

# Banning Pre-Natal Sex Determination-1

## Issues and Debates

by teesta setalvad

*Five years of extensive campaigning by women and health activists has resulted in a legislation banning the selective abortion of female fetuses through the misuse of amniocentesis and other technologies. What have been the major issues which have emerged in the course of the nation-wide debate?*

FIVE YEARS of extensive campaigning by women and health activists have earned us the assurance of proposed legislation banning the selective abortion of female fetuses through the misuse of amniocentesis and other technologies.

The legislation will be restricted to Maharashtra despite the centre's assurances of a countrywide law. This limitation could prove fatal to the effective implementation of the aims. The lack of a ban in neighbouring states, where the practice of selective abortion of female fetuses has grown in alarming proportions since 1983, could prompt a largescale burgeoning of clinics offering this facility indiscriminately, just across the Maharashtra border.

Though the central government has given all possible indications of passing an all India law banning the selective use of amniocentesis and other technologies, and a special committee to recommend the terms of this legislation had been appointed in March 1987 which has submitted these to the government around September last year, New Delhi seems to have chickened out of the issue. Laudable though the decision of the Maharashtra government must seem, it must be remembered that in Gujarat, Punjab, Haryana, and even New Delhi, the country's capital with these clinics blatantly offer these facilities.

Debate among activists demanding such legislation centred around two points, whether such a ban should be total or selective and if the latter, which clinics should be exempted: in the interests of the benefits of some of these tests that are vital in detecting the genetic abnormalities of a foetus. Many activists, though genuinely fearing the growing trend of such selective abortions, expressed grave reservations that such legislation would only push these tests underground. Legislation cannot and should not be the aim of such a campaign. Such legislation that precedes the change in social mores and attitudes so drastically must be backed up by certain schemes that create conditions for the aims of the law to be implemented. The debate among activists on the question of a ban, selective or complete, focussed around two main issues: the overall status of women in the country that can lead to such largescale abortion of female fetuses and the grave question of the misuse of advanced technologies, ignoring its impact on the health of women. Several democratic and liberal forces ranged against the discussion and strove through their stand to defend that ultimate test of freedom—choice.

Are choices exercised in a vacuum? The scores of women interviewed and questioned by journalists and activists clearly enunciated the rationale behind their exertion of the supreme choice—to abort after the result of a sex determination test showed the foetus to be female—to save their skin from torture or battering, to maintain their status within the marital home, to save a marriage on the rocks. All this

because of the woman's supposed inability to bear a son.

Even more infructuous arguments were used. These included the defence of amniocentesis and other tests as a tool to reach family planning targets. Another devious counter to the increasingly vociferous protests from women's groups was the postulate that the status of women would naturally improve in societies where the sex ratio has declined. Both arguments, it needs to be stressed, have been effectively countered.

Sex determination tests do not guarantee a male child. They merely ensure multiple abortions, (that is an abortion for every second foetus tested for its sex) which can do immense, if not irreparable harm to a woman's health. Women are being increasingly used and singled out as target groups (and as a result, victims) for family planning and amniocentesis is part of this trend. Lack of food, clean-drinking water and a total denial of economic securities and safe clinical facilities have led to a situation where one woman has to have 6.2 children to ensure one surviving male child. The argument therefore, that successive abortions followed by amniocentesis act as family planning tools is untenable.

Research studies on societies having adverse female sex ratios, reveals that customs like polyandry, sharing a wife (outside wedlock) abduction and purchase of women are widely prevalent in such societies. Besides, it is strongly felt that adverse sex ratios may in fact lead to an increase in incidence of rape, prostitution and grave controls over women.

Female mortality was 60 per cent higher than that of males in the age group upto five years. Today, in a situation where the sex ratio is declining, this 60 per cent higher mortality exists upto 8-9 years among girl children.

Faced with these social circumstances, and now assured of legislation completely banning the use of these tests for sex determination of the foetus, activists belonging to the Forum Against Sex Determination and Sex-Preselection (FASDSP), the umbrella organisation of several groups, have forwarded their demands to the government that would give more teeth to the proposed law. Greater powers, like the one to seize and examine documents must be given to voluntary organisations that make up the Vigilance Committees to ensure that the proposed law is effectively implemented. Moreover, the FASDSP is also demanding that these Vigilance Committees consist of adequate representation from voluntary organisations, doctors and government officials who have powers under the Criminal Procedure Code to ensure concrete results.

