US
UNIVERSITY OF SUSSEX

Sussex Research

Re-situating abortion: bio-politics, global health and rights in neo-liberal times (JOURNAL SPECIAL ISSUE)

Maya Unnithan, Sylvie Dubuc, Silvia de Zordo

Publication date
03-06-2018

Licence
This work is made available under the Copyright not evaluated licence and should only be used in accordance with that licence. For more information on the specific terms, consult the repository record for this item.

Document Version
Accepted version

Citation for this work (American Psychological Association 7th edition)
Unnithan, M., Dubuc, S., & de Zordo, S. (2018). *Re-situating abortion: bio-politics, global health and rights in neo-liberal times (JOURNAL SPECIAL ISSUE)* (Version 1). University of Sussex. https://hdl.handle.net/10779/uos.23308706.v1

Copyright and reuse:
This work was downloaded from Sussex Research Open (SRO). This document is made available in line with publisher policy and may differ from the published version. Please cite the published version where possible. Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners unless otherwise stated. For more information on this work, SRO or to report an issue, you can contact the repository administrators at sro@sussex.ac.uk. Discover more of the University's research at https://sussex.figshare.com/

Sussex Research Online

Re-visioning evidence: Reflections on the recent controversy around gender selective abortion in the UK

Article (Accepted Version)

Unnithan, Maya and Dubuc, Sylvie (2018) Re-visioning evidence: Reflections on the recent controversy around gender selective abortion in the UK. Global Public Health, 13 (6). pp. 742-753. ISSN 1744-1692

This version is available from Sussex Research Online: http://sro.sussex.ac.uk/id/eprint/68897/

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

Copyright and reuse:
Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

http://sro.sussex.ac.uk

Re-visioning evidence: Reflections on the recent controversy around gender selective abortion in the UK

Maya Unnithan* & Sylvie Dubuc**

**Global Studies, University of Sussex, Falmer, Brighton, BN1 9SJ, UK*

M.Unnithan@sussex.ac.uk (corresponding author)

***Department of Geography and Environmental Science, University of Reading, Reading, RG6 6AH, UK; Nuffield College, Oxford*

S.Dubuc@reading.ac.uk

Re-visioning evidence: Reflections on the recent controversy around gender selective abortion in the UK

Reports in the British media over the last 4 years have highlighted the schisms and contestations that have accompanied the reports of gender selective abortions amongst British Asian families. The position that sex selection may be within the terms of the 1967 Abortion Act has particularly sparked controversy amongst abortion campaigners and politicians but equally among medical practitioners (and their professional organisation BPAS) who have hitherto tended to stay clear of such debates. In what ways has the controversy around gender based abortion led to new framings of the entitlement to service provision and new ways of thinking about evidence in the context of reproductive rights? We reflect on these issues drawing on critiques of what constitutes best evidence, contested notions of reproductive rights and reproductive governance, comparative work in India and China as well as our involvement with different groups of campaigners including British South Asian NGOs. The aim of the paper is to situate the medical and legal provision of abortion services in Britain within current discursive practices around gender equality, ethnicity, reproductive autonomy, probable and plausible evidence and policies of health reform.

Keywords: gender selection, reproductive autonomy, abortion legislation reform, sex-ratio at birth, plausible evidence, Britain

Introduction

The gender selective abortion controversy in Britain gained public attention in February 2012 with two reports carried by the Daily Telegraph. The reports were based on secret films made by the paper's investigative reporters following the information they had received that doctors in British clinics were agreeing to terminate foetuses based on whether they were male or female. The matter of whether charges should be brought against the two doctors mentioned in the films

was deliberated upon by the General Medical Council and supported by the Secretary of State for Health, Andrew Lansley who also informed the Police. The Care Quality Commission announced that all abortion clinics would have random checks. The doctors were eventually cleared of any wrongdoing in the court of law who found there was not enough evidence to suggest gender selective intent. The media continued to focus on the issue with further investigative reports appearing in television broadcasts on the BBC and in newspapers such as the Guardian and the Independent in 2013 and 2014, respectively.

The piece in the Independent newspaper drew on an 'in house' statistical study to note:

> 'The practice of sex-selective abortion is now so commonplace that it has affected the natural 50:50 balance of boys to girls within some immigrant groups and has led to the "disappearance" of between 1,400 and 4,700 females from the national census records of England and Wales, we can reveal. A government investigation last year found no evidence that women living in the UK but born abroad were preferentially aborting girls. However, our deeper statistical analysis of data from the 2011 National Census has shown widespread discrepancies in the sex ratio of children in some immigrant families, which can only be easily explained by women choosing to abort female foetuses in the hope of becoming quickly pregnant again with a boy. The findings will reignite the debate over whether pregnant women should be legally allowed to know the sex of their babies following ultrasound scans at 13 weeks.' (Connor, The Independent 15th January 2014)

Alongside these reports, a host of feminist and health activists, medical professionals and politicians contributed their views on the seriousness of the issue and the required interventions. Notable amongst them was Ann Furedi of the

BPAS (British Pregnancy Advisory Service) who was quoted as saying that abortion on the grounds of sex selection may be within the terms of the 1967 Abortion Act (Ditum, Guardian 2013; Appendix 1). That the Act did not specify any clear legal guidelines on gender related abortion became a key issue in the ensuing debate.

As a result of these commentaries public and political concern shifted to focus on whether the existing Abortion Act required specific amendment so as to prevent terminations on the basis of the sex of the foetus. And if so, a central consideration for a wide majority who supported women's access to safe abortion services (those who were pro-choice) was whether the efforts to change the existing law which has enabled women to access abortion relatively easily would be put into jeopardy (also Ditum, Guardian 2013). The stricter surveillance of doctors in having to provide clear evidence in the event of prosecution would have a 'chilling effect' on abortion provision as argued by the pro-choice lobby (Lee, 2014), and especially so for women of British Asian communities.

