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girlscount

Dear Friends,

Needless to say, the launch of BBBP programme in 2015, gave a momentum to the issue of declining child sex ratio and all of us an opportunity to work relentlessly on many aspects of gender inequality. We believe that under this national-level programme, the government would make efforts in the right direction while also enforcing gender related laws and safeguarding women's reproductive health and rights.

We are grateful to the writers for their valuable and insightful articles with innovative ideas and suggestions that stakeholders including officials could consider in their work.

The eight edition of the Newsletter covers a range of critical aspects such as the issue of trafficking of girls in the Northeast, BBBP programme, safety of women and girls in cities, the debate around mandatory sex selection, and the issue of unwanted girls in Maharashtra. We have also provided an insight into our campaign carried out at the grassroots level to address gender inequality. The topics were selected taking into consideration the developments in the last three months and with an idea to encourage more discussions on the issues.

We look forward to your continued support in engaging and contributing towards strengthening the voice for gender equality in many ways. Please send us your feedback and comments on the issues and concerns discussed and raised in this edition at info@girlscount.in.

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Looking beyond *Beti Bachao Beti Padhao*

Dr Rainuka Dagar

Haryana and Punjab have had unfavourable child sex ratios with sharp declines in the past century. The reversals now bring to mind a number of 'utopian' possibilities. Does the birth of more girls mean there is a decline in preference for a male child? Are the changes in the survival rate of girl children spurred by initiatives taken by the government and other stakeholders? Is gender equality emerging in our society, or, are there other drivers making the sex of a child irrelevant with inequalities between males and females unfolding in other domains?

Historically, the condition of the girl child in Punjab and Haryana has been among the worst globally. In 2001, Punjab had a sex ratio at birth (SRB) of 778 and child sex ratio (CSR) of 798, and Haryana a SRB of 809 and CSR of 819. These have improved over the past one decade. By 2011, these went up by 73 and 48 points in Punjab (SRB 851/ CSR 846) and by 26 and 15 points in Haryana (SRB 834/CSR 835). A monthly/annual collation by the civil registration system also reports the same trend of rising SRB, with a more spectacular rise in Punjab (The CSR improved by 82 points between 2004 and 2013 in contrast to 44 in Haryana for the same period - Government of India). By 2015, it rose to 879 in Punjab and 876 in Haryana. There are four points to be noted. First, both sex determined pregnancies and cultural neglect—not giving timely or quality healthcare/nutrition to the girl child—leading to higher girl child deaths, are on the decline in both the states. Both the practices are prone in different population groups, such as the peasantry and the lower income groups, signaling a broad change. Second, the rise in the number of girls has been ongoing for the past one decade and is not an overnight phenomenon that can be attributed to the Beti Bachao programme. Third, Punjab without the fanfare surrounding Haryana's initiatives saves more girls. Fourth, in spite of the improvements, the girl numbers in these States remain among the worst in the country.

Mandatory sex selection test: Constitutionally and ethically unviable

Dr Sunita V.S. Bandewar

Besides expressing doubts about the feasibility of the proposal, operational challenges and the costs involved, critics question how would it work in a system which can't even ensure compliance with PCPNDT Act of a much smaller number of doctors compared to pregnant women annually

"It is better that we change the policy. As soon as the woman is pregnant, it becomes compulsory for her to tell if it is a boy or a girl and she has to register. If she registers in the initial stages, you will be able to monitor whether the birth took place or not," said Union Minister for Women and Child Development (WCD) Maneka Gandhi on February 1, 2016, in Jaipur, Rajasthan. However, later the Ministry issued a statement on twitter, "Minister WCD clarifies that there is no Cabinet proposal for tracking the sex of a foetus and that compulsory determination of foetal sex is an idea given by some stakeholders…"

Such ideas demonstrate the lack of understanding of the real issue at hand of gender discriminatory practices which are deep rooted in our society. More importantly, it undermines the very foundations of the legislative instruments, such as the Pre Conception and Pre-Natal Diagnostics (Regulation) Act (PCPNDT), and the ethical values which shaped them.

Commentators have registered a number of objections to the proposal if at all it was to be implemented. Some of them have been about feasibility of the proposal, operational challenges, costs involved and other related matters. The proposal is antithetical as it suggests a surveillance system in response to the same system which is grossly dysfunctional. Expecting millions of pregnant women annually to be tracked throughout their pregnancy until they deliver is profoundly paradoxical! In a system which can't ensure compliance with PCPNDT Act of a much smaller number of doctors compared to pregnant women annually, the proposal would be intriguing enough. However, focusing the debate on operational hurdles may suggest wrongly that the proposal can be pressed further once operational challenges were addressed.

Mandatory sex identification would violate women's right to personal information which is exclusive to them and that they have a right to not disclose it

Instead, substantive objection to the proposal and more significantly the underlying regressive attitude towards gender justice in general and sex selective practices in particular should be center-staged. The objections are rooted in the Indian constitutional framework, international frameworks of rights, and ethical tenets which ought to be upheld unconditionally.

