

## Subject: Science Object: Women

*The great battle of Mahabharatha was fought between the Kauravas and the Pandavas. The two clans trace their origin to a common grandfather, Vichitra Veerya, who was impotent. Bhishma, the patriarch, decided that in order to continue the lineage, they would request the renowned sage Veda Vyasa to furnish his sperms to the childless queens. The legend goes that the sage, being a vagabond in his appearance, frightened the queens. The first closed her eyes on seeing him and gave birth to a blind son, the second grew pale and delivered a weak son who was cursed to die the day he would seek to fulfill his sexual desire. The third queen, too scared to meet the sage, sent in her maid who after a satisfactory encounter gave birth to Vidhura, the wise minister.*

*The story continues that the second son, Pandu, who could not have sexual intercourse, was married to Kunti, who was blessed by the gods with divine conception. His other queen, too, wanted to beget children, so Kunti bestowed on her one of her blessings. Hence the great Pandavas, endowed with divine powers from their heavenly fathers, won the battle against the Kauravas and then claimed the throne of their earthly father.*

*Mahabharatha, the great Indian epic*

Anglo-Saxon jurisprudence is structured on the fact that procreation involves only two partners—man and woman, hence the new scientific inventions (acting as a multi-dimensional agency involved in procreation) pose a new challenge to the existing system. In Indian mythology and local folklore, however, such notions abound. Sex, procreation and inheritance are often de-linked and possibilities of donor sperms have been as much a part of the past as they will be of the future. However such de-linkages have not helped in achieving the utopia of women's equality.

Similarly, modern science and scientific inventions are portrayed as giving women choices like remedying infertility and producing children of desired sex/specifications. It is also projected that this choice in bearing children can be taken out of its traditional boundaries of heterosexual marriage and can be extended to single persons or couples of the same sex. But the "choice" is not contextualised in a neutral terrain devoid of social values and processes. It is confined within existing social processes of discrimination and inequalities, and scientific inventions which offer the 'choice' only serve to strengthen these inequalities.

In India as in many parts of the world, conception of a child is still viewed as only possible within the traditional concept of family.<sup>1</sup> The reinforcement of this can be seen even in so-called developed countries that have given the right to register homosexual partnerships but have withheld their right to either adopt or have children.

This paper attempts to link the development of modern reproductive technology with attempts by law and society to suppress women's sexuality and over-emphasize her fertility (within or outside a marriage). Further, it reviews earlier experiences when prevalent social and legal attitudes sabotaged scientific developments, purportedly for the benefit of women, into being used against them.

### Of wives, mothers and property deeds: Women's sexuality within marriage

Control of property through control over women's sexuality within the patriarchal scheme of reproduction seems to be the central theme of all matrimonial laws in India. Hence, issues such as women's adultery have come to be the central matrimonial offences under the present family laws. This concept was first introduced in the Indian context through a law applicable to Christians enacted in 1869, titled the *Indian Divorce Act*. Under this law, the husband is entitled to divorce his wife on grounds of adultery. But the man's adultery does not entitle the wife to divorce him. She has to prove additional grounds of cruelty or desertion, thus reinforcing that a woman's sexuality belongs entirely to her husband while she does not have a reciprocal claim over him. Matrimonial laws become the converging site for attempts to control women's sexuality and property. Control over sexuality translates into control over women's property. Constant patriarchal collusions have eroded established rights and have weakened women's economic status. Several adverse judgements by colonial rulers denied women even the limited rights that the community had granted them. All property inherited by a woman was to devolve on the heirs of her husband or her father.<sup>2</sup> Following the concept of adultery from family law into criminal law, further gender bias is revealed. The law stipulates:

*Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery.*

The definition indicates that adultery is committed only when there is sexual intercourse with a married woman without the consent of her husband. The section implies that a married woman can be permitted by her husband to have sex with another man. The woman has no legal identity as an offender or abettor. The offence is merely against the husband without whose permission another man has had sexual intercourse with his wife. The woman has no right to institute proceedings against an errant husband. No crime of adultery can be committed against her. The penal provision of adultery thus strengthens the prevailing notion that it is the husband's sole prerogative to control the sexuality of his wife.

