

## Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses

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In India, sex-selective abortion is an established phenomenon that cuts across rural/urban, educational and socioeconomic status divides. However, in understanding this complex and deeply contextualized issue, kinship patterns, dowry and the low social value accorded to women are often mobilized to serve as overarching explanations. While these factors are important in explaining sex-selection, in an effort to expand beyond the generalizing discourse that exercises a single point focus on patriarchal cultural practices, this paper centralizes the role of institutional structures. Specifically, the paper explores state population control policies and the unchecked utilization of reproductive technologies to uncover the contemporary institutional factors that lend sex-selective abortion a normative appeal. Moreover, legal approaches to eradicating sex-selective abortion are examined in tandem with feminist conceptualizations of the issue to uncover the efficacy and dynamics of institutional responses to sex-selection in India. The paper asserts the importance of an integrative approach for understanding and responding to sex-selection, both at the macro and micro level.

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The premature elimination of female foetuses is a widespread phenomenon in Asian countries. In fact, Amartya Sen (2003) has uncovered that in the last century, “100 million women have been missing in South Asia due to ‘discrimination leading to death’ experienced by them from womb to tomb in their life cycles” (as cited in Patel 2007:289). For instance, in China in 2000 the child sex ratio at birth was 120 males per 100 females. In the more prosperous provinces of the country such as Anhui, Jiangxi and Shaanxi the imbalance was even more pronounced, as there were 135 males born for every 100 females. The statistics released in the summer of 2011 indicate that child sex ratios have marginally improved and gone down to 118 males per 100 females (Branigan 2011; Jacoby 2008). In India, Census data reveals that child sex ratios have undergone a significant decline from 927 females per 1,000 male children in 2001 to 914 females for a 1,000 male children in 2011 (The Economic Times 2011). These dire numbers, both in India and China, are a consequence of practices like female infanticide or the killing of newborn female children, the denial of health care to female children in the 0-6 age group, and the selective abortion of female foetuses (sex-selective abortion or sex-selection). Further, contrary to the initial notion about the premature elimination of female children being contained within Asian borders, since 1996 there has been emerging evidence of sex-selection among Asian immigrants in Canada, UK and USA. Across divergent contexts, skewed sex ratios

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symbolize the larger context and disturbing implications of son preference and daughter aversion (Patel, 2007). Importantly, this paper is concerned with the contemporary dynamics of sex-selective abortion in India for a number of reasons that will be elucidated in the methodology section. In contextualizing the practice of sex-selection in India, it is important to map the multiple ways in which daughter aversion and son preference are expressed across locations, time periods and throughout the life cycle of Indian women (Patel 2007).

Historically, in India the elimination of girls was tied to female infanticide. This practice was limited to upper-class warrior castes, who devalued women due to the economically draining custom of hypergamy (marriage of a woman with a man from a higher social group). Contemporarily, the advent and easy accessibility of sex determination technology (henceforth referred to as SD) has coincided with the preponderance of sex-selective abortions. In fact, sex-selection has largely come to replace female infanticide as a method of eliminating females (Patel 2007). According to The Asian Age (2003) report, and based on a study by the Chandigarh (Punjab) Institute for Development and Communication, every ninth household in the state acknowledged sex-selective abortion conducted with the use of ante-natal SD tests between 2002 and 2003 (as cited in Patel 2007). On average each missing girl is an outcome of at least two foetal SDs and one sex-selective abortion. In fact, the foetal stage has become the riskiest time in an Indian woman's life, as one in seven girls are eliminated before birth because of their sex (George 2006). Urban settings, higher education of mothers, higher birth order of daughters and economic prosperity correlate with increased incidence of sex-selective abortion (Das Gupta 1987; George 2006). Significantly, in 2001 rural areas recorded 887 females per 1000 males and urban areas recorded 848 females per 1000 males. This pattern is explained with respect to the increased accessibility to SD technology experienced by urban, educated and economically well off families. Alternatively, illiterate mothers in rural areas have decreased access to SD technology. Also, they are likely to have more children and thereby, more female children (Das Gupta 1987; George 2006). While sex-selective abortions are increasing among higher classes, in poorer families girls experience premature death due to gendered allocation of food and inadequate access to health care. Moreover, while female infanticide was restricted to certain populations, sex-selection has spread across the country and disproportionate sex ratios have been noted in almost every state. Alarming, the practice has even been identified in many Northeastern states and Kerala, where women have historically enjoyed a higher status (Patel 2007). Thus, the issue of sex-selective abortion, coined as female foeticide in India is a grave matter of national concern around which various legal and community measures are resurrected (George 2006). Moreover, much of the academic work on this topic (as will be detailed below) understands the practice of sex-selection through patriarchal cultural norms (i.e. dowry) and kinship structures. While this perspective is invaluable to developing a holistic understanding of sex-selection and the unfolding crisis of daughter elimination, the paper will concentrate on providing an alternative lens by delving into the multifaceted institutional dynamics of the issue in India. Specifically, the paper will explore state population control policies and reproductive technologies, to uncover the institutional factors that lend sex-selective abortion a normative appeal. Moreover, legal approaches to eradicating sex-selective abortion will be critically analyzed, with respect to its successes and

drawbacks, in order to understand institutional responses to the crisis.

