

CHAPTER 7

SEX SELECTIVE ABORTION AND VIOLENCE AGAINST WOMEN

Sex selective abortion has been described as the ultimate act of violence against women. The reasons for making such a statement are evident. The numbers of women are falling and the phenomenon of 'disappearing girls' is working at an alarming rate. If this had happened in the context of an identifiable ethnic group, the world would have screamed 'genocide'. Disappearing women however, don't seem to raise the same kind of concern.

Many don't even consider the act to be violence against women. For those who do, such violence is intrinsically linked to abortion and then of course it gets translated into abortion against an unborn child and not into violence against women. How far is sex selection violence against women as far as future unborn generations are concerned?

Sex selection often is a result of many pressures subtle and otherwise on mothers. How far have these pressures been recognized? Is this violence against women and if so what has been done about it?

Violence against women can be looked at from another angle. Assuming a low sex ratio continues, how will it impact violence against women? This is probably the most controversial issue discussed in this chapter. There are two opposing views- one view which holds that a scarcity of women will lead to women possessing a greater value and lead to their being in a better bargaining position. The other view is that the commodification of women would increase and that their choice of roles would become further limited.

The example of China is also taken. China is facing an acute shortage of adult women today. This has impacted violence against women quite adversely. Crimes against women have gone up. There are also concerns that other crimes may also

go up as a result. How far has this been of concern in China and how are they tackling this fallout of their one child policy will be seen.

The research question which is partly dealt with in this Chapter is-

1. Is sex selection a social problem which justifies legal intervention?

Whether violence against women which is already being done or in the future may be done against women would justify legal intervention is seen. In this Chapter legal intervention would mean not just a law on sex selection, but also legislation or policy to counter effects of the falling sex ratio as well as the adverse impact a law on sex selection could have.

Guttentag and Secord (1983) describe the effects of imbalanced sex ratios on *dyadic power* in interpersonal relationships between men and women. They contend that members of the sex that is in short supply are less dependent on their partners because a greater number of alternative relationships are available to them. Should they become dissatisfied with their current partners, they can more easily form relationships with other members of the opposite sex. In contrast, members of the sex that is in relative oversupply are in a dependent position vis-à-vis their opposite-sex partners because there are fewer members of the opposite sex with whom to form a relationship. Members of the sex in short supply, then, have greater dyadic power than members of the sex in relative oversupply³⁹⁶.

This has been precisely the argument of many including government functionaries regarding allowing sex selective abortion. But, unfortunately, the law of demand and supply or, rather, supply and value (price) do not seem to work in this case. The reason why historically dowry has been paid to men by women's families, for example, is not because men are in short supply, but because of sociocultural histories of such groups. In fact, as seen in the Chapter on population, in communities where women have been historically devalued, their numbers are less than that of men. And they continue to be devalued.

This chapter tries to examine two questions—

1. From a jurisprudential point of view, can sex selection and sex-selective abortion be considered to be violence against women?
2. Does sex selection and sex selective abortion exacerbate other forms of violence against women in any way?

³⁹⁶ Scott J South and Katherine Trent, "Sex Ratios and Women's Roles: A Cross-National Analysis," *The American Journal of Sociology*, Vol. 93, No. 5 (Mar 1988) 1096-1115 at 1097.

While most writing, feminist and otherwise, tends to portray sex selection and more particularly sex-selective abortion as violence against women, the reasons are often confused with abortion *per se*. Such a foundation has more in common with the Catholic concept of ensoulment of the foetus—a concept which led to the early criminalization of abortions and which is driving the Christian Right abortion debate in the West. Thus, from the point of view of law, the first question has two parts—

1. Are the acts of sex selection or sex selective abortion acts of violence?
2. If they are acts of violence against women, who are these ‘women’?
 - a. Would these ‘women’ be the ‘unborn’ or ‘unconceived’ women?
 - b. Can violence against women be addressed to women as a class without identifiable individuals actually undergoing violence?

In the first paragraph, I have dealt with one view as far as dyadic power is concerned. But, that is of course too simplistic a view, and the authors also qualify it, as seen later. In a world of variables, this is affected by a number of other variables. As pointed out by South and Trent in the *American Journal of Sociology*, the extent to which dyadic power shapes sex roles is constrained by the distribution of structural power, defined as control over “... the political, economic, and legal structures of the society” and the ability “... to influence and shape social customs and practices.” Because structural power resides with men in all but a handful of societies, the ability of women to use dyadic power to gain freedom and independence is sharply limited. More specifically, men use their structural power over women to limit and modify women’s use of dyadic power. Hence, the distribution of structural power circumscribes the way in which women’s dyadic power, which is high when women are in undersupply, can be exercised³⁹⁷.

³⁹⁷ Scott J South and Katherine Trent, “Sex Ratios and Women’s Roles: A Cross-National Analysis,” *The American Journal of Sociology*, Vol. 93, No. 5 (Mar 1988) 1096-1115 at 1097.

One classic example often used is the saying, ‘why must a woman first be the slave of a man in order to be a mother?’ Men have controlled even the most ‘natural’ relationship— that of a woman with her child. The concept of illegitimacy of the child, disempowering a nonmarried woman and punishing fornication in many traditional systems of law all are evidence of the control of societal structures by men. Patriarchal structures promote patriarchal values. All the pressures exerted by such structures are not seen as violence against women, though women may undergo depression, loss of status, and in cases even physical violence as a result. Marital rape is a classic example— an act which humiliates the women, is many times a result of physical force, and leads to low self esteem and depression among women is still not a crime. What better evidence on who controls the legal system. Economically too, women as owners of property are few despite laws which give women substantial rights to property in India³⁹⁸.

