

**The Indian woman's decision to sex-selectively abort: challenging the presumption of adaptive preference formation and absence of autonomy**

**By**

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A thesis submitted in partial fulfilment of the requirements for the degree of

Doctor of Philosophy

The University of Sheffield

Faculty of Social Sciences

School of Law

September, 2017

**Summary of Thesis**

Some women in India are making the decision to abort their foetus because it has been identified as female. One feminist intuition could be that those decisions are a result of false consciousness, that women have adapted their preferences in response to the social and gender oppression to which they are subjected. The presumption is also that the adaptive preference signifies an absence of autonomy. This thesis challenges that intuition and presumption, arguing that not all preferences made under oppressive conditions are to be regarded as non-autonomous. The motivation behind decisions is complex and a decision must be considered in the context of varied social, economic and cultural influences.

The thesis uses three hypothetical case studies to facilitate a critical analysis of the concept of adaptive preference formation and different theories of autonomy from a feminist perspective: the content-neutral traditional procedural theory, content laden substantive theories and the relational theories which are re-conceptualised versions of the former accounts. This results in a theoretical analysis of which approach to autonomy best acknowledges the effect oppression may have on decision-making but is also able to recognise a woman’s autonomy where possible. This analysis is valuable as it reveals the difficulties in determining autonomy when such complex theories of autonomy are applied to real-life cases but also demonstrates that there is the *possibility* of the presence of autonomy even within a restricted choice environment. Although this focus on autonomy must not serve to detract from condemnation of a practice which perpetuates the denigration of women, condemnation alone is unlikely to result in a change in practice. I conclude that only when respect for bodily integrity is placed at the heart of medical decision-making in India will the right to self-determination and autonomy be realised for everyone.

**Acknowledgements**

I am grateful to Dr. Victoria Chico and Dr. Atina Krajewska for their support and encouragement throughout the supervision of this thesis. They have managed to enthuse and motivate me at each meeting and their feedback has been invaluable. I would also like to thank Dr. Ruth Stirton who was one of my supervisors during the earlier stages of the thesis and whose warmth and assistance was very much appreciated. I am thankful to my colleagues at the University of Huddersfield who have provided time and interest when it was much needed. Finally, thanks are due to my husband, Mike, and daughter, Hannah, who have helped to sustain my belief that this would be carried through to completion.

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**INTRODUCTION**

**Research aims**

India has a well-documented problem of a preference for male children which has resulted in a gender imbalance in several states. This is a consequence of the historical practices of infanticide and child neglect, but also, more recently, of the technology which enables sex determination and then sex-selective abortion[[1]](#footnote-1). Women were, and still are, making such decisions in large numbers, despite the current legislation that criminalises the practice of sex-determination for non-medical reasons.[[2]](#footnote-2) In addition an abortion on the grounds of the sex of the foetus would not comply with the grounds of the Medical Termination of Pregnancy Act 1971.

One intuition, when reading about the figures of ‘lost girls[[3]](#footnote-3)’, is that the Indian woman’s decision to sex-selectively abort one’s own sex is an adaptive preference in response to her oppressive environment and so cannot be autonomous. An alternative intuition, however, is that some women will nevertheless be autonomous and this should be recognised where possible. The principal aim of this thesis, therefore, is to challenge the *presumption* of non-autonomy and to argue that, although a choice *may* be adaptive to the woman’s constrained choice environment, not all adaptive choices lead to a conclusion of a deficit in autonomy.[[4]](#footnote-4)

In order to achieve this there is firstly a need to examine the extent of the gender and cultural oppression in relation to Indian women and recognise how it may influence decision-making. Secondly, it is necessary to identify preferences which may have been adapted and therefore warrant further scrutiny. Serene Khader’s concept of adaptive preference formation has been used here. The final aim is to analyse these preferences by applying different theories of autonomy to the decisions of hypothetical women in three case studies, in the context of their oppression and their particular option set. The objective is to evaluate which theory of autonomy best recognises the effect of oppression on the decisions yet, where possible, deems the woman to be autonomous.

The following section provides a more detailed presentation of how the thesis is developed.

**Addressing the research questions**

Context

The thesis starts by analysing the extent of sex selective abortion in India and how the decision to abort a female foetus may be influenced by the Indian woman’s cultural environment and society’s attitudes to her sex. Indian legislation, which nevertheless prohibits sex determination and would not allow abortion on the grounds of sex, is examined, in addition to India’s approach to consent to medical treatment. The legislation chapter is not intended to be a comprehensive comparison of the legal position in both countries which would require much more in terms of history and context and would be more relevant to a thesis with different aims. It is, however, important here in that it provides an insight into the provenance of the relevant statutes and common law and sets the scene for the use and application of the law on sex-selective abortion.

Theoretical framework

Two feminist intuitions, which may act against each other, are central to the thesis. Despite both aiming to improve the lives of women who may be oppressed one intuition contends that social oppression impedes autonomy, whereas the other aims to recognise and promote autonomy where possible. As the thesis challenges the *presumption* of an adaptive preference which indicates a lack of autonomy, the theory of adaptive preference formation is explained and evaluated. Serene Khader’s Deliberative Perfectionist Concept of Adaptive Preference Formation is preferred as offering a framework for responding to adaptive preferences that is sensitive to the difficulties of their identification in real life situations. Her approach is used to identify a *suspected* adaptive preference: one where the choice is inconsistent with basic flourishing[[5]](#footnote-5), was formed under conditions which are not conducive to basic flourishing, and it is believed the woman would change following normative scrutiny and a change in her conditions. The identification of a suspected adaptive preference, however, does not necessarily result in a finding of non-autonomy and this requires an analysis of different conceptions of autonomy: the traditional procedural and substantive theories and the reconceptualised relational autonomy theories. These different theories are then to be applied to the decisions of Indian women illustrated in three hypothetical case studies.

*Feminist standpoint theory and consciousness-raising*

The background context of this thesis is the oppression of women in a patriarchal society and its possible effect on the woman’s autonomy. I therefore use a feminist epistemology to offer an alternative narrative about Indian women choosing to sex-selectively abort. It is a gender-related focus that aims to engage with the possible effect of power of one group in society over another.[[6]](#footnote-6) Although data provides evidence as to the prevalence of sex-selective abortion one of the aims of the thesis is to investigate the women’s reasons for choosing to carry out that practice. An empathetic stance is required in order to enter the world of the hypothetical women in the case studies and to understand that world from their perspective.[[7]](#footnote-7)

Standpoint epistemology draws on Marxist theory to explain the issue from the perspective of the person or the group of persons who are disempowered or oppressed (those with epistemic privilege) and who are considered to possess a better understanding of the oppressive relationship. The experience of that group and reflection on that experience gives them a standpoint to challenge the imbalance of power within the relationship. Feminist standpoint theory specifically values the perspectives of women and challenges accepted truths by offering what is claimed are more authentic truths: the hypothetical case studies are intended to provide these.[[8]](#footnote-8)

The case studies should assist women to recognise their membership of the group with epistemic privilege and facilitate collective self-consciousness.[[9]](#footnote-9) Catherine MacKinnon argues that dominant groups project their desires onto subordinate groups and as a result of the power that they possess they cause subordinate groups to conform to the way the dominants want them to be. The aim of consciousness-raising is for women to be able to unmask these ideological misrepresentations by acting on a shared understanding of themselves as women and, in this case, as an inferior sex.[[10]](#footnote-10) Women will then be able to identify political issues in their personal experiences and, if they recognise that their experiences are shared, then it can help them to comprehend that concern is justified.[[11]](#footnote-11) They will then be better able to understand their own role in the practice of sex selective abortion and how that acts to perpetuate their oppression. As MacKinnon asserts, ‘Complicity in oppression acquires concrete meaning as women emerge as shapers of reality as well as shaped by it.’[[12]](#footnote-12) It is intended, therefore, that consciousness-raising enables women to recognise what they are doing and why they are doing it. MacKinnon emphasises ‘It is validating to understand oneself as devalidated rather than as invalid.’[[13]](#footnote-13) The woman then understands that something has been imposed on her rather than her status being the natural order of things. The recognition of those women as being autonomous, where possible, but perhaps more so the recognition of the reasoning behind their decisions, will also serve to raise awareness within their community as well as serve to provide an improved understanding for outsiders.

Application of theory to the hypothetical case studies

Three hypothetical case studies depict decisions by Indian women to abort on the basis of the foetus being female. Each woman’s social environment is detailed to analyse whether the woman is living under oppression, whether this may have been internalised and whether there is a suspected adaptive preference using Khader’s Deliberative Perfectionist definition.[[14]](#footnote-14) However, this merely identifies an adaptive preference of concern but will not automatically lead to a conclusion that the woman is not autonomous.

As each decision requires further analysis the procedural and substantive theories of autonomy are applied, in addition to the relational versions of both. Recognising the complexity of decisions, and the varied motivations for making choices, Catriona Mackenzie has more recently argued for a more holistic approach to relational autonomy theories that considers different dimensions of autonomy and how they are causally inter-related.[[15]](#footnote-15) Her Three Dimensional approach is the final theory of autonomy applied to each case.

In concluding whether or not the woman’s decision can be deemed autonomous, following the application of the different approaches to autonomy, it is possible to analyse whether one or both feminist objectives are met. One feminist objective does not necessarily preclude the other: if both objectives can be satisfied this will grant the woman the respect and involvement she should be given in making such important life decisions within an environment which is not conducive to reproductive freedom, and at the same time will recognise the possible influence of social oppression and the fact that she is not necessarily endorsing her decision.

The use of case studies

Case studies aim to analyse an event or occurrence (here, the decision to sex-selectively abort) in depth and within a real life context, to provide a richer debate and discussion. The approach is holistic in that it focuses on relationships and society and the interconnections between them, aiming to determine why certain outcomes occur.[[16]](#footnote-16) The advantage of employing this research design is to focus on three exemplars in order to address the complexities of the decision to sex-selectively abort. It aims for a more detailed understanding of how and why these decisions are made and facilitates an examination of relationships and social processes where other methods may not be successful.[[17]](#footnote-17)

One of the drawbacks of using actual case studies and attempting to interview women in India would be the difficulty in obtaining access to them because of potential sensitivities. Women in India would be unwilling to discuss such personal decisions with a researcher from another country and culture, and possibly even one from their own culture, particularly as the decision to sex-selectively abort is unlawful. They would be unlikely to feel comfortable enough to be honest as to why they are making their choices and there would also be a language barrier. In addition it would be problematic to make contact with a significant and varied sample: women from all classes, religions, levels of education and habitat. Such an approach could also be considered by the subjects as paternalistic and patronising. The subjects of the study may also be concerned about the possibility of being portrayed as victims or about the consequences an open discussion could have on their community and them as individuals.[[18]](#footnote-18)

The use of hypothetical case studies, however, allows for an exploration of possible scenarios which can be based on several original accounts. It also enables the consideration of cases in different cultural, political and geographic contexts with the aim of facilitating a wider discussion and debate. It protects the identity of those who would otherwise have been asked to participate and who may have feared prosecution or being shunned by their own community for daring to speak of the practice. The researcher is not confined to actual real life scenarios and is able to construct narratives and potential outcomes to promote reflection and deliberation.[[19]](#footnote-19)

The three hypothetical case studies employed in this thesis, are drawn to represent key issues and the variables within each are identified and discussed at the beginning of the chapter.[[20]](#footnote-20) These hypothetical women are based on the only record identified of contact with women who have made these decisions, which is Gita Aravamudan’s book *Disappearing Daughters.*[[21]](#footnote-21) The three exemplars are not exact representations of Aravamudan’s dialogues but are combinations of them, with the aim of illustrating some of the more pertinent variables which may be reflected in the women’s decisions and any adaptive preferences they may have formed. Interviews with other women in podcasts and documentaries also contribute to the illustrations of the hypothetical cases.[[22]](#footnote-22)

The advantages of using hypothetical case studies have been emphasised here but it also has to be conceded that they cannot provide the deeper analysis which could be produced by using empirical studies and in-depth interviews. However, the latter would also be subject to limitations, particularly when attempting to examine desires and motives in relation to a decision which is at present illegal, sensitive and controversial. It may be that the value of the findings from the hypothetical case studies is doubted as the findings cannot be confirmed, nor denied. Further, some may suspect that they are used more for convenience and pragmatism. However, these are more than mere fabricated stories and are founded on real life accounts, developed, explained and interpreted which aim to capture reality more than data retrieved from several possibly superficial interviews.

Reflection and conclusions

The thesis concludes by discussing the findings from the application of the theories of autonomy to the case studies, critically analysing the different approaches to autonomy and the extent to which they accommodate the possibility of internalisation of oppression whilst still allowing for a finding of autonomy where appropriate. I also discuss whether the focus on autonomy is the most valuable way of examining the decision to sex-selectively abort in India given the lack of emphasis on the principle of autonomy in medical decision making. Finally, whether or not the woman’s decision is deemed autonomous, this emphasis on autonomy must not detract from condemnation of the practice of sex selective abortion. This is necessary even in the light of concerns of appearing paternalistic and not engaging sufficiently with multiculturalism. One of the ways to protect and support the woman’s autonomy is to constrain the choices available to her.

**CHAPTER 1**

**THE EXTENT OF SEX SELECTIVE ABORTION IN INDIA AND THE WOMAN’S CULTURAL ENVIRONMENT**

This chapter sets the scene and context for the three hypothetical case studies in Chapter 5. It addresses the low sex ratio in India and the various practices which are thought to be the cause: sex determination which is followed by abortion of the female foetus; anecdotal evidence that female infanticide is still occurring in certain villages, particularly in the northern and north-western states; and neglect of the unwanted female child. Various estimates of the extent of the number of ‘missing girls’ in India range from claims of up to one million[[23]](#footnote-23), to a more conservative five girls per one thousand births[[24]](#footnote-24).

Historically, in more developed countries, male mortality during the period of gestation has exceeded that of female mortality, although this has been reduced as maternal health and nutrition have improved. The normal sex ratio at birth now favours boys with between 105 to 106 boys being born per 100 girls[[25]](#footnote-25). This differential tends to be offset to a certain extent by higher infant mortality for boys, but this also has declined due to economic development and advances in medicine[[26]](#footnote-26). The consequence of these biological and other behavioural factors result in a slight female dominance for most societies but in India, where there is an acknowledged preference for male children, statistics indicate a different pattern and the population sex ratio is male dominant.[[27]](#footnote-27) Therefore, son preference, demonstrated prenatally through sex determination and sex selective abortion has resulted in a low sex ratio at birth.[[28]](#footnote-28) In addition it is demonstrated post-natally through female infanticide and neglect of female children which has resulted in higher female mortality.[[29]](#footnote-29)

**1.1 The extent of sex determination and sex-selective abortion**

Sex determination in India is prohibited[[30]](#footnote-30) and termination on the grounds of the sex of the foetus does not meet the requirements of the legislation governing abortion[[31]](#footnote-31). Despite this there is indisputable evidence that as a result of strong son preference both practices are still prevalent.

Although there are no official figures which demonstrate the extent of sex selective abortion, estimates can be made by analysing the sex ratio figures which are produced by several Censuses of India and also from the National Family Health Surveys conducted by the Ministry of Health and Family Welfare. The latter provide estimates, at national and state level, of fertility, infant and child mortality, the extent of family planning, maternal and child health, the services offered to mothers and their children and the take up of those services. By comparing figures provided in the more recent Surveys it is possible to determine whether or not the sex ratio figures have increased or decreased. Whether this is as a result of the availability of sex determination services and then sex-selective abortion can only be surmised given the lack of specific data but the evidence is quite significant, indicating that this is at least one strong factor.

Findings from the latest report based on the National Family Health Survey (NFHS-3) India of 2005-06, ‘Gender Equality and Women’s Empowerment in India’, indicate that there is a clear decline in the sex ratio of the population aged 0-6 (with more girls dying than boys). The child mortality rate (which is the number of deaths of children aged 1-4 years per 1,000 children reaching age 1 year) is 61% higher for girls than for boys.[[32]](#footnote-32) In addition there has been a decline in the sex ratio at birth for those births which occurred in the five years preceding each survey. The report finds that ultrasound tests are used for sex selection and that the technology is used more among the wealthy section of the population. So females are under-represented among births and over-represented in the group which are born but then die in the first few years of life.

This decline in the sex ratio can be explained by either an undercount of female children, the increased use of technology which can detect the sex of the foetus and then a decision to abort the foetus if it is the wrong sex, or an increase in the mortality of female children because of discrimination against the female and consequent neglect. The last two explanations are probably now accepted as the main reasons for the fall in the sex ratio, given the well documented preference of families for a son and the low status of women in several regions of India.

An analysis of the three National Family Health Surveys (1992-93, 1998-99 and 2005-06) not only shows a downward trend but also demonstrates that the decline accelerated between 1993-97 and 2000-04. The introduction and availability of technology during that period, which can identify the sex of the foetus, is a clear reason for the figures, given that 24% of all pregnancies in the five years prior to the last NFHS received an ultrasound test and the sex ratio at birth for those who received ultrasound testing during pregnancy is 851 compared with 941 for those completed pregnancies which did not use ultrasound testing.[[33]](#footnote-33) A consistent finding has been that it is those women who belong to the highest wealth quintile and who are better educated who are more likely to employ the ultrasound test. It has been hoped and expected that those with more education would be able to influence, and possibly eventually change, the current ingrained preference for a son. Yet wealth and education appear to be of no protection to the female foetus, wealth enabling financial access to the technology, education informing the woman as to how to control the number and sex of her children. The desire for a son seems to be strong no matter what the social background of the woman and her wealth and education are used to achieve her objectives.

There is an ever-growing demand for sex determination tests[[34]](#footnote-34), despite the strict legislation which bans their non-medical use.[[35]](#footnote-35) The new technology has now become available across all regions in India and to all social groups. What has been observed, however, is that those who are economically and educationally advantaged, and of higher caste, are practising sex determination and sex selective abortion to a larger extent. Nevertheless, this is now spreading to all socio-economic groups as a consequence of the desire of the lower socio-economic groups to emulate the higher socio-economic groups and their practices.

Furthermore as more couples are choosing to have a smaller number of children, and contraception becomes more available and acceptable, the pressure is then increased for the desired number of sons within the smaller number of children produced. Evidence from the latest National Family Health Survey (NFHS-3) shows that couples stop procreating when they have had the birth of their last son as they then regard their family as complete, so the preference for a male is resulting in the sex ratios of last births being lower than for other births.[[36]](#footnote-36) With the exception of the two states of Kerala in the South and Mirzoram in the North-East, the sex ratio of last births is below normal in all the states of India which appears to contradict any theory of a north/south divide[[37]](#footnote-37) in relation to approaches to women, at least when analysing the sex ratio for last births[[38]](#footnote-38). The fact that the ratios are so low across India indicates that the preference for a son, which influences reproduction decisions, is widespread and, if anything, increasing.[[39]](#footnote-39)

There is no question that pre-natal sex selection is less emotionally costly than neglecting a female child or carrying out infanticide so if the preference for males persists demand for such services is unlikely to decrease. The provision of ultrasound scanners and practitioners is also a profitable industry so there will always be financial motivation for an increase in their use.[[40]](#footnote-40) What is more, evidence suggests that doctors still support sex selective abortions.[[41]](#footnote-41) Sabu George reports that medical researchers in India have for many years considered foetal sexing as a solution for women who continue to reproduce until a son is born. Many clinics promote sex selection as a method of reducing population growth.[[42]](#footnote-42) Some practitioners claim that they are providing a service for which there is a very high demand and that they are assisting women with control of their own family size and structure.[[43]](#footnote-43) This may be true but, in facilitating a choice which many women feel pressured into taking, this becomes a problem not only for the women but for Indian society as a whole. Probably more telling is that the business of sex determination followed by sex selective abortion is worth over US$100 million per year.[[44]](#footnote-44) There will therefore be little incentive to abide by the law and not provide access to the necessary technology and services.

**1.2 Female infanticide**

As fertility has declined the preference for a male child has prevailed so parents are still attempting to ensure the birth of a son and then his survival. It is thought that prenatal sex determination and selective abortion of females is preferable to either the abandonment of baby girls or female infanticide which were the historical methods of rejecting a female child. Prenatal sex selection techniques seem to be taking the place of post-natal methods which is indicated by increasing masculinity of sex ratios at birth.[[45]](#footnote-45) Thus, it is hoped that although fewer girls are born, if they *are* born then they are more wanted and will tend to survive. However, this may only be the case for families who can afford to undergo sex determination and then abortion. The poorer families may still rely on child neglect and female infanticide to achieve the desired balance to their family. The data confirms that this may be the case.[[46]](#footnote-46)

In Case Study One (Anya), the family, although extremely poor, have found the money to determine the sex of the child Anya is carrying and then pay for a termination. This would still be less costly than giving birth to a girl, and then keeping and providing a dowry for her. Should there be insufficient money for an abortion then the child may be killed or neglected.

The census data of 2001 showed that there was a sharp decrease in the sex ratio of the population aged 0-6. There were 945 females per 1,000 males in 1991 and this figure had fallen to 927 females in 2001. This is also confirmed in the data from the most recent National Family Health Survey that shows that by 2005-06 the sex ratio for those under the age of 7 had fallen even further to 918 females per 1,000 males. The trend has continued and the Census of 2011 found that it had fallen again to 914 which is of considerable concern.[[47]](#footnote-47) It indicates that female infanticide and female neglect also play a large part in the under-representation of females. The next Census is due to be held and published in 2021 and it will be crucial to determine how the figures have changed, if at all.

Despite a general belief that the practice of infanticide is now almost non-existent there are still reports that it is regarded by many as an inevitable fact of life[[48]](#footnote-48). In July 2012 the Guardian highlighted that the preoccupation of most of the population is to survive and not the imbalance in the sex ratio of the population. Articles on the abandonment of a female foetus in a sewage canal or an attempt to bury alive a newborn baby girl had not, as one would expect, resulted in outrage of the readership of the Udaipur Times, but had only prompted one comment[[49]](#footnote-49). The murder, or the abandonment of the female baby immediately after birth, not caring whether it lives or dies, is an alternative to an abortion, perhaps for those who are unable to afford the cost of an antenatal scan and a termination.

Historically the principal reason for infanticide was the system of hypergamy, where women must marry into a social group higher than their own. As this was impossible for the women of the highest caste girls were killed rather than contravene the rules of hypergamy or have the girl remain unmarried. This was particularly prevalent in Northern and North-Western India where infanticide of females born was part of the strategies used by the upper caste groups to improve their socio-economic status. It was better to acquire a dowry from a daughter-in-law than to lose one to another family through one’s own daughter. As the practice of dowry has spread, so has female infanticide which is extending to all caste groups. The lower castes emulate the upper castes in using the dowry system in order to enter the economic networks to further themselves but demands for high dowry payments have also led to the practice of female infanticide, foeticide and female child mortality higher than the norm.[[50]](#footnote-50)

Although rarer than female child neglect and sex selective abortion, and certainly less documented, there is still convincing evidence that at least in some states of India, the practice continues. One study in the state of Tamil Nadu indicates that the practice existed as far back as the 19th century in certain communities.[[51]](#footnote-51) The traditional methods employed to kill the child were using paddy rice with the husk soaked in milk or the use of the poisonous sap of the calotropis plant. More recently, and to avoid leaving forensic evidence, starving the baby to death or inducing pneumonia has been the method chosen. Most female deaths occur during the first seven days of life. It is presumed that the knowledge of what to use, and how to employ it, has been passed down through the generations. It is not certain whether reports of an increase in the practice are merely a reflection of an increased awareness by NGOs and a ring-fencing of funds targeted towards this issue. Contrary to expectations, however, is the reporting of such decisions being made by women in Tamil Nadu who are recognised as being better educated than in other parts of India, and who arguably possess a greater degree of autonomy[[52]](#footnote-52). It also appears to be most prevalent among the dominant caste of the areas within Tamil Nadu, although there is evidence of it also occurring within the lowest castes in the hierarchy. Sabu M. George visited villages in the state during the period 1986 to 1990 and then between 1994 and 1995. He found that as many as 80% to 90% of the victims were girls of a higher birth order, parents often not even attempting to disguise their contempt for such girls, naming them *Venda* which means ‘don’t want’ or *Podum Pennu* which translates as ‘enough of daughters’.[[53]](#footnote-53)

NGOs have responded by threatening families with being reported to the police after pleas against the practice are ignored. However, reports to police generally fail to result in a successful prosecution as there is a lack of enthusiasm in bringing such cases to court, it is difficult to build a strong case against the family, and doctors have been bribed to provide false death certificates.[[54]](#footnote-54)

A consultation organised by the Voluntary Health Association of India and the Voluntary Health Association, Punjab, which focused on the growing problem of female foeticide in the context of growing gender violence, concluded that the practice of female foeticide would not cease while other forms of gender violence continued. This, they held, does not just include domestic violence based on dowry demands and son preference but they also considered that the technology which is available to sex determine a foetus and sex select at pre-conception acts against the interests of women.[[55]](#footnote-55)

The deep irony is that female infanticide is carried out against female babies by women, whether it is the mother or the mother-in-law. The mother, however, may be a victim herself as she could be punished for not producing a son either by being beaten, raped, or even killed so that the husband is able to remarry a woman who may produce a male child.[[56]](#footnote-56) It could therefore be a question of survival in a society where the male is revered and the woman has low status until she produces the much wanted son.

**1.3 Female neglect**

Although there are differences throughout India in the way girls are treated in childhood when compared with boys, the discrepancies in nutritional equity between the two sexes are much higher in the northern states than in southern states.[[57]](#footnote-57) There is also evidence of other forms of neglect such as lack of education and access to health care. This disparity in treatment of one sex over another is a further illustration of the low status of a female in India. The discrimination may not be intentional but could be a result of internalised norms that result in better care being given to sons than daughters, although Das Gupta examines the possibility that the discrimination tends to be targeted at girls of higher birth order which indicates a more conscious discrimination.[[58]](#footnote-58)

The most recent National Family Health Survey (NFHS-3) also indicates excess female mortality after one month of life. Biologically, mortality in infancy is expected to be higher for males than females, in particular during the first month of life and the data from India reflects that expectation, male mortality being 41 compared to 37 for females per 1,000 births during the five years prior to the survey. However, after the one month period the number of deaths of children, aged between 1 and 11 months, is 21 for females, compared to 15 for boys, per 1,000 live births. This trend is also seen in the child mortality rate for children aged 1 to 4 years with the child mortality for girls at 23 per 1,000 and 14 per 1,000 for boys. There is evidence of this in each wealth quintile but data shows that those born into wealthier families are more likely to survive and that those born into poorer families have a higher probability of dying.[[59]](#footnote-59) This may indicate that for the families with limited resources it is a natural reaction to give what is available to the male children rather than the females.

This excess in female mortality, particularly between the years of 2 and 5[[60]](#footnote-60) has been examined by Emily Oster who argues that it can be explained to a large extent by sex differences in vaccination and malnutrition.[[61]](#footnote-61) She pushes for universal vaccination rather than sex biased vaccination and believes that this would have, at least in the short term, a noticeable effect on the mortality rate. The focus on changing the view and status of women, however, remains essential, given that the difference in care and nutrition is merely an indicator of the motive behind the practice. In addition, Oster’s study, although recognised as valuable as it is a reminder of the importance of the biological factors which can influence sex differentials in health outcomes, is also doubted with regard to the extent of that impact. Das Gupta believes that parental preferences based on cultural prejudices are much more significant in influencing the deficit of females.[[62]](#footnote-62)

Girls tend to be breastfed less frequently and for shorter periods. Following the birth of a daughter the older son may continue to be breastfed at the same time, resulting in less nutrition for the newborn daughter.[[63]](#footnote-63) The duration of time the child is breastfed increases by as much as 40% if the child is a boy although they are no more likely to be breastfed than girls.[[64]](#footnote-64) During childhood, and later in adulthood, it is the male who is fed first and with the better food. The possible consequences for the female are anaemia and stunted growth. As that female goes on to reproduce, these same factors complicate pregnancy and can result in maternal and infant deaths as well as low birth weight for those born.[[65]](#footnote-65)

In addition female children receive less health care than males and figures indicate that when daughters fall ill they are not given medical help as often as sons.[[66]](#footnote-66) This also extends to the provision of vitamin supplements: boys are 13% more likely to receive Vitamin A which protects against night blindness, measles and diarrhoea.[[67]](#footnote-67)

One of the fears of any success of the 1994 Pre-Natal Diagnostic Techniques Act, which made it illegal to use ultrasound to determine the sex of a foetus when the purpose was not medical, is that girl foetuses will not be aborted but will then be raised as unwanted children, being the subject of neglect and so vulnerable to infant and child mortality.[[68]](#footnote-68) Recognising that sex selective abortion, i.e. pre-birth sex selection costs less than neglect (financially and presumably emotionally as well), Oster acknowledges that an increase in this practice should result in every girl born being wanted and then not neglected after birth. However, as gender differences in mortality are indicated after birth, in childhood, she believes that those who do not feel strongly enough to abort on the grounds of sex, or may not have access to those facilities, or may not be able to afford them, may still discriminate against the female child during her first years.[[69]](#footnote-69)

Interestingly, a study of the data from the National Family Health Surveys shows that states where prenatal sex selection is increasing have also resulted in a reduction in the proportion of malnourished girls, indicating that those born *are* more wanted and thus more cared for.[[70]](#footnote-70) This possibly helps to substantiate Oster’s claim although it is of little comfort when faced with the high number of female foetuses which have been aborted purely on the grounds of their sex.

Research has demonstrated that the desire to produce sons affects fertility decisions and so alters the size of the family and the sex composition within the family. Those couples with fewer sons are likely to continue to have children until they have reached their optimum son/daughter balance. Although this will not apply to all families the effect of differential stopping behaviour at the family level can result in girls belonging to larger families. Families with girls will become larger as the parents attempt to produce boys. The girls in that family will be unwanted girls and would have a higher risk of dying young.[[71]](#footnote-71)

**1.4 The Indian woman’s social environment**

It would be a mistake to focus on one principal factor which influences the choice to abort a female foetus. The strong preference for a male child is based on several issues – cultural, religious and economic – which combine to create a choice architecture where only one option may be deemed open to the woman, which is that of terminating a pregnancy when the foetus is identified as female. These social influences may vary in extent and nature, depending on the area within which the woman lives. The differences in the sex ratios between the Northern and Southern states in the past have been explained by the different views each area has towards the female and how the household is governed. However the gap in the statistics appears to be closing and there are now disturbingly low sex ratios throughout the country.[[72]](#footnote-72) This may indicate that the influence of some of these factors will be present, no matter where in India the woman lives and whichever system she lives within.

1.4.1 The dowry system

For many the dowry system, prohibited but still thriving, is at the heart of the problem and perpetuates the view of the daughter as an economic liability.[[73]](#footnote-73) The Dowry Prohibition Act[[74]](#footnote-74) came into force in 1961, yet the practice persists and, if anything, is becoming more entrenched each year.[[75]](#footnote-75) As both the groom’s family and the bride’s family are potentially liable to punishment under the Act there is little motivation to complain from either family and consequently there are very few arrests under this legislation.

In Northern India marriage rules are exogamic so spouses must be unrelated with regard to kinship and also by place of birth or residence. Marriage is used as a way to acquire land or other economic assets so the importance to the family is crucial. Women become objects of exchange as the marriages are arranged on the principles of hypergamy[[76]](#footnote-76) and the dowry system.[[77]](#footnote-77)

For those within the North Indian system those who are giving the wife are regarded as socially inferior to those who take the wife and consequently a dowry is the main marriage transaction, the amount of which can be of immense concern to the female’s family. An average dowry can total up to five times the annual income of the family and is believed to be a principal cause of poverty among certain groups or in certain areas.[[78]](#footnote-78)

In contrast the Southern model holds that the ideal marriage is between cross cousins and the descent group is endogamous[[79]](#footnote-79). Females are more likely to be married to those from familiar households closer to home. Marriage and dowry are much reduced in importance given that they do not have the same effect on social relationships as in the Northern system.

Despite the legislation prohibiting the dowry system, dowry payments in India are increasing. In Europe the practice of dowry became less popular following industrialisation but modernisation in India did not affect the role that caste plays in deciding one’s status.[[80]](#footnote-80) It is hoped that if and when the caste system starts to disappear then that will result in a decline in dowry payments. There is thus a role for the government in attempting to reduce the importance of caste. As barriers to opportunities regarding education, employment and ownership of property are reduced through legislation, with the consequence of income equality throughout the caste groups, the expectation is that the practice of marrying within particular castes will die out.[[81]](#footnote-81) In turn, as less importance is then placed on the caste of the person one marries, the dowry payments should reduce as they also become less important as a way of social climbing.

There is no question that the birth of a daughter leads to considerable expense in the form of a dowry and even beyond marriage as the natal family are expected to continue to provide gifts to the groom’s family in order to ensure their daughter’s wellbeing and respectability.[[82]](#footnote-82) Yet there is little evidence of any meaningful attempts to cease the tradition. Dowry deaths[[83]](#footnote-83) continue to be reported[[84]](#footnote-84), as do incidences of mistreatment of the bride by the husband’s family when not satisfied with the gifts from her family. There have been marches and calls for dowry-free weddings so perhaps the tide is turning with the younger generation helping to bring about change. If girls are no longer considered a burden to the natal family and then a burden to the husband’s family if she does not meet their expectations, then gradually a woman’s status will rise. The dowry culture has been blamed as the main cause of female foeticide as less wealthy parents attempt to avoid many years of saving for the marriage of a girl child.[[85]](#footnote-85) It does not seem to apply to any one section of society as it remains a status symbol for the wealthy and has become a matter of honour for the poorer groups, who are striving to achieve a higher social status. The dowry system will therefore affect the decision of *Bishakha* in Case Study Two as her family will already have followed the tradition of dowry for many decades, albeit providing much higher amounts to marry off daughters. For those families with substantial property there is also the fear that the son-in-law will demand a share of their property.[[86]](#footnote-86)

1.4.2 The traditional status of women

The 2015 Human Development Report of the United Nations Development Programme placed India in the category of Medium Human Development. It ranks 130 out of 188 listed countries on the Human Development Index, and 130 out of 188 countries in the Gender Inequality Index.[[87]](#footnote-87) This is a slight improvement on previous years yet still demonstrates that within India the woman’s status is unacceptably low.