### Explaining Sex-selection in India

In extrapolating on the root causes of sex-selective abortion most studies have identified the economic and social devaluation of women as core factors (Bedi 2008; Patel 2007; Purewal 2010). This is illustrated by a study conducted by the Voluntary Health Association of India (2003) in Kurukshetra, Haryana which surveyed 1,401 households, 999 married women, 72 doctors and 64 Panchayat members. They found that the most immediate cause of sex-selective abortion identified by the participants was the perception of daughters as economic and social liabilities due to factors like dowry costs, protection of daughter's chastity and concern about her marriage (as cited in Patel 2007). Further, the most resilient explanation for women's economic devaluation and the practice of sex-selection is dowry. The rampant commercialization of marriage has turned dowry into a pervasive and coercive practice that transgresses divisions of caste, education and class (Patel 2007; Purewal 2010). Dowry consists of the giving of money and other goods by the bride's family to the groom's family. This practice is socially justified as the final expense a girl's parents must bear before she becomes the responsibility of her husband's family (Sarkaria 2009). For the propertied classes, even though they are able to afford dowries, they do not desire daughters due to the fear that the son-in law will demand a share of the property. The non-propertied classes eliminate daughters to avoid demands for dowry payments that may consume their life's savings or render them vulnerable to dowry harassment (Patel 2007).

In addition, daughter devaluation has been conceived with respect to endogamous and exogamous marriage patterns that constitute divergent kinship and social systems in South and North India, respectively. Under the exogamous kinship system spouses are unrelated, women do not generally inherit property, dowry is the main marriage transaction, women are out-marriers and so they are not expected to contribute to the natal house post marriage, honour is tied to the chastity of women, and female sexuality is closely monitored. In contrast, in the endogamous kinship system the ideal marriage is between cross-cousins, women may sometimes inherit or transfer property rights, females are more likely to be married near their natal home and render support in later years, dowry is not as important, expenses of the marriage ceremony are likely to be shared by kin groups and women's sexuality is less rigidly controlled. Based on the social relations inscribed through the endogamous and exogamous kinship patterns, historically, women in South India have perceived greater autonomy than their counterparts in North India: they have typically experienced greater freedom to choose their marriage partner, ability to assert some right over property, perceived economic value due to female labour participation, and social value due to the ability to contribute to the natal household post- marriage (Dyson and Moore 1983). Consequently, until recently North-South kinship patterns have had immense explanatory power because they coincided with higher female child ratios in South India. However, an analysis of changes in the 0-6 sex ratio between 1991 and 2001 shows that, except for Lakshadweep, Sikkim, Mizoram and Tripura, all states have registered a decline in the female child ratio (Agnihotri 2003). The declining sex ratios in South India can be attributed to the deterioration of endogamous marriage among

younger generations, women living further from their natal home, women's lack of access to property rights, women's constrained ability to choose marriage partners, and the increasing resignation to dowry customs (Srinivasan & Bedi 2008). While the blurring of the North-South binary evidences the proliferation of patriarchal norms and discriminatory practices across India, kinship patterns may be a useful way to conceptualize female autonomy and value in diverse societies.

Overall, kinship patterns, dowry and the low social value accorded to women due to their status as sexual objects that require "protection", serve as overarching explanations of sex-selection, a phenomena that is deeply contextualized and complex. The significance of this narrative is that it refers to central social relations and systems that, when examined with reference to a particular context, can yield rich insights about sex-selection. In fact, various academics have done so in producing works on sex-selection with a particular Indian population (for example see Purewal 2010; Srinivasan & Bedi 2008). However, the abovementioned analysis neither complicates the role of institutional forces and structures in facilitating sex-selection, nor does it connect these factors to particular expressions of patriarchal cultural norms and son preference. Importantly, the dominant narrative does not explain what facilitates the shift from preferring sons to engaging in sex-selection. It exercises an insular focus that does not consider and, thereby, negates the influence of institutional forces on the contemporary characteristics of the issue. Thus, the current paper attempts to extrapolate beyond the dominant academic discourse that has largely drawn on a decontextualized trope of patriarchy to explain son preference and daughter devaluation. In using the limitation of the general discourse on sex-selection in India as a point of departure, the current paper will centralize the role of institutional factors (linked to sociopolitical, economic and contextual variables).

To further elucidate the importance of delving into socioeconomic shifts informed by state policies or other institutional forces, the case of sex-selection in Punjab can be examined. Specifically, Punjab, which has one of the lowest sex ratios in the country scores high on many indicators of female status, such as high female literacy, low child mortality, economic prosperity, high contraceptive use, high rate of institutional delivery and later age at marriage. However, the high incidence of sex-selection in Punjab can be better understood (not to the exclusion of other explanations but in addition to them) with reference to certain occurrences. Since the 1970s, state repression and violence in the form of extra-judicial killings and mass disappearances of Sikh men have amounted to an assault on Sikh masculinity. Moreover, the industrialization of farm labour following the Green Revolution displaced women from field labour and reduced their autonomy and mobility in the community. Taken together, these two factors delineate son preference in Punjab as arising partially from the reduced economic value of women and the desire to reinstate Sikh masculinity by replacing a generation of missing men (Purewal 2010; Sarkaria 2009). Thus, in taking from the Punjab example this paper recognizes the importance of a multidimensional analysis that allots as much importance to social relations defined through systems of patriarchy and kinship, as to the context of sex-selection defined through an analysis of institutional forces.

