

# Skewed Sex Ratio and Women's Reproductive Rights in India: Issues and Challenges

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**Abstract:** *Reproductive rights of women are certain basic legal rights and freedoms of women relating to reproduction and reproductive health that are already acknowledged in international human rights treaties. This may include the right to decide the number, timing and spacing of her children and to make decisions regarding reproduction free of discrimination, coercion and violence. The ability of woman to control her own fertility is a key component of reproductive rights as defined by Cairo agenda. The strict implementation of both Medical Termination of pregnancy Act (which prohibits abortion except only in certain qualified situations); and Pre-Conception and Pre-Natal Diagnostic Technique (which prohibits the sex selection of foetus with a view towards aborting it) violates the reproductive rights given to women. This paper examines the conflict between reproductive rights and declining sex ratio. The issue of declining number of females per thousand males in India has been examined in the study. The paper also proposed the effective solution for tackling the issue of sex ratio imbalance in the country.*

**Keywords:** Reproductive health, Pregnancy, Abortion, Patriarchal, Son preference, Sex ratio

## 1. Introduction

**“Women have been the mere echoes of men. Our laws and constitution, creeds and codes, and the customs of social life are all of masculine origin. The true woman is as yet a dream of the future”** (Schneir, 1994). These words of Elizabeth Cady Stanton quoted from her speech to the International Council of Women in 1888 boldly reveal the suffering and plight of a woman in the male dominated society. Women who contain almost half of the world's population contribute to the economy in a significant manner. An important indicator of human development of a nation is the status of women or how women are treated in the country. As Pandit Jawahar Lal Nehru aptly remarked that ‘one can tell the condition of a nation by looking at the status of its women’. Right to health is considered as one of the fundamental human rights. Health and well being of the members of the family is far more dependent on the productive capacities of the women than any other member of the family. Health of women is not simply a state of physical well being but also an aspect of many roles they play as wives, mothers, health care contributor in the family and as well as breadwinner in the present scenario. Women in the past have suffered on account of neglect and discrimination, as a result of which, their health status has remained below the desired levels. Women are different from men because they have the ability to give birth. Women's control over their own child bearing is a key component of reproductive health. Reproductive health Status of women has been largely neglected over a long period and thus is one of the major issues today.

## 2. Reproductive Rights and Women

The 1994 International conference on Population and Development Programme at Cairo states that a reproductive health is a state of complete physical, mental and social well being in all matters, relating to the reproductive system, and to its functions and processes at all stages of life.

Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. This involves the right of men and women to be informed and have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as other methods of their choice for regulation of fertility, and the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.

Reproductive rights are rights pertaining to reproduction and reproductive and sexual health. It began to appear as an aspect of human rights in Tehran, Iran in 1968. The Programme of Action adopted at the International Conference on Population and Development held in Cairo in 1994, defined reproductive rights as the right of all couples and individuals “to decide freely and responsibly the number, spacing and timings of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health”. It also includes their right to make decisions concerning reproduction free from discrimination, coercion and violence, as expressed in human rights documents.

This International Conference made significant steps towards women's reproductive issues with the result the concept of women's reproductive right emerged and become recognized as an integral aspect of universal human right. The Platform for Action, which was adopted by 189 delegations at the Beijing Women's Conference supported and expanded the scope of such rights by insisting “The explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment”

The United Nations has continued to promote reproductive rights worldwide by making universal access to reproductive

health as goal under target 5 (improve maternal health) of Millennium Development Goals(MDGs) set in 2000. The Sustainable Development Goals (SDGs) for 2030 renew governments' commitments under the MDGs to diminish maternal mortality; attain universal access to sexual and reproductive health information, education and services; ensure reproductive rights; and achieve gender equality as a matter of women's and girls' human rights. Target 5.6 of the SDGs ensures 'universal access to reproductive health and reproductive rights'. Guaranteeing women's access to safe and legal abortion is a main concern for women's reproductive health and rights.