The different social systems in the North and South have tended to reflect the status of the woman and so influence the preference for a male child, and in turn the resulting gender imbalance, as women choose to abort female foetuses. The two systems may still be relevant to the woman’s choice but to a more limited extent as sex ratio figures at birth and under the age of seven no longer indicate a noticeable difference between the two regions and social systems. The differences are still worth noting here, however, given that the Northern systems and customs appear to be moving to the Southern states so the influences remain but are not as confined to one part of the country.

Within the North Indian system the woman is coming into one family from another and hence is often regarded as a threat. In order that she identifies her interests with those of her husband and his family, she has to be re-socialised. As she becomes more aligned with her husband’s family her own parents are regarded as outsiders and so can expect little help from her.[[88]](#footnote-88) She is in effect prevented from assisting her birth relatives, even if they are in need.[[89]](#footnote-89) Within this patrilineal group even the relationship between husband and wife could be seen as a threat to the solidarity of the group and so often the sexes are segregated. The chastity of the female is regarded as paramount in order to maintain the honour and reputation of the males within the group and so sexuality is strictly controlled, the woman even being secluded. In accordance with a patrilineal system the lineage is only continued through the male.[[90]](#footnote-90) All this contributes to the low value attributed to a female child. She will be costly, will move away and will be unable to provide financial and emotional support to her natal family.

In addition, arranged marriages at a young age have been regarded as advantageous in the North. Despite an amendment to the Child Marriage Restraint Act 1976, which raised the legal age to marry from 15 to 18 for women, illegal child marriages still occur in some rural parts of the country. Not only will the marriage produce alliances between groups, in addition the difference in ages between the bride and groom discourages the potentially threatening emotional bond. From the point of view of the bride’s family, the earlier she leaves to become the financial burden of another family, the better. Similarly, the longer the daughter is unmarried then the more likely it is that her dowry payment could increase. An earlier marriage also means that the girl or woman will have more reproductive years to produce male heirs.[[91]](#footnote-91) Her reproductive autonomy is thus compromised given the extreme pressure she will receive from her husband’s family to reproduce until she has given birth to the required number of males. Although at this stage her own wishes will be sublimated to those of her husband’s family, not only will she have been socialised to accept this, but further, those desires will become her own interests. In producing a large family she is able to create her own social group and will become less isolated.[[92]](#footnote-92) In addition her status will rise within the new family as the producer of male heirs. This point is exemplified in *Anya’s* case study. She has been sold as a bride at a very young age and has been pressurised since by her new family to produce sons. The interests of her husband’s family have become her own interests as her well-being depends upon her status improving as she produces more male heirs. She will be unlikely to form any emotional bond with an older husband who is also prepared to share her with his brothers and so her only potential allies will be her children.

In contrast, although not necessarily applying to all states in the South, there is more equality in the South Indian system. As chastity is not regarded as important the woman tends to be less controlled. There is also not the need to repress the female and re-socialise her and any emotional ties between husband and wife are not considered a threat to the group. The woman in the South consequently has relatively more autonomy, is part of the workforce, more able to move around and will be able to access family planning clinics in order to control her fertility. Decisions are more likely to be made with partners rather than the strong influence from senior female members of the family.[[93]](#footnote-93) It is hoped that this difference in approach to the woman will influence gender preference but the data now seems to be less clear in reflecting this.

The low status many women possess will affect how she regards herself in respect of her own worth, it will affect her confidence in her own views and it may affect whether or not she wishes to bring a female child into the world, knowing her daughter’s fate will be similar to that of her own. It will certainly influence her choices. This will be particularly relevant to the relational autonomy theories considered in Chapter 4 and the conditions to be met in order to be deemed autonomous.

1.4.3 The value of the woman as a source of labour

Again, there are differences between the South and the North in the way women are viewed as a source of labour, or at least these differences were identified in the past. In the South of India, which has an agrarian system, the female appeared to have greater value as she was required to work in the fields to produce rice. As female labour was relatively scarce her value increased.[[94]](#footnote-94) However, in the North of India, and in the wheat growing areas in particular, agrarian development has had a serious effect on women’s participation.[[95]](#footnote-95) Technological change was brought about by the Green Revolution[[96]](#footnote-96) which had welcome consequences in increasing food production but also had the effect of excluding women from their traditional roles as work they had previously carried out was mechanised and then given to men. They were thus pushed to the bottom of the labour hierarchy.[[97]](#footnote-97) This disparity between the two areas may be disappearing, however, as the traditional system of agriculture in the South is now being replaced with cash crops. This has led to a higher stratification of wealth similar to that in the North and as a consequence the dowry system has also spread, as has the northern culture and attitude to women.

Rural women have few opportunities to work in urban areas as they are generally uneducated and unskilled. Educating women can result in them being able to contribute to the household income but few are encouraged to complete higher education as it is an investment which will benefit the future husband’s family, and not the natal family, at least in the North.[[98]](#footnote-98)

For the poorer families there is little incentive to educate a daughter as her primary role is to be married and reproduce. Her employment prospects are very limited unless she can be used for agricultural labour but there is little need for formal education for that role. The literacy rate for women varies between states but is generally low throughout India when compared to that for men. In the four large Northern states it is lower than the average nationally.[[99]](#footnote-99)

1.4.4 Inheritance issues

Historically in many parts of India there has been a resistance to giving land rights to daughters of the family.[[100]](#footnote-100) As sons usually remained at the family home, and provided more financial support for parents than daughters, it made economic sense to bequeath land to sons. The restricted inheritance rights for women were therefore indicative of their limited autonomy and unequal status in Indian society. Although there have been some reforms and improvements there may still be an unwillingness to leave land to a daughter who has moved away from the parental home and who is not expected to provide monetary aid to her parents.

The law relating to inheritance and succession is governed generally by the Indian Succession Act 1925, which gives every Indian an entitlement to equal shares on inheriting property. The Act thus ensures equality between sons and daughters. The exceptions to the Act are Hindus, Sikhs, Jains, Buddhists and Muslims who are governed under separate laws of succession.

Between 1976 and 1994 the states of Kerala, Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra[[101]](#footnote-101) amended the law at state level to give women equal inheritance rights over ancestral property.[[102]](#footnote-102) These state-level reforms which applied to Hindus, Jains, Skiks and Buddhists, have been directly linked to an increase in the age of marriage and also a rise in education of females, education levels of women and a higher probability of women inheriting land.[[103]](#footnote-103)

The Hindu Succession Act of 1956 was amended in 2005 to improve women’s land rights. It now provides equal property rights for both sons and daughters, although this cannot be applied retrospectively.[[104]](#footnote-104) Women have a legal claim to inherit the ancestral agricultural land of their parents as parents legally have to divide their land among all their children, rather than just among their sons as was previously the case.[[105]](#footnote-105)

Muslim personal laws do allow polygamy and although there are certain laws which protect women’s rights the traditional attitudes still prevail.[[106]](#footnote-106) The Muslim Shariat Act 1937 applies to all Muslims except for those in the state of Jammu and Kashmir where customary law prevails.[[107]](#footnote-107) The daughter receives half the share of the son and the widow is entitled to the same share as the daughter so there are unequal shares between male and female heirs. In practice daughters and widows rarely receive the share of property due to them, particularly so in poor families.[[108]](#footnote-108)

Generally, therefore, although the position is gradually changing, the low status of women is reflected in the legal position on inheritance and helps to perpetuate the view that a daughter is worth much less than a son. In addition, one unintended consequence for women is that if parents have a strong son preference but are then made to give equal inheritances to daughters as well then this raises the cost of the daughter and could lead to higher child mortality.[[109]](#footnote-109)

1.4.5 Economic security

For an ageing population with little pension provision[[110]](#footnote-110) it is natural that elderly parents will rely on their past earnings and transfers from their children and so the relationship between parents and children is important for security in later life. Less than ten per cent of the elderly in India receive pension income. If the main financial support is received from the family then as the number of children per family decreases the focus on the one or two male offspring becomes more and more understandable.[[111]](#footnote-111)

Various government programmes do exist to help with poverty of the elderly but the number covered is still low. A means tested pension is provided by each state but the rules regarding eligibility and the levels of benefit provided vary between states. The National Old Age Pension Scheme from the central government supplements the state pensions.[[112]](#footnote-112) However, again many are excluded as this is available to those who are destitute and aged 65 and over and the criteria for eligibility is set by each state according to resources available.[[113]](#footnote-113)

Another related issue is that even when pension provision is present (for example through the Employee’s Provident Fund Organization), it very often fails to achieve its objective as there are withdrawal options for members before they reach retirement age. One of these options is the funding of the marriage of a daughter. So even if a couple attempt to provide for themselves after finishing their working life, they know that this amount will be eaten into because of the cost of the marriage of a daughter. The withdrawal can be up to 50% of the employee’s share of the contributions, indicating the potential cost of such an event.[[114]](#footnote-114) This demonstrates a further reason why males are preferred and females can be regarded as a liability.

1.4.6 Small family culture

Concerns about the population in India have led to a push to control family size and this could also exacerbate male preference. The Family Welfare Programme aims for the population to choose to have a small family in order to stabilise the population.[[115]](#footnote-115) The National Population Policy aims to reduce the Total Fertility Rate to replacement level.[[116]](#footnote-116) When the normal size of a family was large and there was limited access to contraception then the son preference had less influence on sex ratio. Couples could continue to bear children although female infanticide, abandonment of newborn girls and neglect of daughters were all methods used to reduce the number of children and increase the male-female ratio within the family, particularly when poverty was a driver. However, when fertility rates are low, either by choice of the couple or when encouraged by the state, then female births have to be prevented in order to produce the desired number of sons.[[117]](#footnote-117)

Related to this is the two-child norm which was introduced in 1992 and aimed to reduce population growth in the country. The policy is active in certain states to control the size of families and encourages parents to limit the family to two children by creating disadvantages for those with more than two.[[118]](#footnote-118) The disadvantages include being disqualified from panchayat council positions or denial of certain public services[[119]](#footnote-119) and Government welfare programmes.[[120]](#footnote-120) The policy operates at both state level and centrally.[[121]](#footnote-121) Although not as formal and restrictive as the one-child policy in China the norm nevertheless serves to reinforce son preference and thus sex-selective abortion.[[122]](#footnote-122) Women have been removed from local office for not abiding by the norms and studies have shown that the fear of this removal has resulted in husbands forcing wives to abort their third child or to give the child up for adoption. Alternatively they have divorced or deserted wives who have gone on to produce a third child.[[123]](#footnote-123) The policy has prevented many women from participating in politics at the local level but has also led to increased discrimination against the female child. As a result, given the pressure on women to produce at least one male child within the two children allowed her, this policy has resulted in an increase in pre-natal sex determination tests and the abortion of female foetuses.[[124]](#footnote-124) Further, the two-child norm policy has been regarded by many as a violation of ‘basic human rights, as anti-women and anti-weaker segments of society.’[[125]](#footnote-125)

1.4.7 The role of religion

The majority of the population in India follow Hinduism as their religion, 13.4% follow Islam, 2.3% Christianity, 1.9% Sikhism, 0.8% Buddhism and 0.4% Jainism.[[126]](#footnote-126) An analysis of the data included in the National Family Health Surveys[[127]](#footnote-127) did not indicate a clear link between religion and an increased male/female ratio at birth so as an influential factor it may be limited. Although the ratio had increased significantly in Punjab, which has a high proportion of Sikhs, it had also increased in Himachal Pradesh where the population is predominantly Hindu.[[128]](#footnote-128) This seems to indicate that it is a national, cultural issue, rather than a religious one.

Some of the traditions within the religions, however, will affect gender preference, albeit not on religious grounds specifically.[[129]](#footnote-129) For example, one Hindu tradition requires sons to perform certain religious functions such as lighting the funeral pyre when cremating parents.[[130]](#footnote-130) They also perform *pind daan,*[[131]](#footnote-131)to help in the salvation of the souls of their parents who have died.[[132]](#footnote-132)

Approximately 47% of Muslims in India live in the three states of Uttar Pradesh, West Bengal and Bihar. They make up a majority of the local population in Lakshadweep and Jammu and Kashmir but a substantial number of Muslims are also found in the eastern states of Assam and West Bengal and in the southern states of Kerala and Andhra Pradesh. The ideologies of Islam in relation to the view of women are reflected in the values of north Indian kinship but the patterns of kinship existed before any contact with Islam so are not driven by religion. Therefore there is doubt that Islam is a strong factor in relation to the regional variations in sex ratios.[[133]](#footnote-133) The Muslim religion condemns abortion more strongly than the Hindu religion and there is no evidence of a significant tendency for Muslims to carry out sex selection.[[134]](#footnote-134) The fertility rate is higher among Muslims but opinion is divided as to the reasons for this, some believing that it reflects socio-economic conditions rather than religious views, others that it is a result of being unwilling to use contraception. Marriage at an early age[[135]](#footnote-135) also means that the period of fertility is much longer than that for Hindu women.[[136]](#footnote-136)

It is worth returning to the so-called North/South divide at this point and in particular analysing the data provided by the latest Census in India, that of 2011. The data does not provide individual state figures for sex ratios at birth, rather it provides an overall sex ratio within the country, and a sex ratio of those aged 0-6. Comparisons are made with data from previous Censuses, providing an overview of trends in sex ratio over the years and across the states. Distinct patterns have been noted. The states with the highest value of overall sex ratio were Kerala (1084), Tamil Nadu (995) and Andhra Pradesh (992), all in the South of India. In contrast, the states with the lowest sex ratio were Haryana (877), Jammu & Kashmir (883) and Sikkim (889), all Northern or North-Eastern states. The lowest child sex ratio (0-6 years) is indicated in the states of Haryana (830), Punjab (846) and Jammu and Kashmir (859), again all Northern states, although the figures for Haryana and Punjab have risen slightly since the Census of 2001.[[137]](#footnote-137) These figures seem to substantiate to a certain extent the claims made of the significance of the cultural differences between the North/North-Eastern states and those in the South and how they affect son preference. However, overall, the number of states and union territories with a child sex ratio below 915 has increased from nine to fourteen between 2001 and 2011 and this decline in the sex ratio is witnessed not only in North/North-Eastern states but also in some of those in the South, such as Kerala, Karnataka and Andhra Pradesh and in the West such as Maharashtra and Goa. So sex selective abortion, child neglect and/or female infanticide appear to be practiced in a cross section of states. This either contradicts or diminishes the claim or indicates that the practices of some states are transferring to others.[[138]](#footnote-138)

**1.5 Government policies**

The low sex ratios in India have served to promote recognition of the need for change regarding the way Indian society views women in particular and their role within that society. The solutions advocated have varied and have been of limited success, suggesting that further, different approaches are required.

Previous commentaries on the low sex ratios at birth, as a result of sex selective abortion and infanticide, have recommended improved education and have submitted that increases in socio-economic status would help to resolve the problem. More recent findings, however, have indicated that it is the wealthier and more educated who are availing themselves of sex determination services and then sex selective abortion as they have the requisite finances and access to information.[[139]](#footnote-139) Increased education has not resulted in women turning away from the practice, rather they are using it to further their own immediate best interests in controlling their fertility and assisting them to give birth to the desired number of sons.

Further and more accurate monitoring of the use of sonography and abortion on the grounds of sex will help and hopefully eventually remedy the gender imbalance but these measures do not go to the heart of the reasons why the practice persists. Many have called for ways to increase the status of the female in Indian society, arguing that social change seems to be the only way a real difference can be made.[[140]](#footnote-140)

With this long-term aim in mind, several programmes have been initiated in certain villages or districts where the problem has been identified as particularly severe. Policy makers, presumably learning from studies which have demonstrated that sex selective abortion results in financial gains to the family, have provided financial incentives to produce a girl child, or subsidies to those who give birth to daughters.[[141]](#footnote-141)

Some states have already instigated financial incentive programmes which are designed to discourage the preference for sons and to encourage investment in a daughter. Sinha and Yoong’s study examines one such programme in the state of Haryana, *Apni Beti Apna Dhan*, which translates as ‘Our Daughter, Our Wealth’.[[142]](#footnote-142) Since 1994 those parents who are eligible,[[143]](#footnote-143) and where the woman gives birth to a girl, have been offered a financial incentive of an immediate cash grant and a long-term savings bond, as well as further bonuses for education. The bond can only be redeemed when the daughter reaches 18 and is unmarried so there are conditions attached. Although data is limited there are signs that the programme has had a positive effect on the sex ratio of living children. However there are inconclusive results regarding whether preferences by mothers in relation to producing female children have in fact changed.[[144]](#footnote-144) Therefore, although it may be seen as a successful policy tool with regard to female disadvantage it is debatable as to whether it is as successful in changing social and cultural preferences. A further programme was launched in Haryana in 2006, again offering incentives and awards, with conditions attached and similar schemes in other states such as Rajasthan and Andhra Pradesh.

In Tamil Nadu, as early as 1992, the state government had launched the ‘Cradle Babies’ Scheme, where families were asked to leave their unwanted female babies in cradles provided for that purpose, rather than to kill them. In 1992 77 girls were abandoned in these cradles, some then adopted, some cared for by NGOs and some not surviving.[[145]](#footnote-145) The scheme was criticised as it made it only too easy to discard the female newborn and thus detracted from attempts to make more fundamental changes.

Another example of attempts at social change is the ‘Nawanshehar model’ in Punjab where the authorities in Nawanshehar have claimed that their efforts raised the sex ratio in 77 villages. Shaming tactics were used and a team of informants were used to track pregnancies. Villagers were also paid to report any woman they suspected of considering an ultrasound or abortion. Although there were favourable results in terms of increasing the sex ratio it came at considerable cost to the women who were penalised. Their privacy was invaded and the result could be further ostracism by the family.[[146]](#footnote-146)

A centrally sponsored scheme was introduced nationally in 2007, called *Balika Samridhi Yojna,[[147]](#footnote-147)* which provided for a grant of 500 rupees following the birth of a girl, the money to be invested in a savings account, redeemable at 18 but with further cash deposit bonuses as the girl completes different stages in education. The number of those who have joined the scheme is unknown, as is the long-term impact on families, particularly as the girls approach marriageable age.[[148]](#footnote-148)

There are few formal social safety nets in India, such as pension schemes, and this also serves to reinforce son preference as families rely on sons to provide for them in old age. The National Old Age Pension Scheme of 2007, which is aimed at the elderly poor, may also assist in reducing the preference for a son.[[149]](#footnote-149)

Perhaps surprisingly it is the campaigning on a television programme, presented by Aamir Khan, a well-known actor, which has more effectively addressed the issue of sex selective abortions.[[150]](#footnote-150) It focussed on Rajasthan, which had one of the worst sex ratios in 2011, with 883 girls for every 1,000 boys.[[151]](#footnote-151) The programme succeeded where interest groups and non-governmental organisations have failed in that it caused the government in Rajasthan to plan fast-track courts to deal with those who carried out such abortions.[[152]](#footnote-152) Licences of some sonography centres were cancelled and others were issued notices. There are also plans to install trackers at sonography centres so that inspectors can monitor how many female foetuses are in fact born and survive[[153]](#footnote-153). Jensen and Oster[[154]](#footnote-154) also found the media to have had a considerable impact on son preference so media outreach could be a powerful tool in the struggle to change inherent perceptions of the low worth of a female child.

In addition to policies established in India there are international policies such as the United Nations Programme of Action in 1994[[155]](#footnote-155) which was adopted by the International Conference on Population and Development in Cairo[[156]](#footnote-156). This Programme made it clear that the use of technology to establish the sex of the foetus and also pre-natal sex selection are regarded as harmful and unethical and should be prevented[[157]](#footnote-157). Such international policies should lend support and weight to any national attempts to make changes.

The United Nations Population Fund (UNFPA) has also worked with other national partners to train parliamentarians on population and related issues and has sponsored several public-awareness campaigns through the media. Medical officers selected to implement the Pre-Natal Diagnostic Techniques Act 1994 at state and local levels were made more aware of the sensitive nature of the issues. In addition UNFPA led a group of partners to create a national advocacy strategy to address the structural issues underlying gender discrimination. Accepted by the central Government in India, it is also expected to be adopted and put into operation by state governments.[[158]](#footnote-158)

It is clear that financial incentives may reap some reward but will do little to change the ingrained values. Furthermore, education appears to have made minimal inroad into changes in attitude and perhaps needs to be more specifically targeted at the reasons why women are still so ready to abort or neglect their own sex. Government policies are heading in the right direction but much more remains to be done. Nevertheless, research on the decline in son preference in South Korea seems to give hope that the Indian government’s approach of attempting to change societal norms and disseminate different values is the right one.[[159]](#footnote-159) It was found that rather than just increasing female education what works is a combination of media campaigns, changes in legislation, the sponsoring of women’s organisations and financial incentives.[[160]](#footnote-160)

**Summary**

The harsh reality for many households in India is that having a son rather than a daughter could mean the difference between poverty and being able to rise above the poverty line. A daughter’s income will move to the parents of her husband and as a consequence it is not considered worthwhile to invest in her education and possibly other aspects of her well-being when a son will earn more and his income will remain with his parents[[161]](#footnote-161). The use of sex selection could mean that the parents do not have to save or go into debt to finance a daughter’s marriage through the dowry system, an amount that could be catastrophic for a poor family. The sobering truth is that a sex selective abortion could increase per capita household income by about seven percentage points, the results varying depending on the age of the household, the levels of education of the parents, different religions and castes and whether living in rural or urban areas.[[162]](#footnote-162)

Given that it is in one sense rational to prefer sons over daughters as daughters are much more expensive, then it has been submitted that it may be better to assist parents to avoid producing a girl which would then result in fewer girls being abandoned, neglected or even killed.[[163]](#footnote-163) However, this is to accept the current position as inevitable and to take a passive stance to male preference. Thankfully there are still demands for more active deterrence rather than a mere encouragement for change, through continuing legal prohibitions as well as policies aimed at combating poverty, and education to inform women of their rights. There must also be attempts to annihilate the cultural attitudes that are so ingrained.[[164]](#footnote-164)

Given the struggle to survive for the majority of the population, and the financial repercussions on the family in the event of the birth of a girl, it is a rational reaction, albeit an unpalatable one, for families to avoid, if possible, the birth of a female. When the birth of a girl is not celebrated but is a cause for sympathy, yet the birth of a boy involves celebrations throughout the village, when an unwanted baby girl may be given the name ‘Vikalp’ which means ‘Alternative’ or ‘Mafi’ which means ‘Sorry’, then there has to be a credible call for change from those who have influence.[[165]](#footnote-165) When raising a girl is compared to “watering a plant in someone else’s house”, then equality for women still has a considerable way to go.[[166]](#footnote-166)

**CHAPTER 2**

**THE LEGAL FRAMEWORK GOVERNING REPRODUCTIVE RIGHTS IN INDIA**

Chapter 1 examined the extent of sex-selective abortion in India and provided a brief analysis of factors relating to the Indian woman’s social environment which could impact on the decisions she makes and her decision-making skills. The low status attributed to females, and the low worth with which she is regarded generally, could result in the woman adapting her preferences in line with those views and choosing to sex-selectively abort, notwithstanding that such abortions are illegal. This chapter examines the legal framework regulating abortion and sex determination. The legislation on abortion in India is similar to, and is based upon, the U.K. legislation, but the background to the two statutes differs, including the extent the role feminism played in both countries. As patriarchy and the possibility of oppression is the lens through which the woman’s decision to sex-selectively abort is examined, a discussion of the role of feminism in India is pertinent, as is its relevance to the position on abortion.[[167]](#footnote-167)

Although feminism in the U.K. did not directly result in the Abortion Act in 1967, which was introduced by the Liberal MP, David Steel, the legislation was backed by the Abortion Law Reform Association, which was made up of 25 national groups, including traditional women’s organisations. Feminism in India had little influence on the Medical Termination of Pregnancy Act of 1971. In addition, although there is no right to abortion in the U.K. there is nevertheless a perception by some of abortion as a right or an entitlement which is not present in India.[[168]](#footnote-168) This difference in focus may help to explain the lack of debate in India on the morality of abortion (which is still prevalent in parts of the West) but also the absence of a focus on autonomy evidenced in the jurisprudence on reproduction.

**2.1 The extent to which feminism has influenced the woman’s status in India**

Although feminism in India has a long history, it has been slow to gain real strength as a movement, despite the fact that the perception of gender is at the heart of many of the country’s conflicts.[[169]](#footnote-169) The growth of feminism can be divided into three principal periods, with colonialism playing an important part. Like feminists in other countries and societies feminists in India have fought for equal wages, equal access to health and education as well as equal political rights, but they also have issues which are particular to the patriarchal and hierarchical society of India, such as laws of inheritance, the practice of Sati,[[170]](#footnote-170) violence in relation to dowry, child marriage, infanticide of females and, more recently, sex-selective abortion.

Surprisingly it was men who were the instigators for change for women and the first phase of feminism in the early nineteenth century.[[171]](#footnote-171) Indian males who had been educated in the West and who had become acquainted with European liberalism re-appraised the inequalities and oppression in their own culture.[[172]](#footnote-172) The drives for reform included attempts to abolish the practice of Sati, to allow widows to remarry, to prohibit child marriage, to regulate the age of consent, to reduce illiteracy and to ensure property rights.[[173]](#footnote-173) These struggles for the emancipation of women were initiated by Indian men (such as Raja Ram Mohan Roy,[[174]](#footnote-174) Ishwar Chandra Vidyasagar,[[175]](#footnote-175) Keshav Chandra Sen[[176]](#footnote-176) and Behramji Malabari[[177]](#footnote-177) among others), but the British were reluctant to interfere with Indian customs for fear of destabilising their rule.[[178]](#footnote-178)

However, social reforms intended to improve the status of women were threatened in the late 19th century by nationalist movements that rejected Colonial interventions intended to modernise the Hindu family in particular. One faction, led by the radical Bal Bangadhar Tilak[[179]](#footnote-179), wished to give the fight for freedom priority over social reform. There was antagonism to concessions to Western ways, in particular reforms for women. Others, who were politically more moderate, wished to combine the two struggles. As disillusion with the British grew, however, the two factions merged and the push for improved conditions and furthering the status of women became part of the new society it was hoped would be achieved through independence.[[180]](#footnote-180)

As politics changed and there was a realisation that militancy was not the answer, women were then brought into the cause by Mahatma Gandhi who included them in the non-violent civil disobedience movement against the British Raj and so legitimised them as a group. Gandhi’s philosophy of non-violence (*Ahimsa)* was built on moral power, regarded as a necessary alternative to physical force, given the superior military powers of the British. This moral power was compared to the pure and gentle but firm strength of women or the moral power of womanhood (*stree shakti*).[[181]](#footnote-181) Women thus made an important contribution to the nationalist efforts against colonial rule and women (or rather the middle class, upper caste woman)[[182]](#footnote-182) and the nation were inextricably linked in the psyche of the population. The Indian woman became a symbol of nationhood and the images of women as goddesses and mothers certainly enhanced their sense of involvement.[[183]](#footnote-183) However, as Nussbaum points out, the symbol was merely a tool employed to further male ends of Hindu nationalism and unfortunately the symbol has also served to objectify women which may have led to an increase in violence against them.[[184]](#footnote-184) During this time organisations such as the All India Women’s Conference and the National Federation of Indian Women emerged and by the 1920s localised women’s associations were being created. These organisations campaigned for equal political rights, civil rights and personal law reforms.

 Independence was gained in 1947 and, although the various women’s associations continued to operate, the feminist movement was less active during this period as nationalist agendas on building and improving the nation took priority. Much faith was placed in the country under Jawaharlal Nehru and his commitment to the ideals of democracy and socialism.[[185]](#footnote-185) This, together with the adoption of the Indian Constitution in 1950, which appeared to secure equality for groups previously regarded as inferior, lulled women and others into a sense of security as to their equality and rights. In fact it was one of the main goals of the framers of the Constitution to remove deeply entrenched inequalities that had been based on caste and gender.[[186]](#footnote-186) Thus, Article 14 states that the state will not deny any person equality before the law or the equal protection of the laws.[[187]](#footnote-187) Article 15 prohibits state discrimination on grounds of religion, race, caste, sex, or place of birth.[[188]](#footnote-188) Women were referred to in the Constitution as the ‘weaker section’ of the population and this attitude, although patronising to women, helped them to be treated as equals (at least on paper) and meant that they did not have to struggle for women’s equality rights, in contrast to women in the West. However, as is evident throughout the thesis, these theoretical rights have been slow to be acknowledged in practice as India has struggled with supporting multiculturalism without sidelining women’s rights.[[189]](#footnote-189)

Thus, by the 1970s the rights in the Constitution were not reflected in the social structures and ideologies within India and women were once again challenging inequalities. A new autonomous Indian Women’s Movement emerged and expanded.[[190]](#footnote-190) It has been successful in achieving law reforms such as laws on domestic violence and the criminalisation of practices previously regarded as socially acceptable, such as dowry,[[191]](#footnote-191) sati,[[192]](#footnote-192) and female foeticide.[[193]](#footnote-193) There was also recognition that there were other inequalities still in place, not just in relation to gender but also regarding religion, caste and region among others. This led to a realisation that ignoring other types of oppression, in order to focus on gender as the only category of oppression, should be avoided. This is still a challenge to feminism today.[[194]](#footnote-194) Following the crisis of secularism during the 1990s,[[195]](#footnote-195) the Indian women’s movement realigned its ideologies so that it was still striving for gender equality but within a framework which acknowledged cultural and religious diversity as it wished to avoid any perceived alignment with the Hindu right.[[196]](#footnote-196)

Further reforms occurred during the late 1990s and the early 2000s,[[197]](#footnote-197) and superficially there currently appears to be legal equality. Yet there are many areas in India where women are still suffering from inequality and oppression and where campaigning by the feminist movement is essential and on-going. Literacy rates for women are much lower than those for men, women are more likely to leave the education system earlier than men, they are less well represented in the workforce and there is the recently much-publicised issue of violence against women in various forms.[[198]](#footnote-198) Despite legal prohibitions sati and child marriage still exist, as do the practices of dowry and polygamy.[[199]](#footnote-199) Female infanticide is still reported, particularly in rural districts, and sex-selective abortion is prevalent, predominantly in areas where women are wealthier and better educated.[[200]](#footnote-200)

The main obstacles preventing women from obtaining full equality are the traditions and customs that have been an accepted part of Indian culture for centuries and so have become institutionalised. The woman in India is raised and conditioned to revere her father and to be devoted to her husband and this ideal has been romanticized in the media, legend and folklore.[[201]](#footnote-201) The subservience of women is part of Indian tradition, as is the lauding of women’s self-effacement. So despite the fact that women have been granted rights in the Constitution and in other legal provisions, therefore possessing at quite an early stage what feminists elsewhere were still striving for, the problem is that women do not make use of these rights. This may be because they are not aware of them, because it is contrary to the image of the subservient woman, or because asserting or claiming them is too complicated and expensive given the bureaucracy involved.[[202]](#footnote-202) If asserting or exercising their rights also involves having to fight a male in the family then the woman’s unwillingness to do so is exacerbated. It is more likely, however, that Indian women constantly have to balance their rights as a woman with their duties within their culture and religion. As rights are granted to individuals there may be contradictions with group rights of minorities.[[203]](#footnote-203) Jain identifies the difficulties in India in accommodating the interests of different religious and cultural communities that may compete with each other, which will include the rights of women within those groups.[[204]](#footnote-204) Religious laws often conflict with the rights provided for in the Constitution and the government appears reluctant to challenge those religious personal laws which are primarily biased against women. There is a lack of political will to interfere with traditional family values, therefore these prevail and social justice for women is sacrificed to political convenience.[[205]](#footnote-205)

 Although criminal law is uniform throughout the country, and is administered by the state, the civil law in India is heavily influenced by the religious systems of law, despite a succession of demands for a uniform civil code. Each religious body has power in the areas of marriage, divorce, property and child custody, areas which are particularly pertinent to women but which tend to discriminate on the grounds of sex and caste.[[206]](#footnote-206) Muslim and Christian women have challenged the religious personal laws but there is a political disinclination to interfere with such laws in order to retain votes from influential religious leaders. One example is the *Shah Bano* case of 1985 where Shah Bano challenged, in the Supreme Court, the Muslim law that held that her husband did not have to pay her alimony after he divorced her following 43 years of marriage.[[207]](#footnote-207) The Supreme Court found in favour of Shah Bano, holding that her husband had to make the alimony payments under Indian criminal law.[[208]](#footnote-208) This resulted in claims by Muslim clerics that the religion of Islam was being attacked and a certain outrage that a Hindu court should be able to interpret Islamic law.[[209]](#footnote-209) Yielding to pressures from the Muslim community the Congress Government backed a new Bill that overruled the *Shah Bano* decision.[[210]](#footnote-210) Religious groups are thus appeased for political gain but at the cost of rights to women.[[211]](#footnote-211) This demonstrates that sometimes there is a tension between the fight for gender equality and an attempt to politically recognise other cultures and minority rights.[[212]](#footnote-212) Enacting standard laws, such as a Uniform Civil Law, would be likely to lead to further conflict as the interests of minorities would be side-lined, so innovative approaches have had to be employed by women’s groups to improve the rights of women while at the same time trying not to undermine cultural or religious diversity.[[213]](#footnote-213)

Another major concern is that violence against women in India is thought to be increasing and the prejudice against women is seen initially before the birth of the female when sex-selective abortion is carried out. In some areas, if the female is not aborted, then she may be the victim, once born, of female infanticide. If she survives to childhood she may be neglected with respect to nutrition and health care[[214]](#footnote-214). When she reaches womanhood studies have indicated that she may then be subjected to physical and psychological violence.[[215]](#footnote-215) Nussbaum argues that these forms of violence, or the constant threat of violence, interfere with a woman’s capabilities throughout her life.[[216]](#footnote-216) If the woman has been taught to accept that violence or the threat of violence is her fate then she may demonstrate adaptive preferences that adjust to her lower status, and she may not recognise that her rights have been violated.[[217]](#footnote-217) If she does not acknowledge that her right to bodily integrity has been breached then this may affect her choice to abort.[[218]](#footnote-218) A right not to abort is part of her right to bodily integrity but she needs an awareness of this and confidence to assert that right. Alternatively she may be making a conscious decision to abort to avoid a female child being born into the same environment. This is still an adaptive preference but based on what she knows is the future for her child.