Violation of right to equality and risk of discrimination

Article 14, 15 and 16 of the Constitution guarantee the Right to Equality. Acts of discrimination is antithetical to equality. It violates one's right to equality.

The notion of discrimination implies unjust or prejudicial treatment of a person or a group of persons on the grounds of certain identities. The notion of discrimination implies depriving certain individuals or groups of opportunities or privileges that are available to others in a society, resulting in adversely differential treatment and/or exclusion. Traditionally, the discriminatory practices are associated with caste, race, religion and sex. However, in the changing context, locally and globally, the grounds for discriminatory practices continue to expand. Discriminations experienced by persons living with HIV and persons with alternative sexual orientations are the prominent examples. Gender based discriminations are pervasive across the sectors around the world.

In Indian context, women continue to get discriminated in a number of ways although we have made some progress in certain ways. Extensive research in the area of abortion beginning from early 1990s informed advocacy and legal reforms in abortion and sex selection/identification related laws. This body of scholarly literature not only vindicated rampant abuse of diagnostic techniques but also revealed the dominant trend of the plight of women having no male child. Their victimisation at the hands of their own families, social ostracism, calling them names, their husbands blatantly indulging in unlawful second marriage with support from family members, and at times women with no child or no male child facilitating second marriage of one's own husband; are some of the manifestations of severity of discrimination such women face. The empirical reality is difficult to change since male preference is a 'deeply entrenched phenomenon'.

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Against this backdrop, the idea of tracking pregnant women potentially can put women carrying female foetuses, especially in families waiting for her to deliver a boy, at risks of discrimination in their daily lives. Such discrimination may be subtle or explicit. The proposal that women should be tracked once tested for sex identification, also shifts the responsibility wholly on the women. It ignores the larger socio-cultural context of male preference as well as indulgence of medical professionals in unethical and unlawful use of medical technology for sex determination. As a fall out, there will also be collateral damages. For example, pregnant women with female foetus may land themselves in difficult situations if for some reason they experience spontaneous abortion, that is, miscarriage.

Violation of right to personal liberty

Mandatory medical diagnostic test amounts to violating the constitutional rights on yet another count. It would violate woman's right to personal liberty to decline mandatory testing as per Article 21 of the Indian Constitution. The Article 21 provides Right to Life and Personal Liberty. In a clinical setting, the right to liberty implies respecting personhood, that is, autonomy of an individual receiving care. Operationally, the principle of autonomy and personal liberty is translated into seeking and obtaining consent. This is further supported by legislative framework offered by the Indian Contract Act 1872 and the Indian Penal Code 1860, although the common law on consent is not fully developed in India.

Chapter II, especially Sections 13 to 18 of the Indian Contract Act, elaborates the concept of consent. In healthcare settings, the relationship or agreement between healthcare provider/entity and care receiver could be treated as a contract. Going by the Indian Contract Act, it necessitates that they enter into contract by free consent of parties competent to contract. Consent is when two or more persons agree upon the same thing in the same sense. According to the Contract Act, a free consent implies that it ought to be free of coercion, undue influence, fraud, misrepresentation and mistake. Even though consent in India is recognised in terms of contracts rather than as a principle of tort, the principles of consent may be utilised for medical testing and treatment. Overall, legally speaking, not obtaining consent in healthcare settings could result in a civil claim for damages or trespass to a person receiving care. It may also result in a criminal charge of assault or battery.

Philosophically and ethically, seeking consent from care receiver in healthcare settings is shaped by the principle of respecting personhood, human dignity and bodily integrity. The ethics discourse globally and locally has centre-staged informed consent both in healthcare and health research settings. The concept of consent in ethics discourse has four important elements. One, validity of consent is contingent upon competence of the consenting person. Two, consent must be informed. Three, consenting person must comprehend the information received. And four, consent must be given voluntarily, that is, it ought to be taken without coercion. The proposal of mandatory sex identification and tracking women, thereafter, inherently contradicts the constitutional framework and healthcare ethics code.

Violation of right to privacy and confidentiality

The proposal also clearly means that pregnant women's right to privacy and confidentiality would be violated. The Indian Constitution although does not honour explicitly the right to privacy and confidentiality, over time progressive interpretations by various benches and judges have enabled inclusion of right to privacy and confidentiality. Courts have construed that right to life and liberty—Article 21—includes the right to privacy. Furthermore, India is a signatory to the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) since 1979 both of which are explicit on right to privacy. It is Article 12 of UDHR and Article 17 of ICCPR which recognise the basic human right to privacy. Enactment of the Protection of Human Rights Act in 1993 has made the right to privacy an enforceable human right in Indian courts.

This would imply that the proposal of mandatory sex identification violates women's right to personal information which is exclusive to them and that they have a right to not disclose it.

If parliamentarians can't address matters deeply entrenched into socio-cultural contexts, such as, male preference, they are expected, at least, to be sufficiently diligent to not undermine the well-thought out legal frameworks developed painstakingly over time.

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