The Forum is also asking for the inclusion of all internationally accepted indications and 'exposure to potentially teratogenic chemicals and/or radiations' in the eligibility criteria for prenatal diagnosis. The creation of an all-India supervisory body, like a Technical Expert Committee to issue,

renew and cancel licenses and ensure uniform standards at the places approved for prenatal diagnosis, has also been demanded. Periodic inspection visits by this committee to those centres granted licenses to carry out these tests could act as a monitor.

Since the entire campaign, spanning over five years had exposed the blatant ambivalence of the medical profession on an essential question of medical ethics, the FASDSP is also asking for suitable amendments to the Indian Medical Council Act to enable cancellation of the registration of those doctors found violating this proposed legislation. The Forum argues that the two processes of collection of samples and the testing should be de-linked. The former, that involves a collection of the amniotic fluid in safe and hygienic conditions could be carried out at the medical college level after careful screening of applications. Thereafter the testing must be carried out at genetic counselling laboratories where the testing, with sophisticated machinery need be done. Misuse of ultrasonography for sex determination should also be an offence enough ultrasonography itself must be excluded from the purview of the ban due to its varied application. The government is considering imprisonment and fine to the offenders and the Forum is stressing that women who undergo these tests must not be punished.

It can be clearly seen that the emphasis, at every stage, in the recommendations put by the FASDSP, for the legislation to have any use, is on vigilance. Vigilance that involves a high level of commitment from both volunteers and officials who participate in the process. The limitations of just resting with this legislation cannot be underemphasised. The greatest problem being the blind preference for a male child, in a patriarchal society where male attitudes and values dominate.

Maharashtra and Gujarat, have over the last few years implemented schemes aimed directly at promoting the girl child/children family norm. Felicitation from the state to a family with only girl children, a special green card that procures extra rations, concessions in education apart from an all out publicity campaign have already begun. Moreover, one of the promotion schemes started in Maharashtra depict not merely the single girl child family but portray the woman at the helm, making all relevant decisions concerning health and family. Apart from enthusiastic vigilance from voluntary agencies, commitments of this kind in the state's health policy could make the social impact of this legislation more effective. The aim is to give the woman, from girlhood her rightful place and share in society.

#### Pathetic Attitude of Doctors

More than anything else, the public debate that preceded the legislation reflected as never before the pathetic 'neutrality' of the medical profession on the ethics of the issue. Whereas more 'glamorous' questions like euthanasia draw the most eminent into the pros and cons of the debate, the selective abortion of female foetuses left the top medicos unmoved.

On the contrary, until pushed into a corner on the blatantly embarrassing statistics provided through studies conducted by several organisations, medical practitioners openly said that 'amniocentesis and appendicitis were their bread and butter'. At as much as Rs. 500 per sample taken, even in remote rural areas, amniocentesis for sex determination has become a

lucrative commercial proposition. The number of such centres, with not even minimum standards has proliferated. In Bombay, the capital of Maharashtra the number has gone up from three to at least 20 in the period between 1983 and 1986. The larger of these sex determination clinics perform a minimum of 1,500 amniocentesis tests a year.

The Voluntary Health Association of India (VHAI) has pointed out through a study that the chances of a premature delivery in a woman having undergone amniocentesis are as high as four per cent, and the risk of abortion as high as 1.5 per cent. With these tests normally being conducted in the fourteenth and fifteenth weeks of pregnancy, abortions that follow in the second trimester are inherently dangerous. It need not be mentioned that these risks were either not revealed at all by the doctors performing these tests or, were grossly underplayed. Unless the culpability of the medical profession is assured through the proposed legislation, loopholes that already exist through provisions of the Medical Termination of Pregnancy (MTP) Act that enable a woman to have an abortion, could be exploited while this abhorrent practice continues unabated.

If effective vigilance is not maintained and these tests continue to be available at different centres for sex determination underground, there is no way in which the offence could be detected at the stage at which a woman comes for the medical termination of her pregnancy, that is, abortion. Under the MTP Act, a section provides that a woman can undergo an abortion for 'failure of contraception'. It is being argued that this section could be misused by unscrupulous medical practitioners in league with family members of the woman who have managed a test that reveals the sex of the foetus.

Apart from this, another lacunae exists that can be blatantly used by practitioners to escape the law. This was brought out through a case filed by the Mahila Dakshata Samiti in the Bombay High Court after 21-year old Sunita Chaturvedi, mother of two girls, died as a result of an abortion that followed a sex determination test. The case which came up before the High Court in October 1986 but has lain in cold storage since, cited the victim's husband, Girdhari Chaturvedi and two doctors Dr. Meenaxi Merchant and Dr. Rajani Arya as respondents. Apart from making out a strong case against the misuse of amniocentesis, this pattern that has failed to move legal brains, reveals how section 8 of the MTP Act can be misused by unscrupulous doctors to shield themselves from the consequences of heinous acts.