Many of these concerns can be traced to centuries-old traditions and cultural relativists may argue that to criticise another state’s culture and way of life is to disrespect it. The use of the doctrine of cultural relativism[[219]](#footnote-219) could therefore threaten arguments against traditions which involve some violence against women, particularly violence within the family, and this possibility has been recognised for some time by Nussbaum and Sen.[[220]](#footnote-220) If forms of violence are linked to ideas of culture then there can be a reluctance to criticise, reflecting a respect for difference. But, they argue, differences are not all worth maintaining and those that discriminate and harm others *should* be rejected.[[221]](#footnote-221) Some principles are transcultural, and one of those must be the right to bodily integrity.

The next section addresses the limited contribution feminism in India made to the abortion law and then later the legislation prohibiting sex-determination, which aims to inform about the attitude of women in India to abortion and what it means for them.

**2.2 Background to the legislation on abortion in India**

There are distinctions between the U.K. and India regarding the history of feminism and its main objectives and this is also demonstrated in the extent to which feminism drove the legislation on abortion in both countries. Abortion was legalised in the U.K. under the Abortion Act 1967 as a result of many years of campaigning, by women’s groups and the medical profession, against unsafe and illegal abortions but also as a recognition, albeit limited, of women’s reproductive rights. Abortion on the grounds of the sex of the foetus for non-medical reasons was not explicitly prohibited but it is generally considered that as a reason it would not satisfy grounds under s.1(1)(a) to (d) and so would be unlawful.[[222]](#footnote-222) The social ground under s.1(1)(a) would be the most likely to be argued, the woman claiming that the continuance of a pregnancy where the foetus is known to be female would involve injury to her mental health because of pressure from her family to give birth to a son.

In India abortion was legalised in 1971 by the Medical Termination of Pregnancy Act, legislation which was very similar to the U.K.’s 1967 Act.[[223]](#footnote-223) More recent legislation has prohibited pre-natal sex determination under the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. Despite this many women in India are choosing to test for the sex of the foetus and then to terminate the pregnancy because the foetus is female.[[224]](#footnote-224) It is therefore essential to examine the background to the legislation on abortion in India and in particular the feminist contribution to the debate given that this is a choice made by women against their own sex, which appears to be inimical to feminist ethics.

During the pre-colonial period abortion was not regulated in India but it became illegal in the 19th Century.[[225]](#footnote-225) Similar to the default position in the U.K. and based on British law at that time, in India if an abortion is caused[[226]](#footnote-226) then it is an offence of Causing Miscarriage under the Indian Penal Code, Act No. 45 of 1860, § 312.[[227]](#footnote-227) There is a possible defence within the section if the miscarriage is carried out in good faith to save the life of the woman. Punishment of whoever causes the miscarriage (including a woman who causes her own miscarriage) is up to three years in prison, a fine, or both, unless the woman is ‘quick with child’[[228]](#footnote-228) in which case the imprisonment extends to seven years and a fine.[[229]](#footnote-229)

The severity of the Penal Code led to large numbers of women dying from illegal and unsafe abortions. The concerns as to the number of premature deaths and the fact that the population was constantly expanding resulted in a change of stance by the government. In 1965 a United Nations mission to India evaluated the country’s population policy and recommended that abortion should be legalised. The government also appointed a committee, chaired by Dr. Shantilal Shah,[[230]](#footnote-230) to address the feasibility of legalising abortion and this committee recommended legislation on abortion in its report of 1966, the aim being to reduce the number of illegal and unsafe abortions.[[231]](#footnote-231)

The Medical Termination of Pregnancy Act was passed in 1971, founded on the principles of the British 1967 Act, with declared objectives of helping those who were victims of rape, those who became pregnant as a result of contraceptive failure and to reduce the risk of giving birth to incapacitated children. The Act thus provides that in certain circumstances an abortion can be carried out lawfully. It permits abortion if the pregnancy endangers the woman’s life, causes grave injury to her physical or mental health, is a consequence of rape or a failure of contraception, or is likely to result in the birth of a child suffering from serious physical or mental abnormalities. Abortions should be performed in a government hospital and there is a time limit of 20 weeks. If the pregnancy is more than 12 and less than 20 weeks then two medical practitioners are required to form the opinion, in good faith, that the abortion is a medical necessity.[[232]](#footnote-232) Only one medical practitioner’s opinion is required for a pregnancy less than 12 weeks.

In the Lok Sabha[[233]](#footnote-233) the majority supported the Bill but they insisted on making the point that the real objective was population control even though there was no mention of this in the objectives in the Act’s opening paragraph.[[234]](#footnote-234) As is the case in respect to similar legislation in most countries the Act was *not* an acknowledgement of the right of the woman to choose therefore, or a fundamental right to induced abortion as the abortion legislation is sometimes perceived. To some extent it did share the aim of promoting public health as in the U.K[[235]](#footnote-235) but it was more a means to an end, imposed on women’s bodies, for the political objective of controlling the population.[[236]](#footnote-236) This perception, either as a right, hard fought for, or as a medical procedure imposed, is important to women’s attitudes to the act of abortion and will affect any sense of ownership of the legislation or alternatively detachment from it which in turn will influence the extent to which it will be observed.

In 2002 the Indian Parliament enacted the Medical Termination of Pregnancy (Amendment) Act [[237]](#footnote-237) and the amended Rules and Regulations in 2003[[238]](#footnote-238). The objective of the new Act was to decentralise the regulation of abortion services in order to permit District Committees to approve and regulate abortion facilities.[[239]](#footnote-239)

The abortion law in India is fairly liberal yet many abortions still take place illegally, either to bypass monitoring, or because there are not enough approved facilities, or to avoid the restrictions imposed on the reasons permitted for an abortion under the legislation. One study has estimated that providers who are working outside registered and government-recognised institutions carry out 6.7 million unreported abortions each year.[[240]](#footnote-240) What is more they are often performed by untrained staff in unhygienic conditions, failing to satisfy the initially stated objective of reducing the number of illegal and unsafe abortions. It is clear that the only grounds which could be used by a woman wishing to abort because she is carrying the unwanted sex are the failure of contraception or she could claim that to give birth to a girl would cause grave harm to her mental health. The abortion would have to be carried out at less than 20 weeks gestation which may be possible as an ultrasound scan would identify the sex of the foetus before that date. There is no evidence of whether or not the doctors in the registered clinics are strict in keeping to the required grounds being met. However, if women are choosing to attend unregistered clinics in order to abort on the grounds of sex then this is of concern, given the possible unsafe facilities and lack of expertise.

Although the Medical Termination of Pregnancy Act has been generally regarded as a liberal piece of legislation, Jesani and Iyer submit that this is because it has been generously interpreted as a result of the pre-occupation with population control.[[241]](#footnote-241) Should socio-economic and demographic pressures change then the interpretation could become much more restrictive. Thus, legislation is not driven by women’s claims to rights to control their reproduction: their choices are mainly determined by the medical profession, prompted by government policy. [[242]](#footnote-242)

Unlike the position in the U.K. where the law on abortion did partly derive from feminist politics, the women’s movement in India was not fully established at that time and there were no strong feminist groups pushing for liberal legislation on abortion.[[243]](#footnote-243) Rather it was an issue of population control driven by the belief that poverty was a direct result of over-population.[[244]](#footnote-244) Despite feminism gaining in strength in India over the following years the issue of abortion is still not a main part of their agenda.[[245]](#footnote-245) This could be explained by the dearth of anti-abortion campaigning and so the lack of a need to fight against it.[[246]](#footnote-246) This lack of pro-life campaigning could be indicative of the attitude to the unborn child in general but also a certain acceptance of what is now the status quo.

Despite this lack of debate between pro-life and pro-choice groups, as evidence has mounted that large numbers of abortions are being carried out on female foetuses, feminists have campaigned against sex selective abortions.[[247]](#footnote-247) However, if arguments are based on the rights of the female foetus this may be considered anti-feminist as such rights would directly compete with the right of the woman to choose. In addition, an argument based on the right to life of the female foetus can also be submitted for any foetus and so would jeopardise the lawfulness of abortion.

Alternatively, if the abortion laws in India were to be framed or regarded differently, in terms of a right to self-determination, then logically one would expect claims that the state has a corresponding obligation to support the right by providing conditions that allow for safe abortions to be available to all women.[[248]](#footnote-248) No claims on this basis have been brought to court to date despite insufficient safe facilities being provided throughout India. Recent statistics suggest that the number of illegal and possibly unsafe abortions is still unacceptably high and the reasons submitted are the limited number of adequate facilities, lack of education and inaccessibility. Illegal abortions thus remain the cause of a high rate of maternal mortality.[[249]](#footnote-249)

Although women have not brought actions claiming a right to the provision of abortion facilities women have brought cases to court regarding the current time limit of 20 weeks allowed for an abortion under the legislation. There is no discretion on the time limit, even in cases of rape or where there is evidence that the child would be born with serious mental or physical abnormalities. Petitions on this basis have resulted in mixed messages from the courts, some girls or women being granted permission for an abortion, others being forced to continue with the pregnancy.[[250]](#footnote-250) The Act permits an exception to be made under section 5 of the 1971 Act if it is immediately necessary to save the life of the pregnant woman. However, there is no provision for a termination of pregnancy over 20 weeks if the foetus is abnormal and in such cases the woman has to take the matter to court. Judgments have been inconsistent and this has led to a challenge on the constitutional validity of the 20 week limit on the grounds that the time limit violates Article 14, the Right to Equality, Article 19, the Right to Freedom, and Article 21, the Right to Life, within the Constitution of India.[[251]](#footnote-251) Although the petition is still being heard the proposed draft Medical Termination of Pregnancy (Amendment) Bill 2014 allows for an abortion after 20 weeks but under certain conditions, including where the pregnancy involves substantial risks to the mother or child, or if the woman’s pregnancy is the result of rape.[[252]](#footnote-252)

However, a liberal law on abortion, in a society where women have little control over their reproductive choices, may not serve to promote women’s rights.[[253]](#footnote-253) Rather, it will serve the purposes of others who aim to use abortion as a means to an end: population control.[[254]](#footnote-254) The ‘choice’ to abort for many women has become a ‘compulsion to choose’ to do what is socially sanctioned, which is the termination of a female foetus.[[255]](#footnote-255) This point is also in accordance with the observations of Thaler and Sunstein who have noted how powerful social influences can be, how people learn from others, being predisposed to follow the herd even when those beliefs are false or are based on misconceptions.[[256]](#footnote-256) Therefore if the majority of the community believe that it is acceptable to terminate a pregnancy because the foetus is female this influence will override the legislation which does not allow it.

**2.3 Legislation on pre-natal sex determination**

Before the decision to abort is made the woman will need to discover the sex of the foetus. Diagnostic techniques, which had the legitimate purpose of detecting genetic abnormalities, metabolic disorders, chromosomal abnormalities and certain congenital malformations or sex-linked disorders, were misused to identify the sex of the foetus but then terminate the pregnancy when the sex was not the one desired.[[257]](#footnote-257) The reported abuse of the technology led to campaigns, by women’s groups and health movements, for legislation to prevent sex determination for sex selection, indicating that at this stage the women’s movements *were* aiming to influence policy and legislation. The first state to legislate was that of Maharashtra,[[258]](#footnote-258) which imposed a ban on the use of diagnostic techniques for sex detection.[[259]](#footnote-259) Further campaigns at national level resulted in the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994,[[260]](#footnote-260) which made it illegal to use ultrasound or amniocentesis to determine the sex of a foetus when it was not related to sex-linked disorders.

Section 4 (2) states the purposes for which pre-natal diagnostic techniques are to be used: for the detection of chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathies, sex-linked genetic diseases, congenital anomalies and any other abnormalities or diseases which may be specified by the Central Supervisory Board.[[261]](#footnote-261)

Under Section 4 (3) pre-natal diagnostic techniques can only be used if the person qualified to do so is satisfied that the pregnant woman is over 35 years old, has undergone two or more spontaneous abortions, has been exposed to potentially teratogenic agents, has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease, or any other condition specified by the Central Supervisory Board.[[262]](#footnote-262)

It is stated in Section 5 that the woman should not be informed of the sex of the foetus by words, signs or in any other manner.[[263]](#footnote-263) This is enforced further by Section 6 which prohibits determination of the sex of a foetus by the use of pre-natal diagnostic techniques, including ultrasonography. There is also a prohibition on advertisements relating to pre-natal determination of sex,[[264]](#footnote-264) and the punishments relating to such offences are of up to three years’ imprisonment and a fine up to 10,000 rupees.[[265]](#footnote-265) Similar punishments are imposed on those who request pre-natal diagnostic tests to be carried out on a pregnant woman, and these are increased for subsequent offences.[[266]](#footnote-266) Section 24 presumes that the pregnant woman has been coerced by her husband or a relative to undergo such techniques unless there is proof to the contrary.[[267]](#footnote-267) To an extent this protects the woman, as the default position is that it is the husband or relative who has forced the woman to undergo the test, and so the woman would avoid punishment. However, it is submitted that this section will not be used in the manner intended, there would be little investigation of the woman’s choice and very often a proxy consent will be taken from the husband or relative on behalf of the woman.[[268]](#footnote-268) In addition it would be relatively easy for the coercer to avoid punishment by claiming that it was the woman’s decision and so deny responsibility.[[269]](#footnote-269) Not only does this section portray the woman as a potential victim, it also assumes that the woman is not autonomous in her decision-making, certainly in relation to this particular decision. In this respect the Act appears paternalistic, it denies the woman agency, stripping her of her autonomy in relation to a decision about reproductive choice, an area where she alone should be in control. Rather, it should put any clinic on notice as to the possibility of coercion or undue influence and more rigorous investigations should be undertaken regarding the decision.

It is interesting to compare this with what would be required in the U.K. for a valid consent to treatment. In the U.K. there is a presumption of capacity under Section 1(2) of the Mental Capacity Act 2005,[[270]](#footnote-270) but an irrational decision (such as a decision to abort because the foetus is female) would trigger further scrutiny of the decision. The patient would also have to have understood information relevant to the decision and the decision must be made voluntarily. Although an irrational decision would not necessarily result in a conclusion of lack of capacity this would at least be a safeguard. In India it is almost the reverse position. There is a presumption against autonomy (although little done to redress that) but the choice to sex-selectively abort would not appear irrational and would not trigger the further scrutiny. There appears to be a safeguard but it has little impact. The elements required for a valid consent such as capacity, information and voluntariness do not appear to be addressed.

The objectives of the Indian 1994 Act are clear and there is little ambiguity as to the policy behind it, yet it has proved difficult to enforce, primarily because of inertia and the lack of staff available to monitor what is happening in clinics.

In 2000, health activists, concerned that the 1994 Act was not being enforced, filed public interest litigation in the Supreme Court demanding revision of the 1994 Act to include pre-conception tests and calling for further amendments to give teeth to the original legislation. Advocates were United Nations organisations, including the United Nations Population Fund (UNPFA), the United Nations Children’s Fund (UNICEF), the World Health Organisation (WHO) who worked with international NGOs,[[271]](#footnote-271) and India’s Ministry of Health and Family Welfare. Together these organisations achieved an increase in media interest, created networks, trained partners, carried out research and supported civil society groups. Amendments were enacted in 2003 and the Act was renamed as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act 2002.[[272]](#footnote-272)

The more comprehensive Act makes it clear under Section 6(c) that sex selection is not allowed before as well as after conception. It further inserted Section 3A which prohibits sex selection on a man or woman or on any tissue, embryo, conceptus, fluid or gametes. This includes chromosome separation techniques used on sperm to increase the probability of producing a male foetus. Section 22 on the prohibition of advertising is expanded to include prohibition of advertisements relating to pre-conception as well as pre-natal determination and now includes communication as well as publishing or distributing advertisements, in particular referring to the use of the internet.[[273]](#footnote-273)

It gave the legislation more teeth by inserting Section 3B which prohibits the possession of, or sale of, any ultrasound machine or similar, to anyone not registered under the Act.

The previous Section 4 on the use of pre-natal diagnostic techniques, following the amendments, has been made more onerous by requiring that there are complete records kept regarding techniques carried out and whether the reasons for the use of these satisfy the conditions listed in Section 4(3). Of course this would then need to be followed up and monitored.

Those who can be charged include those who run a diagnostic unit for sex selection, those who carry out the sex selection test, anyone who advertises sex selection, mediators who may refer pregnant women to have the test and even relatives of the pregnant woman.[[274]](#footnote-274) The presumption of the pregnant woman’s innocence remains, once again a recognition of the possible coercion by family members to force her to request the test.[[275]](#footnote-275) This appears to be an acknowledgement of the woman’s possible vulnerability to such pressure but without any separate legislation or procedural safeguards to address this. It is a presumption of a lack of autonomy but with nothing in place to enable self-determination.

The Act specifies the penalties for violations of the Act, which are a term of imprisonment of up to three years and a fine of up to 50,000 rupees for a first offence and a term of imprisonment of up to five years and a fine of up to one lakh rupees (100,000) for a subsequent offence.[[276]](#footnote-276)

Further to the changes to the 1994 Act, the Central Supervisory Board, which was established under the 1994 Act,[[277]](#footnote-277) has approved the proposal to ban portable ultrasound sonography machines except where they would be used for diagnostic purposes, i.e. hospitals and other similar institutions.[[278]](#footnote-278) This move was aimed at their use in rural areas where the sex ratio has fallen dramatically, arguably as a result of these machines being employed to determine the sex of a foetus. In addition radiologists would only be allowed to register at two places. As every ultrasound machine is registered against a radiologist it is hoped that this will also improve the situation. All qualified doctors would have to undertake a certification course at the Medical Council of India before they would be able to use an ultrasound machine and it would also be mandatory for radiologists. The courses would be delivered by institutions accredited and recognised by State governments.[[279]](#footnote-279) As there is a clear correlation between the number of sonography clinics registered and the sex ratio of a particular state it is a further attempt to make real, effective changes.[[280]](#footnote-280)

There is no doubt that when the new technology came onto the market, primarily intended to assist in identifying possible serious genetic diseases, it was regarded as valuable. However, its misuse has meant that it not only reflects the gender inequality of the country using it but it also perpetuates the same. Certainly, it ensures a male child in a less abhorrent way than female infanticide or female child neglect but the technology, which was once welcomed, is now more of a weapon to be used against the female foetus.[[281]](#footnote-281)

**2.4 An examination of the failure of legislation and policies**

In March 2006 the first successful prosecution under the 2002 Act occurred in Haryana, and led to a conviction with a prison term. A doctor and his assistant were sentenced to two years’ imprisonment and a fine of 5,000 rupees.[[282]](#footnote-282) There had previously been a conviction in 2003 in Punjab but the doctor concerned was only fined 1,000 rupees by the court.[[283]](#footnote-283) Given that the original Act prohibiting the misuse of sex determination came into force in 1994 it is astounding that this was the first instance of the enforcement of this legislation given the widespread reported practice of sex determination.[[284]](#footnote-284)

It appears that the strict legislation in place has little weight and most of those who either wish to avail themselves of such services, or wish to provide them, ignore the provisions of the Act with little concern as to the consequences. What influences a person to abide by the laws of their country is a study in itself and beyond the scope of this thesis but for various reasons there are many in India who are prepared to act, and who are permitted to act with impunity, in complete contravention of legislation which has been introduced for the good of the female sex in particular and the country as a whole.[[285]](#footnote-285) What evidence suggests as incontrovertible is that many in India do not consciously or overtly agree with the legislation, so ingrained is the belief that the male is superior and so preferred to a female child. If the practice of sex determination and a consequent sex selective abortion is not regarded as wrong then the legislation will have little influence on decisions made. If there is no belief in the legislation then prohibitions will be ignored.[[286]](#footnote-286) Visaria points out that women have internalised the patriarchal values to such an extent that even when they make statements which appear to give the requisite value to their daughters they sound unconvincing as it is clear they still desire more sons.[[287]](#footnote-287) What is evident is that laws are futile without the corresponding backing and support of the community.

This is also evidenced in the poor enforcement of the legislation. Although authorities are appointed at state level to monitor and enforce the law, to work with the director of health services, an officer of the law and a member of a women’s organisation, they are overstretched and under-staffed. They also have insufficient funds to take action against the perpetrators. Given the extent of the poor administration in the clinics, missing documentation, forms not signed and badly maintained records, monitoring and follow up of suspicious practices is understandably rare. With no real fear of appropriate sanctions clinics will continue with poor practices.

There are mixed messages on attitudes to the legislation from the medical professionals who may also be concerned with their commercial interests. They have certainly not taken a strong ethical stance against the use of the technology.[[288]](#footnote-288) This may not be of surprise if we acknowledge that doctors are products of the same societal values that are causing couples to abort female foetuses because they do not value women to the same extent as they do men. Yet they are also in a position of power in relation to the use of the relevant medical technology and so have a responsibility to avoid abuse of the same, in particular when this is underpinned by clear legislation against abusive practice.[[289]](#footnote-289)

Monitoring of breaches of the Act is also necessarily difficult given that the offence takes place within the clinic and both parties have an interest in non-disclosure: doctors have a financial interest in continuing the practice, and the women attending the clinics are invariably coerced by members of the family, or subconsciously by social pressure. It is also quite easy to divulge the sex of the foetus, using gestures or codes, without having to record the information.

Yet, one study indicates that to some extent the Prenatal Diagnostic Techniques Act 1994 has been successful in that without the legislation the child sex ratio would have declined even further and more female foetuses would have been aborted.[[290]](#footnote-290) However, those who responded more readily to the ban on sex-selective abortions tended to be the villages which already had the weakest son preference and so presumably did not require as much convincing as those areas where the values and beliefs were more ingrained. This suggests that those who do not agree with the legislation, or believe that it is mere lip service to prohibition, will not abide by it. It may be that Nandi and Deolalikar’s belief that better enforcement of the legislation could in fact lead to a halt, or even a reversal, in the child sex ratio is over-optimistic and unrealistic.[[291]](#footnote-291)

In addition, there are concerns that the prohibition of sex selective abortion could have the effect of increasing mortality for the unwanted females which are born.[[292]](#footnote-292) It is argued that if sex-selective abortion were to be permitted then it would increase the survival rate of females as those born would be wanted by the parents.[[293]](#footnote-293) Prenatal discrimination, they submit, is preferable to postnatal discrimination.

Furthermore, such criminalisation can result in punishment of the victims themselves, the potential mothers. They are in a difficult position as they are being pressurised by society to produce sons but then if they take steps to ensure that they give birth to a male they could be punished by the state. If they are then left with few alternatives other than to use illegal providers of the services their health becomes compromised and they could even be pushed into infanticide.[[294]](#footnote-294) Yet decriminalisation would validate the prejudice of society against the girl child and remove any protection women have by seeking to hide behind the law to avoid being coerced into a sex selective abortion.[[295]](#footnote-295)

In addition, should the woman be denied sex selection and then proceed to give birth to a female child, she will have to have a second, third or fourth pregnancy in order to produce a son and obtain the security in old age only he can provide. Given that early marriages are common in India then repeated pregnancies are possible which in turn significantly increase the risk of maternal mortality and morbidity.[[296]](#footnote-296)

These real concerns with the current legislation, and also the fact that more advanced diagnostic tests are becoming available which can be used at home and will therefore be unregulated, perhaps indicate that non-legal options are preferred including campaigns and public initiatives against sex selection. These are more likely to result in a sea change in attitude towards women, if successful.

**2.5 Consent to treatment in India**

Requiring an individual’s consent to treatment is evidence of a respect for that person’s autonomy and their right to bodily integrity. A doctor requires consent from the patient for her treatment, whether the treatment is for sex determination using ultrasound or the termination of a pregnancy. The requirement for consent is recognised in U.K. common law and in India the principle of autonomy is also protected by Article 21 of the Indian Constitution on the right to life and personal liberty. However, the common law application of the law on consent is not as developed in India. In India the relationship between doctor and patient is a contractual one which only applies in the U.K. when a patient is receiving private treatment. The patient is therefore considered a consumer and the doctor a provider of services.[[297]](#footnote-297) There is no legal definition of consent in Indian law although

s 13 of the Indian Contract Act 1872 states that ‘two or more persons are said to consent when they agree upon the same thing in the same sense.’[[298]](#footnote-298) This implies more than submission and it is understood that consent requires competence, that there is sufficient disclosure of information, that there is understanding, and that the consent is given voluntarily.[[299]](#footnote-299) Most principles regarding consent to treatment appear to derive from U.K. authorities but there seems to be a difference between what is required legally and what occurs in practice.[[300]](#footnote-300) Although the Medical Council of India has established guidelines indicating where consent is required in writing this generally applies to operations and for other treatments implied consent is sufficient. Some of the case law indicates that there is insufficient respect given to the autonomy of the individual and generally it is conceded that there are some grey areas regarding consent to treatment in India.[[301]](#footnote-301) For example, in the U.K. if the patient is a competent adult she would be the only person who could provide a valid consent to her treatment, whereas there are no clear principles on proxy consent in India and generally the doctor is protected when he or she proceeds with treatment after taking consent from a relative of the patient.[[302]](#footnote-302) Indeed, research has demonstrated that there is considerable variation in the process of giving informed consent, the need for information and the extent of paternalism within the doctor-patient relationship, as well as in the role the family and community play in the process.[[303]](#footnote-303) Of the women interviewed for DeCosta et al’s study, who were participating in clinical research, the majority had allowed their husbands or mother-in-law to decide for them.[[304]](#footnote-304) There therefore seems to be lip-service paid to the respect for autonomy with what happens in practice very much out of line with what is supposedly required by law, and indicating more of a focus on protection of the medical staff against litigation.[[305]](#footnote-305)

**2.6 Jurisprudence and reproductive rights**

There are no cases related specifically to sex-selective abortion but there are several cases that indicate the attitude of the judiciary to women’s reproductive rights.

*Cehat and Ors. Vs Union of India,[[306]](#footnote-306)* was a public interest case regarding the Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. The claim was that the Act was not being implemented properly and that this had led to a fall in the female child sex ratio. The Supreme Court criticised the central and state governments for failing to apply the Act and it passed various orders for its effective implementation. As detailed above, the 1994 Act was amended in 2002, during the course of the petition, to increase the awareness to the public that there should not be discrimination between the male and female child. It also directed that there should be increased maintenance of records and reports to be made available to the public.[[307]](#footnote-307) This addressed sex-selective abortion but in doing so arguably held against women being able to control their reproduction. It therefore addressed the potential discrimination against a female foetus but in doing so curtailed the ability of a woman being able to sex-determine and then abort her female foetus. That said, that is the same position in other jurisdictions so the Indian woman’s rights in relation to that aspect of her reproduction are no more interfered with than elsewhere. The strong line by the Court was required as the legislation which was the subject of the case was targeted at the problem of sex-selective abortion and evidence indicated that the phenomenon was still prevalent in many parts of India. To ignore the claim would therefore have appeared to condone the practice.

However, in the case of *Javed vs State of Haryana and Ors,[[308]](#footnote-308)* the ‘two child norm’ policy of the government in some states was upheld even though this policy could also result in a change to the female sex ratio: couples who adhered to the policy would wish to ensure that at least one of their two children was male. The challenge was that a coercive population control provision in the Haryana Panchayati Raj Act 1994 was unconstitutional as it disqualified those with more than two living children from holding specific offices in panchayats. The focus in this case was on ‘the laudable purpose – socio-economic welfare and health care of the masses’ and was held to be ‘consistent with the national population policy.’ The court held that the provision was not arbitrary, unreasonable or discriminatory. It also pointed out that it had not chosen to go as far as China which had a compulsory one child policy. Rather India had merely provided ‘minimal disincentives’ without actually penalising procreation beyond a certain limit. The policy was described as promoting family planning and the court went on to state ‘it has to be remembered that complacence in controlling population in the name of democracy is too heavy a price to pay, allowing the nation to drift towards disaster’.[[309]](#footnote-309) The autonomy of the individual or even the couple reproducing was clearly regarded as second to population control, mirroring the original impetus for the abortion legislation in 1971. If population control is achieved at the expense of the female sex then that seems to be acceptable.

This is also indicated in the case *State of Haryana v Smt Santra.[[310]](#footnote-310)* The Supreme Court found in favour of the claimant, who had conceived following a sterilisation that had been performed negligently, but the reasoning in the final judgment was based on the need for population control.[[311]](#footnote-311) ‘[I]n order that [the Indian nation may enter] into an era of prosperity, progress and complete self-dependence, it is necessary that population is arrested.’ The seeming acknowledgement of the importance of the woman’s autonomy in finding in favour of the claimant merely masked the underlying focus on population control once more.

This can be compared to case law in the U.K. where the control of pregnancy is regarded as part of the rights of the woman over her reproduction.[[312]](#footnote-312) So, in *Paton*, a woman’s husband could not prevent his wife from having an abortion if her decision came within the grounds of the Abortion Act 1967. [[313]](#footnote-313) Precedence was given to the right of the woman to control her body. Similarly, in *St George’s NHS Trust v S,[[314]](#footnote-314)* it was held that a competent woman can refuse treatment even if it would mean the death of the foetus she was carrying, placing her autonomy above the interests of any others, including the unborn child. The interests of the country would certainly not be given precedent over the woman’s own interests.[[315]](#footnote-315)

There is thus a clear distinction between the focus in the case law: in India the emphasis is on the need to control the woman’s fertility, in the U.K. the woman’s autonomy and right to self-determination in relation to her reproductive choices is at the heart of each decision, albeit within statutory limitations in the case of abortion.

Ironically, should the emphasis change in India to that of the woman’s right to autonomy, the result could be a claim that the grounds of the current legislation in India act against her right to self-determination and that a woman should be permitted to terminate on the grounds that the foetus is female. Yet this would be taking the woman’s right to control her pregnancy even further than has been accepted elsewhere as even in the more liberal countries there have been limits imposed on the grounds for abortion that are considered to be lawful.

There is an inevitable tension between the limited rights of the unborn child (which will include specifically here the rights of the female foetus) and the rights of the pregnant woman over her own body and where the line is to be drawn. In India at present the rights of the woman may be more in conflict with the needs of the nation and its requirement of population control. This disparity in focus has been noted extensively, particularly in the international arena, where in the 1994 International Conference on Population and Development in Cairo there was a distinct move from the population control discourse to a focus on the more feminist aims of reproductive rights and gender equality.[[316]](#footnote-316) A move to a language of rights can be instrumental in seeking change from government and governmental organisations. This may be what is required in India in order for the State to be effective in protecting women from discrimination and to promote their wellbeing. This would not only involve enforcing the law on sex determination and sex-selective abortion but would also mean focusing on autonomy and ensuring that it is part of decision making. The entrenched social norms of Indian society need to be challenged and equality measures put in place.[[317]](#footnote-317) In recognising reproductive rights much more weight has to be placed on the autonomy of the woman and the need for her to be allowed to make an informed decision, without coercion or influence from family or the wider community. Only then would the abortion legislation work in favour of women (those who have to make reproductive decisions about their own bodies) rather than the Indian nation.

**2.7** **A need for autonomy to be at the heart of decision-making and more explicit legislation on the prohibition of sex-selective abortion**

The legislation in India is clear on the legality of sex determination for a non-medical purpose.[[318]](#footnote-318) Even so, Section 24 presumes that the pregnant woman has been coerced into undergoing a sex determination test. Despite an open recognition that this may occur, there are no entrenched procedures to ensure that the decision *is* that of the woman. In that respect the State fails the woman. The messages in the legislation are conflicting. It foresees the woman being coerced (and so her consent would not be autonomous) but then proceeds to do nothing about that possibility in the Act. It is indicative of the attitude to autonomy in general. The need for a valid consent should be incorporated into the Act to give it further weight and to clarify exactly what is required and who is permitted to provide the requisite consent.

The position on aborting a foetus on the grounds of its sex is less explicit, in both India and in the U.K. This is not surprising given that the Indian legislation was based on that of the U.K. The U.K. did not envisage sex selective abortion as a problem and, given that there is little evidence of preference for one sex over another, it is unlikely to be a significant threat to the demographics of the U.K. in the future. It is also unlikely that India foresaw its current crisis at the time it enacted the Medical Termination of Pregnancy Act in 1971, yet sex selective abortion has already had a serious impact on the balance of the population.

