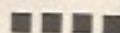


respectful behaviour by health personnel; concealing information about hazards of the different contraceptives, and inhuman atmosphere of camps, have all contributed to revealing the true intentions of the government.

The women who came out with their experiences asserted that the government was exploiting their genuine need for birth control. The fact that women repeatedly got themselves ster-

ilized was proof enough that they wanted to limit their families, but the government was obviously not competent even to provide adequate services to fulfil this need. In the discussion that followed, the need for safe contraception emerged as a concrete demand for the women's movement, along with the campaign against hazardous contraceptives.



SEX DETERMINATION AND CHILD BIRTH

Critique of the New Bill



Last week activists from several women's and social organisations came out on the streets of South Delhi in protest against the growing misuse of sex-determination and sex pre-selection methods at the hands of doctors and quacks alike. Expressing concern at the worsening sex ratio due to the growing practice of selective male child births, women shouted slogans like, "No to Sex Determination," "No to Female Extinction," "Eliminate Profiteering, Not Women," "Stop Selective Child-Birth," "Stop Misuse of Ultra-Sound," "Women, an Endangered Species." Traffic was stopped and leaflets distributed to draw public notice to the serious implications of such practices. Women were also critical of the failure of the government to take appropriate action in this regard.

The widespread misuse of pre-natal diagnostic techniques for the purpose of sex-determination and selective abortion of female foetus has raised alarm for quite some time now. Diagnostic techniques like ultra sonography, amniocentesis tests and chorionic villi biopsy, supposedly meant for facilitating the detection of foetal abnormalities, and thereupon interventions such as abortion or therapy, are being increasingly misused by commercial and professional interests for exploiting the existing

bias against female child. Most genetic clinics and labs in Delhi, as elsewhere, are engaged in carrying out sex-determination tests, which invariably leads to abortion if the sex of the foetus happens to be female. The mushrooming of ultrasound clinics in recent years has made things worse, so much so that the very existence of womankind is at stake.

Although it is not possible to provide definite statistics about the extent of the use of pre-natal diagnostic techniques for purposes of sex-determination, and subsequent abortion of female foetuses, estimates place this figure around two lakhs. The commercial exploitation of such techniques spread very rapidly soon after technological developments made it possible. According to one estimate, between 1978-82, nearly 78,000 female foetuses were aborted after sex determination tests in the country. Between 1986-87, 30,000 to 50,000 female foetuses were apprehended to have been aborted. Between 1982-87, the number of clinics for sex-determination multiplied manifold in the city of Bombay alone, it shot up from less than 10 to 24. Between 1987-88, nearly 13,000 sex determination tests were estimated to have been done in 7 Delhi clinics themselves. Worse still, these facilities were widely publicised through advertisements in newspapers, in

trains, buses, on walls, hoardings, pamphlets, letters etc. Even training programmes for foetal sex testing were advertised! And there was no law which could prevent such blatant misuse of technology to reinforce social prejudice against the female sex.

Sex determination, it is generally argued by its practitioners will help prevent unwanted population growth by enabling couples to avoid adding to the number of children for the sake of producing a male child. How this eagerness to avoid the birth of girls will result in serious demographic imbalances and make sex-ratio increasingly unfavourable to women is either not considered at all, or its threatening implications are not fully understood by them. Those who argue in support of sex determination on the presumption that the scarcity of women would only increase their value in society must not forget that even at present sex-ratio in India is unfavourable to women though the status of women is for anyone to see. Far from improving the state of women, any serious reduction in the number of women in future will only precipitate crimes against women.

After eight years of pressurising by women's organisations, the government has finally proposed a law to deal with this problem. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill, 1991, passed recently by the Paliament though still awaiting President's assent, however, addresses the problem of sex-determination in a very superficial and token manner. It, in fact, is incapable of preventing the worsening sex ratio in the country.