While the paper is unable to depict a multidimensional/integrated approach, it attempts to complicate the unidimensional narrative on sex-selection by centralizing the role of institutional forces. This examination is not comprehensive, as it cannot possibly

examine the implications of context specific socioeconomic variables in diverse locations throughout India i.e. a specific district in Punjab. Nevertheless, it strives to nuance the macro/national discourse on sex-selection. Significantly, the paper's disengagement with an analysis of social relations does not suggest alignment with a top-down framework. The paper acknowledges the importance of an integrated approach that encompasses an investigation of social and institutional systems, as they mutually reinforce each other and inform expressions of son preference. However, the contribution of this paper is to address this gap in the literature and thereby provide a complimentary perspective (that furthers the objective of devising an integrated discourse) by engaging with institutional dynamics of sex-selection in India.

### Methodology

The current paper is oriented at examining the multidimensional impact of institutional forces in both shaping the phenomenon of sex-selection in India and the responses to it. Significantly, this paper develops theoretical insights about the institutional dynamics of sex-selection in India, despite the presence of sex-selection in other countries i.e. Pakistan or China, for a number of reasons. Firstly, the ramifications of sex-selection are currently an impending concern in India due to the marked shortage of women in certain parts of Haryana and Punjab (George 2006). Thus, by contributing to a holistic understanding of sex-selection in India, the paper aims to inform the creation of effective programs or policy interventions. Secondly, this paper arose from the imperative to examine the diverse feminist conceptualizations of sex-selection. In reading a number of feminist writings on sex-selection in India, the multifaceted role of institutional factors in propelling and combating the practice of sex-selection became discernible. A number of articles utilized for this paper are written from a feminist standpoint and employ political economy, sociological, and development studies perspectives. In terms of selecting academic articles for this paper, care was taken to choose peer reviewed journal articles that relay theoretical constructions and/or utilize or engage in primary research conducted across various states or regions of India. Also, some newspaper reports were utilized to gain access to more recent information about the rapidly evolving aspects of sex-selection in India. Taken together, the articles reviewed and analyzed for the purpose of this paper espouse a critical feminist ideology and reflect interdisciplinary perspectives.

In terms of the organization of the paper, at its onset the paper draws on diverse feminist frameworks to conceptualize the practice of sex-selection and establishes the reproductive justice lens as a useful theoretical tool. The first section of the paper details the role of population control policies in normalizing and legitimizing the practice of sex-selection at a discursive level. The second section highlights the commercialization of SD tests, as well as the role of state agencies and the medical community in allowing the dispersal of reproductive technology. The last section details the critiques and successes of the legal intervention on sex-selection. Significantly, it relays the incompatibility of the legal approach with a feminist vision of ensuring women's secure access to abortion and the troublesome clauses embedded in the legal intervention. In terms of clarifying some terms utilized throughout the paper, it is important to note that the words sex-selection and sex-selective abortion are used interchangeably. While the word sex-selective abortion is

more commonly utilized in medical discourses, both terms refer to the selective abortion of female foetuses. Overall, the current paper strives to interrogate the role of state, medical and legal institutions in informing the landscape for understanding and responding to sex-selection in India.

### Conceptualizing the Practice of Sex-selection

In understanding and locating sex-selection as a practice, it is important to draw upon contemporary feminist debates that involve liberal pro-choice feminists as well as feminists that espouse the reproductive justice lens. Significantly, given the conflation of sex-selection with abortion rights in various contexts, the issue of sex-selection has been avidly taken up by liberal pro-choice feminists. Liberal pro-choice feminists ascribe to a liberal rights framework that utilizes universalizing and decontextualized notions of reproductive choice. Thus, they conflate sex-selective abortion with abortion and declare that women have the right to obtain an abortion for any reason. Following from this position, banning sex-selective abortions is tantamount to infringing on women's reproductive rights (Luthra, 1993; Menon, 1995; Petchesky, 1990; Purewal, 2010; Sarkaria, 2009). On first glance the liberal pro-choice feminist approach seems to be mindful of the diverse reasons women choose to abort. However, it has been criticized for its blanket and uncritical support for sex-selection on the grounds of reproductive choice. It fails to problematize and target sex-selection as a form of gender-based violence. Specifically, liberal pro-choice feminists understand sex-selection as a coerced and inauthentic choice in response to traditional cultural practices and pressures. This discourse fails to perceive women's choice to sex-select as a "real choice" because it focuses on a binary notion of choice (as either for or against abortion). The liberal pro-choice feminist position fails to consider the way in which various social conditions (i.e., the pressure to bear a son, women's reliance on the ability to bear sons to garner respect in their marital home) shapes choice. Due to its narrow focus on a certain type of choice, the liberal pro-choice feminist discourse serves to reduce Indian women's reproductive choice to a matter of cultural preference.