This notion of "ownership" is reflected in other legal provisions of matrimonial law. Restitution of Conjugal Rights is another instance of legal sanction to the concept of the conjugal servitude of women. Though this remedy was unknown to either the Hindus or the Muslims it was made available to all during British rule.<sup>3</sup> Restitution of conjugal rights enshrines on the spouse the right to approach a court to restore a conjugal relationship which the other has, without reasonable excuse, withdrawn. While the provision is near impossible to implement against husbands, who cannot be forced to reside with a woman they do not want, a woman's arm is often twisted by denying her economic rights vis-à-vis her husband if she refuses to comply with the order. For a woman who has no other economic right in marriage other than the right to be maintained by her husband, this often becomes an issue of survival.

Another area of law that curtails a woman's right to her body and to refuse sex is the law concerning rape. The penal law in India does not recognise a woman's right to refuse sex to her husband. India is one of the few countries which has still not granted legal recognition to marital rape, thus giving the wife no recourse under the law even against forced sex. Thus, a woman's right to her own body is denied by law in the

name of marriage. She is perceived as belonging to her husband who has complete right over her body, hence denying her the very right of choice.

The above examples in law illustrate that the power-holder continues to be the man. Further, since property in most societies is passed on through the male lineage, sons become the only medium to ensure the immortality of the family.<sup>4</sup> The entire pressure is on the fertility of the woman and her ability to provide a son. Since the contribution of the man to reproduction is confined to conception, to determine paternity unambiguously it becomes necessary that the woman does not have sexual relations with any other man than the father of the child.<sup>5</sup> Matrimonial law strives to maintain and propagate these social 'mis-beliefs.'

### **Women and their reproductive rights: Experiential Curve In The Indian Context**

Issues of reproductive capacity and sexuality which are so central in matrimonial law are also reflected in state health policies. The health status of women is far inferior to that of men. But the only aspect of women's health that has received attention is that of their capacity to reproduce.

A study on energy expenditure and calorie intake shows that while women expend 53 per cent of human energy on survival tasks, men expend 31 per cent. A corresponding look at calorie intake shows that women consume 100 calories fewer than what is expended while men consumed 800 calories surplus.<sup>6</sup> As per a pamphlet issued by Forum Against Oppression of Women, a Bombay based organization, in 1984 for every five men who made use of primary health centers only one woman does so. Further, the UNICEF-WHO report of 1991 showed that between 40 to 50% of urban women and 50 to 70% of rural women suffered from anemia.

Women's bodies have been fodder for two diverse trends within reproductive discourse—control of infertility and control of population.

Infertile women are often abandoned and socially stigmatised due to the high premium on the ability to bear a child, especially a son. While men are expected to exercise complete ownership of women and the sons they bear, no responsibility is taken should the woman fail to conceive or if she conceives a female child. Hence, being childless or having a female child would be blamed entirely on the woman who will bear the social consequences of this.

On the other hand, contraceptives are forced on women by the state as part of its family-planning policy. Since the mid-seventies, when forced male sterilisations led to political turmoil and ultimately to the overthrow of the party in power, all efforts have been directed at women. The State began giving incentives to women to undergo sterilisation or use contraceptives, thus bringing in indirect coercive methods to control conception. It was against this social and cultural background that the facility of amniocentesis was introduced in India in the mid 70's. Though it was not uncommon in India to kill newborn females<sup>7</sup> the facility made it easier, as they could be eliminated even before they were born.

What is also relevant here is the law concerning abortion, which was misused with the aid of amniocentesis. While several developed countries are even today debating the moral and ethical issues of abortion, it was legalized in India as far back as 1972.<sup>8</sup> Though the state claimed that the purpose of the act was to regulate abortions being performed unhygienically, which endangered women's lives, in reality the act was part of the population control policy of the state. The act permitted women to abort foetuses for reasons of their health/life or the life of the child. If conception was caused due to rape or failure of contraception women were permitted to abort the child.

