



## Gender based violence - international concerns

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### Abstract

There is a war on women being waged all over the world. It is not the fictional war on women but it is a real war that takes the lives of millions of females every year. This real war is fuelled by abortion. Sex-selective abortion, along with the less prevalent infanticide, kills more girls in China and India every year than are born in the United States. The number of girls “missing” in Asia is equivalent to the entire female population of the United States, the majority due to sex-selective abortion. This real war on women has been going on for decades and is now beginning to get the attention it deserves. And recent study of Census data indicates that sex-selection is happening in the United States. Immigrants who come to America with gender bias and want to abort their girls have the benefit of having the law on their side. While sex-selection is illegal in many countries including India and China, only a handful of states in the U.S. address the issue. Around the world, particularly in countries like China and India, sex selective abortions are common. Women’s rights groups try to talk around the issue. Planned Parenthood decries abortion based on the baby’s sex. Pro-abortion groups attempt to reconcile the nonsensical claim that sex selective abortions are wrong while abortion itself isn’t.

**Keywords:** foeticide, universal declaration of human rights, international covenant on civil and political rights, pre-natal, conception, life

### 1. Introduction

Every human being has the inherent right to life. The right to life is a fundamental human right, central to the enjoyment of all other human rights. Right to life is a phrase that describes the belief that a human being has the right to live, particularly that a human being has the right not to be unjustly killed by another human being. According to Merriam Webster Dictionary, right to life means opposed to abortion or anti-abortion<sup>[1]</sup>. International human rights law recognizes this basic right as accruing at birth. These attempts to grant a right to life before birth—and therefore recognize pre-natal legal personhood—seek to bestow rights on a zygote<sup>[2]</sup>, embryo, or foetus that would be equal or superior to the rights of women. In many cases, these measures aim to outlaw any procedure that terminates a pregnancy<sup>[3]</sup>. Various international conventions and instruments provide for the right to life, survival, health, etc. in favour of women and children, and thus implicitly recognise the right of an unborn.

### 2.1 International human rights standards

International and regional human rights treaties protect a right to life without defining when life begins. Authoritative sources

for interpretation - including the history of negotiations and the jurisprudence of the bodies charged with interpreting and monitoring compliance with human rights treaties - clarify that these protections do not apply before birth and recognize that to protect an absolute right to life before birth could contradict human rights protections for women. The histories of negotiations over the terms of human rights treaties, which provide a source for interpretation where the language of a treaty is ambiguous, indicate that right to life provisions are not intended to protect a prenatal right to life. Additionally, treaty monitoring bodies, through general comments, concluding observations, and decisions in individual cases, consistently emphasize the importance of protecting women’s rights, and assert that to guarantee women’s fundamental rights to life and health, among others, States must remove barriers to the full enjoyment of those rights, such as the denial of safe and legal abortions.

#### 2.1.1 Universal Declaration of Human Rights (UDHR), 1948

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10<sup>th</sup> December 1948 [General Assembly resolution 217 A (III) (French) (Spanish)] as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

The Universal Declaration of Human Rights, 1948 opens with an assertion of the equal unassailable rights of all members of

<sup>1</sup> Right to Life available at <http://www.merriam-webster.com/dictionary/right-to-life> (Visited on 07 June 2013 at 10:20 am).

<sup>2</sup> A zygote is the initial cell formed when two gamete cells are joined by means of sexual reproduction. In multi-cellular organisms, it is the earliest developmental stage of the embryo. In single-celled organisms, the zygote divides to produce offspring, usually through Mitosis, the process of cell division.

<sup>3</sup> Whose Right To Life? available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RTL\\_3%2014%202012.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/RTL_3%2014%202012.pdf) (Visited on 07 June 2013 at 10:25 am).

the human family to inherent dignity and the dignity and appreciation of the aspiration of the common people for a world that is free from experience of barbarous acts which have lived with conscience of human kind.

The preamble states, "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people".

Articles 1, 2, 3, 7, 16(3) and 25 (2) are specifically relevant to the present purpose, addressing questions of entitlement to dignity and freedom without distinction of race, colour, sex, etc.