In relaying an alternative perspective, the reproductive justice lens diverges from focusing on individual "choice" and symbolic legal rights (i.e., the right to abortion). Instead, it addresses the social relations, structures and conditions that inform reproductive choice (Menon, 1995; Petchesky, 1990). In applying this framework to the issue of sex-selective abortion, it is apparent that women do not "choose" to sex-select in a social vacuum. In the Indian context, social conditioning about the value of a son, conflation of social worth with ability to produce sons, limitations imposed by dowry demands, and coercion by the husband's family are all factors that impinge on a woman's decision. Importantly, this perspective highlights the value of understanding women's decision to sex-select as a strategic and rational choice, given their social environment and pressures (Luthra, 1993; Menon, 1995; Petchesky, 1990; Purewal, 2010; Sarkaria, 2009). Evidently, the reproductive justice framework offers an alternative and more critical paradigm for viewing sex-selection. Thus, this paper will conceptualize sex-selection in accordance with the reproductive justice framework and regard sex-selection as an agentic choice within a particular social context rather than a passive expression of cultural preference.

## Population Control Policies

In assessing and delineating the institutional forces that impinge on the unfurling phenomenon of sex-selection, it is important to note that the Indian state does not explicitly condone sex-selection. However, state policies have inadvertently played a complementary role in fostering the practice, through sanctioning aggressive population control policies and unregulated usage of modern reproductive technologies. Specifically, the ramifications of female elimination, in terms of limiting population numbers and meeting the net reproduction rate of one (the replacement of the mother by only one daughter) coincides with state's population control policy objectives. Moreover, the hegemonic appeal and operation of the small family norm evidences the role of population control rhetoric in legitimizing sex-selection. Significantly, India's population control policy is based on the Malthusian idea of a negative correlation between affluence and family size. Thus, historically India's population control imperative under the guise of family planning has functioned to restrict the reproduction of poor and marginalized populations in order to enhance the country's economic development (Bhatnagar, Dube & Dube 2005; Patel 2007; Purewal 2010).

For instance, during the 1970s period of emergency imposed by Indira Gandhi's Congress government, the Indian state's population control agenda took a blatantly coercive and oppressive route. The state enacted measures like granting employees promotions, loans and housing permits based on their ability to produce a certificate of sterilization and a list of people signed up to do the same. Significantly, mass sterilization camps were set up near railway stations, slums, villages and areas with a high density of Muslims. These camps were aimed at reducing the population of religious minorities, especially Muslims in India. However, these policies were short lived because their exclusionary focus on male sterilization was widely criticized. As a result, family planning policies following the 1970s embodied an anti-woman bias. They were enacted to provide poor women and women from religious minority groups disproportionate access to contraceptives and sterilization services (Bhatnagar et al. 2005; Patel 2007; Purewal 2010). For instance, current family planning clinics feature sterilization packages that provide women abortions on the condition that they assent to sterilization or contraceptive use of IUD's following the procedure (Passano 2001). Significantly, the Indian state's population control policy is likened to the eugenics model due to its focus on minimizing poor and minority populations. Moreover, it seeks to sidestep the issues of insufficient food, unsanitary living conditions, inadequate maternal health care, and unemployment that lie at the crux of poverty and high population density. In adopting a repressive, elitist and anti-poor approach to population control, the Indian state severely limits the reproductive rights of poor women and ideologically normalizes sex-selection (Bhatnagar et al. 2005; Menon 1995; Patel 2007).

In fact, the state's propagation of the small family norm over the last fifty years, through extensive multimedia propaganda, suggests an obvious population control mechanism that operates to discursively support sex-selection. The promotional slogans read, "A small family is a happy family", "we are two and we have two", "stop at two or three", "wait after one and none after two" (Bhatnagar, et al. 2005:14 ). Significantly, the messaging around the small family norm occupies a nationalist appeal and draws an inextricable link between prosperity, modernity and the presence of small families. In

this ideological context, reproductive technologies that enable families to control family size and composition are highly valued as "scientific" and "appropriate" techniques for ensuring national and individual development. Evidently, given the context of son preference and widely internalized state discourse about the economic productivity and social value of small families, sex-selection offers a pragmatic way of ensuring small families without compromising the patriarchal desire for the optimal number of sons (Bhatnagar et al. 2005; Patel 2007; Purewal 2010). In fact, the normalcy and acceptance ascribed to sex-selection within the framework of nationalist population rhetoric is evident in the responses of medical practitioners and community members. The head of the Obstetric and Gynaecology Department of Bokaro General Hospital in Bihar states, "Our priority is population control by any means. Amniocentesis should be used as a method of family planning and be made available to everyone at a minimum cost or even free" (Kishwar 1995:18). At an individual level, the internalization and reproduction of the two-child family norm is evidenced by the tendency of women to show greater son preference when their first child is a girl (Das Gupta 1987; Kishwar 1995). Moreover, Bardia et al.'s (2004) study of 160 grandmothers and mothers in the All India Institute of Medical Sciences hospital, Haryana revealed that 40% of the participants supported SD on the grounds that it contributed to population control and prevented families from having a series of females to produce a male (as cited in Patel 2007). In voicing the impact of the national family planning discourse on women's decision to sex-select Sarkaria (2009) states, "Punjabi women thus make their 'choice' of whether to selectively abort in the shadow of the societal preference for at least one son coupled with the government's campaigns, which preach the value of a one-or two-child family" (Sarkaria 2009: 938-939). Therefore, through family planning policies the state's population control model implicitly encourages sex-selective abortion as a cost or side effect of engaging in the larger process of nation building and development. This ideological normalcy relegated to sex-selection via state family planning and population control policies operates in concert with the easy accessibility of medical technology to provide one of the many possible explanations for the increasing incidence of sex-selection.

