CHAPTER: VII

SUMMARY AND CONCLUSION

7.1. INTRODUCTION

This study is underpinned by a concern for the demographic impact of a rapidly declining sex-ratio. This concern had led to a long-lasting campaign by various civil society players against the misuse of medical technologies for sex-determination/sex selective abortions. Initiated in the 1980s, when census data analysis by various scholars/activists revealed the imminent demographic threat of sex determination/sex selective abortion, the campaign has moved along a difficult journey: for apart from the logistics of planning and sustaining a campaign for more than three decades, there was a need to consistently interrogate the language of their discourse. This was primarily because the discourse framing sex-determination tests/sex selective tests debate could well impinge on women's reproductive rights and curtail women's access to safe abortion.

7.1.1. The Study Focus

Set against the backdrop of these concerns, the study examined the role of the campaign against sex-determination and sex-selection in Maharashtra in addressing the issue of declining sex ratio and its impact on women's right to abortion. It documented the evolution of the campaign through its various milestones: for the campaign which began in order to raise public outcry against sex-selection and ensure legal framework for action against the misuse of technology, also needed to ensure the effective implementation of the PC-PNDT Act. It then analyzed the reasons why the legal enactment banning sex determination tests under the PC-PNDT Act did not effectively prevent the continued decline in sex-determination tests. Finally, the study highlighted the legal anomalies caused by two different laws framing women's reproductive bodies. The crux of the problem is that the PC-PNDT Act seeking to ban sex determination/sex selective abortions impinges on women's right to safe abortion. This is a serious concern particularly in a country that has one of the worst records of illegal abortions in the world. Studies have indicated that the number of induced abortions are much higher than the official estimates of 0.6 million. According to these studies only 10 per cent for the figures on induced abortions in India are by qualified professionals (Khan M.E. and Barge N. Kumar et al

1990). The real concern is that the number of illegal abortions could go up if women's right to reproductive controls are interfered with.

7.1.2. Premise of the Study

The study was premised on the recognition**,** that the decline in sex ratio (particularly child sex ratio) was an expression of the status of women in the society and that it was an indicator of the country's lopsided social development. The serious demographic implications of this decline were first placed on the public domain by activists and scholars in the 1980s. They criticized the rather facile arguments put forth by certain sections of the medical fraternity that sex determination tests enabled families to decide not only the size of their families, but also the desired sex of their children. It was therefore a matter of personal choice. Pointing to the long-term effects of the demographic imbalance, these activists and scholars struggled to ensure legal restrictions on sex-determination tests. (Sen 1992; NIPCCD 2008; Kaur 2013).

The study draws its inferences from works of researchers Menon 1994; Krisnaji 2002; Das 2007; Choudhry 2003; Mahapatra 2015 to argue that, though the decline in sex ratio is a more recent phenomenon, the secondary status of women in the society is a long standing problem in the country. Women in India have been subjected to violence and discrimination; deprived of the benefits healthcare and educational facilities. Women also had limited legal protections in a patriarchal system. These scholars have also indicated that the social and legal changes that have occurred in India in the recent past have benefited only women from a certain socio-economic strata.

One of the main cultural reasons for the poor status of women has been the deep-rooted son preference and daughter aversion that prevails in Indian society. This preference for sons is no doubt evident in the adverse sex ratio that has existed since 1901. But as studies have pointed out the situation has been aggravated with the easy access to medical technologies that can determine sex determination (Mazumdar 1994; George 2000; Duggal 2004; Duggal & Contractor 2010). The correlation made by these scholars of the link between the declining sex ratio (particularly child sex ratio) and the misuse of medical technologies to determine the sex of the child was the starting point of the campaign. However this much needed intervention by civil society to prevent the demographic disaster, inadvertently impacted upon women's right to safe abortions.

It in essences enhances surveillance of women's reproductive bodies by the state and other civil society groups to the detriment of women's struggles for gender equality.

7.1.3. The Study Area

This study was restricted to Maharashtra. The reasons why the focus of this study was limited to Maharashtra were as follows: 1) Despite being a progressive state, Maharashtra had witnessed a rapid decline in sex in the 1971 and 1981 census; and 2) Although the public outcry against sex determination was first raised in New Delhi, the campaign against sex-determination took concrete shape in Maharashtra. It was due to the efforts of women's groups/health activists in Maharashtra that the first break-through in the law was achieved, through the passage of the PNDT Act (1994) by the Maharashtra Legislative Assembly. Subsequently the campaign ensured that the various loopholes in the PC-PNDT Act (2002) were plugged through Amendments in the central Act passed in 2002.

