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Banned and Enforced: The Immediate Answer to a Problem Without an Immediate Solution

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Banned and Enforced: The Immediate Answer to a Problem Without an Immediate Solution—How India Can Prevent Another Generation of “Missing Girls”

ABSTRACT

India has banned the use of ultrasound technology to determine the sex of a fetus for more than a decade. Despite this ban, India's 2001 census showed that for every one thousand boys under the age of six there are only 927 girls. There is speculation that this striking gender imbalance is largely the result of the abortion of fetuses discovered to be female after a sex determination ultrasound or amniocentesis procedure. Traditionally, the desire not to have a female child is viewed as a consequence of the dowry system that is prevalent in India. Commentators often propose efforts to raise the social and economic status of women to end this custom as a solution to the gender imbalance problem. This Note argues that new research shows that traditional explanations and solutions may not be accurate or effective. The Author proposes that the problem must be addressed by both immediate and long-term solutions: India's government should immediately implement a ban on sex selection with "vigor and zeal" and should, in the long-term, increase the value of women in Indian society.

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I. INTRODUCTION

India's total population on 1st March 2001 stood at 1.03 billion persons. With this, India became the second country in the world, after China, to cross the one billion mark. The population of the country rose by 21.34% between 1991 and 2001. What did not rise, but rather declined shockingly, was the child sex ratio. How do communities uphold and honour a value system which is based on son preference and discrimination against the girl?¹

In 2001 the Supreme Court of India ordered state authorities to begin enforcing a law, which had been on the books for years, banning the use of technology to determine the sex of fetuses.² This order stemmed India's 2001 census, which showed a dramatic drop in the number of young girls in the country.³ For every one thousand boys under the age of six there are only 927 girls.⁴ This latter number represents a drop from the 1991 statistic of 945 girls.⁵ Some speculate that this decrease is largely the result of the abortion of female fetuses, determined to be so after a sex determination ultrasound or

1. UNITED NATIONS POPULATION FUND, MISSING: MAPPING THE ADVERSE CHILD SEX RATIO IN INDIA 1 (2003), at http://www.unfpa.org.in/publications/16_MAP%20brochure_English.pdf (last visited Mar. 21, 2004) [hereinafter U.N. POPULATION FUND].

2. *India's Female Freefall*, Cnn.Com, June 19, 2001, at <http://edition.cnn.com/2001/WORLD/asiapcf/south/06/19/india.ultrasound/index.html> (last visited Oct. 20, 2003); see also Centre for Enquiry into Health and Allied Themes v. Union of India, 2001 SOL Case No. 340, May 4, 2001, available at <http://www.supremecourtonline.com/cases/4179.html> (discussing the Pre-natal Diagnostic Techniques Act of 1994).

3. *India's Female Freefall*, supra note 2.

4. *Id.*

5. *Id.*

amniocentesis procedure.⁶ It is commonly believed that this disparity is the result of the desire of Indian parents to avoid paying a dowry at the time of their daughter's marriage.⁷ The dowry is a payment from the bride's family to the groom's family in money, property, or goods.⁸ Although India outlawed dowries in 1961, the social custom still flourishes.⁹

Commentators suggest that the solution to the problem is not passing more laws, such as banning sex determination ultrasounds, but raising the social and economic status of women.¹⁰ These commentators argue that while banning sex determination ultrasounds may appear to help eliminate the problem of selectively aborting female fetuses, it is questionable whether this is a step in the right direction because such a ban will not prevent the neglect of young girls or prevent female infanticide.¹¹ Moreover, they emphasize that both these tragedies are cited as potential causes of the disparity in the ratio of boys to girls ages six and under.¹² What will the effects of banning sex determination be? While it is clear that dowries present a substantial financial burden for the parents of females, can the blame be placed on the dowry, and is increasing the social and economic status of women the answer?

Part II of this Note will discuss the traditional role that sex selection has played in India, describe the current state of India's child sex ratio, reveal the traditional explanations of and solutions to the gender imbalance, and advocate that new research shows that these traditional explanations may not be accurate. Part III of this Note will examine past solutions to end gender imbalance in India and explain why these actions have been largely ineffective. Part IV of this Note will propose that the problem must be addressed by both an immediate and long-term solution. India must address this

6. David Rohde, *India Steps Up Efforts to Halt Abortions of Female Fetuses*, N.Y. Times, Oct. 26, 2003; see also Fred Arnold et al., *Sex Selective Abortions in India*, 28(4) POPULATION AND DEVELOPMENT REVIEW 759 (2002) (stating that there is a lack of reliable information on abortion but this conclusion could be inferred from the same sex ratios).

7. *India's Female Freefall*, supra note 2; see also Monica Das Gupta et al., *Why is Son Preference so Persistent in East and South Asia? A Cross-Country Study of China, India, and the Republic of Korea*, 40(2) J. DEV. STUD. 153, 154 (2003) (citing dowries as the main problem).

8. See *India's Female Freefall*, supra note 2.

9. *The Bride Says No: Nisha Sharma Stops her Wedding and Becomes a Symbol-over a \$25,000 Dowry*, PEOPLE, June 23, 2003, at 65 [hereinafter *Bride Says No*].

10. See Beverley E. Booth et al., *Fetal Sex Determination in Infants Punjab, India: Correlations and Implications*, 309 BRIT. MED. J. 1259, 1260-61 (1994) (concluding with this theory).

11. See Catherine Philp, *Delhi's Rich Adopt Gender Selection of the Poor*, TIMES (LONDON), Nov. 27, 2002, at 15 (stating the bias is deep-rooted and born of tradition).

12. *Id.*

problem through a two-pronged approach. The first prong involves the immediate imposition of a strict ban on sex determination. The second prong requires the implementation of long-term solutions that involve increasing the value of women in Indian society. This approach will help India immediately start to address the problem of its "missing girls."

II. BACKGROUND

A. *The History of Sex Selection and the Role It Plays in India*

While relatively recent technological improvements have made sex selection a viable guarantee to ensure the birth of a child of the desired sex, the quest to be able to select the sex of a child is in no way a recent phenomenon.¹³ According to one author, "[b]ecause sex historically has been linked to economic entitlement, social privilege, and person status in most societies, attempts to control or predict the sex of one's offspring also date back to ancient times."¹⁴ The earliest post-conceptive method of sex selection was infanticide.¹⁵ The first written record of female infanticide dates back to the Tokugawa period in Japan (1600 to 1868 c.e.), when there were nine times more male than female births recorded.¹⁶ It is believed, however, that the practice had already been in existence for thousands of years.¹⁷ Historically, more common methods of sex selection involved preconception efforts that were both biologic and symbolic in nature.¹⁸ Aristotle speculated that the "likelihood of having a male correlated directly to the vigor with which one copulated."¹⁹ The Greek philosopher Anaxagoras theorized that tying off the left testicle would produce a male child.²⁰ Other societies have emphasized symbolic methods of preselecting a child's sex, such as hanging trousers on the appropriate bed post or having the woman dress like a man before intercourse.²¹ Modern scientific techniques of sex determination include ultrasound, chorionic villi sampling, and

13. Owen Jones, *Sex Selection: Regulating Technology Enabling the Predetermination of a Child's Gender*, 6 HARV. J.L. & TECH. 1, 3 (1992).

14. Jodi Danis, *Recent Development: Sexism and "The Superfluous Female": Arguments for Regulating Pre-Implantation Sex Selection*, 18 HARV. WOMEN'S L.J. 219, 223-24 (1995).

15. Jones, *supra* note 13, at 3; *see also* Danis, *supra* note 14, at 224.

16. Jones, *supra* note 13, at 3-4.

17. *Id.* at 3-4.

18. *Id.* at 4-6.

19. *Id.* at 4.

20. *Id.*

21. *Id.* at 6.

amniocentesis.²² If the use of one of these procedures determines that the sex of the child is a girl, the fetus is often aborted.

Sex determination of fetuses became possible in India during the 1970s with the arrival of amniocentesis.²³ Amniocentesis involves analyzing cells drawn from a hollow needle inserted by a doctor through the mother's abdominal wall into the amniotic fluid surrounding the fetus.²⁴ This procedure was developed to discover genetic abnormalities but is also used to determine the sex of the fetus.²⁵ In 1975, when the procedure was first available at a Delhi medical institute, "only one of the thousands of tests performed that year was performed for a purpose other than discovering the fetus's gender. And almost all of the women who found out they were carrying a female fetus aborted her."²⁶ Although the government of India banned the use of amniocentesis for sex selection in 1976, the ban was not all-encompassing.²⁷ The ban was applied only to government facilities and did not prevent private clinics from offering the procedure for sex-determination.²⁸ The first private sex determination clinic was opened in Amritsar in 1979.²⁹ Despite the weakness of the ban, the use of amniocentesis for sex selection in India remained a controlled phenomenon that was limited largely to a few urban areas.³⁰

It was not until the 1980s and the increasing availability of ultrasounds that sex determination became a widespread method of sex selection in India.³¹ Ultrasound is a noninvasive technique by which the doctor directs a high-frequency sound source at the fetus.³² A visual image of the fetus is created by the echoes of the sound waves.³³ Doctors are able to determine the sex of the child from this image. All areas of India, even small rural towns, gained access to the procedure through the formation of private clinics.³⁴ Further, "elaborate referral networks sprang up, connecting small villages to their nearest urban ultrasound clinics, with each link receiving a

22. *Id.* at 7.