#### Utilization of New Reproductive Technologies for Sex-Selection

Despite dominant ideas about the neutrality of reproductive technologies, commercial, population control and patriarchal interests greatly shape the availability and acceptance of SD technology. Clearly, SD technology is not the cause of sex-selective abortions. However, advances in reproductive technology, in terms of the creation and availability of ultrasound machines, have corresponded with the move towards sex-selection and the increased elimination of female babies. In fact, Punjab, with the worst sex ratios in the country was the first state in 1979 to promote the commercial use of SD tests. Prior to the advent of ultrasounds and amniocentesis, female infanticide was recorded but only among certain warrior castes (i.e., Rajputs and Jats). In contrast, sex-selection is a widespread phenomenon that cuts across class, caste, education, and religious divides. Moreover, despite the 1988 ban on SD tests in public hospitals, private clinics are flourishing throughout India, as they are meeting the demand for such services and incurring monetary benefits (Kishwar 1995; Patel 2007; Purewal 2010). In fact, SD technology has

become the mainstay for many gynaecologists. Dr. Kulkarni (1986), from the Foundation of Research in Community Health, conducted a study to investigate the prevalence of SD tests in Mumbai, Maharashtra. It was found that 84% of gynaecologists interviewed were performing amniocentesis for SD. These 42 doctors performed approximately 270 amniocentesis tests per month (as cited in Patel 2007). The active role of doctors and medical professionals in supporting the proliferation of the sex-selection industry should at the very least be looked upon as influenced by profit maximization imperatives. It has been approximated that the business of eliminating girls before birth is worth at least \$100 million (George 2006). Moreover, the economic benefits perceived by doctors for providing SD tests are inextricably tied to the willingness and ability of India to source technology from multinational corporations (Patel 2007; Purewal 2010).

Moreover, the medical community has refused to take responsibility for the declining sex ratios or operate within the legal apparatus. At large, except for suspending the licenses of four doctors from Punjab in 2005, the Indian Medical Council has not taken any progressive steps towards preventing sex-selection. In fact, the medical community has actively broken laws pertaining to sex-selection (George 2006). Also, private clinics have resorted to marketing and justifying their services by appealing to state population control policies and patriarchal ideas about female devaluation. For instance, to promote their services the New Bhandari Ante-Natal SD Clinic in Amritsar harnessed the idea that high dowry costs make daughters an economic liability (Patel 2007; Purewal 2010). Their advertisements that came under heavy criticism from feminist groups featured the slogan, "Spend Rs. 500 now, save Rs. 50,000 later" (Patel 2007: 311). Also, Hingorani and Shroff (1995) uncovered that renowned Indian medical researchers, who are credited with pioneering the amniocentesis test at the All India Institute of Medical Sciences, supported foetal SD. These medical researchers validated the use of sex-selection as a population control method that prevents female infanticide and assists women who are repeatedly reproducing in order to have a son (as cited in Patel 2007). Evidently, technocrats and medical community members are liable for disregarding medical ethics and concerns about gender justice. But it is important to note that the unregulated dispersal of SD technology is substantiated by the state's capitalist and population control agenda. As in the 1980s when SD tests were expensive and under strict government control in other countries, the Indian government made these tests cheap and accessible (Patel 2007). Thus, the state is directly implicated in exporting profitable technology to a context that is ripe with son preference. Further, it has taken to selectively promoting SD technology over and above MVA (Manual Vacuum Aspiration) technology, which conducts abortions via vacuum evacuation of uterine contents and enhances the safety of the procedure (Passano 2001). Clearly, technology is developed and made available based on the commercial imperatives of the state and medical body, rather than concerns about the health and well-being of society members.

In the Indian context, population control rhetoric and the commercial interests of medical practitioners, state actors and technocrats collude to shape the accessibility and rampant utilization of sex-selection technology. Thus, in examining sex-selective abortion in India, it is essential to acknowledge that role of institutional forces in reinforcing the expression of son preference and daughter devaluation through sex-selection. In fact, the corrupt nexus between state and medical bodies that serves to authorize and commercial-

ize sex-selection has been the target of mainstream feminist organizing and activism in the public forum. In 1984 women's groups, civil liberties and health movements banded together to form the Forum Against Sex Determination and Sex PreSelection (henceforth referred to as FASDSP). FASDSP questioned the technocrats, scientists, and state for facilitating the widespread use of SD technology. Their platform for legal intervention was premised on building state accountability and fracturing the abusive potential of reproductive technologies. FASDSP prioritized the immediate and long term consequences of sex-selection (i.e. the implications of the practice for the further devaluation of women) and the psychological and physical health needs of women. The legal intervention, around limiting the use of ultrasounds and amniocentesis tests to the detection of serious genetic conditions, arose in response to the pressure exerted by FASDSP and will be explored below (Ganatra 2008; Luthra 1993; Menon 1995; Patel 2007). This examination reveals the role of the legal apparatus, another institutional force in informing the dynamics of sex-selection in India.

