

In the Interests of Equality

*An examination of the human rights and ethical dimensions of sex selective
abortion in the context of public policy addressing skewed sex ratios*

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Introduction

In late 1990 the New York Review of Books published an essay by noted economist Amartya Sen, which drew popular attention to a phenomenon which had been disturbing demographers and social scientists for a few years. This article *More Than 100 Million Women Are Missing* (Sen A, 1990) immediately drew the world's attention to the issue of sex ratios of populations in different countries. Sen asserted that contrary to the popular belief in Western countries 'that women make up a majority of the world's population' in countries of South and West Asia and in China, assuming the same ratio between the sexes as in western countries, a total of nearly 100 million women were missing. Sen's contention was that this big difference in numbers was not a result of poverty or lack of economic development but due to lack of care of women. This was soon corroborated by eminent demographer Ansley Coale (Coale 1991) who revised Sen's estimates down to 60 million, but confirmed the phenomenon and explained it through excess of female mortality. Sen's article is relevant to this day not only for the concern it drew to the simple numeric of the 'sex ratio' and its complex relationship with social economic and cultural issues concerning women, but for stimulating scholarship and public policy action on the issue. Twenty years later while many things have changed, the overall problem of skewed sex ratio in different populations remains a continuing matter of concern. The situation however has become more complicated in the intervening years with sophisticated technologies of sex detection (followed by sex selective abortion), and Preimplantation Genetic Diagnosis (PGD) (for designer babies), moving the issue from a relatively non-controversial developmental plane of poverty and female 'neglect' to a contest between individual autonomy, social desirability and human rights violation.

Sex selective abortions are those abortions which take place where the abortion is done on basis of the sex of the foetus. Amniocentesis, chorionic villus biopsy, ultrasonography and examination of blood for foetal antigens are among the methods used to identify the sex of the foetus. Once the foetus is identified to be of an undesired sex, overwhelmingly female, abortion follows. This paper will trace both the developments on the issue of sex ratio changes and sex selective abortion in different countries as well as the rights discourse around it. It will briefly describe the nature of, reasons behind and public and policy responses to the problem of changing sex ratios in Asia especially in three countries where it has been seen the most viz. China, India and South Korea. It will specifically explore the role and responses to sex selective abortion in these countries. The paper will also explore international human rights and legal positions, as well as various country level laws around sex selective abortions and other mechanisms for sex selection. The paper will further examine the ethical dimensions of the issue and arguments that various experts have placed on record. Hopefully the paper will be able to contribute to a nuanced understanding on the issue and contribute to future policy action that firmly upholds women's equal rights as well as their reproductive choices.

Part 1 : Female deficit and sex selective abortions in Asia

In modern societies, the number of males at birth is slightly in excess of females, but this slight numerical advantage is followed by a higher survival rate among girl children balancing the sex ratio in childhood. In circumstances where females and males have exposure to similar nutrition and health care, males tend to have higher mortality, with the result that the overall population sex ratios tend to be in favour of females. However large differences in sex ratio of the populations, favouring men, were noted in the 1980s for many countries in Asia, particularly in South Asia and China. Sen as has been noted earlier, coined the term 'missing women' for this phenomenon of lop-sided or skewed sex ratios where the number of men outnumbered those of women. The deficit of women in India has been noted from the first census (in 1901) and this figure has more or less continually increased over the years.

In the past there were speculations that undercounting of women was perhaps one of the important causes of this deficit but studies established that differences in mortality between males and females were also important contributors to widening gap. Studies from North Western India first drew attention to the fact of widespread infanticide and neglect of daughters (Miller 1981) leading to early mortality. Later studies from Southern India (George 1992) as well as Pakistan (Coale 1991, Sathar, 1994; Karim, 1994) and Bangladesh (Coale 1991, Chaudhury, 1994; Alam and Bairagi, 1994) confirmed the phenomenon in other south Asian settings. The large difference in sex ratio were also observed from China, South Korea and Taiwan, however in slightly different circumstance, ie. in much better socio-economic circumstances, and in the context of a drastic fertility decline. Deeply entrenched patriarchal practices, linked with issues of inheritance, lineage and old age security were considered important and 'son preference' was considered to the most important factor leading to this situation.

Asia and its male majority - With an overall sex ratio close to 105 (number of men for 100 women in the overall population) throughout the period 1950 until 2005 – Asia has the highest proportion of males in the world. While the proportion of men in most countries tends to diminish with development and with the increase in life expectancy of women, the reverse has been happening in Asia. If the population of Asia had the same sex ratio as other regions of the world, in 2005 there would be 163 million women more than was reported at that time. This deficit of women was seen to be more acute among children and sex ratio at birth was seen be particularly skewed in some countries and more so at higher birth orders (Guilmoto, 2010).

The decline in the number of girls being born has now been documented from many countries in Asia, including China, India, South Korea, Vietnam and others. The table shows the number of women missing for selected Asian countries (Klassen and Wink 2002). Unless manipulated, sex ratios at birth have been seen to be reasonably consistent across different population groups. Many socio-demographic factors have been studied for their influence on sex ratio at birth and other than an influence of war which has been found to cause a small

but significant increase in male births (the reason for this is not yet explained satisfactorily) no other factors show much influence (Hesketh and Xing 2006) .

	1980s and early 1990s				Around 2000			
	Year	Sex ratio	Missing Women		Year	Sex ratio	Missing Women	
			Number (millions)	Percent			Number (millions)	Percent
China	1990	1.060	34.6	6.3	2000	1.067	40.9	6.7
Taiwan	1990	1.071	0.7	7.3	1999	1.049	0.5	4.7
India	1991	1.079	38.4	9.4	2001	1.072	39.1	7.9
Pakistan	1981	1.105	4.3	10.8	1998	1.081	4.9	7.8
Bangladesh	1981	1.064	4.6	8.9	2001	1.038	3.7	6.9
Nepal	1981	1.050	0.6	7.7	2001	0.997	0.1	0.5
West Asia	1985	1.073	3.9	7.1	2000	1.043	3.8	4.2
Afghanistan	1979	1.059	0.6	9.7	2000	1.054	1.0	9.3
Egypt	1986	1.049	1.2	5.1	1996	1.048	1.3	4.5
Total			88.9	7.7			95.2	6.9

SOURCE: Klasen and Wink (2002).

However son preference, which is seen to exist across much of Asia from the East to the Middle east/West Asia, via South Asia and extending up to North Africa, has been seen in recent times to affect sex ratio in most significant ways. Earlier sex ratios in Asia continued to be higher but stable but in recent times changes have been observed in the sex ratio among children and also in the sex ratio at birth. While the natural sex ratio at birth is seen to be between 104 and 106, it has been seen to be as high as 152 in the case of second births in China (Guilmoto 2010) and over 200 among mothers who had more than three in South Korea in the 1990s. This increase in sex ratio at birth (in favour of the male) is a relatively recent phenomenon, with changes starting to show in East and South Asia from the 1980's. It is linked to the introduction of sex detection technologies of amniocentesis and ultrasound which led to parents identifying the sex of the foetus and to selective abortion of the female foetus. It is estimated from 1990 census data for South Korea that nearly 80,000 female fetuses were aborted between 1986 and 1990 for purposes of sex selection (Westley 1995). In China and India the figures reported are much higher, with reports about claiming that it may be as high as 10 million in two decades (Jha et al 2006). It is pertinent to note that currently South Korean sex ratio at birth has reverted to normal levels, and this will be discussed later.

Son Preference and Sex Selective Abortions - While sex detection technologies are definitely responsible for sex selective abortions and subsequent decline in the number of females born, these technologies, by themselves are not responsible for female deficit or changes in sex ratio. This phenomenon is the result of a number of different situations which have come together in these countries and include

- Son preference
- Decline in fertility as a result of couple's own aspirations and state policies encouraging fertility reduction
- Reduction in infant and child-mortality

Son preference is an important component of gender inequality that is present in many Asian countries. Some of the reasons for son preference are

- patriliney (family line is maintained through sons) where sons not only continue to stay with parents but also assume old age responsibility of parents,
- higher wage earning capacity of men especially in agricultural societies,
- traditions of inheritance, ancestor worship and death rites and so on.

Son preference can result in discrimination against the girl child through neglect or even infanticide leading to high female mortality and higher sex ratio in favour of males. However it is important to note that it is only with reduction of childhood mortality (including female mortality) and reduction in fertility that son preference creates a squeeze on desirability of female births, accentuating daughter discrimination. In other terms it means that deficit in the number of girls born expresses itself only after ‘desirable’ features of development start manifesting themselves i.e. improved health outcomes and reduced fertility rates. In Asia, improved public health measures have led to reduction in childhood mortality and many countries started family planning programmes promoting smaller families. It is in this context that the new technologies of amniocentesis and ultrasound provided parents an option to balance the sex ratio of their children in a desired direction – i.e. have small families with at least one son, leading prenatal sex screening and sex selective abortions leading to changing sex ratio especially in higher order births.

While female deficit is common across the region – it is not uniform. China and India are both large countries with substantial socio economic variations. Examination of data shows that this phenomenon is higher in some regions and less in others. Thus in China all provinces other than Tibet and Xinjiang show high sex ratios and this is so in the states of Punjab, Haryana, Gujarat, Rajasthan and Maharashtra. This shows that even in neighbouring regions there can be social and cultural differences, as well as differences in economic circumstance and technological access that affect sex selection. While this is a heartening fact for those who see son preference as a negative social attitude, it is equally true that the practice of sex selection is not only intensifying within locations, but spreading across regions as well (Guilomoto 2010, Agnihotri 2000).

