REPRODUCTIVE HEALTH matters

"If a woman has even one daughter, I refuse to perform the abortion": Sex determination and safe abortion in India

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Abstract: *In India, safe abortion services are sought mainly in the private sector for reasons of privacy, confidentiality, and the absence of delays and coercion to use contraception. In recent years, the declining sex ratio has received much attention, and implementation of the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act (2003) has become stringent. However, rather than targeting sex determination, many inspection visits target abortion services. This has led to many private medical practitioners facing negative media publicity, defamation and criminal charges. As a result, they have started turning women away not only in the second trimester but also in the first. Samyak, a Pune-based, non-governmental organization, came across a number of cases of refusal of abortion services during its work and decided to explore the experiences of private medical practitioners with the regulatory mechanisms and what happened to the women. The study showed that as a fallout from the manner of implementation of the PCPNDT Act, safe abortion services were either difficult for women to access or outright denied to them. There is an urgent need to recognize this impact of the current regulatory environment, which is forcing women towards illegal and unsafe abortions.*

Keywords: abortion law and policy, abortion services, second trimester abortions, sex determination, sex ratio, private doctors, India

India was one of the few countries to legalize abortion as early as 1971 with the passing of the Medical Termination of Pregnancy (MTP) Act[1] by the Indian Parliament. However, legalizing abortion has not translated into safe and affordable abortion services for the vast majority of women in the country. Although all public sector facilities of a certain category are deemed recognized and are supposed to provide MTP services free of cost, the reality is very different. Abortion services have remained predominantly in the private domain, even for women who cannot afford them. With an issue as sensitive and socially stigmatizing as abortion, women choose secrecy over all else. The public sector health centres in most of the states have not yet integrated medical abortion pills within their MTP services and in those that do have the equipment and trained providers for surgical abortion, the services are often made conditional on acceptance of a long term or permanent method of sterilization.

Women's lack of awareness of the MTP Act, and lack of information about safe, legal services means that they are often late in finding care and come in at later gestations. In the meanwhile, unsafe abortion continues to be among the top five causes of maternal mortality in India.[2]

The status of women and girls in India has traditionally been seen as secondary to men and boys. The girl child has always been unwanted to some extent, and female infanticide has been a tradition in many communities for hundreds of years. In fact, the Female Infanticide Prevention Act was passed as long ago as 1870 during British rule in India.[3] With scientific advances it became progressively easier to identify the sex of the fetus at an early stage through pre-natal diagnostic techniques, and people could now terminate a

 Doi: 10.1016/j.rhm.2015.06.003

pregnancy when fetal sex was identified rather than wait for the delivery to eliminate the girl child.

Although the sex ratio in India has been declining since the 1901 census,[4,5] it was the mobilization of advocacy efforts by many civil society groups in the 1980s that led to the passing of the Pre-Natal Diagnostic Technique Act in 1994,[6] which was later amended in 2003 and renamed the Pre-Conception & Pre-Natal Diagnostic Technique (Prevention and Misuse) Act [7]. The PCPNDT Act is applicable to radiology (which includes the use of ultrasound), in-vitro fertilization facilities and genetic laboratories.

The MTP and PCPNDT Acts are very distinct in content, addressing two completely different types of facilities with no cross referencing. Despite this, at the implementation level, most authorities tend to conflate the two and speak of "preventing sex selective abortions".

These two laws are part of a long list of laws directed towards the potential welfare of women and the girl child – such as prevention of child marriage,* against dowry,† and equal inheritance rights. However, the lack of rigorous implementation and no strategy to address the deep-seated cultural and social values have resulted in little change in the status quo.[8]

Thus, despite the attempts by government authorities to monitor radiologists and genetic laboratories, the Census of India 2011[9] reported a dip in the child sex ratio (Figure 1) in states like Maharashtra between 2001 and 2011 (from 913 down to 894). This alarmed the state health authorities and in response to growing pressure from civil society groups, women's rights groups and wider media coverage, the government started stringent monitoring of the implementation of the PCPNDT Act in smaller towns in Western Maharashtra, from where most of the "decoy cases" were registered with police. These are usually led by local NGOs and involve a pregnant woman who is used by them as bait to draw out a doctor who agrees to do a sex determination for her.

In 2012, the Maharashtra government sent a proposal to the Centre to treat sex selective abortions as murder and make the act a punishable offence with life imprisonment.[10] Other statements from health ministers have been about restricting access to 12 weeks of pregnancy.[11] Moreover, the State Food and Drugs Administration recently clamped down on sales of medical abortion pills, ostensibly since they were being used for sex selection, but which has resulted in all chemists refusing to stock the pills any more.[12] All of this has created an undercurrent of anti-abortion sentiment.[13]

During the course of their work in rural areas of Western Maharashtra, SAMYAK, a Pune-based, non-government organization that promotes gender equality and advocates for human rights, found cases of private medical practitioners denying safe abortion services to women, claiming legal concerns.

"It does not make any difference to my practice if I say no to provide an abortion, but it makes a great difference to my practice if I do an abortion and it turns out to be a female fetus. PCPNDT machinery wants us to report every single abortion and its result. So I asked the family to get a permission letter from Taluka (Block) Medical Officer, which he refused to provide, so I denied abortion service to this woman." (Respondent)

More such stories were reported in SAMYAK's interaction with communities in the semi-urban areas, and we suspected that many more such stories existed. Hence, we decided to explore the interactions of private medical practitioners with the regulatory machinery and the specific reasons behind their refusal to provide abortion services.

Methodology

SAMYAK planned an exploratory study to document the knowledge and perspectives of private practitioners regarding the relevant laws and their interactions and experiences with the PCPNDT regulatory authorities and persons responsible for on the ground implementation. The study, being exploratory, involved a purposive and small sample of service providers in four districts of Western Maharashtra. The four districts were identified on the basis of low or declining child sex ratio in three consecutive Census of India reports. The sex ratio in these districts averaged 933 (range 924-941) in 1991, 865 (range 839-895) in 2001, and 864 (range 845-880) in 2011.

*The Prohibition of Child Marriage Act, 2006. http://wcd.nic.in/cma2006.pdf.

†The Dowry Prohibition Act, 1961. http://wcd.nic.in/dowryprohibitionact.htm.