Politics of Reproduction: A Post-Colonial Feminist Analysis of the 'Missing Girl' Phenomenon in India

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Abstract:

The controversial issue of 'missing girls' has been a cause of concern since the time of the British rule in India. Most research studies pointed towards a demographic pattern of its occurrence, the Northwestern plains of India saw an alarming scarcity of girl children. Since then many studies focused at examining the economic and socio-cultural factors motivating the missing girl phenomenon. However, the 2001 Census of India reoriented the attention of policy makers and researchers at the declining child sex ratios in India especially in the age group of (0-6) years. This census data also highlighted the ineffectiveness of the measures taken by the government of India. The paper therefore seeks to examine the factors other than economic and socio-cultural which have motivated sex-selective abortions leading to a greater number of missing girls. It traces the 'politics of reproduction' by critically analysing institutional dynamics through the role of the post colonial state and its population policies, modernization process and reproductive technologies. The analysis is done by employing a post-colonial feminist reading of the texts. The subsequent section deals with the interpretation of the contents of Pre Natal Diagnostic Techniques (PNDT) Act, 1994 which was implemented to prevent the misuse of reproductive technologies for the purpose of sex-selective abortions. The analysis shows how this legal intervention has proved ineffective in preventing sex-selective abortions from being carried out. The conclusion of the analysis points at the institutional dynamics such as the limitations of the legal measures, misuse of reproductive technologies, forces of modernization and international development discourse and the state's population policies which have in totality aggravated the 'missing girl' phenomenon in India. Thus without taking these above factors into consideration, it is difficult for any legal intervention or ban to work independently. Attitudinal changes and society's acknowledgement of women's socio-cultural, political and economic contribution is required to reverse this trend.

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Chapter1. Introduction to the Research Problem:

There have been substantial amounts of research and debate carried out at the global level and particularly within India over the last two decades on the imbalance in female-male sex ratios and the question of 'missing women' (See Miller, 1987, 1997 & 2001, Kishwar, 1995, Goodkind, 1999, Das Gupta et al, 2009, etc). The subject of 'missing women' has been a cause of concern and controversy since the late eighteenth century; it was during this period that the British discovered the practice of female infanticide in the Indian society (Miller, 1997: 13). Many research studies since then have been carried out using varied approaches. For instance Barbara Miller in her anthropological study of declining female sex ratios in North India has highlighted the strong relationship between culture and mortality within the Indian society (Miller, 1987). During 80s and 90s studies showed a regional pattern- it was the Northwestern plains of India that most faced the scarcity of girl children. Thus data acquired then suggested that it was a demographic problem rooted within the cultural matrix of the Indian society (Miller, 1997:23-24). Amartya Sen in the early 1990's in his scholarly editorial article published in the British Medical Journal titled "More than 100 Million Women Are Missing" had pointed out this unusually alarming deficit of women in the Asia-Pacific region. (Sekher and Hatti, 2010: 1).

However it was the data of the 2001 Census of India that invited concentrated attention to this issue of declining sex ratio in the Indian society. The prevalent discourse on 'missing women' saw a shift towards 'missing girls' when the tabulation of sex ratios in the age group (0-6) years was brought to light, down from 945 girls for 1000 boys in 1991 to 927 girls for 1000 boys in 2010, thus highlighting the magnitude of the situation of missing female children before, at birth and during early childhood (Sekher and Hatti, 2010:1).

However after two decades of publications and government's census data, the trend of a colossal scarcity of girl children hasn't alleviated in India. This rise in intensity and the wide-spread nature of the 'missing girl phenomenon' brought into limelight yet again by the recently conducted 2011 national census in India has become a serious cause of concern for researchers and policy makers alike. It brings several questions to the fore demanding an urgency to comprehend this issue, understanding the factors influencing it and bringing out solutions to alleviate the situation. One such question that has troubled researchers working in this field is why is gender bias and a skewed sex ratio still prevalent in the Indian society

despite of women's participation in the economic and political activities of the country and the increasing rate of literacy among women? Also how have 'modern' values and systems impacted the gender imbalance issue in 'modern' India?

Inglehart & Welzel point out that theorists like Karl Marx and Adam Smith viewed innovation in technology and its economic and social consequences as the foundation for the progress of humans. This according to them would be succeeded by wide spread implications for political and cultural institutions (Inglehart & Welzel, 2005:16). Karl Marx has argued that people's value orientations would be subsequently determined by changes in cultural traditions and moral standards brought about by socioeconomic development (Inglehart & Welzel, 2005:17). With this cultural understanding as a part of the concept of modernization, it would be insightful to consider the two contradictory arguments suggested. One set of thinkers argued that "cultural traditions are remarkably enduring and shape the political and economic behaviour of their societies today" (Inglehart & Welzel, 2005:19) and the other set believe that with the rise of the industrial society there have been continuous shifts in cultures and traditions away from the 'traditional value systems' (Inglehart & Welzel, 2005:19). Surprisingly enough these above two claims seem to both hold water, mirroring the complexity that prevails while analysing the Indian context with respect to modernization. With this above understanding of the concept of modernization in the back of one's mind the question is whether it is possible then to comprehend the layers of complexities unfolding in the 'modern' Indian society.

It is in this light that P. Padmanabha's, (Former Registrar General and Census Commissioner of India) interesting take on this issue becomes more lucid, she acknowledges the fact that female sex discrimination has been a characteristic feature of the Indian society for decades and hence cannot be understood as being a result of modernisation and neither can the impact from the west be blamed for the same. Modernisation according to her has however aggravated the problem of female sex discrimination through access to greater wealth, property and technology leading to social compulsions on displaying wealth during weddings and therefore increased ridiculous demands for dowry (Sekher and Hatti, 2010:11).

Against the backdrop of this particular idea of modernization and the way in which it is understood in the Indian context, this dissertation will analyse the impact of Modern Reproductive Technologies and the Pre-Natal Diagnostic Techniques Act 1994. The researcher acknowledges the difficulty in compartmentalizing different economic, socio-

cultural, political or institutional factors shaping the missing girl phenomenon. However being aware that the above factors are interlinked together in different ways, the researcher has attempted a separation within the paper for mere analytical purposes. The intention behind this was to enable the researcher to easily comprehend and analyse these factors despite their overlaps.

1.1. Purpose of the Study

Several experts such as demographers, sociologists, economists, gender specialists, etc have approached the issue of gender imbalance and daughter discrimination in a variety of ways. Some publications perceive it as a human rights concern others are worried of the consequences this situation will bring upon females such as gender-based violence, forced early marriages, etc. Some other studies have also pointed out that these gender biased practices are static in nature and are intrinsic to the Indian culture and society largely due to its unique kinship systems. Many other scholars have also stated that modern technology has been combined with gender biased practices to amplify the gender imbalance within the Indian society (Das Gupta et al, 2009), (Banister, 2004), (Miller 1997 and 2001) and (Bora, 2007).

This study aims at tracing the impact of access to New Reproductive Technologies (NRTs) [elaborated in the methodology chapter under the sub-section that deals with conceptual definitions] (such as ultrasound scanning and amniocentesis) on the 'missing girl' phenomenon in India and how the politics of reproduction has motivated the misuse of sex determinative tests. In order to do so the study will engage in a digressionary way to capture the debates on New Reproductive Technologies through a post colonial feminist perspective. As a background to understanding the debates, a thorough understanding of 'modernization' in the Indian context is imperative. Hence a part of the study will also focus on the difference in construction of 'modernity' in the west and in the Indian Context.

The second part of the study will analyse the Pre Natal Diagnostic Techniques Act (1994) a formal document formulated by the Indian Government to control the increased sex selective abortions and how all these have impacted the 'missing girl phenomenon' in India.

Therefore the aim of the study is as follows;

"To study the impact of the Pre Natal Diagnostic Techniques Act (1994) and the access to New Reproductive Technologies (NRTs) on the 'missing girl phenomenon' in post colonial 'modern' India"

Following are the research questions that will be pursued in the study;

1) *How has the 'politics of reproduction' in the Indian society motivated the misuse of new reproductive technologies for sex-selective abortions?*
2) *How the policy that was meant to prevent the misuse of reproductive technologies has instead motivated pre-natal sex-selection and abortions?*

The expression 'politics of reproduction' tries to capture the dynamics of the institutional structures and factors that have shaped the missing girl phenomenon. The researcher is aware that reproduction as a term can mean a vast range of things therefore this term as used in the paper refers to the stage that deals specifically with pre-conception and conception issues. The research questions while trying to answer the overarching aim of the study would firstly look at the introduction of new reproductive technologies in 'Modern' India and analyse the political-economy of NRTs, population control discourse, role of the post colonial state, sex selective abortions and its consequences felt thereafter. In the second part, an analysis of the Pre Natal Diagnostic Techniques Act (1994) will be done, which was formulated due to reported increase in sex selective abortions by the use of new reproductive technologies. The impact of this ban brought on by the Indian Government on the use of reproductive technologies and the resultant effect on the missing girl phenomenon will also be analysed.

Limitations of the Study:

It is essential to understand the ideas of modernity and the process of modernization for this paper as the analysis surrounding the issue of modern/new reproductive technologies and the missing girl phenomenon are set in the context of 'modern' India. Hence it appears significant to understand the constructions of modernity and the process of modernization in the Indian context. The terms modernity and modernization are used interchangeably in the paper which refer to various ideas of what it means by progress and development and other interrelated processes that have resulted in a hybrid form in the context of India.

Keeping in mind the time constraints and limited scope of the study, the researcher has refrained from undertaking a study based on data collected primarily from the field. Hence the alternative research strategy of employing the documentary analysis method which also

involves doing a critical review of secondary documents has been adopted. On a parallel plane it would be noteworthy to mention that several research studies have been conducted in this area. The modest aim of this study is to provide a fresh perspective and therefore it can be termed as a 'pilot study' on which further future field investigations can be based.

India is a huge country with an accumulation of diverse cultures and hence analysing the 'missing girl' phenomenon is a challenging and difficult task. Even in attempting to grasp the magnitude of the issue is problematic due to the nature of the problem which is so sensitive that collecting accurate data often becomes a daunting task. Therefore relying on official statistics of child sex ratios and state wise data of missing girls was the best bet to get an idea of the proportions and urgency of the issue even though they may not be accurate.

Chapter2. Organization of the paper

Chapter 1 introduces the research problem and the purpose of the study stating the overall aim and research objectives of the study.

Chapter 2 presents an overview of how the paper has been organized.

Chapter 3 provides a background to the reader to get familiarized with the situation in India in relation to women's movement and organization around issues concerning women in India. The chapter also gives a statistical insight into Indian women's workforce participation.

Chapter 4 gives an overview of the methodology adopted in the paper. It discusses the documentary analysis method and its application, motivations for the choice of literature and documents, issues of reliability and limitations encountered during the selection and access to the selected texts. It also briefly explains the motivations behind choosing post-colonial feminist lens.

Chapter 5 aims at providing a detailed theoretical framework. This chapter begins by a discussion of the contested concept of 'modernization' in the 'Western' sociological tradition. The next section contextualizes the phenomenon of 'modernization' as it is understood and experienced in the Indian case. Following sub-section traces the gendered nature of 'modernization' through a feminist perspective and the final section of this chapter discuses in detail the post-colonial theory and the post-colonial feminist standpoint.

Chapter 6 sets the scene giving an idea of the 'missing girl' phenomenon in India. It explores the socio-cultural and economic factors that have influenced the 'missing girl' phenomenon this is done through a review of several other studies conducted in this area.