In order to understand how the mechanisms of patriarchy and patrilineal social systems influence son preference and ultimately the practice of sex selective abortions, Monica Dasgupta (2009), has done a detailed analysis of the different circumstances existing across India, China and South Korea. Dasgupta asserts patrilineal systems (which are common elsewhere as well) need to be further elaborated through very rigid kinship relationships that lead to political power and authority to be vested in patrilineages. This leads to men being organized into clans and sub-clans, and marriage is strictly exogamous (outside clans), and once married women lose all contact with their natal families. This kind of arrangement is common to Northwestern India, China and Korea. Dasgupta compares these traditions to the more relaxed ‘bilateral’ kinship relations existing in other parts of Asia and India, where after marriage both bride and groom relate to both families, and daughters continue to maintain a relationship with their natal families. In West Africa where patrilineal kinship relations are as

strict, the situation is ameliorated with women have greater economic autonomy. In North Africa and Middle-east, intermarriage between cousins reduces distance between families. In Muslim cultures not only is marriage within cousins permissible but women also have inheritance rights, reducing such rigid patrilineages.

Historical Confucian traditions provide the cultural background in China and Korea, whereas unique Jat traditions forms the backdrop in India. In China, Mao had sought to destroy these lineages and rituals, but after his death, especially in order to encourage overseas Chinese to invest locally, family ties and linkages were re-emphasised. In Korea ancestor worship was encouraged and patrilineal traditions were legitimized after independence through the Civil Code in 1958, where only men could be noted as heads of household.

Other scholars like Croll (2002) advise that terms like ‘son preference’ and ‘abnormal sex ratios’ remove the focus from the key phenomenon of daughter discrimination. She says that it is this discrimination which leads to son preference both in conditions of poverty and high fertility as well as those situations where there economic development and demographic transitions have taken place. She points to the fact that despite higher levels of literacy and work participation among women in East Asia, sex ratios continued to become adverse, and that despite having sons, educated mothers in North India, did not want to have daughters (Croll 2002). The reduction in fertility and family size has sharply exacerbated the phenomenon. Dasgupta (2009) also notes that aversion to raising daughters is sharpened in times of resource crunch such as war, famine and fertility decline. Rapid fertility decline, coerced as in the case of the “one-child policy” of China, or voluntary as in Korea or due to mixed circumstances as in India, coupled with easily available technology (ultrasound) and economic growth, together contributed to the significant shift of gendered sex selection practices from female infanticide and daughter neglect to sex selective abortions.

Abortion access, laws, and changes in sex ratio at birth – With the easy availability of sex detection technologies, sex-selective abortion became an easy way to maintain family size in the context of high son preference/daughter discrimination. With improved economic circumstances firmly established in South Korea, and well on its way in China and North Western India, intra-uterine sex determination followed by abortion has become the leading mechanism for exercising gender discriminatory reproductive choice. Legal abortion services have been available in Asian countries like India, China and Korea from before and easy access to abortion has been coming under increasing scrutiny as a significant contributing factor for promoting son preference. However, the relationship between easy access to abortion ie. liberal abortion laws, and changes in sex ratio is inconsistent. If this relationship were true then changes in sex ratio would be evident in all countries where abortion laws were liberal. Conversely strong son preference and inverse sex ratios can coexist even in the presence of strict abortion laws as in the case of Pakistan and Afghanistan (Ganatra 2008). Thus son preference expresses itself as declining female sex ratio irrespective of the legal regime around availability of abortion services.

In the face of overwhelming evidence of declining sex ratio and sex selective practices, Korea, China and India have all banned sex-selection. However in China and India the practice continues. The easy availability of ultrasound technology, the commodification of health and the unregulated nature of health services has led to unscrupulous practitioners continuing the practice despite the ban. However the easy availability of ultra-sound technology alone does not predict more skewed sex ratios since South India has better sex ratios despite having more technology available. Studies from Vietnam have also shown that despite increasing use of ultrasound in pregnancy, these are not necessarily used for sex-detection (Ganatra 2008). Ganatra (Ganatra 2000) in an earlier study has shown that at 1 in 6 women who sought abortion in the city of Pune, in the western province of Maharastra had sought a sex determination test.

While changes in the population sex ratio, or even the sex ratio at birth are easy to document and describe, sex determination or of abortion following sex determination is not. In the days before sex determination was illegal there were advertisements for sex determination and abortion were commonly found in northern Indian provinces. Most of the estimates around sex selective abortions are done mathematically using sex ratio at birth numbers. Experience from India also shows how difficult it is to catch offenders who reveal the sex of the foetus after ultrasound investigation using clues and symbols to avoid detection. A report from India documents ingenious ways of conveying the diagnosis.

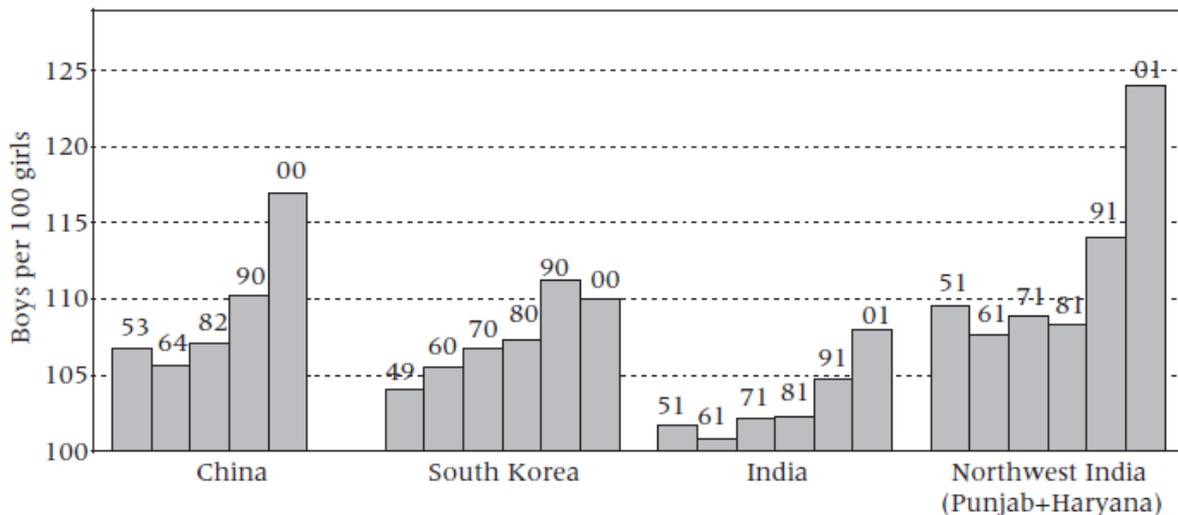
Doctors, meanwhile, have found unique ways of bypassing the law and revealing the sex of the foetus to demanding parents. While some scribble innocuous-looking ‘+’ (for a boy) or ‘-’ (for a girl) signs on pieces of paper, others draw a leaf (girl) or a flower (boy), ask for a laddoo (boy) or barfi (girl), or use a specific ink colour to write with. (Infochange News and Features 2005)

China	Abortion is legal and widely accessible since 1953. Sex selective abortion is banned since 1994.	Prenatal sex determination is banned since 1989. Pre implantation sex selection is also prohibited
India	Abortion is legal up to 20 weeks since 1971 under the MTP Act. Access to abortion services is not uniform especially in rural areas.	Sex selection and preconception sex selection are prohibited since 1994 and 2002 respectively. Prosecutions under this act are rare.
South Korea	Abortion is illegal since 1953, with limited reasons for abortion services, but it is widely available.	Selection is prohibited since 1987. Penalties increased in 1994. Eight doctors prosecuted in xxx. Ban on informing parents about sex of the fetus overruled by Court in 2008.
<i>(Adapted from Ganatra 2008 and other sources)</i>		

With regulation of sex detection difficult and lax, the pressure has been to regulate sex selective abortion. In China second trimester abortion has been restricted in many places and similar intentions have been expressed in India. In many cases providers themselves have started restricting second trimester abortions fearing prosecution (Dalvie 2008) . In China, medical abortion pills have been banned in some districts fearing their use for use in sex selective abortions and in India there are reports that availability of drugs for second trimester

abortions is being restricted for similar apprehensions (Ganatra 2008). Reviews of how the Indian campaign on skewed sex ratio was managed and the way messages were projected through the media highlights the mechanism through which distinction between access to abortion and sex selection is blurred and abortion demonized (Nidadavolu and Bracken 2006, Ganatra 2008). Nidadavolu and Bracken give some examples in their paper of the unintended consequences of the common imagaries of using a foetus and knives in posters - “after seeing a government poster on punishments under the PNDDT Act, one man believed the poster was useful: ...as it communicated that one should not have an abortion as it is ‘killing a fetus’”.

Country level scenarios in the time of changing sex ratios – The focused attention on the decline in sex ratios have led to changes in laws around abortion and sex selection as has been mentioned above. However at the same time these countries are undergoing very dynamic socio-economic changes. In Korea these socio-economic and political changes have actually resulted in a reversal of the decline in the birth of girls, giving hope that similar changes may be possible in the recent future in India and China as well. In this section the country level scenarios in these three countries will be explored to identify key steps taken in these countries.



NOTES: The numbers above the bars indicate the year in which the census was taken. The data for India are for the age group 0–6.

Juvenile Sex Ratio (0 -6 years for India and 0 -4 years for other Countries)

(figure from Chung and Dasgupta (2007))

China – In 2005 in China, 123 boys were born for every 100 girls born (Xinhua 2006), and this figure has been rising since 1982, when it was at the same level as is considered normal ie. 106 (Li 2007) Historically the overall population sex ratio in China had been favourable towards men from 1930s, however from then on this difference continued to decline till 1978. Excess mortality among girl children which was seen to be high in the 1950’s reduced by the 1970s (Banister 2004). Sex ratio at birth was seen to be around 106 (males for 100 females) in the 60’s and 70’s started showing an increase during the eighties. The changes in China’s can be seen in the context of the political and economic changes that took place in this period.

In 1949 Chairman Mao Zedong established the People's Republic of China. In the same year 'foot binding' a gender discriminatory traditional practice was forbidden and other steps for the empowerment of women were started. Following the death of Mao in 1976 and the emergence of Deng Xioping marked a radical shift in Chinese economic policies as well as demographic policies. In the quest for economic growth education was increasingly privatized and the earlier public efforts at literacy were withdrawn (Li and Lavelly 2003,Chakrabarti 1998). With declining collectivization, which also marked a move toward family based farming where men were seen as more important and the pre-existing son preference within a patriarchal system among the Han Chinese became more evident (Thorburg 2005). It was within this context that one-child policy was introduced in 1979 and at the same time sex detection technologies were becoming easily available with China starting to manufacture the ultrasound machine in 1979 (Junhong 2001) . This decline is the most severe in the south eastern provinces and is not seen among the Muslim minorities, the Uighurs or Tibetans.