The law in both countries does not directly prohibit gender specific abortions but prohibits abortions carried out without two doctors having formed the view, in good faith, that the health risks of continuing the pregnancy outweigh those of the termination and that the grounds of the Act are met. Aborting on the basis of the foetus being of one particular sex does not meet any of the grounds in the 1971 Act. Yet, in India, there appears to be considerable discretion afforded to doctors and little censure should a sex-selective abortion be performed. In effect state institutions are complicit in the practice given the lack of monitoring, the dearth of prosecutions, and the widespread availability of scanners that facilitate the screening to determine the sex of the foetus that results in a termination if the foetus is female. A clear message that the practice is wrong is needed from the State and this could be in the form of a specific section stating that sex selective abortion is prohibited under the Act.[[319]](#footnote-319) This is preferable to having to construe whether the grounds allowed within the 1971 Act would cover sex selective abortion and the opportunities for a favourable interpretation therein. If the choice is taken away in certain terms then there is hopefully a chance that women will not be expected to make that choice and that attitudes will change over time.

As is the case with the diagnostic legislation, the requirements for a valid consent to treatment and the importance of autonomy are not stated or made reference to, nor are they the subject of the limited case law on reproduction. These should be established whatever the reason for the abortion. Admittedly there is no requirement for a valid consent articulated in the U.K. Abortion Act but the common law position on this is now well established and the principle of bodily integrity is an essential element to medical training and practice. In India, obtaining a patient’s consent prior to treatment is accepted as necessary, but there is nothing explicit in the legislation which requires this, nor what is required for a *valid* consent, i.e. that the patient must have capacity, must be given sufficient information, and must be making the decision voluntarily. In addition, in practice doctors appear to be satisfied with implicit consent or even consent provided by others.[[320]](#footnote-320) The importance of respect for autonomy, and therefore the fact that a valid consent must be obtained from the individual, has to be made central to any medical decisions. Although it is generally believed that the legal position on sex selective abortion in India is clear the limited monitoring of the practice and the unwillingness to impose legal sanctions on those involved enables women to choose what is socially sanctioned rather than in accordance with the law.[[321]](#footnote-321) It seems to be more important to conform to the social position rather than the legal position, suggesting that there is a problem if these two positions are not in alignment. What is required is a community that endorses the regulation and it is clear that India as a society does not accept the current legislation on both sex determination and then sex selective abortion. In addition, it could be that the omissions on consent within the legislation give the impression that valid consent is not an essential part of any treatment.

Of course, if the abortion laws are tightened in order to contain the problem of sex selective abortion then the concern is that this will inevitably compromise the woman’s access to abortion.[[322]](#footnote-322) She will be left vulnerable then as she has to continue with a pregnancy her family do not wish to proceed to term. She may suffer as a consequence: physically and psychologically. There is already evidence of more limited access to abortion as some clinics, fearing the stringent records required for incidents of ultrasound and then abortions, have stopped providing these services. A high level of awareness of the Prenatal Diagnostic Techniques Act 1994 also appears to have led many potential patients and even providers to misunderstand its objectives and have interpreted it as meaning that all abortions are illegal. There is limited understanding of the distinction between abortion itself being allowed if within the grounds stated within the Medical Termination of Pregnancy Act 1971 and the fact that to abort a foetus on the grounds only of its sex is regarded by some as a violation of the right to be born.[[323]](#footnote-323)It may be that in India this has to be made more explicit and a direct prohibition would assist with improved understanding.

Yet if there is an acknowledgement of the woman’s right to autonomy and her right to choose to abort for other reasons, (which appears to be the case in other countries where sex preference is not indicated), then this focus on the inherent right or wrongness of her reason for an abortion could be denounced as hypocritical. In addition, any scrutiny of the woman’s reasons for her choice to abort, particularly when the termination is at an early gestational point, is unlikely, given the difficulties inherent in such an approach. Rather than questioning the woman’s reasons for her choice it may be preferable to question whether or not she is autonomous in making that choice. There will always be a potential conflict between the right of the woman to make a choice regarding abortion and the right, if any, of those who are being prevented from being born.[[324]](#footnote-324) The woman’s choice prevails at present, if that choice meets the requirements of the abortion legislation. However, the question is whether it should still prevail if birth is prevented solely on the grounds of the female sex of the foetus. If we focus solely on the reproductive rights of women then it would be difficult to argue against that choice. The right to equality pulls in two ways here: the right for a woman to choose and the right to be considered equal on behalf of the foetus. As the foetus is not a being it will not be granted the same extent of rights as the woman although it will have some rights as gestation proceeds.

**2.8** **The U.K.’s position on sex-selective abortion should be unequivocal**

In the U.K. the position on sex-selective abortion has been addressed but again there is apparent discretion and limited accountability. The BMA has made its position clear as to the acceptability of the practice:

The association believes that it is normally unethical to terminate a pregnancy on the grounds of fetal sex alone, except in cases of severe sex-linked disorders. The pregnant woman’s views about the effect of the sex of the fetus on her situation and on her existing children should nevertheless be carefully considered.[[325]](#footnote-325)

but then continues:

In some circumstances doctors may come to the conclusion that the effects are so severe as to provide legal and ethical justification for a termination. They should be prepared to justify the decision if it were challenged.

This presumably allows the doctor some flexibility if the pressure on the woman from her society is so strong that to be refused an abortion would be injurious to her mental or even physical health: there may even be a duty to allow the termination under the social ground if the pregnancy is within the 24 week time limit.[[326]](#footnote-326)

Doctors are given a wide discretion when considering the risk to the mental or physical health of a patient, and there is insufficient considered medical guidance setting out how to weigh the risks to a woman in continuing the pregnancy or terminating the same. Consequently, it may be very difficult to bring successful prosecutions against doctors agreeing to sex-selectively abort, if indeed this is considered necessary as a deterrent. When two doctors were recorded by undercover journalists agreeing to abort female foetuses, the decision was taken not to prosecute them as it would be impossible to prove that the sole reason for the abortion was the sex of the foetus.[[327]](#footnote-327) The unwillingness to prosecute, or the difficulties in enforcement of legislation in India, has been criticised, but it has to be conceded that a similar problem may be perceived in the U.K. This concession to the discretion of the medical profession could be a recognition of the woman’s right to bodily integrity, an unwillingness to interfere with a woman’s decision on reproduction. To refuse an abortion, which will mean that the woman has to continue with an unwanted pregnancy, would be against the doctor’s instinct and training to do what is best for his patient. This demonstrates how deeply the respect for autonomy is held in day-to-day practice in the U.K.[[328]](#footnote-328)

Although there has been an attempt to amend current abortion laws and to clarify the legal position on abortion solely on the grounds of the sex of the foetus, this attempt was defeated in February 2015, the government stating that it had been clear that sex selective abortion is illegal.[[329]](#footnote-329) Section 84 Serious Crime Act 2015 required a review on the practice to be carried out within six months and the review was published in August 2015.[[330]](#footnote-330) The Department of Health found that currently there were no substantiated concerns of abortions on the grounds of sex taking place in England, Scotland and Wales but it would continue to monitor the issue.

Whether or not there is evidence of a systematic practice of sex selective abortion in the U.K.[[331]](#footnote-331) there is a justification for making the U.K.’s legal position more stringent. It implies double standards if the practice of sex-selective abortion in India is condemned but little is done to tighten up the U.K.’s position on the same practice because there is less concern about the possible gaps in the law being abused. If the argument is that to choose to abort on the grounds of sex is to be prohibited because it is indicative of inequality (and possibly the worst example of inequality) between the sexes then the stand against it has to be strong in all jurisdictions.

The difficulty is in achieving the correct balance between the right to choose, even when choices may be morally objectionable, and protecting the right to equality. Within the 1967 Act the right to choose is limited to the grounds deemed acceptable, the opinion of two doctors acting in good faith, and the length of gestation of the pregnancy. When the Act was written a termination because the foetus’s sex is female was not envisaged but now, although not likely to be a practice that will affect the gender balance of the population in the U.K., it is a practice which should be condemned for its symbolism as to the approach towards one sex in particular. Any acceptance of the practice sends a message that it can be condoned because the consequences to the U.K. will not be as serious as elsewhere. That is an insufficient response and an irresponsible one.

This, of course, contradicts the current assumption as to the centrality of autonomy to any medical decision made. When women have fought to protect their freedom to choose in relation to their reproductive decisions then it is difficult to justify further restrictions to abortion even where those choices appear irrational or morally objectionable.[[332]](#footnote-332) The proposed prohibition of the practice has also raised the suggestion that if we allow abortion on the grounds of disability then we will have to allow abortion on the grounds of sex.[[333]](#footnote-333) This, Williams argues, is grounded on parity of reason. If a woman has the right to select against foetal impairment then she should also have the right to select against the sex of the foetus. In addition, to reject the criticisms of selective abortion for disability would similarly dismiss any principal objections to selective abortion on the ground of sex of the foetus.[[334]](#footnote-334) Whether or not there are valid challenges to this claim will not be addressed here but it demonstrates that a move to question the moral legitimacy of the reason a woman gives for an abortion may also lead to a questioning of the current grounds accepted under the 1967 Act.

A review of the current abortion legislation is justified, including the grounds to be considered appropriate. If sex-selective abortion is to be prohibited then this should be made much clearer in the legislation, rather than be left to the BMA’s guidance or ad hoc statements by the government. As it stands the preference to sex selectively abort could satisfy the first social ground. To inform any review more research will have to be completed on the extent to which this practice is already taking place in the U.K. The findings from this thesis will help to enlighten on the different reasons Indian women may have for taking the decision to sex-selectively abort, even when they are immigrants or daughters of immigrants, and how those decisions may nevertheless be deemed autonomous. It is hoped that a valid consent is at least ascertained in the U.K. to send a clear message that the woman should be the decision-maker and that her autonomy should be respected. However, that does not make the practice acceptable even if we do not have realistic fears that this will skew the sex balance of the population. A duty is owed not only to Indian women here but also to those living elsewhere to at least give them the protection of the law and taking this choice out of their hands.

**Summary**

The chapter has examined the Indian woman’s relationship with the legislation on abortion and sex-determination. This connection will influence the Indian woman’s choices and her approach to the practice of abortion as she may not feel the same ‘ownership’ of the abortion legislation as the woman in the West, where the debate has been much more divisive, politically and morally. Women in the West regard abortion as part of their push for control over their own reproduction, in the liberal individualistic tradition. The concerns of the women in India are different, even opposite, as they regard abortion as part of the state’s control over their fertility.[[335]](#footnote-335) Yet women in India may feel more ownership over the legislation intended to prevent sex-selective abortions and are more likely to continue to campaign to have the ban policed. What is clear is that it will only be when the legislation reflects the values of its society that the population will be willing to abide by it. The current legislation does send a message that the state is not prepared to condone ‘natal discrimination’ but at present it is one with little authority.[[336]](#footnote-336)

The chapter has also examined the law on consent to treatment and the extent to which it reflects a respect for autonomy of the individual undergoing medical treatment. The Indian jurisprudence suggests that the importance of autonomy is not evidenced in the court decisions and that the law on consent to treatment is in need of clarification.

In India consent to treatment should be further aligned to respect for the right to self-determination rather than mere lip service to the principle as appears to be currently the case. In addition a clear prohibition of sex selective abortion is required in both India and the U.K. and this has to be made more explicit in the relevant legislation. At present this issue is left too much to the discretion of the medical profession which creates uncertainty and still leaves the option of a sex selective abortion open to women.

**CHAPTER 3**

**INTERNALISED OPPRESSION, ADAPTIVE PREFERENCE FORMATION AND THE RELATIONSHIP WITH AUTONOMY**

An Indian woman’s subjugation and her limited status in India were considered in Chapter 1. This chapter analyses how the oppression to which the woman is subjected may have been internalised to the extent that the woman comes to believe distorted views about her sex and these attitudes then affect her choices and decisions. Further, she may then perpetuate that oppression by imposing those values on other women. This behaviour has been identified as adaptive preference formation (APF) and the principal theorists of this phenomenon consider that, as these views are not the woman’s own, but have been foisted on her by others, then she is not autonomous.[[337]](#footnote-337) The existence of poor conditions, and a decision which is inconsistent with the woman’s well-being, results in a presumption that she is not in control of her decisions and that there is an autonomy deficit. In the context of a decision to sex selectively abort, therefore, it will be presumed that the woman has adapted her preference to accord with the views in India of her sex and so lacks autonomy.

This intuitive definition of adaptive preferences and the consequent assumption of autonomy deficit have been criticised, however, given the inherent difficulties of identifying adaptive preferences in real-life situations.[[338]](#footnote-338) Serene Khader argues that limited opportunities, imposed trade-offs and unfamiliar cultural preferences could all be mistakenly labelled as adaptive preferences which denote an absence of autonomy. Khader believes that her alternative approach offers a framework for responding to adaptive preferences which is sensitive to these difficulties of identification. Her Deliberative Perfectionist Concept contains procedural and substantive criteria so focuses on the preferences which are harmful to the decision-maker, which have been adapted to social conditions, and which are contrary to basic flourishing. It must also be possible that the preference could be changed following exposure to conditions which are more conducive to flourishing.[[339]](#footnote-339) These she identifies as preferences of concern, i.e. where adaptive preference formation is suspected, but at this point they are not considered non-autonomous choices. As there are difficulties in making cross-cultural judgments about flourishing she advocates arriving at a definition of flourishing through a cross-cultural deliberative process. It is Khader’s version of APF which is applied to the hypothetical case studies in Chapter 5, together with the different theories of autonomy, in order to determine whether each decision is autonomous. For each case study a more detailed understanding of the individual’s option set is required, and how she perceives those choices, in order to determine whether or not there may be an adaptive preference and a lack of autonomy.[[340]](#footnote-340)

**3.1 Oppression which may have been internalised**

The Indian woman may believe that as a woman her primary role is that of providing a son for the patriarchy and so she submits to an early, arranged marriage, continuous pregnancies, an abortion if the sex of the child is not the one desired, and consequent ill health. She may regard herself as disposable as she has observed the practices of female foeticide, female infanticide and torture and, later in the woman’s life, the killing of wives when there is dissatisfaction with the dowry payments provided by her family.[[341]](#footnote-341) She has witnessed that there are different rules for women and infidelity, that women are often raped and abused with limited responses from the judicial system.[[342]](#footnote-342) All of this may be internalised to the extent that she then considers the female as without value or merely to be used as a means to an end.

The submissiveness of some Indian women has been explained as a socially and culturally conditioned response.[[343]](#footnote-343) The passivity is a cultural construct and so girls and women will tend to adopt the behaviour expected of their gender in that culture, subsuming how a female is valued or ranked. As this is internalised she will eventually come to regard herself as inferior. When the external oppression becomes highly internalised from centuries of acculturation then she may not even recognise that there is any oppression and will deny its existence. She may lose any sense of personal rights, may have very low expectations and may be too willing to defer to others or to compromise. There may be a strong sense of duty to sacrifice her own wishes for the sake of the family or even the wider community.[[344]](#footnote-344) This internalised subordination is particularly difficult to resist in India as there is a strong instinct to observe social behaviour, and to conform to the gender roles expected, which is resistant to any rational analysis. There appear to be few strong voices challenging the low status of women and little evidence of anger, even from the middle and upper classes who are better educated and employed.[[345]](#footnote-345) There is an observed tendency by women in India to conform to customs and traditions, and an unwillingness to confront the traditional gender hierarchy.[[346]](#footnote-346) Furthermore the current violence and oppression of women appears to be sanctioned by India’s culture and society, evidenced by poor responses by the police and others in the community.[[347]](#footnote-347) There is no doubt that for many in India women are seen as little more than a commodity which, now in short supply in certain regions, can be bought and sold across state boundaries. The woman may then be shared among members of one family and becomes little more than a chattel to be traded.[[348]](#footnote-348)

This internalisation of social and gender oppression can result in choices made by women which are adaptive preferences based on distorted values she has taken as her own.[[349]](#footnote-349) Consequently, the woman, when aborting because the foetus is female, may not consider her behaviour as questionable: she regards it as acceptable as it conforms to society’s views of the female. As she may not recognise that the female should be entitled to be treated as an equal she may not appreciate her deprivation. In rejecting the female foetus she sends a possible message that she concurs with that view and this perpetuates the oppression of the female.

3.1.1 Oppression of women by women

This acceptance of the status quo can lead to a disconnection from other women, even a turning against other females, demonstrated by the behaviour of women to other women.[[350]](#footnote-350) The perpetrator of cruelty and violence within a family is more likely to be from another woman, so it will be the woman’s own mother who will control her, her mother-in-law who will insist on the killing of the granddaughter or the female foetus and the sisters-in-law who will abuse her when she has joined their family.[[351]](#footnote-351) The acceptance of patriarchal norms is perpetuated as those women punish women who transgress those norms, which in turn results in a reward to them in the form of social approbation or an increase in their self-esteem. They then take on the role of a ‘carrier of culture’ by oppressing other women and at the same time strengthen their own position.[[352]](#footnote-352) This behaviour acts to perpetuate women’s oppression.

**3.2 Adaptive preference formation as evidence of lack of autonomy**

The principal theorists of Adaptive Preference Formation are Martha Nussbaum, Susan Okin and Amartya Sen. The phenomenon can be seen as a deformed desire, where the person who is oppressed desires what is oppressive to her so that she is perpetuating her own oppression. Building on Elster’s definition of adaptive preference, which regards it as a preference formed unconsciously that downgrades options inaccessible to the decision maker,[[353]](#footnote-353) Nussbaum, Okin and Sen go further, but their ideas are mostly reliant on intuition and have been criticised for not being based on more long term empirical work.[[354]](#footnote-354) Nussbaum defines adaptive preference as the preference the agent finds herself with after life-long conditioning so the woman may believe that the preference is something that she has to accept, as it is part of being a woman in her position. She believes that women are likely to endure unjust treatment because they have accepted the views behind a discriminatory system.[[355]](#footnote-355) Okin has questioned whether acquiescence to cultural practices originates from a lack of power, or having been socialised to accept inferior roles, which in turn results in little self-esteem or a lack of sense of entitlement.[[356]](#footnote-356) Although Sen does not tend to use the term ‘adaptive preference’ his references in discussions on human development are taken to refer to this when he talks of preferences which have been formed by deprivation.[[357]](#footnote-357)

The concept of Adaptive Preference Formation satisfies feminist objectives as it casts doubt on the woman’s subjective attitudes as reliable indicators of her welfare. It also rejects any claim that this apparent endorsement equates to consent which could be used to legitimate her deprivation and so place certain practices beyond scrutiny.[[358]](#footnote-358) It prompts a questioning of preferences made by women who are being socially oppressed in order to avoid an assumption that they are condoning certain attitudes to themselves.

However, there are criticisms, not of the concept itself, but of the assumptions made as a result of applying the concept to real women, i.e. an assumption that women making preferences of concern under poor conditions are not autonomous. The objections are that the principal theorists tend to be Western white women who appear to be regarding third world women as submissive victims of patriarchy, or women who are unable to form their own normative values. There is an assumption that a woman who adapts her preferences to unfair conditions does not possess the mental capacity to develop and form her own appropriate values which in effect labels her as a defective agent. This stereotypical view of women in the third world is considered morally objectionable, inaccurate and even to be ‘reflecting colonial epistemic prejudices’.[[359]](#footnote-359) Whether or not the criticisms have substance, they have served to highlight that the concept of APF is not necessarily straightforward and that the reality of why women may be perpetuating their deprivation is much more complex.

**3.3 Difficulties in identifying adaptive preferences**

Thus, care has to be taken not to regard *all* women who appear to be perpetuating their deprivation as ‘dupes of patriarchy’.[[360]](#footnote-360) There could be various motivations and reasons for her decisions which could be mistaken as the type of adaptive preference which also signifies a deficit of autonomy.

3.3.1 Unfamiliar cultural preferences

Unfamiliar cultural preferences or ways of flourishing could be mistaken for non-autonomous preferences. There is concern that if it is assumed that there is one feminism, which represents the objectives of all women, then this applies the rationalistic, individualistic, and masculine approach to ethics to which women have objected in the past.[[361]](#footnote-361) It is often Western commentators who challenge patriarchal practices against third-world women, relying on their own intuitions to decide which preferences are adaptive. There are evident difficulties when cross-cultural judgments are made about flourishing. It is therefore essential to make a distinction between merely unfamiliar preferences which the woman is entrenching and those which are harmful and amount to deprivation. This requires a clear definition therefore of what should be considered deprivation and what is basic flourishing. Contextual knowledge would assist in linking the behaviour and the welfare. Although those with inside knowledge of the culture may be better placed to provide this, the danger then may be that they are unable to make the causal link because they are entrenched in the community and could be habituated to those unjust practices. Nevertheless, what is clear is that cultural practices should remain under scrutiny and there should not be an unwillingness to do so merely because there is a danger of erroneously labelling cultural differences as non-autonomous preferences.

3.3.2 Psychologizing the structural

Khader also warns against ‘psychologizing the structural’.[[362]](#footnote-362) A woman may express her lower order adaptive preference but her higher order preference could be consistent with her flourishing.[[363]](#footnote-363) She may merely be making the best of her situation. The lower order adaptive preference could be assumed to reflect her higher order preference but it may be that it is not the person’s values which are the principal reasons for the preference but her restricted opportunities. A woman may believe that her options are unacceptable but has to manage them as best she can. If it is decided that the woman is failing to flourish because of her values and beliefs rather than her structural environment then we are psychologizing the structural. This has repercussions for development interventions which could be directed inappropriately at changing values when what is in fact required is structural change or further options.

3.3.3Selective value distortion

Despite appearing to be endorsing certain norms women may nevertheless have a critical view of them and could be dissatisfied with the choices they are making.[[364]](#footnote-364) There could be varying degrees of endorsement of some patriarchal norms, even within one group. The woman may have internalised some distorted values and not others. She may still value herself in certain respects so there will be some sense of entitlement and self-regard but there could be some degree of normative distortion as a result of internalised oppression. There may not be a need to highlight the unjustness of her position as she may already have a critical perspective of her situation and the choices she has to make within patriarchal restrictions. So the woman may not lack self-esteem in relation to her career or other aspects of her life but may still defer to others regarding her reproductive decisions because she believes that it is expected of her. There may be doubt as to autonomy in relation to the reproduction decision but further analysis will be required by applying the different theories of autonomy to the woman’s choice.

3.3.4Forced trade-offs

A woman may hold appropriate values but she may be aware that she can only achieve a certain threshold of welfare. Her options may be so restricted that she is forced to pursue one aspect of her welfare at the expense of others. This is recognising that a woman is not an individualistic being, but will consider others with whom she is in a relationship, others who may be dependent on her. It may be that she will have to make certain choices which will help others in her family at the expense of benefit to herself.[[365]](#footnote-365) So if there is very limited money coming into the family, and the woman has children already, then she may be protecting their future welfare by aborting another female.

The woman may even have an interest in the system of hierarchical oppression. Women react in different ways in the face of oppression and she may use various strategies to maximise her security and increase her life choices.[[366]](#footnote-366) In India’s patriarchal system girls are made to marry at a young age into families where the husband’s father is the head. They are then not only subordinate to all men but also to the more senior women of the family. The woman is only able to establish her own place in the family when, or if, she produces a male child. In the life cycle of the patriarchal family she later has authority over her own daughters-in-law and aims to keep them subservient to her. She thus has a vested interest in the oppressive system which, initially, restricts her life but then later gives her power over others.[[367]](#footnote-367) The hierarchical system remains but the woman employs a survival tactic, or strategy, which results in some advantages for her later in the cycle. The choice to act as she does towards other women is an adaptive preference but is also a way of navigating the system.

Consequently, the choice to abort a female foetus is possibly a means of survival for the woman in India so this ‘patriarchal bargain’, as identified by Kandiyoti[[368]](#footnote-368), is an example of how women can work against women in order to manage life as it is. By destroying the female foetus she avoids the contempt of her family, or at least delays it until she is pregnant again with a female foetus. When, or if, she eventually gives birth to a male child then she reaps the rewards as she is praised and admired by her relatives. This does not of course inevitably mean that she has internalised the belief that the woman is inferior. Rather, she is recognising the benefits she can gain regarding her status as a result of complying with the oppressive norms which exist in her society. She may nevertheless value certain things of which she is deprived but realises that she has to choose between one benefit and others. It is an acknowledgement of what life is for women in India and she maximises any benefits she can from it. Accordingly, her decision may not necessarily be deemed non-autonomous.

3.3.5Factual misperception

Here a woman could comply with an oppressive norm because she does not have certain non-normative information. The argument is not that she is unaware of what is the right choice or the correct content of a decision but that she may not be aware, for example, that she could refuse to make that choice and that there could be certain benefits in doing so. It is unclear whether possible consequences could be considered non-normative information as invariably there are normative arguments attached to the consequences. To explain to a woman who persistently aborts a female foetus that her country will inevitably suffer from a serious shortage of females, which in turn could lead to her gender being sold and trafficked and treated even more as a commodity, may be moving too far towards directing the moral content of her decisions. In the context of the Indian woman choosing to sex-selectively abort, therefore, it could be that she is unaware of the medical risks to herself and the fact that it is her decision to make, not that of others, even if in doing so she takes consequences to others into account.

What is apparent is that there should not be an automatic conclusion that because these women seem to be entrenching their deprivation there is Paradigmatic Adaptive Preference (where the internalisation is so great that the values of others are the sole reason for acting) and so an absence of autonomy. It still may be the case that the women are not endorsing their preferences, and their apparent complicity does not necessarily mean that they are consenting to their situation, but it is essential that the position regarding autonomy is clarified. We therefore need to know why women are accepting or taking on certain roles in order to more accurately come to a conclusion as to whether or not a decision is autonomous. The decision in itself cannot lead to a conclusion of non-autonomy, no matter how strong the intuition that this is the case.

3.3.6 Paradigmatic adaptive preference

The concept of Paradigmatic Adaptive Preference is where the woman has internalised her oppression to such an extent that she does not realise what she is entitled to as a human being.[[369]](#footnote-369) The woman perpetuates her deprivation when her choices add to, or even cause, her deprivation. She may not value herself appropriately and may regard certain harmful behaviour as acceptable. She may have learned injustice as a child by absorbing messages about differential treatment for males and females and the fact that they are not regarded as equal.[[370]](#footnote-370) Inequality becomes an accepted norm. When the woman’s choice is solely or primarily based on these norms then this would result in the woman’s choice to sex-selectively abort being considered as non-autonomous because of her paradigmatic adaptive preference.

When Paradigmatic Adaptive Preference is identified then Adaptive Preference Formation is a useful concept because it facilitates challenges to whether a person’s subjective attitude is in fact a reliable indicator of what will facilitate that person’s wellbeing. It means that we can question the view that there is an underlying endorsement when she appears to be willingly perpetuating her deprivation: we recognise that her complicity does not necessarily mean that she is consenting to it. However, this also signifies that she is not autonomous.

This will particularly be the case for those who have become perpetrators rather than mere victims as it is more likely that there has been a thorough endorsement of certain beliefs. In such cases Papanek describes the process as a ‘secondary socialisation’ which justifies to the women what they are doing to their own sex.[[371]](#footnote-371) This process may apply to those women with more senior status within the family, the mother and the mother-in-law, who are forcing the woman to abort the female.

If there has been more or less total internalisation of distorted norms then a finding of no autonomy fits particularly well with Natalie Stoljar’s strong substantive relational account of autonomy discussed in the following chapter. [[372]](#footnote-372) This claims that the decision-maker is lacking autonomy if the norms of others are central to her decision. However, if there is no paradigmatic adaptive preference but the preference still serves to act against the well-being of the woman who is living in conditions which are not conducive to her flourishing then a further analysis of whether autonomy is present is required and this requires the application of other accounts of autonomy to determine whether or not the decision is autonomous.

**3.4 Khader’s alternative deliberative perfectionist conception of adaptive preference**

Khader’s alternative conception of Adaptive Preference results in the questioning of many oppression-perpetuating preferences, but does so without necessarily denying the agency of those who are oppressed. For Khader a suspected adaptive preference is a preference which is inconsistent with basic flourishing, and which is formed under conditions which are not conducive to basic flourishing. In addition it is a preference which it is believed the decision-maker could be persuaded to change when exposed to conditions more conducive to flourishing and following normative scrutiny of the preference. It is accepted that the choice is not a reliable indicator of the woman’s true wishes because there is an assumption that most will not desire their own deprivation. This then maintains the feminist political goals of the theory of Adaptive Preference Formation by helping to identify real-world preferences which have been adapted to oppressive conditions as well as offering an explanation of why they appear not to be the true preferences of those women. This can be achieved without the automatic conclusion that those same women are non-autonomous and so is a more respectful approach.[[373]](#footnote-373)

Khader’s conception of Adaptive Preference has to have certain substantive moral commitments and the key commitment is to the promotion of basic flourishing. The conception has to incorporate an idea of welfare that corresponds with our intuitions about which preferences in the real world have been adapted. This has to be widely regarded as legitimate so Khader believes that it should be the result of a cross-cultural deliberative process, i.e. it should not be the conception of flourishing used by one society. It therefore cannot be her own idea of human flourishing but she does believe that it is possible to anticipate certain features of the definition. So it would have to be substantively minimal. This means that it would be confined to basic flourishing as that is more likely to be consistent across cultures. It would also have to be justificatorily minimal because although there is more likely to be agreement about which functionings are important there is less likely to be agreement about why they are important. Finally it would have to be vague so that it could be applied generally to human beings as a group.

 Khader’s idea of welfare could consist of human rights, or, as she has suggested, it could consist of Nussbaum’s capabilities list which focuses on basic wellbeing.[[374]](#footnote-374) Conscious of the usual criticism of requirements of any moral content to choices Khader nevertheless considers that her perfectionist assumptions can exist with liberal commitments if her conception of the good is sufficiently restricted. As she concedes it is not always possible to determine a person’s desires from her behaviour and to understand whether those desires are consistent with basic flourishing then there has to be an avoidance of coercion in order to persuade people to change their preferences. If an adaptive preference is made in response to poor options, and an attempt to maximise that person’s welfare, then coercion to make her change her preferences could actually make her life worse. Therefore the aim is to allow autonomy to be maintained where possible and where it is warranted.

In requiring some normative competence we may be losing the focus on the self, which appears at present to be so important in relation to other values, so we must be careful not to be too prescriptive, but if the values to be protected are generally accepted as universal then their protection must be more important than the emphasis placed on individualism and the self.

3.4.1 Nussbaum’s capabilities list as the welfare content

Khader has proposed Nussbaum’s Capabilities List as the content of welfare in her conception of adaptive preference. Nussbaum’s list of Central Human Capabilities[[375]](#footnote-375) is grounded in a respect for human dignity and consists of functions which have not always been given to women on an equal basis, including the right to bodily integrity and being able to be treated as a dignified being whose worth is equal to that of others.[[376]](#footnote-376) To make her list central to Khader’s conception of Adaptive Preference would involve going against preferences which currently prevail in a patriarchal society such as India. Capability 3 refers to being able to have a choice in matters of reproduction as part of the capability of bodily integrity. Capability 7, referring to Affiliation, includes having the social bases of self-respect and non-humiliation as well as being able to be treated as a dignified being whose worth is equal to that of others. In India, because of the internalisation of some oppressive norms, these central human capabilities could even be seen to go against women’s own preferences. To assert that these preferences are wrong may seem interventionist and paternalistic and in that respect Nussbaum maintains a universalist approach. However, Nussbaum does not apologise for this as she regards it as wrong not to see oneself as someone with rights whose worth is equal to that of others. Some principles are trans-cultural, she argues, and one of those must be the right to bodily integrity.[[377]](#footnote-377) There is a need to challenge entrenched preferences and we do have to communicate to women what should be desired as a universal standard. Perhaps by not focussing on the content of a decision but on a woman’s capabilities this can be considered less controversial and more empowering for women.

The result, if the list is incorporated into Khader’s conception of Adaptive Preference, would be that an habituated preference not to have an item on the capabilities list would be considered an Adaptive Preference which warrants scrutiny although would not necessarily result in a finding of non- autonomy.

The Capabilities List has been included here as suggested by Khader as part of her Deliberative Perfectionist conception of adaptive preference formation but it does have its detractors and has been criticised in particular by Alison Jaggar and Brooke Ackerly, who doubt its value.[[378]](#footnote-378) Jaggar’s doubts centre on the reasoning used by Nussbaum to defend the capabilities theory and the retreat from her claim as to the list’s universalism to more of an ideal for which to hope. Ackerly presents her own list which is a revised version of Nussbaum’s, omitting what Ackerly regards as the more ‘intellectual and aesthetic capabilities’ on the list and preferring to use the terminology of human rights following her study of the movement for women’s rights as human rights.[[379]](#footnote-379) It may well be that Nussbaum’s list has content which is not relevant or meaningful to those for whom it is intended and that those oppressed members of the real world should have more input. It suffices here as it is the list used by Khader for her conception although it is conceded that it could be replaced by other indicators of well-being.

**3.5** **Conflicting feminist intuitions when there is evidence of adaptive preference formation and the consequences regarding a woman’s autonomous status**

The woman in India who is making the choice to sex-selectively abort is living under social and gender oppression, the dubious norms of which she may or may not have internalised. If she *has* internalised these norms then she may have done so to varying degrees. This influence could result in evidence of adaptive preference formation and some feminist theorists would then argue, based on intuition, that the choice cannot be autonomous as the preference is based on the traditional feminine norms of others which have been taken on as the woman’s own.[[380]](#footnote-380) This has the beneficial result of not accepting what superficially appears to be the woman’s choice, so avoiding its possible acceptance as such by a wider society and consequently its legitimisation. However, the consequence is also that it may label the woman as autonomy deficient and the decision as non-autonomous. As it appears to be the society’s norms about which feminists are concerned, rather than the norms of the individual woman, it would be an injustice to label her as non-autonomous and to merely assume that she has taken on as her own the oppressive norms which society has attempted to impose on her.