Article 1 of the Universal Declaration of Human Rights states that, "all human beings are born free and equal in dignity and rights." Significantly, the history of negotiations indicates that the word "born" was used intentionally to exclude a prenatal application of the rights protected in the Declaration. The drafters of the Declaration rejected a proposal to delete "born," and the resulting text of the Declaration conveys intentionally that the rights of the Declaration are "inherent from the moment of birth.

Article 2 prohibits gender discrimination or discrimination on the grounds of sex. It states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty".

Article 3 says that "Everyone has the right to life, liberty, and security." According to Article 7, all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Also Article 16(3) says "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". And according to Article 25(2), "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

Many pervasive social, cultural, political and economic injustices against girls and women constitute violations of the right of women to non-discrimination. This was clearly recognized at the International Conference on Population and Development (ICPD) in 1994 and in the associated Programme of Action which enjoined governments to eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices regarding female infanticide and pre-natal sex selection<sup>[4]</sup>.

<sup>4</sup> United Nations Report (1994); paragraph 4.16.

States also have an obligation under international human rights law to respect, protect and fulfil the human rights of women, as elaborated for example in the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR)-Article 2(2)<sup>[5]</sup>; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC)<sup>[6]</sup>.

### 2.1.2 International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was opened for signature by the UN General Assembly on 19 December 1966 and entered into force on 23<sup>rd</sup> March, 1976. The ICCPR deals in particular with what are typically referred to as 'civil and political' rights, such as the right to equality, the right to life and so forth.

The right to life in Article 6 of the ICCPR states:

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

The Human Rights Committee explains that the right to life 'is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.'<sup>[7]</sup>

### 2.1.3 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed on July 17, 1980 by sixty-four countries, is the most extensive and widely ratified international agreement and has as its principal goals the protection and promotion of women's rights and the elimination of discrimination against women.

The CEDAW is considered to be equivalent to an international bill of rights for women, defining what constitutes discrimination and providing an agenda for action. It states the negative consequences of female discrimination and seeks full equality between men and women in all fields of political, economic, social and cultural life. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, obligates State parties to eradicate all kinds of discrimination against women "in effect" in all walks of human activity.

### 2.1.4 Year of girl child- SAARC

The SAARC countries, of which India is a member, announced the year 1990 as "SAARC Year of the Girl Child" and to observe "SAARC Decade of the Girl child" from

<sup>5</sup> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

<sup>6</sup> Preventing Gender-Biased Sex Selection- An interagency statement OHCHR, UNFPA, UNICEF, UN Women and WHO, at p.3 available at [http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/P\\_reventing\\_gender-biased\\_sex\\_selection.pdf](http://www.unfpa.org/webdav/site/global/shared/documents/publications/2011/P_reventing_gender-biased_sex_selection.pdf) (Visited on 12 June 2013 at 10:48 am).

<sup>7</sup> Bogecho, D, "Putting it to Good Use - The International Covenant on Civil and Political Rights and Women's Right to Reproductive Health", (LGD) 2004 (1), available at <http://elj.warwick.ac.uk/global/04-1/bogecho.html>. (Visited on 12 June 2013 at 10:28 am).

January 1991, so as to create the right environment to secure a rightful place for female children <sup>[8]</sup>.

### **2.1.5 United Nations Convention on the Rights of the Child (UNCRC), 1989**

There are been a number of international treaties and documents that outline the rights of a child. Prior to World War II, the League of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924. The United Nations took its first step towards declaring the importance of child rights by establishing the United Nations International Children's Emergency Fund in 1946 (The name was shortened to United Nations Children's Fund in 1953, but kept the popular acronym UNICEF). Two years later the UN General Assembly adopted the Universal Declaration of Human Rights, making it the first UN document to recognise children's need for protection.

The first UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights <sup>[9]</sup>.

The preamble of the Convention recognises many of the principles outlined in the Declaration on the Rights of the Child. It recognizes that the United Nations has, in the Universal Declaration of Human Rights and in the Convention on the Rights of the Child, International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and considers that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity <sup>[10]</sup>.

Article 1 of the Convention defines a child as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier <sup>[11]</sup>. In this Article the maximum age prescribed is 18 years while as there is no minimum age defined. This was done in order to avoid the debate over abortion, which could possibly threaten the acceptance of the convention.