23. Arnold, *supra* note 6, at 762.

24. See <http://www.medic8.com/healthguide/articles/amniocentesis.html> (n.d.).

25. Arnold, *supra* note 6, at 762.

26. Madhu Kishwar, *Mothers and Disappearing Daughters: Sex Determination Tests in India*, in *THE POLITICS OF MOTHERHOOD: ACTIVIST VOICES FROM LEFT TO RIGHT* 334, 335 (Alexis Jetter et al. eds., 1997).

27. Arnold, *supra* note 6, at 762.

28. *Id.*

29. Kenan Farrell, *Where Have all the Young Girls Gone? Preconception Gender Selection in India and the United States*, 13 *IND. INT'L & COMP. L. REV.* 253, 260 (2002).

30. Nandini Oomman & Bela R. Ganatra, *Sex Selection: The Systematic Elimination of Girls*, *REPROD. HEALTH MATTERS*, May 2002, at 184.

31. *Id.* at 185.

32. Jones, *supra* note 13, at 7.

33. *Id.*

34. Farrell, *supra* note 29, at 260.

commission from the clinics.”³⁵ Recently, a new ultrasound technique that produces a 3D/4D image of the fetus, instead of a flat unclear image produced by most ultrasounds, has arrived in India.³⁶ This technology, if used for sex determination purposes, will further enable doctors to guarantee the accuracy of the sex of the fetus.

The state of Maharashtra enacted the first ban on the use of ultrasound for sex determination in 1988.³⁷ Three other states enacted similar prohibitions shortly thereafter.³⁸ This legislation resulted in a decline in the number of sex determination clinics and appeared to be a step in the right direction.³⁹ The success of this legislation is largely credited to an organization called the Forum Against Sex Determination and Sex Pre-selection (FASDSP), which monitored compliance with the ban.⁴⁰ Unfortunately, this group eventually deteriorated, and as it became apparent to the people that the ban was not being enforced, many of the clinics reopened.⁴¹

The 1991 census indicated the severity of the decline in female children.⁴² The ratio had declined to a national average of 945 girls to every one thousand boys.⁴³ The numbers could no longer be ignored. For the first time, the central government of India began to notice the problem.⁴⁴ The use of ultrasounds and other sex selection technologies were banned throughout India in 1994 through the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.⁴⁵ This Act banned the use of prenatal technology to determine a fetus’s sex, prohibited the communication of sex information to the patient or her relatives, allowed the devices to be used only in registered genetic testing clinics, and limited the tests only to women who met certain criteria for genetic counseling.⁴⁶

This nationwide Act, while bringing attention to the issue, was weak compared to legislation that had been enacted in some states.⁴⁷ The Act mainly applied to government hospitals and clinics and consequently failed to address the problem adequately.⁴⁸ The

35. *Id.*

36. Supriya Bezbaruah, *Mama Watch Me*, INDIA TODAY, June 14, 2004, at 62.

37. Farrell, *supra* note 29, at 261.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. U.N. POPULATION FUND, *supra* note 1, at 1-2.

43. *Id.*

44. Farrell, *supra* note 29, at 261.

45. *Id.* at 261-62.

46. See Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of Part III (1994), available at http://www.indialawinfo.com/bareacts/prenatal.html#_Toc498331222 (last visited Oct. 15, 2004).

47. Farrell, *supra* note 29, at 262.

48. *Id.* at 263.

requirement for private clinics to register with the government in order to conduct "genetic counseling" did little to prevent doctors from informing patients of the sex of their child under the guise of genetic counseling.⁴⁹ A Delhi doctor has admitted that doctors simply use code words, such as "the sky is blue" and "your baby is fine and will play football" (indicating that the fetus is male) or "you are in the pink of health" and "your child is like a doll" (indicating a female fetus), to communicate the sex of the fetus to the mother.⁵⁰ Further, such action requires no written record, and as a result, the detection and punishment of doctors employing these practices is difficult.⁵¹ The Act also applied only to pregnant women, so it was not effective against the use of preimplantation techniques to engineer the sex of the child.⁵² These loopholes prevented strict enforcement of the ban.⁵³ The detection of female feticide in India is made more difficult because often sex determination is conducted at one clinic and the abortion is performed at another.⁵⁴ Further, between the enactment of the Act in 1994 and 2000, there were no convictions of individuals who did not comply with the ban.⁵⁵ Finally, despite the implementation of the Act, it was still possible to obtain an ultrasound sex test for as little as \$12.42 from any number of clinics in India.⁵⁶

B. *The Increasing Severity of the Sex Selection Problem*

A child sex ratio indicates the number of girls between the ages of zero to six to the number of boys in the same age group.⁵⁷ As mentioned above, the 1991 census reported a child sex ratio of 945 females to every one thousand males.⁵⁸ The 2001 census revealed that there are now only 927 girls for every one thousand males.⁵⁹ This severe decrease comes after years of declining numbers of female children in India. Certain areas of India are now being described as "a Bermuda Triangle where millions of girls disappear without a trace."⁶⁰ The decline is not a recent phenomenon. The number of

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49. *Id.* at 262 nn.67-69.
 50. Shefalee Vasudev et al., *Missing Girl Child*, *India Today*, Nov. 10, 2003, at 14.
 51. Farrell, *supra* note 29, at 263.
 52. *Id.*
 53. *Id.*
 54. Vasudev et al., *supra* note 50, at 14.
 55. Farrell, *supra* note 29, at 263.
 56. Sugita Katyay, *India's New Policy May Lead to a Girl Shortage*, *CHI. TRIB.*, Aug. 27, 2003, at 7.
 57. U.N. POPULATION FUND, *supra* note 1, at 1.
 58. *Id.*
 59. *Id.*
 60. Anna M.M. Vetticad & Ramesh Vinayak, *Sex Selection: The Gender Gestapo*, *INDIA TODAY*, July 16, 2001, at 41.

females represented in the child sex ratio fell from 976 in 1961, to 964 in 1971, and then to 962 in 1981.⁶¹ As stated by Vibhuti Patel, the leader of a Women's Center in Bombay, "for us, it's the survival of women that's at stake. The social implications of sex-selection are disastrous. It's a further degradation of women."⁶² The practice of female feticide, long prevalent in small villages throughout India, is now an urban reality as well.⁶³ The Indian census commissioner, J.K. Banthia, estimates that over the course of the decline of females, as many as 25 million female fetuses and babies have been killed before, during, or after birth in India.⁶⁴

It is relevant that this problem is not unique to India. China and other Asian countries are experiencing a similar phenomenon.⁶⁵ China's problem with gender imbalance became clear from a 1982 census report indicating a ratio of 108 boys to 100 girls.⁶⁶ This ratio has subsequently become ever more imbalanced: a recent calculation was reported to be 118 boys to every 100 girls.⁶⁷ One author notes that "these particular expressions of 'Asian values' [female feticide] will have unpredictable repercussions in these powers for decades to come."⁶⁸ While there is a slight preference for male children worldwide, this preference is negligible in most countries.⁶⁹ China, South Korea, and India are notable exceptions; the preference has resulted in a severe gender imbalance.⁷⁰

Alarmed by India's recent census data, the Supreme Court of India in 2001 ordered the central government and state authorities "to implement with all vigor and zeal" the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994.⁷¹ In February 2002 state governments were ordered to impound ultrasound machines from unregistered clinics that advertise the use of ultrasound testing for sex selection.⁷² While the actual effect of this

61. U.N. POPULATION FUND, *supra* note 1, at 1.

62. Lynne Marie Kohm, *Sex Selection Abortion and the Boomerang Effect of A Woman's Right to Choose: A Paradox of the Skeptics*, 4 WM. & MARY J. WOMEN & L. 91, 117 (1997).

63. Vasudev et al., *supra* note 50, at 14.

64. Rohde, *supra* note 6.

65. Nicholas Eberstadt, *Missing Girls Bode Ill for China in Future Decades*, ASIAN WALL ST. J., Feb. 16, 2004, at A9.

66. *Id.*

67. *Id.*

68. *Id.*

69. Das Gupta et al., *supra* note 7, at 153.

70. *Id.* at 154.