Chapter 7 focuses at applying the documentary analysis method by critically analysing a variety of secondary literature to get a multidimensional understanding of the impact of the 'politics of reproduction' in shaping the 'missing girls' phenomenon. One of the sub-sections within this chapter examines the PNDT Act (1994), its content and the impact it has had on the prevention of the misuse of reproductive technologies. The effectiveness of this law and the role it has played in preventing /aiding the numbers of missing girls is also explored. Finally the paper ends with a conclusion that is oriented towards tying up the arguments raised in the documentary analysis section in a conclusive manner. In the end suggestions are

made towards future possibilities that can aid in reversing the devastating trend of 'missing girls' in India.

Chapter3. Background to the women's movement in India

The women's movement in India has a fairly longer history as compared to much of the first wave and the second wave feminist movements in the west. The concept of '*Shakti*' that meant 'female power principle', "was recognized thousands of years ago" in the Indian context (Liddle and Joshi, 1986:5). Yet this does not imply that there has been a cohesive unsplintered women's movement in India but what is evident is large scale political engagement from Indian women over decades (Sen, 2000: 2).

Literature concerning issues of women in the last 40 years or so has focussed around analysing and theorizing the root causes for women's subordination to men around the world. One such theoretical approach stated that the position of women is intricately linked to the development of the class to which she belongs. In India a similar process can be identified with an additional feature which associates women's position to the caste system in India. An Indian woman's subordination appears to be tied up to her caste status in the social hierarchy within India (Liddle and Joshi, 1986:6).

M.N. Srinivas an Indian sociologist came up with the term 'Sankritization' which requires a change in the lifestyle in order to be an "upwardly mobile caste" (Liddle and Joshi, 1986:6). This process had a radical impact on the status and position of women changing the dynamics between the husband-wife relationships. A direct quote of M.N. Srinivas on how he perceived these relationships states that "/.../ among the less Sanskritized 'low' castes, conjugal relations appear to be more perceptibly egalitarian than among the Sankritized 'high' castes" (ibid). Srinivas provided a solution to free women from constraints that arose from the caste system. He connected women's freedom to another process parallel with that of Sankritization which he referred to as 'Westernization'. This process of Westernization stemmed from the influence of British Colonial rule in India, it means the adoption of western values and cultural norms by the 'Sanskritized upper castes'in India. However it was noticed that the there were many commonalities between the lifestyles of the British and the so called Indian 'lower castes' both of whom engaged in customs and habits that were otherwise looked down upon by the Indian 'upper castes'. Certain things such as consumption of alcohol and meat were a practice common amongst both these groups. Similarly women enjoyed relatively more levels of freedom; divorce and remarriage was an acceptable part among the British and the Indian lower castes. Many people including

Srinivas and the British agreed with this position that women's liberation lay in adopting the 'western culture' (Liddle and Joshi, 1986:6-7). However in later discussions on the positions of women Srinivas dropped this line of thought that associated women's emancipation to westernization however it still remains a widely held belief in the west (Liddle and Joshi, 1986:7). Even though the British rulers supported certain issues related to Indian women's emancipation, historical evidence on the influence that the British had on the position of Indian women suggests otherwise. The British selectively supported those issues which concerned Indian women that coincided with their own interests and opposed the others which did not. It was done to show that colonial rulers attempted to protect Indian women from the patriarchal practices seen in the Indian society. The motive behind this selective support was to prove to the Indian subjects that they were incapable of self-rule in a bid to maintain colonial dominance over India (Sen, 2000:6).

It was in the year 1979 when a women's magazine named '*Manushi*' was published in Delhi. The encouraging response it received reflected the first sign of Indian women organizing around issues concerning them (Liddle and Joshi, 1986:17-18). However there hasn't been one single organized women's movement in India but there have been several isolated instances where women have organized against variety of issues such as wages, sexual abuse, violence, provision of drinking water, legal discrimination, prohibition of liquor, protecting forest rights, etc (Sen, 2000: 2).

A statistical insight provided by the Centre for Strategic & International Studies (CSIS) report (2012) suggests that India's 478 million workforce population is the second largest in the world. The latest figures state that women form 24 percent of this workforce i.e. 117 million out of the overall 478 million. There are about 5 percent Indian women reported to be in senior level positions (Inderfurth and Khambatta, CSIS report 2012:1).

Chapter4. Research Methodology

The paper is a qualitative study set in the Indian context. The purpose of this chapter is to introduce the research strategy adopted, methods utilised and conceptual definitions used. Documentary analysis is the qualitative method used where critical review of primary/empirical and secondary documents forms a part of the analysis. The data is gathered from secondary and primary sources of literature such as governmental policy documents and Acts, statistics, already existing studies in this area, etc. The analysis is oriented towards exploring the multidimensional factors shaping the phenomenon of 'missing girls' and sex selective abortions in India.

4.1 Documentary analysis method:

Social scientists have often used documentary analysis methods only to supplement the more conventional methods of data collection while doing a social research. These include methods such as social surveys, questionnaires, participant observation, interviews, etc. The author Mogalakwe has argued that documentary analysis method is underutilised in social science research and is a very useful 'scientific' method that "requires adherence to research protocol" (Mogalakwe, 2006:222). Documentary analysis method may not be popular in mainstream social research nonetheless its application is not new. It has been employed by several classical theorists such as Marx and Durkheim (Mogalakwe, 2006:224). Mogalakwe argues that original research is possible by using old data (2006:228).

The significance of analysing documents in a research study is to enhance the understanding of the issue by being able to situate the contemporary accounts within a historical context. This method allows for a comparison to be made between how the events have been recorded in these documents and how an observer interprets these events and the happenings (May, 2001:175). Some examples of documents include Acts of Parliament, Congressional papers, policy documents, bank statements, minutes of meetings, books, manuals and other publications, diaries, letters, accounts and balance sheets, newspapers and magazines, official statistics, biographies, charts, tables, company reports, etc (Mason, 1996:71).

For this study various research papers have been carefully selected and utilized; these papers are based on data which is primary and/or secondary collected from different parts of India surrounding the issue of sex-selective abortions using reproductive technologies. All of the

secondary literature used is peer reviewed and is published work that lends it credibility. Another corpus of literature used is reports and studies based on Government of India's official statistics on child sex ratios. The content of these documents are not taken at face value and a critical view of the impact has been presented. The PNDT Act 1994, an official government document has been analysed from a feminist perspective by applying tools of documentary analysis.

When a researcher engages in analysing documents she/he tries to contextualize the issue that is to be studied. A researcher then adopts a theoretical framework to analyse these various texts that are chosen, for the purpose of the paper a post colonial feminist lens has been used. The events surrounding the issue are then interpreted through critical reading of these texts thus allowing the researcher to be able to get acquainted with various constructions of what happened in relation to the issue under study (May, 2001:182-183).

For analysing the contents of the PNDT Act here as a document, the researcher has tried to acquaint the procedures that went into the formulation of the Act in the first place. Later by critically reviewing the provisions and content of the Act the discussions and debates surrounding the Act are examined. This has enabled the researcher to place the Act in a broader social and political context without assuming that the official documents represent one particular 'social reality'. Here the researcher has applied her own cultural understandings to interpret the meanings embedded in the document with the help of other secondary literature which has provided perspectives from the fields of feminism, sociology, development studies and law. The paper makes use of an interdisciplinary approach thus lending the subject matter multiple layers (May, 2001:182-183 and 193 and Nagpal, 2013: 22).

A researcher's use of variety of documents while conducting a study can reveal a great deal about how the events have been constructed, what are the reasons employed and it also enables in providing material on which further research investigations can be based (May, 2001:175). As a norm there are a range of documents that are available to a researcher that help her/him to conduct a research study, these documents then are not to be viewed merely as containers of information and content that represent reality but more as devices of communication (Flick, 2009:261). Document analysis provides the researcher with an unassuming method for collecting (empirical) data. Thus documents have the potential to provide a new perspective of the processes and the field (ibid).

4.2 Ethical issues and limitations in the use of documents:

On the face of it ethical issues for researchers using documents can seem less immediate since there are no face-to-face interactions involved per se. However access to documents can become an issue when certain documents take on a private and confidential form perhaps because of its content which may not be public or may be controversial and hence it becomes difficult to establish informed consent for their use (Mason, 1996:78). One such issue that confounded the researcher in the study was getting access to a particular book. The book titled '*Female Infanticide in India: A Feminist Cultural History*' (2005) written by Indian authors Rashmi Dube Bhatnagar, Renu Dube and Reena Dube have examined the problem of female infanticide critically through the colonial period. After several failed attempts at locating this book in the Lund university libraries, failing to find it online for purchase or in book stores in India, copies of the book were located in a few of the British University libraries. Through a couple of friends studying at universities in Britain, it was found out that they were all denied access to that book citing reasons such as the book being located in the restricted section of those libraries.

Besides using an array of documents for analysis, this research study has also focussed partly on examining the Indian Government's legislation enacted in 1994 known as the Prenatal Diagnostics Technique (PNDT) Act which was introduced to prevent and regulate any misuse of new reproductive technologies for the purpose of sex determination. The PNDT Act (1994) was implemented in 1996 and was later expanded in its scope in 2003 to cover a whole range of activities that might play a part in facilitating deliberate sex selection (Subramanian & Selvaraj, 2009:245).

The theoretical lens employed in the study is the Post-Colonial Feminist lens. As a researcher from the 'Third World' who has stayed and received most of her education in India, it was an automatic choice of position to undertake. This position keeps reminding the researcher of the subject she speaks on behalf of or for without taking the position for granted. The position of privilege from which most Western white middle-class feminists examine the issues of 'all women' has been a point of criticism in the feminist discourse. Also since the study is rooted in the colonial and post-colonial context in India, a post-colonial lens was a likely choice that would facilitate in understanding the "Third-World" woman and issues concerning her in a much self-effacing way.

4.3 Conceptual Definitions:

R.P. Ravindra (1992:147) has defined the key concept of NRTs in the following way;

New Reproductive Technologies (NRTs): "This term denotes the entire spectrum of modern medical techniques targeted at women's bodies, affecting their control over their bodies, bodily processes or products, they include:

• Sex Selection Techniques
• Non-Coital Reproductive Techniques (also known as Assisted Reproductive Techniques)
• Long acting Contraceptive Techniques
• Miscellaneous techniques like hymenoplasty, etc"

For the purpose of this study, the focus is primarily on the Sex Selection Techniques that are referred to while speaking of New Reproductive Technologies (NRTs).

Pre-natal Diagnostic Techniques (PDTs): "The techniques meant for detection of congenital malformations (which may or may not be sex-linked) in embryo or foetus, e.g., Amniocentesis, Chorionic Villi Biopsy (CVB), etc".

Sex Selection Techniques (SSTs): "These are techniques used for selecting the sex of the unborn offspring before or after conception. They include Sex Determination techniques and Sex Pre-selection Techniques".

Sex Determination Techniques (SDTs): "They are PDTs which can be used for predicting rather than determining the sex of the unborn offspring after conception, preferably in the first four months of pregnancy".

Sex Pre-Selection Techniques (SPSTs): "Technique employed for selecting the sex of the offspring before or during conception"[1]

Missing Girl Phenomenon: It is an empirical term used by Amartya Sen in an editorial he wrote for the British Medical Journal (BMJ) titled "More than 100 Million Women Are Missing" referring to the terrible deficit of women in substantial parts of Asia and north Africa which according to him has arisen from the sex bias in relative health care and nutrition (Sen, 2003:1297). Ever since the 2001 Indian Census figures highlighted the

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[1] The entire definition is cited from '*New Reproductive Technologies and Indian Woman. Social Problem and Welfare in India*' (Ravindra, 1992: 147)

declining sex ratios especially in the (0-6 years) age group, there has been a shift in the vocabulary from 'missing women' to the numerous 'missing girls' (Sekher and Hatti, 2010:1). This term encompasses everything from female foeticide to female infanticide, sex discrimination at birth and post birth for female children in ways such as nutritional neglect, lesser medical attention etc.