Traditional society in China was male-dominated. Binding of women's feet was a symbol of women's constrained position in society (Worden et al 1987). Son preference is still common and once a daughter is married she is no longer considered a member of the family. The birth of a boy is celebrated more lavishly, and being the mother of a son is also more prestigious. However there is no dowry and the son's family takes care of the costs of marriage (Junhong 2001). There were also reports of female infanticide and abandonment of female infants earlier . The Communist revolution was responsible for reorganisation of farming and of family norms. Collectives allowed women to participate in the workforce. Traditional religion was suppressed. Son preference may have reduced during this period. However subsequent economic reforms have revived son preference. Reforms reduced social security and increased the need to establish economic security at the level of the family, which favoured men, and the revival of Confucian gender ideology reinforced women's subordinate roles (Li and Lavelly 2003) .

While the reasons for the skewed sex ratio was earlier considered to be female infanticide, female under-reporting and sex selective abortions, the reasons for the current situation is solely considered to be because of sex selective abortions. Abortion was legalized in 1957 but it was not until the one-child policy that abortions became common. Once sex detection technology was easily available abortion became more widespread (Kaz 2010). Concerned about the use of ultrasound for sex detection purposes an order prohibiting pre-natal sex determination was circulated by the Family Planning Commission and the Bureau of Health of the Beijing Municipality in 1986. These were reinforced from time to time through additional notices in 1989 and 1993, but in the presence of persistent son preference and 'back-door' services made it impossible to regulate the practice .The government also relaxed its one child policy to allow couples who first have a girl to go in for a second pregnancy (Junhong 2001). Junhong's study of 820 women in rural Central China, found that 36% of all abortions these women were sex selective. While recommending stronger regulation Junhong feels that it is difficult to prosecute providers "who need only to smile or frown to indicate the sex of the foetus". Junhong argues that coercive population policies are not necessarily a

reason behind this phenomenon, rather it is son preference coupled with the easy access to sex determination and abortion technologies. The role of sex-selective abortions is reinforced by other authors (Zhu and Hesketh 2009). In their analysis only one variant of the one-child policy where second children were permitted only if the first child was a girl, was found to be associated with higher male excess.

Acknowledging the inherent gender discrimination existing in society the Chinese government has made a slew of policies for the advancement of women (Table 3).

Table 3: Laws and Regulations addressing changes in sex ratio

<i>Laws and regulations to promote gender equality</i>	<i>Regulations against pre-natal sex determination and sex-selective abortion</i>
Constitution of the People’s Republic of China (1982)	Law of the People’s Republic of China on Maternal and Infant Health Care (1994)
Stipulation of Labour of Woman Staff _1988_	Stipulations on Family Planning Technical Services (2001)
Law of the People’s Republic of China on the Protection of Rights and Interests of Women (1992, 2005 revised)	Population and Family Planning Law of the People’s Republic of China (2002)
Compulsory Education Law of the People’s Republic of China (1986)	Stipulation on Forbidding Non-medical Aimed Foetus Sex Determination and Sex-selective Abortion (2003)
Law of Succession of the People’s Republic of China (1985)	Decision of the Central Committee of the Communist Party of China and the State Council on Fully Enhancing Population and Family Planning Programme and Comprehensively Addressing Population Issues (2006)
Marriage Laws of the People’s Republic of China (1950, 1981, 2006 revised)	

In 2000 the government launched a campaign to address the issue of sex ratio by addressing the issue of the girl child. This campaign included the “Chaohu Experimental Zone Improving Girl-Child Survival” and the “Care for Girls” campaign. Under the Chaohu experiment alongside social and economic interventions like training, group meetings with mother in laws, economic activities for women, those found practicing selection and infanticide were punished. The Care for Girls campaign was initially piloted in 24 counties and then scaled up all across the country. Civil society organisations like All China Women’s Forum and Population and Family Planning Association and Universities have been involved in these efforts. The mass media has been involved by reporting on meetings and symposia held and reports released on the issue (Li 2007).

There are some recent reports that the Government efforts focussing on the girl child is having some positive effects and couples are accepting single daughter families. Some of the reasons behind the changes in fertility choices noted by Zhang (Zhang 2007) are

- new attitudes towards child rearing as a means of old age support – not only are children living further away from parents, but the older parents no longer consider their children dependable. Older people are now more self-reliant.
- changing meaning and practice of filial piety – with fewer daughters due to the restriction on family size, families are realising the value of daughters. In the new economic regime daughters are equally able to find opportunities sometimes even getting an advantage

- new standards of good parenthood – parents are investing more on their children's education to equip them to become part of the industrialisation process .

It also appears from her description of the responses of parents from her study area that the rural community appears to have 'internalised' the government's calls and slogans over the years. While noting the impact of the neo-liberal processes on parenting beliefs and practices the author also cautions of the increasing rural-urban divide in China. Zhu and Hesketh (Zhu and Hesketh 2009) while acknowledging changes in some provinces as a result of the 'care for girls' campaign, conclude that the worsening of sex ratios will continue for the next two decades.

India - Female infanticide was a long standing practice in India. The British had enacted a law, the Female Infanticide Act in 1870 to stop this practice. They had shown an interest since 1780's when it was noted that the Rajkumars of Benares Division selectively killed girl children in order to avoid expensive marriages. By the 1840's dowries were linked with impoverishment of landed Rajputs and an important reason for increasing female infanticide. It has been mentioned that their concern about infanticide was a part of their civilising mission in India (Kasturi 2000). Initially the problem of infanticide was supposed to be restricted to northern and north western India, but later it was shown to exist in southern India as well (George S et al 1992). A slew of scholarship in the 1980's and 90's established the different ways in which gender discrimination and son preference manifested itself in different parts of India and the possible reasons (Miller 1981, Dasgupta 1987, Arnold et al 2002).

The overall sex ratio in India at the beginning of the 20th century was 972 women for 1000 men in 1901 and this has declined to 933 women for 1000 men in 2001, with a small rise in 1981 and 1991. The child sex ratio or sex ratio among children below the age of seven years had declined from 976 girls for 1000 boys in 1961 to 945 in 1991 to 927 in 2001 (Garg and Nath 2008). The clarion call for concern was raised when after the 2001 census this decline in the sex ratio of children was noted and a very steep decline was found in in some states. In the states of Haryana, Punjab, Gujarat and Himachal Pradesh a decline of over 50 points was noted in the intervening decade. Incidentally the protocol for reporting sex ratio in India is the reverse of the general norm (number of men for 100 or 1000 women), and thus the problem of changing sex ratio is commonly called 'declining sex ratio' or adverse sex ratio in India .

Abortion was legalised in India in 1971 through the Medical Termination of Pregnancy Act (MTP) 1971, and though it has some restrictions, in practical terms it provides services on demand and is widely used in cases of unwanted pregnancies. Since family planning or population control were one of its principal objectives it was not surprising that when amniocentesis was first available in All India Institute of Medical Sciences (AIIMS), it was actively encouraged for sex determination and subsequent abortion of the female foetus in keeping with the government's policy for small family size. When Indian Council of Medical Research stopped the AIIMS tests, an establishment called New Bhandaris' Antenatal Sex Determination Clinic started operating out of Amritsar, Punjab and it advertised its services widely (Mazumdar 1993). Advertisements for sex determination tests and sex selective

abortions became common in India with slogans like “Pay 5000 today and save 5 lakh tomorrow”.

A hospital based study of 700 cases of screening of sex between 1976 -77 found that 430 of 450 female identifications were followed by MTP, while MTP was not done for even one of the 250 male foetus identified (Ramanamma and Bambawale 1980). A hospital based study from Delhi (Sahni et al. 2008) analysing sex ratio at birth over one hundred and ten years (and larger samples since 1930's) concluded that there was a statistically significant downward shift in sex ratio at birth from 1980. Up until 1979 the sex ratio at birth was seen to be around 935 (CI 906 – 967), but then this declines to 892 (CI 868 – 918) for the subsequent years, corresponding to the easy availability of sex detection technology in the market.

The civil society response to sex selective abortions started with the first meeting on the topic taking place in 1982 in Delhi. The Forum against Sex Determination and Sex Pre-selection (FASDSP), a coalition of feminist and human rights groups, was formed in Mumbai in 1985. It was noted that in Mumbai between 1982 to 1987, the number of clinics for sex determination increased from below 10 to 248. A study conducted by (Kulkarni 1986) in Mumbai found that gynaecologist were routinely carrying out sex determination tests. Others noted that these practices were also taking place in smaller towns (Ravindra 1986). As a result of the sustained advocacy of civil society groups in Maharashtra the state passed a state law banning the practice of sex- selection (or sex determination as it is called in India) in 1988. Soon four other states followed with their state laws – Punjab, Haryana, Gujarat and Rajasthan. The problem of sex determination continued to be highlighted through academic writing as well as civil society action drawing attention to the issue, and a national law was passed in 1994 (Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) or PNDT Act). This law called for registration of all pre-natal diagnostic centres (including ultrasound clinics) as well as the prohibition of sex determination in such clinics (Lingam 1998). Despite an explicit National law there were hardly any steps taken at the state level to implement the law, including the registration of genetic clinics. This led the civil society to challenge the Government of India in the Supreme Court (CEHAT and others vs Govt of India 2000). The Supreme Court through its orders started prodding the states to take action. Around the same time the provisional results of the 2001 Census were announced and this revealed that there had been a sharp decline in sex ratio among children aged 0 -6 years.

In some ways the contemporaneous nature of these two incidents allowed for an intensification of the advocacy against sex selective abortion supported by increased scholarship into the issue. International agencies like UNFPA, UNICEF, World Bank have played an important role in the advocacy against sex selective abortions. The National Women's Commission, in partnership with UNICEF and the Indian Medical Association, convened a very high profile meeting with religious leaders (National Convention of religious leaders for the abolition of female foeticide and infanticide) in 2006. Some of the messages and approaches employed by civil society and others and their implications are discussed later.