### 3. Safe abortion as a Woman's reproductive right

Abortion as a reproductive right is a controversial issue. Any reproductive choice is a decision having a direct impact and greatest bearing, only on the concerned individual(s). Each and every woman has an absolute right to have control over her body. A woman's right to choose what she does with her body, her mind and her life is what equality is all about. Among various rights which are available to woman, it is believed that right to safe and legal abortion to be one of the most essential and fundamental right. Only after the case of **Roe V. Wade 410US 113(1973)** that right to abortion was made legal and also considered as one of the essential right under fundamental right and it is included as a part of the Right to Privacy.

It is argued that legalizing abortion is necessary as in 2003 approximately 42 million pregnancies worldwide end in abortions and nearly 20 million of those abortions were unsafe (World Health Organisation, 2007).Some 68,000 women die annually as a result of complications of unsafe abortion, making it one of the leading causes of maternal mortality i.e 13 percent( Haddad and Nour,2009)

### 4. The Medical Termination of Pregnancy Act (1971)

In India before Medical Termination of Pregnancy Act(1971),abortion was treated as a criminal offence under section 312 of the Indian Penal Code, 1860,where done with or without consent of the women except, if it is done for the protection of mother life and in no other conditions abortion was allowed. Thus no woman can claim abortion as a matter of her right.

In the year 1971, on the basis of the recommendations of the Abortion Study Committee headed by Mr. Shantilal Shah (1966), abortion was legalised under the Medical Termination of Pregnancy Act (MTP Act). The Act aims to improve the maternal health scenario by preventing large number of unsafe abortions and consequent high incidence of maternal mortality. This Law guarantees the Right of woman in India to terminate pregnancy by a registered medical practitioner where the pregnancy does not exceed 12 weeks and where it is approved by two medical practitioners in cases where the pregnancy exceeds 12 weeks but not exceed 20 weeks. Not all pregnancies could be

terminated. Abortion according to section 3 of MTP Act 1971 can be obtained under the following conditions:

- 1) **As a health measure:** when the continuance of the pregnancy would involve danger to the life of the pregnant woman or risk to the physical or mental health of the woman;
- 2) **On humanitarian grounds:** if the pregnancy is caused by rape or intercourse with a lunatic woman;
- 3) **Eugenic grounds:** when there exists a substantial risk that the child, if born would suffer from some physical or mental abnormalities as to be seriously handicapped.
- 4) **Failure of contraceptive Devices:** when used by the married couple for the purpose of limiting the number of children.

Pregnancy can be terminated in Hospitals established or maintained by the by the Government, or a place for the time being approved by the Government for the purpose of this act. Only the consent of a woman is required or if Age is less than 18 years or lunatic patient consent of guardian is required.

Thus, abortion is permitted only under these circumstances and would otherwise incur criminal problem. Some argued that the 1971 MTP Act was motivated by the need to promote abortion as a means of population control. Twenty weeks is too narrow a window for genetic abnormalities to manifest. 2-3 percent of the 26 million babies are born in the country ever year with severe abnormalities. Not all women are allowed to avail the facility of Abortion as a matter of Reproductive Right service under MTP Act. If abortion is carried out by them to exercise her choice, the abortion is illegal in India. Women are the one most affected by pregnancy; they are the ones responsible for the care and nurturing of children. A woman cannot go to a doctor and ask to terminate pregnancy. Her right to choose whether and when to bear a child is an aspect of gender equality (Ashok K. Jain, 2006). In other words, the right of a woman to reproductive control is a crucial aspect in women's struggle for gender equality.

### 5. Selective Abortions for Female Sex

Indian society is based on extreme patriarchal. Sex selection against females is a manifestation of patriarchal social structures that favour males. Compared to daughters, sons are expected to provide labour in the family farm or in a family business, earn better wages, and provide support to their parents during old age in view of the fact that she leaves her parent's home and serves her husband's family after marriage. Daughters on the other hand, are seen to be an economic liability to her parents because of heavy dowry to be given to groom's family on marriage. The significance of having sons also arises from the necessary religious rituals that only son can perform. According to Hindu belief, deceased parent's soul can only attain heaven if they have a son to kindle the funeral pyre.