Chapter5. Theoretical considerations

5.1 Modernization – a contested concept in sociology

This section primarily looks at the construction of modernity from the perspective of western social thinkers as most of the corpus of literature surrounding modernity in sociology is rooted in Western thinking. Giddens (1990:1) succinctly states that modernity refers to modes of social organization and life having emerged from Europe in around seventeenth century.

Within the sociological tradition over the last 150 years there have been many social thinkers who have defined and differently emphasised the meaning of modernization. For some thinkers the economic and structural component has been the area of emphasis but for some others transformation of personality influenced by culture was modernization (Bernstein, 2002:141). Most classical social thinkers such as Marx, Weber, and Durkheim have all focussed at one single transformative element while interpreting the nature of modernity. Capitalism is the major transformative force that has shaped the modern world for thinkers who are influenced by Marxist line of thought (Giddens, 1990:11). Marx provided a critique of the exploitation that the capitalist society was characterised with, he advocated communism as a best pathway into modernity (Inglehart and Welzel, 2005:16). As feudalism declined, agrarian production was replaced by manufacturing and production for national and international markets. Consequently material goods and human labour became commoditized. In relation to this Giddens states, "the emergent social order of modernity is capitalistic in both its economic system and its other institutions" (Giddens, 1990:11).

Giddens further juxtaposes Durkheim's viewpoint with that of Marx's in interpreting modernity, where Durkheim and later Weber have criticised Marx's viewpoint that capitalism is the single transformative force and instead stated that modern institutions are primarily an impact of industrialization. According to this perspective, it is not capitalism from which modern social life has derived its character but it is through the industrial exploitation of nature (Giddens, 1990:11-12). On the other hand 'rationalization' of human activities and the rational use of technology is what drives modernity according to the Weberian viewpoint (Giddens, 1990: 12).

Habermas begins by describing modern as a transition from the old to the new (Habermas, 1981:3). According to him, modernity was charted out during the Enlightenment period. The

philosophers of this period aimed to develop an 'objective' science, law and a universal morality which was intended to enrich the everyday life by rational organization of social life (Habermas, 1981:9). Habermas viewed modernity as a discourse or even a conversation moving beyond the surface discussions on economic and technological innovations. He viewed modernity as a discourse that was introduced by the enlightenment thinkers and later on by other voices over successive historical periods (Dallmayr, 1987:682)

Chatterjee and Riley also resonate what Habermas observed that modernity was born out of the enlightenment period which upheld values of rationality, scientific inquiry, and secularism etc. Thus modernity came to signify ideas of freedom, truth, reason, progress, order, autonomy and individuality. Knowledge that was produced scientifically was a key feature of the project of modernity. The authors further point out that the discourse of modernity has incorporated selective representations of western experiences (Chatterjee & Riley, 2001:815).

Habermas while discussing various conceptions of modernity points out that the most recent modernity which he refers to as 'aesthetic modernity' is what makes an abstract distinction between the tradition and the present and which according to him appeared in the midst of nineteenth century and we are a part of this space (Habermas, 1981:4). He goes further to explain this concept of 'aesthetic modernity' which is characterised by the way it views the historic past and memories. There is a sense of heroic affinity of the present while juxtaposing it with the past extremes of history that recognized itself with wild, barbaric and primitive (Habermas, 1981:5). Modern societies as Bernstein points out are often simplistically juxtaposed with the traditional/ pre-modern societies thus defining traditional society in a negative way to the point of even evading the contentious question of what is modern (Bernstein, 2002:146). The modern society in sociological parlance is often understood as a nation-state to be able to contrast it in a radical way with the pre-modern states (Giddens, 1990:13).

One of the ways of distinguishing pre-modern societies from modern states as Giddens has observed is to interpret the boundedness of social systems. Thus according to his interpretation modern nation-states have a clearly defined boundedness as opposed to agrarian societies that were not so strictly territorial as nation-states and normally assimilated into other groups around them (Giddens, 1990: 14). Giddens has further explained this differentiation through his time-space distanciation concept i.e. 'the conditions under which

time and space are organised' is much greater in modern nation-states as compared to the agrarian civilizations (Giddens, 1990:14). He further points out some important defining elements of modernity such as the one described above separation of time-space zoning, the development of disembedding of social systems, risk, trust and reflexivity of knowledge (Giddens, 1990:17). A capitalist society as Giddens puts it is a sub-set of a modern society and ideas of surveillance, control of the means of violence (military power) and industrialism are the institutional dimensions of a modern society (Giddens, 1990: 58-59). Thus according to him, time-space distanciation, reflexivity in human actions and disembedding of social mechanisms are facilitating conditions along with the above discussed institutional dimensions that radically differentiate pre-modern or agrarian societies from the modern states (Giddens, 1990: 63).

At the heart of the modernization theory is the claim that socioeconomic development is linked to some amounts of predictable changes in political and cultural life. This transition or change is roughly explained as socioeconomic development begins with innovations in technology that leads to an increase in the productivity of labour and brings about occupational specialization, educational levels begin to rise along with rising incomes. There is a diversification in human interaction where authoritative relations give space to collective bargaining; this in the long run brings about cultural changes such as changes in gender roles, sexual norms, declining fertility rates, and higher participation of the public in the political sphere (Inglehart and Welzel, 2005:19).

Giddens eventually, in his work '*The Consequences of Modernity*' acknowledges that; "Modernity turns out to be enigmatic at its core and there seems to be no way in which this enigma can be overcome" (Giddens, 1990:49). This contested concept does not have a consensually agreed upon definition and therefore as Giddens refers to it, it remains a mystery to not just lay people but philosophers as well, each one trying to define it from their perspective. It has been difficult within the sociological tradition to clearly differentiate modernity because some of its character appears to be interlaced with both pre-modern and post-modern periods.

5.2 Modernization – as manifested in the Indian context

India was exposed to the ideas of modernization during the British colonial rule and within this political context the former shaped its own understanding of modernity. While Indian social thinkers and reformers were enticed by the ideas of democracy, human rights and

progress, this on the other hand led to sharpening of the critique against the British rule over India, thereby developing a 'modern Indian Nationalist sensibility' (Chatterjee & Riley, 2001: 818).

According to Chatterjee & Riley, the Indian anti-colonial nationalist leadership had made a distinction between the spiritual and material spaces during the nineteenth century. The spiritual domain was a space that was distinctively crafted with the nation-state's cultural identity, a space that the nationalists could call their own, where the politics could be fashioned with its own representational and cognitive constructions and hence it was viewed with a sense of superiority to the west. Whereas the material space was the one where India was struggling to emulate the west in terms of science and technology, ideas of rationality, economic organization and the 'modern State' (Chatterjee & Riley, 2001: 818). During the twentieth century, in the writings of Jawaharlal Nehru[2] , it is observed that he expressed this ambivalent impulse mentioning that India should pursue the greatest modern ideals of humanism and scientific spirit but simultaneously alter and mould them according to the national sensibilities (Chatterjee & Riley, 2001: 818).

Mahatma Gandhi as has been observed in Chatterjee & Riley's work was opposed to this idea of modernity. He staunchly criticized it while pointing out its consequences of inequality, materialism and destructive competitiveness. However it was the Nehruvian policy of modernization that prevailed. Chatterjee & Riley, further state that during the post-independence period India's strategic neutral position as a non-aligned nation during the cold war period helped it to gain international financial aid. Both the authors have argued that this reduced India to a developing country seeking to play by the rules of the west thereby notwithstanding its Nationalist rhetorical image of 'Indian modernity' (Chatterjee & Riley, 2001: 818-819).

This maybe partly true but nonetheless the argument presented above is not fully convincing in the sense that India lost out its 'modernity with a difference' rhetoric in the bargain to seek international aid. What characterises Indian distinctiveness is the way the modern western project of the European Enlightenment period has been altered and tailored to fit Indian sensibilities. This point of view can be backed by what Yoko et al, (2003) have observed "the development of modernity in a region has always been in conjunction with outside worlds,

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[2] is considered the architect of the 'Modern Indian State' and the promoter of the 'development project

but it has also retained local roots and characteristics" (Yoko et al, 2003: 2). The Nationalists attempts at identity formation let to selective appropriation of ideas from the 'Western modern project' in the bid to reconstruct nation's masculinity in order to re-establish themselves as capable and rightful rulers of their own country which was according to them emasculated by its colonial past (Yoko et al, 2003: 5).

Having discussed various definitions and constructions of modernity, this study will try to employ a working definition of modernity that acknowledges the existence of different forms of modernity that are produced across historical, geographical and gender differential spaces (Yoko et al, 2003: 3).

5.3. Modernization – a feminist critique

The above discussions and positions clarified the constructions of modernity, thus it is essential to also explore the critique towards this contested concept of modernity which as any other concept is flawed in some ways.

Several feminists have criticized modernity for its highly masculinist character. Yoko et al (2003) in their book '*Gender and Modernity*' have quoted Jolly who stated that modernity is not only gendered because of the fact that the female and male subjects experience it in a different way but it is also gendered in the way its discursive terms are constituted. When feminists elaborated the differences in the way men and women experienced modernity, it meant that the experience was 'different' due to the hierarchical structures generated under institutions of capitalism and the division of labour based on gender relations which are asymmetrical in nature (Beneria, 1995:1842). Boserup has pointed out that the problem was not how women need to be integrated in the development process but the entire concentration of women's participation that centred on household and insecure gendered conditions under which women's participation in the market was allowed (ibid).

Another quote by Stivens used in the same book '*Gender and Modernity*' aptly observes the masculinist construct that 'modernity' is- basing itself on dichotomous categories such as male-female, modern-traditional, west-east, public-domestic, colonizer-colonized, rational-emotional, mind-body; where the female/feminine attached with negative connotations is simultaneously categorized into the 'Other' for this modern western male subject (Yoko et al, 2003: 1). Within this construction of 'traditional society' are embedded ideas of family, women and community which function as a contrast for modern ideas of rational, forward-looking, public-realm dominated by males (Scott, 1996: 23). Modernization theory as

feminist critiques observe has seen a heavy reliance on the public-private binary distinction around tradition and modernity discussions (Scott, 1996:24). The domestic sphere that is most associated with females and is characterised as a feminine arena vitally supported the maintenance of colonial domination (Mills, 1998:102). Ann McClintock points out that during the Victorian period, the production of domesticity was not merely a coincidental occurrence that developed at the same time, but it played an integral part in producing and maintaining imperialism. She further argues that obsessive cleanliness on the part of the Victorians, which revolved around controlling women's labour within the household led to the birth of peculiar type of 'domesticity' that was 'labour-intensive'. Within the colonial sphere and the Victorian period, the number of these household tasks increased and gradually the British woman assumed the role of the domestic manager who employed several 'servants' from the colonized worlds to maintain the colonial households (Mills, 1998:103). Thus McClintock speaks of the role gender dynamics have played in the maintenance of imperial enterprise and that "Gender power was not the superficial patina of empire, an ephemeral gloss over the more decisive mechanics of class or race" (McClintock, 1995:6-7).

Modernization theorists posited that ideas and values associated with women and tradition were not compatible with modern institutions as they believed that rationality, good governance and technological progress could be achieved in the public sphere inhabited by autonomous men (Scott, 1996:24). The simultaneous dependence on linear evolutionary theories of social and political change portrays "development as a struggle for dominance over nature and implicitly over women" (Scott, 1996:24). In this struggle for linear progress women are left behind confined to the domestic private realm and devoid of citizenship status as their existence is understood to be naturally dependent on the patriarchal head of the family. Thus male citizenship is in fact defined by continued subordination of women (ibid).