This study, however, does not limit itself to documenting the early history of the campaign and end with the passage of the PC-PNDT Act (2002). It has documented the initiatives by civil society to ensure the effective implementation of the Act through a study of 158 cases filed with the Appropriate Authorities in Maharashtra. Through the analysis of these cases this study seeks to find the loopholes in the PC-PNDT Act that enabled medical facilities to circumvent the restrictions placed by the law. The study also has addressed the question on how the PC-PNDT Act restricts women's right to abortion. Therefore what are the contradictions in the laws framing women's reproductive bodies in India, i.e. the Medical Termination of Pregnancy Act (1971) and the PC-PNDT Act (2002)? These contradictions need to be addressed because it is noticed that since the passage of the PC-PNDT Act, there has been a decline in women's access to safe abortions and an inverse rise in illegal abortions (Contractor 2012; Dalvi 2015).

7.2. FRAMEWORK OF THE STUDY

The study was premised on the co-relation drawn by scholars on the long-term demographic impact of the new reproductive technologies on women's reproductive rights. In India, the discourse on new reproductive technologies and its impact of the society and demography began in the early 1970s when genetic tests were experimented for the first time at the All India Institute of Medical Sciences. The Government of India had permitted the All India

Institute of Medical Sciences to conduct research on reproductive biology since the 1960s. This meant thwt the Institute received both national and international grants to conduct research into reproductive technologies. The resultant research into human genetics using amniocentesis tests was first conducted by the Department of Human Cytogenetics. Although the testing was intended to determine genetic abnormalities, its capacity to predict the sex of the foetus soon became widely known. By 1975, it was apparent that the tests were being conducted not so much to detect genetic abnormalities but rather as a tool for sex determination, leading to sex selective abortions (Mazumdar 1994). Such tests soon became a major money spinner for the medical facilities since it offered opportunities for families wanting a male child to ensure the birth of sons and eliminate chances of the birth of daughters. The commercialization of sex determination tests followed by sex selective abortions can be attributed to the changing policies governing the health care sector in India since the 1970s which allowed private medical practice.

Civil society organizations were the first in the country to notice that technology was being misused for sex-selection purposes. The gravity of the situation motivated them to organize themselves, include people from various fields of expertise and expand their base in different states. The campaign against sex determination was instrumental in convincing the government to enact a legislation banning the use of technology for sex selection.

7.2.1. **The Aim of the Study**

Apart from documenting a campaign that confronted the misuse of medical technologies for sex determination, the aim of the study was to highlight the impact of the campaign on women's right to abortion. It has dwelled upon the dilemmas and debates regarding abortion and sex selection from perspective of ensuring women's reproductive. The study located within the demographic trends evident in the various Census reports was conducted through the use of qualitative research methods. Information regarding the role of the campaign in shaping the abortion and sex selection discourse was collected using in-depth interviews, and scrutiny of case records filed under the PC-PNDT Act with the Appropriate Authorities. This has helped us in understand the shortcomings in the implementation mechanisms that prevent compliance with the law. Through this analysis the study sought to deepen our understanding of the difficulty of ensuring women's reproductive rights under the surveillance of the criminal justice system. It indicates that the state agencies are often complicit in violation of the provisions of the Act. It is

because of the many omission by the state regarding the implementation procedure that often the erring medical professionals escape punishment for the violation of the law.

7.3. REVIEW OF LITERATURE

The framing of this study was undertaken through a critical review of literature. The review began through a historical overview of the reproductive policies since the early 20th century. Subsequently examining the shifting frames within which women's reproductive concerns were viewed in state policies, the review examined studies that discuss women's access to abortion in India. The indications were that despite the seemingly liberal rights to abortion that Indian women have under the MTP Act, the number of illegal abortions performed by non-qualified doctors, were phenomenal. This can be assumed from the poor health care facilities that exist in India and the lack of access that a number of people have to health care facilities. Therefore it is apparent that Indian women have poor access to safe abortions. It can also be conjectured that the official estimates of 0.6 million abortions every year is an underreporting. The ground reality is that the actual number of abortions performed every year is much higher (Jesani and Iyer 1995; Johnston and Hill, 1996; Ganatra, Hirve, Walawalkar, Garda and Rao, 2000; Hirve 2003).