Son preference is apparent in India among couples who have strong preference for sons over daughters (Arnold, 1987).Son preference has driven families to not want, and therefore discriminate against girls, which has taken the forms of neglect and infanticide historically, and sex-selective abortion in more recent years, especially as desired

family size has declined (Guilmoto, 2008). In British India, during 18<sup>th</sup> and 19<sup>th</sup> centuries, female infanticide was common among large section of the North Indian population (Miller, 1981). With the progression of science and technology, the traditional system of killing the female child after the birth has now been replaced by female foeticide. With the result female foetus is killed in the womb of the mother and thus avoiding the birth of a girl child. The sex of the foetus was initially found out by amniocentesis in the 1970s and Chronic Villus Sampling (CVS) in 1980s which were openly advertised through media and were extensively used in urban areas for sex-selective abortions (Lancet, 1986). Ultrasonography has become most popular technique for sex determination from early 1990s.

It is believed that the issue of abortion has been intricate by sex –selective abortion in India. Therefore the requirement of new law was felt to prevent the misuse of the MTP Act of 1971 for sex-selective abortion. Hence Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994 to prohibit pre-natal diagnostic technique for the determination of sex of the foetus leading to female foeticide.

## 6. Pre-Natal Diagnostic Act (PNDT), 1994

The most important reason of enacting the **Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT)** was to forbid the use of sex selection techniques after conception and check the misuse of diagnostic technique for sex selective abortion. But with the introduction of new sophisticated pre-conception sex selection technique such as sperm sorting (where a sperm cell is specifically chosen because of its sex chromosomes), medical practices try to influence the sex of the child before conception. The law was therefore amended in 2003 to bring the technique of pre-conception sex selection within the ambit of the Act and was renamed **Pre-Conception and Pre-Natal Technique (Prohibition of sex selection) Act (PCPNDT)**. The law as it stands not only prohibits determination and disclosure of the sex of the foetus but also bans advertisement related to pre-conception and pre-natal determination of sex. All the technologies of sex determination including the new chromosome separating technique have come under the ambit of this Act. Ultrasound and amniocentesis cannot be used for the use of pre-natal diagnostic techniques except for the following diagnostics such as genetic abnormalities, metabolic disorders, chromosomal abnormalities, certain congenital anomalies, haemoglobinopathies and sex-linked genetic diseases. The Act has also made mandatory for all ultrasound scanning machines to be registered and for medical practitioners to maintain record of every scan done on pregnant woman. Further, in all ultrasonography units, the prominent display of a signboard that clearly indicates the detection/ disclosure of the sex of the foetus are illegal.

## 7. Declining Sex Ratio- a matter of concern

The declining Child sex ratio is the most distressing factor reflecting low premium accorded to a girl child in India (Patel, 2003). In census 2011, child sex ratio has horrendously touched an all-time low. According to 2011

census, there are 164,478,150 children in age group 0-6 years which comprises of 85,732,470 boys and 78,745,680 girls. There are 6, 986,790 or 7 million fewer girls in this age group, thus giving a Child sex ratio of 919 girls per thousand boys. This sharp decline in the child sex ratio since the 1970s is now unequivocally linked to the widespread use of prenatal sex determination and selective abortions of girls. (Jha et al., 2011). Despite several amendments, the PNDT Act fails to achieve its objectives. Had the act been effective the Child Sex Ratio in India should have improved, but on contrary it has reached its lowest level as per the census 2011 data. The Census of India 2011 reported a dip in the Child Sex Ratio (919). It was 927 in 2001 census, 945 in 1991 census and 962 in 1981 census. The Act has failed to yield any result for the past two decades. So the actual reasons for deteriorating the female-male ratio should be analysed and corrective action must be taken.