Alternatively, other theorists submit that the woman’s decision *can* be supported on the basis of autonomy, despite possible evidence of adaptive preference formation resulting from oppression.[[381]](#footnote-381) This approach is driven by the wish to recognise and value women who are living in a patriarchal society and aims to respect their agency if their choices have been reflected upon and endorsed. This then includes them in the dialogue, but could abandon them to their non-autonomy if the theory of autonomy applied then fails to adequately take into account the effect, or extent, of social oppression. It will support the woman’s decision on the basis of autonomy but may not sufficiently address the magnitude of the influence of social and gender oppression.

There is thus a conflict of intuitions, both of which aim to further women’s rights and to change the situation of women living in patriarchal societies, but both at the same time potentially having a detrimental effect on the lives of the same women.[[382]](#footnote-382) Consequently, caution should be taken with both deductions. The first feminist intuition is that as the norms of that society are based on traditional views of the status of women, and as the woman appears to have taken on those norms as her own, the conclusion must be that the woman is not autonomous. This is an easier solution than challenging the norms of society head-on but is also taking the approach which courts have been keen to argue we should not take, which is to find non-autonomy, on the basis of what appears to be an irrational decision (in this case to abort a foetus because of its gender), i.e. working backwards from the content of the decision.[[383]](#footnote-383) This takes away any opportunity for the woman to contribute to the discussion and discounts her from any consultation as her views as a non-autonomous individual would not be considered worthy of inclusion. She is not given the respect she deserves as a woman who is making choices about reproduction in her own life situation. She is also labelled as one of a class of women who are subjugated and is therefore homogenised. The second feminist intuition seeks to respect the woman and to facilitate her autonomy within the context of her own limited options but may, as a result, neglect to recognise how pernicious the norms are which influence her life decisions. The first quite well-intentioned aim may hide the fact that there has been complete indoctrination and internalisation of others’ norms; norms which do not enable her to flourish. The consequence is to recognise a non-autonomous choice as autonomous.

**Summary**

It may be that some feminist theorists are looking for a general response to any claim that women’s perpetuation of certain sexist or misogynistic practices are morally and politically unproblematic as they appear to be condoned by the women themselves. The theory of adaptive preference formation does indeed attempt to address this claim. However, it is not enough that findings of adaptive preference, and further a conclusion that this signifies a lack of autonomy, are based on intuition as that is insufficiently rigorous as an argument. What is required is a widely applicable account as to why actual women may perpetuate their oppression.

Of course, for adaptive preferences to be distinguished we need to know what is causing behaviour which is incompatible with welfare. First-hand accounts are thus essential in order to investigate these choices in more depth. Those who have criticised commentators on their intuition-based approaches have been those who have obtained more robust empirical data on the preferences of women from personal accounts.[[384]](#footnote-384)

If the woman has made a preference which is adaptive because of the conditions of her life, because of the way she recognises her society views women, because she is insufficiently informed, because she has decided to make the best of her situation or because she has some distorted values, but not total distortion, then she may yet be held to be autonomous under the various accounts of autonomy.

Although oppressive social conditioning results in doubts as to the presence of autonomy we also need to recognise, where possible, that person’s normative authority over her decisions.[[385]](#footnote-385) To be able to respect her authority where we can we need to empathetically engage with the experience of the other person, to imagine what her situation is like and what her concerns may be. This is relational in its approach as in doing so we are recognising her humanity. This does not necessarily mean that her autonomy should be assumed as it is still possible to recognise another’s humanity, and to understand her subjective view, yet recognise that her normative authority over her decisions may be impaired.[[386]](#footnote-386) The obligation is to try to understand her subjective perspective and if necessary to try to change her view, or the culture underlying that view, while avoiding ineffective and inappropriate paternalistic interventions. This would serve to empower her where possible rather than further reduce or restrict her options. Responses to findings or otherwise of autonomy are crucial to the arguments here because if there is inappropriate intervention then the situation for women could be made worse. They could be coerced into changing their behaviour, all with good intentions, but with little knowledge of the context and possible consequences for those women. What is required is input from those who are perpetuating their own oppression so that they can contribute to ways in which the oppression could be ended, again imputing a need for first-hand involvement in the dialogue. Although the case studies in Chapter 5 are hypothetical and so not truly empirical, they are based on accounts from real women and so attempt to provide this necessary input to cast light on the reasoning behind decisions.

The following chapter analyses the different theories of autonomy which can be applied to question preferences which may have been adapted to conditions of social oppression.

**CHAPTER 4**

**THREE CONCEPTIONS OF AUTONOMY**

One of the arguments submitted by neo-liberalists[[387]](#footnote-387), and indeed some feminists[[388]](#footnote-388), is that reproductive choice is such a fundamental right that it should not be interfered with by the state and that the autonomy of the woman in this respect should prevail, given that allowing her to make such a choice is a truer path to equal rights[[389]](#footnote-389). Presumably, depending upon the extent of liberalism promoted, this would allow for more progressive abortion laws, including sex selective abortion. However, this argument would only carry weight if the woman is freely choosing her actions which will depend on the extent of the influence of the cultural mores within her society.[[390]](#footnote-390) It therefore needs to be examined whether or not the choice made by women living in an oppressive, patriarchal society, is autonomous as this would be central to claims that her choice should not be interfered with.

Given the Indian woman’s cultural background it is questioned whether decisions by women in India regarding sex determination and sex-selective abortion are being made autonomously and the essence of this chapter is to firstly examine two traditional approaches to autonomy which could be applied to that decision, namely procedural theories which are content-neutral, and substantive theories which are content-laden. Relational autonomy will then be considered as an alternative feminist re-conceptualisation of autonomy, which examines choices in the context of the individual’s relationships, obligations, concerns and social environment. Although the more traditional approaches address the possibility of cultural or gender oppression affecting decision-making this issue is at the heart of the relational autonomy approach which addresses the phenomenon more directly. This chapter will apply these conceptions of autonomy to the decision to sex selectively abort in the context of social oppression but the theories will be applied in more detail to the specific hypothetical case studies in Chapter 5.

Autonomy is difficult to define, or at least it is difficult to realise a definition that adequately recognises the numerous factors which influence choice, yet at the same time allows us to accept that a person may be self-governing. Influences are inevitable as no individual can exist in isolation and it is the input from others, the environment and the community within which we live, which contributes to the person we are. However, when the influences are oppressive, (when they cause the individual to take on views and perspectives it is difficult to accept would be that person’s own) then the problems in defining autonomy, or establishing it, become central to any claims of rights to self-determination. Different accounts of autonomy may be applied to acknowledge these influences, whilst maintaining that autonomy may be present, albeit in varying degrees.

**4.1** **The importance of autonomy**

The word autonomy is derived from the Greek word *autos* meaning “self” and *nomos* meaning “rule” or “governance” or “law”.[[391]](#footnote-391) It originally related to the self-governance of states so it is pertinent that it has also been described as having sovereignty over one’s life as the concept has been extended to individuals.[[392]](#footnote-392) It is to act as one’s own person, and by implication to have ownership of one’s desires and wishes as well as recognising why we possess those desires and wishes. Therefore, its importance is self-evident, given the alternative of having ideas, aims and characteristics imposed on us by external forces or institutions.

Autonomy is particularly significant in bioethics and has become a central principle in relation to consent to treatment, recognising the inviolability of the patient. This aspect of autonomy is pertinent to the later consideration in the case studies of the woman choosing to undergo medical treatment which is the termination of pregnancy because the foetus is female. Autonomy is recognised when a valid consent or refusal provided by the patient is respected. A valid consent or refusal requires the patient to have capacity, to possess sufficient information as to the procedure and to give her consent voluntarily, so without coercion or undue influence. There is thus a responsibility on the part of the medical professional to be certain that the consent or refusal of treatment is valid. Although an irrational decision does not necessarily result in a finding of the consent or refusal not being valid it will trigger further investigations as to whether the patient has capacity, sufficient information and is making that decision without pressure from others. When the irrational decision is not necessarily regarded as such within a particular culture, however, and is considered within the accepted norms of that society, then that questioning of the validity of the decision may not be prompted. This could be the position in India where the decision to abort a female is deemed acceptable and there is then little questioning as to the presence or otherwise of autonomy when making that decision.

**4.2**  **Socialisation and the traditional accounts of autonomy**

The traditional accounts of autonomy considered in this chapter focus on either the ability or capacity to make an autonomous decision (a procedural account) or on the moral content of the decision (a substantive account). The accounts have been challenged, particularly when an agent makes a decision under conditions of oppressive socialisation and where there may be evidence of possible adaptive preference formation. There must then be further examination of the decision in order to determine whether or not it may be deemed autonomous.

Socialisation can affect decisions, either as a result of openly coercive measures in the form of policy or legislation, or more subtly as a consequence of societal attitudes and mores.[[393]](#footnote-393) Coercive measures mean that women learn that there are certain consequences if they do not act in a particular way or make certain choices and this motivates them to comply.[[394]](#footnote-394) Some may be aware that they are being coerced and will resent it, but others will not realise that the more insidious socialisation has become internalised and will believe that the reasons for their acts or choices are their own.[[395]](#footnote-395) This socialisation is oppressive because what the woman is made to think and believe is not true and is contrary to her wellbeing. She has been led to internalise false ideas and as a consequence fails to comprehend the reasons she has for making certain decisions. She may then adapt her preferences to comply with norms she has internalised and those preferences will appear to be her own.

Recognising the possible effect of socialisation, procedural accounts of autonomy require that the individual has the capacity to reflect on her motivational structure and also to be able to change it in response to this reflection. A distinction can thus be made between the parts of the agent’s motivational structure she merely finds herself with unreflectively and the parts she views as her own after she has reflected.[[396]](#footnote-396)

Substantive accounts, however, require more in relation to the content of the decision made. Decisions must satisfy certain values in order to be considered autonomous.

**4.3**  **Procedural** **theories of autonomy**

In applying a procedural theory the focus is on whether or not the agent has subjected her motivations and actions to critical reflection. The actual content of her desires, values, beliefs and emotional attitudes is viewed as irrelevant.[[397]](#footnote-397)

4.3.1 Structural approach

The structural approach focuses on the agent’s immediate motivation and whether she has appropriately critically reflected upon her desires, beliefs and values. Both Gerald Dworkin[[398]](#footnote-398) and Harry Frankfurt[[399]](#footnote-399) formed the model of autonomy that identifies an agent’s lower-order and higher-order desires. The lower order desire is where the agent has the desire to do X. By contrast the higher order desires tend to reflect longer term desires which may ultimately be achieved through lower order desires. Dworkin described the agent as autonomous when there is “authenticity”, which is where the agent identifies at a higher level with her lower-order desires. Dworkin gives the example of the smoker. The lower level desire is to smoke and if the higher level desire is also to be a person who wishes to smoke then she is autonomous. She must identify with the influences that motivate her. If she wishes at a higher level to stop smoking because of the potential harm to her health then that is the motivational structure with which she will identify. If that wish alone is not enough to cause her to change her behaviour then she may wish for something else to do so, such as taking something which would make smoking unpleasant to her. Although her behaviour in stopping smoking is not then voluntary, but a result of the substance which makes her reject the smell and taste of tobacco, she would still regard those causal influences as her own because her desire to stop smoking represents her true self. In the context of this thesis the woman in India must, after reflection, identify at a higher level with her lower level desire to sex selectively abort. If she wishes not to have that desire then there is no identification. If she identifies with the lower level desire at a higher level then there is authenticity.

Dworkin also required procedural independence in achieving this identification. In determining the conditions required for this a distinction has to be made between subversive ways of influencing one’s ability to reflect and those which strive to improve that ability.[[400]](#footnote-400) So in addition to identifying with a choice the decision maker must also not be influenced by others in such a way that would make the motivational structure not her own. If there is apparent authenticity, but the woman has been influenced in such a way that there is no procedural independence, then she is not autonomous.

Similarly Frankfurt describes an autonomous person as one who has second order ‘volitions’. Such ‘volitions’ are second order desires to have one’s first order desires cause one to act. So again an agent’s first order desires and second order desires must be in agreement. The different elements of the self are thus ordered hierarchically.[[401]](#footnote-401) Frankfurt identifies an agent’s will with an *effective* first order desire. He argues that autonomy requires the agent to exercise control over her will and also to identify with her will, at the level of her second order desires. Identification will result after reflection where the agent makes a distinction between those desires she regards as “her own” and those she finds herself with and so is indifferent to them or considers them as external.

However, when there is the possibility of social oppression then sceptics of this account have focussed on the difficulty of ensuring that the higher order identifications are in turn autonomous. There is the potential problem of constant regress.[[402]](#footnote-402) How will the socially oppressed woman know whether her desires are her own or are the product of indoctrination? It is unlikely she will even question the lower order desires. There would be doubt as to whether the higher order desire which is endorsing the lower order desire is in itself autonomous or is in need of endorsement by yet another level of desire.[[403]](#footnote-403) Frankfurt provides a response to this criticism, arguing that there is no need for a further higher order endorsement of the identification with a lower order desire if the endorsement is made decisively and without reservation.[[404]](#footnote-404) However, this too can be rejected in exactly the same way, as ‘decisive identification’ can also be the result of manipulation and oppression.[[405]](#footnote-405) In addition it does not inform us as to how or why one particular desire becomes a person’s ‘own’. It does not tell us what particular property it must have.[[406]](#footnote-406) The response is therefore unsatisfactory.

A further response from Frankfurt maintained that the person only had to be *satisfied* with the higher order desire and that would constitute endorsement. Later elaboration indicated that being genuinely satisfied merely meant to have no interest in making changes.[[407]](#footnote-407) This, in turn, has been criticised by Michael Bratman who points out that a lack of interest in change could be a result of depression, exhaustion or ennui and therefore Frankfurt’s requirement of mere satisfaction would be too weak to amount to identification.[[408]](#footnote-408)

Christman picks up on the ambiguity in relation to the concept of identification as it could mean a mere acknowledgement of the desire a person finds herself with or it could mean an evaluation of having the desire. An acknowledgement of a desire would be inconsistent with the usual concept of autonomy as a desire can be acknowledged without being the product of an autonomous process. If identification requires an endorsement of the desire, however, thus strengthening the requirement of identification, then it could not result in an unapproved autonomous desire.[[409]](#footnote-409) This also results in problems as there are always going to be aspects of oneself which are authentic but not necessarily approved of, given that no individual is perfect. This demonstrates what Christman believes are the onerous mental gymnastics required when applying such hierarchical theories.[[410]](#footnote-410)

Irving Thalberg also challenges the equating of “higher” aspects of the self with the true or real self, arguing that this then contradicts the Freudian account of human psychology.[[411]](#footnote-411) His dispute was particularly with Professor Wright Neely who, in pursuing the model of Dworkin and Frankfurt, held that a person’s ‘real’ desire was the desire that person possessed when thinking rationally.[[412]](#footnote-412) Thalberg believed that this was a mistaken interpretation of Freud’s view of the person’s consciousness. Rather, Freud’s personality theory considered the individual as a mixture of elements, both rational and irrational, considering darker, non-rational aspects of a person as equally, or more, important than those which are rational.[[413]](#footnote-413) So, Thalberg argues, although we may value our moral thinking (the rational thinking) over our more primitive impulses, and so regard them as “higher”, that does not in itself justify prioritising those aspects of ourselves.[[414]](#footnote-414) Of course there are problems with the definition of ‘rational’ and its different implications as it could signify thinking practically or thinking morally. This point will be examined in more depth later in this chapter when the substantive account is considered.[[415]](#footnote-415)

Marilyn Friedman argues that such hierarchical theories are unable to adequately address the problem of socialisation.[[416]](#footnote-416) The issue is either not addressed at all, she believes, or it is assumed that the higher level self in some way is immune to, or overrides, the influences of socialisation. She submits that the higher order self is just as susceptible to socialisation as the lower order self. The hierarchical theory does not make it clear how and why the higher level motivations are autonomous and have been subjected to the requisite level of critical reflection. It is impossible to know whether or not these higher level principles and values really represent what the person wants or values. If there is oppressive socialisation then it may be that the individual’s first order desires are more of an indication of what that person really wants and values, the higher level principles and values being those which are a result of socialisation.[[417]](#footnote-417) Thus, the higher level desire would presumably then overpower the lower level desire but would not reflect a person’s true wishes.[[418]](#footnote-418)

This is endorsed by Wolf[[419]](#footnote-419) and Thalberg[[420]](#footnote-420) who argue that a woman, who has been conditioned and socialised in a particular way throughout her life, may appear to pass the test of autonomy because her higher order and lower order desires seem to be consistent. However, as her values are not her own but a product of her conditioning then she is not truly autonomous. Therefore the woman in India choosing to sex selectively abort may appear to be autonomous but she may be unlikely to challenge or question her desires.

The structural, hierarchical approach has thus been found wanting for not adequately answering such challenges. In addition, it is criticised for taking a ‘time-slice’[[421]](#footnote-421) approach to autonomy and, in doing so, not taking into account the historical aspect of how the agent’s beliefs, wishes and values have been formed. Christman thus considers the structural account as an incomplete theory unless we also consider how a person’s preferences have been formed, arguing that this may help to address the problem of social oppression. He considers that a person’s autonomy in relation to her choices is a function of her history,[[422]](#footnote-422) and so the historical theory builds upon, and refines, the hierarchical approach.[[423]](#footnote-423)

Robert Noggle, however, argues against these approaches on a different basis and refutes any requirement of critical self-reflection as part of the conception of autonomy. Taking the liberal stance that autonomy has to be free from substantive content and that only procedural conditions are required for autonomy, he nevertheless argues that an individual does not require *critical* self-reflection in order to achieve that self-rule.[[424]](#footnote-424) He concedes that a person who is more reflective and self-examining may rule her life more wisely but it does not mean that a person who does not critically self-reflect should lose her self-governing status. Further, he claims that it is elitist to require that in order for a person to be considered autonomous then all her commitments and values should be subjected to critical self-reflection. Her commitments and values are so much part of the identity of that person that to ask her to re-evaluate her value systems before they can be granted credibility is paternalistic. The freedom for each person to order her life as she wishes is the very concept liberals fight to defend.[[425]](#footnote-425) It is submitted, however, that this approach is so empty of requirements that there are few if any safeguards to protect against the possibility of social oppression and it would be difficult to discern whether or not the agent was autonomous. The approach he is defending would conceal any internalisation of social oppression.

Some feminist theorists consider the content neutral procedural accounts advantageous as there are no restrictions on the content of an individual’s preferences in order to be considered autonomous.[[426]](#footnote-426) Different perceptions of what is good are thus allowed for. It means that autonomy can be present and compatible with such elements of feminine agency as relationships of care and dependence on others which are regarded as contrary to the more masculine approaches to autonomy which value independence and self-sufficiency.[[427]](#footnote-427) Other feminist theorists, however, are wary of applying pure procedural accounts, when agents are possibly oppressed and when that oppression could influence their preferences but remain undetected. Critical reflection may be executed, and the woman may appear to meet the requirements of the procedural account, but the feminist intuition is that she cannot be autonomous, given the influence of norms that may be oppressive to her femaleness.[[428]](#footnote-428) As a consequence, the substantive account is preferred.

These challenges to the purely procedural theories demonstrate that although some consider that autonomy can be satisfied if the decision-maker has capacity to critically reflect on his or her choices, (and Noggle does not even require that), there is nevertheless doubt as to whether it can ever be possible to discover one’s real desires, particularly when living under oppressive conditions. Oppressive socialisation thus acts as a catalyst to test the various theories and at this point the substantive theories may seem preferable as they focus on the need for stricter normative conditions for autonomy. This is particularly pertinent when analysing the problem of oppressive socialisation and any choices made under its influence, such as sex selective abortion.

**4.4** **Substantive theories of autonomy**

Whereas the previous theory has assumed that only procedural conditions are necessary for autonomy, some advocate that the procedural account is supplemented by a non-neutral condition.[[429]](#footnote-429) Responding to objections to the procedural account based on potential problems identified with socialisation, a *strong* substantive account rejects the content neutrality of the procedural theory and requires specific content of preferences of agents in order for them to be considered autonomous. Alternatively, a *weak* substantive account merely suggests further conditions regarding attitudes to oneself, such as self-trust, and emotional states such as self-confidence and self-esteem in order to be deemed autonomous.

4.4.1 Strong substantive theories

Strong substantive theories hold that agents have to possess the capacity to identify the difference between right and wrong in order to be autonomous. Oppressive socialisation in particular may interfere with this capacity and so it follows, according to this account, that agents who are subjected to such socialisation may not be autonomous.

Susan Wolf’s theory states that if there is a failure of a capacity to recognise what is moral or right then there is a failure of autonomy. This, she asserts, could be regarded as a new version of Kant’s traditional account of autonomy which requires the capacity for rational self-legislation.[[430]](#footnote-430) In effect this is an external condition of rationality or, as Wolf, terms it, a ‘special sort of sanity’.[[431]](#footnote-431) The agent would have to possess the ability to know what she is doing and the ability to know that what she is doing is right or wrong. In effect she would have to be able to evaluate herself rationally and accurately. Wolf makes reference to the ‘deep self’ as a requirement for autonomy and responsibility, so the agent must govern her actions by her desires but then also govern her desires by her ‘deep self’. Wolf describes this as the ‘ability to evaluate ourselves sensibly and accurately’[[432]](#footnote-432) which appears to require somewhat more than what is needed for the procedural account.[[433]](#footnote-433) However, she also adds to this the condition of sanity, arguing that the ‘deep self’ requirement alone is insufficient. The ability to know the difference between right and wrong as well as the ‘ability to cognitively and normatively appreciate the world for what it is’ signifies sanity.[[434]](#footnote-434) The concern here, and one which Wolf herself recognises, is that there is uncertainty as to what ‘understanding the world for what it is’ actually means. It implies that the decision-maker must be able to place herself and her desires in the context of what others may believe is right or wrong. A much wider awareness of others’ views may be difficult for some women to attain. Wolf, however, describes it as ‘widespread inter-subjective agreement’ which seems to suggest that the majority view prevails. The term ‘sanity’ is unfortunate and can lead to objectionable reasoning. If there is an assumption that some are sane because they are right about the world then those with other views about the world will be insane and not autonomous. As a consequence this could give the majority the power to decide on the sanity of those who do not comply with the majority view.[[435]](#footnote-435)

Similarly, Paul Benson, in his earlier accounts of autonomy, endorsed a strong substantive account, arguing that not only oppressive socialisation, but also inadequate or inappropriate socialisation, may undermine normative competence. If norms are accepted and internalised they can prevent the agent from appreciating whether or not the norms are morally right. If women lose the capacity to criticise a norm, and the ability to detect whether or not it is wrong, they lose autonomy in respect to those decisions in their lives which may be governed by the norm.[[436]](#footnote-436)

Thus, as adherents of strong substantive theories, both Wolf and Benson require as a condition of autonomy the capacity to form desires and preferences, and endorse values, which have specific content. If applied to the decision to sex selectively abort then it would certainly result in the choice being deemed non-autonomous, given that it would be Western values which would be applied to the content of the decision, representing ‘widespead inter-subjective agreement’.

Yet, with obvious change of heart, Benson later goes on to challenge the same strong substantive accounts, pointing out that there is a need to recognise human weaknesses. Erroneous normative decisions are almost inevitable, yet can still be compatible with autonomous agency.[[437]](#footnote-437) In addition, if it is submitted that there is no room for autonomy in an environment of subordination or oppression, then those who are affected will automatically lose their agency. The strong substantive accounts therefore leave little room for autonomy in situations where autonomy in fact *needs* to be recognised in order to facilitate internal resistance and challenge. In fact such accounts may serve to deny opportunities for criticism and opposition.[[438]](#footnote-438) Benson points out the distinction between autonomy and orthonomy, the difference between self-rule and right-rule and the importance of not conflating the two.[[439]](#footnote-439) So an agent can autonomously own her mistakes and limitations even when she cannot do the right thing for the right reasons. This is certainly demonstrated in the hypothetical case studies where we see that a woman may have several genuine reasons for choosing an act which many in the West would regard as wrong and immoral and so non-autonomous.

There are concerns, then, that this approach is too stringently normative and equates autonomy with moral responsibility when these two concepts are arguably not necessarily the same. If an external condition such as rationality is added to the requirements for autonomy then this contradicts the traditional concept of autonomy as self-government.

There is a further potential problem with Wolf’s requirement that an agent holds the ‘correct’ moral view. There is not always a general agreement as to the morality of an action. If it is proposed that only those who are rational and who are holding the accepted moral position are autonomous then any interference with the judgments of those who are deemed irrational will not be regarded as interferences with autonomy. It therefore follows that the interfering agent who holds beliefs which are supported by more objective evidence will not be considered to be impeding the other’s autonomy as his own beliefs are the more reasonable.[[440]](#footnote-440) A finding of a lack of autonomy on the grounds of an irrational decision therefore invites paternalism and could as a result justify an interference with another’s liberty. It may be argued that the interference is justified for the good of the person yet is still consistent with her autonomy, given that she is regarded as non-autonomous because she is not making a rational choice. Interference, in particular state interference in the form of legislation, can then be justified more easily. Arguably this is already the position in India where the legislation prohibiting sex determination indicates that there is a presumption that the choice is not that of the woman, that there must be coercion, and so she is not autonomous.[[441]](#footnote-441) It is of concern that rather than addressing the possible undue influence, and legislation being in place which prohibits the practice in any event, many doctors are performing the procedure and without a valid consent from the patient.

The demands of the substantive accounts may also entail criticism of another culture. Ethical relativists believe that ethical differences between cultures can never be reconciled. Each society has its own history that produces its own ethical values and standards, so rights are meaningful only within that distinct cultural tradition.[[442]](#footnote-442) Relativists will be unwilling to intervene and criticise. Ethical universalists, however, consider that there are certain rights that all human beings have and that there are at least *some* ethical values, standards or principles which are not relative.[[443]](#footnote-443) Further, they claim that very general basic values are recognised at least implicitly, and to some extent in all societies, even while acknowledging that there may be cultural differences and diverse conventions which suggest otherwise.[[444]](#footnote-444) The stance taken will influence any justifications made for interference. Many theorists will be wary of imposing their values on others, recognising the potential for criticism and accusations of Western superiority or paternalism. Others will attempt to justify their universalist position. It is worth noting here again Serene Khader’s conscious need to restrict her conception of the good to basic wellbeing in order not to appear to be criticising others’ values.[[445]](#footnote-445) Nussbaum, on the other hand, is willing to stand by her universalist stance on the right for women to be regarded as having equal worth to men and the right to bodily integrity.[[446]](#footnote-446)

4.4.2 Weak substantive theories

Given his later criticisms of the strong substantive approach Benson has, as an alternative, proposed a weaker normative competence theory.[[447]](#footnote-447) This rejects the content specificity of the strong substantive theory, instead placing certain constraints on the characteristics of the agent.[[448]](#footnote-448) He argues that free agency requires the agent to possess a sense of worth, which entails a sense of who she is, and this should be evident in her conduct. This expects more, he asserts, than the usual procedural conditions and adds a social dimension. The agent must regard herself as in a position to respond to various expectations that others could make of her.[[449]](#footnote-449) This requirement of self-worth does not result in total content neutrality because the condition places certain constraints on the agent’s attitude towards herself. In essence, Benson’s non-neutral condition is a half-way house between the purely procedural approach and the more content-specific account, but is also a nod to relational autonomy in that the importance of one’s relations to others is also recognised. It does not act to unduly restrict an agent’s desires or values but recognises the doubts expressed that procedural conditions alone are sufficient to ensure that a person’s actions are in fact that person’s own.[[450]](#footnote-450) As there is this social dimension to this approach the weak substantive theories are considered in more detail in the section on Relational Autonomy. It will also draw on work by Robin Dillon[[451]](#footnote-451) and Trudy Govier,[[452]](#footnote-452) as well as Andrea Westlund[[453]](#footnote-453) and Sigurdur Kristinsson[[454]](#footnote-454).

The principal criticism in response to the strong substantive theories is that the more prescriptive we are as to the content of decisions, the more we move away from the traditional concept of autonomy which is for an individual to be able to decide for herself. Individualists, in particular, are critical of this approach, preferring to focus on the ability and skills required to make decisions and to leave the individual to be responsible for his or her own decisions, moral or otherwise.[[455]](#footnote-455) It could be then that the weak substantive approach is more acceptable, particularly if required together with the specified procedural conditions, as there are some similarities with the character traits required under the weak substantive theories and the ability to reflect required under the procedural theories. However, even the weaker substantive theories may be considered too burdensome for the individual who is socially oppressed. Such character traits as self-worth and self-esteem may be difficult, if not impossible, to achieve, given that oppression will inevitably serve to erode them. The recognition of the influence of social oppression will not then necessarily aid the woman who is living within such an environment. By setting the bar so high these theorists may be rejecting the possibility that such women could achieve autonomy at all.

**4.5****Rationality as a requirement for autonomy**

Throughout the discussions of both procedural and substantive theories there have been references to requirements of rationality. Rationality therefore has relevance to both procedural and substantive accounts. It can centre upon the means used to achieve an end and can also be pertinent to the final aims to be achieved. These different views of rationality are explained by Victoria Chico as either the procedural ability to carry out acts or make decisions to achieve an individual’s real desires, or whether the overall aim or objective is valuable.[[456]](#footnote-456)

Thus, procedural rationality is considered part of the agent’s competence regarding autonomy. The question would be whether the individual has capacity for rational and objective thought.[[457]](#footnote-457) Substantive or value rationalityfocuses on ultimate ends and the rationality of a particular choice is determined by reference to the end it tries to achieve. However, there then have to be some objective standards which allow us to determine whether the ends are rational or not.

David van Mill argues that Hobbes’s theory of rational action highlighted the divide between these different applications of rationality and described them as ‘thick’ and ‘thin’ versions.[[458]](#footnote-458) The ‘thick’ version extends the scope of rational action to the consideration of ends to be achieved, whereas the ‘thin’ version defines reason and rationality in a more neutral way, relating only to means, not ends. In order to be autonomous the individual has to prepare a life-plan which is rational not only in finding the best means to achieve one’s ends, but also in choosing the best ends, thus requiring both thick and think versions.[[459]](#footnote-459)

Substantive rationality requires that the content of a decision meets certain norms. However, the concern then is that there cannot be unanimity as to what is the ‘correct’ course or decision and it would be difficult to ascertain which norms should be applied. Wolf’s ‘widespread inter-subjective agreement’ referred to earlier in the chapter appears to imply the norms to be specified are those accepted by the majority[[460]](#footnote-460) and so it could be pertinent to look to international agreements or the legal position in one’s own and other countries as an indication of the moral view on certain issues. These could provide guidance, at least to the extent that they reflect an international moral consensus. However, there is unlikely to be complete agreement, or even majority agreement, on the morality of certain practices. Reasonable people can disagree on basic values and principles and the same can apply to different countries and states.[[461]](#footnote-461) Even when there is a general agreement on the legal position there is no guarantee that the legislation will be respected. Jeffrie Murphy also points out that the majority view does not necessarily entail that a law has a rational basis as it could just as easily reflect that majority’s prejudice.[[462]](#footnote-462) Therefore, searching for a general consensus on a moral issue could be seen as an unsatisfactory way to determine the requirements for the content of a particular decision.

Consequently a more useful approach may be to employ a theory which could be applied to any moral decision-making by any agent. Wolf’s strong substantive theory was described as a modern version of Immanuel Kant’s rationality requirement and so it is pertinent here to examine Kant’s version of rationality and the strong link he makes between rationality and autonomy.

4.5.1 Kant and rationality

Rather than others, or society, determining the principles which should govern decisions, Kant proposed that the will of an individual should determine its own guiding principles, linking the concept of morality and self-government.

In deciding what is the right thing to do the standard Kantian approach could be applied. It holds that the right action is to act in order to respect the humanity of each person.[[463]](#footnote-463) This would be irrespective of whether the act results in the best outcome in consequentialist terms.[[464]](#footnote-464) It is a self-imposition of universal moral law which is based on moral obligations and the respect owed to not only others but also oneself.[[465]](#footnote-465)

Kant’s approach to moral decision-making was to apply the deontological theory, which is based on the requirement to carry out one’s moral duty. However, rather than basing the content of decisions on the individual’s own circumstances or desires, morals are self-imposed using an account of rationality.[[466]](#footnote-466) He rejected the proposition that moral judgments had to be based on human feelings and emotions.[[467]](#footnote-467) Rather, Kant’s morality is based on rational rules, and he uses the Categorical Imperative as his formal rule of morality. It is imperative (a command) and is categorical (it applies to everyone, including the individual who is making the decision or is acting). It relates to an action which is objectively necessary in itself, without reference to the consequences, so it is based on doing what is right and what is one’s duty. The Categorical Imperative demands that a person should treat others as ends in themselves and not as merely means. Applied to the decision to sex selectively abort this would certainly result in a conclusion that the choice is not autonomous. It is questioned, however, whether a decision-maker will be able to take possible consequences out of the equation and this is arguably what drives the choices the women in India are making about their reproduction.

Kant’s Principle of Universality provides a further version of the Categorical Imperative in that a person should only act from personal rules that can be willed as universal moral laws. This is not asking the individual to consider the consequences of the action or decision, but looking at whether that action or decision could be consistently willed. Consistency is a ground rule of rationality because contradictions indicate a lack of rationality. So it should be asked whether one’s personal rule could become a universal moral law and this application of the Categorical Imperative will decide whether intentions are morally acceptable. A person will act rightly or morally when she respects another person’s freedom, rationality and dignity, when she treats others as ends in themselves and not means to an end and if that act or decision can be willed to be a universal moral law. This rule of consistency would assist women as all individuals would have to be respected in the same way and this would include the female foetus. However, for the particular individual who will endure specific consequences, she is being asked to make a decision against her own interests in favour of the greater good.