The convention recognises the duty of the State parties to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social

origin, property, disability, birth or other status <sup>[12]</sup>. The best interest of the child shall be a primary consideration, in all actions that relate to the child. Among the various other rights of the child one of the most important right of the child under the convention is that every child has the inherent right to life, and the state is under an obligation to ensure, the maximum survival and development of the child. Therefore, it can be said that the right to take birth is an inherent right of the unborn foetus under the United Nations Convention on the Rights of Child, 1989.

The convention contains a set of universal legal standards or norms for the protection and well being of children. Article 6 of the convention says that State parties are obliged to recognize that every child has the inherent right to life, survival and development. Article 2 contains provisions relating to non- discrimination and Article 3 provides for the best interest of the child.

### **2.1.6 International Conference on Population and Development (ICPD)**

The conference was held in 1994 and the issue of sex selection was discussed at length. Section 4.15 of the ICPD Programme of Action discusses sex selection as a problem of son preference and discrimination of girls since the early stages of their lives and which is compounded by new technologies to determine foetal sex and abortion of female foetuses. The section concludes with an appeal for critical investments in the health, nutrition and education of the girl child. It says, "since in all societies discrimination on the basis of sex often starts at the earliest stages of life, greater equality for the girl child is a necessary first step in ensuring that women realize their full potential and become equal partners in development. In a number of countries, the practice of pre-natal sex selection, higher rates of mortality among very young girls, and lower rates of school enrolment for girls as compared with boys, suggest that "son preference" is curtailing the access of girl children to food, education and health care. This is often compounded by the increasing use of technologies to determine foetal sex, resulting in abortion of female foetuses." The section concludes with an appeal for critical investments in the health, nutrition and education of the girl child <sup>[13]</sup>.

### **2.1.7 Beijing Declaration**

Paragraphs 115 and 116 of the 1995 Beijing Platform for Action give a list of practices considered as violence against women, including prenatal sex selection and female infanticide. This list of practices has been reiterated, for instance, in country reports of the various Rapporteurs on Violence against Women. This is potentially problematic since this could connote that the female foetus has the right to be born, irrespective of legal and medical contexts. Caution needs to be exercised while using the concept of sex selection as "violence against women" as contained in the Beijing Platform of Action 6.

<sup>8</sup> Dr. Sapna Rathi, *Sex Determination Test and Human Rights* 157 (Deep & Deep Publications, New Delhi, 2012).

<sup>9</sup> International Mechanisms -United Nations - United Nations Convention on the Rights of the Child  
<http://www.childlineindia.org.in/United-Nations-Convention-on-the-Rights-of-the-Child.htm> (Visited on 14 June 2013 at 10:48 am).

<sup>10</sup> U.N. General Assembly Document, Convention on the Rights of the Child, Resolution /44/25 (12 December 1989) with Annex.

<sup>11</sup> Article 1 to the United Nations Convention on the Rights of Child, 1989.

<sup>12</sup> Article 2(1) to the United Nations Convention on the Rights of Child, 1989.

<sup>13</sup> Report Of The International Conference On Population And Development (Cairo, 5-13 September 1994) available at  
<http://www.un.org/popin/icpd/conference/offeng/poa.html> (Visited on 05 June 2013 at 5:30 pm).

### 2.1.8 53<sup>rd</sup> world medical association general assembly 2002 resolution on female foeticide

The resolution was adopted by the 53<sup>rd</sup> WMA General Assembly, Washington, DC, USA, October 2002 and reaffirmed by the 191<sup>st</sup> WMA Council Session, Prague, Czech Republic, April 2012. According to the Resolution:

1. There is grave concern that in certain countries female foeticide is commonly practised.
2. The WMA denounces female foeticide as a totally unacceptable example of gender discrimination.
3. The World Medical Association calls on National Medical Associations:
  - To denounce the practice of female foeticide and the use of selective sex determination for that purpose and;
  - To advise their governments accordingly.

It is concluded that the practice of all kinds of discrimination against girl child, be it in the form of female foeticide and female infanticide or otherwise is an obvious and manifest violation of the provision of the various international covenants like the United Nations Declaration of Human Rights (UNDHR), the Convention on Elimination on the Discrimination Against Women (CEDAW) and the United Nations Convention on the Rights of Child (UNCRC).

