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# Fighting Female Foeticide - A Long Way to Go

*Ravindra, R.P.*

***Abstract:*** *The blatant misuse of amniocentesis for sex selective abortions continues unabated. State laws enacted to curb the problem have helped little, partly due to inherent defects in the law itself and implementation machinery that leaves much to be desired. In a scathing critique, Ravindra Rukmini Pandharinath analyses the existing legislation on prenatal diagnosis and the central government expert committee draft Bill which is pending before parliament.*

In 1975, amniocentesis arrived in India as a method for the detection of genetic abnormalities. Soon it came to be used more commonly for sex determination (S.D.), actually a misnomer for sex prediction leading to sex selective abortions. In response to an official directive, government hospitals stopped the misuse of this technique for S.D., but it resulted in opening the floodgates for large scale commercialization in the private sector. S.D. soon became a booming business in Delhi, Maharashtra, Punjab, Haryana, U.P., and spread like an epidemic in north and west India. This was the region which had shown a much sharper skewing of the sex ratio (adverse to females) in the past decades, thanks to a pronounced sexist bias and prejudice leading to discrimination against females in all walks of life. Young daughters, in lakhs, died silent deaths as their health and wellbeing received low priority in the family and society. In fact, amniocentesis came as a gift of modern technology to 'Mother India' who has always been cruel to her daughters.

The 1991 census has further highlighted the trend of a declining sex ratio prevalent throughout this century. The sex ratio of more than half of the rural districts in north and west India are dangerously low. If the S.D. 'epidemic' is allowed to proliferate further in this demographically sensitive area, for our society. Yet, a demographic catastrophe of unprecedented dimensions, an almost irretrievable breakdown of the sex ratio balance is an avoidable tragedy, provided we act in time.

**Allied Issues**

The blatant misuse of amniocentesis has thrown up allied issues as well. While S.D. techniques have already made India their home, there are other, more sophisticated reproductive techniques crossing the threshold or waiting at the door. Regulation of prenatal diagnostic techniques would initiate the long overdue process of regulation and debate over medical technology in India. The laws relating to medical products are extremely weak; however those relating to medical technology are totally absent. In the absence of such regulation, India might in the near future became a dumping and testing ground for all types of hazardous medical technology. Further advances in sex preselection techniques and the growing clout of the 'population control' lobby are bound to pose newer problems and more complex issues.

Curbing sex preselection is possible only if a law against S.D., symbolizing the state's commitment to intervene in medical technology on grounds of 'right to equality' and 'preserving the sex ratio balance', is brought into effect and implemented.

Self-regulation would have been preferable to state intervention. However, the medical establishment has consistently refused to take a stand on the issue of S.D. or for that matter on any issue of medical ethics. Issues raised by S.D. techniques are too important to be left to technodoes alone.

But ultimately, progressive legislation is not a substitute for cultural chances and consciousness raising. However, the former is, at least in the Indian context a prerequisite for social action. Female infanticide and sati could not have been curbed (if not eliminated) without the aid of suitable legislations.

**Initiation of a Campaign**

For many years, while the' message of sex preselection was taken down to even far-flung villages and bastis in the form of roadside slogans and pamphlets that read "Spend Rs.500 now, save Rs.50,000 later", virtually no action was taken. Then in 1982, an error in S.D. diagnosis at the New Bhandari Hospital of Amritsar, resulted in the abortion of a much wanted son of an influential family. A controversy erupted which snowballed into a major national issue. However, within six months, the issue died a natural death. The government had ruled out a legal ban. Although it had promised 'appropriate action' a against the New Bhandari Hospital, the latter rather improved its business, so much so that its geneticist, Dr. Loomba shifted to Delhi to start his own

laboratory to cater to the needs of his overgrowing clientele, which include top government officials and ministers -- the very people who enact laws and are responsible for their implementation!