That abortion in itself, let alone gender selective abortion, is a major issue of moral and ethical contention is not a new observation as the many activist campaigns and mobilisation of pro-life (anti-abortion rights) versus pro-choice (pro-abortion rights) groups globally have demonstrated over the past 50 years. Yet the new ways in which moralities around abortion are mobilised on-the-ground in the current climate of economic, religious and political conservatism require renewed academic attention. With this objective in mind in the paper, we investigate the extent to which the controversies around gender selective abortion are rooted in new meanings and mobilisations of reproductive rights to shape new forms of entitlements to healthcare and reproductive governance. We follow

Morgan and Roberts definition of the term reproductive governance to mean the 'mechanisms through which different historical configurations of actors use legislative controls, economic inducements, moral injunctions, direct coercion and ethical incitements to produce, monitor and control reproductive behaviours and practices' (Morgan and Roberts 2012: 243).

At the outset it is important to note that Britain has an active Christian basis to its pro-life lobby. It was conservative, pro-life MP Fiona Bruce who tabled the bill (section 5 of the Serious Crime Bill) which triggered the intense debates around legal reform of the Abortion Act in November 2014. Fiona Bruce cited a series of case studies of women from the South Asian community who were faced with pressure to abort their female foetuses as well as South Asian women's groups who campaigned to prevent the practice, in support of her proposal (she received the support of over 70 other MPs). That the proposed amendment to the Serious Crime Bill would make abortion on grounds of sex selection a specific criminal offence drew a significant response from across the professional and academic community, British South Asians amongst them (letter to the Telegraph 28/01/2015; with over 50 signatories including the authors of this paper and several contributors to this themed issue). Several British Asian civil society groups, on the other hand, lent their support to Fiona Bruce's Bill (letter to the Telegraph 9/02/2015).

In the following section we take an in-depth look at how the pro-life and pro-choice positions were sustained in the case of gender selective abortions and begin by examining the kinds and meaning of *evidence* deployed by the different parties. We consider the ways in which the controversy around gender selection has invested ideas of reproductive autonomy and choice with new meaning and

the implications this has for new configurations of notions of entitlement to public health service provision. Given that specific (Asian) communities are implicated in the practice of female selective abortion, we also deliberate upon the role that gender and 'culture' plays in framing notions of reproductive autonomy and entitlement.

The aim of the paper is to situate the medical and legal provision of abortion services in Britain within current discursive practices around gender equality, ethnicity and notions of health reform and evidence.

Dispute over 'Evidence'

A mix of anecdotal and quantitative evidence has been used in the media and parliamentary discussions on whether there is a need to introduce a law sanctioning sex-selective abortion. Quantitative evidence in particular has proved to be decisive in shaping media reports on the issue and the opinions of legislators. At the same time, it is important to note that there is very limited qualitative data on gender selective abortion in the UK. We start by taking a close and critical look at the 'evidence' that has been mobilised by the different sides in the abortion debate (we use the term 'evidence' as an umbrella term to cover different kinds of sources marshalled by members of these groups). Overall, we make two important arguments in the paper to suggest that without nuanced cultural data firstly, the idea of female selective abortion as potentially agentive would not be understood. Secondly, we suggest that in the absence of qualitative data, live-birth metrics can more easily be used to expand the controls and injunctions on reproductive behaviours and practices (which underlie reproductive governance).

The argument in support of especially plausible forms of qualitative data (Unnithan 2015) also comes from the fact that quantitative material rarely speaks to the causes and decision processes at play. In addition, because the practice of prenatal sex selection is 'hidden', sex-determination (intention and decision of the couple) and sex-selection, especially in the case of abortion procedures, are two *separate* processes and therefore reliable counts of sex-selection procedures are not available. It is impossible for anyone but the couple to determine with certainty which abortions are motivated by gender selection. A systematic sex-selection against a specific gender[i], on the other hand, becomes manifest in a distortion of the sex ratio at birth (SRB). Therefore a significant distortion of the measured SRB from the 'normal' SRB[ii] provides strong indirect evidence of prenatal sex selection in a population or group. This method is extensively applied by demographers[iii]. While biased SRB provide indirect evidence of prenatal sex-selection (ie. preconception and post-conception selection) it provides no information on the method of sex-selection used (whether medically assisted reproduction or as gender selective abortion).

Where prenatal sex selection against females has been empirically documented (notably in South and East Asian countries and the South Caucasus), generally the bias in the ratio of boys to girls becomes apparent only at higher birth orders (i.e. for second, third or later births) and especially when only daughters have been previously born (e.g. Arnold et al., 2002). The rationale behind such data is that the likelihood to remain sonless increases exponentially with the reduction in the number of children per family (Dubuc, 2009, 2017 forthcoming). In other words, parents with only daughters who desire a small number of children but wish to have at least one son, are likely to resort to

prenatal sex-selection to reconcile their gender composition and family size ideals (e.g. Das Gupta & Bhat, 1997; Croll, 2002).

The first indirect quantitative evidence of prenatal sex selection in the UK was reported in 2007. The analysis of exhaustive annual vital data registration from the Office for National Statistics (ONS) by birthplace of mother, from 1969 to 2005, revealed a significant increase in the SRB to India-born mothers living in England and Wales (but not for any other group; see Dubuc & Coleman, 2007 for details), particularly happening at higher birth orders (from third birth), where the SRB rose from 104 to averaging 113 boys per 100 girls over the study period, and coincided with the widespread availability of prenatal sex diagnostics (mainly ultrasound). The recourse to prenatal sex-selection - thought to be largely female selective abortion - appears to be the most plausible explanation for these observations, and no realistic alternative explanations have been identified. Comparable demographic evidence and interpretations have been forthcoming, including in the USA and Canada (eg. Almond & Edlund 2008; Almond et al., 2013).