How does all this impact women in the event of a high sex ratio where women are in ‘short supply’ as compared with men? Despite patriarchal structures, do women show greater dyadic power? Are they more valued?

Guttentag and Secord enumerate several societal level responses to imbalanced sex ratios³⁹⁹—

- *Women’s traditional roles as mothers and homemakers will be adulated and encouraged.* This also means that women will be pushed more and more into traditional roles and will not have much choice in determining what role they would like to assume. Societal structures will also portray traditional roles as the ideal. Law, as reflected by the courts, already has in mind a

³⁹⁸ All laws except Muslim law for example give daughters the same rights as sons in succession. Muslim law gives the daughter a share equal to half that of the son. However, in many cases, irrespective of religion or personal law, the women get a pittance, or more often nothing. The reason is twofold— they are pressured by parents, brothers, etc., to write off the property to their male relatives on the ground that they are now married off into a different family. Sometimes, though not very often, wills are made to deprive daughters and wives of their shares. Even in the event of the woman receiving a share, it is often appropriated by her spouse under some pretext.

³⁹⁹ Principles (italicized) adapted from Scott J South and Katherine Trent, “Sex Ratios and Women’s Roles: A Cross-National Analysis,” *The American Journal of Sociology*, Vol. 93, No. 5 (Mar 1988) 1096-1115 at 1097.

portrayal of the good wife and mother versus the bad, career oriented, selfish woman⁴⁰⁰.

- *Most women will marry, and they will do so at an early age.* Since the demand is high for women, they will be forced to marry earlier. Child marriages come with a lot of problems of their own and are seen as a violation of women's human rights. Even if the bride is not a child, it often means that the young adolescent bride is quite powerless and subject to the dominion of a) her parents who get her married without much of a choice, and b) her in laws and other elders in the marital family who exert pressures on her, leaving her choiceless on a number of crucial matters touching her intimately, including her relationship with her spouse, access to contraception, and decisions regarding the number, spacing, and timing of her children. The lack of awareness of and access to reproductive rights where adolescents are concerned has been a grave concern with those working on reproductive rights⁴⁰¹.
- *Fertility rates will be high but illegitimacy rates will be low.* Since women are few and valued for traditional roles, it is likely that fertility will be high. The inverse relationship between access to jobs, economic prosperity, and freedom of choice on the one hand, and fertility on the other, has been well documented by many commentators⁴⁰². While it is not always true that educated, working women have only one or two children, the overall family size will still be small. Fertility also does not mean that in the next

⁴⁰⁰ In fact, even the Court in the *Cehat* litigation dealing with the implementation of the Pre-Conception and Prenatal Diagnostic Techniques Act, 1994 waxed eloquent on the soothing effect daughters have upon families. Traditional roles have thus been held up as model roles to be assumed by future generations. Cases on cruelty are a typical example. Many times men claim a divorce on the ground of cruelty on the basis that the wife has not taken care of his parents well, or is not performing her household duties. What is more, courts tend to be quite sympathetic to such men.

⁴⁰¹ Even the Pre-Conception and Prenatal Diagnostic Techniques Act takes note of this helplessness of women by exempting women from punishments and targeting family members instead. The fact that adolescent women are under a lot of pressure to prove their fertility and especially their ability to provide a son for the family is a known fact and is the reason behind such a move in the Act. The earlier Pre-Natal Diagnostic Techniques Act, which did not take into consideration this factor came under heavy criticism by feminists.

⁴⁰² See Chapter on Population

generation, the bias against the girl child will vanish. Son preference may still continue as a working son is to be preferred to a homemaker daughter.

If the State has laws restricting the number of children, there would be further complications. The two-child norm would further worsen the sex ratio that could have tragic impact on society. Furthermore, as women have had less decision-making capacity regarding the number of children, so their health would be jeopardised due to repeated abortions in search of sons⁴⁰³.

Since few women are available, men who wish to marry would marry them and illegitimacy may be low. On the other hand, new forms of 'marriage' may develop which are not necessarily legitimate. For example, the 'Draupadi' form where several brothers share a wife. Such a wife may not have the legal status of a wife since polygamous marriages are not recognized in law. The woman and the children may be left without remedies such as right to maintenance and succession in such cases. There is already plenty of evidence that such marriages are in fact happening and not only in areas which always accepted polyandrous marriages. This custom is moving to new areas as well.

- *Because men lack the opportunity to form alternate relationships, divorce will be relatively infrequent.* In societies like India, divorces are infrequent as compared to the size of the population. This is due to several reasons. While divorce laws have been largely liberalized, maintenance laws have not. Also, law does not recognize matrimonial property and if a woman chooses to divorce, it would likely be at the cost of her economic security and very likely that of her children as well. Also, this statement presumes that men are the ones who seek divorce. Divorce is largely a middle-class phenomenon, and largely urban middle class where women too seek divorce.

⁴⁰³ Ajay K Tripathy, "Unpleasant endorsement of population control"
<http://www.expresshealthcaremgmet.com/20041115/viewpoint01.shtml> as on 26 March 2005 at 2.