Other Government efforts include launching the ‘Save the Girl Child’ campaign by the Ministry of Health and Family Welfare in partnership with the Ministry of Women and Child Development in 2001. The PNDT Act was amended in 2002 to include various preconception technologies (PCPNDT Act 2002). Various states have taken initiatives like *Dikri Bachao* campaign of Gujarat, Girl Child Protection Scheme of Tamil Nadu, *Devi Rupak* Scheme of Haryana, *Ladli* campaign of Delhi and the scheme for cash incentive to Panchayats for improving the village sex ratio of Punjab (Prime Minister’s address on the occasion of inaugurating the Save the Girl Child campaign). 24th of January has been designated the Day of the Girl Child by the Government of India, and linked declining sex ratio with the problem of missing girls.

While declining sex ratios and sex selective abortions continued to be highlighted as important policy issues, overall access to abortion remains a crucial health rights concern among women’s health advocates. India had the highest maternal mortality rates with over 70,000 maternal deaths every year (RGI 2008), and unsafe abortion contributed 12% to this figure. Despite legislation for MTP, there were more illegal abortions being conducted in India than legal ones. Most private formal abortion



A poster against female foeticide



Picture from a Campaign in Delhi

providers are not registered according to the provisions of the law. While of the abortions in the country are conducted in the first trimester, women acknowledge the pressure to undergo sex selective abortions (Duggal and Ramachandran 2004) Studies have shown that there is little awareness that abortion is legal, whereas messages and images about sex selective abortions have received wide publicity (Nidadavolu and Bracken 2006). The campaign against declining sex ratio is often located within a ‘female foeticide’ and ‘violence against women’ paradigm. This unconsciously strengthens the logic that declining sex ratio is linked with violence against individual women, and these individual women are eliminated through female foeticide and abortion is the key act through which this happens. There is constant use of the expressions ‘female foeticide’ and ‘save the girl child’ giving unnecessary

‘personhood’ to a fetus in high visibility campaigns. In Rajasthan and in Orissa the news and images of female foetus inappropriately disposed have been used for focusing public attention to the issue, unwittingly drawing attention to abortion as well. The conflation sex selection with physical violence is most extreme when in the India Shadow Report to CEDAW it is claimed that “ (T)he most recent method of exterminating girls that is on offer is sex selective conception”. The report further goes on to justify extermination linking persecution of women as a class and sex selective abortion of female foetus. At a practical level the confusion between intention and practice is examined through the analysis of a street play conducted by a feminist group in Vadodara (Garlough 2008). The author examines their performance and their key message “I am your daughter, I am a human being... will you kill humanity’ and expresses her reservations that the messaging comes very close to delegitimizing abortion. The abortion focused campaigns in India have also allowed international pro-life anti abortion advocates to blur issues eg. a large demonstration in Coimbatore in July 2009 had the banner “Discrimination against the Girl Child leads to Abortion” (Lifesitenews.com). On August 1, 2010 a mini-marathon was organized by a faith-based organisation in Bangalore to strengthen a campaign against abortion. The efforts to engage the religious community in this effort has led to many to articulate abortion as a “crime” and this includes religious leaders from different religious persuasions. While there



Banner used in a March in Coimbatore

are no clear evidence of restrictions on abortions in India there are clear signs that the lines between abortion and sex-selection are getting blurred. Early reports indicate doctors are hesitating to conduct second trimester abortions (Dalvie 2008) and religious agencies may be exploiting the confusion to push their pro-life agendas.

One key strategy that has been adopted by many agencies in India is the ‘sting’ operation. In a sting operation a ‘decoy’ woman goes and requests a service for sex selection from a provider and then the entire interaction is taped by a secret camera and then this documentation is used for prosecuting the concerned health provider. In one high profile case a TV channel conducted such a sting operation on a large number of doctors and broadcast these as a serial called “*Kokh me katl*” which loosely translates into “murder in the womb” clearly providing a negative message around abortion, which is legal under the MTP Act in India. However the TV channel promoted sting operation did lead to the state government of Rajasthan issuing restraining directions against the doctors. Till recently there was only one conviction under the law however news from the state of Haryana also indicates that the state Government has prosecuted 23 doctors for violating the PCPNDT Act in 2010. However there are many cases which have been filed in different states in India which have not been prosecuted.

Korea – The Korean story provides some interesting differences from the Chinese and Indian experiences. South Korea is a small country and like China has strong Confucian background with patriliney and ancestor worship. Korea has undergone dramatic economic growth and decline in fertility and now is classified among the developed countries. It reached replacement fertility in 1983 and currently it has among the lowest fertility rates in the world (1.08 in 2005). The rapid decline in fertility was also accompanied by changes in women's education rate, raised age at marriage (Choe and Park 2006). Abortion is considered to have played an important role in the decline in fertility rates despite the high levels of contraception and a restrictive abortion regime (Choe and Kim 2007). Sex selective abortion has been widely practiced in Korea (Chun and Dasgupta 2009) and is considered to be responsible for large excesses in male children at birth.

Sex ratio at birth in South Korea has historically shown an interesting variation along with the Year of Horse of the Chinese calendar. According to the Chinese zodiac, children born in the year of the Horse are independent and rebellious, characters considered particularly troublesome in daughters (Lee and Paik 2006). Despite abortion being illegal, Korean authorities have condoned abortion for family planning purposes (Chun and Dasgupta 2009). In 1990, the estimated average number of abortions for married women throughout their lifetime was 1.9 times higher than the estimated lifetime number of live births, which was 1.6 (Westley, 1995). The changes in sex ratio have been some of the most acute among all countries. There has been documentation of sex ratio at birth of over 200 for higher parity births (two boys for every girl born) in the late 1980's. Lately, Korean men unable to marry nationals have turned to poorer Asian countries for brides – the Philippines, Vietnam, Cambodia and China being major source countries. In 2006, 9 percent of marriages involved a foreign bride, up from less than one percent in 1990 (Edlund and Lee 2009).

The changes in sex ratio (favouring males) Korea can be seen as associated with the alternate reinforcement and dilution of patriarchal values in state policies. Between the 1950s and the establishment of democracy in 1987, the Korean military regime sought to reinforce Confucian traditions in order to maintain social and political stability. The Korean Civil Code of 1958 reinforced that family headship (*hoju*) must be held by men in the line of the eldest son, that inheritance should be through the male line. Candidates for government jobs had to be of the right lineage (*yangban*) and sons and grandsons of widows who had remarried were not allowed to take civil service exams. These patrilineal authoritarian measures were also beneficial to the Korean business interests and the rapid economic growth process. At the same time urbanisation, industrialisation and declining fertility has also broken many patrilineal traditions, assisted by changes in patterns of social security. Industrialisation meant a large number of women entered the workforce. After the establishment of democracy changes were initiated including many changes in laws and policies relating to women (Kim 2009).

Along with changes in women's literacy there were also significant changes in women's social and economic positions through the women's participation in the *mingjung* movement and women's demands for change in family laws. The *minjung* or people's mass movement

was primarily a movement for democracy against the existing military regime, however embedded within it was a *yo'song haehang*, or women's liberation struggle. Korean women's groups have been fighting the family headship system since the 1950's. In the 70's they organised themselves and launched the Pan-Women's Group for the Revision of the Family law. In 1989 women's organisation formed the Women's Union for Revision of Family Law. In 1997 the nation-wide campaign for "using both parents' family name," caught the media's attention. These struggles were finally successful when the Korean Constitutional Court struck down the *ho ju* system in February 2005 (Kim 2009). Side by side there were changes in social security measures and a universal pension scheme was started in 1999.

Today South Korea is considered a successful example where sex ratios at birth are coming back to normal. While sex ratio at birth was still a little high at 107 in 2008 but it has been declining every year since 2002. Signaling that the times had finally changed, in July 2008 South Korea's top court, overturned a ban on revealing sex of unborn babies that had been put in place as a protective measure in 1987. Responding to very low fertility the South Korean family planning policies started incentivising childbirth with tax breaks, child care support, support for buying a new apartment, infertility treatment and so on under the Saero-Maji ("new beginning") Plan for the 2006-2010 (Haub 2010).

The Korean example provides an interesting example of how along with economic changes along measures for empowerment of women, and strengthening social security systems it is possible to reduce son preferences within a reasonably short time span. These larger social changes have led to changes in social norms with fewer women reporting to desire sons in 2003 compared to 1991 (Chung and Das Gupta 2007). Legal changes which provided women greater opportunities also made sons and daughters equally valuable to parents, leading to changes in intergenerational relationships. The support provided to daughters by her parents have also led to married men now living with their wives' parents. (Chun and Dasgupta 2009)

A comparison of the three country experiences

Comparing experiences across different patriarchal systems across different countries Dasgupta (Dasgupta 2009) makes some pertinent observations about why the situation around male sex ratios has been so acute in China, Korea and North West India. She also provides an interesting insight how changes can come and has happened in Korea. According to this analysis the nature of kinship relationships is critical in determining the value of daughters and son preference. In places where patrilineal and patrilocal traditions are reinforced with extremely limited contact of the bride with her maternal family after marriage such practices become common, and this is found in these three areas. If we review contemporary history we find that Confucian kinship and lineage systems continued to be encouraged even under modern industrial regimes in China (after Mao) and under the military dictatorship in South Korea, and *khap* panchayats still exist Punjab, Haryana and Western UP. Though diffusion of the practice is happening in India, an interesting finding has been that the district in Gujarat with the lowest sex ratio in 2001, had a high concentration of persons migrated from what is now Haryana over 200 years ago. The paper argues that the

modern state with its functions of supporting and providing space for the individual and opportunities and mechanisms for articulating and obtaining equality are as important as the forces of industrialisation and urbanisation and reorganising of family and household structures for tackling and reversing the son preference and changes in sex ratio at birth. In Korea these have happened through reform in the traditional kinship based civil code of 1958 and in women's movements demanding more space and opportunities for women, followed by legal reform. Industrialisation and urbanisation has led to a majority of families have becoming nuclear. Sons are now more likely to live away from parents and daughters as likely to live close to their parents after marriage, changing the imperatives and intensity of the kinship relationships.