It is almost a decade now since the first public debate on this issue. In the meantime, the clientele for S.D. tests has grown, and so has the influence of the Loomba's and New Bhandari's who are found almost all over India (except the south). They have found for themselves influential spokespersons and supporters - ministers, bureaucrats, sociologists and population experts. S.D. is being flouted as a 'woman's democratic right' and 'an answer to India's population problem'. Opposition to it on grounds of equality and gender justice is labeled as 'feminist distortions'. Newspapers which sermonize on the dangers of S.D. routinely continue to carry the advertisements of S.D. clinics and laboratories. Eternal vigilance, it seems is the price of equality and justice. However, even among vigilant activists there is a growing scepticism bordering on cynicism. Many feel that S.D. is as yet not a very widely known technology, and they are afraid, that campaigning against it would make people aware of its existence. [It is like opposing demonstrations against dowry murderers lest it gives ideas to as yet innocent in-laws].

In 1986, Forum Against Sex Determination and Sex Preselection (FASDSP) Bombay made a systematic attempt to revive the campaign on this issue. It put S.D. back on the national agenda. It pressurized the government of Maharashtra to enact the first ever legislation on this issue - The Maharashtra Regulation of Prenatal Diagnostic Techniques Act, 1988. It also catalyzed a socio-cultural movement on this issue. Today, although most people even in the remotest corners know about the existence of a 'S.D. service', they are also aware of the campaign against it.

FASDSP has as an issue based campaign group performed a versatile role - researching, disseminating information and ideas, lobbying, having protest actions, helping in drafting legislation, and co-ordinating and networking. Similar groups have emerged in other parts as well as - Forum Against Sex Determination (FASD), Gujarat Voluntary Health Association (GVHA), Gram Gujarat and Baailancho Saad in Goa, to name a few. Their campaigns have prompted the introduction of Bills in their respective state legislative assemblies.

**History of Legislation**

The nationwide support and international coverage received by the campaign has also resulted in the appointment by the, union government of an expert committee on S.D.

and female foeticide. The committee has after detailed dialogue and debate drafted a central Bill and submitted it to the union government along with a detailed report. The Janata Dal government fell before it could take any decision on this issue. The Chandrashekhar government had, in its short tenure, attempted to introduce the Bill in parliament. The bill actually was an attempt to nip the campaign in the bud. But it had very serious lapses. It could not see the light of day due to timely protests by activist groups.

The Congress(I) in its 1991 election manifesto has promised to enact nationwide legislation on the subject. Other political parties, too, have indicated a willingness to have a law on S.D. tests. Meanwhile, the Maharashtra Act his remained on paper primarily due to basic defects in the Act (see table), as well as the total lack of political will of the government in implementing the Act.

Before the comparative merits and demerits of various legal options on this issue are discussed, it becomes necessary to indicate a growing trend among activists and the public. The euphoria of public interest litigation has evaporated. With it has vanished much of the magic of progressive legislation. Indeed, among women's groups, there is growing disillusionment about any effective role of law. For many, the laws specially related to women's issues, are too inadequate to bring about any effective chance. They feel that such laws would never be implemented. 'The non-implementation of the law on sati, the Muslim Women's (Protection of Rights on Divorce) Act and the Maharashtra Regulation of Prenatal Diagnostic Techniques Act are glaring examples of this phenomenon.

**Comparison of Various Acts/Bills**

The various legislative options on this issue offered by different authorities have much in common, mainly because all the Bills are basically amended or improved versions of the Maharashtra Act. This commonality is reflected in matters like functions of implementing bodies, indications for carrying out prenatal diagnosis, registration of centers / clinics / laboratories and the basic objectives viz. regulation of prenatal diagnostic techniques and banning of their misuse for sex determination for non-medical reasons (see table on page 8-9). However, they do differ in their approach on various important matters, which we will now proceed to examine.

**A) Implementation of Act**

**a) Setting up of a Time Frame for En-forcement of the Act and Appointment of Implementing bodies:**

It has been observed that governments which enact certain progressive legislation under popular pressure drag their feet at the time of their implementation. A common gimmick is to delay the notification of the Act in the Official Gazette or to maintain ambiguity about the mechanism of implementation of the Act. If the Act itself suggests the formation of an independent implementing machinery, the government puts off its constitution. In order to overcome these problems, activist groups have suggested incorporating within the Act specific time frames for these matters. While the Maharashtra and Gujarat Act and the Chandrasekhar government draft Bill, ignored their suggestion, the same has been accepted in the central committee draft Bill and the Goa Bill. Interestingly, the former has came up with a novel suggestion that the Act should come into force on the day of receipt of the President's assent (irrespective of publication in the Official Gazette). However, constitutional validity and practical difficulties need to be considered before accepting this suggestion. The inordinate delay of the government of Maharashtra in setting up implementing bodies (see table) inspite of persistent pressure from activist groups underscores the need for such a time frame.

