Sex selection

Can sex selection be ethically tolerated?

B M Dickens

Prohibition on sex selection may well be unnecessary and oppressive as well as posing risks to women’s lives

The urge to select children’s sex is not new. The Babylonian Talmud, a Jewish text completed towards the end of the fifth century of the Christian era, advises couples on means to favour the birth of either a male or a female child. The development of amniocentesis alerted the public in the mid-1970s to the scientific potential for prenatal determination of fetal sex, and progressive decriminalisation of abortion afforded choice about continuation of pregnancy. The more recent emergence of preimplantation genetic diagnosis (PGD) obviates resort to abortion, and improved techniques of sperm sorting and diagnosis permit creation of zygotes that will ensure the sex of a future child.

Growth of biomedical means to select the sex of future children has been accompanied by fear that such means will be employed to favour births of sons, and so perpetuate devaluation of girl children and women’s inferior family and social status. A reaction to this fear has been the demand for legal and social status. A reaction to this fear has been the demand for legal and social status. A reaction to this fear has been the demand for legal and social status.

Sex selected abortion, however, is seen as an instrument and consequence of male dominance that feminists are committed to oppose. It has been observed that “[m]any feminists view any efforts to plan the sex of future children as epitomising sexism”. Writing about abortion in 1986, a prominent prochoice advocate stated: “we believe abortion for-gender choice is an unqualified moral wrong”. Opposition to means of sex selection that are made possible by PGD and sperm sorting avoids the dilemma posed by sex selected abortion, and affords opponents the support of conservative antiabortion agencies, as well as of others committed to the elimination of the pro-male sexism that sex selection is seen to represent.

The stereotypical concept that male sexism is inherent in sex selection, rooted in perceptions of pervasive devaluation of girl children, may be contradicted in particular countries, however, by empirical studies. For instance, summarising the conclusion of a comprehensive sociological survey and public presentations, members of the Royal Commission on New Reproductive Technologies in Canada reported in 1993 that:

Legislation has been enacted in a number of countries, and proposed in others, to prohibit sex selection on non-medical grounds, such as the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 in India. The survey revealed that, contrary to what has been found in some other countries, a large majority of Canadians do not prefer children of one sex or the other. Many intervenors . . . assumed that Canadians have a pro-male bias with regard to family composition; we found that this assumption appears to be unfounded.

Whatever the specific reasons are for abortion, most feminists believe that the women concerned are in the best position to judge whether abortion is the appropriate response to pregnancy. Because usually only the woman choosing abortion is properly situated to weigh all the relevant factors, most feminists resist attempts to offer general, abstract rules for determining when abortion is morally justified . . . . Despite the diversity of opinion found among feminists on most other matters, most feminists agree that women must gain full control over their own reproductive lives if they are to free themselves from male dominance.

In light of evidence from India, China, and other countries and cultures in which son preference is apparent, many analysts and commentators have envisioned the use of techniques of sex selection only as reinforcing male dominated sexism and women’s subordination.

New reproductive techniques and technologies have always triggered fears of unnatural, harmful outcomes, social disruption, and destruction of conventional families. In the mid-1960s, addressing human reproduction by artificial insemination, the gynaecologists Kleegman and Kaufman perceptively observed that:

Any change in custom or practice in this emotionally charged area has always elicited a response from established custom and law of horrified negation at first; then negation without horror; then slow and gradual curiosity, study, evaluation, and finally a very slow but steady acceptance.

The established custom that was initially, and in some cases is still, horrified at recognition of the potential for effective sex selection of future children was not only that of conservative religion, but also that of some components of organised feminism. By the 1980s, feminism was becoming a politically influential force in Western Europe, North America, Australia, and several other westernised democratic countries. The dilemma posed by sex selected abortion is that many feminists, not all of whom are women, consider choice in abortion to underpin women’s moral agency and the defence of their self determination. A leading modern analyst has observed that:

perform any procedure or provide, prescribe or administer any thing that would ensure or increase the probability that an embryo will be of a particular sex, or that would identify the sex of an in vitro embryo, except to prevent, diagnose or treat a sex linked disorder or disease.

The survey revealed that, contrary to what has been found in some other countries, a large majority of Canadians do not prefer children of one sex or the other. Many intervenors . . . assumed that Canadians have a pro-male bias with regard to family composition; we found that this assumption appears to be unfounded.
Preferences were generally seen as unimportant, almost trivial. The
survey showed that virtually all prospective parents want, and feel
strongly about having, at least one child of each sex.1

Nevertheless, invoking perceived femin-
itist values, the commissioners recom-
manded criminalisation of the use of sex
selection techniques, which is now pro-
posed in the legislation introduced in
May 2002.

This legislation is comparable to that
enacted in India in 1994, but raises the
ethical issue of whether the social circum-
stances the legislation is intended
to affect are comparable. The ethical
principle of justice, considered at a
formal or abstract level, requires that like
cases be treated alike, and that different
cases be treated with due recognition of the
difference; that is, it is as unjust and un-
ethical to treat different cases alike as to
treat alike cases differently.2 Male
dominance may be comparable in
Canada and India, but the evidence is
that sex preference between children is
different.

There may be the same preference in
some families for a firstborn child to be
male, but this preference, if offensive to
equal priority and opportunity between the
sexes, can be addressed by not allowing sex
selection only for second or sub-
sequent children, rather than by absolute
prohibition. Under a limit of this nature,
allowing sex selection for purposes of
family balancing in countries in which
no demonstrable pro-male sex bias exists
among prospective parents appears at
least ethically neutral and tolerable.3

Support lies in such tolerance contribut-
ing to respect for prospective parents'
autonomy. It avoids the harm of compel-
ing a woman’s repeated pregnancies
unwanted by her. It avoids the force of
male dominance.

