

Q. Is sex-selective abortion illegal under the MTP Act?

- A. Yes. Sex determination is not a permitted condition for seeking legal abortion under the MTP Act. Under the MTP Act, abortion in India is legal for the following conditions:
- When continuation of a pregnancy involves risk to the life of the pregnant woman or of grave injury to her physical or mental health taking into account the pregnant woman's actual or reasonable foreseeable environment
 - When there is substantial risk that if the child were born, she/he would suffer from such physical or mental abnormalities as to be seriously handicapped
 - In cases of rape
 - When the device or method used by any married woman or her husband for the purpose of limiting the number of children has failed.

Q. Are all second-trimester abortions sex selective? Why do women seek abortions in the second trimester?

- A. Not all second-trimester abortions are sex selective. In fact, while sex determination takes place mostly in the second trimester of pregnancy, 80 to 90 percent of reported abortions in India take place in the first trimester. In India, some women delay pregnancy termination until they are in the second trimester for reasons other than sex selection. Cases of delay in abortion seeking are common amongst poor, young, and unmarried women in particular, who are often poorly informed on many fronts: they may not understand the signs of pregnancy, the possibility or legality of obtaining an abortion, the importance of seeking early abortion (in the first trimester) and the location of safe services.

Q. What can be the consequences of restricting access to abortions for women?

- A. Restriction on safe abortion services will have long-term consequences on the health of women – especially if they are poor and less educated – and may also violate their human and reproductive health rights (Ganatra 2008). Evidence shows that if women do not have access to safe abortion services they often turn to unsafe options (WHO, 2007). Placing limitations on second-trimester abortions and/or increasing unnecessary reporting requirements for abortions will discourage providers from offering abortion services. Any immediate actions to curb access to abortions by government will add to the already widespread belief that abortion in India is illegal, pushing women to risk their lives, when they are in need of early and safe abortion services.

Q. What are some steps that can lead to a balanced approach to address both issues of sex selection and lack of access to abortions?

- A.
- Educating policymakers, government officials and other stakeholders on the ways in which both MTP and PCPNDT Acts are implemented in fulfilling their intents, that is to prevent unsafe abortion and to prevent sex selection respectively. Using one law to fulfill the intent of the other is in fact counterproductive and does not help fulfill the objectives of both Acts
 - Encouraging dialogue among NGOs that work to implement the PCPNDT Act and the MTP Act to reach consensus on strategies that address both issues without hindering either; and to ensure strengthened implementation of both Acts with clear understanding of intent of each
 - Operationalizing District Level Committees under the MTP Act so that private abortion providers are brought into the legal framework of the Act. This will ensure regular reporting of MTP cases, including second-trimester abortions

- Focusing communication campaigns on the issue of sex determination and selection
- Clearing up public misconceptions by emphasizing that sex determination is illegal, while abortion is legal (for certain conditions) in the country
- Using communication campaigns to emphasize the importance of seeking early and safe abortion, in order to discourage abortions in the second trimester when chances of sex selection are higher
- Ensuring better regulation and vigilance to stem illegal and unethical practices instead of imposing additional restrictions such as not allowing sale of abortion drugs or restrictions on registration of facilities for MTP
- Supporting implementation of programs and initiatives that seek to reduce gender discrimination
- Seeking and implementing behavior-change campaigns to address the underlying social causes of sex selection and discrimination against the female child.

Q. How can improved implementation of the MTP Act prevent sex-selective abortions?

- A. The MTP Act clearly defines the approval requirements for private-sector facilities and reporting mechanisms for both public and private-sector facilities. However, implementation of the MTP Act is poor across the country, and data for abortion services is often missing in both the public and private sectors. Improved implementation of the MTP Act will contribute to better reporting of cases of abortion in the country and provide information on trends of abortion, the gestational age at which abortions are sought, and number and location of private-sector facilities offering abortions. This will lead to improved access to safe, legal abortion services for conditions approved by the Act and will make realistic data available for better analysis and policymaking.

Q. What steps can be taken to improve implementation of the MTP Act?

- A. Some steps that can be urgently taken to improve the implementation of MTP Act include:
- Setting up of the district-level MTP committees
 - Ensuring that district-level MTP committees are functional including systematic inspection of facilities and monitoring of MTP records
 - Expediting registration of facilities that fulfill the criteria set under the Act to qualify for providing MTP services.