71. Farrell, *supra* note 29, at 254 n.7 (citing Centre for Enquiry into Health & Allied Themes v. Union of India, 2001 SOL Case No. 340, May 4, 2001).

72. *India-Crackdown on Sex Selection*, at www.lifeissues.org/international/v13no2.html (attributing information to international right to life newsletter) (last visited Mar. 20, 2005).

measure by the Supreme Court is unknown, after the order was issued there was a significant decrease in signs advertising the availability of ultrasound testing.⁷³ Further, in 2003, an amendment went into effect that renamed the Act as "The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act."⁷⁴ The new version of the Act prescribes that a "person who seeks help for sex selection can face, at first conviction, imprisonment for a 3-year period and be required to pay a fine of Rs. 50,000."⁷⁵ The Act also provides that the registration of the medical practitioner who engages in sex determination can be suspended, and upon conviction, registration can be terminated.⁷⁶

The implications of a large gender imbalance spread across India are yet to be fully experienced or understood. The practice of sex determination and sex selective abortion has only recently become a problem of the general population.⁷⁷ Studies conducted in the 1980s and 1990s suggest that the gender imbalance crisis only existed in certain subsets of the population prior to the last ten years.⁷⁸ There is a lot to be learned regarding the potential consequences of a gender imbalance for India from the areas of India where gender imbalance has been a concern for the past few decades.

The systematic eradication of females in the areas that have been employing the practice for the longest period of time has led to men purchasing brides from other locations or even sharing a wife with their brothers.⁷⁹ Ravinder Bhalla, a sociologist, remarks, "[t]he young woman is formally married to only one brother. Neither she nor her parents have any idea of their real intentions. Later, her husband's brothers also have sex with her."⁸⁰ Another problem found in these areas is bride kidnapping. Bride kidnapping is most prevalent in small villages where it is not uncommon for a baby girl not to have been seen in years.⁸¹ One woman, Sandhya Khajur, escaped to tell her story.⁸² Khajur was approached on the street by a woman claiming to have a job prospect for her.⁸³ After showing interest in the job, Khajur was offered a cup of tea.⁸⁴ The next thing

73. Farrell, *supra* note 29, at 263.

74. U.N. POPULATION FUND, *supra* note 1.

75. *Id.*

76. *Id.*

77. Asha Krishnakumar, *Doomed in the Womb?*, Hindu, Dec. 14, 2003, available at <http://www.thehindu.com/2003/12/14/stories/2003121400351400.htm>.

78. *Id.*

79. Philp, *supra* note 11, at 15.

80. Amrit Dhillon, *Brothers are Sharing the Same Woman*, Times (London), June 22, 2004, at 4.

81. Amrit Dhillon, *Kidnapped Girls Sold to Meet India's Shortage of Women*, S. CHINA MORNING POST, Jan. 31, 2004, at 10 [hereinafter *Kidnapped Girls Sold*].

82. *Id.*

83. *Id.*

84. *Id.*

Khajur remembers is waking up in an unfamiliar location and realizing she had been abducted.⁸⁵ Khajur was subsequently sold to a farmer who needed a wife for his son.⁸⁶ After paying 35,000 rupee for Khajur, this farmer noted that “there are hardly any girls in our community. My son is 28 and it was high time he got married. Other people in my community have done the same thing. I didn’t know it was illegal.”⁸⁷ Luckily for Khajur, after being kidnapped and sold into marriage, she found a support group that arranged for her release.⁸⁸ Many other women, however, are not so fortunate.⁸⁹ Another consequence of the lack of women in India is that men are marrying younger and younger girls.⁹⁰ An increase in sexual violence toward women has also occurred among frustrated single men.⁹¹

As described by the *Chronicle of Higher Education*, a recent book, titled *Bare Branches: Security Implications of Asia’s Surplus Male Population*, proposes even grimmer consequences of gender imbalance.⁹² The authors of this book, Valerie M. Hudson and Andrea M. der Boer, caution that history, biology, and sociology all suggest that the spread of sex determination techniques and the resulting increase of single males will lead to high levels of crime and social disorder.⁹³ Further, Hudson and der Boer even speculate that these large numbers of single men in India and China will cause these countries to “build up huge armies in order to provide a safety valve for the young men’s aggressive energies.”⁹⁴ One of the authors stated that “[i]n 2020 it may seem to China [and India] that it would be worth it to have a very bloody battle in which a lot of their young men could die in some glorious cause.”⁹⁵ Many critics disagree with Hudson and der Boer’s conclusion, specifically noting that their argument relies too heavily on a few historical cases and that the authors “fail to establish a systematic correlation between sex ratios and violence.”⁹⁶ Regardless of whose theory is most believable, the reality is that many of the consequences of gender imbalance are still unknown.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Jane Hughes, *Indian Soap to Combat Boys Only Culture: A New Primetime Television Show Will Shock a Nation Still Obsessed with Gender Selection*, OBSERVER, Sept. 7, 2003, at 23.

91. Philp, *supra* note 11, at 15; *see also* Hughes, *supra* note 90, at 23.

92. David Glen, *A Dangerous Surplus of Sons?*, CHRON. HIGHER EDUC., Apr. 30, 2004, at A.14.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

Despite arguments that a lack of women will enhance the social value of daughters, it does not appear that a decrease in the percentage of females in the population has led to greater value being placed on the women present.⁹⁷ Further, it is interesting to note that the women in India who deliver female children are "blamed" for not producing male offspring, despite the fact that it is an established medical fact that the man's semen determines the child's sex.⁹⁸ In one Indian mother's account, before bearing a son she was referred to as the "mother of her eldest daughter."⁹⁹ When after thirteen years of trying to have a male child she was finally successful, she stated, "[n]ow, of course, they call me the mother of my son, and my status is transformed as a consequence."¹⁰⁰ Women forced by their husbands and in-laws to abort female fetuses often suffer psychological harm. One woman, Sunita Shankar, is currently suffering from severe depression thought to be the result of six abortions after sex determination tests determined the fetuses to be female.¹⁰¹ Shankar has already had three daughters, and her family wants her to produce a son.¹⁰² The pressure has led Shankar to attempt to take her own life on two separate occasions.¹⁰³ Other women who have undergone multiple abortions in the quest for a male child experience fits of unconsciousness and severe anxiety.¹⁰⁴ The preference for male children is deeply embedded in the Indian culture, and there are further currently unseen implications of gender imbalance.

C. India's Dowry System

In India there is a saying that raising a daughter is like watering someone else's field.¹⁰⁵ This saying is based on the cultural norm of a daughter marrying a man, leaving her own family, and spending the rest of her life working for her husband and in-laws.¹⁰⁶ Many authors and analysts argue that this norm is the cause of gender imbalance in India.¹⁰⁷ The theory is that families unable to afford a dowry

97. See Mrityunjay Ram, *Hyderabad Has Lowest Sex Ratio in AP*, TIMES OF INDIA, Feb. 14, 2004.

98. V.G. Julie Rajan, *Will India's Ban on Prenatal Sex Determination Slow Abortion of Girls?*, HINDUISM TODAY, Apr. 30, 1996, at 1.

99. Das Gupta et al., *supra* note 7, at 175.

100. *Id.*

101. Vetticad & Vinayak, *supra* note 60, at 50.

102. *Id.*

103. *Id.*

104. *See, e.g., id.*

105. Sanjeev Miglani, *India's Missing Girls, High-tech Victims of Bias*, NEWS INDIA-TIMES, July 6, 2001, at 45.

106. *Id.*

107. *See, e.g.,* Donen Laine, *Guest Lecturer Speaks Out on Dowries, Violence in India*, DAILY TEXAN, Feb. 20, 2004.

participate in female feticide or infanticide in order to avoid the dowry payment.