7.3.1. The Right to Abortion

The review indicated that women's right to abortion was legally a deeply contested area. Women in many different countries and cultures do not enjoy the right to abortion on the grounds of right to life of the foetus (Mohr 1978; The Alan Guttmacher Institute 1999; Gold 2003; David 2005). It been relatively easy for Indian women to get the right to abortion, albeit with restrictions on this right. Studies have indicated that the MTP Act was dictated by the population control of the state, rather than a recognition of women's right to reproductive autonomy (R. Chhabra and S.C. Nuna 1994; Gupte 1997; Phadke 1998; Ganatra 2000; Ganatra 2001; Ganatra 2002, Hirve 2003; Malhotra 2003)

7.3.2. Debating Women's Reproductive Rights

The review then sought to locate these concerns within the debates on women's reproductive bodies. It indicated that the debates around women's reproductive bodies can be traced to the rise of Malthusian Theory of population explosion. This theory was applied to the Indian context by

the colonial state to justify the high mortality caused by frequent famines in India. While there was no doubt that the frequent famines in India was caused by the exploitative colonial agriculture policy of opening vast tracts of land to cash crops and refusal to lower food prices, the Malthusian theory of population explosion was used to justify the need to control population (Rutherford 1987; James 2008; Gupta, 2012). The roots of the population control policies of the post-colonial state can be traced to the colonial state policies of population control. This is not to imply that eugenics was the only basis on which the entire edifice of women's reproductive rights was built. The various feminist organizations in India since the early 20th century also struggled for women's right to sexuality and their reproductive rights. Many of the doyens of the first wave feminist consciousness in India—such as Lady Danavathi Rama Rau and Avabai Wadia-- were also in the forefronts of the struggle for women's reproductive rights. It is within these streams that women of social thought that we need to locate women's right to abortion. By and large the idea of reproductive rights was not the major thrust area of the women's movement, particularly in the early phase of the 20th century. It was a right given to Indian women within the framework of national population policies after Independence. Indian women's groups raised the question of women's reproductive rights in the context of the new reproductive technologies (Shakti 1987; AIDWA 1994; Nnada 2004; Mukherji and Nayak 2009; Narayanan 2010).

7.3.2. Changing Population Policies

The review indicated the changing population policies and the influences that shaped these policies. It indicated that the justification for coercive population control measures introduced during the Emergency could be directly traced to the uncritical acceptance of Malthusian theories (Sen 1994; Caldwell 1998; Sen and Iyer 2002). The negative impact of compulsory male sterilization on the election prospects of the Congress party after the Emergency meant that the focus of the population control polices was shifted to women. In the absence of risk-proof safe contraceptives, abortion became a measure of population control (Gupte, Bandewar and Pisal 1997; Ganatra 2000; George 2003). The debate around sex-selective abortions is located within the theoretical framework that saw abortion as a method of population control. During the 1980s, when the issue of sex selective abortions was first foregrounded by women's groups, the

argument put forward by those who opposed any legal restriction on sex selective abortion was that families must have the right plan the family the size and profile of their families.

7.3.4. **The Use of Medical Technologies for Sex Determination**

The review also indicated the co-relation that exists between the advances in medical technologies and the rapid change in sex ratio in the country. It indicated that although India always had an adverse sex ratio, the drastic dip in sex ratio became apparent in the 1971 and the 1981 census when medical technologies that could predict the sex of the foetus became available (Mazumdar 1994; Saheli 2006; Purewal 2010; Duggal and Contractor 2010).

7.3.5. Reasons for Sex Selective Abortions

The review indicates that the question of sex selective abortions should be located within the prevailing gender violence under patriarchy. Gender violence has a dual component to it: Along with the overt expressions of gender violence through rape, sexual abuse and wife beating, gender violence is embedded in the social structure that denies women their rights and entitlements. Sex selection indicates one aspect of the structural violence. No doubt it is a phenomenon found in contemporary society, but it has a long historical precedent, embedded in the socio-cultural fabric of society. Female infanticide was among the many forms of discrimination and violence that was inflicted upon women. This practice was first incident which was recorded was in 1789, when Jonathan Duncan, detected the practice in Rajput Clan (Sarvanan 2002). In some states the practice continued even after Independence. These socio-cultural practices desensitized people to the issue of sex selective abortions. In fact the introduction of sex determination/sex selective abortions were seen as the lesser evil compared to female infanticide.

Scholars have co-related cultural practices of dowry and endogamous marriages with the prevalence of sex selective abortions (Karat and George 2002). The evils of dowry was first placed on the centre stage by the new women's movement, which pointed to the growing number of instances of "bride burning." (Srinivas 1984; Basu 2005; Jain and Banerjee 2000; Oldenburg 2002; Sunder Rajan 2003; AIDWA 2003; Palriwala 2009).