The Principle of Universality also means that ethical relativism has no place in Kantian theory as the Categorical Imperative must bind all rational beings, no matter what their culture. This recognises that there are some duties it is important for all people to have. A distinction is made between *cultural* relativism and *ethical* relativism: some duties will be culturally relative but, as rational beings should not carry out actions which cannot be willed to apply to everyone, there are some duties which must be fulfilled by all.

Thomas Hill notes how the Kantian concept of autonomy contrasts with certain psychological concepts of autonomy which some have considered the ideal.[[468]](#footnote-468) So, rather than conceiving autonomy as possessing psychological maturity, which only some will have, Kant regards autonomy as a concept of reason, which is accredited to all rational wills. It is an all or nothing characteristic which grants respect to all human beings, not just those who are the most conscientious.[[469]](#footnote-469) In his article Hill considers the familiar objections to Kantian autonomy, one of which is the claim that it is incompatible with psychology and the way in which human action is explained in terms of one’s beliefs and desires. The view is that Kant’s concept envisages human beings as being able to act without any motivation but Hill disputes that this is Kant’s position. Kant does not deny that acts can be explained by reference to feelings and nature and his approach to autonomy is compatible with that. Desires will not decide the rational course of action if a person, when deliberating about what there is reason to do, is committed to rational standards of choice which are not desire-satisfaction.[[470]](#footnote-470) It is difficult to ask a person to ignore her own motivations in order to be committed to a more rational standard however.

Onora O’Neill also takes up this distinction between Kant’s version of autonomy and the more contemporary conception which regards it as a property of individuals which they possess to different degrees.[[471]](#footnote-471) Kant refers to autonomy of reason, of ethics and of principles, not of autonomous individuals. His account of practical reason means that to act according to one’s duty is to act on principles which should not come from arbitrary starting points. Rather than applying or proposing heteronomous ethics based on religious or state authorities, on the majority view or on certain ideologies, Kant’s approach is based on principles which all others could adopt. His principles are arguably those which are acceptable to be universal laws and those which would not treat others as a means to an end.[[472]](#footnote-472)

This focus on rationality and the individual, and the exclusion of feelings and emotions from the process of self-legislation, although in line with Kant’s metaphysical view of the human being, has been criticised by some feminist theorists.[[473]](#footnote-473) The approach ignores the social embeddedness of humans and, it is argued, is associated with the masculine ideals of individuality and separation, which feminist theorists question as an appropriate value, given its advocacy against connecting and engaging with others.[[474]](#footnote-474) If applied to the decision to sex selectively abort then it would result in that decision being considered non-autonomous. It leaves no space to take into account the complexities of each decision.

4.5.2 An orthonomous concept of autonomy

One of the main arguments liberalists use against the application of a content laden theory is that by imposing external criteria on an individual ‘s choice the self is being taken out of self-government, so contradicting the traditional concept of autonomy.[[475]](#footnote-475)

However, Tom O’Shea is not prepared to reject entirely the proposition that an autonomous act has to be a good or rational one as this would mean that irrational attitudes and false beliefs could nevertheless be considered autonomous. This would be inconsistent, he argues, because personal autonomy is usually regarded as a valuable human ideal and so a concept of autonomy which does not require robust normative conditions would be a mistaken ideal. As an alternative he proposes the adoption of an orthonomous concept of autonomy which would recognise the contribution that substantive rational capabilities make in assisting us to self-govern. *Self-*governance would then depend upon the capacity for *good* governance.

Extending this further, Philip Pettit and Michael Smith have identified a distinction between narrow and broad versions of orthonomy.[[476]](#footnote-476) Narrow orthonomy requires our motivations to be governed by our deliberative conclusions, whereas broad orthonomy requires those deliberative conclusions to be responsive to reasons, namely to be attuned with the world.[[477]](#footnote-477) Although narrow orthonomy seems to equate with procedural theories of autonomy, this version requires more than the agent decisively choosing her desires or endorsing them through her higher order volitions. In addition, the agent’s motivation must be to act in accordance with what she values and the extent to which she values it.[[478]](#footnote-478) This requires that her actions must originate from chosen motivations, not necessarily correct ones. What causes the agent to act is what she cares about and this is manifested in her deliberative conclusions. It therefore goes much further than the procedural account of autonomy.[[479]](#footnote-479)

However, in addition to the requisite deliberation, broad orthonomy requires the deliberation to be responsive to reasons, adding a substantive *virtue* to the requirements. It requires particular content, albeit values which the individual is able to defend, perhaps as in line with that person’s own reasons for acting. The requirement to be attuned with the world also suggests that the content of a preference or decision should coincide with a more generalised view of what is right. It could be claimed that adding this normative constraint results in a contradiction between autonomy as it is traditionally understood and orthonomy because something has to be conformed with other than one’s desire.[[480]](#footnote-480) However, as O’Shea argues, some substantive accounts of autonomy have required rationality as an essential ingredient of self-governance and this has resulted in both self-governance and good governance being considered as equally essential norms.[[481]](#footnote-481)

O’Shea considers that there is a need for rigorous rational constraint as without it there would be an inevitable absence of ethical and moral standards. However, if we require the individual to be able to respond to reasons, there is then access to a source of authority which can guide deliberation and will result in action which is not capricious. Orthonomous autonomy would thus entail both executive and substantive virtue. Again, this will not satisfy those who prefer the focus to be on the individual making her own decision, whatever its content, rather than adding a criteria of rationality or goodness.[[482]](#footnote-482) The main argument against orthonomous autonomy therefore appears to be the move away from it being the self who governs rather than rationality being the impetus which drives the individual to a good act. What is more it is thought that this version of autonomy could be too onerous to achieve, given its excessive demands.[[483]](#footnote-483) It may also over-intellectualise autonomy, so that it becomes more a virtue of clear thinking.

Yet, O’Shea points out that even those accounts of autonomy which are explicitly internalist, such as procedural autonomy, require some responsiveness to reasons so he considers that the difference is on the requirement of how robust the responsiveness to reasons has to be. He points out that Christman, an advocate of the procedural autonomy theory, is prepared to require some internal conditions for rationality, albeit only those which would preclude ‘manifestly inconsistent desires or beliefs’.

Only minimal ‘internal’ conditions for rationality (like consistency of beliefs and desires) would be plausible as conditions for autonomy. For to demand more […] would make the property of autonomy divergent from the idea of self-government that provides its intuitive base.[[484]](#footnote-484)

The objective here is to rule out self-deception because a self-deceiving agent is unable to self-govern. However, he still believes that requiring external conditions for rationality would be too far removed from the notion of self-government.

O’Shea argues that it is not enough that beliefs are formed which are merely consistent with our other commitments, it could also include being willing to reject old beliefs in the face of evidence, whether the beliefs are internally consistent with each other or not. Consequently, there has to be some significant form of rationality requirement, whether it is externalist or not. The disagreement, he believes, is not really about two different concepts of self-government, but more about how extensive are the rationalist components of autonomy.

Orthonomous agents recognise that there are certain benchmarks of right belief and right desire and will respond to what is right, even though they may respond differently, or to various extents.[[485]](#footnote-485) To be orthonomous, rather than autonomous (whether procedurally or substantively), the evaluations and desires of the individual have to be sensitive to her recognition of normative requirements (the reasons to support evaluative claims).[[486]](#footnote-486) Of course, although these are quite persuasive justifications for an orthonomous concept of autonomy the arguments employed against requiring a normative element still prevail. In addition, some of this reasoning has resonance with the relational weak substantive theories explained later in this chapter.

4.5.3 Rational reasons for acting

Rationality may also be relevant with regard to the reasons for acting. John Harris believes that it is self-interest that provides us with the most reason for acting.[[487]](#footnote-487) Such subjectivist theories have been influential but others believe that they are misguided as they imply that reasons derive their normative force from desires that we could, in fact, have no reason to have.[[488]](#footnote-488) This may nevertheless be a rational reason if it is viewed subjectively or egoistically. It may be a rational way to achieve an individual’s aims and those aims could make sense within the agent’s own subjective worldview, even if the same decision may appear irrational to another agent. This may be particularly so if the other agent inhabits a different culture as other cultures will hold different worldviews and so may have different rationalities.[[489]](#footnote-489) Therefore, for the woman in India there may be a rational reason for what appears to be an irrational choice and this is explained by her specific cultural environment which provides a context to her decision.

Others prefer that the reasons for acting are value-based, the reasons for acting being based on the values the acts would satisfy.[[490]](#footnote-490) As we only have reason to act when what we are doing or trying to achieve is worth achieving or is good, they are value-based.[[491]](#footnote-491) Savulescu and Momeyer develop this argument further when they submit that although a choice does not have to be rational in order to be considered autonomous, that choice does have to be based on a rational belief. Holding true or rational beliefs, they maintain, helps to promote autonomy and assists in allowing the individual to see what there is good reason to choose to do. So it is not the choice which has to be rational but rather that the choice is based on rational beliefs.[[492]](#footnote-492)

There is thus a distinction between the ends themselves having to be rational and the reasoning to achieve those ends having to be rational. This would focus on the values of the individual and she would have to show that she has valuable reasons for her acts or objectives. The end itself does not have to conform to a particular rational value. The individual and her circumstances can then be taken into account and it becomes a more subjective concept of value. Although the decision of the individual may seem irrational and anathema to some, it could still be considered autonomous, and would be rational, if the reasons for making that decision are reasonable. The value of the end is determined through the agent’s reasons for achieving that end.[[493]](#footnote-493) This, it could be argued, recognises the individual’s own circumstances and concedes that a decision may be rational even if the end result appears to be irrational.

**4.6 Relational autonomy**

The mainstream concepts of autonomy have been regarded by some as inadequate in confronting and engaging with the way in which the internalisation of oppression could affect autonomy. The response of feminist theorists was to develop relational autonomy theories.[[494]](#footnote-494)

Initially welcomed by feminists, the right to self-determination appeared to be a goal which would free women from oppression and certainly the recognition of respect for autonomy played a role in women striving for equality.[[495]](#footnote-495) The focus on the ‘self’ and freedom of expression and being able to make one’s own decisions is still a fairly recent achievement for many women. More recently, however, and as women have started to relax into the position of being able to make decisions for themselves, some feminists have tended to regard autonomy, or at least the traditional view of it, with suspicion. It is considered by some as a masculine concept, and the ideals and assumptions about the notion of ‘selfhood’, which focus on self-sufficiency and atomism, raise problems if then analysed from a feminist perspective. It is also doubted whether such values should be considered worthy of promotion.[[496]](#footnote-496) These issues have been addressed by the use of feminist critiques but theorists are not ready to discard the concept of autonomy altogether, as it is clearly still essential in order to put oppression, subjection and agency into context.[[497]](#footnote-497) Rather, feminist writers have preferred to refigure the concept from their own perspective and have labelled it ‘relational autonomy’. It is important to examine the critiques of the traditional concepts of autonomy as any reconception of autonomy has to respond to those concerns and be compatible with them. At the same time relational autonomy theories must attempt to address social conditions or environments which are oppressive, and which may then be internalised, undermining or eroding a woman’s autonomy.

The application of relational autonomy theories thus examines certain preferences in more depth, recognising that although autonomy focuses on the decision by an individual, some choices are made in the context of family and community practices, and may be reflecting some of the values of that community.[[498]](#footnote-498) Applying relational autonomy theories provides a much richer analysis of the presence or otherwise of autonomy when there is evidence of adaptive preferences, taking into account that agents are embedded in social and historical contexts and can be emotional, feeling, and rational beings rather than individualistic and self-sufficient.[[499]](#footnote-499) The findings could be that there is autonomy in some cases and not others, depending on the extent of any internalisation of oppression and other competing values or objectives. What is evident is that there should be no automatic conclusion based on the content of the choice or on the general context within which the decision is made as each individual may reason and react differently depending on her individual situation and attitudes to herself. There is consequently more of a possibility of preserving autonomy while still recognising that choices are made within a wider context.

Relational autonomy as an overarching term covers both reconceptualised procedural accounts and substantive or normative accounts. Within each account the focus is looking outwards to the woman’s relationships with others or at historical and social influences, rather than the more individualistic, traditional approaches, which focus solely on the self. As one of the main motivations for the development of the relational approach has been to provide a more adequate explanation of whether autonomy is impaired when there is oppressive socialisation, these accounts may therefore better take into account how social oppression can direct the woman’s choice to sex-selectively abort. However, it should also serve to help us to empathise with the woman having to make decisions in her particular cultural context and arrive at a more detailed knowledge of her reasons for making those choices.

4.6.1Feminist critiques of traditional conceptions of autonomy

Rather than critiquing a particular theory of autonomy, Lorraine Code critiques the character ideal of the autonomous man, believing that it influences mainstream moral theory, and sustains the Western obsession with autonomy as the principal aim.[[500]](#footnote-500) She thus describes autonomous man as:

(…..) self-sufficient, independent, and self-reliant, a self-realising individual who directs his efforts towards maximising his personal gains. His independence is under constant threat from other (equally self-serving) individuals: hence he devises rules to protect himself from intrusion. Talk of rights, rational self-interest, expedience and efficiency permeates his moral, social, and political discourse. In short, there has been a gradual alignment of autonomy with individualism.[[501]](#footnote-501)

This ideal reflects a character who self-servingly focuses on achieving his own personal gains with no recognition of his social embeddedness. The caricature of the rugged male individualist who is only concerned with himself may be anachronistic, and possibly offensive to both sexes, as it intimates that only women are the caring, more communitarian minded sex, and that only men are rational and self-sufficient. However, libertarian theorists, who focus on individualism, certainly emphasise the importance of rights and self-interest as the supreme value at the expense of other rights and interests, which may have equal, if not more, value.

The ideal portrayed by Code can lead to problems in the views it produces. Values such as trust, loyalty, friendship and responsibility, which result from co-mutual relations, will be considered of secondary importance to the value of substantive independence. In addition, agents are regarded as the same and interchangeable as they are regarded as atomistic holders of rights. Furthermore, relationships and communities that centre on interdependence could be perceived as a threat to autonomy.[[502]](#footnote-502)

Metaphysical critiques argue against a conception of autonomy which asserts that agents are atomistic. Four different claims regarding ‘individualism’ are recognised, one of which is that agents are causally isolated from others. Mackenzie and Stoljar agree with Annette Baier’s rejection of individualism in this context, as she proposes that persons are “second persons”, requiring dependency on others to develop.

Persons are essentially successors, heirs to other persons who formed and cared for them, and their personality is revealed both in their relations to others and in their response to their own recognised genesis.[[503]](#footnote-503)

So any reconceptualised theory of autonomy, she argues, must recognise the status of a person as a second person. It is certainly the case that the women in India are in part the products of their mothers in that they have inherited the view of the female as inferior. The cultural values are handed down from generation to generation. In addition women will require the input of others in order to develop and further their autonomy. This emphasises the importance of such close relationships. Of course daughters can also influence the views of their mothers and hopefully this is one way forward to promote autonomy and ties in well with the consciousness-raising which is one objective of the thesis. It also links well with Christman’s requirement that the decision-maker be aware of the historical background to beliefs and values.[[504]](#footnote-504)

Other conceptions of individualism are also rejected, positing that an agent’s sense of herself cannot be independent of relationships with family and community and that the agent’s social relations are an essential part of her identity. Yet the acceptance that social relations not only influence an agent’s sense of herself but may constitute the agent’s self, does not mean that autonomy is not present. Relational approaches have to acknowledge the *effect* of social conditions on certain capacities of the agent, such as her sense of self-esteem and self-trust, without automatically undermining a claim of autonomy. It is conceded, however, that in the sense that agents are metaphysically separate beings with a capacity for autonomy, then individualism must be accepted.[[505]](#footnote-505)

Traditional views of autonomy consider characteristics such as independence and self-sufficiency as superior to any value attributed to relations of dependency and interconnections with others and as such are condemned by care critiques. Such relationships with others have historically and symbolically been linked to women and so the traditional theories of autonomy could be deemed as devaluing those principles and experiences. This is particularly the case in India where women are raised to be dependent and to put family before themselves. In this way, therefore, the traditional concepts are regarded as masculine. Any re-conceptualisation should not be defined in a way which is opposed to femininity or relations of dependence and in fact if influenced by the care critique will emphasise the value of relations of dependency and nurture. Jennifer Nedelsky asserts that autonomy is a capacity to be either nurtured or undermined through our relationships with others and the society within which we live.[[506]](#footnote-506) Again rejecting liberal individualism, believing that it cannot meet the goals of feminist theory, she grounds her re-conception of autonomy on intimate relations, and chooses childrearing as a symbol of autonomy, believing that it illustrates how autonomy develops through a relationship with others.[[507]](#footnote-507) However, it has been contended that this focus on one intimate relationship would not adequately address the effects of oppression on the capacity for autonomy although it is conceded that these care critiques are to some extent in line with the aim of arriving at a relational notion of autonomy.[[508]](#footnote-508) What also requires emphasis is the fact that autonomy can be destroyed or undermined by relationships with others and sadly in India this can be carried out by others of the same sex.

The care critique also links with Nancy Chodorow’s account of how masculine and feminine psychic development accounts for why women make certain choices or are unable to make choices which go against their culture.[[509]](#footnote-509) She explains how, in societies which are unequal in how different genders are treated and regarded, and where women are the main caregivers, masculine selfhood is defined in the development of a strong sense of self and self-sufficient independence whereas feminine psychic development promotes interdependence and the ability to connect with others, the latter being at the expense of the first.[[510]](#footnote-510) It could therefore be posited that in certain societies it will be more or less inevitable that women will be deemed non-autonomous.

Also dismissing the established ideal of self-mastery, postmodernist critiques draw on several different theories to claim that the traditional concept of autonomy is in fact an illusion.[[511]](#footnote-511) Since Freud autonomy can no longer refer to the transparently self-aware agent, or the Kantian rational self-legislator.[[512]](#footnote-512) Rather, psychoanalytic theory indicates that agents may be self-deluded, hidden to themselves and driven by desires of which they may not even be aware, nor be able to control. Introspective reflection will not, therefore, be able to discover a true self. The traditional views of autonomy, challenged by Freud and others, are, they argue, complicit with the suppression of others, including women, who are often regarded as incapable of achieving this rational self-mastery that is aspired to.[[513]](#footnote-513)

Given these criticisms, one response would be to reject the conception of autonomy altogether. However, autonomy is tied up with acknowledgement of rights, and in particular the right to make one’s own decisions. This has been so hard to achieve for women, and accomplished at such expense, that it would be foolish to reject it outright. Rather there is a need for a re-conceptualisation of autonomy to take into account the fact that an agent is more complex and is influenced by different social and historical contexts. Feminist theorists have had to reclaim the concept of autonomy by drawing on these critiques of autonomy and then refiguring the mainstream theories of autonomy in ways more favourable to a feminist perspective.[[514]](#footnote-514) The following proposed alternatives to the more traditional approaches are attempts to address the possibility that social and gender oppression could undermine autonomy and to reconsider the required conditions for autonomy. The feminist philosophers have responded to hard cases such as practices of oppression, adaptive preference formation and self-abnegation, in different ways, and consequently they are based on different theoretical stances.[[515]](#footnote-515)

4.6.2Relational procedural theories of autonomy

The procedural conceptions of autonomy are content neutral and so are attractive to feminist theorists as there is no requirement to endorse certain preferences such as self-sufficiency or social separation. The more feminine preferences for relationships based on care and dependency can then be regarded as just as autonomous. Content neutrality also means that differences can be maintained and respected and there is a recognition that a person can make wrong choices, or have preferences which are not in her best interests, but still be autonomous. Some relational theorists have, as a result, adopted the procedural theories but have revised them slightly, have centred on the skills required for reflection or, instead of focussing on the occurrent mental state, they have applied a historical process of critical reflection. This, they contend, answers the doubts expressed regarding the more traditional procedural theories that focus on critical reflection which may not allow for the effect on autonomy of oppressive socialisation.

4.6.2.1 The integration model

Marilyn Friedman proposes a non-hierarchical or “integration” model as an alternative to the structural, hierarchical models of Dworkin and Frankfurt.[[516]](#footnote-516) Rather than favouring the higher level assessment, critical reflection would be a two way process, integrating a person’s hierarchy of intermediate standards and motivations and her highest principles. Principles would only be considered a person’s “own principles” if the person’s highest principles have been assessed as matching her intermediate standards and motivations. Autonomy would result when there is integration between the different levels of the self. This approach does not give undue weight to the higher level desires and so addresses the criticisms of Thalberg[[517]](#footnote-517)and facilitates a two-way process. However, Paul Benson doubts that it sufficiently addresses the effects of oppressive socialisation on autonomy. He argues that the integration model will only perceive threats to autonomy when the total internalisation of socialisation which inhibits autonomy has either started to fail or has not been entirely successful.[[518]](#footnote-518) So Friedman’s alternative proposal may well be subject to the same criticisms as those she has articulated for the identification model. She appears to be relying on the suggestion that the two levels of desires may not be in agreement and so prompt further critical reflection. If there is no disparity (as there may not be if the socialisation is complete) then it still does not necessarily signify autonomy. Therefore, if there is total internalisation of the belief that a woman is inferior then it is unlikely that the integration model would lead to sufficient critical reflection to enable the woman to amend her choices.

4.6.2.2 Historical theories

Christman’s historical approach requires that the agent must not reject the *process* which led her to the desire.[[519]](#footnote-519) In recognising the potential problem of manipulation the agent would only be autonomous if she did not resist the development of her desire when reflecting on the process of development or she would not have resisted that development if she *had* reflected on the process. In addition any lack of resistance must not be a result of factors that inhibit self-reflection, any self-reflection that is involved has to be minimally rational, and it should not involve self-deception. Finally, the agent must also be minimally rational with respect to the desire so the agent should not experience conflicts of desires or beliefs that significantly affect her behaviour.[[520]](#footnote-520) This appears to be requiring consistency in desires and beliefs.

Christman submits that in order for there to be autonomy the processes of reflection must not be influenced by what he terms “illegitimate external influences” such as manipulation or brainwashing, indoctrination or oppressive socialisation which would interfere with an agent’s normal cognitive reflective processes.[[521]](#footnote-521) This directly addresses the concerns identified with the pure procedural accounts. These influences would be considered illegitimate if the agent amends her identifications after becoming aware of them following critical reflection. However, desires and preferences would be autonomous if they are not a result of illegitimate external influences or the individual does not, or would not, object to the way she arrived at those desires and preferences. It must be questioned, however, whether an individual who has only known one way of thinking, and so has deeply internalised certain beliefs, would ever be able to challenge those external influences. Critical reflection would not necessarily result in a revision of identification if there is no reason for the agent to consider the influences as illegitimate.

Benson takes issue with the condition of ‘externality’ as he argues that influences do not have to be external in order to inhibit autonomy.[[522]](#footnote-522) In fact, oppressive forms of socialisation are able to influence the normal cognitive processes and so may be better described as internal influences. If this particular condition of externality is too weak, as Benson asserts, then the account instead rests on the condition of illegitimacy, which Benson also questions. If the agent is used to thinking of herself in a way which is the result of social oppression then she is unlikely to reflect on the awareness of the reasons for her identification in the normal way or in the way expected of an autonomous agent. This condition of illegitimacy is also too weak then in that it either regards oppressive socialisation as a legitimate influence on the autonomous agent because she does not object to those influences or it presumes, mistakenly, that the critical reflection is autonomous.[[523]](#footnote-523)

The problem here could be that autonomy is equated with self-transparency so that the more an individual is aware of the way she has acquired her desires and preferences the more autonomous she is. Yet it is unlikely that socially oppressed agents will possess this level of self-transparency. In turn, a further problem is that an individual who has been socialised to the extent that she has internalised certain norms would then be unlikely to change her higher-order identifications following critical reflection. The agent’s normal processes of reflection would already have to be autonomous in order for her to alter her identifications following awareness that they are the result of socialisation.[[524]](#footnote-524)

Andrea Westlund agrees that the historical approach could set the bar too high for the achievement of autonomy in that it requires us to analyse each motivating desire prior to acting and to be aware of our psychological history to an unrealistic degree.[[525]](#footnote-525) Yet this historical approach appears to be endorsed by Dworkin when he also required that the processes of critical reflection should be procedurally independent. He claimed that the agent must be able to reflect on, and critically assess, not just her desires and beliefs but also the processes that have led her to acquire those particular desires, values and beliefs, whether they are influenced by socialisation, parents or peers. If the agent endorses these *processes* then she is autonomous.[[526]](#footnote-526)

Although such approaches acknowledge the importance of taking into account historical processes when forming values and desires, there remains doubt as to whether they deal adequately with how oppressive socialisation can affect autonomy. There is thus, arguably, a need to analyse in detail the skills and capacities required for autonomy as well as the type of socialisation which is required to develop them or which may undermine them. Some of these problems may be addressed by applying competency theories[[527]](#footnote-527).

4.6.2.3 Competency theories

Diana Meyers is motivated by a need to explain how oppressive socialisation can impair autonomy and to develop a theory which demonstrates how agents who are subjected to oppressive social circumstances could nevertheless be regarded as partially autonomous, or autonomous in relation to certain decisions but not others. In submitting that autonomy is a competency, which consists of different skills and capacities such as those of self-discovery, self-direction and self-definition, then these skills that enable reflection have to be exercised in order to achieve an integrated self. So again, reflection and integration play a role but this approach focuses more on the skills required for reflection to be successful.[[528]](#footnote-528) This may be evidence of one other aim of relational autonomy theories – the furthering of autonomy rather than merely establishing its presence or otherwise.

This can be described as a self-realisation approach and will differ between individuals as the skills and capacities each person needs to fully realise herself will, in turn, vary. Meyers argues that such competency can only be developed or nurtured in the context of social relationships, practices and institutions. The social context is particularly important to the development of autonomy competency, she asserts, for several reasons. First, different social environments encourage the development of different potentialities in the individual. Secondly, she recognises that the individual’s attempts to develop her authentic self could be compromised and undermined by her environment as she is more likely to develop socially reinforced aspects of herself. Finally, the social context could actually impair the capacity of the individual to achieve autonomy by encouraging the development of some skills at the expense of others. In particular Meyers highlights patterns of gender socialisation and how women are encouraged to develop certain skills and men others.[[529]](#footnote-529)

If such skills can be developed and exercised to a different extent then autonomy can be viewed as a matter of degree. Meyers makes a distinction between episodic autonomy, programmatic autonomy and narrow programmatic autonomy. She considers that women who have been subjected to oppressive socialisation may demonstrate high degrees of episodic autonomy, (the capacity to decide what one wants or how to act in a particular situation), be capable of some narrowly programmatic autonomy (the capacity to make decisions in certain parts of one’s life such as choice of partner), yet may be compromised in relation to programmatic autonomy, which is the capacity to critically and reflectively decide important life issues.[[530]](#footnote-530) Meyers links self-realisation to self-respect and claims that, if socialisation has damaged a person’s self-respect, then that socialisation is oppressive and compromises the capacity to achieve full autonomy.

The danger then is that if social oppression exists in a society the conclusion may be that a woman in that society is not autonomous. Benson prefers to take the stance that some women living under social oppression, even when making choices in relation to important life issues, could still be making them autonomously. The conventions to which an agent is exposed do not necessarily prevent her from reflecting critically on her motives and even changing her decisions on the basis of such reflection. This is because *some* women will have a sufficient degree of self-awareness and will have access to relevant information that prevents them from being brainwashed or manipulated. The social oppression has not managed to reduce their regard for their own competence and worth. So they will be able to stand by their decisions and answer for them, if challenged.[[531]](#footnote-531) This means that the fact that social oppression exists in that particular society will not *automatically* result in a conclusion that a woman in that society is not autonomous.

Meyers recognises the same potential problem and resolves it by submitting that not all wishes should be granted equal weight. So those wishes which are reflective of uncritical acceptance of social norms and expectations are not as worthy of being recognised as those which are a result of exercising skills of self-discovery, self-definition and self-direction. It is not then the content of the agent’s choices or decisions but whether or not those desires have been acquired autonomously which is important.[[532]](#footnote-532) However, it is conceded that it is likely to be the content of the choice, and the possibility of the choice being an adaptive preference, which will trigger the challenge, even if that leads to an examination of how the individual has arrived at her choice.

In rejecting the view that procedural conditions alone could be sufficient for autonomy, and in line with Meyers’ contribution above, Natalie Stoljar considers that feminists should hold the ‘feminist intuition’ that those attitudes which are directly produced by the internalisation of false and oppressive norms are unable to result in autonomous action, even when agents have reflectively endorsed these attitudes. This, as with Meyers’ theory, recognises that women are influenced to too great an extent on some issues and this would destroy autonomy in relation to those issues only.[[533]](#footnote-533) However, a distinction can be made as Stoljar’s argument focuses on normative substance rather than procedural conditions so refers to the *content* of the preferences formed as a result of socialisation rather than the *process* of the socialisation which influences the woman in making her decisions.[[534]](#footnote-534)

4.6.3 Relational substantive theories

Traditional substantive theories are value-laden concepts where the contents of the preferences of an agent are subject to direct normative constraints. A preference by a woman to be subservient or to consider herself inferior would not, under these theories, be autonomous. Criticisms of these accounts were considered earlier in the chapter and weak substantive accounts were briefly considered as more closely aligned to relational accounts of autonomy.

The relational substantive approach to autonomy instead focuses not on the moral content of the choice, thus responding to those criticisms, but on the qualities an agent should have for normative competence or a requirement that the agent’s decisions are not based on distorted norms acquired through internalised oppression.

4.6.3.1 Relational strong substantive theory

Natalie Stoljar rejects the purely procedural account and also argues that the weak substantive account is inadequate in recognising the role social oppression plays in decisions. She prefers to apply a relational strong substantive account of autonomy to better explain the feminist intuition which is that choices which have been influenced by oppressive norms cannot be autonomous choices. It is not then the content of a decision that causes us to doubt the autonomy of the decision-maker (although that may trigger initial concern and further investigation) but it is what has influenced that decision.[[535]](#footnote-535) So if the woman is overly influenced by incorrect norms regarding her gender, in that these norms are *central* to her decision, then that decision will attract the feminine intuition that the decision-maker is not autonomous. This avoids the concerns of those who are worried about the move away from the ‘self’ as the focus is still the individual, yet takes into account the content of the decision. In contrast to the weak substantive accounts, however, it takes a more objective view of the basis for her choice so if her decision is based on a norm that women are not deserving of equal treatment then Stoljar would regard that choice as non-autonomous. This approach more adequately addresses those cases of paradigmatic adaptive preference (where there is total or near-total internalisation of oppressive socialisation).

Natalie Stoljar justifies her relational version of autonomy by relying on the feminist intuition that preferences which are influenced by oppressive norms of femininity will not be autonomous.[[536]](#footnote-536) The feminist intuition, she argues, can only be explained by sanctioning the substantive account of autonomy which restricts the content of preferences. Although she is unable to provide details of such a theory she calls for feminists who hold to this intuition to articulate and develop that account.[[537]](#footnote-537) Therefore, if an individual is overly motivated by oppressive norms because these have been internalised, then the feminist intuition is triggered and the decision is regarded as non-autonomous. Care must be taken here, however, as the feminist intuition is merely replacing the trigger usually produced by an irrational decision and although that should result in further scrutiny or inquiry it should not presume non-autonomy.

There are further reservations about this approach. If we hold as suspect *any* questionable preference made by an agent who is socially oppressed then those agents would lose any voice they may have and any opportunity to challenge their oppression. It could result in disenfranchising those who are already being discriminated against and would justify unwarranted paternalistic interference.[[538]](#footnote-538) The approach is based on intuition, both that there is an adaptive preference based on internalised oppression, and further, that some social relationships are damaging to autonomy, signifying that the woman is not autonomous. Admittedly the intuition is a strong one, particularly in respect to the decision to sex-selectively abort because the foetus is female, but we must question whether we too readily regard oppression as always impeding autonomy. It may be that this approach is a less transparent way of imposing moral content on decisions. After all we are working back from the content of the decision that we find morally questionable. This prompts an investigation of the basis of that decision and the norms it is based on, and then if those norms are distorted we conclude that the woman is not autonomous. It does address the effect of social oppression but it could be argued that as it is assuming that there has been total internalisation then it insufficiently addresses the effect of the woman’s environment and other responsibilities she may care about and which may influence her.

4.6.3.2 Relational weak substantive theories

Weak substantive accounts require that the agent possesses certain characteristics in order to be considered normatively competent. So she should have a sense of self-trust or self-worth[[539]](#footnote-539) or should be able to answer to others regarding her decision, even if she endorses an ideology that appears to oppress her.[[540]](#footnote-540) A further account would require the woman to regard herself as being able to answer for her behaviour according to the normative demands that she recognises others may apply to her acts or decisions.[[541]](#footnote-541) Yet, with respect to the norms she believes apply to her, she may regard herself as competent to answer for her actions. Even if the norms she has accepted are oppressive norms she may nevertheless have the requisite self-confidence to communicate her commitment to them to others.[[542]](#footnote-542) This would not then satisfy the intuition that her decision cannot be her own (based on the content of the decision). Further, the oppression experienced by certain marginalised groups could interfere with that group’s normative competence. Oppression can result in psychological harm such as false consciousness which is where the agent adopts as true the false ideology that oppresses her, or in deformed desires which is where the agent’s desires are based on the belief in the false ideology. Agents who have accepted a false set of beliefs in a particular area of their life may not be able to recognise alternative correct standards and then apply them in order to evaluate their own preferences. Alternatively, when they are faced with a contradictory set of norms and then attempt to exercise normative competence relative to the prevailing norms then it may entail having to adopt a set of norms which go against the ones she is accustomed to, and so it could instinctively appear to her to be against her own interests.