Thus it can be seen how the narrative of modernity is gendered as it is coupled with the developmentalist idea of progress, where modernization means to grow out of the oriental, "feminine tradition into masculine, Western modernity" (Yoko et al, 2003:3). Basically it is not the European modernity that was established against the 'Oriental Other' but modernity for its very existence and survival requires these dichotomous categories of masculine-feminine, Occident-Orient, public-domestic, etc. The establishment of modernity was dependent on the creation and maintenance of these binary oppositions (Yoko et al, 2003: 2).

While critiquing modernity many feminists have pointed out that the modern idea of freedom of the individual is a patriarchal ideology. Although the above feminist critique against the nature of modernity is in no way incorrect but the usual implication of the argument against this critique is that the enlightenment project of modernity claims individual citizen subjects to be gender neutral and hence by this definition freedom of individual should be naturally extended to women too (Yoko et al, 2003: 6). Although the point of contention here is whether it is possible to then universally apply modern ideas of equal rights of participation in the public domain. Since modernity has inherently created spaces of difference that are divided on gender lines such as public: domestic, etc. The erasure of these spaces of difference would signify the end of modernity and therefore problematizes the whole issue leaving no simple choice of either this or that (Yoko et al, 2003: 7).

5.4 Post-Colonial Theory and Post-Colonial Feminism

This section of the chapter introduces the theoretical position that has been employed in this study. Before discussing the concerns of the post-colonial feminist theory it is imperative to get familiarized with the mainstream post-colonial theory.

Post-Colonial Theory:

Edward Said, the post-colonial theorist is believed to have developed the essence of post-colonial theory mainly in his books *Orientalism* (1978) and *Culture and Imperialism* (1993). Said's argument was that the 'West' juxtaposed themselves against the other cultures that it came in contact with during its imperial expansion. These cultures were attributed the negative representation of being the 'Other' to the western norm (Mills, 1998:98). McClintock points out that Said in his work had argued that the superiorly strong position that the western male enjoyed was produced through the sexual subjection of the 'Oriental' woman which enabled the discourse about the 'Orient'. According to Said this Orientalism took the perverse form of 'white male fantasy' that sexualised an Orient woman for the pleasure and possession of the Western power. The arguments of Said's work as McClintock observes lacks a systematic analysis of gender as a constitutive dynamic of imperial and anti-imperial enterprise. His works have used sexuality often as a metaphor (e.g. 'the feminizing of the 'virgin' land') understood as land that is unexplored (McClintock, 1995:14).

The theoretical considerations of post-colonial theory have been broad as it has tried to focus its analysis not only on political and economic structures but also on the development of

specific forms of behaviour and thinking. The concern of post-colonial theorists as Mills has pointed out lies in examining the enduring impact of European Colonialism during the nineteenth century. The focus is mainly the way these former colonized cultures see themselves and the impact that the range of imperial and colonial relations has had on these societies (Mills, 1998:98).

Thus post-colonial theory came under heavy criticism by feminists who reacted against the lack of gender issues in post-colonial thought considering it to be a masculinist field. This was so because the post-colonial theorists engaged themselves in analysing those texts that represented the colonial/imperial context and were written by British males. These texts represented a certain kind of masculinity that could make the British males appear as the 'colonial subject' belonging to the 'ruling race'. Hence one can come across images in these texts where British males have often been represented as being adventurous setting out to explore the 'virgin' lands of the Orients, hard-working, courageous, unemotional and patriotic (Mills, 1998:99).

Post-Colonial Feminist Theory:

Post-colonial feminism emerged through feminist historical research Maitrayee Chaudhuri argues that it laid the foundations for feminist theorizing. It was while South-Asian feminists re-evaluated the constructions of gender and sexuality in colonial and anti-colonial discourses, possible agendas for post-colonial feminisms emerged (Loomba and Lukose, 2012:4). Several concerns and agendas have since been discussed and analysed by post-colonial feminist theorists such as Mohanty, Spivak, Loomba, McClintock etc.

Mohanty in her influential essay '*Under Western eyes…*' (1988) raises the issue of homogenizing of 'post-colonial/third world woman' into a singular group that 'Western Feminist Scholarship' has often found itself engaging into. Mohanty has critically pointed out that the empowerment of marginalized 'Third-World women' and their struggles of resistance against the patriarchal society that they exist in, are hindered by the 'western white middle-class feminist' ideologies. She further states that it is this discursive colonization that the 'western feminist discourse' engages in, while analysing the historical and material differences in the lives of the 'Third-World' women. Thereby constructing an arbitrarily put together image of a homogenous category of a 'Third-World woman' (Mohanty, 1988:61). She observes that the view of the 'Third World woman' depicts them as mere victims of traditions, religion and male control that exist within the developing country's context (Mohanty, 1988:65). She further argues that these characterizations conjured up by the eyes

of the western feminists fail to pay attention to the differences and the history of their subjects' surroundings (Mohanty, 1988:62). Gayatri Spivak has also written about this issue of homogenizing the 'Third-world woman' into a singular category, however she goes one step further from the point where Mohanty positions herself on the issue. Spivak has tried to emphasize the differences within this 'Third-World women's' categorical conceptualization by isolating certain types of colonized subjects from the 'elite indigenous subjects' who were complicit with the colonial powers and it was this group of subjects who were most proximate to the colonial ideas of what 'Third World' is like. In order to bring emphasis on these certain types of colonized subjects she refers to them as the 'subaltern'. This subaltern subject was involved in the resistance struggles against the colonial authorities and at the same time was an "object of colonialist historiography" and therefore becoming the subject of these resistances, the "ideological construction of gender kept the male dominant"(Mills, 1998: 107). Thus Spivak argues that in this context once again it is the subaltern as a female subject who remains in the shadow (Mills, 1998: 106-107).

Mohanty thus argues that this authorizing gaze and the power of judgement of the 'Western humanist discourse' are always carried through (Mohanty, 1988:63). Like western women, the 'Third World' women are produced as "subjects in culturally and historically specific ways by the societies in which they live in and act as agents" (Weedon, 2002:3). Hence if the issues concerning the 'Third World women' are examined in detail with the specific social setting and relations within which they occur, then it opens up a possibility of a more complex picture to emerge (Weedon, 2002:3). Instead of referring to 'women' as a uniform group (and thus leading to a very reductionist analysis), Mohanty encourages using an alternative approach of intersectional analysis not just to understand cross-analytical categories of race, class, caste and gender but also included within this understanding are socio-cultural and political interests of the subjects as well (Mohanty, 1988:72). An analysis of this sort would become productive when 'woman' as a category is not essentialized but is analysed in ways it is constructed through a variety of political contexts that often coexist and overlap (Mohanty, 1988:73).

Another important issue that Spivak raises is the issue of 'who speaks for whom' and whose voices get heard in the discussions of 'Third World women's' issues. This exclusion of the voices of the 'Third World' women is what Gayatri Spivak problematizes in her famous critical essay '*Can the Subaltern Speak?*' where she analyses "how the Third- World subject is represented in the Western discourse and offers an alternative analysis of the relations between the discourses of the West and the possibility of speaking (for) the subaltern

woman" (Spivak, 2010:237). Thus according to Spivak a Post Colonial lens allows feminists to engage with and speak to the subaltern historically muted subject instead of just listening to or speaking for them; this enables a Post Colonial intellectual to then unlearn female privilege. "This systematic unlearning involves learning to critique the Post Colonial discourse with the best tools it can provide and not simply substituting the lost figure of the colonised" (Spivak, 2010:267).

Thus deconstruction, critique, agency, possibilities for conceptualising difference differently are some of the tools that Post-Colonial feminist theory utilises. It has managed to create a position; implicit within it is a set of methodologies and concerns which can help to map out 'alternative subjectivities' (Mills, 1998:109). The aim of Post-Colonial feminist scholars is then to provide alternative frameworks for analysis in this contested space of theoretical writing where the 'South Asian Post-Colonial feminists' are aiming to resolve the pitfalls in the current feminist discourse through a dialogue with the 'Western white' feminists. However bridging this theoretical gap will take some time as Maitreyee Chaudhuri points out there are plenty of writings on women's activism but a scarcity of theoretical writings on feminism in South Asia. When it comes to Post-Colonial feminist theorizing, much of their feminist scholarship developed during the early 1980s which emerged as a reaction to the dominant ideas and modes of theorizing of the 'Western' feminist discourse. It was from here that notions of subjectivity and cultural contexts were pitted against the ideas of 'universalizing theory' (Loomba and Lukose, 2012:15).

Modernization as this study understands is a contextualised phenomenon/concept. It differs between countries, it is gendered, in some contexts classist and racialized and is related to the ideas of progress and colonialism. Also people from different contexts have experienced modernity differently. Having this conceptualization of modernization in mind, the dissertation adopts a post colonial feminist critical analysis of secondary documents and the Government of India's Act. As the issue of 'missing girls' is set in the 'Third World' context and relates to women from the 'Third World' post-colonial 'modern' Indian society it appears only obvious to use this theoretical lens for a fruitful and enriching analysis.

Chapter6. Setting the Scene: Missing girl phenomenon in India

Women's status and welfare in a society can be directly reflected by looking at the sex ratios. A quick look at the census figures for the year 1991 showed an overall sex ratio of 943 females per 1000 males which dropped to an all time low to 927 in 2001 census making headlines during that decade. During this very year new demographic boundaries were identified such as the State of Himachal Pradesh which saw a massive decline in its female population for the very first time. In the North-Western part of India, the State of Punjab witnessed a severe drop in the child sex ratios below the 800 mark. Hence the 2001 census figures made headlines due to the fact that in many regions of India the child sex ratio had declined below the 950 world bench mark (John, 2011:11). These concerns have now amplified after the much awaited 2011 census results which have highlighted the further decline of child sex ratio in the age group (0-6 years) from 927 in 2001 census to 914 girls in the year 2011 for every 1000 boys. Another striking characteristic that the 2011 census has brought attention toward is that the daughter aversion has spread across western, central, eastern and southern India without constraining itself to a particular geography (ibid).

A strong son-preference is one of the strongest causes of daughter discrimination. Several households in rural and urban areas both discriminate in their allocation of resources amongst the sons and daughters. Often daughters are neglected in terms of providing proper nutrition and medical care. As a result there are several cases of female child mortality where daughters die of neglect from their families (Kapadia, 2002: 45). This is the case even though biologically girl children have a stronger rate of survival than males from conception onwards but in the Indian society the biological advantage has been reversed to higher female child mortality due to the prevalence of a strong son-preference (Das Gupta, 2009: 2). As can be observed this situation does not just exist in rural poor areas but is also a feature among urban populations where women are well educated, employed and have achieved a considerable status in society (Sekher and Hatti, 2010: 2).

The existing body of literature in the context of 'missing girls' in India indicates towards a combination of causes and factors such as a strong son-preference, acceptance of 'modern' ideas of nuclear family set up among middle and upper middle class households leading then to controlling the size and sex composition of their off springs. Increased access to modern technologies and legalized abortion along with a complex set of number of economic and

cultural factors have together contributed towards discrimination against the girl child (Bora, 2007: 7).