The practice of sex selection and its inextricable link with dowry becomes evident from the prominent advertisements for sex selective abortions in the 1980s. These advertisements openly called stated "Rs. 500 now or Rs. 50,000 later."It was a call to families saying that it is better to spend Rs. 500 now and get a sex determination test done than pay 50, 000 later as dowry. The analysis of campaign literature indicates the campaign leaders were aware that the cultural prevalence of dowry as the reason for sex selective abortions. This link has also been established through research studies (Srivats 1984; Bardhan 1974, 1982). The second reason for sex selective abortions was the prevalence of endogamous marriages with an underlying assumption that the status of the bride-giving families would be enhanced by the eligibility of the sons-in-law. The difficulty of finding such eligible sons-in-law was often reasons for daughter aversion within families. Dowry was often inducement to eligible bridegrooms to accept their daughters in marriage. The by-product of such a cultural set-up was the popularity of sex selective abortions. The issue received attention when the child sex ratio declined significantly. The data from Census of India and the National Family Health Survey provided evidence to the decline (Census 1971 to 2011). As a response to the decline in sex ratio and the misuse of technology for sex determination purposes, the civil society organizations and concerned individuals launched a campaign to create awareness about the issue and demand for legislation to combat this. Finally the Government took note of the declining sex ratio and the demands of the campaign and enacted a legislation to prevent the misuse of technology.

7.3.6. Limitations of the Literature Reviewed

The extensive review of literature established the link between women's secondary status and sex selective abortions. Studies also showed the link declining sex ratio and the easy availability of sex determination tests. It is also possible to find studies that have pointed the ways by which women's reproductive rights were framed by population control policies. There were however no in-depth study on the campaign against sex determination/sex selective abortions, an important part of contemporary history, especially in Maharashtra. The campaign which began in the 1980s is one of the longest campaigns in contemporary history: Over a period of time the nature of the campaign has changed and newer actors have entered the arena to work against sex determination/sex selective abortions. While in the early phase of the campaign the aim of civil society organizations was to raise awareness and ensure the formation

of a suitable law to deter the misuse of technologies, in the latter phase the aim has been to monitor the implementation of the law. This study then address the ways by which PC-PNDT Act inadvertently curtails women's right to abortion under the MTP Act.

7.4. RESEARCH METHODOLOGY

The investigation of the research question was on the basis of qualitative research methods. It examined the documentation available with the NGOs on the issue of sex determination/ selection, and reviewed the information, education and communication material developed by the campaign. It also interviewed the key players who spearheaded the campaign and studied the cases filed under the PC-PNDT Act in Maharashtra. It presents a historical narrative about the evolution of the campaign in Maharashtra and the enactment of the PNDT Act 1994. The story however does not stop there. It elaborates on the other struggles conducted in Maharashtra to effect suitable modifications of the law on the basis of ground level experiences of the NGOs in monitoring the implementation of the law. The importance of this perspective from Maharashtra is because the law formulated in Maharashtra against sex determination was the model on which other states enacted similar laws in their respective states. It was also the model for the enactment of the PC-PNDT Act by the Centre.

Apart from tracing the growth and development of the campaign through the study of intervention by different organizations engaged in the campaign, this study also undertook a detailed analysis of the cases filed under the PC-PNDT Act. The objective was to identify the gaps and challenges which surround the implementation of the Act and prevent the misuse of technology for sex selection. An effort has been made to study the case files to understand the lacunas in the monitoring and supervision of the implementation of Act by the Appropriate Authorities. The case papers (comprising the initial documentation of the medical facilities and the various charge-sheets filled in the Courts) were analysed, using the Act and the various government amendments/regulations in this matter as benchmark.

7.5. RESEARCH INVESTIGATION

This study investigated three components of the research question: It began by analyzing the implementation of the Implementation of the PC-PNDT Act through the study of 158 cases filed with the Appropriate Authorities (chapter IV). This analysis was not restricted to a textual

analysis; it included an investigation on the role of the implementing agencies and civil society organizations to ensure effective implementation to Act. The study then documented the three decade history of a campaign against sex determination/sex selective abortions from 1975-2015 (Chapter V) and then concluded with an examination of the dilemma on women's reproductive rights posed by the MTP Act and the PC-PNDT Act. For the former recognizes women's right to determine her reproductive body and the latter seeks to restrict it (chapter VI).

7.5.1. Investigation of Cases filed under the PC-PNDT Act

The analysis of all the select cases filed under the PC-PNDT Act showed the many gaps in the implementation of the Act. As per the Act, the cases are filed with the Appropriate Authorities in each district who is entrusted with the responsibility of monitoring the implementation of the Act. A total of 158 filed since 2003 under the provisions of the Act have been examined. The findings indicate the association between decline in child sex ratio, availability of ultrasound facilities with the number of cases filed/pending with the Appropriate Authorities. The results of this analysis corroborate the findings of a study conducted by the Gokhale Institute of Politics and Economics, Pune which showed that districts with more than 100 sonography centres had a distinctly lower child sex ratio than districts with less than 100 sonography centres (Mule and Natarajan 2005).