From the foregoing discussion and on the analysis of various international documents, one is constrained to conclude that there are no specific provisions in most of the documents which could specifically guarantee protections to the foetus right from the day of conception. However, the documents very clearly through various provisions provide that there can be no discrimination and violence against the girl child and she has to be protected against all odds. This can easily lead us to conclude that although there are no specific provisions against female foeticide at present, one can hope that since convention against this menace will definitely come up in the near future.

### 2.2 Right to life of foetus

The right to life is a fundamental human right, central to the enjoyment of all other human rights. International human rights law recognizes this basic right as accruing at birth, and international and regional human rights bodies, as well as courts worldwide, have clearly established that any pre-natal protections must be consistent with women's human rights. An emerging trend to extend a right to life before birth, and in particular from conception, poses a significant threat to women's human rights, in theory and in practice.

However, several countries have adopted various legal frameworks for protecting life before birth:

- Explicit recognition of a constitutional right to life before birth, as in the national constitutions of Guatemala and Chile.
- Constitutional protections that confer equal protection for the life of both the pregnant woman and the "unborn," as in the national constitutions of Ireland and the Philippines.
- Legislation establishing that the right to life is subject to protection pre-natally, as Poland has done.

The strategy of promoting the recognition of a right to life

before birth has emerged in the context of constitutional reform processes, legislative initiatives, and court challenges that seek to extend constitutional protections of the right to life pre-natally. For example, in 2010, the Dominican Republic adopted a new constitution, which recognized a right to life from conception. In 2008 and 2010, the United States (U.S.) State of Colorado, and in 2011, the U.S. state of Mississippi rejected initiatives to amend the constitutions of these states to recognize that 'life begins at conception' and that from the moment of fertilization, zygotes, embryos, and fetuses are people with all the rights guaranteed to persons under their state constitutions. Since 2008, at least 16 Mexican states have amended their constitutions to protect the right to life from either fertilization or conception. In 2007, members of the Slovak Parliament challenged the constitutionality of the country's abortion law, arguing that the constitution protects the right to life before birth. However, the Slovak Constitutional Court found that granting the right to life to a foetus would directly contradict women's constitutional rights to health and privacy and upheld the constitutionality of the abortion law<sup>[14]</sup>.

In the U.S.A, "a foetus" is considered to be a person within the language of the "due process clause" of the Fourteenth amendment to the American Constitution. Besides, in *Rosen v. La, State Board of Medical Examiners*<sup>[15]</sup> the court upheld the embryonic and foetal right to survive, on the basis of the principle of equality of human beings generally. However, in *Abele v. Markle*<sup>[16]</sup> the Lumbard, C.J., held that "Balancing the interests, we find that the fundamental nature of the decision to have an abortion and its importance to the woman involved are unquestioned, that in a changing society women have been recognized as the appropriate decision makers over matters regarding their fundamental concerns, that because of the population crisis the state interest in these statutes is less than when they were passed and that, because of their great breadth, the statutes intrude into areas in which the state has little interest. We conclude that the state's interests are insufficient to take from the woman the decision after conception whether she will bear a child and that she, as the appropriate decision maker, must be free to choose. What was considered to be due process with respect to permissible abortion in 1860 is not due process in 1972"<sup>[17]</sup>. Hence the Court invalidated the statute<sup>[18]</sup> protecting human life "from the moment of conception". While as in *Roe v. Wade*<sup>[19]</sup>, the Supreme Court of U.S refrained from resolving the difficult question of "when life begins" and said that when those trained in the respective disciplines of medicines, philosophy and theology are unable to arrive at any consensus, the

<sup>14</sup> *Supra Note. 3*

<sup>15</sup> 380 F. Supp. 1217 (ED La 1970).

<sup>16</sup> 342 F. Supp. 800 (1972).

<sup>17</sup> "Due process has not been reduced to any formula; its content cannot be determined by reference to any code. The best that can be said is that through the course of this Court's decisions it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society . . . The balance . . . is struck . . . having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing." *Poe v. Ullman*, 367 U.S. 497, 542, 81 S.Ct. 1752, 1776, 6 L.Ed.2d 989 (1961) (Harlan, J., dissenting).

<sup>18</sup> Connecticut Abortion Law, 1821.