- *Women's extrafamilial roles will be severely constrained. They will be unlikely to pursue educational and career goals.* Since motherhood would be at a premium, childrearing would be the activity focused on. At workplaces, law and its enforcement play an important role in providing a child-friendly work environment, such as crèches for the child. In reality this is rarely done. Also because of the relative scarcity of women, men might become even more possessive, and to avoid women forming relationships with other men, she may be prevented from going to work even if she wishes to do so. Many cases of violence against women arise out of jealousy. No indication seems to be forthcoming of a more liberal atmosphere. Honour killing, because of a woman's supposed wanton behaviour, is not only the case in Pakistan, but also happens in India.
- *Accordingly, their levels of literacy, schooling, and labour-force participation will be low.* Girls would be pulled out of school because of the perceived threat of violence towards them, and also as the age of marriage would plummet. Compulsory primary education, as it exists today, is till the age of fourteen and from the age of six. Despite the right of education becoming a fundamental right of all children after the amendment in the Constitution, many children have no access, especially girl children. There is nothing in the law which compels parents of children to send them to school.

Economic reforms in China since 1978 have led to more job opportunities for urban women. However, continuing stereotyped assumption and bias against women, coupled with the adverse implications of profit-oriented considerations, have resulted in new forms of oppression and discrimination against women⁴⁰⁴.

Examples, such as the lower ratio of females at senior administrative and managerial levels, gender-biased policies of imposing more stringent requirements

⁴⁰⁴ Patrick T.C. Hui "Birth Control in China: Cultural, Gender, Socio-economic and Legislative Perspectives in Light of CEDAW Standards," 32 *HKLJ* 187 pp 195-196

for female recruits, a lower pay scale for female staff, a higher percentage of women awaiting employment, the dismissal of female staff before male staff in the rationalisation or restructuring of most employing entities, and the earlier retirement of women illustrate this point⁴⁰⁵.

- *However, because women are highly valued, they will be content with these traditional, familial roles.* Choice is the crucial issue. It does not matter if women choose careers or family roles or both. What is important is the freedom to pursue non-familial roles if she so chooses.

In China, it has been pointed out that married women are sometimes forced to sign contracts promising not to become pregnant for a certain specified time from the commencement of employment under the threat of fines, even though the sanction is illegal. This puts tremendous socio-economic pressure on urban women. With the strict implementation of the Policy in urban areas, the social responsibility to produce a grandchild for both spouses' families falls solely upon an urban woman whose economic well-being will be worsened by pregnancy and child-bearing⁴⁰⁶.

- *Depression and suicide among women will be rare.* This is not true. Women in a state of powerlessness are the ones who suffer from depression and suicide more than women who are in control of their lives. It is not uncommon to come across cases of suicides of young women who are unable to bear the harassment meted out to them by the husbands' family⁴⁰⁷.

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ Contrary to Guttentag and Secord's theory (1983), a high sex ratio (i.e., an undersupply of women) appears to raise, rather than diminish, the female suicide rate relative to the male suicide rate. Given the dubious validity of national suicide rates, as well as the small number of cases on which the equation is based, this finding should probably be treated cautiously. But, it does suggest that the limitations in women's life options engendered by high sex ratios promote dissatisfaction and depression, rather than contentment, on the part of women; the female suicide rate, relative to the suicide rate among men, appears to be higher when women's roles are constrained to those of wife and homemaker. *C.f.* Scott J South and Katherine Trent, "Sex Ratios and Women's Roles: A Cross-National Analysis," *The American Journal of Sociology*, Vol. 93, No. 5 (Mar 1988) 1096-1115 at 1106.

With traditional roles for women, traditional values would also come in. The woman would be expected to be meek and submissive to the authority of males and senior females in the family. She would also have to be self-sacrificing and obedient.

Several other writers have pointed out several negative effects sex ratio imbalances would have on women. Most perspectives are theoretical; however, many of them have been borne out and their validity expressed through the example of China. Of course, this is not to say that such findings would be the same in all societies as societal structures vary from society to society. How this would impact the position of women in India for instance is at this point of time mainly guesswork.

Some writers⁴⁰⁸ projected increased violence in society, or even war. The reasons for this varied from too many frustrated men who had no access to women, to too much testosterone in the population due to an abundance of males⁴⁰⁹. A decline in women's political power is also one possible fallout because their shrinking populations would mean that they were less of a force at the voting booth. In the Indian context, however, where gender is not an overarching concern, women still vote based on their identities of community or religion rather than based on their identities as women. Western writers have suggested that feminist movements in the twentieth century have gathered strength in contexts where women have been in surplus relative to men,⁴¹⁰ an interesting proposition. One characteristic identifier of men surplus societies, however, is in the identifiable roles that women have. Traditional roles seem more common where they are in relative shortage. Cross-national tests also suggest that women tend to have more traditional roles in areas where they are in relative shortage⁴¹¹.

⁴⁰⁸ See Daniel Goodkind, "Should Prenatal Sex Selection be Restricted? Ethical Questions and Their Implications for Research and Policy," *Population Studies* Vol. 53, No. 1 (Mar 1999) 49-61 at 58.