Since 2007, the Department of Health has published reports of birth record analyses in Britain and found no significant evidence of prenatal sex-selection which *remain inconclusive* due to the short time-frame used to analyze small populations, limiting statistically significant interpretations (Dubuc, 2015). The data from the newspaper report of 15th January 2014, discussed above could not be independently validated (Dubuc, 2015). In conclusion, occurrence of sex-selection against females in recent years in Britain remains unclear and qualified interpretations would require continued trend analyses, as required by clause 25 of the Serious Crime Bill.

Most statistics are open to interpretation, and SRB bias is no exception. While media reports have claimed the widespread practice of sex-selection against females in specific communities in Britain based on statistical analysis, Dubuc's work on the sex-ratio bias evidenced between 1990 and 2005 suggests that less than 5% of India-born mothers would have used sex-selection procedures over that period (Dubuc and Coleman, 2007; Dubuc, 2015). Whether this small proportion qualifies as 'widespread' is highly debatable and points to the political use of these figures.

Although demographic data at the aggregate level can reveal significant changes in SRB that are hitherto best explained by the occurrence of prenatal sex selection, we argue that the debate in the UK has been lacking a more nuanced social and cultural understanding of events at the micro-level. Detailed scholarly insight into family dynamics, the household contexts in which gender preferences operate and the underlying complex processes beyond popular accounts are lacking (notable exceptions include Bhopal (1997) who analyses heterogeneity in some aspects of patriarchy among British Asian communities; as also Ahmed (2006), Qureshi (2014) and Hampshire et al. (2012) in more recent accounts). Given the intimate, moral and ethical context in which gender selective abortion is embedded, the basis of evidence needs to be extended to include qualitative and plausible forms of evidence (Unnithan, 2015) to gain a sense of the impact of the shifting family dynamics on gender preference practices. An understanding of the complexities and processes at play is essential to avoid simplistic static representations of sex-selection practices, including ethnic stereotyping, to account for the dynamic role of culture with regard to reproductive autonomy and women's (apparent lack of) agency as we discuss below.

Agency and Autonomy in Sex Selective Abortion

Couples and women in particular who undertake gender selective abortion in Asian contexts have been predominantly viewed as victims of patriarchal ideologies, socialised to accept their role as dutiful producers of sons in the interests of familial reproduction (for example, Miller 2001). Such a view overlooks instances when a woman's decision to undertake female selective abortion would be an autonomous choice and agentive. We use the term agency to mean, following Giddens (1984), a reflexive monitoring and rationalisation of a continuous flow of conduct in which practice, as Bourdieu suggests, is constituted by the interaction of the habitus with the socially structured interests and motivations of the actor (1977:76).

Reproductive agency in the context of decisions to undertake gender selective abortion may thus not be about challenging patriarchal control or seeking to influence or contest the authority of individuals or groups (Unnithan 2001, 2010). For instance, middle class Hindu and Muslim women's routine resort to female selective abortion in Western India can be conceptualised as a form of reproductive agency in terms of the positive action undertaken by them to 'protect' their unborn daughters from the social discrimination they face at, and following, their marriage (and connected with their inability to provide for a substantial dowry; Unnithan 2010). Here women exercise the right to terminate the female foetus as a way of ensuring that future harm to their daughter is prevented (see also Varma, 2002). As respondents in Rajasthan made clear, they regarded gender selective abortion as their social right (*huq*) (see interviews in

Unnithan 2010)[iv]. Private doctors who openly offered sex selection services at the time further promoted the idea that couples were entitled to such services.

The notion of autonomy of choice is central in much of the bio-ethical debates on the regulation of sex-selection methods (including sperm sorting and embryo selection). But it has led to divergent views among ethicists and feminists especially in connection with notions of patriarchy and the 'patriarchal gradient' where sex-selection occurs, as limiting women's individual decisions. Some feminist bioethicists suggest that sex-selective abortion in strongly patriarchal contexts is not morally justified because it perpetuates discrimination against women and cannot be viewed as an autonomous choice (e.g. Wendy Rogers, Angela Ballantyne and Heather Draper, 2007). None-the-less, ethicist Ruth Macklin argues that 'the existence of ethical universals is compatible with a variety of culturally relative interpretations' (p1, 1999), including the prevalence of reproductive liberty, although she acknowledges that the social implications of population gender imbalances in some Asian countries may justify policy intervention (Macklin, 2010).

For feminist Farhat Moazam (2004, p. 205) 'an ethical argument that hinges on the principle of autonomy as understood in the West can be problematic'. This narrow notion of autonomous individual choice ignores the reality of women's lives (Kaur, 2009) as in the case of couples in Rajasthan described above. Also, for philosopher and sinologist Ole Doring, assessing SSA in China as an 'individual's right to independent procreative decision making' is 'culturally insensitive' and flawed. She argues for a third way between individual

determination and family/social coercion where the combination of population policy and biotechnology plays an active role.

The principle of autonomy in terms of reproductive choice for women is an important argument *against* criminalizing sex-selective abortion in the UK (in contrast to India where the law criminalises sex determination leading to gender selective abortion; see Pre-Conception and Pre-Natal Diagnostic Techniques Act 1994, and amended 2002). The ability of being able to exercise reproductive choice is, however, often balanced with the principle of gender equality as well as an evaluation of the risks of harm in the standard (right-based, liberal) bioethical approach to sex-selection. Mary Anne Warren (1999) among others suggests that the argument against criminalising sex-selective abortion to preserve women's autonomy should not be extended to countries where the sex-ratio distortion in the population is severe (as in the Indian case). But where sex-selection is not widespread, as Dickens and colleagues (2005) argue, a law criminalizing sex-selective abortion should not be adopted, to avoid challenging the freedom of reproductive choice for all women.