<sup>19</sup> (1973) 410 US 113.

judiciary is not in a position to speculate as to the answer. The Court held that the state cannot restrict a woman's right to an abortion during the first trimester, the state can regulate the abortion procedure during the second trimester "in ways that are reasonably related to maternal health", and in the third trimester, demarcating the viability of the foetus, a state can choose to restrict or even to proscribe abortion as it sees fit. This decision of the U.S Supreme Court became one of the most politically significant decisions in the history of the U.S Supreme Court, reshaping national politics, dividing the nation into "pro-choice" and "pro-life" groups and stimulating grass-root activism.

In response to *Roe v. Wade* a number of states enacted laws that limited abortion. The Supreme Court struck down several state restrictions on abortions in a long succession of cases stretching from mid-1970's to late 1980's. In 1992 in the case of *Planned Parenthood of South eastern Pennsylvania v. Casey* <sup>[20]</sup>, a suit was filed by five abortion clinics and a physician representing himself and a class of doctors who provided abortion services, seeking a declaratory judgment that each of the provisions of the Pennsylvania Abortion Control Act 1982, namely informed consent, parental consent, spousal notice, reporting requirements and public disclosure of clinics were in violation of the Fourteenth Amendment of the United States Constitution <sup>[21]</sup>. The District Court struck down all the provisions of the Act as unconstitutional and granted injunction restricting their enforcement. The court of Appeal affirmed in part and reversed in part the Amendments, striking down the husband notification provision but upholding the others. The U.S Supreme Court by a majority of 5 to 4 affirmed the Court of Appeal's verdict and refused to discard its 19 years landmark decision in *Roe v. Wade*, that made abortion legal. The court therefore struck down most of the provisions of the Act that make it more difficult for a woman to obtain an abortion <sup>[22]</sup>.

## 2.3 Sex selection and abortion laws in various countries

### 2.3.1 United States of America

Nearly nine out of ten Americans oppose abortion for reasons of sex selection. But such acts of gender violence are neither illegal nor uncommon in the U.S.A. Permissive abortion laws and high - resolution ultrasounds make it easier than ever for parents to target and eliminate unwanted daughters before birth. Until the recent spate of negative publicity focused public attention on such crimes it was not unusual to find abortionists advertising the availability of sex selective abortions in the New York Times. It is a well known fact that the practice of selectively aborting female fetuses is disturbingly common among the Asian-Americans. An analysis of 2000 Census data found clear evidence of sex selective abortion in what the authors called "son biased sex ratios", that is, a higher ratio of boys to girls than would occur

in nature <sup>[23]</sup>.

A study conducted by Columbia University economists, Douglas Almond and Lena Edlund, who examined the sex ratios at birth among U.S born children of Chinese, Korean and Asian parents. According to the study the first born children of Asians showed normal sex ratios at birth, roughly 106 girls for every 100 boys. If the first child happens to be son, the sex ratio of the second born children was also normal. But in case the first child happened to be a girl the sex ratio for the second birth was 1.17 meaning that the second child tended to be a boy. To put it other words roughly 10 percent of girls had been eliminated. If there was no previous son, sons outnumbered daughters by 50 percent. By Comparison while offspring sex ratio varied only slightly with parity and sex composition of previous children and the tendency was for repetition of the previous sex.

Since 2005, sexing through a blood test as early as 5 weeks after conception has been marketed directly to consumers in the U.S raising the prospect of sex selection becoming more widely practiced in the near future. In addition because Indians, Chinese and Koreans make up more than two percent of the U.S population, the effect on the breeding population sex ratio is small. The male bias we find in the U.S appears to be recent. In the 1990 U.S Census the tendency for males to follow females among Indians, Chinese and Koreans is substantially high <sup>[24]</sup>.

Domestically in the United States, we are not confronted by the same skewed sex ratios. However, we are well aware that gender inequality in the United States does exist, and that for some families, the desire to have a son – particularly in families who already have two or more daughters is very strong.

In the US, the sex selection and abortion debate is predictably complex and polarizing. The anti-abortion movement, seizing on a chivalric and politically useful "we'll save the girls" refrain, is cynically using the global "baby girls under siege" issue as part of a concerted incremental chipping away of abortion rights and women's reproductive freedom. Employing sex selective abortions as a political chess piece was deliberately outlined by the movement as early as 1994. The House of Representatives voted to reject the perversely named Susan B. Anthony and Frederick Douglass Prenatal Non-discrimination Act (PRENDA) <sup>[25]</sup>, which sought to ban sex-selection abortions. Authored largely by a man with an obsessive nostalgia for pre-industrial white male supremacy, this bill was roundly condemned by a broad coalition of civil rights, reproductive rights and justice, Asian American community leaders on the ground that this legislation would have impacted very few abortions and would do nothing to help girls and women on the planet <sup>[26]</sup>.