These relational weak substantive accounts may then appear to address the criticisms addressed to the requirement of a specific moral content of decisions as they are more concerned with normative competence than substance. The normative standpoints such as those submitted by Benson, do not come from objective moral reasons but are inter-subjective in that they originate from persons or institutions to which the agent is connected. However, as those standpoints could be oppressive to the group of which the agent is a member this raises a problem. If the oppression is sufficiently internalised then the agent may appear competent in using those standards to evaluate her own actions and so be normatively competent and hence autonomous. To be considered as lacking autonomy then the agent has to be judged to be lacking in normative competence from another standpoint.

Robin Dillon[[543]](#footnote-543) and Trudy Govier[[544]](#footnote-544) have supported weak substantive accounts, where normative content is built in, but, rather than direct normative constraints on preferences, agents would have to demonstrate certain moral attitudes to themselves, such as self-respect and self-trust. Dillon argues for a feminist conception of self-respect that would challenge social oppression and instigate necessary changes.[[545]](#footnote-545) In line with feminist critiques of the standard concept of autonomy[[546]](#footnote-546) she argues that it is traditionally masculinist and that a feminist concept would be more conducive to liberalisation.[[547]](#footnote-547) Working from Stephen Darwall’s distinction between appraisal self-respect and recognition self-respect,[[548]](#footnote-548) she concentrates on recognition self-respect as a requirement for a person to be able to develop and make choices and so be considered autonomous.[[549]](#footnote-549) Recognition self-respect acknowledges that all individuals have intrinsic moral worth and status. Yet if there is institutionalised denial of the woman as an equal and her status is regarded as lower than that of the male then recognition self-respect is difficult to achieve and maintain. This would cast doubt as to the presence of autonomy and it may mean that those living within an environment where there is inequality of power will be presumed to be non-autonomous. Dillon’s feminist notion of self-respect is relational because it recognises our connections to others as part of what makes us an individual. What is more, if there is within this an awareness that self-respect relies on mutual dependency then this *should* result in any inequalities being acknowledged and addressed.[[550]](#footnote-550) The danger, however, is that although this appears to be a state to strive for, if the woman has been made to regard herself as deserving less respect as a result of her gender, or has had the low status imposed on her by society, then the self-respect will be lacking as will any inclination to recognise the inequality in relationships. She may then be regarded as not possessing the autonomy she requires in order to challenge the status quo. This feminist idea of self-respect would lend itself to liberalisation but the self-respect has to be achieved first.

In the same way, Govier emphasises the importance of self-trust, pointing out that we must be secure in the sense of our own values, motives and capacities in order to be able to reflect and act effectively.[[551]](#footnote-551) Without this core self-trust we are more likely to concede our judgment and decision-making to others and so procedural autonomy would not be possible. This, she asserts, is more than a procedural condition while at the same time not being as onerous as the strong substantive approach which would impose external norms on the content of the decision. The woman would have to regard her desires and beliefs as worthy and would also have to possess the moral capacity to make good judgments.[[552]](#footnote-552) Destruction of one’s self-worth, self-trust and self-respect as a result of oppression would then have the consequence of an agent being incapable of autonomy.

In a similar vein Westlund’s dialogical conception requires the agent to take responsibility for herself and to subject herself to independent self-criticism. In order for desires to be regarded as fully one’s own there has to be a willingness to engage in critical dialogue about them. It is only by participating in such dialogue that the woman will take responsibility for her commitments and for herself. Not only must she be answerable to external critical perspectives she must also feel pressure from within, and must demand answers from herself. She will also be open to reforming her desires and preferences as a consequence of the critical dialogue. A woman can only be held answerable, therefore, if she holds *herself* answerable, otherwise she is not self-representing and should not be treated as such.[[553]](#footnote-553)

It is unclear whether the woman who is socially oppressed would be capable of engaging in a critical dialogue with herself and with others: that capacity may be too onerous to achieve. However, she *may* be able to take responsibility for her choice and to provide answers as to why she has made that choice. There is the possibility that although she recognises others may regard her decision as wrong she can distinguish her position. This would be sufficient, as the agent does not have to come to the same conclusion as her external critics, she just has to be prepared to self-represent and be self-answerable. However, it is essential that the practical reasoning is also self-governed so she has to be appropriately responsive to the pressures on her that govern her practical reasoning as well.[[554]](#footnote-554) So this self-reflection is much more demanding than the reflection required for the identification proposed by Frankfurt. It is more than a mere acceptance of one’s desires; rather it is being prepared to give reasons for and against one’s endorsements, making the reflection much more critical and rigorous.[[555]](#footnote-555)

Sigurdur Kristinsson also proposes a relational weak substantive account, focussing on the qualities an individual should have, giving as examples strength of will, reflectiveness and deliberation.[[556]](#footnote-556) The individual should have a *nomos* that is her own in that it demonstrates rationality and coherency. A submissive character and uncritical deference will prevent that person from being able to develop and exercise her capacity for autonomy.[[557]](#footnote-557) What is important, therefore, is whether the agent has rationally accepted the principal elements of her *nomos* even after taking into account any causal history and external influences.[[558]](#footnote-558) This perhaps builds on Christman’s historical approach, requiring more than mere acceptance of how preferences have been acquired after reflecting upon their historical source, but a more rational acceptance.

On similar lines Marina Oshana requires an autonomous agent to have the capacity to exercise control over her choices and actions.[[559]](#footnote-559) For her desires to be effective she must possess the requisite skills, knowledge and opportunity to change her preferences and act on those changes. In order to live a self-directed life she must not be influenced by other persons, by social institutions or circumstances. Although she may live within a social environment which will have an effect on her autonomy she must be able to step back from any socially given roles and practices even though they have arguably made her what she is. This will require relative social and psychological security so that she is free to question and judge those roles and practices against her values and to be able to choose not to adopt them. If she is asked to conform to standards of behaviour that have been set by her community then it has to be her choice to do so.[[560]](#footnote-560) This contains elements of the competence theory of Meyers and also the weak substantive approaches of Dillon, Govier and Westlund. However, it may be excessively burdensome, and possibly unachievable, in what it is demanding of a woman who may be living within an oppressive environment.

Stephen Morse describes this as a form of rationality in that it requires the individual to be able to perceive accurately, analyse the facts correctly, form justifiable beliefs and reason instrumentally.[[561]](#footnote-561) He refers to Susan Wolf’s claim that at the very least rationality has to include the ability to be sensitive to, and be flexible enough to be able to respond to, relevant changes in one’s situation and environment.[[562]](#footnote-562) So, again, it goes beyond the accepted procedural account and ventures into weak substantive accounts.

Yet, Oshana would go further and require a normative element.[[563]](#footnote-563) Objective criteria must be satisfied, which may be different from the agent’s own desires or values, so the agent must be able to respond to criteria that offer objective reasons for action. Further, she must have an understanding of what is expected of an agent who is morally responsible and her reasons for acting must carry sufficient moral weight.[[564]](#footnote-564) Only when the agent is ‘reasons-responsive’[[565]](#footnote-565) would it be fair to hold her responsible. This means that she has to be able to appreciate and explain why she has acted in a particular way and in turn, the explanation, following moral evaluation, must make the action understandable.[[566]](#footnote-566) Furthermore, in order to be normatively competent an agent has to be able to understand and take seriously the moral views of others outside her own moral community, even if those views are not true or correct. If she is faced with strong evidence against her own reasons then she should be prepared to discard them. This raises once again, however, the problem of what would be strong evidence as to the right action to take. Although she must consider society’s view as to what is right or wrong as a relevant consideration she does not have to accept those normative expectations.[[567]](#footnote-567) Yet again Oshana’s arguments resonate with some of the other relational weak substantive accounts, in particular Westlund’s requirement of a critical dialogue.[[568]](#footnote-568)

4.6.4 Catriona Mackenzie’s relational analysis of the three dimensions of autonomy

There are thus several conceptions of relational autonomy, primarily drawing on the traditional approaches but amending them so that they take into account relationships with others, both supportive and oppressive. As do the traditional approaches, these relational theories compete with each other, each theorist using his or her own examples to justify the approach. With this in mind, Catriona Mackenzie has recently taken a more holistic approach that recognises the different relational re-conceptions of the traditional theories rather than just choosing one.[[569]](#footnote-569) She proposes a relational conception of each external or internal condition, recognising that although they are distinct dimensions of autonomy, they are also causally interdependent. The three dimensions are self-determination, self-governance and self-authorisation. Rather than a unitary concept her multi-dimensional approach enables an examination of the different dimensions of the concept of autonomy while still retaining the overall term of relational autonomy. The different aspects can be distinguished so that the requisite weight can be given to the different preconditions required for autonomy, but it also better accounts for our intuitions about autonomy, arguing that a person can be self-governing and self-authorising even in the presence of serious oppression.[[570]](#footnote-570) Alternatively, the conditions for self-determination could be satisfied but the person may not be self-governing and may not regard herself as self-authorising. Each dimension requires certain conditions to be satisfied. The self-determination axis identifies the external structural social and political conditions of freedom and opportunity which have to be met in order for an individual to be able to make choices about what to value, who to be and what to do. The self-governance axis relates to competence and authenticity conditions that are internal to the individual. Finally, the self-authorisation axis identifies three conditions to be met: accountability, self-evaluative attitudes and social recognition. Mackenzie also recognises that certain conditions for the different dimensions may be more pertinent than others, depending on the context of the decision made. She refers to medical decision making as an example and proffers that in such circumstances the most salient dimensions would be self-governance and self-authorisation. There should then be a focus by the medical professionals to ascertain whether the patient meets the competence and authenticity conditions for self-governance and the accountability condition for self-authorisation. Should there be a failure to meet the required thresholds then supportive structures will need to be put in place to enable the patient to make an autonomous decision.

**Summary**

This chapter has addressed the different approaches to autonomy, with particular attention to relational theories of autonomy which directly address the choices of women who exist in socially oppressive situations. It demonstrates that there are reservations about the application of a procedural approach to autonomy, when applied to those living under social oppression. When there is no disparity between the higher and lower level volitions or desires this may be a result of the internalisation of oppression. There will be no challenging of the lower level desire but this will not necessarily signify identification. The procedural approach therefore fails in not being able to determine the true reasons for acting. Given the content of the decision to abort a foetus because of its sex, an alternative substantive approach may be preferable. It would require more from the decision-maker and would answer the concerns of those who are aware that agents may be being manipulated into making certain decisions. It achieves the label of the decision being non-autonomous which correlates with our instincts but there are criticisms that this undermines the ‘self’ in self-regulation and moves too far away from the traditional meaning of autonomy. It may also be too prescriptive and difficult to achieve, particularly for those being socially oppressed. It could leave those who are acknowledged to be socially oppressed as labelled as a non-autonomous group. The weak substantive account may go some way to placate the critics of the procedural accounts yet still fails to satisfy entirely. It does not focus on the content of the decision, rather the characteristics of the decision-maker who must have certain views of herself. Again, these requirements may be difficult to meet if social oppression has had an undermining effect on self-respect and self-trust.

Rationality is certainly a requirement of autonomy, whether as part of procedural accounts or of substantive accounts but again has different meanings and can be applied in different ways. The dispute appears to be the extent to which it is an essential condition and how far the requirement reaches into the realm of orthonomy. It also has a place when discussing our reasons for acting and whether these are based merely on our own desires or on our values. It may be that this account would be too far removed from the more usual approach of women which takes into account consequences, not only to the decision-maker but also to others around her who may be affected by her choices.

Relational Autonomy is an alternative to these more traditional and individualist accounts of autonomy, recognising the importance of relationships to how we make decisions. This re-conceptualisation of autonomy accepts that each agent is complex and is influenced by a range of social and historical contexts. To a certain extent it builds upon the traditional accounts already addressed, but it develops them further and is regarded as a version of autonomy in its own right. It addresses more directly the possibility that internalised oppression can adversely influence choices, weakening or undermining autonomy. Nevertheless, it also has its detractors as it demands many characteristics and qualities which an agent will not be able to attain, particularly living within an environment of social oppression. Although Catriona Mackenzie’s more inclusive approach attempts to look at several aspects of autonomy at the same time, emphasising the relationship between each dimension, the problem in application may be the cumulative demands made on the decision-maker. Given the original objective of the relational autonomy theorists, which was to more accurately address the possibility of internalisation of oppression affecting a woman’s decision, this in fact may act against the woman who is oppressed as the theorists set up their ideal, autonomous woman, which the oppressed woman will always fail to live up to.

I have chosen in the next chapter to apply the autonomy accounts to three hypothetical case studies based on the research carried out by an investigative journalist in India.[[571]](#footnote-571) The case studies, with each woman’s circumstances and history contributing to her practical identity, test the theories: procedural, substantive, the relational versions of both and Mackenzie’s three dimensional relational approach. It may be that if adaptive preferences are identified then the first step should be to ascertain whether there is paradigmatic adaptive preference. If so, then Stoljar’s relational strong substantive account is best applied which would justify a finding that the decision would not be autonomous. If, however, there is any doubt as to whether there is a paradigmatic adaptive preference (and in all cases there *will* be some doubt) then the various accounts of autonomy are applied. The aim is to determine the extent to which any oppression has been internalised and the reasons for the woman’s choices in order to grant her the status of autonomous where possible.

**CHAPTER 5**

**THREE HYPOTHETICAL CASE STUDIES**

**5.1** **Aims of the case studies**

The three hypothetical case studies, of Anya, Bishakha and Chandeep, were created to illustrate the different levels of oppression to which Indian women are exposed, and the complex reasons or factors which could influence decisions. These case studies cannot cover all scenarios and there are women in India who are making contrary decisions, not ceding to pressure from society to abort on the basis of sex, and taking a stance against patriarchy and the norms in India about the status of women. There are, in addition, women in relationships where there is no pressure to abort a female foetus. However, there are sufficient numbers who *are* choosing to carry out sex determination and then termination on this basis to be of tremendous concern, within India and to many in the international community. This disquiet will become exacerbated as ways to determine the sex of a foetus become much easier to access and less transparent, which could result in even greater numbers of abortions being carried out on this basis.[[572]](#footnote-572) In addition, as fertility falls, there will be increased pressure for at least one of the two or three children of the family to be male. Therefore, although it is not appropriate to generalise as to the extent of the practice, there must be recognition that this *does* happen and so requires commentary and a raising of awareness. The hypothetical case studies aim to see the choice to sex selectively abort from the perspective of three different women who may be influenced by a combination of factors. In that respect it is a feminist approach and it is also pertinent that the two quite disparate feminist intuitions remain the focus of the three case studies: attempting to find autonomy or to promote autonomy where possible, but also not being prepared to accept at face value the decision as the woman’s own, without at least further scrutiny, because of the risk of internalisation of her society’s norms.

In each case study the woman is oppressed to some extent and there is evidence of Khader’s concept of adaptive preference formation as each woman is making a choice which is contrary to her own flourishing. The different theories of autonomy, when applied, then provide the further assessment which assists in identifying whether the decision of each woman can be held to be autonomous, despite the fact that the decision is instinctively, or intuitively, one it is not expected a woman would autonomously make against her own sex.

These hypothetical case studies should not be considered as samples, rather opportunities to shed light on the assumptions made by some when adaptive preference formation has been identified and the different possible conclusions as to the presence of autonomy when the theories of autonomy are applied. They also demonstrate that gender is fundamental to disadvantage in India, no matter the education, religion or wealth of the woman in question. The case studies are based on the research carried out by an Indian investigative journalist on sex-selective abortion and female foeticide.[[573]](#footnote-573)

**5.2 Key issues and variables**

The key issues and variables in each case study have been identified as the following and may contribute to the decision of each woman whether or not to sex-selectively abort:

5.2.1 Education

 It has been submitted in some analyses of the phenomenon to sex-selectively abort that a lack of education could be a dominant factor and that all that is required is a re-education of women. As poorer families generally see little point in educating daughters whose essential purpose is to marry and reproduce it would be expected that it would be poorer women only who are choosing to sex-selectively abort. However, data has indicated that the practice of sex-selective abortion is just as common where the women are educated.[[574]](#footnote-574) Nevertheless, the level of education may be relevant in relation to the woman’s competence skills and her ability to reflect on society’s norms she may have accepted as her own, and these factors may be significant when applying certain theories of autonomy. The type of education will also be pertinent because if education has only served to reinforce society’s norms as to the role and status of the female, then she will not have been taught or encouraged to challenge those norms.

*Anya* has had little formal education as she was needed to help at home and the priority will have been the education of her brothers, if even that was possible given the poverty of the natal family. She was then sold at only fifteen. She has had no contact with women from other cultures and even limited contact with other women with whom she would be able to talk freely. Her ability to reflect and question may be significantly reduced.

*Bishakha* is well educated. She has studied for, and has completed, a degree and a postgraduate qualification. The question will be the extent of control the family has had over her education, the ideas from elsewhere to which she may have been exposed, her ability to discuss and to challenge current ideas, and presumptions as to her role in the family and within her wider society. Educated to postgraduate level she will almost certainly have been taught to question and discuss set ideas but whether this extends to fundamental beliefs about her role and purpose in society has been left unstated. The purpose of her education may also be relevant: whether it was to further her knowledge and provide her with the skills for a career of her own, or to make her more attractive in the marriage market as education has become part of the match-making process.[[575]](#footnote-575)

*Chandeep* is educated to degree standard here in the U.K. Although her level of education may be the same as that of *Bishakha*, her experience of higher education will be different. She will have been exposed to different attitudes and will have been given more freedom and autonomy, not only physically but also academically. She will have been studying in a multi-cultural environment with others holding different views and this contact may have broadened her own perspectives or triggered further research and debate.

5.2.2 Potential independence

The potential for a woman to live independently may be germane to the adaptive preferences she forms. If there is little hope of independence then decisions may be made in order to maintain the status quo and to manage the life with which the woman finds herself. Submission to society’s norms may be her only option as she will require the constant support of her husband and his family in order to survive.

In effect *Anya* has been bought by her husband’s family. She is entirely dependent on her new family and it would be impossible for her to return to her natal family as she is now regarded as belonging to Kala’s family. She has not worked in the past, other than domestic work for her family, and would not be able to survive alone. She has been bought from a poor area and has a limited knowledge of Hindi, the language of her husband’s family. She would have no viable alternative to remaining with the family and enduring the life she has.

*Bishakha* has already worked and has been independent. Although she is now married and has a child to support if she were to be divorced by her husband, she has the potential to be independent and to resume her career as an accountant. She may have to lose some of her comforts but the same would apply to any wife who is contemplating divorce. However, the stigma attached to divorce, and the disappointment of family and society in India, should not be underestimated. This may have a considerable influence on her decision of whether or not to decide to leave her husband, as would the likelihood or otherwise of losing contact with her children.

*Chandeep* no longer works but has had her own career in the past. She has been independent and presumably could be again. She has two daughters but the cost of raising them would be shared with her husband should they divorce. It may be easier for Chandeep to leave her husband as society is not as disapproving of divorce in the U.K. Again, however, the stigma attached to this decision within her close community will be significant.

5.2.3 Poverty

The wealth of the family will play a dominant role in decisions to abort a female foetus. The birth of a further girl may mean the difference between the family just managing to cope financially and extreme poverty. This may be in relation to the amount of dowry the family would have to find or merely the cost of raising a daughter in order to hand her over to another family. However, an exceedingly poor family may not have access to abortion facilities, nor the money to pay for it. Female infanticide or female child neglect, resulting in the child’s death, have been the alternatives for some families.

*Anya’s* own family is not wealthy, as demonstrated by their need to ‘sell’ her to another family in a different community. The lack of money appears to be a constant concern for her new extended family and survival is paramount. The number of female children and the financial consequences may therefore be relevant to any decisions she makes regarding abortion on the basis of sex. She has taken on her new family’s concerns as her own, as often all ties with the natal family are cut when the woman joins her husband’s family.

*Bishakha* is relatively wealthy and enjoys a good standard of living. Although potential poverty will not be a driving force for her decision, as dowries or expensive weddings do not appear to be a problem for the family, it should be noted that dowries will increase in line with the wealth of the family so the effect could still be devastating, should there be several female children. As a family they may thus regard themselves as having more to lose, not only financially but also in the way they are regarded by their peers. In addition, they could be concerned about having their family name tarnished should any daughter marry into a lower class.

You have a much greater chance of survival as a girl baby if born to a poor family, rather than a rich family..... Richer families have more assets which could be put in jeopardy by girls due to dowry payments.[[576]](#footnote-576)

*Chandeep* and her husband appear to have a relatively good standard of living. Her husband works full time as an engineer and their financial position is such that Chandeep has been able to leave work in order to care full time for their children. Much may depend on whether dowries are still deemed as important, and are as costly, when living in a different country

and environment, and what is considered appropriate within her community.

5.2.4 Geography

Although certain states in India have seen much lower numbers of females to males, and there initially appeared to be a distinction between those states in the northern and western parts of India, this disparity is now closing as the southern and eastern states take on the traditions of dowry and attitudes to women.

*Anya* is living in the Punjab region. This is in the north of India and its sex ratio at birth is one of the lowest at 728, with the sex ratio for last births falling to 504.[[577]](#footnote-577)

*Bishakha* lives in Mumbai in the Western state of Maharashtra. The sex ratio at birth in the last census was 860, one of the lowest, with a sex ratio for last births of 667.

*Chandeep* was born in the U.K. although her parents are originally from India. Data from the 2011 U.K. census, analysed by statisticians at Imperial College London, has indicated that sex-selective terminations may be being carried out in some areas of England and Wales.[[578]](#footnote-578) The states from which both sets of parents have immigrated may influence their views as to the importance of giving birth to a boy rather than a girl.

5.2.5 Exposure to norms/values

The norms of the woman’s family, community, state and country will clearly influence her decision as to whether or not to abort on the ground of sex. The extent to which she has the opportunity to be aware of other norms which may conflict with these, (whether as a result of discussions with other women, or reading about different approaches to the issue), will also affect how much the norms have been internalised as her own. This clearly links in with the geographical location of the family referred to above, although goes much further than that to include influences from outside the immediate state or even country.

It is evident from the fact that *Anya* has been effectively sold by her own family that females in the family are regarded as a commodity to be traded to benefit the rest of the family. This indicates the low status she carries and which must have been internalised to a certain extent by Anya. She has then been used by her new family as a producer of sons and a sex slave for her husband’s brothers who cannot afford to buy their own wives. The norms of the family appear to be accepted by her and will be reinforced by the other women in the family. She is quite isolated and it is unlikely that she will have exposure to other societies’ norms or values. It has to be questioned where she could have been introduced to other conceptions of being a woman other than that what she has known throughout her life. That is not to say that instinctively, or because of her inherent personality, she would not internally challenge such views of her own sex.

It would be impossible for *Bishakha* to be unaware of the son-preference which is ubiquitous throughout India. She has had to contend with the disappointment of her mother-in-law and her husband when she gave birth to a girl as her first-born. However, she is a more modern woman who has tasted independence and may have had a glimpse of how it could be otherwise. She will certainly have been exposed to norms of other countries and society when studying at University. Much may depend on how those other norms have been introduced to her and the attitude of her tutors and peers.

As *Chandeep* was born in the U.K. she has been exposed to norms which will conflict with those prevalent in her immediate family and community. She has studied at University and has been subjected to multi-cultural influences, presumably there and within her past work environment. Yet she has observed the importance of a son to her own parents and also now to her husband and his family. She will experience some conflict between the diverse opinions as to the acceptability of aborting on the basis of the foetus’s sex.

5.2.6 Religion

There is little evidence to show that religion plays any part in the decision to sex-selectively abort.[[579]](#footnote-579) Therefore, the women in the case studies have not been described as following any one religion. All of the main religions in India would claim to be against the procedure, although the Muslim religion is more strongly opposed to abortion generally than the Hindu religion.[[580]](#footnote-580) Nevertheless some of the religious traditions may affect the preference for a boy rather than a girl and this is demonstrated by the requirement that it is a Hindu tradition that it must be a son who lights the funeral pyre of parents.[[581]](#footnote-581) This may result in male preference being higher among Hindu families.

That said, as Bard states, most hard-line religions aim to control women and their role in society, laying moral responsibility on their sex, conferring different roles on men.

....while fundamentalism appears in different forms in different religions and in different political contexts, all of them have at the heart of their agendas the control of the lives, minds and bodies of women. This is expressed in terms of “family values” a constellation of supposedly immutable ideas which place men at the head of the family, bestowing on its status as well as its income, and which define women as the conveyors of morality and tradition to the next generation. A non-conformist or rebellious woman, according to this view, will endanger the future of the community as a whole which is thus entitled to coerce her to “do her duty” or throw her out.[[582]](#footnote-582)

Curiously, the disapproval of abortion by all the main religions in India does not appear to have influenced the decisions to abort a child on the sole ground of its sex, which perhaps indicates that the role imposed on women to conform and abide by tradition carries more weight.

**5.3** **Case Study 1 *- Anya***

*Anya is a young woman who was sold to her husband, Kala, at the age of fifteen by her family who live in a different district. Anya and her husband live in a small community in the state of Punjab. There is a shortage of women in the state as a result of the practices of female foeticide, female child neglect and female infanticide. Anya is now shared with her brothers-in-law who cannot afford to buy their own wives. Anya cannot refuse to have intercourse with her husband’s brothers as she is afraid that she will be killed if she does not agree, as she has witnessed happen to another girl in her village.[[583]](#footnote-583) She has had no education and speaks little of the language of her husband’s family which is Hindi. She is quite isolated and has little contact with other women apart from her mother-in-law who governs the house. The family are very poor and the birth of a girl is regarded with sorrow and disappointment. Anya has given birth to one girl and one boy. The sex of the foetus for her third and fourth pregnancies was confirmed as female and those pregnancies were terminated. Anya is pregnant for the fifth time and a scan carried out by a mobile scanner in the village has indicated that the foetus is again female. Anya decides to abort her third female foetus in three years.*

5.3.1 Oppressive socialisation

Although there has not been the more traditional dowry price paid by the father of the bride to the groom’s family, here Anya has in effect been sold. In the same way that the traditional dowry system treats the woman as a chattel, paid to be taken off the natal family’s hands, she has been traded for a monetary payment. Further, this has been considered necessary as a result of the shortage of women in that district, in turn most likely a result of the practices of sex-selective abortion, female neglect and female infanticide in certain regions. Anya may have internalised the view of females being used as a means to an end, there merely to provide sons for the family she has joined, a commercial commodity to be traded as required. She has taken on this role, or has been made to do so, and it is not clear whether she has internally challenged the norms underlying that role and her status, even if she is unable to openly do so, given her total reliance for her existence on her husband’s extended family. She appears to believe that the birth of a female child should be avoided and seems to be of the same view that it would be a burden the family cannot afford. There is a possibility that the social oppression has been internalised by Anya so that the norms as to the value of her sex have now become her own. One feminist intuition at this stage is that her decision is an adaptive preference which she has chosen automatically and so cannot be deemed autonomous. However, only one of the feminist objectives would be satisfied here, in that we would not automatically be accepting her decision as her own without questioning it. The other feminist tuition, to grant autonomy where possible, would not be. The extent of the internalisation, therefore, needs to be examined further.

5.3.2 Khader’s deliberative perfectionist conception of adaptive preference

Rather than intuition driving our conclusion that Anya has adapted her preferences in reaction to the unjust conditions in her social environment, and then finding her decision to sex-selectively abort to be non-autonomous, Khader urges us to examine in more detail the reasons for a woman perpetuating her oppression. This will avoid a misrepresentation of the reasons for her preferences and will also inevitably affect our conclusion as to whether the decision is autonomous. If we apply Khader’s Deliberative Perfectionist Conception of Adaptive Preference then it will still be possible to question her preference which is oppression perpetuating, but it may nevertheless be feasible to find her autonomous after applying the different conceptions of autonomy. Khader’s approach aims to prioritize the woman’s flourishing and to respect the right to live the life she wishes to lead. This may not be the life she would choose if there were other options but given her life situation, it is the life she is choosing from limited opportunities. So Anya can still be an active chooser and could hold conceptions of the good but may nevertheless act to perpetuate her deprivation. She could be undermining her own flourishing yet still be able to play a role in changing her life.

The preference must firstly be incompatible with Anya’s basic welfare and causally related to unjust conditions. Her choice would be inconsistent with human flourishing because it sustains a way of life which is bad for her.[[584]](#footnote-584) To choose to abort because the foetus is female would perpetuate the belief that females are inferior and it would appear that Anya also agrees with, or endorses, that conception of females. In addition, it will harm her physically to undergo repeated abortions. Although Khader herself does not provide a conception of welfare she suggests using Nussbaum’s Capabilities List to represent universal values, recognising that in order to comply with liberal commitments this idea of welfare must be cross-culturally acceptable and not too stringent.[[585]](#footnote-585) Anya’s choice is incompatible with several capabilities on Nussbaum’s list. Capability number 2 refers to being able to have good health, which would include reproductive health. Anya has already undergone two abortions and is planning her third, all of which will have taken place within a period of three years. The choice to sex-selectively abort again will be incompatible with this capability. Capability number 3 requires that she should be able to have bodily integrity which would include choice in matters of reproduction. Her decision is also incompatible with this in that she feels that it is expected of her to only produce male children. Finally, number 7 relates to affiliation, which includes having the social bases of self-respect and non-humiliation as well as being able to be treated as a dignified being whose worth is equal to that of others. Anya is being treated as a slave to Kala’s family, including a sexual slave. She is not treated as an equal to the men in the family and has been bought as a commodity for the family to share in order to produce sons. To choose to abort on the grounds that the foetus is female and so worth less is a choice which is incompatible with her wellbeing and this is causally related to her oppressive environment. She has chosen to abort her foetus because it is of her own sex, female, and this will also perpetuate her oppression as she appears to be endorsing or agreeing with the view that the female is inferior to the male.

This establishes that there is a suspected Adaptive Preference. It does not, however, necessarily signify that Anya is autonomy deficient. If there is complete internalisation of these norms (that women are of a lower status to men) and if Anya is making her decision based solely on her belief in those norms then she would not be autonomous. This would be a Paradigmatic Adaptive Preference and as her choice would be based entirely on norms imposed on her by others, it would not be her own preference and would not be autonomous. This would satisfy both feminist objectives: her choice would not be accepted as representing her subjective view and, although we should strive to recognise and promote autonomy where possible, we should not respect her decision if it is not her own. Yet, if the norms adhered to were not harmful to Anya, but she just had not reflected on her preference, would there be a conclusion of no autonomy? If not, this suggests that the content of the choice is integral to the process of scrutiny and is in accordance with Khader’s alternative approach to adaptive preference formation. So in order for the choice to warrant further scrutiny the choice would have to be for something which prevents her flourishing.

However, although this appears to be a Paradigmatic Adaptive Preference, as Anya seems to believe that females are inferior, we also need to examine her other reasons which may indicate a different type of adaptive preference, as identified by Khader. If so then a different conclusion may be reached as to whether or not her choice can be considered autonomous. Anya may have her own reasons for only wanting to produce a male child, not necessarily based on a female’s inferior status. Anya has taken on her husband’s family’s problems as her own, and recognises the situation as it is, namely that a female child would be a detriment to the family and would cost them money they could not afford. This will affect the children she already has and her own living conditions. To give birth to another girl would also detrimentally affect her status within the family, whereas to give birth to a boy would be a cause for celebration and would grant her benefits. So there are indications that there has been a process of reasoning which, if the various theories of autonomy are applied, may result in a finding that Anya is autonomous. It should then be questioned whether the choice can be autonomous, when there are different possible reasons for the decision, one of which is non-autonomous and one of which is possibly autonomous. Anya is recognising her life as it exists and her limited choice environment. It is the norms within her society which are problematic or which cause concern.

This suggests that Anya may have internalised some incorrect values, but not others. She may still value herself to a certain degree, may have some sense of entitlement and self-regard. She may be aware of the injustices she lives with and have a critical perspective of them, so there could be selective value distortion but not total internalisation of those cultural positions.

Alternatively, this could be a forced trade-off, Anya recognising that she has to employ certain strategies to ensure her security and that of the children she has already produced. To provide another son rather than another daughter will improve her life choices and is her survival tactic, given her very limited choice environment. As Sara Mitter states:

By becoming a mother, the Hindu woman does much more than procreate. She compensates for the misfortune of being born female. She redeems her stock, improves her standing at home and in society, confirms her cultural status, and gains some degree of freedom, especially if she has produced sons.[[586]](#footnote-586)

This does not necessarily signify that she does not value a female child and she may personally do so. However, she is recognising the reality of her situation and the fact that the female is not valued highly in her own society, unless as a wife she produces the much-wanted son. Anya may have to sacrifice basic flourishing in one domain of her life in order to achieve it in another. Any risk to her bodily health as a result of undergoing a further abortion will be the price she pays in order to be treated by her husband’s family with more respect and dignity. So there is a trade-off in capabilities evidenced here.

A further motivation for Anya may be that she does not wish a female child of hers to be treated as she has been and would not wish her to live a similar life. The mother’s instinct is to protect and she will know what lies ahead for any daughter she produces, including possibly being sold as Anya has experienced.