It is undeniable that the custom of the dowry is embedded within the culture of India. The custom, however, has not always existed in the manner that it does today.¹⁰⁸ Further, the custom has always varied by region and sub-culture.¹⁰⁹ It is commonly assumed that the practice of the dowry has its roots in Hindu law and the ancient customs of varadakshina and kanyadann.¹¹⁰ Traditionally, varadakshina and kanyadann were in the form of gifts voluntarily given by the father of the bride to the groom.¹¹¹ These gifts were given not as a contract, but rather as a sacrament in the context of marriage.¹¹² Further, the bride was given gifts by her friends and relatives.¹¹³ Specifically, the bride's father would present his daughter with ornaments and cash within his means.¹¹⁴ These presents constituted the bride's stridham.¹¹⁵ These gifts, while intended to assist the new couple as they started a life together, were the property of the bride.¹¹⁶

This custom is very different from the customs that exist today; now there is little that is voluntary about the dowry payment. The family of the bride is expected to give the groom's family a significant amount of money and goods, regardless of the family's financial ability to do so.¹¹⁷ The demands of dowry are not confined to the middle and upper classes.¹¹⁸ Although the bride brings these goods into the relationship, these gifts are usually not in the bride's name and are not under her control.¹¹⁹ According to one author, the dowry custom has "degenerated into a sordid commercial transaction on which monetary considerations receive priority over the merits of the bride."¹²⁰ This same author explains how this practice is justified: "Parents who demand dowry justify it on several grounds. Firstly, since they have to pay dowry for their daughter, why not take it for

108. See Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOKLYN J. INT'L L. 637, 640-41 (1997).

109. See generally, M.N. SRINIVAS, SOME REFLECTIONS ON DOWRY (1983).

110. Nangia, *supra* note 108, at 640.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 639.

118. RANJANA KUMARI, BRIDES ARE NOT FOR BURNING: DOWRY VICTIMS IN INDIA 2 (1989).

119. Nangia, *supra* note 108, at 641.

120. KUMARI, *supra* note 118, at 1.

their sons? Secondly, fathers of educated boys want to get back the money spent on the son's education."¹²¹

The dowry custom has come with more costs than the dowry payment itself. When the family of the bride is unable to satisfy the desires of the groom's family, the new wife is often verbally and physically abused.¹²² Young wives are frequently driven to suicide by this abuse or murdered by their new husband's family.¹²³ It is estimated that dowry payment trouble leads to the deaths of more than 13,000 young brides each year.¹²⁴ Laws related to dowry date back as far as the Sind Leti-Deti Act of 1939, but the first systematic Indian law forbidding dowry payments, the Dowry Prohibition Act, was passed in 1961.¹²⁵ The ineffectiveness of this Act is shown by the fact that during the first twenty-four years of its existence less than one percent of dowry-related death cases were prosecuted under the law in Delhi, one of India's large urban centers with an ever-increasing number of dowry deaths.¹²⁶ This Act was amended in 1984 and again in 1986 in an attempt to remove the many loopholes in the original legislation.¹²⁷ Despite these amendments, the dowry custom still flourishes in India.

Dowry deaths, frequently called "bride burning" in reference to the "accidental" kitchen fires that cause the deaths of young brides, received significant media attention in the 1970s and 1980s.¹²⁸ The lack of recent attention given to this problem is not necessarily evidence that the problem has disappeared or even significantly decreased.¹²⁹ Recently, media attention has focused on women in India who are refusing to marry in cases in which a dowry has been given. *People* magazine recently reported on the case of Nisha Sharama, an Indian woman who broke her promise to marry when her future husband and mother-in-law demanded \$25,000 on the day of the wedding.¹³⁰ Allegedly Nisha Sharama called the police from the white tent where her wedding was to take place.¹³¹ The groom was arrested; although he denies the charges, if convicted he faces a maximum ten year prison sentence.¹³² Sharama became an overnight

121. *Id.* at 2.

122. *Id.*

123. *Id.*

124. *India's Female Freefall*, *supra* note 2.

125. KUMARI, *supra* note 118, at 72; Nangia, *supra* note 108, at 652-53.

126. KUMARI, *supra* note 118, at 72.

127. Nangia, *supra* note 108, at 653.

128. Kalpana Sharma, *Rooted Custom*, available at <http://www.indiatogether.org/opinions/kalpana/dowvict.htm> (last visited Mar. 21, 2004)

129. *See id.*

130. *Bride Says No*, *supra* note 9, at 65.

131. *Id.*

132. *Id.*

celebrity in India.¹³³ Women's groups are using her story and status to further the antidowry campaign.¹³⁴

D. Is the Custom of Dowry to Blame for India's Gender Imbalance?

As mentioned above, the dowry system is often blamed for the prevalence of female feticide and infanticide in India.¹³⁵ The bias against females, however, is more deeply rooted than simply in the dowry tradition itself. This is evident by the growing trend of wealthy families' participation in sex selection.¹³⁶ For these middle to upper class Indian families it cannot be the dowry alone that encourages the use of sex selection to produce male offspring.¹³⁷ While the dowry can pose a burden regardless of a family's wealth, new research suggests that the answer to the gender ratio imbalance in India may not be the enforcement of antidowry statutes.

Recent research shows that the "most pronounced drop in the number of girls under the age of six was no longer in rural areas but in the cities. And not just any neighborhoods, but in the wealthiest enclaves, where the educated elite live."¹³⁸ Educated women are assisting the perpetuation of discriminatory attitudes.¹³⁹ A recent census showed that the number of girls under six in Delhi has dropped to 865 per one thousand boys.¹⁴⁰ Some of the most exclusive neighborhoods, however, were represented by only 796 girls per one thousand boys.¹⁴¹ As noted by a senior census official, "[t]hese are the areas best-equipped with medical technology and these wealthy, educated people are misusing it to ensure they don't have girls."¹⁴²

This new research also seems to suggest that the education of women, an often proposed remedy to the gender imbalance problem, may not be enough to end female feticide and infanticide. Dr. Gautam Sehgal, treasurer of the Indian Healthcare Federation, notes that "education has got nothing to do with it. . . . I have received requests for sex determination from friends, people who have studied and lived abroad, people for whom money is the least of problems."¹⁴³ The leader of the Family Unit at the Tata Institute of Social Sciences in

133. *Id.*

134. *See, e.g., id.*

135. *See Sex Selection in India*, PBS Religion & Ethics NewsWeekly, Episode no. 440, available at <http://www.pbs.org/wnet/religionandethics/week440/cover.html>.

136. Philp, *supra* note 11, at 15.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. Vasudev et al., *supra* note 50, at 14.

Mumbai recognizes that "education, exposure and affluence have not brought values such as equality. . . . It has brought consumerism and commodification of relationships. Women prefer sons, as it is often the only way to increase their status in the otherwise subordinate life."¹⁴⁴

Evidence that the wealthy are just as involved, if not more so, as the poor in contributing to India's gender imbalance suggests that dowry payments are not the only cause of the problem. Moreover, evidence that the problem has recently become intensified in areas where women have the greatest access to education suggests that the education of women cannot be India's only solution.

IV. PAST ATTEMPTS TO RETURN INDIA'S "MISSING GIRLS"

The first legislative action against sex determination in India, the 1976 ban on amniocentesis in public facilities, followed a protest by women's groups against the procedure.¹⁴⁵ Before the 1988 enactment of a ban on sex determination in Maharashtra, multiple women's groups joined the protest.¹⁴⁶ Their efforts focused on getting articles published in the media about the practice of sex determination.¹⁴⁷ These first groups were not as concerned with the sex of the fetus being aborted as today's advocacy groups are, but rather were concerned with the health of the mother and the chance of mistakes being made in the sex determination process.¹⁴⁸ Once technological improvements eliminated these concerns, the protests ended.¹⁴⁹

A few years later, in 1985, when medical technology had allowed sex determination to become widespread, a joint action group, the Forum Against Sex Determination and Sex Pre-selection (FASDSP), formed.¹⁵⁰ This group, largely credited with initiating the first law regulating new diagnostic techniques of sex determination, sought the immediate regulation of prenatal diagnostic techniques and simultaneously attempted to start a campaign to instigate public pressure to eradicate the practice.¹⁵¹ The basic message of the

144. *Id.*

145. FORUM AGAINST SEX DETERMINATION AND SEX PRE-SELECTION, *Using Technology, Choosing Sex*, in CLOSE TO HOME 78, 79 (Vandana Shiva ed., 1994) [hereinafter FORUM AGAINST].

146. *Id.* at 81.

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 80.

151. FORUM AGAINST, *supra* note 145, at 80.

campaign was "*Ladki na ladke se kum*" ("A girl is no less than a boy").¹⁵²

The 1988 passage of the ban on sex determination in the state of Maharashtra represented a great achievement of FASDSP.¹⁵³ Years of work led to the passage of a law that, while filled with loopholes, gave the issue the publicity necessary to place it clearly in the public eye.¹⁵⁴ Despite the dual goals of FASDSP (namely, the passage of a law banning sex determination and the increase of public pressure to eradicate the practice), years of focusing on legislative action had led the *Ladki na ladke se kum* campaign to be placed on the back burner.¹⁵⁵ With all the loopholes in the legislation, FASDSP recognized that if the populace did not support the campaign, the ban would be all but meaningless.¹⁵⁶ Consequently, FASDSP promoted films, songs, meetings in multiple locations, skits with children, parent-daughter marches, and children's day programs—all meant to convey the message that a girl is no less than a boy.¹⁵⁷ The strength of this campaign and of the FASDSP as a whole has since wavered, likely because of a lack of clear progress and a realization that the government is not yet on the side of women.¹⁵⁸ Reports indicate that the law was not effective, and clinics offering sex determination tests continued to thrive.¹⁵⁹ One source indicates that "the only difference the new law made was that huge billboards that had earlier read '*Ladka Ya Ladki Jaanch karaiye*' ('Find Out If It's a Girl') were replaced by barely veiled messages such as '*Swasth ladka ya ladki?*' ('Healthy boy or girl?')."¹⁶⁰ The work of FASDSP illuminates an interesting predicament: as is evident by the effect of past laws such as the Dowry Prohibition Act, the government alone cannot be relied upon to effect change. But without government involvement, what change can occur? The questions that remain regard the level of government involvement required and the availability of other methods that can be instituted simultaneously to effect change.