The Bill specifies that the pre-natal diagnostic tests can be conducted for the detection of five types of abnormalities, viz., chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathies, sex-linked genetic diseases, congenital anomalies. It also lays down certain conditions which must be fulfilled if these techniques are to be used, the age of pregnant woman being above thirty-five, there being a history of two or more spontaneous abortions of

foetal loss, a family history of mental retardation or physical deformities such as spasticity or other genetic disease, or the exposure of pregnant woman to potentially teratogenic agents such as drugs, radiation, infection or chemical have been given as conditions.

The Bill provides for the registration of Genetic Counselling Centres, Genetic labs and Genetic Clinics which shall conduct or associate with, or help in conducting activities related to pre-natal diagnostic techniques. The registration process will only serve the purpose of regularising private clinics which, in view of the weak mechanisms for deterrence created by the Bill, will continue to indulge in these activities for the pursuit of private profit. In view of the difficulties involved in preventing the misuse of these technologies by the numerous private practitioners, and in view of the possibility of meeting the demand for these tests for purposes other than sex determination through government hospitals, several concerned social organisation/ activist groups have been demanding that tests should be confined to government hospital. The Bill, on the contrary, has granted renewed legitimacy to the private sector and expansion, and consequent misuse of technology by it, worse the Bill does not even require the registration of ultrasound machines or other sophisticated machines and equipment, simply because these technologies are meant to be 'used for various other purposes.' This will make it very difficult to detect the misuse of these technologies for sex-detection as is being done at present.

The failure of the Bill to regulate the future technologies which may be used for sex determination is another source of problem. And its implications cannot be undermined when one considers the fast pace at which technological changes are taking place in the present world. Unless future technologies are brought within the ambit of the Bill, it will soon become irrelevant to the very issues which are to be addressed by it.

Further, there is nothing in the Bill which

may challenge the techniques of sex preselection which are reportedly being practiced in various parts of the country and which, with rapid developments in technology, will soon become an easily accessible method of determining the sex of the foetus. It is noteworthy that several techniques are already being quite enthusiastically developed in this respect these include sedimentation or centrifugation, Ericson's method, electrophoresis exchange through flotation, etc. Since sex preselection will have similar, or even, worse effects on the sex-ratio in the country, this too should have been covered by the Bill.

The most offensive and misguided feature of the Bill indeed is its inclination to punish women on the assumption that this will go a long way towards deterring the problem. The Bill provides that the pregnant woman who undergoes the test will be presumed to have been compelled to under-go the test "unless the contrary is proved". Past experience, as in the cases of custodial rape, suggests that shifting the onus to prove guilt does not necessarily go in favour of women because of the gender bias in society.

Providing punishment for women in case she willingly goes for the test in effect implies that if the husband and relatives of a woman who under goes the test can prove themselves not guilty, and escape by laying the blame on the women, who in turn would be punished. This is extremely unjustified when one looks at the overall socio-economic context in which women are placed. Such a clause will only increase the misery of women in a context where patriarchy leaves little room for autonomous decision making by women, and where women are constantly under pressure whether visible or invisible to 'willingly' take the decisions expected of them, or even accept the responsibility for those decisions which they never would like to take on their own. The Bill in this respect is not only anti-women, it will in effect create such conditions as would limit its very effectiveness in preventing these practices. Punishment to women will only serve to help cover up the in-

terests of those responsible for providing such a facility. By creating a common interest among the providers and users of the facility to prevent its detection, the task of checking the practice will be made difficult not easy. It will only deter the possibility of law making a difference to the situation.

Loopholes in Implementation : There are numerous other loopholes and weak spots in the Bill which make it an ineffective instrument for the purpose of achieving its own objectives.

The Bill, for instance, provides that no person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman or her relatives the sex of the foetus by words, signs or in any other manner. There is nothing in the Bill, however, which bars the communication of such information to non-relatives, one wonders if there will be any problem in case this information is passed on through friends to the woman's relatives.