The experience of the restrictive laws on sex selective practices in countries such as India and China however leaves the reasoning above unproven. Jing Bao Nie opposes state intervention in sex-selective abortion in China based on his careful ethnographic work. He suggests that the state in fact undermines reproductive liberty and rights, simplifies and misrepresents the issues at stake, is ineffective in practice and that 'the coercive intervention of the state may well provide a solution that is worse than the problem' (Jing Bao Nie, 2009, p. 12). We examine how state intervention may have unforeseen, negative outcomes in

greater detail in the next section on the unintended consequences of policy responses.

Framing Policy and its Unintended Consequences

Strongly supported by feminists and women's groups, strict legislation in India prohibits prenatal sex-selection for non-medical purposes, the disclosure of the sex of the embryo/foetus and any advertisement of sex selection-enabling technologies (1994 Pre-Natal Diagnostic Techniques Act, revised in 2002). Those who would coerce women into sex-selection are also punishable by law. Comparable legislation has been adopted in China (Dickens et al., 2005; Nie, 2009).

Despite these strict policy measures and wide-scale, punitive monitoring of the use of ultra-sound diagnostic technologies (Singh & Srivastava, 2008) the sex ratio at birth in India and China has continued to rise. This is due to a number of factors ranging from demographic (i.e. fertility reduction; Dubuc & Sivia, 2014) and societal drivers such as large dowries, to alliances with private doctors who benefit in monetary terms (Patel, 2007; Unnithan-Kumar, 2010). There is an emerging consensus regarding the need for policymakers to shift their gaze from gender selection to address its root cause, that is son preference (e.g. Das Gupta et al., 2003; Rogers et al., 2007; Nie, 2011; UNFPA 2014). Accordingly policy interventions have emerged which are for example aimed at promoting girls' and women's status through communication campaigns and the provision of conditional financial support to parents with only daughters in China and India (Zheng, 2007; C-Far 2013)[v].

In the UK, policy response to pre-natal sex selection was first raised in the 1990s with regard to the development of medically assisted reproduction techniques enabling pre-conception sex-selection (sperm sorting techniques). Prenatal (pre-conception) sex-selection for non-medical (social) purposes faced strong public opposition (Human Fertilisation and Embryology Authority (HFEA), 2003; Shakespeare, 2005). The recommendations of the HFEA contributed to the amendments (2008) of the Human Fertilisation and Embryology Act (2000), prohibiting licensed service providers from carrying out sex-selection procedures for non-medical reasons. The HFEA code of practice (2009) for licensed centres restricts sex-selection using pre-implantation technologies. Although the Act concerned only the use of medically assisted reproduction methods it sent a clear message regarding the official position of the HFEA on the matter of sex-selection.

In the USA, in contrast to India and the UK, the argument about safeguarding the freedom of procreative choices has prevailed and no legislation exists to restrict pre-conception technology. Beyond a moderate preference for boys as first born, the main motivation for pre-conception sex selection, if any, would appear to be family balancing (Dahl et al, 2006). Suggesting (potential for) a lucrative market, private US fertility clinics offering sperm sorting services for gender selection for non-medical reasons are widely advertised on the internet.

Although technologies allowing pre-conception and pre-implantation sex-selection are not regulated in the USA, an aggressive campaign to ban sex-selective abortion, specifically, has spread across the USA in the last decade. So far, 21 states have proposed prohibiting sex-selective abortion, which was adopted in eight states. A report from the University of Chicago Law School (Citro et al.,

2014) questions the motivation behind proposals to ban sex selective abortions, noting that those who had proposed or are supporting such bans were also opposed to abortion rights in general[vi].

Civil society responses in opposition to the laws have been multiple and especially with regards to the implication that sex selective abortion against females is a characteristic of specific Asian cultures. The impact of this kind of ethnic stereotyping in reproductive health practices further exacerbates the stress placed on practitioners and abortion clinics as a result of the law as we discuss in greater detail below. Civil society mobilisation both for and against the ban on gender selective abortion demonstrate new forms of what Rabinow, Nguyen and others have called biosociality (2008) – or civil society solidarities forming with a core focus on the body. These movements provide, as we discuss in the lines below, critical insights into the cultural politics of abortion and the way this feeds into policy reform.

The dilemma of mixed messages

Broadly speaking, the debate in the USA on prenatal sex selective abortions has been embroiled in the wider, more entrenched pro-life versus pro-choice debate, where arguments are commonly framed to support a political agenda which erases the motivations and constraints of the women concerned. In turn, their concerns fail to inform policy. For instance, the ethnographic work by Sunita Puri (Puri *et al.* 2011), with a select group of 65 Asian origin women who experienced family gender preferences leading to prenatal sex-selection underlined the perceived importance of having a son for most women as a means to raise their status within

their household. Pressure to have a son was generally exerted by the husband or female-in-law. Verbal abuse and/or some form of neglect (e.g. food restriction, prenatal care denial) were not uncommon and some women pressed to terminate a female pregnancy reported severe physical abuse from their husband/in-laws. The perspective of raising a daughter in the 'liberal' West was also a source of concern among the women.

In India the state provides access to abortion (termed the Medical Termination of Abortion; MTP Act 1979) under regulated conditions which are the same as in Britain. Alongside this the Indian state also has legislation which prohibits the use of ultrasound diagnostics for sex determining purposes (PNDT Act 2003). While such legislation has been ignored by practitioners and clients in the past, following the 2011 census survey which highlighted a significant, sharp further masculinisation of the sex ratio, punitive surveillance and monitoring procedures have additionally come into force (district-wise state family welfare department monitoring units). These include the setting up of Pre-Natal Diagnostic Testing (PNDT) surveillance cells which carry out frequent inspections of clinics (and include the monitoring of bribes), compelling owners to undertake exceedingly bureaucratic procedures for the procurement and running of ultrasound machines. A major consequence of these measures has been that a large number of clinics have withdrawn their ultrasound services altogether (interviews with sonographers, Unnithan, Jaipur, 2013). Another unintended, though equally serious, consequence of state intervention for women's access to reproductive health services has been the widespread popular belief that the state is anti-abortion, not just against gender selective abortion. Feminist work in the domain of abortion rights is thus being undermined through effective state

propaganda against female selective abortion (Unnithan interview notes and personal communication with Singh, 2012).