In order to balance the family size, families with a strong preference for sons engage in controlling the sex composition of their children. This practice has resulted in the decline in fertility thereby masculinising the Indian population (Sekher and Hatti, 2010: 2). Smaller families prefer to "sacrifice" the female foetus rather than repeating pregnancies in attempts at producing a male child. As opposed to common assumptions education, employment and labour force participation do not necessarily lead to equal status for female children as is enjoyed by their male counterpart. There are certain economic attitudes that several Indian communities harbour towards female children. Female children being born are considered to be a 'double loss' to a family. Firstly a daughter has to leave her maternal household after marriage in order to settle at her husband's place. This is constituted as a loss by the natal family as the investments made by them in the daughter's upbringing are now accrued by her new family of marriage. Besides this reason the economic expenses of raising a girl child are further compounded due to the practice of dowry (a sum that is paid by the bride's family to the groom in many communities in India). Increasing education and marriage costs are considered as a major drain on the resources of the household which more than often acts as a disincentive to have daughters. Obviously therefore sons are considered assets as they are perceived to be worthy of short and long term investments (Sekher and Hatti, 2010: 3-4).

Even the patterns of inheritance in India are responsible for daughter discrimination. The pattern of inheritance is typically patrilineal where property passes down from father to son leaving no rights of inheritance to daughters in most of the cases. As a result of which women get counted very little as individuals as they do not inherit any property even from the husband's side of the family. Hence women's contribution is valued but is limited to the household work and therefore they don't get any social status or change in their position within the patriarchal kinship based social order (Sekher and Hatti, 2010: 4).

It was believed that the devaluation of girl children would diminish if they are legally given the right to acquire property under the inheritance laws. Traditionally Indian women could not inherit property under the law but the Indian law now allows daughters to attain their share in the natal family's property. Logically speaking it seems like an ideal situation where Indian women can now become financially secure through this inheritance law. Some observations state that this amendment in the Indian inheritance laws to ensure a girl her

share in the property seems to have backfired. There is a fear among daughter's family that the groom may try to gain control over the daughter's share in the property if dowry is denied to the husband's family, thus defeating the entire purpose of the law (Sarkaria, 2009:912).

Along with the above economic considerations there are many cultural factors that contribute towards a strong preference for sons in the Indian society. A commonly held belief is that sons will support their parents in their old age as majority of Indian parents live with their son(s) and his family after his marriage. This is practiced in Indian society due to the lack of social security for old people (Sekher and Hatti, 2010: 3). Therefore the decision of the parents is likely to be motivated by the concerns about their own security in their old age. Due to various limitations such as economic, social and physical daughters often are not able to contribute towards the welfare of their natal parents. Hence it is believed that daughters cannot substitute for sons (Sekher and Hatti, 2010: 4).

The majority of Indian women face a disadvantage when it comes to marriage due to this compulsive need to get every daughter married after they reach puberty. This is so because of the high value attached to women's chastity in the Indian society therefore the imperative to seek an early marriage so that a daughter's sexuality is contained within marriage. Even in the present day a family's prestige and honour is dependent on the daughters getting married at the right age. Hence the mad scramble to find a good groom by the families and the chapter of dowry ensues (Kapadia, 2002: 49-50). There were several communities who did not have a tradition of dowry but in the last two decades have begun accepting dowries e.g. Christian and Muslim communities (Kapadia, 2002: 48).

The causes of discrimination against daughters in the Indian context are highly complex hence there is a need to understand the nexus of social, economic, cultural and political factors that underpin gender discrimination and violence which has led to such humongous proportions (Sekher and Hatti, 2010: 7). To add to the problem of daughter discrimination, in recent years access to modern reproductive technologies are being used to engineer the production of male children. Instances of sex selective abortions have become routinized in the Indian society leading to a skewed child sex ratio (Sekher and Hatti, 2010: 4).

Chapter7. Documentary Analysis

This section on documentary analysis will be presented in two parts, the first part utilises several research studies surrounding the issue of the missing girl phenomenon. These research documents have been critically reviewed with a feminist perspective. The other half of the documents are empirical in nature these include reports and studies based on official statistics on child sex ratios and the population census and various newspaper reports and clippings. All these documents will be utilised in order to be able to trace the politics of NRTs and examine the role of the post colonial Indian state, modernity, development and the population policy discourses that may have motivated the misuse of modern reproductive technologies for the purposes of sex selection and abortions of female foetuses.

The second part is oriented towards doing a content analysis of the Government of India's PNDT Act (1994). This government document has been implemented by the state as a tool for bringing in social order within the society. The Act is also a reminder of the exertion of authority by the state (May, 2001:182, Purewal, 2010:36). The background and events that went into the formulation of the Act will be presented. Then the legal provisions of the Act will be interpreted and these provisions and legal interventions will then be discussed and debated with the help of secondary literature. A critical feminist reading of the Act would be attempted. The reasons for introducing the PNDT Act in the later part of the analysis is that the issues and arguments surrounding the misuse of New Reproductive Technologies (NRTs) chronologically started appearing in the late 80s and the early 90s. Effective advocacy and demands for bringing a formal regulation on the use of reproductive technologies by several civil society groups led the government to formulate and implement the PNDT Act in 1994.

7.1 The Political-Economy of New Reproductive Technologies (NRTs):

The Medical Science fraternity considers NRTs as a major breakthrough in scientific progress and development of medicine. Tests like amniocentesis provides the opportunity to detect early 'abnormalities' to the foetus and predict the sex of the foetus as well. Whereas there are other techniques such as In Vitro Fertilization (IVF) and Gamete Intra Fallopian Transfer (GIFT) also known as Assisted Reproductive Technologies (ARTs) or Artificial Reproductive Technologies known to assist women in reproduction (who may be unable to conceive naturally) through other artificial means. NRTs as is often assumed is not a gender-neutral scientific technology, it is attached with several ethical and moral issues (Lingam,

1998:4). These techniques have become popular due to its capitalizing on the social stigma attached to infertility of couples (although the onus rests on women), emphasis is laid on biological motherhood where adoption as an alternative is often discouraged and the need for continuity of the lineage. Thus NRTs reinforce the need for biological motherhood within the patriarchal institution of marriage (Lingam, 1998:4). NRTs in the postcolonial context of the 'developing countries' economies and the capitalist modes of production relations resulting in unequal division of labour between the 'West' and the 'Third World' economies have created a complex scenario. Hence it is essential to understand the interactions among the policy makers, international organizations, NRT developers and providers, users and non-users and potential users (Patel, 2003:17).

Having access to ultrasound techniques for purposes of sex selection brings to the forefront several political and ethical considerations surrounding the use of NRTs. Here the multiple levels of power articulated through the use of technologies are exposed through its popularity and routine procedure in the experience of pregnancy in several parts of the world. It is this power (patriarchal and medical) mediated through the use of techniques like ultrasound and amniocentesis that construct women and define their choices (Purewal, 2010:94). The consequences of NRTs in India were felt in the experiences women had (though not similar throughout) being reflected through the popularity of sex selective abortions. The deeply interrelated processes of conception, pregnancy, birth, foeticide and infanticide were mediated through NRTs (Patel, 2007:39). This politics of reproduction is reflected by the issue of missing girls that is indicated through the regional and national level statistical data on adverse sex-ratios. The 'missing girl phenomenon' implicitly holds the reproductive politics and practices which are carried on at three levels; local, national and international (Patel, 2007:32).

Within the Indian context, the misuse of sex determination tests was revealed through several investigative newspaper reports published during 1980s that led to a major controversy surrounding these tests (Patel, 2003:5). The variety of available data reported on this form of gendered violence present conflicting numbers suggesting the undetectable nature and the proportion of violence visited on female foetuses. One such report published by Times of India editorial in August 1994 showed the annual figure at 50,000 female foetuses being aborted after sex determination tests. Another study quoted the figure at 73000 as the number of foetuses terminated between the periods 1978 to 1983. (Dube Bhatnagar et al, 2005:2). With the ever pacing progressions in the field of reproductive technologies a moral consensus

on medical ethics and gender justice seems to be weakening. Some doctors in India who utilize reproductive technologies refuse to acknowledge the future consequences that gender disparity would lead to within broader contexts. Women's rights organizations in India have been concerned with the increasing misuse of NRTs for sex-selective abortion purposes which according to them is the worst kind of violence and discrimination that begins even before the female foetus is allowed to be born (Patel, 2003:18). It is so because this form of discrimination appears sanitized in front of human rights violations arguments as the former bases itself on the logic that sex selective abortions don't engage in killing female children directly, instead it medically terminates the female foetus. Such views find proponents within the medical fraternity; one such view articulated by Dr Anirudh Malpani blatantly favours sex-pre selection tests, according to him there is no question of ethics arising in discarding female embryos. He instead presented a rhetorical counter question of "Who are we hurting, Unborn girls?" (Patel, 2003:18).

NRTs have caught the attention of feminists for a long time now, some groups have argued that innovations in reproductive technology has empowered women as they offer a variety of choices in delinking reproduction and sexual pleasure along with providing opportunities for biological procreation to women who may be unable to do so due to various factors. Whereas on the other hand some radical feminist voices have denunciated reproductive technologies as they consider these technologies to be another systemized form of patriarchal control over women and their bodies (Purewal, 2010:95). This brings the issue of 'choice' to the fore, where liberal pro-choice feminists take the stand that espouses a liberal rights framework for women, colliding abortion with sex selective abortion and declaring that women have the right to abortion under any circumstances. The denial of this right to abortion for them means infringing upon women's reproductive rights. For them opting for sex-selection is a choice taken under cultural pressures and coercion and therefore it is viewed as an 'unreal choice'. It is either for or against abortion for liberal pro-choice feminists. Thus the liberal pro-choice feminists fail to contextualize sex selective abortions and view it as gender based violence. The liberal pro-choice feminist discourse therefore ends up reducing an Indian woman's choice of sex-selection merely to cultural preferences and passive victimization of the Indian woman within patriarchal settings (Nagpal, 2013:23). The idea of choice was coined by the Western middle class feminist movements during the 1960s and 70s. This advocacy enabled women to gain relative autonomy in their reproductive choices, but such a positive view of NRTs cannot be universally representative of all women's experiences in the world (Purewal,

2010:96). When such feminist analysis focuses on mostly criticizing the Indian tradition and culture as the centre of oppression and violence against Indian women, what is being omitted or missed out here is the "histories of resistances, heterogeneous locations and discontinuity in history" (Dube Bhatnagar et al, 2005:2). Dube Bhatnagar et al argue that Indian culture and traditions cannot be used as an overarching framework for the millions of missing women due to practices of sex selective abortions, femicide etc (Dube Bhatnagar et al, 2005:1-2).

A more nuanced alternative view is that of the feminists who ascribe to what they term as the "reproductive justice lens" (Nagpal, 2013) which seeks to analyse the social conditions, relations and structures that inform the reproductive choice instead of focussing on "individual choice and symbolic legal rights (i.e. the right to abortion)" (Nagpal, 2013:23). This perspective draws attention to the fact that an Indian woman's reproductive 'choice' to obtain a sex selective abortion does not exist in a "social vacuum". Thus in the Indian context, "social conditioning about the value of a son, conflation of social worth with ability to produce sons, limitations imposed by dowry demands, and coercion by the husband's family are all factors that impinge on a woman's decision" (Nagpal, 2013:23). Her interaction with her husband, her conjugal family at the household level and with the state through the hospitals and its procedures have an influence on Indian woman's fertility behaviour. Therefore the 'choice' she makes in favour of sex selection within such existing conditions is a 'reflexive rational decision' which ensures her own survival in the process (Patel, 1999:447). As Leela Visaria points out "there is a deep internalization of patriarchal values that are linked to their sense of security" (Visaria, 2007:73-74). The general emphasis often laid by researchers in the west is on the subordination of women in 'developing countries'. Women from these contexts are portrayed as mere passive victims with little reproductive choices to act upon with the oppressive patriarchal framework. Although this may be partly true but nonetheless the agency of women can be found and understood even within such oppressive systems (Patel, 2007:30). Even though women are at the centre of reproductive performance where they are obliged to reproduce, they are definitely not passive reproducers of progeny. Their position within the household and community varies with their reproductive career as ethnographic data conducted in rural Rajasthan by Tulsi Patel suggests. A woman who has been newly married in the conjugal family has a subordinate status to her mother-in-law, but as she progresses in her reproductive career to a point where her own daughter-in-law enters the picture, the former automatically gains a higher status and

say within the household where even the sons are influenced by the mother's decision (Patel, 2007:32). Although an Indian woman's negotiation and resistance in such settings would in no way radically overturn society's deep seated prejudices and attitudes towards female foetuses over night, yet her agency lies in the fact that her decision or choice towards sex selection is a well manoeuvred step taken with full knowledge of the normative constraints and societal structures and institutions that influence and are influenced in the process (Patel, 1999:447).