<sup>20</sup> (1992) 120 L Ed. 2<sup>nd</sup> 674.

<sup>21</sup> Pennsylvania Abortion Control Act 1982, Sections 3207(b), 3214(a) and 3214(f).

<sup>22</sup> Because I am A Girl- the State Of the world's Girls-2007 available at [http://www.plan.org.au/~media/Documents/Research%20and%20Reports/Because\\_I\\_am\\_a\\_Girl%20The%20State%20of%20the%20Worlds%20Girls%202007.aspx](http://www.plan.org.au/~media/Documents/Research%20and%20Reports/Because_I_am_a_Girl%20The%20State%20of%20the%20Worlds%20Girls%202007.aspx) (Visited 09 July 2013 at 6:25 pm).

<sup>23</sup> Mosher W. Steven- Ban on Sex Selective abortions in USA. available at <http://www.slideshare.net/mitukhurana/mosher12062011> (Visited on 17 June 2013 at 11:22am).

<sup>24</sup> Douglas Almond and Lena Edlund- Son Biased ratio in the 2000 U.S Census available at <http://www.slideshare.net/mitukhurana/sonbiased-sex-ratios-in-the-2000-united-states-census#> (Visited on 17 June 2013 at 13:12 pm).

<sup>25</sup> PRENDA defines "sex-selection abortion" as an "abortion undertaken for purposes of eliminating an unborn child of an undesired sex".

<sup>26</sup> 160 Million Missing Females: PRENDA and Misogyny available at [http://www.huffingtonpost.com/soraya-chemaly/gender-selection-sex-discrimination-abortion\\_b\\_1559405.html](http://www.huffingtonpost.com/soraya-chemaly/gender-selection-sex-discrimination-abortion_b_1559405.html) (Visited on 17 June 2013 at 02:34 pm).

The groups that oppose the PRENDA give the following arguments in their favour, “The social and economic factors that would cause a woman to terminate a pregnancy based on the sex of the foetus are troubling, even though evidence on “sex selective” abortions in the United States is limited. But a ban on sex selective abortions does nothing to address the root of the problem, which is family preference for a son. Such son preference stems from “the elevated social status of men, the ability of sons to carry on the family name and perform certain cultural rituals, men’s ability to contribute more to family income, and traditions that require sons to care for aging parents.” Thus, the problem is gender inequality, and the solution should be remedying that problem, not banning abortions.

As far those who are in favour of PRENDA say, passing of the Act would bring the United States in line with a long list of other countries around the world, including China and India, that have banned sex-selective abortions.

Dozens of couples from the U.K fly to the US every year to choose the sex of their babies, a practice banned in Britain three years ago [27]. Therefore, a law for the purpose of combating the problem is the need of the hour.

### 2.3.2 United Kingdom

Some UK abortion clinics have been reported to be falsifying paperwork so that they could carry out their clients’ requests for sex-selective terminations. Undercover reporters for the London Telegraph accompanied pregnant women and taped doctors arranging an abortion after an unequivocal request to abort a child because it was of the wrong sex. The reporters visited nine clinics; at three of them they were able to obtain sex-selective abortions [28]. A new report issued by the British government indicated that illegal sex-selection abortions may be taking place within immigrant communities in the UK. Government Ministers have admitted this after a survey of new birth figures.

“While the overall United Kingdom birth ratio is within normal limits, analysis of birth data for the calendar years from 2007 to 2011 has found the gender ratios at birth vary by mothers’ country of birth,” the Tory minister said.

**Table 1:** Sex Ratio in U.K from 2007-2011

| Year | Sex Ratio |
|------|-----------|
| 2007 | 105.6     |
| 2008 | 104.9     |
| 2009 | 105.2     |
| 2010 | 105.1     |
| 2011 | 105.1     |

However, gender ratios for national populations above 108 and below 103 are rare [29].

Pregnancy terminations based on gender have been illegal in

the UK since a prohibition was lifted in 1967 [30] to allow abortions on foetuses up to 28 weeks into pregnancy on grounds of physical or psychological risk to the mother or in cases where the baby was likely to be born severely physically or mentally handicapped [31].