The mixed messages (civil society and State) that have arisen around abortion in India point to regulatory practices which both reinforce patriarchal and state power over women's bodies at the same time as they generate new modes of resistance, alliances and subjectivity (or 'biosociality' in Rabinow's use of the term; Gibbon and Novas, 2008). These processes have very real effects on the ground.

In the context of Britain, a similar concern with the entangled nature of sex-selective abortion and abortion services in general has been raised by the British Pregnancy Advisory Service (BPAS briefing 2014) to argue that an amendment to include gender selective abortion in the serious crime bill would make abortion doctors who already feel under intense scrutiny, even more wary of providing their services (and especially to women of certain ethnic communities as noted above). According to their briefing, 'sex selection abortion bans are rare across the world, as legislators recognise the problems of criminalising women and doctors. Where they have been enacted they have failed to correct the imbalance and have harmed women in the process' (BPAS briefing 2014). Criminalisation of sex-selective abortion not only undermines the reproductive autonomy of women, but also challenges the trust between practitioners and patients and the provision of abortion services.

In its briefing note setting out its response to the calls for the amendment to the Serious Crime Bill, BPAS highlights the restrictions against sex selection embedded within the current UK Abortion Act 1967 where although 'the Act does not prohibit a doctor from authorising an abortion where a woman has referenced

the sex of her foetus', … 'abortion could not be carried out on that basis alone – she must meet the grounds laid out in the Act'. These grounds include: the pregnancy has not exceeded its twenty-fourth week and that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant woman (section 1(1)(a); BPAS ibid).

Moreover, BPAS notes that while it is unusual for gender to be a factor in a woman's request for an abortion (most abortions being performed before the sex can be determined) there may be *compelling individual circumstances* to do so (p2, BPAS 2014). Gender may be an important factor for instance in the case of a woman with a severely autistic son who may wish to prevent a further male pregnancy due the social effects on her and her family, and also where women are victims of sexual or other violent partner abuse and, consequently, may not wish to carry a male child to term.

Overall BPAS argues against the need for further legislation over and above the existing Abortion Act. In terms of Fiona Bruce's demand for adequate legislative protection for those (South Asian) women who are subject to harm from their partners if found to be carrying a female foetus, BPAS suggests that protection against assault with the intent of causing a miscarriage is also afforded to British women under section 58 of the Offences against Person Act 1861.

The issue of consent is an important consideration when providing legislative protection, especially when consent has not been obtained (in that it would constitute a criminal offence). But equally it opens up the issue of what consent actually means in a context where pressure is exerted in subtle and social ways (General Medical Council consent guidance document). We turn to briefly

consider how the issue of social pressure (underlying 'consent') as well as the response to the bill is debated within different sections of the British South Asian community.

'Culture' and the Debate on Sex Selection within British South Asian Groups

In 2015, members of several British South Asian civil society groups took an active stance to support Fiona Bruce and criminalise sex-selective abortion. They were led by Rani Bilkhu, the head of the community-based women's organisation Jeena International (JI) based near London.

JI received key support from another civil society organisation, Karma Nirvana one of the few secular advocates for the banning of GSA. Support was also forthcoming from other leading South Asian organisations such as the UK Muslim Women's Network and members of the Hindu and Sikh Councils in the UK. In their letter to the Telegraph in support of the amendment proposed by Fiona Bruce, they state, "most of us are pro-choice, though some of us believe that abortion should only be available in limited circumstances. We are united in the belief that sex selective abortion should end." (Daily Telegraph, Feb 9, 2015). The campaigners in particular sought clarity on the abortion law which they regarded as sending 'mixed messages' on the matter of Gender Selective Abortion especially given the BPAS and British Medical Council position that gender selective abortion is *not illegal* and the PM and Department of Health being 'silent' on this matter. The objective of the British Asian campaigners was to 'clarify in statute that sex-selective abortion is impermissible in UK law'. [vii]

JI has produced powerful communication tools (videos, blogs and other website information) including statistics drawn from Dubuc and Coleman's study

as evidence to confirm that British South Asian women are undertaking sex selective abortions in the UK. They also showcase stories and testimonies of several women who have felt marginalised and coerced in terms of producing children, including of the 'appropriate' (male) sex. In their video Stop Gendercide, Karma leader Sanghera says that consent is produced under social pressure exerted by the family where high value is placed on reproducing the male kin line, demonstrating how culture has travelled from the subcontinent (stop-gendercide, JI website, 2015). In the same video Bilkhu makes a powerful argument that gender selective abortion symbolises women's loss of reproductive control over their bodies which needs to be challenged in order for them to gain their reproductive freedom.

Bilkhu and Sanghera marshal statistical, probable as well as plausible (stories and testimonies) forms of evidence to argue that where coercive sex selection occurs women's reproductive choice and autonomy has been undermined. The prevailing view (led by BPAS), however, is that gender selective abortion practices cannot be rectified through criminalising such forms of abortion. Criminalising gender abortion would not address the practice for several reasons: namely, it is difficult to establish intent: who would be prosecuted for the practice? The woman, her parents, in-laws, doctors? In the case of doctors, they may not intentionally be party to gender selective practices as the diagnostics may be carried out elsewhere from the abortion services sought. Moreover, banning gender abortion risks further removing abortion services from existing access to it – as argued by BPAS and indeed as demonstrated in the case of India (section on policy responses and unintended consequences above). Criminalising gender selective abortion would stigmatise providers of such services and not just the

seekers of abortion services. Current research (see De Zordo this issue) maps the increasing use of the conscientious objection clause by European doctors denying abortion services. Abortion seekers would have to struggle more to gain access and to prove they have a 'legitimate case'.