In fact the popular phrase for amniocentesis was the “sex determination test.” It soon became a booming industry and continued to flourish for about five to six years with no regulation. Studies conducted during this period revealed startling statistics of misuse. In Bombay alone the number of clinics had gone up from 10 in 1982 to 248 in 1986-87. It was estimated that between 1978 and 1982, 78,000 fetuses were aborted after sex determination tests.<sup>9</sup> According to a newspaper report, out of 8,000 abortions conducted after sex determination tests, 7,999 involved female fetuses. There was also the case of a mother of two girls in Bombay who died after undergoing an amniocentesis test and an abortion in her fourth month of pregnancy.

These alarming figures and facts forced an NGO in Bombay to file a writ petition demanding that the sex determination test and selective abortions based on the sex of the foetus be prevented. Activist groups consisting of various professionals came together under the banner of Forum against Sex Determination and Sex Pre-Selection to protest against these practices. The campaign also focused on women who were willing to sacrifice anything for a male child, and on the medical community, too. Though the demand of health and women’s groups was for a law banning all prevailing and future techniques which aided sex determination or sex pre-selection, the government only passed legislation regulating the tests.<sup>10</sup> The objective was claimed to be regulation of the pre-natal diagnostics techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide. The legislation was passed but the struggle continues. The legislation has certain inherent flaws which continue to permit the misuse of the amniocentesis technique. The act clearly states that if the woman has, on previous occasions, undergone two or more spontaneous abortions or foetal loss she is permitted to use the facility. Many women are coerced into giving such a statement, which then results in the female foetus being aborted. While the act tries to balance between the possible genuine use and misuse of the technique, it has been unable to plug the loophole.

The above account illustrates how it is the pre-existing social and cultural values within which a technology is introduced which dictate its impact. Even legislative measures are reduced to being mere cosmetics in their efforts at pushing this technology towards being beneficial.

### **Modern reproductive technology: Old wine in new bottles**

The aggression of science in intervening in ‘life’ itself has made it the successor to the traditional patriarchal ideology. It has worked better at reinforcing the emphasis on women’s fertility than some of the laws. While the growing population is made out to be the biggest problem we are facing today, countries are spending large sums of money on infertility treatment.

The new reproductive technology concretises the meaning and importance attached to having ‘one’s own’ child. This may also seem to provide a solution to a person’s inadequacies, but one must not see it devoid of the social context within which it emerges. Past experiences have established that despite legal intervention and scientific design, the techniques have invariably provided a new medium for strengthening social and cultural divisions and categories.

Technologies, by giving newer options to infertility without completely disclosing the success rates or effects, increase the pressure on women to bear children. An example would be In-vitro fertilisation (IVF), which many women have attempted without being aware that the pregnancy rate of IVF is only about 20%. How many failed

attempts lie behind every successful conclusion of IVF techniques is nowhere recorded nor is it considered important. Women, due to the existing social structure and legal control over their sexuality, are not in a position to exercise the choices given by science. Scientific solutions to such problems will continue to be used and be controlled by the traditional patriarchal power-holders.

Science seems to be progressing devoid of any social element within it. While scientists talk of giving options to homosexual couples, the same is not reflected in either state policy or social norms. Even laws in 'progressive countries' do not envisage children outside of the socially and religiously accepted family systems. Motherhood is deemed necessary and desirable only for those who are happily married and live with their husbands. To maintain their identity as women, it is imperative that they become mothers. Thus the assertion that science is reinforcing traditional emphasis on women's fertility is validated.

Even artificial insemination, which was seen by a few feminists as having a potential to challenge patriarchy, did not change the social structure. What happened in the past as seen above is that legal and societal mechanisms were evolved wherein technology continued to be used in a manner that reinforced the existing gender inequality.