⁴⁰⁹ Guttentag and Secord's theory (1983)

⁴¹⁰ Heer and Grossbard Schectman (1981)

⁴¹¹ South and Trent (1988)

However, some of the writers felt that it was unclear whether shortages of women were directly responsible for each of these social outcomes. The experience in China, however, has justified many of these theories.

Sex selection and sex selective abortion and the consequent fall in the sex ratio has definitely led to powerlessness on the part of women in societies which practice them. The effect of sex selection and sex selective abortion can thus be said to increase violence against women in various forms, from the socio-political inequality dimensions, to deprivation of choice, and at the other extreme, to forms of emotional and physical violence to keep women confined in the roles that society and family draws up for them.

However, I have still not answered the question whether sex selection and sex selective abortion would be violence against women in itself. This is important because non-violent or innocent acts may sometimes lead to violence against women. Almost any change in the political–legal–social structures which purports to affect a change in the balance between men and women would contain the possibility of violence against women. Giving women equal rights to property is an innocent act and with a noble purpose. The effect of such a legal measure may lead to circumstances where girl children may be killed to avoid fragmentation of property, or relatives— either brothers or husband— might coerce her to surrender the property to them. Such coercion may take physical and emotional forms. Yet, because a law may lead to incidents of violence, it is no ground to say that such a law should not be passed.

Of course, sex selection and sex selective abortion have more to do with acts of choice by the woman in a legal system that permits it. They are not specifically governed by the law (except now, of course, to ban them). They also have to do with medical technology which claims to be neutral. Sex selection can as easily be used to select a girl child rather than a boy child. Similarly, theoretically, a woman may choose to have a girl and go in for a sex selective abortion if the foetus is male.

Would these be acts of violence? Does the desired sex have anything to do with classifying an act as violence? Or would it lead to ridiculous inferences? If a child were assaulted, male or female, it would be an act of violence. Can therefore abortion of a female child be an act of violence, whereas abortion of a male child is not? Obviously not. Such a reading would mean that abortion is an act of violence in itself, which is an unacceptable premise in the context of reproductive rights.

The answer in my opinion would therefore be that the act of abortion itself is not an act within the scope of violence against women. The act of sex selection is. Using sex as a ground to abort the foetus is unacceptable as it amounts to discrimination against that particular sex. Sex as a ground of discrimination is one of the prohibited markers in Constitutions worldwide as well as in international standards.

Assuming, based on the above arguments, that it is violence against women, there is another quandary to be resolved. Violence against women cannot be something in abstract. There must be a victim of such violence whose right to be free from such violence is sought to be protected by the law. Who is this victim?

Many writers opine that sex selection abortion is violence against women, two of them, a mother and a daughter. Current case law and related statutes support the right of women to choose,⁴¹² regardless of the reason⁴¹³, and this is what perpetuates such violence against women.

Is the woman who undergoes sex selection a victim of violence against women? There is no doubt that coerced abortions would be an act of violence against women. The 1995 Beijing Conference on Women prohibited acts of violence

⁴¹² In this context, the assumption is made that "the right to choose" automatically equals abortion, as few other choices are permissible within radical feminism in the context of reproductive choice.

⁴¹³ Lynne Marie Kohn, "Sex Selection Abortion and the Boomerang Effect of a Woman's Right to Choose: A Paradox of the Skeptics," 4 *Wm. & Mary J. Women & L.* 91

against women, which included forced sterilization, forced abortion, and coercive or forced use of contraceptives⁴¹⁴.

How far are women actually coerced to undergo abortions? According to many feminists in India, women are often forced to 'do the test' and undergo repeated abortions until they conceive a male child. They are forced to do so by members of the marital family, especially the in laws and the husband. Recognition of this fact is one of the factors that prompted the amendment of the Prenatal Diagnostic Techniques Act, and the new Preconception and Prenatal Diagnostic Techniques Act does not penalize the woman, though her husband or relatives may be held liable. Although abortion is a right women have, the right to choose abortion, as it is currently framed by liberalism, does not increase women's reproductive freedom but increases the exploitation of women's reproductive capacities⁴¹⁵.

One reason for this is that the woman cannot exercise agency and has no control over her decisions on childbirth; the other reason is that women seem to have historically ceded this control, not just on decisions regarding abortion, but also in more mundane matters like contraception. Studies in Korea show 40 percent of fertile Korean women turn to sterilization to prevent unwanted pregnancies. This oddly indicates another way in which women choose to relinquish control over their own reproductive cycles rather than to acknowledge or be reminded of their own sexuality on a regular basis, as would be required by other forms of birth control⁴¹⁶. The Indian context is not very different. Abortion is seen as yet another method of family planning, and this has been done because of the law—the Medical Termination of Pregnancy Act. The impact of this law will be more fully discussed in the Chapter on abortion.

⁴¹⁴ Mary H. Hansel "China's One-Child Policy's Effects on Women and the Paradox of Persecution and Trafficking," 11 *S. Cal. Rev. L. & Women's Stud.* 369

⁴¹⁵ Lynne Marie Kohn, "Sex Selection Abortion and the Boomerang Effect of a Woman's Right to Choose: A Paradox of the Skeptics," 4 *Wm. & Mary J. Women & L.* 91

⁴¹⁶ Naryung Kim, "Breaking free from Patriarchy: A Comparatives Study of Sex Selection Abortions in Korea and the United States," 17 *UCLA Pac. Basin L.J.* 301 at 320.