Gender biased sex selection further undervalues women and girls, it perpetuates gender discrimination and should be addressed through effective enforcement of the PCPNDT Act as well as other actions required to promote the value of girls and overall gender equality. However, we must ensure that in doing so, women's right to safe abortion services is not compromised in any manner.

Gender Biased Sex Selection and Access to Safe Abortions

Frequently Asked Questions on Interlinkages



The declining child sex ratio

Recent census (2011) data reveals a dismal child sex ratio of 914 females per 1000 males. This is down from 927 in 2001; and 945 in 1991. The sex ratio at birth at national level increased from 892 in 2000-2002 to 906 in 2007-2009. This is still a far cry from normal sex ratio at birth.

Gender biased sex selection in favor of boys is a symptom of pervasive social, cultural, political and economic injustices against women, and a manifest action of gender discrimination. In recent times, it has been perpetuated by the illegal use of diagnostic technologies coupled with unethical medical practices. Such injustices must be addressed and resolved without exposing women and children to the risk of death or serious injury by denying them access to needed services – and thus further violating their rights (Dickens et al, 2005).

The Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act came into force in 1994 to curb selective sex determination. With rapid improvements in diagnostic technology, the Act was amended in 2003 in order that it became more comprehensive and was renamed the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act. While the Act can be successful in hindering any further worsening of the gender imbalance¹, there are challenges in effective implementation of the same.

Policy makers and program managers at national, state and district levels are seriously concerned and grappling with solutions to arrest this decline in child sex ratio.

Unsafe abortions: A continuing problem

Forty years ago, the Medical Termination of Pregnancy Act (1971) entitled women in India access to abortion services under certain specified conditions.

However, it is a well-documented fact that abortions are not available to millions of women in India who need them. It is estimated that 6.4 million abortions take place in India each year. Half of these (around 3.6 million) are unsafe – performed in unhygienic conditions by untrained providers². More than 80 percent of women in the country still do not know that abortion is legal and available³. Add to this the fact that abortion is highly stigmatized in the socio-cultural context, leading many women who seek an abortion to visit unsafe backstreet providers.

Unsafe abortion is the third leading cause of maternal deaths in India, contributing to eight percent of all maternal deaths annually - morbidity attributable to unsafe abortions is much more.

¹ Arindam Nandi & Anil Deolalikar. Does a Legal Ban on Sex Selective Abortions Improve Child Sex Ratios? Evidence from a Policy Change in India, April 2011. Accessed online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1824420&http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1824420

² Duggal R, Ramachandran V. The Abortion Assessment Project-India; Key Findings and Recommendations. Reproductive Health Matters, Volume 12, Issue 24, 2004. 122-129

³ Banerjee et al. 2009. Knowledge and Care seeking behavior in four selected districts of Bihar and Jharkhand. India. Presented at Population Association of America (PAA). April-May 2009. Available online at paa2009.princeton.edu/sessionViewer.aspx?SessionId=153

Interlinkages

Though the reasons for the skewed sex ratio stem from multiple deep-rooted social and cultural issues, the most common reason given to explain it is the purported easy availability of ultrasound technologies and abortions in the country. This is a flawed assumption precisely because sex selection is first about determination of the sex of the fetus. At times, an instant reaction based on a flawed understanding leads to restrictions on access to second trimester abortions, seen as an easy solution to fix the problem of sex selection.

This already has and will continue to have unfortunate side-effects: in some cases, attempts to combat gender biased sex selection have made it more difficult for women to access an abortion. Even now, many women who seek abortions in India do so through backstreet practitioners. Administrative action that puts curbs on abortion will tend to further drive women to unsafe services as already seen in some states and women who require an abortion in the second trimester for whatever reason may be assumed to be guilty of asking to terminate the pregnancy for sex-selection.

Given the current environment and ad hoc measures to curb gender biased sex selection, there is always a threat of restriction to women's access to abortion, especially second trimester abortion in India. Various United Nations human rights treaty monitoring bodies have established that the rights of women and girls to life, health and development are violated when they undergo an unsafe abortion because safe services are denied to them. Ensuring access to safe abortion services to the full extent of the law at all times is crucial, as is working with communities to address the social norms and practices that increase the vulnerability of women and girls to the health risks associated with unsafe abortion.