Selection based on sex is clearly
sexual, but not necessarily sexist. The
analogy is with the contrast between
rational and racial choice. It is as objection-
able for a decision to be sexist as for it to
be racist. A racially based decision may
be troublesome, but not a sexist preference. To suppose
that any such choice is necessarily sexist is unjust, and to base laws on
announcing criminal penalties on such a supposition
where the evidence is that an assump-
tion of “a pro-male bias . . . appears to be
unfounded”4 is both unjust and oppres-
sive.

Where social practice, including that
to do with sex selection, is apparently
sexist, such as in the environment to
which the Indian legislation of 1994 is a
response, the ethics of legal prohibition
also warrant attention. Since “[f]eminist
ethics demands that the effects of any
decision on women’s lives be a feature of
decisional moral consideration and decision
making,” and focuses “on the need to develop a
moral analysis that fits the actual world
in which we live”,5 legal prohibition may be
examined in that light.

Until their society remedies its sex
preference, the prohibition of sex selec-
tion would seem predominantly to bur-
den women’s lives. It leaves them with
no choice but to bear their future children, and family and religious
requirements that they deliver sons, they
may have to bear successive pregnancies
until they do. Early marriage and a quick
succession of pregnancies contribute signifi-
cantly to the risk of maternal mor-
tality and morbidity. A leading gynaec-
cologist has observed that “[e]very
woman who gets pregnant is exposed to risk . . . . The risk increases in low
resource settings . . . . Risks of pregnancy
and childbirth recur with every preg-
nancy. The lifetime risk of pregnancy and
childbirth depends on how many times the woman gets pregnant”.6

Without considering aggravated risks of ado-
lescent pregnancy, a World Health
Organisation (WHO) report notes “the
disturbing statistics of maternal mor-
tality for developing countries, where
women are more than 400 times as likely
to die from complications during preg-
nancy than women in European
Southwest”.7 The risk to unplanned
childlessness for girls is of early death due to infant
icide, malnutrition, or neglect.8

Son preference has produced, but
might also mitigate, the sex-ratio bal-
ant. The latest Indian census puts the
national sex ratio at 933 females to 1000
males, but only 927 females in the age
group under six years old. In Haryana
state, moreover, there are 861 girls to
1000 boys, and only 820 females in the
under six age group.9

While ominous for the present generation of children, these
figures offer a promise of future redress.

If sons wish, as adults, to have their own
sons, they need wives. The dearth of pro-
spective wives will, in perhaps short
time, enhance the social value of daugh-
ters, reversing their vulnerability and the
force of male dominance.

Whether or not this promise is real-
ised, attempts to end son preference by
prohibition of sex selection are failing in
India, and appear too peripheral to the
irresolvable, since “the tail cannot wag the dog”. Sex bias must be
abandoned at more fundamental and com-
prehensive social, economic, political,
and legal levels. Prohibitions are unnec-
sary and oppressive where there is no
sex bias but only a wish to balance a
family with children of both sexes, and
pose risks to women’s and girl children’s
lives and health where bias remains.


Author’s affiliations

Correspondence to: Professor B M Dickens,
Faculty of Law, University of Toronto, 84
Queen’s Park, Toronto, Ontario, Canada M5S
2C5; bernard.dickens@utoronto.ca

REFERENCES AND NOTES

1 Niddah 3:31A. In: Epstein I, ed. The
Babylonian Talmud (2 vols., trans., London:

2 Kevles DJ. Hood L, eds. The code of codes:
scientific and social issues in the human
genome project. Cambridge MA: Harvard

3 Council of Europe. Convention for the
protection of human rights and dignity of the
human being with regard to the application of
biology and medicine: convention on human
rights and biomedical Strasbourg:
Council of Europe, Directorate of Legal Affairs,
1996.

4 The proposed Assisted Human Reproductive
Act, section 5(1)(e).

5 Kleegman SJ, Kaufman SA. Infertility in

6 For instance the Feminist International
Network of Resistance to Reproductive and
Genetic Engineering (FINNEAGE), formed in

7 Sherwin S. No longer patient: feminist ethics and
health care. Philadelphia: Temple

8 Wolf SM, ed. Feminism and bioethics:
Beyond reproduction. New York: Oxford

9 Harrison BW. Feminist realism. Christianity

10 Royal Commission on New Reproductive
Technologies. Proceed with care: final report
of the royal commission. Ottawa: Minister of

11 See reference 10: 890.

12 Beauchamp TL, Childress JF. Principles of
biomedical ethics [5th ed.]. New York: Oxford

13 Pennings G. Ethics of sex selection for family
balancing: family balancing as a morally
acceptable application of sex selection.

14 See reference 7: 55.

15 Fathalla MF. From obstetrics and gynaecology
to women’s health: the road ahead. New

16 Department of Reproductive Health and
Research, World Health Organisation.
Progress in Reproductive Health Research
2001;56:1.

17 Fathalla MF. The girl child. International
Journal of Gynaecology and Obstetrics
2000;70:7–12, at 8.

18 Registrar General. Provisional population
totals, census of India, 2001. New Delhi:
Office of the Registrar General, 2001; see also
Dugger CW. A claim to help choose
baby’s sex sets off furor in India. New