Assuming that sex selective abortion leads to violence against women, should it be banned? Or to put it in a different way, would it lead to greater violence against women if the law banned sex selective abortion and sex selection per se? The Chinese experience is not very useful here as an analogy, as its position on sex selective abortion came much later. However, an earlier law which still informs the administrative psyche did lead to violence against women—the notorious one child policy (OCP) that China followed⁴¹⁷. The infanticides which took place in the aftermath of the OCP have been infamous for their ruthlessness as well as sheer numbers⁴¹⁸. It is possible that the original proponents of the OCP never recognized the potential for such misogyny. Such a lack of foresight, however, seems unlikely in light of China's historical preference for sons. It is therefore safe to assume that they predicted these effects, and nevertheless decided they were necessary evils⁴¹⁹.

The OCP on the face of it was only controlling the reproductive choice of a woman for a public good as defined by the State. That itself is problematic in itself. But the impact it had upon women was the crudest form of violence against women. Keeping in mind the fact that women don't have a choice, this was doubly cruel. The pressure from the family to bear a son and the pressure from the law to have only one child meant that the 'right answer' would have to be that the woman bore one child, a son. All the other 'wrong answers,' in the form of the daughters she gave birth to, would be discarded. Only the method of discarding remained—infanticide and abandonment being the most common⁴²⁰.

Unlike the western world, it is not acceptable for Indian men to remain unmarried bachelors. They are expected to 'settle down' and to continue the family line by producing male heirs. It would, therefore, be imperative to find brides. Unfortunately, due to the rising sex ratio, there will be simply not enough brides for

⁴¹⁷ For a detailed analysis of the One Child Policy and its impact, see Chapter on Population.

⁴¹⁸ See Chapter on Infanticide for further details.

⁴¹⁹ Mary H. Hansel "China's One-Child Policy's Effects on Women and the Paradox of Persecution and Trafficking," 11 *S. Cal. Rev. L. & Women's Stud.* 369

⁴²⁰ See Chapter on Infanticide

the young men, and India will go through what China is already experiencing in a big way—the ‘bare branches’ phenomenon.

Now, in China, sex selective abortion has been criminalized and couples are being counseled not to abort a female foetus. Whether this law in fact leads to violence against women is still to be seen. Here, at least, China seems to not yet have reached the situation India is in now. Access to technology, probably, or rather the lack of it, is perhaps the main reason why sex selective abortions are not taking place to the extent they do in India. This is indeed surprising because China has a one-child policy while India does not. This is a very negative reflection upon the sociocultural structures in India as well as the misuse of medical technology. Criminalizing infanticide itself did not seem to be very effective; it is therefore doubtful that criminalizing sex selective abortion would work because there are less moral issues to contend with in sex selective abortion than in infanticide. Violence against women in the form of forced abortions is a foregone conclusion in China as in India.

While sex selection and sex selective abortion would generate violence against women in terms of forced abortions and forced tests, what of circumstances where there is no physical or emotional coercion and the woman is undergoing sex determination or sex selection of her own accord? All the arguments of feminists against sex selective abortion fall in such a scenario. In a context where a woman is exercising her own agency to terminate her pregnancy, there is no violence against women. However, it may still be violative of medical ethics and, as I have pointed out earlier on in this Chapter, it would amount to discrimination. Patriarchy may place a definite influence no doubt, but it would not amount to violence against women.

Does a law against sex selection or sex determination itself generate violence against women? Any number of laws will not in the short run change societal attitudes. Assuming that there is a law against sex selection and sex determination,

and assuming further that this law is properly implemented. The net result would be a larger number of female children being born having a positive impact upon the sex ratio. A larger number of females being born might negate many of the adverse impacts of a high sex ratio, but how would they affect individual women?

In the days before sex determination, women had multiple births until they produced an heir. They had no choice in the matter. Coercion was common. If she failed to produce an heir after a few births, she ran the risk of being abandoned along with her unwanted daughters. In China, in the days before sex determination became available, the ancient practice of infanticide raised its ugly head in the context of the one child policy. In communities practicing infanticide in India, it may be likely that it would resurface. If infanticide is rigorously fought against, girls may simply be abandoned, as is already happening.

It is thus very likely that while numbers may increase and the sex ratio may be better off, a sizeable chunk of individual women may, in fact, suffer greater violence. Unfortunately in the rush to prevent sex selection and sex determination, the impact of the implementation of the law is not fully thought through. While many of these acts of violence against women would fall within the meaning of the Domestic Violence Act, remedies available under this Act are not well known. With pamphlets on sex determination, it must also be advertised that forcing a woman to undergo a test or an abortion would be an act of domestic violence. And, what a woman can do under such circumstances— civil and criminal remedies available to her— must be publicized.

One form of violence against women which has emerged in China, which the State has woken to and is taking steps to check, is the trafficking of women. Abduction of women is taking place on a very large scale. Of course, the usual reasons for trafficking are there. However, trafficking in these proportions has been attributed to the high sex ratio and the scarcity of women. Trafficking takes place from urban areas which have more women to rural areas where sex ratios are even higher.