**(b) Constitution of Implementing Bodies:**

These bodies are vitally important in the actual implementation of the Act, as they are entrusted with matters like deciding/revising of policies, granting/cancellation of licences and maintaining vigilance. The lack of initiative, flexibility and political will of the government machinery along with rampant corruption, have been the major handicaps in the implementation of several progressive legislations in the past. The recent trend exemplified by the Consumer Protection Act and amendments to the Dowry Prevention Act reflect the need to set up committees (instead of vesting the power in the hands of an individual) and encourage the growing participation of voluntary agencies in these committees. It is of paramount importance for this Act too. Because almost the entire task of research, analysis, debating and suggesting alternatives on this issue has been single-handedly carried out by voluntary activist groups.

The government has chosen to act only in response to the sustained pressure of public opinion, while the medical establishment has consciously evaded the issue. It is clear that this -Act cannot succeed without voluntary organizations playing a meaningful

role in its implementation. In this context, it is important to note that neither the Goa Bill nor the central committee draft Bill provides any role for non-government organizations/persons. In fact, so much power has been concentrated in the hands of a few bureaucrats that implementation would be impossible and misuse of power inevitable. In the central committee draft Bill, the entire implementation machinery, viz. the State Appropriate Authority (SAA), State Vigilance Committee (SVC) and Local Vigilance Committee (LVC), is proposed to be replaced by a single officer. In all other legislations, the proportion of representation for voluntary agencies is between 1/4 and 1/3 of the total strength of the committee.

While the appropriate authority is vested with the powers of a civil court in several relevant matters, the powers of vigilance committees which form the backbone of the implementing machinery, have not been specified. This could serve as a major impediment in the enforcement of the Act.

**B) Regulation of Prenatal**

**Diagnostic Techniques:**

All the legistations provide for allowing the use of techniques like amniocentesis for specific purposes by specified persons at specified (licenced) places.

**Excerpts from the Report of the Central Committee on Sex Determination**

- It is absolutely essential not to accept medical technologies blindly: decisions related to social development, and the choice of application of technology are too important and value-laden to left to experts in technology ogy, above. (emphasis added)

- Suitable provisions may be made in the code of medical ethics to prohibit the medical practitioners resorting to the unethical practice of sex determination and female foeticide.

- Government may initiate action to provide in the Medical Council Act, for suspension of the name of a medical practitioner from the register of the Council for the first offence of female foeticide and removal of name permanently from the register in the event of repeat offence.

- The acceptance of female foeticide as a family planning method is not merely derogatory to the women's status, harmful to maternal health but is repulsive to human nature.

- Where the practices of any profession tend to reinforce social prejudices, cultural backwardness or communal disharmony, the professionals will have to accept the suzerainty of the state to regulate those practices.

- The absence of a self regulating mechanism within the medical community has left no option but to think of legislation for S.D. tests.

- There is no report anywhere of the members of any medical council trying to take note of this problem and evolve principles and guidelines for the benefit of medical community. The society spends huge amounts on producing qualified medical personnel and has a right to expect that the profession and its apex body function in a socially modern, equitable and development-oriented manner.

- It is time to consider whether the medical councils need to be geared up or restructured in such a way that they are more responsive to social problems. The government may consider whether restructuring the medical councils and nominating a few non-medical social thinkers 'and public representatives on these committees could sensitize them to social problems. (emphasis added). The relevant Acts may also be reviewed to make provisions for government or members of public to refer specific problems and, cases to the Council for its opinion within a reasonable period of time and specific and effective action in the case of an erring medical practitioner.

- It is possible to enact and implement the law, provided government shows the necessary political will and sensitivity to women's problems and seeks the help of committed voluntary organizations in addition to government machinery for implementation.