The study also indicated the violations of the provisions of the Act apparent in the cases filed before the Appropriate Authorities. A more in-depth analysis on fifteen well-documented cases available with the Appropriate Authorities of Mumbai, Satara, Raigarh, Kalyan and Navi Mumbai showed that those violating the provisions of the Act are guilty of multiple violations. This analysis showed that there are 158 cases filed before the Appropriate Authorities from 2003-2015. Out of this total number only 47 cases have been resolved either as convictions or acquittals and the verdicts in 111 are still pending. While there were indication of multiple violations of the Act, the charges filed cited only one or two infringements. For instance, 40 of the medical facilities were charged for non-registration of the facility; 70 were charged for non-maintenance of mandatory records; 29 cases were sting operations conducted by NGOs with the help of pregnant women sent as decoys to a facility known to conduct sex determination tests; 9 facilities/providers were held guilty for advertising the tests and only 5 cases have been registered under other charges.

This indicated various instances of procedural lapses on the part of the Appropriate Authority in the implementation of the Act. It indicated that both the implementation of the Act and the judicial process to ensure compliance with the Act were inadequate. The reasons why the Act fails to be an effective deterrent against the misuse of medical technologies for sex determination were as follows: 1) The lack of political will to ensure effective monitoring; 2) unregulated private medical sector; 3) the nexus between medical professionals and some Appropriate Authorities that prevents effectively filing the cases.

7.5.2. The Campaign against Sex Determination/Sex Selection

The campaign spans three decades of contemporary history from 1975-2015. The campaign was launched as a response to the genetic research studies carried out by AIIMS using medical technologies for detection of genetic abnormalities. However, the tests were clandestinely used for sex determination. Though the tests were eventually banned at AIIMS, the private medical sector took it and soon the tests were available in other parts of India.

The first stage of the campaign was approximately from 1975 to 2002. This period coincided with the growth of the Indian women's movement and its efforts to highlight some of the glaring instances of gender violence particularly in the urban middle class families. For instance the space of "bride burning" incidents was often recorded as accidental deaths. These were actually instances of suicides or murder committed after long episodes of violence, harassment and torture. Since they happened behind the closed doors and sanctity of homes, the cases were never investigated. Women activities and autonomous women's organizations gathered evidence of cases of violence due to dowry and other forms of discrimination. This led to fundamental changes in medico-criminal procedures and the law (Mazumdar 1985).

The campaign against sex determination positioned within the broader struggles of the new women's movement against gender-violence. Though the campaign was around the issue of gender based violence, it raised public awareness on issues of women's rights and equality with a particular focus on crimes against women. The campaign was successful in raising the government's sensitivities on issues of dowry, domestic violence and sex selection. In fact most of the members of the campaign on sex determination were involved in the health or women's movement. So the campaign against the misuse of technology to eliminate the girl child was seen

as one more expression of gender specific violence in a patriarchal society. Since the first instance of sex determination tests were noticed in Delhi, the campaign began their under the leadership of CWDS.

Mumbai was the next site where the campaign was active and eventually the most effective. Feminists, health and human rights activists, lawyers, persons involved in people's science movement launched the Forum against Sex Determination and Sex Pre-selection. The FADSP had a much broader mandate, included the entire spectrum of new reproductive technologies and linked sex selection to boarder issue of gender based violence and demanded for legal redressal for the issue. The campaign was successful in mobilizing the community, social activists, a section of medical professionals and demanded government action.

The second stage of the campaign was 2002 to 2015 and coincided with the amendment of the Act to effective implementation. By the time the central Act was passed in 1994, the Maharashtra act was almost a decade old. People of the state and members of the campaign were frustrated with the ineffective Act. By then the technology had also progressed and pre-conception sex selection was possible. Troubled with the continuing decline in sex ratios, and the advent of new technology which enabled pre-conception sex selection, CEHAT, MASUM and Sabu George, filled public interest litigation in the Supreme Court in 2000 and demanded for an amendment. In 2002, the amendments to the Act were also passed. However, the Act suffered on account of lack of political and poor implementation on the ground. There was marginal impact on sex ratio figures. Considering the change in the context, the civil society organizations had to re-strategize. An important force of resistance was put up by the private medical sector that was anyways averse to regulation of any kind. It was also the time a lot of Non-Government organizations joined the movement against sex selection.

7.5.3. Dilemma in the Abortion and Sex Selection Debates

An attempt was also made to examine the contradictions that arise in the various struggles for women's reproductive freedom. On the one hand women's groups have asked for the right to determine their reproductive bodies and yet the need of the hour is to curtail sex determination. While Indian women have had abortion rights, these rights are subjected to the socio-cultural and

political context in which they can exercise their rights. Moreover, women's reproductive rights and controls have been governed by the state and its regulatory bodies.