Chinese figures indicate that authorities have been successful in rescuing about 64,000 women since 1990, or approximately 8000 per year on average⁴²¹. The attack on trafficking in the form of laws has been quite good. There are heavy penalties for traffickers including execution. The end buyer, however, is let off lightly with a maximum of a three-year jail term. The problem is that law by itself is insufficient; it must be implemented. The trafficking legislation is unfortunately, not implemented sufficiently. Other than law, other measures taken to check trafficking are generation of social awareness of the problem and training on the steps to be taken in case of trafficking⁴²².

The concept of marriage in China is a lot like that in India except for two distinguishing traits— first, in India, marriage is considered a sacrament, whereas in China it is a contract. Second, in India, dowry is prevalent, and in China, there was bride price. In both India and China, the woman seldom has any say, and the matter is settled by the families. Choice regarding partners is not in the woman's hands. Buying and selling women for marriage is thus not a new trend in China. It has, however, increased in the recent past with the change in the sex ratio.

Although infanticide is an offence, it is seldom prosecuted because it has behind it a lot of historical and cultural justifications. Convictions are very rare. However, of late, it seems to have reduced. Abandoning the child is also a criminal offence, but the State is not really bothered about preventing it because, in the context of the OCP, it seems a near impossibility. At the same time, since abandonment is discouraged, the State is very half-hearted in its role as the ultimate guardian of the child. Orphanages are very badly run and the mortality rate is very high. Main causes are neglect and starvation⁴²³.

⁴²¹ Mary H. Hansel "China's One-Child Policy's Effects on Women and the Paradox of Persecution and Trafficking," 11 *S. Cal. Rev. L. & Women's Stud.* 369

⁴²² See *Id.*

⁴²³ In a study conducted in the Nanning orphanage in Guangxi province, staff and regular visitors freely admitted that 90 percent of the 50 to 60 baby girls who arrived at the orphanage each month would end their lives there. Moreover, most abandoned children do not even make it to an orphanage, but are placed in general-purpose institutions with even higher mortality rates. Nicole M.

In a cost benefit analysis of an overabundance versus a low supply of women, the former definitely levels out as being more beneficial to women as a class.

The excess young men in China are referred to as *guang gun-er* meaning bare branches. There is a worry that these young men might turn violent in the future resulting in instability. It would be a case of history repeating itself. During the time of Mao, young men were lured to fight on the promise of finding them brides⁴²⁴. Widespread infanticide of those days led to a situation where there were not enough brides for men of marriageable age.

According to evolutionary psychologist Robert Wright, womanless men compete with special ferocity. An unmarried man between twenty-four and thirty-five years of age is about three times as likely to murder another male as is a married man the same age. Some of this difference no doubt reflects the kind of men that do and don't get married to begin with, but a good part of the difference may lie in "the pacifying effect" of marriage. Murder isn't the only thing an "unpacified" man is more likely to do. He is also more likely to incur various risks—committing robbery, for example—to gain the resources that may attract women. He is more likely to rape⁴²⁵.

The neo liberal law of demand and supply in economics does not work in favour of women though they are less in number; patriarchy still holds sway⁴²⁶. Women have become saleable goods in stark reflection of the position in earlier days when wives were bought. While a shortage of women has led to higher bride prices, women

Skalla, "China's One-Child Policy: Illegal Children and the Family Planning Law," 30 *Brook. J. Int'l L.* 329 pp 347-348

⁴²⁴ Nicole M. Skalla, "China's One-Child Policy: Illegal Children and the Family Planning Law," 30 *Brook. J. Int'l L.* 329 at 351

⁴²⁵ Robert Wright, *The Moral Animal, Why We Are the Way We Are: The New Science of Evolutionary Psychology* (1994) c.f. Nicole M. Skalla, "China's One-Child Policy: Illegal Children and the Family Planning Law," 30 *Brook. J. Int'l L.* 329 at 351

⁴²⁶ See Vibhuti Patel (1992) "Girl Child-An endangered Species" in Viney Kripal (ed) *The girl Child in the 20th Century English Literature*, Sterling Publishers Private Limited, New Delhi at 16

don't benefit from the deal. Again, it is cheaper for many peasant families to buy from a trafficker than to pay a high bride price. Once bought, the woman has no choice but to remain with her buyer. If she tries to escape, she does not receive help from a society which sympathises with wife buying. There is also, it has been alleged, a corrupt network of officials and traffickers which is difficult to break. Although the law itself is stringent in its punishment of trafficking, prosecutions are few and far between and thus not an effective deterrent.

Procurement for trafficking may happen in many forms. All are forms of violence against women, although sometimes it is done with the connivance of the woman herself. In case of the latter, it is because she makes the sacrifice to benefit her family and does not see any other way of doing that. Young girls are sometimes tricked by all the usual tricks traffickers use, including promising them jobs. Very often, outright violence against women in the form of kidnapping or abduction takes place.

Because of serious gaps in China's legal framework, a woman's willingness to participate in her own sale de-criminalizes the sale. Although the trafficking of women by third parties is criminalized under Chinese law, such sales are not illegal when the transactions are completed by the women or their families. These marriages are still illegal and thus unregistered, but neither the women and their families, nor the bridegrooms, face criminal repercussions⁴²⁷.