The 'indications allowing the use of prenatal diagnosis are uniform throughout except the clause relating to 'two or more abortions or foetal loss'. The rationale for including such a clause is supplied by the growing medical evidence which indicates that spontaneous abortions (miscarriages) are often nature's way of eliminating malformed embryos/foetuses. However, the important qualifying word spontaneous abortions is not used in the Maharashtra and Gujarat documents. This can serve as a loophole for allowing the use of prenatal diagnosis for non-medical reasons. A statement by the

woman (or the concerned gynaecologist) that the woman has undergone two or more MTP's could make her eligible for prenatal diagnosis.

While all the Acts provide easy access for needy women to prenatal diagnosis (see table), they are not vigilant enough to prevent its likely misuse for S.D. The Goa Bill is an exception. It specifies that a woman would be allowed to undergo the prenatal diagnostic procedure only after she provides documentary evidence to support her claim of eligibility for prenatal diagnosis. As an additional safeguard the written opinion of three medical experts is also required.

**Table 1**

| | | Maharashtra Act | Gujarat Bill | Central Committee Draft Bill | Chandrashekhar Govt. Draft. Bill | Goa Bill |
|---|---|---|---|---|---|---|
| **(A)** | **IMPLEMENTATION** | | | | | |
| **(a)** | **Time frame specified for:-** | | | | | |
| (i) | Enforcement of Act | -- | -- | On the day of receipt of assent of President of India. | -- | 1 month within date of enactment. |
| (ii) | Setting up of implementing bodies. | -- | -- | 3 months | 3 months | 3 months |
| **(b)** | **Implementing bodies** | | | | | |
| (i) | Bodies/persons entrusted with implementation of Act. | SAA<br>SVC<br>LVC | **Only Govt. officers**<br>Chief Inspector for State and Inspectors for specified area | CSB<br>CAA<br>CVC<br>SSB<br>SAA<br>SVC<br>LVC | Govt. officers not below the rank of Joint Director of Health & Family welfare to serve as CAA & SAA | SAA<br>SVC<br>LVC |
| (ii) | Representation to Voluntary Agencies in<br>CAA<br>CSB<br>CVC<br>SAA | 2/8<br>2/7<br>2/8 | | 4/12<br>4/17<br>2/5<br>Generally on patterns on CAA, CSB & CVC. | 2/15 | 2/8<br>2/7<br>2/8 |

| | | | | | | |
|---|---|---|---|---|---|---|
| | SSB<br>SVC<br>LVC | | | | | |
| (iii) | Powers to implementing Bodies | SAA - Possesses powers of a civil court under Code of Civil Procedure in matters like proof of facts by affidavit; summoning and enforcing attendance of any person, and examining him on oath or affirmation; compelling the production of documents; and issuing commission for the examination of witness. | Chief Inspector & Inspector's power to enter & search premises. | CAA, SAA - Powers of civil court under Code of Civil Procedure in matters like proof of facts by affidavit; summoning & enforcing attendance of any person; examining him on oath or affirmation; compelling the production of documents; issuing commission for the examination of witness. | The Appropriate Authority shall have all the powers of inspection, search and seizure necessary for discharge of its functions. | SAA - Possesses powers of civil court under code of Civil Procedure in matters like proof of facts by affidavit; summoning & enforcing attendance of any person; examining him on oath or affirmation; compelling the production of documents; issuing commission for the examination of witness. |
| **(B)** | **Regulation of Prenatal diagnosis** | | | | | |
| (a) | Indications for Prenatal diagnosis<br>Apart from others | 2 or more abortions or foetal loss. | 2 or more abortions or foetal loss. | 2 or more spontaneous abortions or foetal loss. | 2 or more spontaneous abortions or foetal loss. | 2 or more spontaneous abortions or foetal loss. |
| (b) | Need for documentary evidence for carrying out prenatal diagnosis. | No | No | No | No | Yes |
| (c) | Written opinion of 3 specialists - gynecologist, pediatrician, geneticist/pathologist. | No | No | No | No | Yes |
| (d) | Cognizance of offence by court complaint field by individuals/organizations | No free access to court Notice of not less than sixty days to SAA/SVC/LVC Authorized officer in | -- | Free access to court | -- | Free access to court |