Part 2 – Sex selection, sex selective abortions and human rights – International Positions and National Laws

Sex selection technologies - Sex selection has now emerged as the more ‘humane’ method for realizing gendered reproductive intention. It often entails the use of sophisticated and often very expensive technology, contradicting the notion that son preference and daughter discrimination are in some ways related to ‘lack’ economic development or that they may be dealt with traditional methods of women’s empowerment like improving women’s educational status. Methods of prenatal sex selection are broadly divided into three categories, those where selection of sex of the foetus is done during pregnancy, then when it is done after implantation of the foetus within the uterus, and finally when it is done even before conception. Amniocentesis, chorionic villus biopsy, ultrasonography and examination of blood for foetal antigens are those methods which are done once pregnancy is established and require the sex-identified foetus to be aborted for the process of selection to be complete. In the case of pre-conception selection, technology is used for separating the X and Y sperms (micro-sorting) and having harvested the sperms proceeding for in-vitro fertilization with the desired sperms. In a more complex, more efficient and much more expensive method, after the process of invitro fertilization (resulting in many zygotes) the zygote is examined for sex chromosomes. If the sex of the zygote is found to be desirable, the zygote is implanted. This method is called Pre-implantation Genetic Diagnosis or PGD.

This elaborate introduction to the sex selection process is necessary because current legal regimes in many countries have debated about these artificial reproductive technologies and they also allow the discussion to move beyond the limited and contested domain of abortion for the purposes of sex-selection. However, before moving into hi-tech sex selection and its desirability and legalities, it is necessary to dwell upon the more emotionally charged realm of sex selective abortions.

Abortion and sex selective abortion: International Concerns- Abortion remains the most hotly contested issue in reproductive health, even in the twenty first century. For most of the twentieth century (up until the mid 1960s) abortion has been seen as a crime (under the influence of the Church) and only after Britain’s Abortion Act of 1967 decriminalised abortions, have abortion laws been liberalized around the world. According to contemporary estimates over a quarter of the world’s women live in countries (68 countries) where abortion is either illegal or only permitted in very limited situations, like saving the woman’s life. On the other hand women from 56 countries (comprising 40% of the world’s population) can ask for abortion services without providing any reason. However there are restrictions relating to gestational age which in most cases is up to the first trimester or 12 or 13 weeks. Women’s right to abortion is often considered the most talismanic of all of women’s reproductive rights and a fundamental marker of gender equality in society. This is so because it gives women the autonomy not only to decide about herself but also about the use of her body for a pregnancy, which is usually seen as a ‘social and family good’ with external claims from family, society and not the least, of the ‘unborn child’. Sex selective

abortion adds an additional conceptual dilemma pitting gender discrimination and and ‘violence’ (under some interpretations) against women against women’s reproductive rights.

International concerns about the subordinate status of women and the need to address this separately led to the adoption of CEDAW (Convention on the Elimination of all forms of Discrimination Against Women), the international treaty addressing gender discrimination in 1979. However the international attention on violence against women started only in the 90’s after General Recommendation 12 and 19 on CEDAW (1989) explicitly discussed violence against women and gender based violence. Subsequently in June 1993 women’s rights were acknowledged as integral human rights at the World Conference on Human Rights (Vienna Declaration and Program of Action, Section 3 – The equal status and human rights of women). Later in the same year the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women expressing its unequivocal concern about the issue of violence against women.

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.....

.....
Concerned that violence against women is an obstacle to the achievement of equality, development and peace,

All these initial documents concerning women’s status and rights are silent on abortion, or about sex selection, and it is only during the International Conference on Population and Development (ICPD) at Cairo in 1994 that some form of international consensus formed on both these issues. Consensus around abortion did not happen without some sustained opposition from countries as diverse as Iran and the Holy See (the Vatican has observer status in the UN). While women’s groups had continued to ask for abortion as a right, the Cairo document acknowledges the need for abortion services in the context of its health consequences and for the purposes of avoiding maternal death and morbidity.

...In circumstances where abortion is not against the law, such abortion should be safe. In all cases women should have access to quality services for the management of complications arising out of abortion. Post abortion counseling, education and family planning services should be offered promptly, which will also help to avoid repeat abortions.(ICPD PoA 8.25)

Authorities like Cook and Dickens (2003) see this as an acknowledgement of the right to health of women in the case of abortion and a necessarily interim stage in the evolution of abortion as an unqualified right. Another way to view the right to abortion is to include it within women’s overall human rights as stated in Paragraph 96 of the Beijing Platform for Action, “[t]he human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.”

Alongside including abortion as a legitimate reproductive health issue of women, the ICPD Program of Action also noted the practice of pre-natal sex selection as being discriminatory towards girl children and urged Governments to take steps to prevent it. In the following year in 1995, the Platform of Action (PfA) emerging from the Beijing Conference was more explicit in dealing with sex selective practices. Pre-natal sex selection was clubbed along with forced sterilization, forced abortion and female infanticide as acts of violence against women. The Beijing PfA urged Governments to go beyond social efforts to tackle such violence and enact and enforce legislation. It is important to note that both these documents, still seen as setting some of the most definitive benchmarks on reproductive rights and gender equality, while condemning the practice of sex –selection, do not call for prohibiting sex selective abortion.

The location of prenatal sex selection within the domains of violence against women continued in the International arena with the UN Special Rapporteur on Violence against Women Radhika Coomaraswamy, drawing attention to practices like female infanticide and prenatal sex selection in her report in 1996. The Committee on the Status of Women (CSW) during its 51st session in March 2007 linked the issue of prenatal sex selection to violation of the rights of the girl child along with female infanticide, rape, incest, early marriage, forced marriage and female genital mutilation. The UN General Assembly at its 62nd session in 2008, expressed ‘deep concern’ on prenatal sex selection as a form of gender discrimination. The UN Special Rapporteur on violence against women, its causes and consequences, Yasim Erturk in her critical review of the 15 year process (in 2009) makes mention of sex-selective abortion as a form of violence against women occurring in the family along with the battering, marital rape, incest, infanticide, female genital mutilation and dowry related violence. The report also mentions prenatal sex selection as a form of sexual assault on women not specifically mentioned in the Declaration on the Elimination of Violence Against Women.

Different forms of violence continued to be addressed and elaborated upon in the documents adopted in the years that followed. For instance, the Beijing Platform for Action (PFA) - by including, among its 12 critical areas of concern, VAW, along with women and armed conflict, and the human rights of women - specified various forms of sexual assault on women that were not specifically mentioned in CEDAW. These include systematic rape and forced pregnancy during armed conflict, sexual slavery, forced sterilization and forced abortion, female infanticide, and prenatal sex selection.

From the above discussion a trend that clearly emerges is that the international (UN) position on prenatal sex selection and sex selective abortion has changed over the years. From being seen as a discriminatory practice against girls, it changes its label over the years and emerges as a form of sexual violence against women alongside rape and sexual slavery, a form of violence against girl children alongside early marriage and infanticide, and a form of violence within the family alongside dowry violence and wife battering. On cursory inspection these associations do not appear immediately obvious and seem somewhat stretched, especially since the woman undergoing sex-selective abortion may be doing so volitionally and practice of prenatal sex selection may not even involve humans being but just gametes. It may thus

appear that these consensus draw more from moral outrage about these practices rather than a careful consideration of human rights involved. This is possible because UN positions are not so much developed through carefully argued theoretical considerations as much as practical, desirable and consensus policy articulations. Recent evidence indicates that this may indeed have been the case with UNFPA issuing guidance note in 2010, requesting a more cautious approach. But before coming to the contents of this guidance note it may be instructive to critique the UN Agencies' positions on sex selective abortions and prenatal sex selection alluded to above.

Abortion and Sex Selection: Human rights and Legal positions - The history of modern human rights is embedded in the UN system and the Universal Declaration of Human Rights along with the International Covenant on Civil Political Rights and International Covenant of Economic Social and Cultural Rights comprise the International Bill of Human Rights. This forms the basic architecture for elaborating other human rights which is an ongoing process leading to the articulation of a series of human rights treaties which countries sign on to and subsequently ratify, giving them the sanctity on International law. There are nine core treaties and these include ICERD (International Convention on the Elimination of all forms of Racial Discrimination), CEDAW, CRC (Convention for the Rights of the Child), CAT (Convention Against Torture and other forms of cruel, inhuman, or degrading treatment or punishment), CRPD (Convention on the Rights of People with Disability) and others. Each of these nine treaties has treaty monitoring bodies comprising of experts who monitor implementation and compliance of member countries who have ratified these treaties.

Even though these treaties are considered binding international law, in most cases individuals do not have ways to approach international courts for justice, and countries have the option of stating reservations on certain provisions which they feel do not or cannot apply in their situation. Lack of appropriate justiciability mechanisms is often mentioned as a limitation of international human rights, but its power to influence domestic legislation and jurisprudence is acknowledged and it sets common and acceptable standards for state-citizen relationships as well as about individual liberty and its boundaries within the context of any particular state. Human rights are supposed to be inherent and inalienable for all human beings but in reality are aspirations for all in order to achieve freedom, peace and justice. A further character of human rights is that they are interrelated, interdependent and indivisible, as well as non-hierarchical. It is necessary to consider these characteristics of human rights for discussing the issues around abortion and sex selection.

In order to further consider the concepts at hand one needs clarity on the definitional aspects of the terms discrimination and violence and their relationship with rights. Discrimination has been defined in CEDAW as 'the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' Dictionaries are more concise in their definition and the Merriam Webster defines

discriminate as ‘to make a difference in treatment or favor on a basis other than individual merit’. Violence against women is defined in the UN declaration on VAW as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

Clearly ‘violence’ and ‘discrimination’ do not mean the same thing and there are clear conceptual differences even though there may be substantial areas of overlap between the two. The term discrimination is primarily related to intentionality and judgement (prejudice) whereas violence is related to consequences (negative) of suffering and harm, either actual or likely or implied (threats). Thus while in a large majority of situations both coexist especially in the context of women and their subordinate position in society, it is possible to have discrimination without violence. Not sending the girl child to school while doing so for the boy child is clearly an act of discrimination, but it cannot automatically qualify as violence.