Control over women's bodies and sexuality is a crucial aspect of reproductive freedom. Hence, the women's movement articulated the range of situations in which patriarchal control over women's bodies expresses itself: from a husband forcing his wife to have sex to a government forcing a woman to undergo sterilization. When a woman does not have bodily integrity, when her body is invaded against her will, when her choices are determined by social norms rather than personal preference she is unlikely to be able to exercise her choices in other aspects of her life. The women's movement attempted to reclaim women's control over their own fertility, and demand spaces for her to exercise her autonomy and decision making power. This has contributed towards women having access to contraception and abortion facilities. However, these rights are not available to them unconditionally. In the Indian context while women have the right to seek abortions but these are to be exercised under strict supervision by the family and medical sector. The PC-PNDT Act was enacted to promote women's rights and prevent sex selection, but in reality it became another tool to enhance state vigilance over women's bodies. Women's right to abortion has been affected by this.

7.6. **FINDINGS**

The discussion here highlights the following key findings: The effectiveness of the campaign; the limitations of the implementation programme; the nexus between various stakeholder making the law ineffective; impact of new reproductive technologies on women reproductive bodies; and finally the effect of the PC-PNDT Act on women's right to abortion.

7.6.1. Effectiveness of the Campaign

The effectiveness of the campaign can be determined by some of the following changes noted in comparison with the early days of the struggle.

1) Since the early days when organizations like FASD, MASUM AND Cehat, raised the question of misuse of medical technologies, there have been many more entrants who have enriched the discourse on sex determination and sex selective abortions, through their campaign literature and research studies. A lot of film and media personalities participated in campaigning on the issue.

2) There is also significant change in campaign strategies. In the early days the campaign strategies involved street-corner meetings and public protest marches. Since then the strategies have become more sophisticated and many professional agencies have taken up the issue. This was possible because well-funded organizations have taken up the issue and generated immense publicity on the issue. A campaign like *Beti Bachao* had the involvement of the government and civil society organizations.

3) There is significant awareness in society as well as the medical fraternity about the evils of sex determination/sex selective abortions. Associations such as FOGSI and IMA passing resolutions to curb the misuse.

4) The campaign strategies of the NGOs also involved the monitoring of the implementation of the Act. The organizations have been involved either as members of the advisory/supervisory committee constituted to aid and advice the Appropriate Authority or involved in the process of fielding decoys. In the entire process the organizations have played an active role in demanding state accountability in the implementation of the Act

7.6.2. Limitations of the Implementation Process

Like all other social legislations, the PC-PNDT Act also suffers in the implementation stage. Initially the Act had no teeth and had no deterrent effect on the medical fraternity. It was only because of the vigilance of civil society that further amendments/regulations have been introduced by the state to make the law more effective. The limitations of the implementation process are as follows:

1. Poor monitoring of the ultrasound clinics, delayed registration process, delays in action against complaints, long drawn and poor legal redressal and minimal or no punishment against the erring practitioners.

2. The effective functioning of the PC-PNDT Act is possible if there are clear guidelines on when the use of the medical facility is permissible and what kinds of records need to be maintained by doctor/medical facilities. Clarity record keeping would go a long way to prevent the harassment of doctors and service providers for minor infringement of the law.

3. It is very difficult to find out if the doctor has violated the law and revealed the sex of the child because the relationship between the doctor and patient is a confidential relationship. It is therefore not always possible to find out if the doctor has violated the law by installing monitoring mechanism. The suspicion that a doctor has committed sex determination/sex selective abortions is therefore hard to prove.

4. There is also the difficulty of regulating medical facilities under the PC-PNDT Act since the medical profession in India is not well regulated. No doubt some efforts in the direction

have been made through Clinical Establishment Act and the Nursing Home Regulations Act. But no serious effort has been made to regulate private medical practice.

5. The law in its initial form as the PNDT Act sought to restrict sex determination of the foetus. But the advances in technologies made it possible to pre-select the sex of the child through Assisted Reproductive Technologies. Therefore questioning the effectiveness of the Act in its original form Dr. Sabu George and MASUM filed a PIL seeking amendments to the Act. The PC-PNDT Act of 2002 no doubt addresses this possibility. But how would it be possible to monitor the possibilities of sex determination tests conducted through ART.

6. Act has only made it illegal to advertise any form or place of sex selection. Yet because of poor regulations companies from USA and Canada are able to advertise "home kits" to know the sex of the foetus. The misuse of such home kits are difficult to prevent.

7. The Act gives undue importance to "ultrasonography" as the method of sex selection and seeks to regulate the use of such machines. It does not adequately address the problem of preselection (Jaising, Sathyamala and Basu 2002).