The United Kingdom's reproduction watchdog, the Human Fertilisation and Embryology Authority (HFEA), has advised the government to ban clinics from using techniques that allow parents to choose the sex of their child for reasons that are not medical after overwhelming opposition from experts and the public [32].

As a result of a year-long HFEA review on sex selection which took into account both public and expert opinion on the use of sex selection as well as specially commissioned research on the scientific, technical, social and ethical issues the Human Fertilisation and Embryology Authority, which regulates fertility treatment, recommended a ban on sex selection, except in families where one gender would risk inheriting a serious genetic disorder.

Sex selection ‘for social reasons’ (which is now banned) is contrasted with medical sex selection (which is permitted)—i.e. sex selection where the aim is to avoid creating a child with a sex-linked disorder. Subsequently, the Human Fertilisation and Embryology Act, 2008 has put the regulatory prohibition of (non-medical) embryonic and gametic sex selection on to a statutory footing. Embryo selection and sperm sorting can only be done under HFEA licence and the 2008 Act states that such licences ‘cannot authorise any practice designed to secure that any resulting child will be of one sex rather than the other’. The 2008 Act does, however, lay out some specific types of selection that may be licensed (the above mentioned, general prohibition notwithstanding) including medical sex selection:

In a case where there is a particular risk that any resulting child will have or develop—

- a gender-related serious physical or mental disability,
- a gender-related serious illness, or
- any other gender-related serious medical condition

### 2.3.3 China

Sex-selective abortion has become a universal problem and is raising its ugly head in China also. The problem is worst in China and India where provincial and even national birth ratios evince the widespread practice of elimination of baby girls by sex selective methods including abortion, pre-implantation sex selection in *In-vitro Fertilisation*, and even infanticide. China presently the world’s most densely populated country—is especially affected by its rapid population increase. Yet despite impending threats of mass starvation and economic downfall resulting from widespread poverty and over-population, sex-selective abortion and female infanticide are undoubtedly most threatening to

<sup>27</sup> Stephen Adams, “British couples flying to US for banned baby sex selection” *The Telegraph* Aug. 28, 2012.

<sup>28</sup> Michael Cook, “Newspaper sting uncovers sex-selective abortion in UK” *BioEdge* Feb. 25 2012.

<sup>29</sup> Birth Ratios in the United Kingdom-A report on gender ratios at birth in the UK- Prepared by Analytical Team, Department of Health available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200527/Gender\\_birth\\_ratio\\_in\\_the\\_UK.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200527/Gender_birth_ratio_in_the_UK.pdf) (Visited on 18 June 2013 at 10:23).

<sup>30</sup> Abortion Act, 1967.

<sup>31</sup> Unwanted girls- Fears of sex-selective abortions in the UK available at <http://www.globalpost.com/dispatch/news/regions/europe/united-kingdom/130111/fears-sex-selective-abortions-the-uk> (Visited on 18 June 2013 at 11:47 am).

<sup>32</sup> Zosia Kmietowicz, “Fertilisation authority recommends a ban on sex selection”, *BMJ* 1123 (2003).

population in China<sup>[33]</sup>. Currently, the number of women born in China is 20 percent lower than needed to replace the current population. After several decades of regulations aimed at balancing the birth ratios, China's male to female sex ratio is still rising. In the 1960s and 1970s, the national birth ratio was 106 male births for every 100 female births. In 2009, the Chinese Academy of Social Sciences (CASS) stated that the national birth sex ratio had erupted to 121. The scale of this misogynistic practice adduces drastic societal effects, particularly in China. Sex-selection has been tied to "bride trafficking" from neighbouring countries, increased suicide rates among Chinese women, and increased crime (particularly rape), murder, and delinquency. However, other estimates suggest that the Chinese government grossly underestimates the magnitude of the problem, placing current bachelor estimates at 90 million<sup>[34]</sup>.