152. *Id.*

153. *Id.* at 81.

154. *Id.* at 82.

155. *Id.*

156. *Id.*

157. *Id.*

158. Farrell, *supra* note 29, at 260; see also FORUM AGAINST, *supra* note 145, at 84.

159. Kishwar, *supra* note 26, at 336.

160. *Id.*

V. WILL A BAN ON SEX DETERMINATION ULTRASOUNDS RETURN INDIA'S "MISSING GIRLS?"

A. An Immediate Answer to a Problem Without an Immediate Solution

Eliminating females because of their sex before or after birth is "the ultimate manifestation of gender violence and discrimination, abuse of human rights, and infringement of values of equity, equality, justice, dignity, and quality of life for all."¹⁶¹ Indeed, female feticide is clearly a practice that must end. India needs to take active steps to eradicate this devastating practice sooner rather than later.

Current discourse suggests that the ban on sex determination ultrasounds will simply push the practice underground and lead to further undesirable actions.¹⁶² According to Shanti Conly, former director of policy research at Population Action International in Washington, D.C., passing laws banning prenatal sex determination ultrasounds is easy and important for the government to do, but "to actually enforce these laws is very difficult."¹⁶³ Conly advocates that the "key is changing attitudes and the value of women. It is not really a law and order problem where you can . . . arrest[] women for murder. I think reporting and punishing selective abortions will just drive these practices underground."¹⁶⁴ Some have also expressed concern that if the clinics resort to underground sex determination and abortion, regulating the safety of clinics will become impossible and the health of women will be placed in jeopardy.¹⁶⁵

More strikingly, some women argue that the "unwanted" female is better off not being born.¹⁶⁶ The scarcity of women in India has not led to the improved treatment of women.¹⁶⁷ Another concern is that the threat of criminal prosecution has not deterred female infanticide, which is still prevalent in India.¹⁶⁸ Horrifically, parents have simply developed new, less obvious, crueler methods of female infanticide, such as overfeeding the child and then tightly wrapping the baby in a

161. UNITED NATIONS POPULATION FUND, *Where Has the Girl Child Gone?*, at 1, available at <http://www.unfpa.org.in/detailnews.asp?newsid=26> (last visited Mar. 21, 2004) [hereinafter *Where Has the Girl Child Gone*].

162. Rajan, *supra* note 98, at 1.

163. *Id.*

164. *Id.*

165. Kishwar, *supra* note 26, at 335.

166. Lynette J. Dumble, *Female Imperilment in the Third Millennium*, Said It, July 2001, available at <http://www.saidit.org/archives/jul01/article3.html> (last visited Feb. 18, 2005).

167. *Id.*

168. *Id.*

wet cloth.¹⁶⁹ An additional argument against the ban is that it will increase the likelihood of corrupt government officials being paid for their silence regarding illegal activity.¹⁷⁰ Proponents of this argument (that the ban on sex determination will only increase the problems already plaguing India) analogize the ban to the law imposing jail time for convicted prostitutes and suggest that the effect of prostitution laws, which have led brothel owners to bribe police for protection, will carry over to medical clinics as well.¹⁷¹

Accepting the viewpoint that a ban will not be effective and may actually do more harm than good leads to the conclusion that there is no way to make significant changes in India's practice of female feticide until centuries of devaluation of women can be undone and society is able to change its views. A more immediate solution is needed, however. If the number of "missing girls" is not enough to bring adequate attention and immediacy to this issue, the severe consequences that will occur a decade from now will.

Some who believe in women's reproductive rights do not support the ban, arguing that a woman should have the right to decide whether to terminate a pregnancy or not, whatever her reason may be.¹⁷² Other advocates, however, argue that the nature of the "choice" women are making in the sex selection decision must be analyzed before making this generalization.¹⁷³ This "choice" women make is often "a response to intense pressure to produce male heirs, often through implicit threats of violence or husband's remarriage."¹⁷⁴ Further, "sometimes the pressure is more overt and against the wishes of the woman; she is often advised by family and a medical professional to postpone the decision to have an early abortion until sex determination can confirm that she is not carrying a male child."¹⁷⁵ It is with this understanding that many advocates of women's reproductive rights oppose sex selective abortions despite supporting a woman's right to choose. The distinction is critical.¹⁷⁶ Through this lens, a ban on sex determination ultrasounds in a culture like India's does not infringe on a woman's right to choose. Under the circumstances in India, most women are never given a choice.

169. *Id.*

170. Kishwar, *supra* note 26, at 337; see also *New Gender Test Law: Breeding Corruption*, HINDUSTAN TIMES, Dec. 17, 2004.

171. Kishwar, *supra* note 26, at 337.

172. Oomman & Ganatra, *supra* note 30, at 185.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

There are many valid arguments supporting the theory that enforcement of a ban on sex determination ultrasounds may not be in India's best interest. If the ban is truly instituted with the "vigor and zeal" India's Supreme Court has demanded, however, an opportunity to start enacting change immediately would exist. Without true political will behind the ban, however, it is likely that corruption will ensue and India's "missing girls" will be no better off.

B. India's Government Must Display the Political Will Necessary to Effect Change

In the words of one Indian news writer, "the human rights of women are always secondary to all other issues taken up by successive governments."¹⁷⁷ In order to advance beyond a tradition in which women are devalued even before their birth, societal attitudes must change. The Indian government can no longer be unsympathetic to the needs of women if India's "missing girls" are to obtain the chance they deserve. Currently the Indian government does not appear to be wholeheartedly pursuing its goal to decrease gender imbalance. This is illustrated by the fact that despite the call to enforce the ban on sex determination with "vigor and zeal," not one conviction of a medical practitioner who violated the law had occurred as of December 2003.¹⁷⁸

The lack of political will to solve the problem is also evident in legislative developments in India. Indian officials are desperately trying to curb population growth in India.¹⁷⁹ If population growth continues at its present rate, the population of India may surpass China by 2045.¹⁸⁰ By 2050 it is estimated that India will have a population of 1.63 billion people.¹⁸¹ While India's population policy does not explicitly ban families with more than two children, it contains many measures that encourage smaller families.¹⁸² For example, new legislation in India bans people with more than two children from government employment.¹⁸³ This is a significant deterrent because government employment in India is highly desired, because of the job security and prestige that accompany a career in civil service.¹⁸⁴ Population experts speculate that this ban will only

177. *Govts Insensitive to Women's Rights*, Times of India, Dec. 19, 2003, available at <http://timesofindia.indiatimes.com/articleshow/365833.cms> (last visited Feb. 19, 2005).

178. *What the Law Says*, HINDU, Dec. 14, 2003, at 1.

179. Katyal, *supra* note 56, at 7.

180. *Id.*

181. T.V. Padma, *Population-India: States Quietly Enforce Two-Children Family*, GLOBAL INFO. NETWORK, Aug. 14, 2002, at 1.

182. *Id.*

183. Katyal, *supra* note 56, at 7.

184. *Id.*

“exacerbate the crisis by pushing more people to opt for ‘female feticide’ and female infanticide.”¹⁸⁵ Similar social policies in China have been blamed for an increase in discrimination against female children.¹⁸⁶ One doctor in Delhi who has administered thousands of sex determination tests believes that such tests are the “best way of population control for India.”¹⁸⁷ The government should not support such views through its policy. India also offers a reward to individuals who wait until after the age of twenty-one to marry and are sterilized after having two children.¹⁸⁸ As stated by Francois Farah, the United Nations Population Funds representative in India, “[t]he bottom line is the number of girls is going down because of pressure to have small families.”¹⁸⁹ If preventing female feticide was a top priority of Indian politicians, legislation that effectively encourages families to participate in female feticide would not be increasing.

Just as the practice of using sex determination to terminate the pregnancy of female fetuses is not limited to the poor and uneducated but rather is also prevalent among India’s wealthy and educated women, the problem is not centralized among lay people either. The attitudes and actions of those within the medical system show an indifference to the issue of sex selection.¹⁹⁰ In its 2002 revision, the Medical Council of India’s ethics code did not define sex determination as objectionable unless intent to commit feticide can be proved, despite the Delhi High Court’s March 2002 order to amend the code to align with the law.¹⁹¹ This lack of adherence to the law is significant because as noted above, it is difficult to prove intent to commit female feticide because a sex determination test is frequently conducted at one clinic and the abortion is performed at another.