Thus, under the 1980 Marriage Law, not only is violence perpetuated against such women, they are also prevented from having the status of a lawful wife should they try to make the best of the situation. Thus, not only does the so-called husband force the woman into marriage, sex and childbirth, but because it was a marriage born out of force, he could always abandon her on the ground that she was not his wife. The

⁴²⁷ Nicole M. Skalla, "China's One-Child Policy: Illegal Children and the Family Planning Law," 30 *Brook. J. Int'l L.* 329 at 355

silence of the law on the point of invalid marriages is deafening and ends up revictimising the victims of trafficking⁴²⁸.

The Marriage Law was amended subsequently. The amendment which became effective in 2001, established rules regarding invalid and revocable marriages. Now, failure to register would make a marriage invalid, and so would paying money for the marriage. Forced marriages are now voidable. Women who are forced into marriage against their will can avoid the marriage. However, if they have children, they would be illegitimate and not entitled to benefits from the State⁴²⁹.

How do women in China perceive sex selection or sex-selective abortion? Studies have shown that even for women who had had sex-selective abortions, a very large proportion believed it was not right or not fair to girls. Then why did they do it? A lot of it was familial pressure to continue the family line. But, most women also looked at it as their duty to provide a son for the family⁴³⁰. They also believe that with the value of women rising due to shortage of women, women would be in a better position. Throughout Chinese history, female infanticide and gender discrimination against girls have produced a marriage squeeze, but the status of women has not improved. Violence against women will most likely increase because of the acute shortage of girls. Incidents of kidnapping and trafficking will soar. In 2000 alone, more than 19,000 perpetrators of woman and child trafficking were arrested⁴³¹.

About the problem of the sex ratio, some families believed that things would sort themselves out in the long run. However, in the immediate future many rural families anticipate the shortage of marriageable women. The most popularly feared

⁴²⁸*Ibid.* at 359

⁴²⁹ Xiaoqing Feng, A Review of the Development of Marriage Law in the People's of China, 79 U. Det. Mercy L. Rev. 331, 333 (2002) c.f. Nicole M. Skalla, "China's One-Child Policy: Illegal Children and the Family Planning Law," 30 *Brook. J. Int'l L.* 329 at 359

⁴³⁰ Chu Junhong, "Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China," *Population and Development Review*, Vol. 27, No. 2 (June 2001), 259-281 at 274.

⁴³¹*Id.*

social implication of the rising sex ratio at birth is the possible marriage squeeze in the future⁴³². The remedy seen is not to have daughters, but to find a bride in advance for their sons. This would include putting aside savings to pay the bride price, to procuring an infant girl to be raised as the son's bride⁴³³. The problem would be more acute in rural areas owing to two factors—the already low numbers among women and the migration of young women to urban areas in search of a better life⁴³⁴.

Other forms of violence against women said to be the side-effects of a skewed sex ratio are tipped to be pornography and sex-related crimes of violence, especially rape and molestation⁴³⁵. The 1990s have seen a sharp increase in violent crimes against women, especially dalit women⁴³⁶.

New kinds of relationships might also develop which do not really have acceptance by society. Homosexuality and polyandry may develop⁴³⁷.

Male dominance in substantial numbers in young adult life, now a distinct possibility in the near future in some Asian countries, may bring serious consequences, although not all of them negative. In the short term sex-selection technology is likely to reduce family size and increase the proportion of births that

⁴³² Chai Bin Park and Nam-Hoon Cho, "Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex Ratio at Birth in Korea," *Population and Development Review*, Vol. 21, No. 1 (March 1995) 59-84 at 74

⁴³³ See also Chu Junhong, "Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China," *Population and Development Review*, Vol. 27, No. 2 (June 2001), 259-281 at 277.

⁴³⁴ Chai Bin Park and Nam-Hoon Cho, "Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex Ratio at Birth in Korea," *Population and Development Review*, Vol. 21, No. 1 (March 1995) 59-84 at 74.

⁴³⁵ Ullman and Fidell (1989) c.f. Chai Bin Park and Nam-Hoon Cho, "Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex Ratio at Birth in Korea," *Population and Development Review*, Vol. 21, No. 1 (March 1995) 59-84 at 75

⁴³⁶ Human rights Watch (1999). *Broken People: Violence Against India's 'Untouchables,'* Books for Change Bangalore at 26.

⁴³⁷ Chai Bin Park and Nam-Hoon Cho, "Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex Ratio at Birth in Korea," *Population and Development Review*, Vol. 21, No. 1 (March 1995) 59-84 at 75.

are “wanted,” and in the long run a high sex ratio at birth may improve the position of females⁴³⁸.

The 1990s has also witnessed a significant increase in so-called honor killings, especially in the same areas of north and west India that have also seen an increase in sex selective abortion⁴³⁹. In India, dowry deaths have always been a major area of violence against women. There has been an increase in dowry death documented in the same regions that have shown an increased imbalance in the sex ratio⁴⁴⁰.

In India, hardly anyone buys the argument that an adverse sex ratio and the consequent shortage of women will lead to their higher value and thus a better position. The sex ratio in India has been noted to be adverse to females since ages and is steadily worsening since the first recorded Census of 1871. The population sex ratio of India declined from 972 females per 1000 males in 1901 to 929 per 1000 in 1991. In this same period, the status of Indian women has been steadily eroded, despite gains made in some sectors by some groups of women. Thus, in the Indian context, this is a myth⁴⁴¹. The shortage of women has led to greater restrictions and control being placed over them. The increasing intensity of violence against women in all domains of life is testimony to this. China is already in a bad way. Scholars are not very positive how the *guang gun-er* bachelors are going to handle the issue. Writers predict increased social unrest in China once the shortage

⁴³⁸ Chai Bin Park and Nam-Hoon Cho, “Consequences of Son Preference in a Low-Fertility Society: Imbalance of the Sex Ratio at Birth in Korea,” *Population and Development Review*, Vol. 21, No. 1 (March 1995) 59-84 at 79.