The issue of homogenizing the 'post colonial/third world woman' by the white feminists in the west was raised by Mohanty and Spivak in their post colonial feminist analysis. This issue sees its resonance in the context of missing girls in India, where feminist analysis in general has focused the attention on studying the impact of new reproductive technologies on women in 'developing countries' without paying nuanced attention to the differences in experiences with respect to NRTs among women belonging to different 'classes' (in case of India).

As Dube Bhatnagar et al puts it that, "the socio-psychology of child bearing of the rural poor woman is markedly different from the middle-class woman's discourse about children" (2005:6). A middle-class woman may be more concerned about issues related to her health due to frequent pregnancies and the implications of having more children on child rearing and provision of quality of opportunities to them. Whereas the only concern for a rural poor woman is to reproduce as many children possible in the hope that at least a few among them will be able to survive the high infant mortality rate that exists in rural conditions due to various factors. Pregnancy and the post natal period are the only times when a poor rural woman is encouraged to prioritise her health, her diet, and the need for rest, hence for many rural women who engage in daily hard labour, pregnancy provides them with the much needed respite and so they wish to preserve their right to have children. Thus a poor rural woman cannot afford to dream of having fewer children and more leisure or focus on health and self- indulgence like a middle-class woman (Dube Bhatnagar et al, 2005:6). The Western feminist narrative to have fewer children in order to be able to provide more opportunities of education to the daughters and have an independent career for oneself comes in the way of understanding the conditions in which the rural woman's choice of having more children is informed. For the latter her children are her resource and support for the family's subsistence. Unlike in middle and upper class families where children and women are viewed primarily as consumers until they invest in education and a career, in a rural household children and women are seen as producers from the onset. This is not to advocate large families and child labour practices but what this understanding brings out is the recognition that a poor rural

woman's offspring are her support structure and her only resource in times of total destitution (Dube Bhatnagar et al, 2005:6). Therefore the social structures and constructions in which women exist, shape the choices that new reproductive technologies offer them which eventually leads to differences in experiences and differing reproductive choices (Purewal, 2010:96).

The notion of progress of the country and prosperity for the household are a part of the larger abstractions of development and population theory which are constantly reinforced through discourses in the everyday lives of the Indian women who must accept reproductive technologies for the good of all. There is an erroneous understanding afloat that technologies like amniocentesis and ultra sound misused for sex selection is a negative side effect of underdevelopment, therefore trying to make NRTs appear as value free inventions that are not inherently unethical and manipulative. Instead it is the 'developing Third World' countries that misuse NRTs within their contexts to visit violence upon women and therefore it is solely their self-created monster. Overlooking the gendered nature of NRTs, the violence visited on women in the 'Third World' is considered to be incidental misuse of "gender neutral science" (Dube Bhatnagar et al, 2005:10).

7.1.1 Femicide, State and its nationalist population policy program rhetoric:

It is important to understand the manipulation of women's reproductive behaviour within the context of the Indian state's population control policies as compared to the population policies of the West. Women as reproducers are no doubt at the centre of both pro-natalist and anti-natalist population policies. In most Western countries pro-natal family planning policies are followed where women are encouraged to have more children than fewer children (Lingam, 1998:4). Pro-natal family planning programs in the 'First World' focus on the maternal health of the woman, her reproductive choice and her control over her own body [although its noteworthy to mention that the medicalization of reproduction has taken the idea of the western woman's choice and control over her own body to a whole new level of complexity (Patel, 2007:37)]. On the other hand in a 'Third World' context like India, the government follows an anti-natal population policy in order to control the growth of population. As a result Indian women are subject to the state's coercion of accepting unsafe forms of contraception without any scope for making an informed reproductive choice, this along with the pressures felt from the discourses of development and over population (Dube Bhatnagar et al, 2005:11).

Such anti-natal population policies therefore emphasize on reproducing fewer children and forcing down birth control methods over some sections of the population than others. Thus developed countries follow pro-natalist policies within the domestic context and emphasize anti-natal policies for the 'developing countries'. Women in the North are thus expected to procreate whereas urgent measures to tackle the over-population problem are being pushed for in the South, that result in women from the South bearing the brunt of such population policy measures (Lingam, 1998:5). The discursive roots of anti-natalist population policies have emerged from the 'First World'. It is assumed that all the problems that 'under-developed' countries face stem from the over-population of their societies (Dube Bhatnagar et al, 2005:12). A diametrically opposing perspective was provided by the United Nations report that observed as regards to the pressure on the environment that "In global terms the impact of a drastic decrease of population in the poorest areas of Asia, Africa and Latin America would be immeasurably smaller than a decrease of only 5 percent of the richest countries at present consumption levels" (UNICEF, children and environment, 1990 cited in Dube Bhatnagar et al, 2005:10)

Indian state's policy control objectives happen to coincide with the effects that elimination of female foetuses have on the overall population, i.e. there are fewer females born with the use of sex selective abortion practice now as opposed to earlier times when households reproduced daughters endlessly until they had borne at least one son. Thus the decreasing number of females meets the population limiting objective of the state however in a crude way. Moreover the small family norm that Indian government has adopted rests on the Malthusian notion that affluence of the household depends on the family size. In this way then, the small family norm serves as an evidence of legitimization of sex selection by the state's population control rhetoric (Nagpal, 2013:24). The state's propaganda to have a small family restricting to two children has acted in aiding the misuse of sex determination tests/NRTs as households having strong son preference want to ensure at least one son in the family while adhering to the government's two child policy norm. Such households seem to view sex- determination tests and sex-selective abortions as a way to ensure the birth of a son in the family while still being able to limit the family size (Bose, 2007:84).

Indira Gandhi's Congress government during the imposed emergency period in the 1970s took a very blatantly coercive step with respect to its population control agenda. The then government announced incentives to the public (targeted at men) if they underwent sterilization, a measure sought by the state in efforts to control the population. This however did not last long as criticisms focused around male sterilization poured in from all quarters.

As a result, the negative implications of the population policies post 1970s were felt by women as these new policies embodied an increasingly anti-woman bias (Nagpal, 2013:24). Where on one hand women in the U.S fought the abortion struggle in 1969 to lift the ban on abortion to make it legal, in contrast to this scenario during 1971, the Indian government legalized abortion in India as a measure of population control directives rather than as a step towards women's emancipation (Patel, 2007:36). Other measures of the state include entitling a woman three to six weeks of leave working within the formal sector in the case of miscarriage or induced abortion (Patel, 2010:21).

Within the given Indian context then, where the presence of a strong son preference along with the "widely internalized state discourse about the economic productivity and social value of small families" (Nagpal, 2013:25) exist, sex selection offers a seemingly practical solution towards ensuring smaller families without having to compromise the "patriarchal desire for the optimal number of sons" (Nagpal, 2013:25). The unapologetic and blatant responses of medical practitioners and community members as discussed in the previous section reflect the level of acceptance and normalcy in the society towards sex selection that gets further legitimized by the 'nationalist population rhetoric' (Nagpal, 2013:25). Fieldwork conducted by Bose in the regions of Haryana and Punjab in the Northwest part of India critically suggested a prevalence of a silent conspiracy between various stakeholders such as families of the users, doctors, medical and paramedical staff with regards to female foeticide and the illegal practice of sex determination (Bose, 2007:83).

7.1.2 Role of the post colonial Indian state, modernity and international development discourse:

The 1901 census that was conducted in colonial India stated the female to male sex ratio at 972 females per 1000 males. In the post-independence period the gender imbalance blew in proportion rather than seeing a decrease in this form of discrimination. During the 1981 decadal census, the sex ratio figure dropped to 935 females per 1000 males. These figures alarmingly pointed at the increased number of missing women from 3 million under the colonial rule to 22 million in the post colonial independent India (Dube Bhatnagar et al, 2005:2). This trend has continued to this day with 927 females in 2001 census and a dismal figure of 914 females per 1000 males in the recently conducted 2011 census (John, 2011:10).

The politics of reproduction is played out along with global forces and ideologies. There is a division between countries in the west that follow pro-natalist policies and the 'developing

Third World' countries that are encouraged to practice anti-natalist population policies which are influenced by the Malthusian ideas on the economics of population. Thus showing how global and national forms of power have discursively constituted the reproductive relations at the local and domestic levels. Historical research provides evidence of the state power defining directly or indirectly normative families and controlling the population (Patel, 2007:32). The state's use of coercion as a strategy is justified as a tool to attain the desirable goal of population decrease. Dube Bhatnagar et al view this rhetoric as "neo-imperialist" because "it covers over the nexus between the international community and indigenous governments both of which colonize the poor" (Dube Bhatnagar et al, 2005:12). The international interests convince the national governments to purchase reproductive technologies and services as an effective means to control the population while keeping the big pharmaceutical and technological companies in business. The national governments in the South are coerced by international agencies and groups of multinational businesses into buying the NRTs. This is done by linking foreign aid and credit facilities to the 'Third World' countries on the condition that their performance level in the field of population control remains pro-active. India is one such democratic country that has attempted to initiate its development process by adopting undemocratic means of population control (Dube Bhatnagar et al, 2005:12). It is between the tiny spaces of such persuasive strategies that post colonial India's problem of femicide/missing girl surfaces. It is an 'underbelly' as Dube Bhatnagar et al call it, of the development discourse and the official version of conservation of environment that acts as a population control strategy. They further argue that modern form of femicide pictures itself into the global frame of reference through these discourses on ecology and development (Dube Bhatnagar et al, 2005:9). The valuing of the boy child and perceptions surrounding the girl child do not merely stem from the inherent discrimination against women in a society but as Purewal notes, it is the ever changing and adapting confluence of economic, social and political processes (Purewal, 2010:61).

The post colonial Indian state has done nothing to change the material-economic conditions of the rural poor woman, instead the population control programs strip her off the only resource she has for her and her family's subsistence. In this way the post colonial state ends up blinding itself to the root cause that is her poverty and focuses on providing solutions to the symptoms (i.e. her many children). To add to the rural poor woman's misery, the state's development model robs her off all the resources by displacing her household in order to build infrastructure depriving the woman of her livelihood and destructing her living

environment (Dube Bhatnagar et al, 2005:10). Moreover the state does not take any responsibility to improve the health of the women; instead of providing contraceptive choices through its family welfare program (that would lead to the better control of women of their own bodies) it coerces women to undergo sterilization in order to control her reproductive capacity (Dube Bhatnagar et al, 2005: 10). The state's methods of family planning are further painted along class lines that seek to control the reproductive behaviour of poor women in particular (Nagpal, 2013: 24). The colonial rule disregarded traditional practices of home birthing and therefore "colonial policies imposed medicalization of maternity in India" (Patel, 2007:37). In addition to the above discussed woes of the Indian woman, in the post colonial period the discourse of medicalization of fertility and reproductive practices has been continued and pushed for as a part of the nationalist interest (Patel, 2007:37).