Correcting the imbalance in the sex ratio is a complex issue. The impact of the declining sex ratio is vital as it not only contributes to the deteriorating status of women in society, but also adds to the increasing crime and violence. (Edlund et al., 2007). The shortage of women has led to the problem like women restrictions, violence against women, Kidnapping, women trafficking, rape against women etc. This discourages the couples from to be the parents of a girl child. Therefore the society gets caught in a vicious cycle.

## 8. Addressing the root causes

Normalisation of sex ratio cannot be achieved by controlling either the technology or abortion as neither of them is the root causes. The stringent implementation of these Acts in the absence of a large policy environment that identifies gender discrimination as the root cause of sex determination has meant that it is the safe abortion that came under fire. Rather than targeting sex determination, the way PCPNDT Act is being implemented currently, safe abortion services have become difficult for women to access and is consequently forcing them towards illegal and unsafe abortions. Out of 6.4 million abortions that take place annually in India, 3.6 million or 56 percent are unsafe (Duggal and Ramachandran, 2004). Unsafe abortion is related with maternal mortality. Unsafe abortion is the third biggest cause of maternal deaths in the country contributing 8 percent of total maternal deaths in India annually. It is necessary to eliminate all barriers to accessing safe and affordable abortion services for the vast majority of women in the country.

The practice of female foeticide is deep-rooted within the culture, with the earlier being in the form of female infanticide. Suppressing the pre natal diagnostic technique is not a solution because technology keeps changing and the market can evolve other ways of catering to the demand just as amniocentesis was replaced by ultrasound. The only sustainable way to reduce sex selection is raising the status of women and empowering women so that giving birth to a girl is a real and positive option. The menace of female foeticide must be addressed and resolved without exposing women to the risk of death or serious injury by denying them access to needed abortion services and thus further violating their rights (Dickens et al., 2005).

Restricting access to certain reproductive technologies in order to prevent an imbalanced sex ratio in a given society should not result in the curtailing of the human right of women. The Indian approach to reproductive rights is in violation of India's international obligations. The 1995 Beijing Declaration recognizes that the recognition of women's right to control '**all aspect of their health, in particular their own fertility, is basic to their empowerment**'. The attitude of the Indian Judiciary reveals a complete disrespect of the Pregnant woman's right to privacy, and her right to make independent reproductive choices (Shukla, Priyaranjan.K, 1992). Preventing the access to an abortion forced women to either bear unwanted pregnancy or to use illegal abortions.

The critical goal of equality between the males and females cannot be achieved merely by ensuring the birth of a girl child. Government should think about long-term impact and should work for basic equality between men and women. If women are to be protected, we have to make sure they have access to safe abortions and in the same time get to the root of the problem by changing the cultural and institutional norms that maintain the devaluing of girls. The suggestive measures are strict implementation of anti-dowry laws, providing old age pensions for parents that only have daughters, free and compulsory education for girls, scholarship programs for girls, more equitable patterns of inheritance, job reservation and last but not least campaigns to change people's attitude towards girls. It is impossible to stop sex selective abortion without changing the mindsets of people.

## 9. Conclusion

In Indian society, the birth of a female child is still considered as curse due to various socio-cultural reasons. The decline in sex ratios has raised alarm to intellectuals, policy-makers and reformers to control the situation. Skewed sex ratio leads to increase in crime against women, trafficking and overall deterioration in the status of women. Restrictive legislation such as Pre-conception/ Pre-natal Diagnostic Technique Act did not succeed in correcting the imbalance between males and females, rather safe abortion services have become difficult for women to access under such act. Unsafe abortion is causing a great damage to women's health in general and their reproductive health in particular. Both maintaining access to safe abortion and improving sex ratios are important goals. Both are possible if the focus shifts to addressing the conditions that drive son preference. To correct the persistence in adverse sex ratio, changes in the mindset and attitude of people towards girl child is needed.

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