The third term that needs to be understood is human rights, and this is best understood through the examination of the Universal Declaration of Human Rights (UDHR). Article 1 of UDHR proclaims ‘(A)ll human beings are born free and equal in dignity and rights’ immediately limiting human rights to birth onwards, indicating that human rights do not apply to the foetus. The UDHR also specifies that these are common standard of achievement for all peoples and all nations, and since they are common for all they are in also some ways the lowest acceptable standard. The Stanford Encyclopaedia of Philosophy defines rights as ‘entitlements to perform certain actions and be in a certain states’ with the choice of not doing so as well. Human rights also convey an obligation to the state to provide conditions for the individual to enjoy these rights. In order to differentiate between the core approach of the state towards the fulfilment of human rights, they are further divided into negative and positive rights. In the case of negative rights it is important that the state refrain from interventions and to provide the person freedom to enjoy the right and remove any restrictions and impediments to the individual’s enjoyment of the right. This applies to the case of freedom of speech, of association, to private property and so on. Positive rights on the other require the state specifically intervene to provide necessary conditions for all to be able to enjoy it eg. right to health, to education, to a minimum standard of living and so on.

In the context of discrimination and violence the General Recommendation 19 provides an extensive list of rights that are implied. These include the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law, the right to equality in the family and so on. In the case of discrimination the focus is on the right to equality whereas in the case of violence the focus shifts to right to life, liberty, and security of person. However it is not easy to disentangle different rights so easily because of their inherent indivisibility and interconnectedness.

If we now look at the issues of sex selection, abortions and sex selective abortions in the context of rights a complex picture emerges. Despite the complexity picture is less ambiguous in the case of abortions. Countries like the US and Canada through their jurisprudence have clearly established that abortion is based on the rights of the woman. In the US in the case *Roe vs Wade* (1973) the court held that the 'right of privacy' was sufficient for a woman to secure an abortion. In Canada in the landmark case against Drs Henry Morgentaler, Leslie Frank Smoling and Robert Scott (*R vs Morgentaler* 1988) the judges held that abortion is permissible under women's right to liberty, bodily integrity, security of person as well freedom of conscience and religion.

While the issue of abortion can be settled somewhat easily relating it to women's rights, an element of confusion is created by groups who often owe their allegiances to religions opposing abortions by referring to the rights of the 'unborn child'. Such groups are often called the 'pro-lifers' or 'anti-choice' groups. While their claims can be dismissed under the UN system of human rights simply because rights accrue at birth, there are aberrations under other International law regimes. In the American Convention on Human Rights of 1969, it is mentioned under article 4 that the right to life protected from the moment of conception. Significantly countries like Brazil and Canada aren't signatories to this which treaty and USA has not ratified it. Mexico has ratified it with reservations specifically around Article 4 and its reference to 'moment of conception'.

In the case of sex selective abortion, the issue of concern is the discriminatory practice of selecting the female foetus in the context of widespread discrimination against women and women's secondary status in society, and not towards abortion *per se*. However the possibility of conflation of the two issues - abortion and sex selection, has been pointed out earlier with respect to the campaigns against sex selection in India where the message against sex selection, by focusing on sex selective abortion and female foeticide, has been shown to coming up close to limiting abortion itself. One of the arguments used by some campaigners is that since abortion does not have the status of a formalized 'right' in India, there is no strength in the argument that the right to abortion will be compromised by such messaging by the campaigns against female deficit in the sex ratio. In China, where abortion has been freely available, especially in the context of the one-child policy, sex selective abortions are banned since 1994, however there are no penalties. In India, it is the act of sex selection that is explicitly illegal and there are very specific (though somewhat loose) conditions under which abortions are available and sex selection is not within these conditions.

The act of sex selection, without the context of abortion appears to be a less contentious issue since it does not include the contested issue of abortion. And in many countries sex selection is legal in the context of assisted reproductive technologies. However this practice has also come under legal scrutiny under many countries, because it can imply discrimination. The act of discrimination that may be manifested in the sex selection process links sex selective practices to human rights concern even though there are no directly affected individuals.

The legal position in Canada provides an interesting example for understanding the distinction between the two issues of women's autonomy and discriminatory intent. As far as abortion is concerned the position is unequivocal with the Supreme Court having provided women the unqualified right to abortion. Here there is no enquiry into the motivations behind seeking abortion. However when it comes to assisted reproductive technologies, there is no space for sex selection for social reasons under the Assisted Human Reproduction Act of 2004.

In contrast there are no laws around sex selection US and abortion being legal, sex selective abortions are also legal. Moving across the Pacific Ocean in Australia it is found that abortion is available under health and socio economic grounds even though laws differ between states. However sex selection is prohibited in all states under the National Health and Medical Research guidelines of 2004. It mentions "*Sex selection is an ethically controversial issue. The Australian Health Ethics Committee believes that admission to life should not be conditional upon a child being a particular sex. Therefore, pending further community discussion, sex selection (by whatever means) must not be undertaken except to reduce the risk of transmission of a serious genetic condition...*". In Japan abortion was made illegal soon after its contact with the Western world in 1868. However, after the 2nd World War in 1948 abortion was legalized for maternal health considerations. As far as sex-selection was concerned in the mid- 1980's a method known as Percoll method was being used by Japanese gynaecologists for sperm separation, but in the 1994, the Japanese Society of Obstetricians and Gynaecologists prohibited the use of this method. However the key demographic concern in present times in Japan is its very low birth rate rather than its sex ratio (Mori and Watanabe 2002).

In Britain, abortion is available under the Abortion Act of 1967 which was amended in 1990, making abortion legal till 24 weeks if "the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman or any existing children of her family." British law requires two doctors to certify before the abortion can be carried out. In the case of sex selection, the Human Fertilisation and Embryology Authority prohibits any sex selective practice for social reasons in the context of assisted reproductive technologies. However the situation in Northern Ireland is different where abortion continues to be restricted. In Europe the Oviedo Convention on Human Rights and Biomedicine (1997), an International Convention under the Council of Europe, makes sex selection for non-medical purposes an undesirable practice. **Article 14 – Non-selection of sex** *The use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided.*

In countries with unrestrictive abortion laws, sex selective abortions are usually permissible under the existing abortion laws. According to reports in Sweden since the abortion laws allow abortion on demand till 18 weeks, it is permissible to have sex selective abortions. Similarly in the Netherlands abortion is available for women till 22 weeks without giving any reasons, but only asking her to wait overnight to confirm her decision.

The analysis of legal regimes around sex selective abortions reveals no consistent pattern, but there are some noteworthy elements. In almost all countries of Western Europe, Northern America and Australia abortion is legal. But even in countries like Canada or Britain or Australia where abortions are legal under almost all conditions there is a concern for sex selection. These countries provide interesting balance between supporting women's autonomy and addressing discrimination.

It is in this context the recent UNFPA Guidance Note on Prenatal Sex Selection is very instructive and in many ways also recants some earlier UN positions. Since ICPD was the first occasion where son preference, prenatal sex selection and abortion had been discussed it was perhaps natural that UNFPA had taken the lead on this issue along with its sister agencies like WHO, UNICEF, UNIFEM and OHCHR . After discussing the causes and consequences of sex selection and skewed sex ratios the document makes some radical departures from the past UN language and positions.

IV Use of Appropriate Language for Messaging and Positioning

The language which is employed to address and discuss the issue of sex selection is important. If in doubt, err on the side of caution. Guidance on the use of language includes:

.....

Human Rights: UNFPA is working on a joint position on this issue with other UN agencies. Until that is ready, the following is UNFPA's guidance:

- Avoid any language which assigns the rights of personhood to the fetus - thus, avoid the terms "feticide", or describing prenatal sex selection as "violence against women" (implying that the fetus is a woman).
- If helpful, refer to the human rights concerns which are related to sex selection (e.g. gender inequalities in general, or specific cases such as women who are forced to abort), or the human rights consequences that may result (e.g. trafficking, early marriage). However, do not identify sex selection itself as a human rights abuse.
- For the time being, until we have more clarity on a joint UN position, avoid publicly discussing the human right of women to the information or technology for sex selection. The term "third generation human rights" (referring to group rights) is used in some contexts, but should be avoided as it is not clear what this implies. As is always the case, use existing international guidance wherever possible, but avoid using the Beijing Conference definition of violence against women as including sex selection.

(From: *UNFPA Guidance Note on Prenatal Sex Selection*)

Firstly it advises caution in associating violence against women with sex selection and points towards the possibility of providing the fetus with personhood through such association. It also advises against labeling the issue as a human rights violation (see accompanying box). The guidance note also advises against advocating for legislative measures especially in the context of restricting abortion access, including restriction on late abortion for fear of driving it underground. Instead it focuses on the need for focusing on data, provide support for counseling of women, advocacy with providers, community leaders and technology providers and draw attention to gender discriminatory practices within a culturally sensitive approach.

A review of the international and national legal positions around sex selection and abortions indicates two trends. First there are an increasing number of countries even among the developed countries which acknowledge the possibility of sex selection practices. But these countries clearly acknowledge the abortion rights of women and in most places with liberal abortion laws the reason or motivation is not enquired. The situation with international law is different and here while there is no consensus around abortion but there is a clear consensus around sex-selective abortion. From the time of ICPD (Cairo 1994) the articulation of sex selective abortions has moved from the domain of discrimination to the domain of violence, however very recently there has been a process of rethinking where positions are being rearticulated. While the UN guidance note is cautionary in the use of the term ‘third generation’ rights in the context of sex selection, it may actually provide a classic situation for applying this condition. In the absence of a clear human rights dimension to the issue the issue of sex selection remains in the domain of undesirable social practice. Articulating sex selective practices as undesirable social practices may equate any efforts to have them addressed to the colonial ‘civilising’ projects of the past. It may be explicitly for the reason of highlighting the acceptability of sex selection that the women’s movement has ardently campaigned against sex selection and providing it a larger than perhaps necessary profile in the rogue’s gallery of human rights violations. Sex selective practices need to be firmly located within the domain of rights, and provide the opportunity of also evaluating the principle of choice vis a vis equality. Fundamentally ‘equality’ is stronger human rights principle over ‘choice’, which anyway implies ‘freedoms’, and these are usually constrained in the absence of equality.