The colonial state through its administrative and bureaucratic practices intended to establish a formal institutionalized understanding of its political authority and social order. The post-colonial state appears to be projecting this type of authority through its various actions such as acts and pronouncements, education and development related programs and policies and measures against various social issues. This is the way the post colonial Indian state emphasizes its role and its interventionist functions to enable 'larger public good' and to 'discipline disorder' (Purewal, 2010:36). One such intervention of the post colonial Indian state was the Nawanshahr model that was implemented in the Jalandar district of Punjab. This model named after the Nawanshahr district was an effort of the local government to tackle the 'menace' of female foeticide within the area. The Nawanshahr model is unique in its constitution and operations since it utilized information technology (to keep records of births, foetal deaths, perpetrators etc) in a militaristic coercive style in order to enforce the campaign against female foeticide (Purewal, 2010:40). Despite starting out as a campaign against female foeticide it took no measures to challenge the society's patriarchal socio-economic base. But it turned out in embracement of new reproductive technologies while exhibiting that, capitalist development goals can still be achieved with a vigilant and alert state that can make timely checks. The state's Nawanshahr model failed in achieving its intentions of eradicating the practice of female foeticide through its 'naming and shaming', criminalizing and penalizing policy. This happened because the program did not criticize or question gender-relations or norms in any way instead it was showed how it worked very much from within the "technological, capitalist and masculinist modernity of the time while embracing its tools of knowledge and application" (Purewal, 2010:42). Its efforts can be

interpreted as merely "disciplining the natives" (ibid). These cultural, social, political and economic circumstances incorporated within modernity influence and constitute reproductive practices while interacting with family and gender relationships. Thus the representations and discourses surrounding the reproductive processes are entrenched in local ways of relating to modernity, global technologies and development (Patel, 2007:40). The Nawanshahr model shows how modern ideas of surveillance are implemented by the nation state along with the use of information technology to penetrate into the local communities without any regards for what this form of growth-led development discourse is doing for social justice within 'developing' countries and especially the negative impacts it has on gender relations and gender issues (Purewal, 2010:71).

Dube Bhatnagar et al have argued that the modernisation process and development have not always facilitated the empowerment of all women in all parts of the world (Dube Bhatnagar et al, 2005:10). Madhu Kishwar points at the differing impacts and consequences modernisation and development can have on the lives of men and women and how at times these processes can have an adverse harmful effect on the lives of women (Madhu Kiswar cited in Dube Bhatnagar et al, 2005:11). It is the social forces of modern times as Dube Bhatnagar et al argue that have led to the spread of femicide/gendercide in regions and communities where these practices were unheard of. Modernity according to them has instead introduced "scientifically efficient methods of femicide" (Dube Bhatnagar et al, 2005:11). Historical discourse on female violence in India appears to create 'anti-modern and anti-progressivist sentiments given that after three decades of political independence and modernization there is still a violent threat to the survival of post colonial Indian women (ibid).

7.2 Pre-natal Diagnostic Techniques (PNDT) [Regulation and Prevention of misuse] Act, 1994: Its impact on preventing sex-selective abortions

This sub-section will try to engage in a critical feminist reading of the contents of the Pre-natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994 henceforth referred to as PNDT Act. It will also analyse the issues surrounding the implementation of the Act and trace the factors that motivated sex-selective abortions despite the Act being in place.

Background:

In India until 1970s there were no clear provisions surrounding abortions, hence the provisions contained in the Indian Penal Code (IPC) were applied in cases of abortions and

its legality. Abortions were interpreted as legal under the IPC provisions if there was no criminal intent present and the decision to abort could be taken if the life of the mother was endangered due to the pregnancy. The Indian government primarily adopted the abortion law as a means of population control strategy. Keeping these various considerations in mind, the government of India passed the Medical Termination of Pregnancy (MTP) Act in 1971 which came into force in the year 1972 (Tandon & Sharma, 2006:3). The Medical Termination of Pregnancy Act provided women access to abortions under a variety of circumstances, but due to the stringent nature of the Act many abortions that were carried out could be classified as illegal under this Act. Also legal access to abortion has been limited to a large proportion of women living in the rural areas. As a result many abortions were taking place outside the ambit of the Act illegally and in unsafe conditions proving a threat to the health and lives of the many women (Visaria, 2007:70). According to the MTP Act, abortions could be legally performed if the pregnancy was a threat to the life of the woman or if the pregnancy occurred due to the failure of contraceptives or in case of a rape or if the foetus was detected with abnormalities. Birth abnormalities could now be detected early on through the use of tests such as amniocentesis and sonography done through the use of ultrasound technology. However these tests could also predict the sex of the foetus with no extra effort and therefore began to be misused for performing sex-selective abortions. Thus the legal access to NRTs and state recognition of medical termination of pregnancy together were being misused for aborting the female foetus thereby aiding gender bias (Retherford and Roy, 2003:13, Visaria, 2007:70).

The misuse of sex-determination technologies had become a concern of various groups in India such as women, health and civil liberty advocates. They together formed the 'Forum Against Sex Determination and Sex Pre-selection (FASDSP) in 1984. The forum's effective advocacy and campaigning led to the Maharashtra government to introduce a legislation i.e. the Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act, 1988 (Retherford and Roy, 2003:14, Nagpal, 2013:27). The legislation was passed after findings from a government sponsored study revealed shocking results. It suggested that gynaecologists in most cases were performing amniocentesis test to only determine the sex of the unborn child, only a small portion of these tests were actually being carried out for the purposes of detecting any genetic disorders. In a well known clinic in Bombay which conducted abortions, during the period 1984-85 nearly all of the 15,914 abortions had occurred after sex-determination tests indicated that the foetus was likely to be a female

(Kishwar, 1995:15). Following suit, eventually in the year 1994, the government of India banned sex determination tests at the national level through the formulation of the Pre-natal Diagnostic Techniques (PNDT) [Regulation and Prevention of Misuse] Act (Kishwar, 1995:16). Post implementation of the Act, a number of inadequacies and lacunae were brought to the notice of the government. For instance the earlier Act did not have provisions to cover the new innovations such as sex pre-selection technologies known as sperm sorting (Nagpal, 2013:27) or scientifically known as the 'Ericsson technique' named after Dr. Ronald Ericsson, a 'reproductive physiologist' from the United States who discovered this technique. This technique involves a process of spinning the sperm so that the X-chromosomal sperms which are supposed to be heavier settle at the bottom while the Y-chromosomal sperms stay afloat. Women are then artificially inseminated with these Y-bearing sperms that ensure a male foetus even before it is conceived. A certain Dr. Mehta from Mumbai city in India has been able to obtain the "sole franchise to use this technique" (Agnihotri Gupta, 1991:102). Medical practitioners are of the view that this procedure can be used to avoid foeticide or female infanticide in the future (ibid).

After having taken these developments into consideration the PNDT Act was amended in the year 2003 and is now known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex Selection) Act, 1994 (Hatti et al, 2004:39).

7.2.1 Introduction to the PNDT Act:

(Original (Act) document source: Website of the government of Rajasthan)

Following are the features of the Act;

Under the PNDT Act, a central Supervisory Board has to be set up. It consists of members from various government departments including women and child welfare & health departments. The central government appoints another ten members from varied fields such as doctors, women's organization's representatives, social scientists etc. these board members are responsible for overseeing and reporting on the implementation of the Act and its progress. The Act lays out the expected qualifications, administrative procedures and tenure for all its members (Sarkaria, 2009:919).

The PNDT Act bans the use of any form of sex determination techniques that are used to indicate the sex of the child at any stage before or after conception. It has put forth several provisions that aim at regulating the use of such diagnostic techniques. Determining and

communicating the sex of the unborn child by misusing sex determination technologies has been made punishable under the Indian law. A person who is responsible for conducting such tests i.e. ultrasounds or amniocentesis has to provide a declaration according to the Act that he/she has not determined or disclosed any information regarding the sex of the foetus to the pregnant woman or anybody related to her. Further the Act states that no person including infertility specialists are allowed to conduct sex determination through the collected samples of tissue, fluids, gamete etc of the patients or aid in sex selection procedures. The Act has made it binding upon all clinics that provide ultrasound scans to be registered with the government and similarly any existing or new ultrasound machine needs to be registered with the government. The Act also makes it mandatory for all clinics and medical practitioners providing ultrasound scanning procedures to display prominently either in English or in any local language that 'sex determination of the foetus is prohibited under the law'. Further the Act permits the use of Prenatal Diagnostic Techniques only on medical grounds if deemed necessary for detecting abnormalities, congenital anomaly or any kind of genetic disorders especially if the parents have a family history of mental or genetic disorders. The Act also prohibits any person who conducts pre natal diagnostic procedures to communicate the sex of the foetus to the pregnant woman or her relatives by means of words, symbols or any kind of gestures or other methods.

Genetic laboratories, clinics and genetic counselling centres are allowed to conduct prenatal diagnostics only if they have been registered under the PNDT Act. The Act also mentions that if any clinics or medical practitioners advertise their services for conducting sex determination tests are liable for punishment. The Act also states that doctors and radiologists who conduct or solicit patients for undergoing sex determination tests will be imprisoned for 5 years as opposed to the previous 3 years of imprisonment as mentioned in the Act before the 2003 amendments and a fine of Rs 50,000 as opposed to the earlier Rs 10,000 as fine. Any person that is caught violating any provisions of the PNDT Act is punishable under offences that are cognizable, non-bailable and non-compoundable [http://rajasthan.gov.in/rajgovt/actnpolicies/actnpolicies.html].

[A cognizable offence is one where the police can arrest the offender without any issued warrant. Non-bailable is where only a higher competent court can grant bail and non-compoundable offence is where there is no scope of settlement between the parties to discontinue criminal proceedings (Hatti et al, 2004:40)]

7.2.2 Debates and discussions:

There are several legal lacunae's that have rendered the PNDT Act ineffective at many levels. For instance a clause within the Act states that permission by a medical professional is required for legally undergoing an abortion. This leads to increased indiscriminate power in the hands of the doctors, some of whom may use it to harass and demand higher fees from their patients (Sarkaria, 2009:928). Another issue is the regulation of the use of ultrasound machines which is extremely difficult. As this test is used as a routine procedure done during pregnancy all over the world, it is therefore hard to identify its legal and illegal arbitrary usage (Nagpal, 2013:28). Regulating the activities of patients is also not practically possible. Most patients in order to avoid getting penalized undergo sex determination tests at one clinic and abort the female foetus in another. Thus drawing a connection between the two and charging patients for sex-selection becomes a non-achievable task (ibid).

One of the drawbacks of the Act is that it has laid out penalties and fines for the violators but fails to exclude women from being further victimized under its provisions. In the earlier provision of the Act before its amendment, a woman who underwent an abortion was exempted from punishment but this was later amended. Within the newly amended provisions, a woman is considered a violator if she undergoes an abortion and therefore she becomes liable for imprisonment and fines under the law. On the other hand the Act presumes that a pregnant woman is always "compelled" to undergo an abortion by her husband or relative and therefore an 'accomplice' along with the woman must also be liable for penalties (Sarkaria, 2009:919). Although the law recognizes that a woman is "compelled" to undergo an abortion yet she is held punishable under the Act (Nagpal, 2013:29). Women thus get caught in a 'double bind' due to the legal provisions that punish a woman for undergoing sex-selective abortion. They are on one hand pressurised by their families to produce a son and simultaneously the state criminalizes them for aborting a female foetus. As socio-culturally women are discouraged from giving births to girl children, punishing these women for aborting their female foetuses is not the solution to this menace. The Act in fact ends up punishing the very victim who gets caught in this grind (Sarkaria, 2009:924).