| | | | | | | |
|---|---|---|---|---|---|---|
| | | prescribed manner necessary | | | | |
| (e) | Institutes eligible for obtaining licenses | Private & Govt. | Only Govt. | Private & Govt. | Private Govt. | Only Govt. |
| **(C)** | **Officers & Penalties** | | | | | |
| (a) | To woman for submitting to test for non-medical reasons | Presumed to be innocent. Still fined Rs.50/-. | Fine of Rs.5000/- to woman who submits to test (Whether willingly or unwillingly). | Presumed to be innocent, still fine Rs.500/-. Punishment, on conviction. | Onus of proof (to prove innocence placed on the woman), 1 yr. imprisonment + fine of Rs.1000/- for 1st offence. Subsequently 2 yr. + Rs.5000/- fine subsequent offence. | Assumed to be completely and absolutely innocent. Hence, no punishment. |
| (i) | Presumption | not clear | | not clear | | |
| (ii) | On conviction | | | | | |
| (b) | To Doctor (or owner of institute) | Rigorous Imprisonment RI (upto 3 yr.) + fine (upto Rs.5000/-) (Not less than 1 yr. and Rs.1000/- ) | RI (upto 3 yr.) + fine (upto Rs.5000/-) (Not less than 1 yr. + Rs.1000/-, cite reasons if less punishment is given) | RI (Upto 3 yr.) + fine (upto Rs.500/-) Not less than 1 yr. + Rs.1000/- | For owner simple imprisonment (2 yr.) + fine (Rs.10,000) Subsequently 5 yr. + Rs.50,000 Same for doctor working at unrecognized place | RI (upto 5 yr.) + fine (upto Rs.5000/-) (not less than 3 yr. + Rs.3000/- ) |
| | Suggested action by Medical Council Suspension of name from Register | for 2 yr. (for first offence). Permanent removal on subsequent offence | 2 yr. (first offence) Permanent (subsequent offence) | 2 yr. (first offence) Permanent (subsequent offence) | Not specified | 2 yr. (first offence) Permanent (subsequent offence) |
| (c) | To family members and others for abatement of crime (forcing woman to undergo test) | RI upto 3 yr. + fine upto Rs.3000/- (not less than 1 yr. + Rs.1000/- | Imprisonment upto 1 yr. + fine upto rs.5000/- (not less than 3 months + Rs.1000/- cite reasons if less punishment is given) | RI upto 3 yr. + fine upto Rs.3000/- (5 yr. + Rs.10,000/- for subsequent offence) | Simple imprisonment upto 1 yr. + fine upto Rs.1000/- (2 yr. + Rs. 5000/ - for every subsequent offence) | |

* The Expert Committee has suggested a review of the decision to grant licenses to private institutions after 5 yr.

* SAA - State Appropriate Authority, SVC - State Vigilance Committee; LVC - Local Vigilance Committee; CAA - Central Appropriate Authority; CSB - Central Supervisory Board; CVC - Central Vigilance Committee; SSB - State Supervisory Board.

Yet another example of how Maharashtra Act has consciously attempted to nullify attempts by activist groups to enforce the Act is seen in Section 21 of the Act. Under this Section, voluntary groups or individuals, (or rather anybody except the implementing bodies), cannot move the courts to bring to its notice the alleged contravention of the Act. Sub-section (b) stipulates that the court shall take cognizance of an offence by any person only after issuing a notice of not less than 60 days to SAA/SVC/LVC or an authorized officer in the prescribed manner. The implementation of this Act was held up primarily because these bodies were not constituted and later because these bodies after constitution did not make any serious effort to prevent the contravention of the Act. The manner in which the notice is to he served has not yet been specified. No action has been taken on complaints filed by activist groups nor are they informed of how they should proceed to take legal action against those who violate the provisions of the Act.

The proviso Clause of Section 21(2) makes the issue more complex. It ensures the implementing bodies a right to refuse to make any record available to a person moving the court after issuing 60 days notice, on the grounds of it being 'against public interest'. How can anybody prove contravention of an Act more than 2 months after-commitment of the crime without any records, is anybody's guess! Fortunately, the entire section 21 of the Maharashtra Act has been deleted from all the remaining Bills/Acts.