⁴³⁹ Chowdhry, Prem (2000), “Enforcing Cultural Co Gender and Violence in Northern India.” In: Mary. E. John and Janaki Nair (Eds.), *A Question of Silence? The Sex Economics of Modern India*, Kali for Women, New Delhi at 26

⁴⁴⁰ Mohan Rao, “Female Sex Selection Abortions: Some Issues,” IDPAD Newsletter Vol II, No. 1 January–June 2004 at 22

⁴⁴¹ S Sudha and S Irudaya Rajan, ‘Female Demographic Disadvantage in India 1981-1991: Sex Selective Abortions and Female Infanticide’, *Development and Change*, Vol 30 (1999), 585-618 at 610.

of females to males of the appropriate ages in the marriage market is felt, as a result of the skewed sex ratio patterns there. The same might be said for India⁴⁴².

Crimes against women are soaring. According to *National Crime Report Bureau*, there has been 29.2% increase of crimes against women in 1998 as compared to 1994 and 92.25% increase as compared to 1990.

If we analyse the complex aspect of the role of women in female infanticide, it is quite apparent that they actually inflict violence upon themselves as forced by the patriarchal values. They internalize the gender bias in favour of male children as imposed by societal, cultural, and political forces. Eventually, they resort to the heinous practice of female infanticide and foeticide in secret at the cost of endangering their physical and psychological health⁴⁴³.

The procedure for prenatal sex determination is invasive and not without complications for the woman and the child. In this context, it could well mean that forcing a woman to go through a sex determination test is not just emotional coercion and emotional harm on having her reproductive rights trampled upon, but also actual physical violence and trauma.

Amartya Sen has listed seven types of inequality faced by women today. Violence against women is often used to deny them this equality. These types of inequality include—

(1) Mortality inequality

⁴⁴² S Sudha and S Irudaya Rajan, 'Female Demographic Disadvantage in India 1981-1991: Sex Selective Abortions and Female Infanticide,' *Development and Change*, Vol 30 (1999), 585-618 at 610.

⁴⁴³ M Jeeva, "A Perspective Paper on understanding Female Infanticide and Feticide," public hearing by State Commission for Women, Chennai, 10 July 2002 at 1

- (2) Natality inequality
- (3) Basic facility inequality
- (4) Special opportunity inequality ⁴⁴⁴
- (5) Professional inequality
- (6) Ownership inequality
- (7) Household inequality ⁴⁴⁵

Natality inequality is solely caused by sex selective abortions and mortality inequality further reduces the chance that a girl child born alive would survive. It also impacts the mother who is often pressurized to abort. What price should women pay for a 'balanced family?' How many abortions can a woman bear without jeopardising her health?⁴⁴⁶

Real life experiences in India speak of falling percentage of women in Haryana, Punjab, and the BIMARU states, escalating forced abduction and kidnap of girls, forced polyandry, gang rape, and child-prostitution⁴⁴⁷. In Madhya Pradesh, Haryana, Rajasthan, and Punjab, among certain communities where the sex ratio is extremely adverse for women, a wife is shared by a group of brothers or sometimes even by parallel cousins⁴⁴⁸. Recently, in Gujarat, many disturbing reports of reintroduction of polyandry (Panchali system—woman being married to five men) have come to light. In villages in Mehsana District, the problem of declining number of girls has created major social crisis as almost all villages have hundreds of boys who are left with no choice but to buy brides from outside⁴⁴⁹.

⁴⁴⁴ Amartya Sen, 'Many Faces of gender Inequality,' *Frontline* volume 18-Issue, Oct.27-Nov.09, 2001 at 2

⁴⁴⁵ *Ibid.* at 3

⁴⁴⁶ Vibhuti Patel, Sex Selection & pre-Birth Elimination of Girl Child, Round Table on Sex Selection, Bangalore, 17-18 February 2005 at 10

⁴⁴⁷ Vibhuti Patel, "Girl Child – An endangered Species." In: Viney Kripal (ed) *The Girl Child in the 20th Century English Literature*, Sterling Publishers Private Limited, New Delhi (1992) at 16

⁴⁴⁸ Dubey, Leela (1983, February) "Misadventure in Amniocentesis," *Economic and Political Weekly*, (Bombay) at 10

⁴⁴⁹ The Times of India, 8-7-2004 at 10

As girls under five years of age, women in India face neglect in terms of medical care and education, sexual abuse, and physical violence. As adolescent and adult women in the reproductive age group, they face early marriage, early pregnancy, sexual violence, domestic violence, dowry harassment, and torture in case of infertility; if they fail to produce son, then they face desertion or violence. The end result is a high maternal mortality⁴⁵⁰. Sex selection and sex determination, as promoting violence against women, must be looked at in this light.

⁴⁵⁰ Vibhuti Patel, Sex Selection & pre-Birth Elimination of Girl Child, Round Table on Sex Selection, Bangalore, 17-18 February 2005 at 19