One of the recurring problems in the implementation of the PNDT Act has been the non-compliance of medical practitioners with the Act. Doctors mostly end up asking higher fees for conducting sex-determinative tests while choosing to ignore the ban by the law. The presence of the doctor-police nexus ensures that the payment given to the police provides the violating doctors protection against the law (Kishwar, 1995:17). In several clinics the results

of such tests are either conveyed orally or through symbols and gestures to the patients. Hence it becomes difficult to deploy vigilantes for regulating such private communications that take place between the medical practitioners and their patients. Thus it is solely left up to the conscience of the doctors to not divulge the details (Sarkaria, 2009:920). Moreover the nexus between the doctors, government officials and the police together contribute towards the lack of enforcement of the Act. In several instances government officials have reported of experiencing lobbying and significant pressure from the medical fraternity. Government officials in some cases are urged to restrain themselves from carrying out any prosecution of doctors who are caught violating the PNDT Act (Sarkaria, 2009:922).

Throughout India over 300 medical practitioners have been accused of violating the PNDT Act according to the government officials, but yet only a handful of them have actually been convicted for their offence (Nagpal, 2013:28). Also the percentage of registrations of the ultrasound machines in India is estimated to be fewer than even one percent. The Act is criticized for lacking specific procedures for reporting medical practitioners to their medical council (Sarkaria, 2009:920). Charges of violation of the PNDT Act were also pressed against General Electric (GE) in April 2007 by Indian prosecutors. GE is the largest manufacturer of ultrasound scanners, it was alleged that GE was supplying ultrasound machines in remote areas and small and medium towns especially in the Northwest part of India. It supplied these machines to clinics that were unregistered and which performed sex-determinative tests illegally (Purewal, 2010:72).

If pre-natal sex-selection is understood to be a reflection of the discriminatory attitudes prevalent in the Indian society rather than its cause then a ban on pre-natal sex testing will not be completely effective and it would be difficult to enforce (Goodkind, 1999:51). Families would then try to access these sex-selective techniques by other means that will lead to the formations of black markets where sex-selective procedures will be carried out illegally. This would then be equally detrimental to the health of the women within the framework of restricted reproductive choices (Goodkind, 1999:52).

The binary understanding of 'choice' as either for or against abortion as understood by the Western feminist imagination is a very limiting definition. If however women are presented with multiple choices such as being able to raise a daughter without having to worry about her dowry, or where a daughter can be raised while knowing that the mother will not have to face any violence for producing a daughter or where a daughter can support her parents in

their old age without any social ridicule, then there is a more likely chance that Indian women will choose to keep and raise their female children. When this choice becomes an either or predicament that an Indian woman faces where she is forced to choose between prestige & societal ridicule, her survival and security v/s vulnerability and honour v/s abuse, she is bound to opt for the former (Sarkaria, 2009:908). Moreover the PNDT Act penalizes women who 'choose' to undergo abortions thus denying women any agency. The law disregards the choice of the woman as false consciousness and assumes that she is always compelled by external patriarchal forces. But the state & the law fail to contextualize her choice as her strategy for survival (Nagpal, 2013:30).

This issue of choice as discussed above that several feminist groups argue for and in contrast also support the ban on sex-selective abortions bring very important questions to the forefront. Such as 'whether it is possible to be a pro-choice advocate and simultaneously seek ban and regulations on sex-selective abortions?? Does this perpetuate double standards?? As Nivedita Menon has observed, in practice it is difficult to keep those two contradictory issues separate without infringing upon women's reproductive rights (Nagpal, 2013:30).

Legally speaking there are two aspects of law around which the PNDT Act's character can be analysed. They are criminalization and decriminalization. Upon closer examination it has been observed that the criminalization aspect has posed several difficulties. There is an increased disregard for the law that seeks to prevent the practice of sex selective abortions and intends to create public awareness surrounding this. But by way of criminalizing there is a serious danger of these activities going underground. Thus most women under pressure to produce sons instead of seeking prenatal care in safer conditions end up opting for a homebirth without or with illegal medical practitioners' assistance. Some doctors have even noted that many women fearing legal punishment for seeking an abortion conduct home births in unsafe conditions and later also try to dispose by themselves the female child born at home. This endangers the health of the women who are involved in such practices of unsafe birthing (Sarkaria, 2009:926-927). Thus the more stringent measures are put in place the higher its chances of backfiring. It needs to be noted that within the Indian context the political, administrative and the police begin to have vested interests as soon as some activity is termed illegal. Flouting of laws by the people is used by the police and other law enforcers as a premise to acquire bribes in order to allow the illegal activity to carry on unhindered (Kishwar, 1995:17).

Decriminalization is not an option that can be considered either if sex-selective abortions are intended to be prevented. Decriminalization of sex-selection would give out the message explicitly that the state has a validation towards social biases practiced against girl children. On the other hand decriminalizing would exclude women from being penalized as under the existing PNDT Act (Sarkaria, 2009:929). Therefore criminalization and decriminalization are legal responses that prove to be ineffective and inadequate to prevent sex-selective abortion menace. Criminalizing punishes the female victims and simultaneously threatens their health by forcing them to seek illegal providers. On the other side, decriminalization does not lead to the protection of women; instead it would reinforce social biases against girl children. Regulatory measures also act in a similarly ineffective way that if put in place limit the options and information that a woman would otherwise have had access to. Such measures also break into the doctor-patient confidentiality clause. Sarkaria therefore argues that in the wake of failure of almost all legal responses, non-legal avenues must be emphasised as they would be more effective in addressing sex-selective abortions and check the 'missing girl' phenomenon if backed by law (Sarkaria, 2009:930).

Research findings of most researchers in the area of missing girls and the effectiveness of the PNDT Act suggest that the law has been largely ineffective in controlling sex-selective abortions. But contrary to the findings of several government reports and research studies a recent quantitative study done by Nandi and Deolalikar (2013) on the effectiveness of a legal ban on sex selective abortions states that in the absence of a law such as the PNDT Act, there would have been several more missing girls in India and that the Act has rather been effective if not less. It is essential to observe the methodology that this study uses. The findings of this research study have been derived through an economic quantitative analysis of the official census data hence relying entirely on national statistics, without connecting with the 'field' thus raising some issues of reliability.

As Purewal has observed it official statistics on the child sex ratio are an expression of the post-colonial government's knowledge and power through which it exerts its authority over the population (Purewal, 2010:36). This ability that enables the comparison of national data as well as state level statistics on child sex ratios made available through the figures the government provides begin to be considered as official, accurate and representative factual information of the population they represent (Purewal, 2010:37). Hence it entirely depends on the way a researcher uses these national official figures. If these figures are used as supplementary information to make the issue of femicide or missing girls more concrete

thereby enabling one to imagine the magnitude of the problem under study then it seems useful. But making these national figures the basis of an entire social research with limited contacts with the field and generating a formula based on this information to gauge the impact of the legal ban on sex determinative tests needs to be digested with caution (May, 2001:81).

The ineffectiveness of the legal approach in its implementation and prevention of sex-selective abortions is further problematized by the gap between the feminist vision and the legal measures because of its "hegemonic status and inability to target the root causes of son preference" (Nagpal, 2013:29). Feminism finds it contradictory to collaborate and utilize the very state's apparatus which is hegemonic and reinforces the exploitation of women and poor to demand reproductive rights for women (Nagpal, 2013:29).

Nivedita Menon has criticized "a state centered and top down campaign against sex-selection" (Nagpal, 2013:29) arguing that this cannot be the ideal solution and points out at the dangers of entirely handing over areas of women's reproductive technologies and health in the hands of bureaucratic control. Technology as has been observed is not neutral with regards to structures and relations of power and often "tends to reinforce existing patterns of power" (Nagpal, 2013:29). Technologies give women some rights with regards to their reproductive behaviour but simultaneously also bestow people in positions of power the right to exercise the use of such technologies by allowing or denying a selectively based access to them (Agnihotri Gupta, 1991:105). Menon thus states that such a strategy becomes a "fundamental contradiction to any feminist ideal of democracy" (Nagpal, 2013:29).

The legal approach is inadequate and fails to be effective because the contents of the PNDT Act aim at only addressing the symptoms of the problem of sex-selection but does not target the problem i.e. to bring about changes in attitudes towards daughter devaluation and societal preference for sons. Merely by criminalizing or banning sex-selective abortions will not reverse the systemic and structurally enduring discrimination against daughters in the Indian society. As it is being witnessed, the narrow focus of the government on the symptom is leading to the use of alternative forms that are increasing the number of missing girls (Nagpal, ibid).

7.3 Conclusion:

The above discussions reveal the multiple levels of complexities surrounding the issue of missing girls in India and that there cannot be a unidimensional understanding of the issue. A convergence of social, political, cultural and economic processes interacting with each other creates a complex monstrous 'black box'. There are political forces and processes from above, socio-cultural structures and forces of modernity from within and economic and developmental forces from below that when interlinked together weave their webs of complexity around the missing girl phenomenon.

On a more general level it can be stated that the institutional dynamics such as the limitations of the legal measures, the state's population policies and the misuse of reproductive technologies have in totality aggravated the missing girl phenomenon (Nagpal, 2013:31). It appears evidently that law independently cannot be the solution to address sex-selective abortions and thereby check the number of missing girls. It requires feminist activism, changes at the level of discourse by discovering non-legal avenues that can lead to a gradual decline in the magnitude of missing girls in India. The focus should seek to shift from forcing women to make the 'right' choice to expanding their set of available choices (Sarkaria, 2009:941-942). Rashmi Dube Bhatnagar et al, understand and place this violence against women or as they refer to it as 'gendercide' within the post-colonial Indian state where it is believed to have been exacerbated as reflected through the analysis of historical data. They argue that femicide or gendercide is a product of post-colonial modernity. Femicide according to them in the post-colonial Indian state has been facilitated by the patriarchal family structure, nation-state's population control discourse, First World's reproductive technologies and the developmental discourses of global agencies and international organizations (Dube Bhatnagar et al, 2005:2).

With regards to the current legal interventions which have been termed inadequate and ineffective [see Kishwar (1995), Sarkaria (2009), Purewal (2010), Nagpal (2013)], there is a need to think of solutions beyond the legal framework. A need for policies that are proactive in nature and target the unequal societal relations and gender discrimination prevalent in the Indian society should be asserted. In terms of the 'choice' issue, efforts are needed to offer Indian women with an array of choices that ensure their security and status without them having to face any kind of violence regardless of the sex of their foetus. Also feminist and health advocates should engage in raising public consciousness around sex-selection without conveying an anti-abortion message in general (Nagpal, 2013:32). Alternative models of solutions for women in India need to be necessarily situated outside the "capitalist patriarchal

logic". This is because societal relations in the Indian periphery have become complex and distorted when the global capitalist logic has been put to work. It is primarily because the notion of production relations and patriarchal capitalism devalues women as mere consumers and destroyers of the wealth of the family. To top this up when the Malthusian discourse of 'few people would result in more affluence and prosperity' is adopted by the state as a population control strategy the main targets of this strategy are women and their fertility control. This obnoxiously gets manifested in practices of femicide/gendercide/woman killing/missing girls as one puts it (Dube Bhatnagar et al, 2005:25-26).

Conclusively in a 'sexist patriarchal society' then as Dube Bhatnagar et al have argued, in order to prevent and end this violence against girl children women's value as producers, inheritors and preservers of family wealth needs to be acknowledged and affirmed. Their value as producers and contributors in conserving the environment and resources also needs to be asserted in the face of patriarchy and capitalism (there are plenty of examples that can be found that evidently show how women and tribal indigenous people have engaged in producing and contributing in the preservation of the environment and they're definitely not the reason for destroying and depleting the resources from the earth). Only such changes in valuing the social and cultural contributions of women along with other proactive policy strategies and measures backed with legal interventions are likely to work towards reversing this devastating trend (Dube Bhatnagar et al, 2005:27).

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