Dr. Sabu George, an Indian activist and sex ratio expert, believes that ultrasound machines are still more misused than well-used and blames the widespread decay of medical ethics and continuing leniency by state governments for the misuse.¹⁹² It is necessary for the Indian government to place further pressure on medical groups to more vocally support the ban. Some experts have argued that part of the problem with enforcing the ban on sex determination tests is that the enforcement agencies are often headed by doctors who are willing

185. *Id.*

186. Das Gupta et al., *supra* note 7, at 153.

187. Kishwar, *supra* note 26, at 334.

188. Padma, *supra* note 181.

189. Katyal, *supra* note 56, at 7.

190. Garimella Subramaniam, *Genocide of the Unborn?*, HINDU, Jan. 11, 2003, at 1.

191. *Id.* at 1-2.

192. *Ultrasound Machines Blamed- for Poor Sex Ratio*, HINDU, Feb. 19, 2004, at 1.

to break the law to protect others in their profession.¹⁹³ Members of the Campaign Against Sex Selective Abortion have conducted workshops designed to brainstorm methods to increase the implementation of the ban on sex selection procedures.¹⁹⁴ Some of the ideas developed include filing a lawsuit against the Tamil Nadu Medical Council for nonimplementation of the code of ethics for doctors.¹⁹⁵ Like the government, medical professionals are looked to by people for guidance. It is unlikely that change can ever be effected without the support of the medical profession.

In light of the technological improvement in fetal medicine, the Indian government must also keep track of medical advances and examine their possible effects on gender ratios before legalizing procedures.¹⁹⁶ Currently, some people are advocating preimplantation sex selection as a way to decrease the selective abortion of female fetuses.¹⁹⁷ Preimplantation genetic diagnosis enables doctors to identify the sex of the embryo before pregnancy occurs.¹⁹⁸ Advocates suggest that this is a more ethical approach than using prenatal sex determination followed by selective female feticide.¹⁹⁹ The preimplantation advocates argue that "if we allow people to choose when to have babies; how many to have; and even to terminate pregnancies if they inadvertently get pregnant, then they should be allowed to select the sex of their child if they would like to do so."²⁰⁰ In response to the concern that the use of preimplantation sex selection will further increase the unbalanced sex ratio in India, supporters of this technological advancement suggest that the expense, limited availability, and inefficiency of the procedure make it unlikely to produce any significant changes in the gender ratio.²⁰¹ The procedure costs about \$3,000 and is equal to a year's salary for many middle-class Indians.²⁰² One Indian doctor who uses preimplantation techniques defends himself by stating that "[i]n a

193. Bindu Shajan Perappadan, *Doctors Learn to Work Around New Act*, HINDU, Dec. 20, 2004, at 2.

194. *Code for Doctors: Plan to Move Court Against Medical Council*, HINDU, Apr. 25, 2004, at 1.

195. *Id.*

196. See generally Vineet Chander, Note, "It's (Still) a Boy...": Making The Prenatal Diagnostic Techniques Act An Effective Weapon in India's Struggle to Stamp Out Female Feticide, 36 GEO. WASH. INT'L L. REV. 453 (2004) for more information about how the Act affects preimplantation technology and more broadly how the Act itself can be amended to become a more effective tool in eradicating female feticide.

197. A. Malpani & D. Modi, *Preimplantation Sex Selection for Family Balancing in India*, 17 HUM. REPROD. 11, 12 (2002).

198. *Id.* at 11.

199. *Id.*

200. *Id.*

201. *Id.*

202. Vanessa Gezari, *Sex Testing Used to Cull Girls; India's Rich Defy Law to Guarantee Birth of Prized Son*, CHI. TRIB., Nov. 10, 2002, at C4.

democracy, people should be allowed to make decisions. In any case, how many can afford pre-implantation tests?"²⁰³ This doctor is suggesting that because only the rich will be able to access preimplantation tests, such technology will not largely affect sex ratios.²⁰⁴ As evidenced by the previously discussed research that shows that the gender imbalance is greatest in the wealthiest areas of India, it is likely that the cost of preimplantation procedures will not dissuade many of the families who long for a male child.²⁰⁵ The Indian government therefore must continue to regulate new technology if a ban on sex determination is to be effective.

C. *The Ineffective Actions of the Past*

Many of the solutions proposed as alternatives to the ban on sex determination ultrasounds can and have been implemented concurrently with the ban in an attempt to support and sustain lasting change in India. Such solutions include those that encourage individuals to bring females into their families through economic rewards and the removal of responsibility for the female children who are born. Unfortunately, not all of the alternative solutions that have been instituted are truly effective in the long run because they do nothing to increase the value of women in Indian society.

In 1992 the Chief Minister of Tamil Nadu in southern India instituted a program in which mothers were encouraged to leave their unwanted female infants in special cradles located at various public health centers.²⁰⁶ This program was touted as a "Revolutionary Leader's Scheme to Save the Female Child."²⁰⁷ During the year that the program existed, only fifty-one infant girls were left in the special cradles.²⁰⁸ Of these girls, thirty-nine were given to voluntary agencies and twelve were left in government care.²⁰⁹ Of the twelve infants left in government care, eleven died of neglect and one was taken back into custody by her parents who feared a similar fate for their

203. Vasudev et al., *supra* note 50, at 14.

204. *Id.*

205. While the United States' response to preselection techniques is outside the scope of this paper, it is interesting to note that the debate on this issue is heated and very current. The cover of Newsweek the week of January 26, 2004 reflects the prevalence of the debate by asking the question "Girl or Boy? Now you can choose but should you?" Claudia Kalb, *Brave New Babies*, NEWSWEEK, Jan. 26, 2004. Polls in the United States show that while Americans have a slight preference for male children, this preference is not enough to suggest that legalization of the procedure would lead to a child sex ratio similar to India's. *Id.* at 49.

206. Kishwar, *supra* note 26, at 343.

207. *Id.*

208. *Id.*

209. *Id.*

child.²¹⁰ Such a program is not likely to be beneficial because the preference for male children is not limited to biological children.²¹¹ Even when it comes to adopting, Indian families prefer male children.²¹² While concerns about female feticide are valid, the ever-increasing number of female children living without families is just as alarming.²¹³ Adoption professionals advocate that the same laws against sex determination should apply to adoption and that families seeking to adopt a child should not be able to indicate the sex of the child they desire.²¹⁴ Further, all the girls left in long-term government care died of neglect. The government has thus set a poor example regarding the value of the female child.

The government of Tamil Nadu also established a monetary award to anyone who provided information about a female infanticide.²¹⁵ In the year following the establishment of the award, however, not a single person attempted to claim an award.²¹⁶ Another government initiative in Tamil Nadu involved providing financial assistance to the parents of girls to help them afford the costs of education and dowry.²¹⁷ In order to qualify for the financial assistance, the parents had to live below the poverty line, have no male children, and one of the parents had to agree to be sterilized.²¹⁸ This program was not successful, likely because of the fact that the problem of India's "missing girls" cannot be blamed on India's poor.²¹⁹ In developing a workable solution, this must be recognized, and the attempts to rectify the problem must be directed toward the entire population, including the wealthy and educated.

In 2003 the Indian Health Ministry set a goal to increase the number of women delivering babies in hospitals from thirty-three percent to eighty percent over the following seven years.²²⁰ Under the newly introduced policy, indigent women who give birth in the hospital will be paid \$28 if the infant is a girl and \$14 if the infant is

210. *Id.*

211. *See In Adoption Too, Male Child is Preferred*, HINDU, Jan. 14, 2004.

212. *Id.*

213. *Id.*

214. *Id.*

215. Kishwar, *supra* note 26, at 344. Despite the ineffectiveness of this policy, states still currently considering offering a cash prize to those who "blow the whistle" on doctors and parents engaging in sex determination tests followed by the abortion of female fetuses. *See Radha Sharma, Blow the Whistle on Gender Tests, Get a Reward*, TIMES OF INDIA, Dec. 13, 2004, available at <http://timesofindia.indiatimes.com/articleshow/956690.cms> (last visited Feb. 19, 2005).

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Indian Health Ministry to Pay Women, Midwives for Choosing Hospital Deliveries*, KAISER DAILY REPROD. HEALTH REP., Nov. 24, 2003.

a boy.²²¹ Presumably such a policy will make the detection of female infanticide easier. This type of policy, however, like the special cradle program and financial incentive programs initiated in Tamil Nadu, will do nothing to increase the value of female children and is therefore not an acceptable long-term solution to India's problem. Further, the evidence that all but one of the infant girls left to the government's care in Tamil Nadu died of neglect suggests that despite many programs that on the surface display a concern regarding the problem, the government itself does not value the female and has therefore not developed programs that will effect this goal.