Part 3 . Ethical Dimensions of Sex Selective Abortions

The human rights dimensions of sex selective abortions are complex and not unequivocal, though the phenomenon of skewed sex ratio which arises as a consequence is clearly undesirable and seems 'wrong'. The laws banning sex selection in different countries appear to be the 'correct' response to a problem which often appears to be a humanitarian crisis and terms like 'femicide' and 'gendericide' are often used (perhaps deliberately) to remind one of 'genocide'. However at the same time one is reluctant to apply terms denoting 'death' to a foetus which doesn't have independent and autonomous 'life' in any case. In such a situation it may be instructive to explore the ethical debates around the issue and try to establish whether it is possible to identify ethical standards which could be applied consistently across different situations.

'Ethics' as defined by the Compact Oxford English Dictionary are the moral principles governing or influencing conduct. The more comprehensive Oxford English Dictionary defines it as the science of morals and the study concerned with the principles of human duty. It is in effect the study of morality or notions of right and wrong that guide action.

The issues of abortion, sex selective abortion and sex selection have been discussed at length among bioethicists. Reporting on the discussions at a World Conference on Medicine and Law in New Delhi (1985), Dickens (1986) notes that while it may be argued that the patient may have a right to all information from a prenatal diagnosis, all information beyond that for which the test was indicated, or which has no effect on a medical decision, may be considered irrelevant as far as the patient is concerned, and need not be disclosed. In these early days of the controversy Dickens is of the opinion that it would be sufficient for doctors to accept this as unethical practice and '(e)nforcement of professional medical ethics may be preferred to the introduction of legislation'. Subsequent developments of course point to how wrong this assumption proved to be.

There is considerable agreement that sex selection for the sole purpose of identifying the sex of the foetus for non-medical reasons, and in the context of gender discrimination, is an unacceptable practice, since it can contribute to the reinforcing of such discrimination. Even in the absence of any gendered discrimination, there have been arguments that once sex selection for non-medical purposes is allowed, it will soon lead to the possibilities that parents with the assistance of doctors may be asking for 'designer babies' with desired traits like height, colour of eyes and so on. The Ethics Committee Report of the American Society of Reproductive Medicine (1999) takes a considered view of the issue. In a country where sex selection or sex selective abortion is not illegal, it cautions against the discriminatory practices and discourages the use of PGD for non-medical reasons. However the Chairman of the Ethics Committee in a guidance letter in 2001, stated that for purposes of 'gender variety' sex selection was permissible.

There are other arguments that support the use of sex selection, and these are mostly in the context of parental rights and freedom of choice. Some have argued that sex selection would reduce the number of sex-selective abortions and may even influence the reduction in the number of un-wanted children and population growth and ultimately result in the increased value of women (LeRoy and Bartels, 2000). 'Family balancing' is a term that is often used in the context of sex selection. Experts have proposed ethical guidelines (Pennings, 1996 cited in Dickens 2002) that sex selection should not be allowed for the first child nor when there is already a balance in a family. Dickens and colleagues (Dickens et al 2005) have argued for a distinction between 'sexist' and 'sexual'. They raise questions whether the criminal prohibition of sex selective abortion, in a context where gender discrimination is not established, is ethically justifiable. Individuals should have the freedom for making sexual choices, like the sex of their sexual partner, and in the absence of gendered discrimination this should extend to the sex of their children. They are also of the opinion that criminalisation of sex selective abortion alone, in the absence of other measures may be insufficient, and more substantive measures for addressing discrimination against women necessary.

In a strong critique to the approach that different countries and societies should have a different approach since gender discrimination is not equal in its intensity across the world George (George 2006) argues, that there is an assumption that the countries of the west are uniformly populated by 'Caucasians'. He says that not only does this approach ignore the Asian diaspora on the one hand, but provides impunity to practitioners who target these very minorities. He also cites the changing sex ratio among Chinese and Japanese Americans and considers it the moral responsibility of the majority population to be concerned about the gender discriminatory practices among the minorities. George also makes a distinction about the position of Western ethicists on the issue of sex selection in their context of three different kinds of sex selective practices, the associated technologies, differing levels of costs and medical complexity and the situation in India or China where sex-selective abortion is the only (or principle) issue under debate. In India or China, both PGD and sperm selection are not only expensive but are also not easily accessible. At the same time they do not include the contentious issue of abortion. Thus only sex-selective abortions need to be discussed in the context of autonomy and easy availability. It is easier to be ambivalent about sex-selective abortion in the West in the context of the diversity just described but not so in the presence of the continuing and rapid changes in sex ratio at birth in India.

Indian activists and the Government have taken a strong position against sex-selective abortions. In India, the term 'female feticide' is commonly and often deliberately used to focus on gender discrimination. The term, 'missing girls' is also commonly used to provide a strong moral dimension to the campaigns against 'declining sex ratio'. Sex selective abortions have been variously described as 'holocaust', 'genocide' and a 'national emergency', 'a method for exterminating girls' and a 'crime against humanity' in an effort to draw attention to the seriousness of the problem. The position of the campaigns has also been to ignore the question of the pregnant woman's own choice in order to protect the rights of women as a group (Madhiwala, 2008). Indian activists also took the unique step of taking

the Government of India to court(Cehat and Ors vs Union of India) for not supporting the implementation of the law related to sex selection, giving a fillip to the overall campaign against sex selection. In the process of intensifying the campaign, religious leaders were invited to lead the campaign against sex selection in many places. As has been described earlier this has led to some religious leaders confounding the issue, and speak out against abortion in general.

A feminist analysis of the issue identifies a whole new set of dilemmas (Zillberg 2007). In a deeply discriminatory society, a woman's status may be defined by whether she is a mother of a son or a daughter, similarly an undesired daughter when born, may also face extreme discrimination. In such a situation is it possible to decry a woman's choice to go in for sex selective abortion? On the other hand without banning sex selective abortion, is it possible to take a strong stand against discrimination and provide a strong motivation against this practice? Enforcing prohibitory laws, without addressing gender discrimination and oppression may make women more vulnerable, by driving the discriminatory practices underground, and into the hands of 'rogue' practitioners. In a situation where abortion is allowed for some reasons and not for sex selective purposes, the onus may be placed on women to prove that their abortion was not sex-selective practices, curtailing their autonomy with regard to abortion. Zillberg concludes that legal options, like banning sex selective abortions, in themselves are inadequate as is seen in the case of both China and India (where the practice continues despite bans), and that it is necessary to have a strong programme for social change, and it is only within this context that legal measures may be successful.

Another possible area of confusion around sex selection are the arguments of disability rights activists around discrimination against the disabled in the context of foetal and genetic screening. The Disability Rights Commission in the UK had criticised the Abortion Act of 67 for its provisions for allowing abortion on grounds of risk of disability, as being offensive to many persons for reinforcing negative beliefs of disability. Recently two recent cases around abortion in India, the Niketa Mehta case in the Mumbai High Court and the Nari Niketan rape case judgement in the Supreme Court, the issue of disability was central to the decision of the courts. In the Niketa Mehta case, the doctor of Ms Niketa Mehta approached the court for the permission of abortion at 23 weeks. In India abortion for foetal defects is permitted till 20 weeks but in her case she claimed that the problem had been detected in the 23rd week and that she claimed mental trauma in raising a disabled infant. The court disallowed her petition. In the Nari Niketan case the possibility of disability was discussed and disallowed as a condition for allowing abortion by the Supreme Court.

Disability activist Wolbring (2005) contends that allowing distinction between 'medical reasons' and 'social reasons' for abortion and sex selection, leads to a 'animal farm philosophy' or hierarchical standards and 'makes it impossible for disabled people to establish able-ism within the same human rights framework as racism, sexism, age-ism, homophobia, and other isms'. Commenting on this issue Madhiwala(2008) is of the opinion that there are no conflicts between disability rights and women's abortion because the foetus in question is not imbued with human rights. However in her opinion, while a woman's

choice on whether to carry on a pregnancy or not is absolute, when a pregnancy is beyond viability the issue becomes complex, and one needs to consider the 'rights' of the viable 'potential child'/foetus. The other issue that needs to be considered is that while equality is an important consideration for discussing disability, the overall approach of society is to prevent disability. Thus wearing helmets or seat belts while driving two wheelers and cars are not only to prevent death but also disability. If a foetus, which doesn't have rights is tested to have a potential disability, the principle of prevention should apply, and thus this does not cause any ethical barrier to abortion.

The examination of ethical arguments on the issue of sex selective abortion reveals a range of often conflicting positions. The principle of non-maleficence, or 'do no harm' is an important concept in bioethics and seems to support a universal approach of sex selection prohibition. However there is also the principle of 'beneficence' or which calls for helping the patient, and the principle 'autonomy' indicating that the person concerned should be the best judge. On the other hand the principles of fairness and distributive justice, and the utilitarian principle of greatest good for greatest numbers, also argue against sex-selection, explaining the difficulty to reach a consensus opinion.

Part 4. Discussion

Unravelling the conundrum - Unfortunately we do not live in a perfect world of absolute definitions, impervious categories and infallible arguments. The current state of our knowledge and understanding about our world is the result of our incomplete efforts arrived at through imperfect methods of trying to order the overwhelming jumble of reality that confronts us in our daily lives. The phenomenon of sex selective abortion is one of those still not yet clearly understood realities but we do not have the privilege of deliberating till the point of revelation or serendipity. The phenomenon of sex-selective abortions is situated at the intersection of multiple planes of concerns. It is fraught with dilemmas and commits the most well-meaning of persons to take strong positions even while wondering about the consistency of their positions. Many of these dilemmas and contradictions have been dealt with in earlier and in this section and attempt will be made to synthesise the key concerns and identify possible action points.