The basis of JI demands for clarity regarding the bill stem from, as we see it, two different kinds of recognition issues: first, the need felt by British South Asian feminists for recognition from the government for community level support for education-based awareness (as outlined on their website). Second, JI demands arise from the recognition of the symbolic role played by legislative reform.

On the issue of the symbolic value of legal reform, members of organisations such as JI and Karma Nirvana believe, legal intervention even if difficult to implement would 'send the right message' to the public that the state cares for the welfare of its South Asian women (see letter by JI and others, ibid). The change in the law would for them not only address the imbalance in British South Asian women's universal reproductive rights but would also address the 'othering' their culture has been subject to (with regard to its association with gender selective abortion; see Ahmed, (2006) for example).

Other members of the British South Asian community (including academics and scholar activists who wrote against the ban), while they acknowledge the existence of cultural patterns which place pressure on women to produce male offspring do not believe that criminalising sex-selective abortion is an adequate response to sex-selection practices or to empowering women to resist the social pressures they face in the context of childbearing or indeed the underlying causes of gender unequal valuation and norms.

Rather than a reform of abortion legislation, the practical support requested by Jeena International and its network of civil society organisations could be addressed through provision of support for education and community work at different levels which could include, for example community and state support for i) the celebration the birth of daughters and value of girls as recently undertaken by state-NGO initiatives in India; ii) active work with the media to disentangle the issue of abortion from gender abortion; and for those cases where the gender violence of sex selection has been committed, to iii) re-frame the issue of gender-based abortion/prenatal selection as an issue of domestic violence and a matter of gender equality and justice more broadly than about reproductive autonomy and choice alone.

JI draws on an ethical argument based on autonomy as understood in the West which Moazam and others have shown to be problematic, as we discussed earlier in the paper. At the same time, they draw on essentialist arguments about 'culture' as evidence of women's oppression and lack of agency to strengthen their call to mobilise for the criminalisation of sex selection. In drawing together these two contested positions (in terms of evidence) and in its partnership with pro-life MP Fiona Bruce (who appears as a guest speaker in their Stop Gendercide video), JI demonstrates the complexities of new forms of mobilisation and bio-socialities around women's issues and the emerging dimensions to reproductive governance in the UK.

Conclusion

In terms of a conclusion, the controversies associated with the Bill as discussed above clearly suggest that a ban on gender selective abortion is likely to undermine abortion rights altogether. While there is a consensus among social scientists, bioethicists, feminists and civil society organisations as well as British communities on-the-ground of the need to tackle the underlying factors of gender unequal valuation, in the latter case there remains a split in views on the legal and policy responses to gender selective abortion, with the more prominent voices regarding a lack of criminalisation as compromising women's reproductive autonomy.

Gender norms and values are matters of socialisation but whether British women feel directly coerced into sex-selective abortion (typically by kin) or feel obligated by social norms, it is difficult to envisage what support a law criminalising sex-selection may bring to such women who would have to choose between compromising their active role in family-making with remaining silent on such issues. The dearth of existing reliable up-to-date quantitative and qualitative evidence informing sex selection in the UK as we suggest in the section on 'evidence' above, further supports the opposition to the proposed ban on gender selective abortion. In the absence of qualitative (interpretive) data, live-birth metrics can more easily be used to expand the controls and injunctions (reproductive governance) on family-making practices. The re-visioning of evidence we suggest in the paper also moves us beyond the objective/ subjective divide in thinking of evidence to include the context (historical, political, representational) and power relations which frame practices such as those of gender selective abortion.

References

Ahmed F. (2006). ‘The scandal of arranged marriages and the pathologisation of British Asian families’, N.Ali et.al. eds. *A Postcolonial People: South Asians in Britain.* London, 272-288

Almond D. and L. Edlund. (2008). ‘Son-biased sex ratios in the 2000 United States Census’, *PNAS*, 105:15.

Almond D., L. Edlund and K. Milligan et al. (2013). ‘Son Preference and the Persistence of Culture: Evidence from Asian Immigrants to Canada’, *Population and Development Review*, 39(1): 75-95

Arnold F, S.Kishor, and TK. Roy (2002) ‘Sex-selective abortions in India.’ *Population and Development Review*, 28 (4):759-785.

Bhopal K. (1997). *Gender, 'Race' and Patriarchy: A Study of South Asian Women.* Aldershot: Ashgate.

BPAS (2014). Abortion “on the grounds of the sex of the unborn child”: the threat to women posed by an amendment to the Serious Crime Bill. A briefing from the British Pregnancy Advisory Service.

Citro, B. Gilson, J., Kalantry S., Stricker K. (2014). "Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States". *Cornell Law Faculty Publications.* Paper 1399.

C-Far (2013). Making a Difference: a newsletter on issues of the girl child. Vol 5., no. 2 (December) Jaipur: www.cfar.org.in

Connor, S. (2014). The lost girls. The Independent, January 15.

Croll E. (2002). "Family size and female discrimination: A study of reproductive management in East and South Asia." *Asia Pacific Journal*, June 17(2):11- 38.

Das Gupta, M. and P.N. Mari Bhat. (1997). "Fertility decline and increased manifestation of sex bias in India." *Population Studies*, 51(3):307-316.