8. The use of ultrasound is a routine pregnancy monitoring technique, essential for safe child birth. Any suspicion of its misuse would have a limited impact. The complexity of the medical technology and its multiple uses for general reproductive health and antenatal care makes it difficult to monitor the misuse of technology for sex selection.

7.6.3. Nexus between Doctors, Politicians and Implementing Authorities

Innumerable social and economic issues impair the process of implementation of the PCPNDT act. The social power, influence and status accorded medical practitioners, provides them the immunity to be under any kind of vigil or scanner. Medical practice is still considered a noble profession in India and it is difficult to prove that they could be indulging in any kind of illegal activity. The commercialization of medical practice which has led to health care being treated as a commodity. In the absence of professional ethics, medical practitioners use sex selection technology like any other medical facility to earn profits. Even if the implementers are vigilant and a medical practitioner is caught violating the Act, because of their proximity to politicians they manipulate their way through. The large number of pending cases and minimal punishment given to those found guilty is an evidence of that.

7.6.4. New Reproductive Technologies and Women in India

The new reproductive technologies such as IVF pose a threat to the problem of sex determination. These technologies are considered to be boons for childless Indian couples and

their marriages. With the help of these technologies childless couples could also experiences the joys of biological parenting. These technologies have opened the flood gates for sex pre-selection. Instead of conducting sex determination tests, post conception, IVF has made it possible to fertilize eggs and chromosomes of a desired sex. Though the amended PC-PNDT Act, covers pre-conception technologies, the sheer logistical challenges of monitoring make it impossible to show that a particular IVF was deliberately gender selective.

7.6.5. Effect of the PC-PNDT Act on Women's Rights to Safe Abortion

The two Acts in question, PC-PNDT Act and The MTP Act have their uses in their respective domains. While the PC-PNDT Act is primarily focused on prevention of misuse of technology for sex selection/sex determination testing — naming the techniques, determining where pre-natal diagnostics could be used, who can conduct them as well as the procedural aspects of registration, record maintenance and, finally, provisions for inspection by state appointed bodies could be a logistic nightmare. Similarly the MTP specifies the conditions under which abortion can be sought from designated facilities. The review of the PC-PNDT Act shows that, the Act restricts itself on the use of technology for sex determination; it does not extend itself to talk about the abortion that follows the sex detection process. The MTP Act is also a standalone act and does not intrude into the PC-PNDT Act.

Along with a difference in the focus, the two Acts also have different structure for implementation. The MTP cell and the PC-PNDT cell are independently managed by the government health machinery. So in theory, there is no overlap between the two Acts. However, the experience of implementing the Acts are different. Field level experiences show that among the implementing authorities there is no clarity about the domains and boundaries of both the Acts; hence one seems to impact the other. According to the district-level data available on abortions, there has been a steep decline in the proportion of abortions conducted in registered medical facilities. On an average the decline has been by around 20-25 per cent in most of the districts.

The reason behind this decline is that women are being denied access to abortion services because of the apprehension of sex-selective abortions. Since the sex of the foetus can be determined by ultra-sonography after 12 weeks, it is often assumed that all second trimester

abortions are sex selective in nature. If women continue to need abortion and the providers and facilities behave in a hostile manner, then women will resort to unsafe and illegal facilities. The bigger victims of this situation will be the most vulnerable women who are poor, uneducated, from the rural areas and minors. There are enough field level evidences where women who are subjected to extreme situations often access abortion services at the cost of their health.

Restricting abortions has only minimally impacted the sex ratio. Actually there are several other sex-determination (including pre-conception) techniques which enable pre-birth sex detection and selection even before 10 weeks. Hence denying access to abortion or limiting the time-frame has barely any impact on sex selection. In some states the implementing authorities' started tracking the pregnant women. The only major impact was the shift of focus, from the doctor to the pregnant woman. There was a case in Punjab where Auxiliary Nurse Midwives (ANMs) were made to track women who have had one or two daughters (Nanda 2010). However, report of improved CSR in Punjab, according to Census 2011, made the government limit efforts to limit efforts at the implementation of the Act and withdrawal of donor support to awareness campaigns.

Similarly in a campaign launched by the then Hyderabad collector, Krishna Kumar called 'Nawanshahr campaign' NGOs were involved in collecting data on the registration of births via medical records and subsequent follow up. Software programs and MIS were specially developed to track pregnancies over the course of the first trimester, intruding into the woman's privacy. In Maharashtra there was a move to introduce a tracking device within ultrasound machines called the 'silent observer', which would enable recording of ultrasound images which could then be used by the state for monitoring purposes.