D. Effective Current and Proposed Long-Term Actions to Support and Sustain Change

The ultimate goal should be to eradicate the practice of female feticide by eliminating the perception that female children are worth less than male children. Simply attempting to save a small percentage of the girls who are born through programs that take responsibility financial or otherwise, away from parents, is not an effective solution. Unfortunately, the ban on sex determination alone is also not enough to save India's "missing girls" in the coming generations. More drastic change is necessary. As noted by Sabu George, a long-time activist in India:

Laws should not blind us . . . to the need for "aggressive gender justice" to challenge patriarchal norms and address the root causes of devaluation of daughters. As long as we address the symptom and not the technology is going to support the expression of gender discrimination. There is no doubt that unless patriarchal norms of society are challenged and women valued, the desire to do away with girl children will remain.²²²

India's Health Minister, Sushma Swaraj, has also recognized that "if enactment of a law was the only thing needed to curb this menace, this would have stopped long ago."²²³ Despite the statistics that tend to suggest the problem is impossible to deny, most people do not think the problem affects them or their class.²²⁴ Further, it is suggested that the problem is "invisible" because women are not willing to openly admit what has happened to them.²²⁵ Another predicament is that those who are willing to recognize the problem are not willing to

221. *Id.*

222. Oomman & Ganatra, *supra* note 30.

223. Vasudev et al., *supra* note 50, at 14.

224. Hughes, *supra* note 90, at 23.

225. *Id.*

participate in the solution actively.²²⁶ Following the "not in my backyard" theory, these individuals recognize the importance of maintaining gender balance but call upon other community members to have female children so that there are women to marry their sons.²²⁷

In addition to concurrently enforcing a ban on sex selection and determination procedures, the people of India must be made aware of the realities of the practice of female feticide so that the need for change is understood. Only then will long-term solutions aimed at changing the perception of women in Indian society be successful. The process of change in India will undoubtedly be slow; however, with the correct approach change is possible. Many leaders in India have already established campaigns for change that address the cause, not the symptoms, of the problem. These campaigns must be expanded in order to effect long-term change in India.

In response to the child sex-ratio crisis, Swaraj has proposed that the government initiate an advertising campaign advising the people of India that unless the trend changes direction, there will not be enough women for Indian men to marry.²²⁸ Some Indian states, in an attempt to change society's attitudes toward women, have already initiated television and radio advertising campaigns, declaring such slogans as "daughters are our pride" and "female feticide is illegal."²²⁹ Such efforts have likely stemmed from the recognition of the relative success of women's groups advocating for increased coverage in the press of women's issues, such as dowry, since the 1980s.²³⁰ These efforts are to be applauded and should be continued on a widespread basis throughout India. Media and advertising greatly influence their audiences. Similar campaigns can be seen in the U.S. media in the fight against drug abuse, as well as in efforts to have parents spend more time reading with their children.

Another Indian state, Haryana, has attempted to draw attention to the problems by sending letters outlining the issues to local

226. Glen, *supra* note 92, at 14.

227. *Id.*

228. Rohde, *supra* note 6.

229. *Id.*

230. Rashmi Luthra, *The Women's Movement and the Press in India: The Construction of Female Foeticide as a Social Issue*, WOMEN'S STUD. IN COMM. (Spring 1999), at 1. While coverage of women's issues has increased, the importance placed on these issues still leaves much to be desired. A recent headline in *The Hindu* newspaper reads "Housewife Succumbs to Burns." The text of the article is short, stating only that "The Amberpet police on Friday booked a dowry harassment case after a housewife, Sri Vani (20), who set herself ablaze on January 11, succumbed to burns on Friday while undergoing treatment at the Osmania General Hospital. The victim's parents today accused the in-laws of Sri Vani of demanding additional dowry." Likely hidden on a back page of the daily paper if reported at all, stories such as this are common. *Housewife Succumbs to Burns*, HINDU, Jan. 17, 2004.

leaders.²³¹ The state has also encouraged religious leaders to preach about the evil of female feticide.²³² Further, a strategy has been developed under which each village is forming a group of the most educated ten to fifteen women and four to five men to serve as leaders speaking out against the social evils prevalent in their villages.²³³ These groups will collaborate with government agencies in order to achieve their goals. The Haryana government has also recently modified dowry laws in order to effectively implement the Dowry Prohibition Act.²³⁴ These actions appear to represent real change as well as the political will that is required to effect such change.²³⁵

Awareness of the problem is the first step toward a solution. Making women instrumental in the leadership of change is an important component of a solution because if women are allowed to play an active role, then valuing women is not just something that is being discussed in the abstract, but something that can be concretely seen. The actions of the Haryana government have already yielded results. In Haryana, as many as twenty-two complaints have been filed regarding violations of the provisions of the Pre-natal Diagnostic Techniques Act and more than forty ultrasound machines have been seized.²³⁶ The people and government of Haryana have recognized the severity of the problem and are displaying the willingness to implement change. The numbers show the positive effects of Haryana's campaign. Other states should follow Haryana's lead and work to inform local leaders of the issue and involve local women as leaders in the quest for change.

In order to combat the preference for the male child in adoption, the Rajasthan government in India has passed an order that prohibits sex selection in adoption.²³⁷ Supporters of the order argue that "if the sex of the child should not matter at birth, it should not really matter during adoption as well."²³⁸ These individuals further recognize that banning sex determination tests but continuing to allow couples to indicate that they want a male child in an adoption amounts to hypocrisy.²³⁹ While the level of enforcement of this order

231. Sudhir Kalia, *Declining Sex Ratio Amidst Growing Prosperity*, TIMES OF INDIA, Jan. 28, 2004, available at <http://timesofindia.indiatimes.com/articleshow/447348.cms> (last visited Feb. 19, 2005).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. Sudhir Kalia, *Haryana Campaigns Against Female Foeticide*, TIMES OF INDIA, Feb. 6, 2004, available at <http://www1.timesofindia.indiatimes.com/articleshow/477829.cms> (last visited Feb. 20, 2005).

237. *In Adoption Too, Male Child is Preferred*, *supra* note 211.

238. *Id.*

239. *Id.*

is unknown, ending choice in adoption demonstrates a clear desire by one government to begin the process of altering the mindset of the Indian people and in doing so to increase the value of the female child.²⁴⁰ All Indian states should follow the Rajasthan government by banning sex selection in adoption. While such a law will not immediately change the number of girls who are born, it represents a consistent attack on sex selection and sends a strong signal to the people that devaluation of females will not be tolerated.

A recent nationwide campaign launched by the National Commission for Women and the Union Human Resource Development Ministry promises great strides in the fight against female feticide. In December 2004 these organizations released a handbook titled *Pre-Birth Elimination of Females* that is to be distributed to all students in Classes VIII to X attending central government schools and incorporated in the schools.²⁴¹ The aim of this publication is to generate awareness of the problem of female feticide among teachers and students and sensitize society on the issue.²⁴² It is hoped that the state governments will assist in translating the book into regional languages so that students attending public schools in some of the areas most affected by the gender imbalance can benefit from the information contained in the handbook.²⁴³ By participating in this important educational project, the state governments of India would show a commitment to stopping the spread of a horrific practice. The Union Health Ministry is also currently developing a national surveillance cell to regulate the practice of selective feticide.²⁴⁴ This cell would monitor and enforce laws related to sex determination tests by conducting covert operations to detect illegal tests and by conducting raids on clinics performing illegal tests.²⁴⁵ The cell will be composed of retired police officers in order to transfer the responsibility from already overworked local police.²⁴⁶ Using retired police officers will also transfer responsibility for checking ultrasound clinics away from the Chief Medical Officer in the district,²⁴⁷ thereby eliminating the concern that doctors will be unwilling to turn in members of their own profession. These recent developments indicate that the Indian government is taking steps toward displaying the political will necessary to effect change.

240. *See id.*

241. *Students to be Sensitized on Female Foeticide*, HINDU, Dec. 11, 2004, at 1.

242. *Id.*

243. *Id.*

244. *Centre Plans Surveillance Cell Against Foeticide*, HINDU, Dec. 21, 2004.

245. *Id.*

246. *Retired Cops Roped in to Save Girl Child*, INDIAN EXPRESS, Feb. 1, 2005, available at http://www.indianexpress.com/full_story.php?content_id=63897 (last visited Feb. 20, 2005).

247. *Id.*

Private individuals have turned to the entertainment industry to express their concerns with India's discrimination against the female. Together, Manish Jha and Boney Kapoor wrote and directed a film titled *Matrubhoomi (Motherland): A Nation Without Women*.²⁴⁸ For Manish Jha, the problem of the "missing female" was something he experienced as a reality having grown up in Bihar.²⁴⁹ The film depicts a futuristic India where women have become completely obsolete.²⁵⁰ According to Manish Jha, his goal in producing the film was to "shock viewers into realising the 'instability which can creep into society from the absence of women—be it physical, emotional or psychological.'"²⁵¹ By February 2004, this film, while not set to be released to the public until late March 2004, had already won awards from international film festivals in Venice, Koxlin, Thessaloniki, and Florence.²⁵² One hopes the film will perpetuate further awareness of the issue among the people of India and spawn more recognition in the arts of social evils.