**Table 2:** The Rise of Gender Imbalance in China Reported Sex Ratios at Birth and Sex Ratios of the Population Age 0-4: China, 1953-2005 (boys per 100 girls)

| Year | Sex Ratio at Birth | Sex Ratio, Age 0-4 |
|------|--------------------|--------------------|
| 1953 | --                 | 107.0              |
| 1964 | --                 | 105.7              |
| 1982 | 108.5              | 107.1              |
| 1990 | 111.4              | 110.2              |
| 1995 | 115.6              | 118.4              |
| 1999 | 117.0              | 119.5              |
| 2005 | 118.9              | 122.7              |

The Chinese government approved a new law<sup>[35]</sup> aimed at curbing the use of technologies such as ultrasounds to identify the sex of an unborn child. Officials want to curtail the use of ultrasounds for abortions of female unborn children. Many Chinese rely on sex-selection abortions to ensure the birth of a boy since the government only allows one child. Chinese culture has long favoured boys over girls and some newborn girls become the victims of infanticide as well. The new law puts in place fines and a three-year prison term for helping detect the sex of the baby before birth. The law is also intended to correct the growing gender imbalance that has produced a society of many more men compared with women. The Chinese population control policy of allowing only one child per family was put in place more than 20 years ago. The revision is aimed to prevent the selection of a child's gender when not conducted for medical purposes<sup>[36]</sup>.

In 2005 males under the age of 20 exceeded females by more than 32 million in China, and more than 1.1 million excess births of boys occurred. If the position continues China will see very high and steadily worsening sex ratios in the reproductive age group over the next two decades. The

<sup>33</sup> Ayana Gray, Sex-Selective Abortion, Female Infanticide, and their Lasting Effects in China and India at p.1-2. Available at [http://www.tcr.org/tcr/essays/EP\\_TCR\\_21\\_1\\_F10\\_Infanticide.pdf](http://www.tcr.org/tcr/essays/EP_TCR_21_1_F10_Infanticide.pdf) (Visited on 09 July 2013 at 7.45pm).

<sup>34</sup> Timothy R. Loveland, Sex-Selective Abortion Law in China and Corresponding Conception in the United States, *AHL*, Vol. 21, 175 (SPRING 2012).

<sup>35</sup> Law on Maternal and Infant Health Care, 1994- Article 32 says, Sex identification of the foetus by technical means shall be strictly forbidden, except that it is positively necessitated on medical grounds.

<sup>36</sup> Nicholas Eberstadt, "The Global War Against Baby Girls", *TNA*, 3-18 (2011) available at <http://www.thenewatlantis.com/publications/the-global-war-against-baby-girls> (Visited on 18 June 2013 at 20:16 pm).

Chinese Academy of Social Sciences predicts that by 2020, China will have 30-40 million more boys and young men under age 20 than females of the same age<sup>[37]</sup>. Enforcing the existing ban on sex selective abortion could lead to normalisation of the ratios provided the law banning sex selective abortions is properly implemented.

In West Asia, the Caucasus region has emerged since the end of the Cold War as another front in the global war against baby girls. Between the final collapse of the Soviet Union in 1991 and the year 2000, SRB's in Armenia, Azerbaijan, and Georgia all rose from about 105 to about 120. Ultrasound diagnostics were generally unavailable in these countries in the Soviet era. Inferential evidence — including increased general access to diagnostic ultrasound and newly increasing SRB's for higher-parity births, especially third and higher-order births — strongly suggests that these countries are subject to the same syndrome observed in so much of East and South Asia.

### 3. Conclusion

From the above discussion, it may be concluded that although, there being a number of International Instruments for the protection of the fair sex, the prevalence of the practice of female foeticide has not been successfully curbed. Despite the fact that such practices have been banned in various countries like, the U.K, the world at large has not been able to get rid of the menace and the fair sex continues to suffer. Even in the countries having banned the practice, such inhuman practices continue and the laws banning such practices tend to be futile as the offenders can easily travel to those countries where sex - selection is not banned taking advantage of the liberal laws therein. Sex-selective abortion is by now so widespread and so frequent that it has come to distort the population composition of the entire human species: this new and medicalised war against baby girls is indeed truly global in scale and scope<sup>[38]</sup>. Therefore, there arises a grave necessity for a Universal International Instrument designed specifically for curbing the menace of killing the girl child before its birth by various means.

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<sup>37</sup> Sneha Barot, "A Problem-and-Solution Mismatch: Son Preference and Sex-Selective Abortion Bans", *GPR* Vol. 15 (Spring 2012)

<sup>38</sup> *Supra* Note 44.

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