



the business of sex selection: trying to tame the tiger

On January 17th this year, the President gave his assent to the amendment to the ineffective Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act, 1994. Now called the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection), the Act leaves no room for doubt about its intentions.

The long-awaited amendment – geared to strengthen the regulatory mechanisms and implementation of the Act and also broaden its scope – has been greeted with applause by women's groups and health activists, and hostility by the medical profession, which tried its best to scuttle the overhaul of the law. Bringing into the ambit of the Act emerging techniques for pre-conception sex selection such as sperm separation and pre-implantation genetic diagnosis, increasing the fine and additional provisions for the suspension and cancellation of the registration of violators, the law rightly targets the medical profession: the so-called 'supply' side of the practice of sex-selection.

Manufacturers of ultrasound equipment are now required to sell their products only to registered clinics, and all ultrasonographers now to have maintain records of all tests conducted by them.

doctor: heal thyself

The medical profession too has supposedly taken a public stand against sex determination. In a heavily publicised function in New Delhi in May 2002, members of FOGSI, the Federation of Obstetricians and Gynaecologists Society of India, took a collective oath to *not recommend or conduct sex determination tests*. Much media attention was devoted to the public spirited doctors vowing to fight this practice. But awareness raising and oaths are, however, unlikely to make a dent in a profession that has shaped itself into an industry, particularly in the context of widespread privatization of health services over the last decade.

Moreover, as the joint statement issued on the occasion by Saheli, Sama, Jagori, Nirantar, All India Democratic Women's Association, Joint Women's Programme & Lawyer's Collective stated, "While it is commendable that forums like FOGSI and the government, are finally taking social initiative on issues of women's sexual and reproductive rights, we find it appalling that in doing so, they should choose to work with religious leaders whose own commitment to women has always been questionable. A prime example of this is the presence of Ms Sadhvi Rithambara in the Forum today. As all of us know, Ms Rithambara has always been a blatantly communal voice. She was actively involved in inciting targeted communal violence against the Muslim community prior to and following the demolition of the Babri Masjid. And today, she represents the Sangh Parivar of the right wing BJP party at the Centre and in the state of Gujarat, the VHP, Bajrang Dal and the RSS that have willfully connived to mete out the most horrific acts of genocide on the Muslims of Gujarat, including the most gruesome acts of sexual violence against women and children. Yet, in the midst of the troubled political climate and the unending spiral of violence in Gujarat, Ms Rithambara has been invited to this forum to speak of "women's empowerment".

It was only in 2002, eight years after the PNDT Act was passed, the Medical Council of India – the authority under Sec 23 (2) of the Act to take action against any erring medical practitioner recognized undertaking sex determination tests 'with the intent to terminate the life of a female foetus' as professional misconduct. According to the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, published in the Gazette of India on 6 April 2002, sex-determination without 'proper indication' can lead to de-registration and criminal prosecution.

When any act moves from being ethically wrong to being legally prohibited, regulatory mechanisms play an important role. Cynics may deny the utility of a law simply because it is possible to flout it, and because the regulation brings with it the scope of corruption - the much decried 'license raj'. Yet, the demand for legislation, and the articulation of what constitutes a wrong-doing/crime has been the hallmark of many campaigns of the women's movement. While the 'demand side' of sex determination can be (and must be) tackled through social initiatives, this is a more long-term process, and one where change is not so tangible.

The Act still fails to recognise current medical practice for what it is – a business.

While the women's movement cannot fail to be cognizant of this social reality, why is it that legislation and enforcement has been a significant part of the campaign? Probably because dealing with the providers of the technology shows more immediate results, and sends a message that the practice is simply not acceptable. Moreover, the medical profession and healthcare industry is less amenable to conscientisation and social awareness. It must be tackled through law enforcement and stringent dealing with violators.

self regulation by the medical profession: an impossible dream?

But can the medical profession be expected to self-regulate? Unlikely, feel activists of the Forum for Medical Ethics, given that bodies like the Medical Council of India function virtually as trade union bodies to defend erring doctors accused of malpractice. The MCI code of conduct, while recognizing sex-determination as a punishable offence, allows a huge leeway, since it is only sex-determination 'with the intent to terminate the life of a female foetus' (who will question the doctor's intention?) and sex determination 'without proper' indication that is unacceptable. There is already enough evidence to show that doctors are getting round these regulations, as well as the letter of the law prohibiting the communication of the sex of the foetus. In Haryana, for instance, when asked to specify the indication for which ultrasound is being prescribed, doctors claim 'less amniotic fluid', 'abnormal foetus' etc. The patients are in no doubt about what 'abnormal' in this context means. A male foetus is heralded by the declaration: 'Everything is fine!'

The Act, even with amendments, fails to recognize current medical practice for what it is – a business. Contrary to the demands put forth by several concerned social organizations/activist groups since the early 1990s, that all pre-natal diagnostic tests be restricted to government hospitals, the 'regulation' of these techniques in fact grants a legitimacy to private sector expansion, and consequent misuse of technology by it.

Unless the proliferation of medical technology and its indiscriminate use in obstetrics and gynaecology is examined, it will be virtually impossible to arrest sex selection. The hue and cry by doctors over the amendments, and their claim that the Act would adversely affect their ability to practice, had at its central point the alleged indispensability of ultrasound as a diagnostic tool in obstetrics. These claims need further substantiation, say experts in foetal medicine specialist at the Apollo Hospital, Delhi. Basing his statement on the Cochrane database, a compilation of the latest in medical research, gynecologist Puneet Bedi says that there is no case for routine ultrasound in obstetrics. "There is no evidence that routine ultrasound has improved either maternal or foetal outcomes. Moreover, it is not always accurate, since it is a completely observer-based diagnosis."

More worrisome is the fact that the risks are not fully known, and some studies show a correlation between repeated ultrasounds and miscarriage, low birth-weight babies and pre-term labour. Yet, as Bedi points out, no other procedure in the history of obstetrics has been accepted on such a large scale with so little evidence of effectiveness or safety. An estimated \$ 1 billion are spent every year in the US on routine ultrasounds, and it is a Rs 5 billion industry in India. Is it any wonder then that 'diagnostic clinics' are sprouting out of every garage and tin shed? Undoubtedly, the easy availability of technology is making it easier to translate son preference into elimination of females. An estimated 20 million females in this country have been eliminated following sex determination tests. But not a single doctor has been convicted. It is the providers of this technology who have to be held ethically as well as legally accountable. Immediately. Before another 20 million females go missing.