Das Gupta, M., J. Zhenghua, X. Zhenming, L. Bohua, W. Chung, and B. Hwa-Ok. (2003). "Why is Son Preference So Persistent in East and South Asia? A Cross-Country Study of China, India, and the Republic of Korea", *Journal of Development Studies* 40(2):153-187.

Dahl E, Beutel M, Brosig B, Grussner S, Stobe-Richeter Y, Tinneberg HR, Brahler E. (2006) Social sex selection and the balance of the sexes: empirical evidence from Germany, the UK, and the US. J Assist Reprod Genet; 23:311–318.

Das Gupta M., Chung W., and Li S. (2009). 'Evidence for an Incipient Decline in Numbers of Missing Girls in China and India.' *Population and Development Review*, 35(2):401-416.

Doring O. (2008).What's in a choice? Ethical, cultural and social dimensions of sex selection in China. *Hum Ontogenet*,2:1–14.

Dickens BM., Serour GI., Cook RJ. and Qiu R. (2005) Sex selection: treating different case differently. *International Journal of Gynaecology and Obstetrics*, 90:171–77.

Dubuc S (2017, forthcoming) 'Son preference and fertility: An overview', Chapter in *Family Demography in Asia: A Comparative Analysis of Fertility Preferences*. S. Basten, J. Casterline and M. Choe (eds). Edward Elgar.

Dubuc S. (2015). ‘Prenatal sex-selection against females: evidences, causes and implications’, *Workshop report, Nuffield Foundation*, 20 pages.

Dubuc S. and Devinderjit Sivia (2014): Son preference and prenatal sex selection: the impact of fertility decline on gender imbalances, *Paper at Population American Association conference*, Boston, 1-3 Mai 2014. (Completed manuscript under review).

Dubuc S. (2009). ‘Demographic Manifestations of son-preference in England and Wales’ Paper at the Annual Meeting of the *Population Association of America*, session: *Gender, Power and Reproductive Behavior*, 29th April -2d May, Detroit.

Dubuc S. and D. Coleman. (2007) "An increase in the sex ratio of births to Indian-born mothers in England and Wales: evidence for sex-selective abortion." *Population and Development Review*, 32 (2), pp 328-332.

Goodkind D. (1999). ‘Should prenatal sex selection be restricted? Ethical questions and their implications for research and policy.’ *Population Studies*, 53:49–61.

Gibbon, S. and C. Novas (2008). *Biosocialities, Genetics and the Social Sciences.* London: Routledge

Hampshire K., M. Blell and B. Simpson. (2012). Navigating new socio-demographic landscapes: Using anthropological demography to understand the ‘persistence’ of high and early fertility among British Pakistanis. *Eir J Population*, 28:39-63

Human Fertilisation and Embryology Authority (HFEA) ‘2003 Sex-selection: options for regulation.’ HFEA report, 44 p. (http://www.hfea.gov.uk/803.html)

Jacobson, R., H. Møller, and A. Mouritsen. 1999. “Natural variation in the human sex ratio,” *Human Reproduction*, 14(12): 3120–3125.

Kabeer, N., Huq, L., Mahmud.S. (2013). Diverging Stories of ‘Missing Women’ in South Asia: Is son preference weakening in Bangladesh? *Feminist Economics*, online Nov 19, DOI: 10.1080/13545701.857423

Kaur M. S. (2009) ‘Lessons from Punjab's Missing Girls: Toward a Global Feminist Perspective on Choice in Abortion’, 97 *Cal. Law Rev.* 905 (2009). Available at: http://scholarship.law.berkeley.edu/californialawreview/vol97/iss3/6

Lee, E., (2014) ‘The sex-selection controversy in Britain.’ Presentation at the Centre for Cultures of Reproduction, Technologies and Health (CORTH) on *Re-situating Abortion: Bio-politics, Global Health and Rights in Neo-liberal Times*. School of Global Studies, University of Sussex, November 13-14, 2014

Macklin R. (2010). ‘The ethics of sex-selection and family balancing. *Seminars in reproductive medicine*, 28(4): 315-321.

Macklin R. (1999). *Against Relativism: Cultural Diversity and the Search for Ethical Universals in Medicine*. New York: Oxford University Press,126 p.

Miller, B. (2001). ‘Female Selective Abortion in Asia: Patterns, policies and debates’, *American Anthropologist* 103, no.4:1083-95.

Moazam Farhat (2004). ‘Feminist discourse on sex screening and selective abortion of female foetuses’, *Bioethics*18 (3): 205-220.

Morgan, L. and E. Roberts (2012). ‘Reproductive Governance in Latin America’, *Anthropology and Medicine* 19 (2):241-254

Nie J.-B. (2009) ‘Limits of state intervention in sex-selective abortion: the case of China’, *Culture, Health and Sexuality*,12(2): 205-219.

Park, C.B.and N.H. Cho. (1995). "Consequences of son preference in a low-fertility society: Imbalance of the sex ratio at birth in Korea." *Population and Development Review*. 21(1), pp 59-84.

Petchesky, R., and K. Judd (1998). *Negotiating reproductive rights: Women's perspectives across countries and cultures*. London: Zed.

Puri S., V. Adams, S. Ivey, R. D. Nachtigall. (2011). "There is such a thing as too many daughters, but not too many sons": a qualitative study of son preference and fetal sex selection among Indian immigrants in the United States," *Social Science & Medicine* 2011; 72(7): 1169-1176.

Qureshi, K. (2015). Migration, belong on and the body that births: Pakistani women in Britain. In, M.Unnithan-Kumar and S.Khanna eds., *The Cultural Politics of Reproduction: Migration, Health and Family Making*. Oxford: Berghahn. 14-32

Qureshi, K. (2014). Migration, marital instability and divorce among British Asians. University of Oxford, report ESRC grant. Rapp, R., (1999). *Testing Women, Testing the Fetus: The social implications of amniocentesis in America.* NY: Routledge.