It can be challenging for policymakers to envision approaches that simultaneously address the serious issue of gender biased sex selection while protecting women's access to safe, legal abortion services. Below are responses to some frequently asked questions that attempt to clarify the differences between the two issues and provide helpful information to states across the country that are attempting to address the two issues with equal regard for their importance to the lives of women and girls.

Q. What is ultrasonography (USG) used for during pregnancy?

A. Ultrasonography for pregnant women is conducted to monitor fetal health and for specific maternal conditions like bleeding or excessive pain. In the first trimester of pregnancy, USG helps to diagnose and determine the viability of the pregnancy. In the second trimester, it helps to identify congenital abnormalities in the fetus. It is also in the second trimester, that the sex of the fetus can be determined through ultrasonography. However, the use of ultrasonography for non-medical reasons such as to determine the sex of the fetus is not permitted under law.

Q. Is increased availability of USG the only reason for gender biased sex selection?

A. No. While studies point to a link between higher availability of sonography centres and a decline in child sex ratio⁴, it will be wrong to solely associate the increasing availability of USG to the increase in sex selection. Technology itself has its positives and USG has played an important role in improving maternal and newborn health outcomes across the country. Analysis of the National Family Health Survey (NFHS-3) data shows that among women who had at least one USG for any of their pregnancy, 80 percent had one or more live births without any pregnancy loss⁵. Equally, it is the misuse of technology by the medical community that has made it possible for parents to act out their preference for sons.

⁴ A Study of Ultrasound Sonography Centres in Maharashtra. Population Research Centre (PRC), Gokhale Institute of Politics and Economics, Pune

⁵ Banerjee et al. 2011. Understanding the Role of Ultrasound (USG) in improving maternal care in India

Q. Is pre-natal sex selection the only reason for the skewed child sex ratio?

A. No. The main reason for skewed child sex ratio is son preference – this manifests itself not only in the pre-natal period but in practices that discriminate against females even after birth. Girls killed shortly after birth or adopted outside the family are sometimes unaccounted for. Discriminatory feeding and health care practices leading to neglect cause an increase in post-natal mortality in girls which is visible in the gender gap in infant and under five mortality rates of some states. The ratio can be also affected by the undercounting of girls in census enumerations⁶.

Q. Do women seek abortions only to terminate a pregnancy when the fetus is female?

A. No. Most women who opt for an abortion do so because they cannot afford another child, because contraception has failed, because they are unmarried, or because they have been raped. Estimates indicate that two to four percent of all abortions in the country are son selective abortions⁷. According to estimates for 2001-2008, 4.6 percent of all female births did not occur because of pre-natal sex selection⁸.

Q. What makes an abortion legal in India?

A. Abortion is legal if it fulfills the following conditions:

- Performed by a registered medical practitioner as defined in the MTP Act
- Performed in a place approved under the Act
- Other requirements such as gestation period, consent and opinion of registered medical practitioners are fulfilled.

However in India, many private providers, including well-qualified private providers may provide safe abortion services although the fact that facilities where they perform abortion are not approved makes them illegal. Therefore, facilities capable of providing safe abortion services need to be able to get a registration under the MTP Act in a timely and systematic manner. It is only when access to safe abortion improves that woman will not need to resort to backstreet and unsafe services.

Q. What are the legal requirements for offering abortion services?

A. The MTP Act clearly spells out requirements in order to provide legal and safe abortion services.

- The Act lays out the qualifications for providers who wish to offer abortion services
- The Act also spells out facility requirements for clinics that wish to be eligible for approval to offer abortion services in the first and second trimesters
- For second trimester abortions, opinion of two registered medical practitioners as defined in the Act is mandatory.

⁶ Jha P. et al. Trends in selective abortion of girls: Analysis of nationally representative birth histories from 1990 to 2005 and census data from 1991 to 2011. Published online May 24, 2011 www.thelancet.com

⁷ *ibid*

⁸ Trends in Sex Ratio At Birth and Estimates of Girls Missing at Birth in India (2001-2008). United Nations Population Fund – India. 2011