The drama of sex selective abortions has a large cast and a number of perspectives and vantage points. The pregnant woman is the central character but the question is whether she should also be the most important? What will be the defining perspective, that of rights violation, of discrimination or entitlement? Another important question that needs to be resolved is what the rules of engagement will be. Will it be one set of rules guiding both sex selection and abortion or will they be different? Should there be a consistent logic across both rules. How will multiple vantage points – the woman's own, and societies' cultural and ethical expectations and legal standards be reconciled? In case there are culpabilities, who will be culpable? Will it be the woman, her husband, family, society in general, the medical service provider who conducted the test or the abortion, or the medical technology provider, the government, the law enforcement agencies or greed or patriarchy or globalization?

Reasons behind the conflations - A comparatively easy distinction may be attempted in understanding sex selective abortion as belonging to either the domain of discrimination or to violence. The UN position was seen to evolve from 1993 to 2009 – moving from discrimination to the most heinous forms of physical, sexual and domestic violence. In a somewhat related development the rhetoric among Indian civil society advocates also assumes very shrill notes (genocide, gendericide, holocaust) and in the 2006 CEDAW Shadow Report two paragraphs and more are devoted to developing the idea of sex selective abortion as a crime against humanity. A pertinent objection to this line of thinking is that in the case of sex selective abortion, where is the victim (the survivor) or the person affected?

There are possibly two reasons behind these conflations. The first is between a discriminatory practice and a deliberate act against a person and the second between a foetus (with no personhood) and living, breathing women and girls. The first reason behind this easy slippage into a comfortable moral position was the initial terms of reference for the problem that was introduced by Sen in his essay that of 'Missing Women'. Sen cannot be faulted because his analysis was based on neglect and lack of value of the girl child. In 2003 Sen revisited the problem and highlighted that sex selective abortions had become the common phenomenon in

the intervening years. However the legacy of his initial phrase continued and this phrase unwittingly ended up providing a false personhood to a foetus – now referred to as the ‘missing girl-child’. A second reason for this slide is the continuum of discrimination represented by female infanticide and sex selective abortion. The International Conference on Population and Development provided a life-cycle logic to the issue of women’s reproductive health. Violence against women is also seen within a life cycle approach. Thus pre conception sex selection, sex selective abortion, female infanticide, nutritional and healthcare related neglect of the girl child, also provides a continuum that easily slip into this logic of the life cycle approach. Once again this ends up providing personhood to the foetus. Once the logic was in place and the rhetoric had the legacy of a person as eminent as Sen, it was easy to construct the ‘sex selective abortion as the most heinous of all crimes’ argument. One suspects that this process of radical construction benefited from a process of mutual reinforcement between civil society players and the UN Agencies who had come very close during the years of the Rio, Vienna, Cairo and Beijing Conferences.

What is right and what is not - Before proceeding further it would be instructive to delineate the issue of sex selection from abortion, no matter how closely intertwined they appear. One is an issue of reproductive health and rights the other clearly belonging to the domain to gender discrimination or sexist practice. The issue of gender discrimination and son preference may also be justifiably seen as an issue for social development or women’s empowerment without necessarily complicating it as a human rights issue. Unfortunately the current development discourse seems to indicate that a social issue can only be seen as important or desirable for intervention once it is cast within a rights paradigm, and sex selective abortion as an issue may also have suffered from this compulsion.

A human rights analysis of sex selective abortion appears complex since the foetus is not a subject of rights, and the mother’s right to abortion ends up allowing sex selective abortion rather than prevent it, which seems to be the consensus opinion at least in the context of India and China. The issue of abortion is well settled in human rights scholarship as a right of the mother. However a more thorough human rights analysis demands that both the purpose and attributes be examined. The Universal Declaration of Human Rights is explicit in its purpose from its opening statement “*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. Equality is the fundamental principle and freedom, justice and peace the desired state for people to live in. Equality and justice taken together indicate ‘substantive equality’ and ‘distributive justice’ and may become the appropriate framework for examining sex selective abortion both in the context of social compulsion and individual desire. While the UN agencies have advised caution, as argued earlier, the principles of equality and distributive justice taken together provide a more than adequate reason for considering the issue of gendered sex selection as a ‘third generation’ human rights or community rights. The violation in this case is against the group of ‘women’, and the act is gendered sex-selection, which can be seen as similar to the gendered withholding of girls from going to school. Gendered sex selection in this framework then arises from and further contributes to the overall secondary position of women in society.

The principles of equality, distributive justice and autonomy provide clues to deriving an ethical position on the issue. However this calls for applying the ‘animal farm principle’ of hierarchies and privileging equality and distributive justice above freedom and liberty. In keeping with the principle of greatest good for greatest number, it may be utilitarian to call for a uniform prohibition of sex selection practices, while allowing abortion on demand. This will curtail the freedom of a few to practice sex balancing practices, but that will have to remain since the overwhelming evidence is that sex selection is primarily used to discriminate against women.

The need for complementary approaches – In a country like India, if sex selective practices have to be addressed then sex selective abortion needs to be addressed as a single phenomenon, but the approach needs to be disaggregated and comprehensive at the same time. No approach to sex selective abortion can be framed only within the strict boundaries of laws and regulations. The laws for sex selection and abortion should be seen distinctly as they are currently in India, allowing women the necessary autonomy to have abortion according to their informed choice. Laws around sex selection need to be implemented with greater rigor, since doctors have proven unequal to the ethical standards expected of them. However these steps should necessarily be seen complementary to larger policy interventions around gender equality. The experience of Korea seems to suggest that there needs to be three distinct approaches which need to be taken together within a very strong movement for social change and equality. First issues around inter-generational dependence needs to be addressed by introducing social security measures like old age pension, universal healthcare which are funded through taxation. Secondly the constitutional provision of gender equality and continuing discrimination needs to be addressed through appropriate changes and enforcement of laws around inheritance, equal wages, marriage, registration of births and deaths, violence against women and so on. Thirdly women’s development needs to be promoted through free and compulsory education for women and other forms of affirmative action. In addition to women’s education and workforce participation need to be promoted for comprehensive gender equality. Today the call for ‘save the girl child’ seems to be working as a shorthand for a comprehensive approach, but clearly it is not enough.

Sex ratio is a demographic measure, and in India, there is a long history of addressing demographic issues through incentives. In the case of adverse sex ration such demographic solutions have been floated where couples with single daughters are provided incentives. In the short run these efforts seem to be effective because they promote reward/ punishment based behavior and do not promote the exercise of informed choice. Such changes may be effective but are antithetical to a rights approach. Change need to be promoted within increased public aspiration for social change and located within the framework of comprehensive policy shift. Thus there needs to be a strong call for gender equality within all social justice movements. Finally future efforts, especially in India, may also need to reverse and address any damage that may have already taken place by associating sex selective abortion with individual harm and violence against women.

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Annexure : Terms of Reference

Background

International Development Research Centre through its programme initiative Women's Rights and Citizenship (WRC) has been supporting studies looking into the phenomenon of adverse sex ratios resulting from sex selective abortions and the death of baby girls due to neglect. The primary rationale for supporting this work was to develop evidence based strategies for intervention to stop sex selective abortions. It was our understanding that sex selective abortions in Asia were an extreme form of gender inequality which needed to be explored and contested for furthering the agenda of women gaining greater control over their lives. IDRC has supported a select number of field based studies in different parts of India and Bangladesh and an India-China comparative study on policy issues in adverse sex ratios. IDRC-supported research work has been presented at major national and international fora, including at the 51st Session of the United Nations Commission on the Status of Women (CSW) in New York in 2007. However, in relation to this work, there remains a dilemma for IDRC and for most other agencies that work with a rights based approach and that uphold the right to abortion, and that is, how does promoting interventions to end sex selective abortions fit with a rights based framework. This consultancy is being developed to open up the discussion and gain clarity on this dilemma. How do feminist researchers/ activists and policy-makers in the South Asian region and globally view the phenomenon of sex selective abortions and son preference? Does son preference mean daughter discrimination? Are sex selective abortions against the human rights of women? Is there a fundamental difference between sex selective abortion and abortion and should they not be treated differently? Does a ban on sex selective abortion impinge upon women's right to abortion? These are some of the questions which WRC would like to have more clarity on.

Terms of Reference and Schedule

Pursuant to this contract, the consultant shall draw upon her/his professional expertise for the preparation of a background paper on Ethical and Legal Issues in Sex Selective Abortions. The paper should provide a state-of-the-art overview of current thinking on the issue. The paper should review existing legal and feminist literature on the subject, drawing on published and unpublished research; relevant global and regional agenda-setting processes; relevant policies and programmes being implemented at the national levels by governments, women's organizations and other stakeholders; and emerging debates on the issue from ethical standpoint. Importantly, the paper should respond to the questions detailed above (as well as any other issues that the consultant views as critical to understanding this theme), but should also incorporate the elements listed below.

Specifically, the consultant shall:

- a) Review research and advocacy messages/campaigns against sex selective abortions, especially in Asia, to identify the principal arguments advanced for it;
- b) Review the international law on sex selective abortions, including scholarship and its treatment by UN Committees and at international women's conferences;

- c) Examine the legal treatment of abortion and sex-selection technologies outside of Asia, with special emphasis on comparing the Asian situation with Canada.
- d) Review literature on the ethical dimensions of sex selective abortions;
- e) Provide a detailed assessment of which arguments against sex selective abortions are legally supportable, ethically sustainable and favourable to the advancement of women's rights and citizenship, both with respect to eliminating sex selection and maintaining women's right to choose; and
- f) Submit to the Centre a completed draft report of 20-25 pages by _____ for review and comments by the members of the WRC team. WRC will review the document and share comments within one month of its submission;
- g) Undertake a revision based on the comments by the members of the WRC team and submit a revised, final report by _____. Section A9 sets out the Centre's expectations and will form the basis of its determination whether or not the detailed report is satisfactory;
- h) The Centre will hold the copyright for publication of the paper. However, if the Centre does not succeed in finalizing the publication within a period of one year from the submission of the final draft, the Centre will give favourable consideration to the author seeking publication of the paper in a recognized journal. In that event, the author will acknowledge Centre's support towards the paper.