Roger W., Ballantyne A, Draper H. (2007). 'Is sex-selective abortion morally justified and should it be prohibited?'. *Bioethics*, 21:520–24. 31

Sarkaria, M. (2009) Lessons from Punjab's Missing Girls: Toward a Global Feminist Perspective on Choice in Abortion. *Cal. L. Rev*, 905 Retrieved from http://scholarship.law.berkeley.edu/californialawreview/vol97/iss3/6

Shakespeare T. (2005) 'Sex-selection', *Nature Reviews Genetics;* Ethics watch, **6**, 666 (September 2005) | doi:10.1038/nrg1701

Singh, M., and K. Srivastava (2008) Saving the girl child. *Seminar* 583, March. New Delhi: Malvika

United Nations Population Fund, UNFPA (2014) *Sex ratios and gender bias sex-selection. History, debates and future directions*. UN Women, 72 p.

Unnithan, M. (2015) What Constitutes Evidence in Human Rights Based Approaches to Health?: Learning from lived experiences of maternal and sexual reproductive health. *Harvard Journal of Health and Human Rights*; issue 17.2.

Unnithan, M. (2009). Female Selective Abortion beyond 'Culture': gender inequality and family making in a globalising India. *Culture, Health and Sexuality*, vol 12, issue no. 2: 153-166.

Unnithan, M. (2003) Reproduction, Health, Rights: Connections and Disconnections, In, J.Mitchell and R.Wilson (Eds.), *Human Rights in Global Perspective: Anthropology of Rights, Claims and Entitlements* (pp. 183-209). London: Routledge ASA series.

Varma R. (2002) "Technological fix: sex determination in India". *Bulletin of Science Technology Society* Vol. 22, No 21, 11p.

Warren Mary A. (1999). 'Sex selection: individual choice or cultural coercion?'. In: Kuhse H, Singer P (eds). *Bioethics: An Anthology*. Oxford: Blackwell,142. 32

Zheng Z. (2007). 'Interventions to balance sex ratio at birth in rural China.' Chapter in Attané I, Guilmoto CZ, editors, *Watering the neighbor's garden: The growing demographic female deficit in Asia*. Paris: CICRED'. pp. 327-346.

Zilberberg J. (2007). Sex selection and restricting abortion and sex determination. *Bioethics*, 21:517–19.

Acknowledgements,:
The authors would like to thank the reviewers for their feedback and the participants at the workshop on Re-situating Abortion organised by the Centre for Cultures of Reproduction, Technologies and Health at the University of Sussex in November 2014. Parts of the paper have been drawn from work supported by a Nuffield Foundation grant to Sylvie Dubuc.

Authors Bios:

Maya Unnithan is Professor of Social and Medical Anthropology at the University of Sussex. Her current research interests include reproductive politics, maternal health inequalities, childbirth and infertility, sex selection, surrogacy, assisted and contraceptive technologies, sexual reproductive health rights, child inherited and adolescent anemia in India and globally. She is currently developing work on son preference and sex selective abortion in the UK along with a larger research team of demographers and ethicists based at the Universities of Reading and Oxford. At Sussex, Maya leads the interdisciplinary research Centre for Cultures of Reproduction, Technologies and Health (CORTH) based in the School of Global Studies.

Sylvie Dubuc is Senior Lecturer in Human and Population Geography at the University of Reading, having previously worked ten years at the University of Oxford, where she led various projects in the multi-disciplinary field of population studies. Her current research interests include family and childbearing, migration, population and development, gender preferences, sex-selection, reproductive health and rights, ethics and policy in South Asia and Europe. Sylvie currently coordinates a new ESRC funded multi-disciplinary

project on son preference and sex-selection in the UK, working with social anthropologists at Sussex University (led by Maya Unnithan), Oxford ethicists (ETHOX) and the UK Department of Health.

---

[1] Analyses of sex-ratio at birth can only evidence the occurrence of sex-selection within a population when directed systematically at a specific gender (e.g. selection against females to ensure a male offspring) but would not evidence sex-selection for 'family balancing' (e.g. to secure having a girl when only boy(s) are born and vice-versa) because male and female specific selections would cancel each other at aggregated level, resulting in normal sex-ratio at birth.

[ii] On average, the likelihood of having a boy is slightly higher than the probability of having a girl (about 0.51 against 0.49); the worldwide unbiased SRB is around 105 boys per 100 girls at birth, although geographic variations exist.

[iii] Considered a robust indicator, the SRB has been extensively applied to evidence prenatal sex selection in countries like India and China for instance, where the practice of sex selective abortions is recognised and well documented.

[iv] This was differentiated from the more widely regarded local concept of reproductive rights (*janani adhikar*) understood as the 'right to reproduce' rather than the right to control one's own body. More broadly this view resonates with Petchesky's writing on the culturally problematic nature of the goal of reproductive autonomy and having control over one's own body (Petchesky & Judd 1998; Unnithan 2003).

[v] South Korea is the only country to date, where a strong bias in the sex-ratio developed in the 1980s, has reverted and the causes behind this trend remain difficult to evaluate (Das Gupta et al. 2009). A policy combining enforcement of a ban against the use of sex-selection method, media campaigns to promote girls, and some modifications of the law in favour of mothers, in addition to general economic changes and increasing paid work for women may have contributed to gender normative changes and attitudes to sex –selection. (eg. Das Gupta et al. 2003; Das Gupta et al. 2009)

[vi] The report also questioned whether the quantitative evidence showing SRB bias in the US among Asian communities would apply to more recent years. However this critique was not robustly qualified.

[vii] See their webpage and videa on Stop Gendercide at www.stopgendercide.org/tag/jeena-international. There is less of a sense of the agentive actions related to abortion as discussed with reference to the Indian context described in the section above.