The Bill provides for the constitution of a Central Supervisory Board which is expected to advise the government on policy matters relating to use of pre-natal diagnostics techniques as well as to review the implementation of the Act and the rules made thereunder and recommend changes in the same to the Central Government. It is also supposed to lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics, and to perform other functions specified in the Act. Further, it is expected to create public awareness against the practice of pre-natal determination of sex and female foeticide. Although details about the constitution of the Board are provided by the Bill, it also underlines that no act or proceedings of the Board shall be invalid merely for reason of any defect in the constitution of the Board, or any defect in the appointment of a person acting as a member of the Board, or even any irregularity in the procedure of the Board not affecting the merit of the case. One wonders why detailed procedures relating to the consti-

tution of the Board had to be specified in the first instance, if irregularities were not to be a cause of worry as far as the functioning of the Board was concerned.

The Bill also recommends the appointment of the one or more Appropriate Authorities for States and Union Territories, and an Advisory Committee for each such Authority, by the State Governments and the Centre respectively. The Appropriate Authority is entrusted with the power to grant, suspend or cancel registration of a Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, and in doing so it is expected to seek and consider the advice of the Advisory Committee. Further, it is expected to enforce standards prescribed for the Genetic Counselling Centre, Genetic Laboratory and Genetic Clinic, and to investigate complaints of breach of the provision of the Act or rules made thereunder and take immediate action. The primary responsibility for implementation of the Act is thus placed primarily on the Appropriate Authorities.

There is no provision in the Bill for the creation of any local vigilance committees which could contribute to the effective implementation of the Act. All it suggests is that the Appropriate Authority may suo moto, or on complaint, after giving an opportunity of being heard to the Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic and having regard to the advice of the Advisory Committee, if satisfied that there has been a breach of the Act or the rules, may suspend its registration for such period as it may think fit or cancel its registration, as the case may be. Or, it may do so without issuing any such show cause notice, though it will be required to record its reasons in writing. An appeal against it can, however, be made to other Central Government or State Government depending on whether it involves Central Appropriate Authority or State Appropriate Authority.

The name of the registered medical practitioner convicted by the Court will have to be reported by the Appropriate Authority to the

respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for two years for the first offence and permanently for subsequent offence. The Bill does not, however, specify any time period within which action has to be taken by it.

The Bill provides that the Court will take cognizance of an offence when approached by the Appropriate Authority, or any officer authorised in this behalf by the Central or State Government, as the case may be. Any person or social organisation can also make complaint to the Court, but only after giving a notice of not less than thirty days in the manner prescribed to the Appropriate Authority. Only a Metropolitan Magistrate or a Judicial Magistrate of the first class can try any offence punishable under this law.

The Bill provides for punishment in case its provisions are contravened. Quite carefully, however, it avoids specifying any minimum punishment which can be given to those who indulge/assist in providing the sex-determination test. Any person contravening the provisions of the Act may be punished with imprisonment which may extend upto three years and fine which may extend to ten thousand rupees. Actual punishment may in fact remain only nominal.

It remains to be seen whether such provisions will act as a deterrent or these will serve to demoralise the complainant.

Imperatives : the proposed Bill in its present form is unlikely to make any difference to the rapidly worsening sex-ratio in the country as at present there are only 927 women per 1000 males.

It is imperative that this Bill be amended and made more gender sensitive, more comprehensive, more perceptive and less inclined towards the protection of professional and commercial interests.

The ambit of regulations needs to be expanded to cover both future technologies of sex-determination and commercial interests.

It is extremely important that the women who undertake the test are seen as victims of existing power arrangements and prejudice in society rather than be damned as criminals. The proliferation of commercial and professional interests in the sphere of pre-natal diagnostic techniques too needs to be checked. Without providing for effective mechanisms for local vigilance, the possibility of making a difference to the situation will remain remote. The problems on account of selective child birth cannot be taken care of under the provisions of the present Bill. The necessary amendments must therefore be carried out and Bill be implemented at the earliest.

To argue for the legislation, however, is not to suggest that law by itself can solve the problem of discrimination in matter of births. No less than a comprehensive review of state policies and programmes which themselves contribute to devaluation of the female gender and privileging of the male in society needs to be undertaken and correctives introduced. The conditions which perpetuate gender bias, and hence son-preference, also need to be changed with a sense of urgency. For nothing short of a more egalitarian and less exploitative social order can make a difference to the problem. Yet, appropriate legislation is the first requisite in the direction.