### Legal Intervention

As early as 1988, in response to FASDSP's effective advocacy the Maharashtra government introduced a legislative breakthrough, the Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act. This law was aimed at the misuse of SD tests and was somewhat able to restrict the availability of the tests (Luthra 1993). In 1994, in extending the state level initiative, the Indian Parliament passed the first national law banning sex-selective abortion, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (henceforth referred to as PNDT Act). The PNDT Act (1994) limits the use of prenatal tests for the diagnosis of genetic conditions in fetuses and bans the application of this technology for SD (Jaising, Sathyamala and Basu 2007; Menon 1995; Sarkaria 2009). It requires that all genetic counselling centers, clinics and laboratories register with the government and that no center "be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause" (as cited in Sarkaria 2009: 919). In defining the medical instances in which a pre-natal diagnostic test can be conducted, the clause lists five "abnormalities" and leaves it to the discretion of the Central Supervisory Board to make additions to the list. In addition, the PNDT Act prohibits advertisements promoting SD. The Act dictates that medical personnel who defy the Act should be reported to their respective State Medical Council. Significantly, the Act reflects FASDSP's feminist ideology and applies the presumption that women undergoing sex-selective abortions are not acting out of their free will. They are viewed as being influenced by the prevailing social ethos or pressured by their husbands and families. However, this presumption does not absolve women of criminalization for engaging in sex-selection. Instead, it means that when a woman is charged under the Act, some 'accomplice' to the woman must also be charged (Jaising et al. 2007; Menon 1995; Sarkaria 2009).

Overall, the PNDT Act of 1994 called for the regulation of prenatal diagnostic procedures but failed to target newly developed sex-determinative technology i.e. sperm sorting. Also, it did not regulate "portable" clinics and ultrasound tests that were common to all pregnancies and revealed foetus sex. In response to the shortcomings of the initial

Act, and demands by advocacy groups to ensure stricter implementation of the PNDT Act, the Supreme Court introduced amendments to the original Act in 2003. Also, it was re-termed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act (henceforth referred to as PC & PNDT Act). In its ruling, the Supreme Court ordered the central and state governments to report regularly on the implementation of the Act and to educate the public about sex-selection through media campaigns. In addition to the abovementioned conditions, the revised Act imposed stricter registration requirements for ultrasound providers, limited the use of pre-conception diagnostic procedures to medically necessary situations, and prohibited sex-selection (i.e., the use of any test or method for sex-selective abortion) (Jaising et al. 2007; Menon 1995; Sarkaria 2009).

### Analysis of Legal Intervention: Challenges

#### *Implementation*

The critique of the abovementioned legal intervention is premised on the difficulties in implementing the Act, the inherent disparity between feminist ideals and a legal framework, and the counterproductive conditions set forth by the Act. The implementation of the PC & PNDT Act has been flawed due to a number of factors. First, the penalties laid out in the law have been unable to prevent doctors from communicating information about the sex of the foetus. Moreover, since the use of ultrasounds is an aspect of a regular pregnancy, it is difficult to differentiate between illegal and legal use. Also, since SD tests and abortions are generally done at different health facilities, it becomes difficult to establish a link between the two and charge individuals for sex-selection. The inability of legal mechanisms to externally regulate cases of sex-selection places the onus on governmental officials, individual providers, and medical bodies (Ganatra 2008; Sarkaria 2009). However, government officials experience significant pressure from the medical community to pardon charges against doctors. In fact, a government official who conducted a raid on a clinic received threatening calls warning him to discontinue such practices because there were "vested interests" behind the continuation of sex-selective abortions and utilization of SD technology (Sarkaria 2009:923). Also, the judicial inertia in processing crimes of sex-selection has meant that while 400 cases have been registered since 1994, only a handful of individuals have been convicted. In addition, contrary to reducing the incidence of sex-selection, the criminalization of the practice has aided the proliferation of private clinics throughout the country. These private health facilities make SD and sex-selective abortions cheap and accessible, often in unsafe conditions (Ganatra 2008; Kishwar 1995; Sarkaria 2009).

#### *Gap between the Legal Approach and Feminist Vision*

An alternative and radical strand of feminism problematizes the legal approach due to its hegemonic status and inability to target the root causes of son preference, as well as the negative implications of the law's conditions for the reproductive health and abortion rights of women. First, a legal and rights based approach is perceived as antithetical to feminism and analogous to colluding with hegemonic forces in utilizing the very apparatus

that reinforces the exploitation of poor and marginalized women. In articulating her criticism of waging a state centred and top down campaign against sex-selection Menon (1995) states, “[i]t is true that technology is not neutral in relation to power structures and that it tends to reinforce existing patterns of power. Nevertheless, the solution cannot be to hand over entire areas of science and knowledge to bureaucratic control. Such a strategy is in fundamental contradiction to any feminist ideal of democracy” (Menon 1995:380). Second, the content of the law evidences that it operates to target the symptoms of the problem (sex-selection), rather than bring forth attitudinal changes with regard to its root causes, son preference and daughter devaluation. Significantly, merely by banning sex-selective abortion the systemic and enduring dynamics of daughter discrimination will not be reversed and it is likely to manifest in alternate forms. In fact, in Punjab, the government’s hyper vigilant and narrow focus on sex-selective abortion has allowed practices of female infanticide to resurface (Ganatra 2008; Sarkaria 2009).