International organizations have also begun to assist in nationwide efforts to address the devaluation of women in India. A soap opera intended to increase awareness of the issue of female feticide, funded by the international development charity Plan and supported by the Indian government, has been developed.²⁵³ The show begins with a woman giving birth to a premature baby girl by Caesarean delivery.²⁵⁴ The husband of the woman and her mother-in-law had expressed hope that the operation would kill the child.²⁵⁵ The storyline of the soap opera then progresses as the woman meets a women's rights advocate, stands up to her husband regarding her desire not to have a sex detection test in her second pregnancy, subsequently divorces her husband, and moves into a new apartment where she and her neighbors have a dialogue regarding how female feticide has affected them all.²⁵⁶ Noting that laws alone will not prevent the pressure women feel to have sons, the director of the show states that "[w]e want people to question their motives and to show why daughters should be valued. . . . Hopefully, husbands will think about what their wives are going through and women will realise they have the final say in their reproductive rights."²⁵⁷ This

248. *Spectre of a World Without Women*, HINDU, Mar. 3, 2004, at 1.

249. *Id.*

250. *Id.*

251. Ranjit Devraj, *India: A Film on Girl Abuse is Shocking but Timely*, IPS-INTER PRESS SERVICE, Mar. 4, 2004.

252. *Id.*

253. Hughes, *supra* note 90.

254. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

type of action by international organizations should be welcomed by the Indian government and made a priority for international human rights groups. This is not just India's problem but rather an issue that should be important to all. Undoing years of devaluation of women is not something that can happen overnight. It will take continued dedication by the Indian government as well as the nongovernmental agencies. These groups must possess the will not to back down in the face of popular opposition.

Another international group, the United Nations Population Fund, has recently produced an informational pamphlet titled *Missing: Mapping the Adverse Child Sex Ratio in India* in an attempt to increase awareness of the severity of India's gender imbalance.²⁵⁸ The research done by the United Nations has helped to pinpoint the areas of India where the problem is most pronounced.²⁵⁹ Francios Farah, the United Nations Population Fund representative in India, is calling for "greater advocacy by authorities, civil society groups, cultural, religious and media institutions to promote the value of the girl child and eliminate gender biases in prevalent social practices."²⁶⁰ This multidimensional approach is to be commended because it recognizes the widespread nature of the issue and the need for multifaceted solutions.

Another multidimensional approach has been developed by the fifty-seven nongovernmental organizations that have joined together to fight female feticide and other issues that affect women.²⁶¹ This campaign emphasizes female self-esteem, literacy, health, and economic independence.²⁶² The group has undertaken to resist the social evil of female feticide at two levels: "first, by increasing women's leadership roles within the wider community, and second, by sensitizing men to their own poverty and patriarchy-related oppression."²⁶³ This group believes that a people's movement is needed to effectively change the status quo.²⁶⁴ The organization recognizes the lofty goals that it has set: "It's a mammoth task, but the strength and imagination of the Indian women's movement and NGO network may well be the recipe which the home government . . . [has] long been lacking."²⁶⁵ These organizations, in conjunction with the government of India, have the potential to make great strides toward solving the gender imbalance crisis. Despite the assistance of nongovernmental organizations, the role of the Indian government is

258. *Where Has the Girl Child Gone*, *supra* note 161.

259. *Id.*

260. *Id.*

261. Oomman & Ganatra, *supra* note 30.

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

fundamental to effecting positive change. One important way the Indian government can assist in changing societal attitudes is by assisting nongovernmental organizations in their efforts to increase the role of women in the political arena.

The role of women in India is typically home-centered, therefore making it easy to exclude women from public activities and political life.²⁶⁶ In the public sphere and political process, issues surrounding the female sex are easily suppressed by the male majority.²⁶⁷ Some of the above-mentioned remedies, such as the inclusion of women in local village leadership groups that speak out against social evils, represent an important part of India's campaign for change. Women must become involved in the leadership of India.

In an attempt to redress the lack of female representation in legislative bodies, the government of India amended the constitution in 1992 (with the seventy-third and seventy-fourth amendments) to reserve one-third of the seats in local government for women.²⁶⁸ This amendment helped to bring women into India's political process, but women's participation in political life is still viewed by many to be relatively minimal.²⁶⁹ The lack of participation of women is speculated to be due to minimal socialization, insufficient resources, and little independence from the male head of the household.²⁷⁰ The proportion of women in the legislature is still low even in states where women are typically thought to have better educational opportunities and an overall higher quality of life.²⁷¹ One researcher found that only forty-four percent of the women he interviewed even knew about the legislative seats reserved for women.²⁷² This same researcher concluded, through his interviews with Indian women, that the lack of awareness of political positions did not translate to women being unaware of the effect of politics in their lives.²⁷³ A majority of the women recognized that "political participation would be good for them, participation would solve the problems faced by women, and it would also raise their social status."²⁷⁴ Further, almost all the women interviewed were proponents of "the voice for equality, self-sufficiency, and education" of women.²⁷⁵ In order for women to voice these views and become active participants in the public and

266. Pradeep Chhibber, *Why are Some Women Political Active? The Household, Public Space, and Political Participation in India*, 43 INT'L J. COMP. SOC. 409 (2002).

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

political arena, they must step out of the male dominated household.²⁷⁶ Stepping out of the household and becoming involved in the public sphere does not necessarily mean giving up or ignoring the responsibilities of the home. The government of India should institute a campaign designed to inform women of the potential for political leadership. In order to be successful, this campaign must be sensitive to the traditional role of women in India and emphasize that political participation does not require abandoning that role.

The focus of India's campaign should be on remedies that will work to increase the value Indian society places on women. India's campaign should not involve economic incentives and other programs that take responsibility for female children away from those who have given birth to a female child. Actions that address the cause of the problem rather than the symptoms are what will support and sustain change in the long run.

VI. CONCLUSION

It is clear that the disparity in the sex ratio in India cannot be ignored. The numbers are staggering. Even a skeptic would have a difficult time arguing that India's gender imbalance is not an issue that must be addressed. The implications of the imbalance for the decades to come, while largely unknown, are sure to be devastating. Currently India is already facing many of the tragic effects of a society that is "missing" its girls. The United Nations has noted that it is entirely possible that a time may come "when it would become extremely difficult, if not impossible, to make up for the missing girls."²⁷⁷

The attention that has been paid to this issue recently has given new definition to the problem. No longer is the issue a class problem that affects only the poor and uneducated. New research shows that the practice of using sex determination ultrasounds and aborting female fetuses is prevalent among India's wealthy and educated elite. This research suggests that the dowry system, often to blame for gender imbalance on the theory that some families cannot afford to pay a dowry, does not deserve all the blame. The research also suggests that without other types of action, educating women in India may not be an effective solution. The problem goes beyond the dowry custom and requires a stricter and more immediate solution than attempts to educate Indian women.

The Indian Supreme Court has handed the people a tool to use in the fight against female feticide. Now is time to use the Supreme

276. *Id.*

277. Devraj, *supra* note 251.

Court's ruling requiring the ban on sex determination to be enforced with "vigor and zeal" as a platform to further the campaign to return India's "missing girls." In the words of one advocate, "[t]his latest legal weapon must be exploited to the maximum possible extent to fight foeticide, unarguably the surest means of imprinting the stamp of present gender bias into future generations."²⁷⁸ Despite arguments against the ban, the ban is the only "quick fix" India has to a problem that necessitates an immediate remedy. This is not the type of situation in which the government can take a wait-and-see approach. Because of a lack of governmental enforcement, the custom of dowry, outlawed more than fifty years ago, still flourishes in India, and women are killed daily for not producing a large enough dowry. India cannot allow a similar fate for the thousands of yet-to-be conceived female fetuses that will be aborted solely because of their sex. The ban must be enforced, and the government must show the political will to enforce it.

Despite the necessity of the ban, social norms will not likely change through legal means alone. While strict enforcement of the ban on sex determination in and of itself will likely decrease gender imbalance in India, it will do little to increase the social value of the girls who are born. Strong advocacy for implementation of the ban does not mean that the larger problem can be left unaddressed. Long-term efforts to sustain change must be implemented concurrently with the ban in order to remedy the problem. These long-term solutions involve using resources from around the world to enable the women of India to reach a position from which they are able to challenge the patriarchal norms of Indian society. These solutions do not involve economic incentives for having female children, but rather involve campaigns to change Indian society's attitudes toward women and include women in leadership roles. Through the immediate solution of the ban and the long-term efforts to increase the value of girls, India might prevent another generation of "missing girls" from being forever lost.

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278. Subramaniam, *supra* note 190.

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