In addition to this the Government had commissioned a study to evaluate various aspects of this Information and Communication Technologies (ICT) led initiative in Kolhapur district. The study findings highlight that there were no significant changes in the Sex Ratio at Birth even after a year of the initiative. The maximum impact could have been in creating fear in the minds of sonologists that they are being watched. However, neither the technology was error free nor the implementing authorities took any action based on the evidence collected through this process (State Health Systems Resource 2012).

7.6.6. Impact of the Campaign on Women's Right to Abortion

It was observed that the most significant way in which the campaign against sex selection impacted women's rights was through its anti- abortion language and terminology. In order to be emphatic and forceful in touching the emotions of people, often the campaign used a strong anti-abortion language seriousness of the issue, often unintentionally. The terms used namely- 'femicide' 'foeticide' though intended to be used for sex selection had a strong anti-abortion undertone.

Some of the terminology used in Marathi and Hindi, such as 'bhrunhatya', 'kanya bhrunhatya' have been widely used in spite of being anti-abortion in nature. These terms mean that a girl child is being killed in the womb. It goes to signify that killing a girl child is an "evil" and that by killing a gild child an evil act is being committed. Radio jingles and Television advertisements which had the unborn foetus crying to be born and calling out to the mother not to kill her had very damaging effects. Though these kinds of campaign materials grabbed eye balls they were detrimental in the long run. They contributed to negative messaging and sensationalizing the issue without getting into the root cause. The role of media in over exposing the visuals of aborted and disposed of foetus, helped in creating public opinion against abortion. Messages targeted towards mothers made them villains while in reality they were actually the victims of the patriarchal society. Using this kind of terminology and messaging definitely helped in sensationalizing the issue but also had a shock value. This level of messaging does not take into account the position of women in Indian society and son preference rooted in patriarchy.

7.7. CONCLUSION

Imbalanced sex ratios at birth not only reflect demographic maladjustment but also about the social realities. In most cases it is a reflection of strong patriarchal values which allows gender discrimination against girls and women to persist. Discrimination against girls and women to produce sons questions the fundamentals of equality accorded to both the genders in the society. The traditional values of son preference have been facilitated in the modern times by increasing availability of technologies such as amniocentesis and ultrasonography which has practically allowed more male children to be born. However, this in itself is not the root cause of the problem and there is a more deep-rooted practice of gender based discrimination which is the

underlying cause. While governments and civil society organisations have endeavored to curb or disallow the use of such technologies, experience at the ground level shows that legal restrictions alone without broader social policies to transform deep-rooted social norms which negatively influence the reproductive rights of women have limited chances. It is imperative that medical and other health-related technologies should be regulated to ensure that they are not misused and practiced as per the provisions of the law. In this professional associations and civil society organizations have to play the crucial role of self-regulation and monitoring respectively. The problem of gender-biased sex selection will necessitate foremost commitment and sustained efforts by governments, civil society, international agencies and all others working towards the goal of gender equality. A comprehensive plan involving all stakeholders which creates a positive atmosphere where women can exercise their reproductive rights and avail safe and legal abortion facilities is absolutely essential. This must be combined with the use of non-judgmental and non-coercive mass-media strategies and other social measures to encourage behavior change. Imbalanced sex ratios are an unacceptable manifestation of gender discrimination against girls and women and a violation of their human rights.

7.8. RECCOMENDATIONS

Though the study has a limited focus of looking at the role of the campaign against sex selection and the issue of declining sex ratio in the context of women's right to abortion, the larger context of political economy of health care which impacts women's reproductive rights needs to be addressed. A narrow campaign against sex selection will have limited impact if it is not in conjunction with campaigns against dowry and domestic violence, or the trafficking of women, or the campaigns on child rights and of course gender equity. In addition, there are macro issues such as, privatization of health care, largely technology driven health care system, unregulated private health care system and withdrawal of the state from public health care also have a bearing on the issue. It is also important to note that any campaign on this issue which focuses only on the supply side, or only the demand side or only the implementation side will not have the desired outcome.

The other issue is with regard to abortion. The views on abortion are completely polarized with some people believing in pro-life and others believing in uncontested right to abortion. Hence there is a need for the campaign against sex selection and advocates of abortion rights to arrive at a common minimum ideology which is in the best interest of women and located in the socio-political realities of the country.

Along with the above issues, the implementation of PC-PNDT Act should be carried out with utmost seriousness. Political will and a coordinated effort between the It is true that there the Central Supervisory Body, the National Inspection and Monitoring Committee at the Centre as well as the National Support and Monitoring Cell (which is a nongovernment cell appointed in consultation with the Government) the State Supervisory Boards is central to the implementation process. Networking and capacity building of all stakeholders including the medical professionals, government officials, communities, civil society organizations, media and communication groups, judges and public prosecutors, will be a significant set in this direction.

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