuse, of prenatal testing has forced an impassioned debate throughout India. Dr. Vibhudi Patel, a former professor of SNDT

Women's University in Bombay who has studied the movements of the working class women, notes that this petitioning against sex selective abortions began only in the 1980s, about fifteen years after the techniques of sex determination were widely introduced into the country.

Even with the passage of the Act, sex determination practices unfortunately have not been stemmed. Oddly, legal interference has had a negative affect on the situation, leading an otherwise lawful practice in hygienic clinics to slip underground. Procedures are now offered without written evidence so as to escape legal action. Even though advertisements were banned in several states before sex determination tests and abortions are still advertised, though less blatantly. This underground movement, coupled with the realities of the size and distribution of India's population, make it difficult to estimate just how many procedures are taking place. The estimation is also hindered by unregistered births and deaths in villages and states.

The suggestion of having a multi-faceted response that transforms society's mindset from one that systematically devalues women to one that considers women equal stakeholders in the society is definitely an advantageous solution however also suggests an idealistic state. But the start could be made by changing attitudes of both men and women and the value of women in the society.

REACTION FROM GRADUATE STUDENT

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When the legal system fails to address the root causes of a social injustice, the problem continues to persist. Kristi Lemoine and John Tanagho establish this to be the case in their article, "Gender Discrimination Fuels Sex Selective Abortion: The Impact of the Indian Supreme Court on the Implementation and Enforcement of the PNDA Act." In their written analysis of sex selective abortion, Lemoine and Tanagho provide a comprehensive and important commentary on the failed enactment of a law intended to address this societal injustice occurring in India today. This response to their commentary aims to highlight the strengths of their analysis, propose education as an additional intervention, and include considerations for future study.

In their article, Lemoine and Tanagho thoughtfully present a comprehensive review which successfully highlights the complexity of the causes, implications, and action needed to address the societal injustice of sex selective abortion. A thorough list of the numerous underlying factors for sex selective abortion is included. These factors provide a necessary foundation for the understanding of both gender discrimination and the abortions which result from it. The information presented is also strengthened by the proposal for action which specifies the organizations and groups necessary to the collective effort required to change the current culture of inequities between genders. Although the article presents a multitude of critical stakeholders needed to transform societies' view of women, it fails to mention the necessary role education may play in this process. Education and information are two established ways to gain power, however, in India only forty-seven percent of girls, and fifty-nine percent of boys attend secondary school (Unicef, 2008). This low rate of attendance, particularly for girls, is a result of the need for children to work, a need for girls to marry earlier (and cease their financial dependence on their family), and the lack of opportunities which result from gaining an education (Jayapal, 2000). For women to gain power and knowledge, India needs to continue to work to make education more of a possibility for women in particular. The government also needs to determine ways to increase women's access to financial opportunities and employment which would reduce their required dependency on their families and husbands. By addressing this great need, the country would also be working to empower women, battle gender inequality, and decrease sex selective abortions.

Unfortunately, the obvious and apparent need for the multifaceted approach to address the issue of sex selective abortion results from the multitude of challenges also listed in the article. One challenge not listed but which is highly linked to sex selective abortion is the problem of infant neglect and infanticide. These parallel problems need to be considered when contemplating the effects that the enforcement of the PNDA Act may have on India's population. If it seems that sex selective abortion is not possible, then neglect or infanticide may become an alternative way for controlling the outcome of a pregnancy. In India today, the intense longing for sons has contributed toward neglect, infanticide, and abortion of female babies (Hedge, 1999). Infanticide, the practice of

ending the life of a newborn child, is a practice which has been thought to have been occurring in some parts of India and other parts of Asia for centuries (Caldwell, 2005). [It should be noted that infanticide is not a practice that should be considered common amongst the general population, but is a practice which is still practiced by some individuals which may increase if the shared root causes for neglect, infanticide, and sex selective abortions are not addressed.] The dowry system, preference for sons, the practice of only marrying daughters to higher castes, inheritance laws, the belief in reincarnation, and the economic support required for females are some of the reasons infanticide continues to be practiced to this day (Hedge, 1999). Not surprisingly, these reasons seem to parallel the reasons for sex selective abortions; both are fueled by gender discrimination. This parallel indicates the need to use a multifaceted approach to end gender discrimination as well as the need to monitor and address these co-occurring problems at the same time. If such an approach is not found, alternative methods such as infanticide or neglect may be utilized instead.

In conclusion, the article “Gender Discrimination Fuels Sex Selective Abortion: The Impact of the Indian Supreme Court on the Implementation and Enforcement of the PNDT Act” has provided a strong and thorough analysis of the injustice of sex selective abortion in India. Its’ call for a multifaceted approach and the enforcement of the PNDT Act is a comprehensive solution to a complex problem rooted in centuries of gender discrimination. There is very little room for critique about the article itself; therefore, the only suggestions made in this reaction are that both education and the parallel problems of neglect and infanticide should be considered as Indian society works to address the problem of sex selective abortion. Truly, in the end, Lemoine and Tanagho have produced an important contribution to the work of social justice which cries out for both our attention and our action.

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