### *Criminalization of Women*

In addition to the ideological drawbacks of the legal approach, the regulations set forth through the law penalize women who undergo sex-selective abortions, hamper the reproductive health of women, and have the potential to infringe on the abortion rights of marginalized women. Evidently, the PNDT Act (1994) states that, “the court shall presume, unless the contrary is proved that the pregnant woman has been compelled by her husband or relative to have the sex-selective abortion” (as cited in Sarkaria 2009:924). Significantly, while the law recognizes that women are compelled through social pressure or family members to undergo sex-selective abortion, it still holds women liable. Moreover, the condition of women’s ‘compulsion’ may be hard to establish in all except the most obvious of cases and this directive may instead create a double bind for women. On the one hand if they produce daughters, women are threatened by harassment and abandonment from the husband’s family. On the other hand, the law threatens to persecute women if they undergo sex-selective abortion. The revictimizing and punitive feature of the law is problematic from a feminist perspective and exercises a negative impact on the quality of health care utilized by women. For instance, in some parts of Punjab doctors suspect that in order to avoid criminalization women are not utilizing government hospitals for prenatal care and deliveries. Instead, they are delivering their children at home where they are able to eliminate the child if it is a girl without legal repercussions (Sarkaria 2009). Alternatively, to override the threat of criminalization, women have also resorted to seeking private and unlicensed medical practitioners that carry forth sex-selection procedures in unsanitary conditions without adequate training (Ganatra 2008).

### *Disregard of Women’s Choice*

Contradictorily, an additional problem of the abovementioned clause, which understands sex-selection exclusively as a consequence of gendered oppression and coercion, is that it denies women agency. Significantly, the PC & PNDT Act configures women engaging in sex-selection as not exercising “choice” or exhibiting a false consciousness. This conceptualization stems from FASDSP’s pragmatic approach, which seeks to prevent the criminalization of women and pinpoint the context of gender inequity. Since population

control discourse often uses the notion of women's choice and reproductive rights to justify aggressive quotas and sterilization camps, this is a deliberate tactic to safeguard women's interest. In legal context this depiction may lend women an advantage, although, as mentioned above this benefit is limited. However, from a feminist viewpoint it is a flawed assumption that fails to contextualize women's choice as a survival strategy and reduces them to mere victims (Luthra 1993; Sarkaria 2009).

### *Prohibition of Sex-Selection and Abortion Rights*

While FASDSP, the largest propeller of legal action on sex-selective abortion in India, has consistently claimed that they do not want the legislation against sex-selection to infringe on women's abortion rights, the two issues cannot be as distinctly separated in practice (Menon 1995). There are a number of examples that point to the threat that banning sex-selective abortions imposes on the abortion rights of Indian women. Agnes (1991) noted that two legal initiatives against SD, which were opposed by FASDSP, were premised on questioning women's unrestricted access to abortion. For instance, in 1986 a woman's group in Bombay petitioned the High Court against SD tests arguing that they violated the right to life. Also, a Private Member's Bill was introduced to amend the Medical Termination of Pregnancy (MTP) Act and instate the medical practitioner with more power to refuse termination of a pregnancy if, "they have reason to believe that such termination is sought with the intention to commit female foeticide"(as cited in Menon 1995:378). This suggestion is beset with issues, because it places women's access to abortion services at the will and discretion of the medical practitioner. Moreover, these recommendations address sex-selection through the purview of abortion debates and therefore, pose a threat to the current conceptualization of abortion rights in India. Further, despite its declaration, FASDSP has itself suggested that the MTP Act should be revised. The clause that defines sex-selective abortion of female foetus as that which is performed on the pregnant woman "on grounds other than those listed in the MTP Act of 1971" should be deleted (Menon 1995:378-9). Their claim is that this definition excludes sex-selective abortions deemed permissible by the Act through the mental health clause. As doctors conducting sex-selection have interpreted the mental health stipulation, one of the listed grounds, to include the mental trauma women would be subjected to if they give birth to a female child. However, any amendment of the MTP Act has serious implications for scrutinizing and possibly altering the provision of routine abortions (Menon 1995). In addition, the campaign against sex-selection waged by FASDSP has been charged with using inflammatory images that depict abortion in a negative light and fail to elucidate the differences between sex-selective abortion and abortion. Also, their messaging portrays sex-selective abortion as a sin and personifies the foetus by using the term female foeticide. Especially, if the discourse is translated into local languages it has a strong anti-abortion connotation (Ganatra 2008). Given the vulnerable access to abortion experienced by poor and rural women in India, the abovementioned legal measures and advocacy strategies have the ability to bring into question current legal stipulations around abortion and further compromise marginalized women's access to abortions (Passano 2001). Significantly, in India, abortion rights are premised on population control objectives, as opposed to principles of reproductive freedom. But despite being legalized, most marginalized women are unable to access adequate abortion services (Menon 1995). In fact, Bang and Bang (1992) noted

that ten percent of the total abortions are performed by licensed and safe medical services (as cited in Menon 1995:375). Also, Jesani and Iyer (1993) asserted that 660,000 women die every year due to illegal abortions that are performed by unqualified practitioners (as cited in Menon 1995: 375). Thus, given the dire status of abortion services in India and the discursive association of abortion with sex-selective abortion, it is imperative to reevaluate legal solutions to the issue of sex-selective abortion.