**Granting Licences to Private Institutions**

It has been observed that even in of a nationwide law, misuse of prenatal diagnostic techniques has not been reported from any government hospital or laboratory in the last decade. However, in this very period, private centers/labs/clinics have proliferated across the country and turned these techniques into a shady business. In Maharashtra, contravention of the Act by private clinics has been reported. Moreover the infrastructure in the government sector (e.g. municipal teaching hospitals) is sufficient to cater to the needs of prenatal diagnosis and counselling for most parts of the country. Hence there is no reason why private institutions, aver which no effective control can be

exercised, should be issued licences for carrying out prenatal diagnostic procedures and techniques. Yet, only the Gujarat and Goa Bill seem to support this plea.

**C) Offences and Penalties**

All the Bills/Acts are unanimous in punishing doctors (for misusing the technique) and in-laws (for abetting the crime) although the degree of punishment might vary to some extent. Although they are unanimous in referring to the medical council the name of defaulting doctors for purposes of taking suitable action, no medical council is yet known to have taken any action against any erring doctor. An amendment in the Medical Council Act to provide for such action is the need of the hour. The expert committee's comments about the lack of sensitivity of established medical institutions (like medical councils) and its suggestion for revamping them by including nonmedical members is worth a follow-up.

There is also a provision for punishment of doctors/their assistants for advertising sex determination. The Gujarat Bill has specified different punishments for doctors carrying out tests at unauthorized places, by unauthorized persons, for unspecified grounds, etc.

The only bone of contention in this Section relates to punishment to women undergoing S.D. tests. Activist groups have always been asserting that a woman rarely makes a conscious choice to undergo an S.D. test. Hence she should be 'presented' as innocent in all circumstances. It is unjust to equate the victim (the woman) and the criminal (the doctor and family members). While the Goa Bill seems to uphold this view, the Gujarat Bill and central committee draft Bill reflect exactly opposite views. lie Maharashtra Bill and the central government expert committee draft Bill are a compromise between the two positions. However, the experience in Maharashtra indicates that any dilution or compromise on this issue would render the Act non-implementable. Punishing a helpless woman would make her more vulnerable to pressures and would leave her with still fewer options. It would also discourage courageous women from coming out to expose guilty doctors and family members.

**Conclusion**

Whatever may be the constraints of the present legal system and the broader social system within which it operates, a comprehensive nationwide law on S.D. tests is urgently needed despite the fact that the law is by no means an end in itself, nor will it be sufficient to deal with the problem.

A seriousness on the part of the government to implement its laws is vital. As the initial experience of the Maharashtra Act shows, doctors prefer to close down their clandestine businesses if they are convinced that the law would be implemented. The fact that the S.D. business has slowly revived once doctors and the public become convinced that the law would remain on paper, is just a corollary of the earlier statement. Keeping vigilance over thousands of S.D. clinics spread over three-fourths of India is an impossible task. But bringing to book 1 or 2 culprits is sure to send the right signal everywhere.

Finally, a nationwide law would be the beginning of a process. Activist groups and legal experts would have to be ready for intervention - right from the stage of identifying legislation to the stage of struggling for its implementation, which shall be more difficult. But, the journey of a thousand miles always begins with a small step.

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**Excerpts From Resolutions Passed**

**By the Geneva Conference,**

"The Conference"

- HOLDING that Amniocentesis sets a precedent which may apply to other medical developments, specially in the field of genetics, and to ways in which society may be called upon to deal with such developments;

- RECALLING that in case of drugs, vaccines and other therapeutical agents, extensive evaluation mechanisms have been and are being developed for protection of society, but that no mechanisms exist as yet for the evaluation of new biomedical procedures;

- CONCLUDES that only if new medical procedures and interventions are subject to such critical assessments can mankind progress towards the determination of its fate rather than submitting blindly to technological developments."

- VIII Council for International Organization of Medical Sciences

While S.D. techniques have already made India their home, there are other, more sophisticated reproductive techniques crossing the threshold or waiting at the door.

Regulation of prenatal diagnostic techniques would initiate the long overdue process of regulation and debate over medical technology in India.

* The Chinese government has prohibited the use of Chorionic Villi Biopsy (CVB) for S.D:-and subsequent sex selective abortions.

It has been observed that governments which enact certain progressive legislation under popular pressure drag their feet at the time of their implementation. A common gimmick is to delay the notification of the Act in the Official Gazette or to maintain ambiguity about the mechanism of implementation of the Act.

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