This section, provides that no suit or other legal proceedings can lie against registered medical practitioners for any damage caused by any action committed 'in good faith'. Abortion followed by amniocentesis, dangerous and fatal though it might be in the second trimester of pregnancy for the woman, can leave a doctor untouched if this section remains. Such lacunae in the law can be misused against whatever limited benefits that the proposed legislation selectively banning these tests might achieve. Social attitude apart, it must be remembered, medical practitioners though now somewhat hedged in with the threat of legislation, are likely to be the main contenders of the law.

Unless an internal code of medical ethics or specific provision in general criminal law hold them accountable, the

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become stronger. In order to promote a particular brand of a drug company, doctors prescribe medicines to their patients, which are either of no use or are patently harmful. The tremendous hold of the drug industry over the health care system in our country, was recently brought to light by the Lentini Commission. Another example of the proliferation of useless and spurious drugs is the fact that more than 20,000 kinds of non-prescription drugs are on sale in the Indian market, most of which are non-essential and about 25 per cent of them spurious. As against this, the WHO has prepared a check list of only 200 essential drugs. Though the medical council is fully aware of the unethical practices of doctors prescribing drugs known to be harmful and useless, why has the council not prosecuted the doctors and more importantly should not the medical council have powers to initiate proceedings against drug companies?

The research establishment, both private and government, also collaborate with drug multinationals in conducting human trials. Human experimentation by the medical community is justified on the ground that such trials are for the benefit of humanity. For example, experimentation by administering injectable contraceptive Net-pen, which has not been proved as a safe drug is being conducted on several thousands of Indian women, who are being used as guinea pigs without their informed consent. These trials are being initiated by the government's family planning programme. The Helsinki Declaration clearly states that no tests should be conducted on human beings unless they are proven to be safe and without obtaining the informed consent of the person on whom the experimentation is to be done. The Net-pen tests are in clear violation of this declaration. The govern-

mental institutions are the most consistent violators of medical ethics and yet the medical council and courts have been hesitant and unwilling to take any action. In the Bhopal case, the government and its research institutions have effectively suppressed all medical information pertaining to the after-effects of MIC, and the treatment to be given to the victims. For example, though the Indian Council of Medical Research (ICMR) prescribed mass detoxification to the victims, by injecting sodium thiosulphate, the medical community in Bhopal ignored this recommendation.

The recent scientific advances in the field of reproduction like amniocentesis, chorion villi biopsy (CVB) are calling into question the philosophy and values of medical ethics. Those techniques which were meant to detect genetic deformities are now being widely used for sex-determination. Not a single doctor has been prosecuted by the medical council.

These are just few of the examples where not only doctors but government institutions have flagrantly violated the various international and national codes. And yet nothing has been done and the medical system continues to devour and maim a large number of people.

The extent to which the medical profession will conform to proper standards of medical care will depend to a large degree on the development of the public's awareness of the issue. The basic rules of social conduct can be ensured only if the public maintains a constant and vigilant eye on the doctors in particular and the functioning of the health care system in general. It is only then that the doctors will be forced to abide by the highest standards of medical practice.

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selective abortion of female foetuses could continue unabated. The callous and blatant attitude of the medical profession towards this question can be illustrated through a front-page advertisement appearing in one of the city's evening papers barely five days after the Maharashtra government's triumphant declaration of intent on January 1. This advertisement read in bold type, "Boy or Girl? Contact clinic." A proposed legislation that will, in all likelihood ban such blatant advertising did not deter the doctor couple offering sex determining facilities. It must not be forgotten that, though pushed into a corner on several occasions, the medical profession refused to take an ethical stand before the government's declaration of bringing in such legislation. Apart from the high level of vigilance, a commitment from an ambivalent medical profession, faced with the loss of quick commercial gains, is a must.

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the groups should utilise the avenues available to participate in the implementation process, in order to expose the hollowness of the bill.

The medical establishment had earlier argued that a law would force female foeticide underground. Now they have, in collaboration with the government, brought a law which can partially keep female foeticide above ground, within the purview of law. There is no alternative but to continue struggle against the medical practice of female foeticide.

This Bill has been passed in the Maharashtra Assembly without any significant amendment in April 1988.

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Edited by Les Levidow

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