### Analysis of Legal Intervention: Successes

Clearly, the current legal approach is insufficient to target to root causes of sex-selection and extensively curb the provision of sex-selection services. Furthermore, it imposes a number of problematic conditions on women. The legal intervention's tangible success is limited to minimally regulating the provision of SD tests by public health facilities. However, in multiple ways the discursive presence of a legal approach is conducive to organizing against sex-selection. Specifically, in challenging the normative construction of sex-selection, the legal apparatus is able to demand responsibility and transparency from doctors, technocrats and the state. Moreover, given the rampant commercialization and abuse of reproductive technology, a legal intervention that prioritizes state role and prosecutes liable medical practitioners is highly relevant and essential. Also, criminalizing sex-selection increases public awareness about the issue and sends a clear message about the ills of engaging in sex-selection (Luthra 1993; Moazam 2004; Purewal 2010). Having such a law lends leverage to the activities of many grassroots organizations that are working to prevent sex-selection at the community and family level. Often, community workers and police officers utilize the legal framework and repercussions dictated by the PC & PNDT Act to dissuade people from engaging in sex-selection (Bedi 2008; George 1997). Thus, despite its failure to curb sex-selection in the short term, the presence of a law around sex-selection is necessary to initiate sensitive institutional and policy based responses to sex-selection in the long term.

### Conclusion and Recommendations

Taken together, an investigation of the institutional dynamics of sex-selection in India reveals that the issue is inextricably linked to state population control policies, the unregulated use of medical reproductive technology, and the limitations of a legal approach in solving the problem. Evidently, state and medical institutions that facilitate the preponderance of sex-selection cannot be viewed in isolation. In order to arrive at a comprehensive understanding of sex-selection, institutional structures and policies that maintain the status quo must be analysed in tandem with precipitating factors (i.e. patriarchal cultural practices and kinship systems) of sex-selection. In fact, even the shortcomings of the legal approach demonstrate the expediency of examining the social fabric that promotes son preference and daughter devaluation. Specifically, the narrow rights based perspective embodied by the legal intervention overlooks the consequences of criminalizing female perpetrators of sex-selection, the issue of female "choice" in sex-selection, and the inextricable link between sex-selective abortion and abortion (Menon 1995). While the law, as an institutional force, condemns sex-selection, it does not probe the underlying social

constructions and conditions that facilitate sex-selection. Thus, as mentioned earlier in both understanding and devising solutions to the problem of sex selection an integrated approach is imperative. While it was not within the scope of the paper to demonstrate an integrated approach, the paper attempted to supplement the unidimensional macro discourse by providing an alternative institutional lens. However, the above analysis of institutional forces reiterates that social systems and contextual variables should be examined simultaneously. This will facilitate understanding about the intersecting forces that shape diverse manifestations of son preference and daughter aversion in the Indian context. This approach can also be extended to the formation of solutions on the issue of sex-selection in India.

### *Future Directions for Policy Interventions*

In devising holistic solutions to the issue of sex-selection, it is imperative to look beyond the current legal solution. Instead, proactive and targeted policies that are focused on transforming the social relations and gender inequities on which son preference and sex-selection are premised can be pursued (Ganatra 2008). In this regard, the reproductive justice perspective, mentioned earlier, offers a useful viewpoint (Petchesky 1990). The reproductive justice lens posits that the eradication of sex-selective abortion lies in transforming the societal forces that make sex-selective abortion a preferred choice for many women. For choosing between keeping your daughter and suffering a lifetime of abuse from your husband versus aborting the female foetus is not a real choice. Thus, societal norms have to be restructured to provide women freedom of choice by ensuring them security, honour, and status regardless of the sex of their child (Sarkaria 2009).

In using the reproductive justice lens as a departure point, it is important to initiate policies that create equal opportunities in education, employment and inheritance for women. In South Korea, policy initiatives and laws facilitated greater female workforce participation in high value jobs, higher rate of female education, old age security schemes and women's rights and responsibilities in their natal house post-marriage (Ganatra 2008). These initiatives, as prefaced by the earlier analysis of kinship patterns, diminished the basis for son preference. They elevated women's social and economic value thereby, altering the conditions that sustain sex-selection. Thus, instead of exercising an exclusionary focus on legal actions pertaining to sex-selection, it may be useful to develop comprehensive social policies that address the material, ideological and institutional basis of sex-selection. Moreover, in order to dispel drawbacks of the current law, feminist public organizing should prioritize disentangling illegal sex-selection from legal and safe abortion. FASDSP should focus on raising public consciousness about sex-selection through sensitive campaigning tools that cannot be construed as anti-abortion (Ganatra 2008; Passano 2001). Overall, a more integrated legal approach that, along with prohibiting sex-selection, is oriented towards achieving gender equity in the realm of inheritance, education etc. should be pursued. These institutional resolutions should be supplemented with community based initiatives that promote critical awareness and attitudinal changes with respect to son preference and daughter devaluation.

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that focuses on marginalized populations and bridging the gap between theory and practice. In fact, Sugandha has been involved with numerous community based research initiatives and has finished her master's research review paper on sex-selection in Indo-Canadian communities. Her research derives from an anti-racist feminist perspective and strives to explore issues of gender, race and class, transnational migration, gender-based violence and community development.

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