The pressure on women to have children is so great that they are willing to allow experiments on their bodies, as they too believe that it is their function to give pleasure to men and bear children. Despite prohibitive costs, women approach doctors for treatment only to avoid the constant humiliation and vilification for being infertile. The technique itself starts off a new chain of physical suffering accompanied by the constant tension of success or failure that it becomes the sole objective of their lives. A woman's statement recorded in 'We and our Fertility' only emphasizes this phenomenon.

*"It was to be a minor operation. On inquiry I was told that it was to extract the eggs maturing in my body. I had already learned the process of getting up everyday putting the thermometer into my mouth and noting my temperature. The twelfth day the temperature had increased somewhat. I went running the doctor. But the doctor was upset ... 'you are too late!' I was astounded. I was doing just as I was told. What could I say? I just listened to the doctor's anger. Their whole schedule had been upset. I was disturbed by their helpless defeated look. I was responsible for it, for their loss of hope. Crestfallen, I came out.*

*My husband went in. In no time he had come out, and almost dragged me out of the hospital. 'All my money, my efforts have gone waste. What kind of woman are you?' I was silent. What could I say? And anyway whether or not I said anything mattered not one bit in the situation. Why do they not take the egg-producing ovaries themselves out of my body and leave them in the safe care of the doctors? What use were they to me? It was their being in my body which was causing the entire problem."*

The other phenomenon, which has been dealt with largely, is the selection of sperms in cases where the husband has none to offer. The sperm banks allow the freezing of only certain kinds of sperm and also provide it to only certain kinds of couples. Thus, the control passes on to technocrats who exercise power over sperm banks. Finally, they declare that the right of motherhood is a right of wives, not of women. Implicit in such a policy is that a few people will be identified as being more useful and superior and worthy of reproduction.

Sperm banks advertise the kind of sperm available using categories like skin colour, religion, race, etc. Couples who have been discriminated against either for colour or

their social status are looking for sperm from what they believe are better human beings. The construction of this concept of perfect human beings borders on fanaticism. The selection/elimination attempted in not-so-distant history to achieve the perfect race has found its 21st century successor, which is even more vicious as it comes in the guise of 'choices.'

### Conclusion

Selling dreams of fertility must be weighed with the real injury caused. At what cost should the infertile women be pressurised to have their own babies either through socialisation or science? Individual choice can only be an interplay between individual and collective rights.

These technologies are liable to further misuse with social and legal attitudes coupled with economic realities. There was a hue and cry in India when Nirmala wanted to rent her womb for Rs. 50,000 in 1997. Questions were raised when, in the United States, girls who needed money for further education donated their eggs for \$30,000 to assist research.

Assisted reproductive technology benefits childless people in the first world and their affluent counterparts in the third world. With the population policy not controlling the population as a whole but only that of a select few, the entire thought becomes an extension of not wanting girls to wanting a particular type and class of babies.

Should the benevolent and progressive nature of medical technology be taken for granted, or judged in the present and potential social context in which it would be used, abused or misused?

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- 1 Feminists scholars like Flavia Agnes, believe that till the advent of English prudity, brought in through concepts such as monogamy by the English laws and judges, marriage and sexual relationships in India were less rigid.
  - 2 Flavia Agnes. *Law and Gender Inequality; The politics of women's rights in India*, Oxford University Press, 1999.
  - 3 Paras Diwan. *Marriage and Divorce*, Wadhwa and company
  - 4 Matrilineal societies also exist in India, but are slowly being eroded.
  - 5 Chanynika, Swatija and Kamaxi. *We and our Fertility; The politics of technological interventions*, 1999
  - 6 Nandita Gandhi and Nandita Shah. *The issues at Stake*
  - 7 Female infanticide was banned by an enactment of the British in 1870
  - 8 Medical Termination of Pregnancy Act, 1972
  - 9 Patel, Vibhuti. *Campaign Against Amniocentesis*, in Bhate K, et al (eds). *In Search of our Bodies*. Shakti, Bombay, 1987, as cited in Nandita Gandhi. *The Issues at Stake*
  - 10 The first enactment was the Maharashtra Regulation on the use of Pre-natal Diagnostic Techniques Act, 1988, followed by a central act titled Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.