Khader warns against ‘psychologizing the structural’ and assuming that the woman’s beliefs and attitudes are the proximate causes of her deprivation.[[587]](#footnote-587) Although they *may* be the sole cause of her deprivation, they *could* play merely a minor role. She may not reflect on her deprivation because for her it is just a fact of life. When identifying the requisite development interventions what is crucial is whether it is the woman’s beliefs or social structures which need to be changed or other factors which should be addressed. This reinforces Khader’s belief that it is important to engage in individual dialogue in order to discover the reasons for the woman’s preferences rather than merely assuming that the only source of oppression is cultural practice. She makes the point that poverty and social and economic marginalisation are also causes of adaptive preferences.[[588]](#footnote-588) This is so in India in particular where poverty and the cost of keeping, raising and marrying off a daughter (admittedly based on cultural practices) is a constant reminder that it would make more economic sense for a woman to give birth to a boy rather than a girl. Certainly the woman is being oppressed by cultural practices, but it is questioned whether these are in turn driven by larger problems in that society or whether they merely exacerbate the base belief of the inferiority of the female.

What is clear is that the reasons for making particular choices are often complex. It is ingenuous to assume that adaptive preferences are entirely caused by social oppression and as a consequence are non-autonomous. A more in-depth analysis of each decision and the reasons underlying the decision is required. Thus, the choice requires further scrutiny and there should be no automatic assumption that the woman endorses the decision she makes. Nor should there be an assumption that she is not autonomous because of the content of her choice. The choice can be examined from the perspective of the theories of autonomy to determine whether the choice can be deemed autonomous. It will also be demonstrated whether one or both feminist objectives are satisfied.

5.3.3 Application of procedural theories of autonomy to Anya’s decision

5.3.3.1 Traditional procedural theories

The advantage of applying procedural theories of autonomy is that it is more liberal in approach as there is no attempt to restrict the content of an individual’s decision. If it is found that there is a procedural autonomy deficit then there is no disrespect for the content of the choice. Rather than trying to change the content of others’ preferences, the focus will be on attempting to ensure that the individual has choices, and freedom, and so is more empowered.

For a choice to be autonomous in a procedural sense it has to be free of internal or external constraints which could result in the choice not representing the person’s real preferences. Internal constraints could be not having the ability to order one’s desires or reflect on one’s preferences. External constraints could be coercion, undue influence or not having sufficient information. There is no evidence of direct coercion, and presumably Anya has been given sufficient information as to the procedure, but her cultural environment may unduly influence her and this then links to internal constraints. We must question whether social oppression, which can result in adaptive preference formation, has affected Anya’s ability to reflect on her motivational structure and to have the capacity to change her choice when responding to the reflection.

Applying the structural approaches of Gerald Dworkin and Harry Frankfurt Anya must identify at a higher level with her lower level desires.[[589]](#footnote-589) Anya must therefore make a distinction between desires she regards as her own and those to which she is indifferent. Anya would have to have a higher level desire that the lower level desire be effective, that is, she must endorse her lower level desire to abort because the foetus is female. If her lower level desire is not under her control then her choice may not be deemed autonomous. There is no indication that Anya does not endorse her choice at a higher level but without a detailed dialogue we would not necessarily be able to discover whether this is really the position. Perhaps she does have conflicts of desires between the two levels. She may believe that the female child would be a burden but at the same time she must be aware of the importance of her own role (that which only a woman can accomplish) which is to reproduce male heirs. She may also appreciate the experience of raising a daughter who would be a potential ally in a patriarchal world. However, without further investigation her desire to sex selectively abort appears to be endorsed at a higher level as she believes that a female child would be inferior and unwanted. This results in her decision being deemed autonomous. This would satisfy one feminist objective in that it grants her respect and empowers her but, as the extent of society’s influence on her decision cannot be ascertained, there are sufficient reservations as to the authenticity of her decision to cast doubt on whether the other feminist objective has been satisfied. It may insufficiently address the possible internalisation of oppressive socialisation and Anya’s decision may only reflect others’ norms, norms which act against her own welfare. If these are then understood as her own this is the conclusion challenged by adaptive preference theorists as it may *appear* to be her legitimate choice and she is unjustly perceived. This criticism of the structural approach was identified in Chapter 4, where it was noted that it is difficult to be certain that any higher level identifications are themselves autonomous and so there is the possible constant need for further levels of desire and endorsement.[[590]](#footnote-590) Anya may appear to identify with her lower level desire but the doubt would be as to whether the higher level desire, which endorses the lower level desire, is itself autonomous or whether it is influenced to an unacceptable degree by social oppression.

5.3.3.2 Relational procedural theories

The following approaches are not always labelled as relational autonomy theories but are palpably attempting to address the possible influence of internalisation of oppressive socialisation. The question is whether they sufficiently attend to the extent of this influence. As they are reconceptualised versions of the traditional theories they should satisfy one feminist objective at least, and possibly both, if they can recognise some autonomy and aim to empower.

In answer to the criticism that the structural approach takes a time-slice approach to autonomy and does not take into account how the individual has come to possess those preferences, John Christman considers the historical aspect of the formation of desires.[[591]](#footnote-591) He submits that an agent is autonomous in relation to a preference if she did not resist the process of its development.[[592]](#footnote-592) If Anya would not have resisted the preference to sex-selectively abort after analysing how she had arrived at that preference, then her decision would be autonomous. If she has not sufficiently examined her motivational structure, not recognising the extent of the influence of distorted norms of femininity on her decision, then it has to be questioned whether she would have resisted that decision if she had attended to it more closely. It may be that Anya is unlikely to have resisted, given the years of acculturation as to her lower status and the limited value attached to giving birth to a girl. The norms she has so deeply internalised would not cause her to resist her preference or how it has been developed. This again could result in her decision being considered autonomous. This meets one feminist objective in that she is deemed to be autonomous and will be granted a voice, but if there is entrenched internalisation of oppressive values then again it may not meet the second feminist objective as it does not sufficiently address the effects of oppressive socialisation.

As an alternative to the hierarchical approach of Dworkin and Frankfurt, Marilyn Friedman requires that higher and lower level desires should be integrated. Both higher and lower level desires could be subject to revision so rather than a top down approach it is a two-way process of integration.[[593]](#footnote-593) She requires there to be a reflective equilibrium. The question would then be how much inconsistency between desires would be sufficient to undermine autonomy as a proper process of reflection often requires there to be some incoherence. We would have to question whether there is sufficient internal confusion to find her decision not autonomous. Unless there is a severe breakdown in coherence then it may not be enough to be considered as a non-autonomous decision.[[594]](#footnote-594) There is in fact no sign of a struggle within Anya and this approach will only identify threats to autonomy if there has not been total internalisation of socialisation. If there appears to be integration, which could be a result of internalisation of those norms regarding the value of her sex, then her decision will be regarded as autonomous. This again would meet one feminist objective but not the other.

As Friedman holds that subordinate feminine lives can still express values, a conclusion that Anya’s choice can be autonomous certainly meets one of the feminist objectives.[[595]](#footnote-595) She prioritises recognising and respecting the values and agency of women in patriarchal societies, in contrast with Stoljar whose feminist intuition compels her to find that the decision is non-autonomous as a result of the evidence of internalised social oppression, although the degree of the internalisation required is not made clear by Stoljar.[[596]](#footnote-596) Friedman’s concept of autonomy is value neutral and this allows for a finding of autonomy even when there is compliance with oppressive feminine norms. She argues that there must be scope for different responses to the recognised influence of internalised oppression in order for there to be the possibility of criticism of the current order from within. If the decisions of women who are subordinated are not considered autonomous then, should they start to criticise those oppressive practices, *those* criticisms must also not be supported on the same basis. We cannot choose to support decisions on the basis of autonomy according only to the oppressive conditions under which the woman is living.[[597]](#footnote-597)

Meyers agrees that a woman’s non-autonomy should not be inferred just because she complies with subordinating feminine norms but also believes, like Stoljar, that a feminist account of autonomy facilitates social critique.[[598]](#footnote-598) Her Competency Theory, which concentrates on the skills required for effective reflection, was designed to explain how oppressive socialisation can impair autonomy but also aims to develop a theory which demonstrates how those who are subjected to oppressive social circumstances could yet be regarded as partially autonomous, or autonomous when making some decisions but not others.[[599]](#footnote-599) As she links self-realisation to self-respect then we need to examine whether socialisation has damaged Anya’s self-respect to the extent that her programmatic autonomy has been compromised, i.e. her capacity to critically and reflectively decide important issues. If so, then the socialisation may have compromised her capacity to achieve autonomy. Critical reflection is thus once more the essence of this approach. As Anya appears to have worked through what is best for her and her new family by making this choice, and seems to have adopted a sense of responsibility for others’ wellbeing, then there is evidence of self-respect which may be sufficient to satisfy Meyers’ approach. Procedural theories of autonomy can impose a minimal rationality condition on preferences which again comes within Meyers’ requirement for competence skills. [[600]](#footnote-600) We would be asking whether Anya has the capacity for rational thought, or as Sandven describes it, ‘the ability to use one’s powers of reason and judgment’.[[601]](#footnote-601) Rationality would be defined in a neutral way and would relate to the means of achieving certain ends so we would question whether Anya was rational in the ways she wanted to achieve her objectives. Her objectives are to improve conditions for herself and her family and to give birth to a son would be a rational way to achieve this. The content of these objectives are not the issue as that would lead us into substantive requirements, but Anya is using her powers of reason to choose to sex selectively abort, which would be a rational way to accomplish her goals.

What will also be important in order to make a rational life choice will be being provided with sufficient information.[[602]](#footnote-602) Anya must therefore receive the relevant information and understand the same in order to be able to make a reproductive choice such as this. Without relevant information Anya may not be able to be self-governing.[[603]](#footnote-603) The question then is what information would be relevant to her decision. She would at least have to be informed of the risks inherent in the procedure, and in her case, undergoing the procedure for a third time in three years. Whether she would also need to be aware of the possible repercussions for her sex is doubtful as this would be straying too far into substantive issues.

It may therefore be possible to hold her decision as autonomous applying this theory of autonomy. This would also satisfy both feminist objectives as the effect of socialisation has been addressed and there is an acknowledgement that despite the oppressive socialisation Anya may possess sufficient autonomy for that particular decision.

5.3.4 Application of substantive theories of autonomy to Anya’s decision

5.3.4.1Traditional substantive theories

A focus on procedural autonomy means that we can avoid having to make a judgment about the content of Anya’s choices, which satisfies liberal theorists who would be wary of imposing others’ values and cultural norms on her. However, for some this is not enough and the criticism is that by relying on the subjective perspective inherent in procedural theories of autonomy the pernicious forms of socialisation may not be identified and adequately taken into account. Sonya Charles argues that we cannot filter out the oppressive norms when applying purely procedural accounts of autonomy. Rather, we have to understand those oppressive norms in relation to other norms, using non-subjective criteria.[[604]](#footnote-604) Consequently, the application of substantive theories also asks that the choice being examined satisfies certain norms or has specific content. The problem is to identify which values should be reflected in the decision. We would demand that Anya makes a moral choice or does the right thing but would have to specify the standards to be applied to her decision. There may be a conclusion that Anya’s decision is not autonomous as her decision to sex-selectively abort will be unlikely to satisfy values we apply in Western cultures.

Yet here we are entering into the realms of orthonomy or good government, and there are dangers inherent in this approach, namely a move away from the historical meaning of autonomy, which is *self*-determination. In addition, if we import Western society’s culturally specific conception of the good then we lose the importance of context and risk losing credibility with other cultures. We also fail to accept that all of us possess weaknesses and can make mistakes and, what is more, that these can be autonomous mistakes. In the West we have the luxury of being able to follow certain norms and to have them reinforced by others in our society as well as challenged but if Anya has been raised in a society with different norms it is arguably too onerous to expect her to follow different values from other cultures. In addition, it is doubtful that she would be aware of these different values.

5.3.4.2Relational substantive theories

Strong substantive relational accounts, such as those of Benson,[[605]](#footnote-605) and Wolf,[[606]](#footnote-606) would require Anya to be able to identify the difference between right and wrong. There is a recognition that oppressive socialisation can interfere with this capacity and can therefore undermine normative competence. The conclusion may be, when applying this account, that Anya’s decision could not be deemed autonomous. If rationality is imposed in a substantive sense then Anya would have to have the capacity to form preferences that track objective standards of reason, as Wolf points out.

In order to have control over the moral quality of his actions, an agent must have certain requisite abilities – in particular, the abilities necessary to see and understand the reasons and interests he ought to see and understand and the abilities necessary to direct his actions in accordance with these reasons and interests.[[607]](#footnote-607)

Stoljar, a proponent of the strong substantive relational theory, claims that it is the only theory that explains the feminist intuition that Anya’s decision cannot be autonomous.[[608]](#footnote-608) Although there appears to be procedural autonomy she also requires Anya to be able to criticise her actions or choices in a competent manner applying relevant normative standards. However, Stoljar has in reality decided that there cannot be autonomy based on the content of the decision and she is attempting to impose a theory which will lead to that result, despite evidence that there may be autonomy using other models of autonomy. This assumption serves to discount any decision which is in line with the distorted norms of the Indian woman’s society and, although it meets one of the feminist theorists’ objectives, it does not meet the other, which is to use theories of autonomy to empower, recognise and enable autonomy where possible.

The problem here is that Stoljar’s rebuttal of what other theories regard as autonomy is based solely on her intuition that there cannot be autonomy given the content of the decision, although she claims it is because the choice is based on norms imposed on the woman by her own society. However, if the choice was not intuitively wrong to us then even if the choice was based on the norms of others, it would not be labelled as a non-autonomous choice. This therefore implies that it is the *content* of the choice which is driving Stoljar’s conclusion. Intuition that there cannot be autonomy is not enough to refute support of the decision on the basis of autonomy. Further investigation and dialogue may do so but an unconsidered conclusion is not appropriate.

Stoljar’s account of autonomy, based on feminist commitments, facilitates social critique and this is welcomed by other theorists.[[609]](#footnote-609) However, Stoljar is not clear as to how prescriptive her theory should be and this needs to be clarified. Her feminist intuition is that those preferences which are influenced by oppressive norms of femininity cannot be autonomous but then later she claims that it is only conduct which is *overly* influenced by stereotypical and incorrect norms of femininity which is not autonomous. This seems to dilute her intuition.[[610]](#footnote-610) Meyers interprets this claim of Stoljar in two ways: either that the woman cannot be autonomous if the oppressive norms have too much influence in her life, or it will depend upon how damaging the oppressive norms are. Consequently, if her behaviour is primarily motivated by acquiescence to oppressive feminine norms, she would not be autonomous but, if her behaviour is only motivated in a small part and she has other personal reasons for making her choices, then she could yet be autonomous. Several motivations, as in Anya’s case, would mean that she would not automatically come within Stoljar’s feminist intuition. As motivation is complex and will invariably be a blend of individual concerns, as well as some compliance to social conventions, further analysis would be required in order to discover how central her endorsement of oppressive gender norms is to her motivational system.[[611]](#footnote-611) Alternatively, Stoljar’s claim could signify that if the woman complies with very damaging feminine norms she would not be regarded as autonomous. This again brings us to the standards to be applied when deciding how damaging the norms are and question who decides. Whether or not Anya’s decision is deemed autonomous will depend on the exact approach Stoljar intends. It will certainly meet one feminist objective as social oppression is taken into account but if this is a blanket conclusion based on the existence of social oppression within Anya’s society then the other feminist objective would not be satisfied. Stoljar’s approach does not allow for Anya having solid reasons for accepting the incorrect norms and being prepared to take ownership of that choice which corresponds with a different feminist conviction. The irony is that a theory based on feminist intuition could deny women the opportunity to make a contribution to a discussion about their own position. There will be some women who can stand up and challenge the norms of their society and a blanket conclusion of non-autonomy will not allow for that. This may be evidence of feminist theorists presuming that all third world women are downtrodden and in need of Western more enlightened women having to deliver them from their situation. It puts all potentially oppressed women in the same group, taking no account of an individual’s view of the world or her own characteristics. As Benson points out, different feminist convictions will have their own way of trying to understand internalised feminine socialisation across a wide range of circumstances – political, economic, historical and cultural.[[612]](#footnote-612) Some women will have reasons to accept the influence of incorrect norms and those decisions will still be their own. This also corresponds with Khader’s view that not all adaptive preferences will be paradigmatic and there could be other bargains or trade-offs being made.[[613]](#footnote-613)

Marina Oshana’s strong substantive relational approach goes much further and focuses on the socio-relational status of agents rather than the content of their values or beliefs.[[614]](#footnote-614) So if the woman possesses a status which is subordinate to another then her choices will be constrained and she cannot be autonomous. This appears to conclude that certain relationships are inimical to autonomy and so unless the woman rejects the very social relations on which her practical identity is based then she will not have autonomy. Therefore in recognising the social embeddedness of agents when the woman is in an oppressive relationship she will lose her autonomy as a matter of course. As Anya is clearly subordinate to the other members of the family this would automatically mean that she would be regarded as non-autonomous. This approach is injurious to women in Anya’s situation. The social embeddedness which is inherent in the relational autonomy approach and which is there to acknowledge the possibility of social oppression affecting decisions then serves to deny her autonomous status.

Relational weak substantive accounts would require Anya to have certain moral attitudes to herself, such as self-respect and self-trust, rather than requiring her choices to have specific content.[[615]](#footnote-615) If social oppression has destroyed Anya’s self-trust then her decision would not be supportable on the basis of autonomy. She would need to have a sense of her own value in order to reflect effectively.[[616]](#footnote-616) Stephen Darwall’s recognition self-respect, which acknowledges that everyone has intrinsic moral worth and status, could be difficult for Anya to achieve as her status in her society is regarded as lower than that of the male.[[617]](#footnote-617) The denial of her status as an equal by her own society would inhibit development and the ability to make choices. Connections to others are partly what make us, which is relational in approach, but also casts doubt as to whether there can be autonomy when there is gender oppression to this extent.[[618]](#footnote-618) This appears to be granting a strong decisive role to those who are the oppressors and again may not satisfy the second feminist objective to empower and enable autonomy where feasible.

Benson, whose later work preferred a weak relational substantive approach, would require Anya to have a sense of worthiness to act. She would have to consider herself as competent to answer for her own decision in light of the normative demands of others which could be applied to her choice.[[619]](#footnote-619) If she lacks self-confidence, self-trust or self-esteem then her decision may not be deemed autonomous. There may well be a low sense of self-worth here and this may affect Anya’s normative competence. It will depend upon whether she regards herself as competent to answer others’ expectations. However, if she is making a choice in order to increase her status, and therefore her self-worth, then it may be that Anya *does* regard herself as competent to answer the normative demands which apply to her. If she wishes to increase her standing in her own normative community and is pursuing a certain social status then she must regard herself as deserving. The possible influence of social oppression is thus addressed yet she will be regarded as autonomous if she demonstrates self-respect and self-trust. Her decision will be autonomous and both feminist objectives will be satisfied. Other relational weak substantive theories, however, may be more stringent in their conditions to be met and may set the standard much too high for those who are living in a patriarchal, oppressive society where such characteristics or attributes may be difficult to maintain or even form.[[620]](#footnote-620)

Although Mackenzie has more recently advocated the Three Dimensions approach, she too in the past has proposed a weak substantive relational approach.[[621]](#footnote-621) Therefore, not only would procedural autonomy conditions have to be met but the woman would also have to be able to speak for herself and have a sense of a rightful claim to normative authority. In order to achieve this Anya would need relations of intersubjective recognition which may be an obstacle for her given her relationships with her family.

5.3.5 Application of Mackenzie’s relational three dimensions of autonomy to Anya’s decision

Mackenzie understands autonomy as a multi-dimensional concept.[[622]](#footnote-622) Drawing on work from several theories she identifies three distinct but causally interdependent dimensions to autonomy: self-determination, self-governance and self-authorisation. She believes that this approach facilitates conferring the requisite weight to the social and political pre-conditions for autonomy. It satisfies both feminist intuitions as it recognises that a person can be self-governing and self-authorising even when living under severe oppression and that a person could have the freedom required for self-determination but may nevertheless not be self-governing or self-authorising. The much rounder view recognises the different external and internal conditions, capacities or characteristics, required for autonomy and better addresses both intuitions.

5.3.5.1Relational self-determination

The self-determination dimension identifies the importance of the external conditions required for autonomy so Anya would have to have the freedom and opportunity to make choices. Relational autonomy theories focus on opportunity conditions and Mackenzie believes that the capabilities theory best describes the opportunity conditions for self-determination.[[623]](#footnote-623) If internalisation of oppression leads to a choice not to have one of the capabilities, evidenced by adaptive preference formation, then external conditions are interdependent with conditions which are required for self-governance, such as authenticity and competency, and conditions for self-authorisation. Anya’s external conditions such as her family situation, her oppression and the general belief within her community that a female child could be detrimental, may have affected the skills and capacities she needs to make choices. Oshana has also submitted that certain external constraints will undermine autonomy as they take away a person’s ability to control her life. She would therefore require Anya to be able to exercise control over her choices and not to be influenced by others or circumstances. Anya must be able to question practices from her own society and to be able to elect not to adopt them. Should she conform, it must be her choice to do so.[[624]](#footnote-624) Yet, to ask this of a person with little support from others is arguably asking too much. It is submitted that this dimension would be difficult for Anya to satisfy. She has little freedom and opportunity. This alone will not determine autonomy, however, and this is one of the benefits of the three dimensional approach. This is merely one dimension of three.

5.3.5.2Relational self-governance

Here the focus is on internal conditions such as competence and authenticity but Mackenzie’s relational approach acknowledges that the relationship between external and internal conditions is complex and it is difficult to separate them. As it is now accepted that people are socially constituted then external conditions, such as relations with others, shape our identity which is the self of self-governance. These external conditions will also influence the development of the skills and competencies required to govern the self. This is a potential problem, however, if there is social oppression, which is evidenced by adaptive preference formation, as this then means that limited opportunity conditions can influence how we form our practical identity and will also impair the development and exercise of autonomy competence.

Authenticity conditions indicate what is required to be self-governing in relation to our motivational structure, so what it means for choices and values to be our own. The more traditional hierarchical or endorsement conceptions of Dworkin and Frankfurt have previously been rejected by relational theorists who have argued that rather than focusing on the agent’s will at the time she is making her choice, the historical processes of practical identity formation should also be taken into account, as should the internalised effects of psychological oppression. Mackenzie does not wish to reject these views but rather wants to embrace a more nuanced analysis of authenticity such as that of John Christman.[[625]](#footnote-625) His conception of authenticity accepts that our identity develops over time and that it should be a preference about which we do not feel alien after reflection which is adequate and historically sensitive. Should Anya reflect on how her identity has developed and what is the historical foundation of her choice she may not endorse its provenance but she is also unlikely to reject it. For her it is accepted as the position in her country or at least in her limited community. She will acknowledge it but will not challenge it.

Competence conditions describe the range of skills a person needs in order to be self-governing. Relational theorists agree that such skills are important but believe that they have been over-rationalised at the expense of other skills such as emotional skills, imaginative skills and dialogical skills. Self-knowledge is achieved not just through introspection but also through dialogue and interaction with others. So again social influence is recognised and the need to promote those relationships which assist self-governance. Anya may have limited competence skills and little opportunity for interaction or dialogue with others who may help her to make choices. However, her emotional skills and imaginative skills may be more developed. Again, without a direct dialogue with Anya, these competencies will be unclear, and even with a direct dialogue could remain inconclusive. Much may depend on her individual strength of character and will.

5.3.5.3Relational self-authorisation

This is explained as a person seeing herself as having the normative authority to be self-determining and self-governing. So Anya should see herself as someone who could be held accountable and answerable to others for her reasons. She should have self-respect, self-trust and self-esteem and should be regarded by others as having the standing of an autonomous agent. This is clearly drawing on work from those who have promoted the weak substantive relational theories of autonomy.[[626]](#footnote-626)

Mackenzie points out the links between self-authorisation and self-governance as these are evaluative stances towards oneself and are usually dependent on inter-subjective social relations. If others refuse to grant that person the relevant recognition in a particular realm then that person will be vulnerable.[[627]](#footnote-627) If there is an inequality of power in social relations then there may be failures of recognition. Given Anya’s position within the family there is a clear imbalance and it is doubted that she will be recognised by the other family members as having the status of an autonomous agent. It then appears that her external factors are dictating any finding or otherwise of autonomy, entirely based on how others regard her. However, rather than an all or nothing approach which Mackenzie regards as too demanding, she prefers to ask that a person just has *appropriate* self-evaluative attitudes, so it is more a matter of degree which will also depend on the context. These conditions are underpinned by the fundamental normative idea of individuals as moral equals to be treated as respect-worthy and self-authorising. Even so, for Anya, this may be too high a standard for her to accomplish but we would need to ascertain her levels of self-respect and self-esteem which nevertheless may be present despite the strong influences surrounding her. She is striving to improve her status and to gain more respect from others. The question is whether she relies entirely on others for this or whether, despite how her life has progressed to date, she has sufficient self-respect to satisfy this dimension of autonomy. She has much to overcome and the task is so much more onerous for her than for women who have support from others.

This approach recognises how each dimension is interdependent with the other and how a much more holistic approach may serve the woman better in that it may satisfy both feminist objectives. The relevance of social oppression is certainly addressed throughout and the appreciation of how as an external constraint it may also act as an internal constraint, affecting how a person reflects on her own preferences and the extent to which she can nurture competency skills. Yet some may argue that it is asking too much of women like Anya who have so much to fight against and so little help from their own society in terms of encouragement and support. It is not simple to come to a conclusion as to whether her decision can be deemed autonomous when applying this more complex approach to relational autonomy but it is certainly more comprehensive and attempts to answer the criticisms of each isolated relational theory.

What is not clear, however, is how these different dimensions can be applied to a decision, whether all have to be satisfied and to what extent, and whether there is a hierarchy to the three dimensions. If one dimension carries more weight than the others and if that weighting depends on the particular context of the decision-maker and the choice to be made then it may be that one dimension will be able to compensate for another. This implies a striving to find autonomy where possible, which is one of the feminist objectives or intuitions, and may bestow considerable discretion on those judging whether or not autonomy is present. This would be acceptable but only if the other feminist intuition is also given requisite attention: then there may be no objection to using the dimensions in this way. There could also be the possibility, however, that these dimensions can be manipulated to serve the pre-conceptions of those judging and so safeguards or further guidance is required. This may only be possible following application of this approach to problems like the hypothetical case studies.

**Summary**

On first reading Anya’s decision appears to be an adaptive preference. If this is a paradigmatic adaptive preference, where the sole basis for her decision is the view that females are inferior, then the decision would not be considered autonomous. There could be an unquestioning acceptance of the practice of sex-selective abortion, evidence that the oppressive views of women have been internalised, and have become Anya’s own. There seems to be little evidence of reflection on this issue, rather a natural progression from finding out that the foetus is female to deciding to terminate the pregnancy on that ground.

However, closer analysis casts doubt on whether this is paradigmatic as Anya could have several subjectively rational reasons for aborting this foetus. Indeed Anya’s case study demonstrates that it will only be in rare cases that there is one motivation and that usually several factors will influence a person’s decision. There can be varying degrees of autonomy in relation to the particular decision to be made. It is indisputable that in some respects Anya’s decision to abort would enhance her quality of life, which, at this point is very poor. Khader’s conception of adaptive preference is useful here as it prevents an automatic assumption that as there is a suspected adaptive preference there is no autonomy. The preference is certainly adaptive to Anya’s circumstances and environment but does not necessarily signify a lack of autonomy. It causes us to examine more deeply her decisions or preferences which are inconsistent with basic flourishing but it does not assume that she lacks autonomy,

When the different theories of autonomy are applied her decision may be deemed autonomous under the traditional procedural approach (although the extent of internalisation of discriminatory norms will not be clear), but the decision will not be considered autonomous when the substantive approach is applied (although arguments as to relativism and universalism will be raised and concerns as to the imposition of other cultures’ norms). Both approaches are thus unsatisfactory as we would have little confidence that the conclusion as to the presence or otherwise of autonomy is correct and truly representative of Anya’s status.

The relational theories of autonomy were intended to acknowledge the influence of relationships with others and to highlight the danger of those living under social oppression being unduly influenced by relationships with those with more power and dominance, in particular when this resulted in the internalisation of others’ values. However, if the fact that these relationships exist results in women being regarded as non-autonomous then this will be detrimental to women who are not just in relationships with those who are oppressive but who are also in relationships with their children and potential children, relationships which may weigh more heavily when making choices about reproduction. The relational theories may then be asking too much of a woman who is oppressed and if one objective of a feminist theory of autonomy is to resist oppression we need to guard against unfairly placing this burden on a woman who is not in a position to challenge it.

Relational procedural accounts certainly endeavour to assist the woman to achieve autonomy where possible and in that respect meet one of the feminist objectives. They allow for different choices to be considered autonomous rather than dismissing some as non-autonomous because of their content. As Meyers argues, the value-neutral theories of autonomy better serve feminist purposes.[[628]](#footnote-628) So Anya would not be deemed lacking autonomy because of the nature of her choice. However, as the requirements to be considered autonomous build on the ability to critically reflect this may be intellectualising a decision which, for Anya, is instinctive rather than considered. She may be unable to critically reflect to the degree required but could nevertheless be autonomous. The relational procedural account may fail in its objective when applied to women like Anya who have little encouragement to reflect. To live a life of limited freedom will discourage reflection. She has the very basic goal of survival to achieve and the abortion of a female foetus will help her to meet that. Reflection to the extent that seems to be demanded would be a luxury to Anya who has little freedom in her life and is possibly not something she is accustomed to doing or encouraged to do. Her objective is to improve her standing within the family and the potential future wellbeing of the children she already has. To that extent there is reflection but it is probably limited to her immediate goals and may be insufficient for the criteria set out by the various theorists.

The relational substantive approaches, both strong and weak, will also not assist Anya as the relationships she is surrounded by, and which guide or control her, will only be assumed to undermine any self-trust and self-esteem she may possess.[[629]](#footnote-629) These approaches certainly recognise her social embeddedness and so cause us to be suspicious of her stated wishes, given her social environment, but grant such weight to the relationship she has with her oppressors that a loss of autonomy is almost a foregone conclusion. Relational autonomy theorists would demand so much more of Anya, in respect of a sense of worthiness to act, than she would be able to demonstrate.

Mackenzie’s new approach, which ties together all of the relational theories, is welcome in that it avoids having to choose just one relational concept of autonomy. However, each dimension has its own requirements and it is not clear whether these are compensatory or whether the capacities are cumulative.[[630]](#footnote-630) The situation or social environment which is at the centre of the reconceptualised theory may determine her autonomy as the characteristics she has to have are unlikely to be realised. The relational autonomy theories thus fail to satisfy one feminist intuition which is to empower Anya. The intuition not to accept her preference as a subjective indication of her welfare is satisfied but only because the bar has been set too high for the capacities she must have and the reflection she must undertake, not necessarily because there is in fact no autonomy. The link with her social environment almost predetermines her status as non-autonomous. As discussed in the application of this approach to Anya’s case if there is flexibility as to weighting regarding each dimension then the theory may better lend itself to a satisfaction of both feminist intuitions. However, as this flexibility is in the hands of those concluding on the presence of autonomy it may well be that the context itself, in this case sex selective abortion, will determine the finding, again relying extensively on one feminist intuition or the other.

**5.4** **Case Study 2 *– Bishakha***

*Bishakha is educated to postgraduate level and is married to a businessman. The marriage was arranged by her family and that of her husband. She lives in a comfortable home in Mumbai. She has worked in the past as an accountant but at her husband’s insistence she joined his business after their marriage. Her first child was born two years ago. She is a girl and, although she is loved and well cared for, Bishakha’s husband and his family have emphasised to her the importance of giving birth to a boy. Bishakha is pregnant again and has recently visited the hospital for a scan where the doctor indicated that the foetus was another girl. She has decided to abort this foetus and then try again to conceive a boy.*

5.4.1 Oppressive socialisation

Bishakha appears to be a modern, independent woman. She has enjoyed her own career as an accountant prior to her marriage and is educated to postgraduate standard. However, this level of education may merely be undertaken in order to attract a more suitable husband and this will be relevant to her attitude to higher education and her motivation. She has agreed to an arranged marriage which may be an indicator of oppression if she has always assumed that this would be her future and what is expected of her. Alternatively, it could be an autonomous decision to accept this if she has been surrounded by similar marriages and has regarded them as successful. She appears to have been persuaded to give up her own career in order to join her husband’s business but again this could also be her own decision if that is regarded as a more judicial choice for the family’s best financial interests and perhaps also in relation to flexibility for child care. The pressure from her husband and her family is strong, so much so that she does not appear to be capable of choosing to continue with the pregnancy. Alternatively, it could be important to her too because she has internalised the worth of a son over another daughter. She may already have abided by tradition when proceeding with an arranged marriage because it was expected of her and also agreeing to give up her own career to join her husband’s business. There are signs throughout her life that she complies with tradition quite readily. However, the extent of any internal conflict can only be ascertained through further scrutiny of her decision.

5.4.2 Khader’s deliberative perfectionist conception of adaptive preference

As with Anya, Bishakha’s choice is not compatible with her basic welfare, and is causally related to unjust conditions, so complies with Khader’s Conception of Adaptive Preferences. To abort the foetus because it is female is inconsistent with human flourishing as can be demonstrated by applying Nussbaum’s Capabilities list. Capability Number 2 states that she should be able to enjoy reproductive health. Inconsistency with this Capability is less the case with Bishakha than with Anya who was undergoing her third abortion, which could affect her health. This will be Bishakha’s first abortion and could be her last if her next pregnancy results in a boy. She is also undergoing the abortion under better, safer conditions. Evidence has indicated that the more wealthy and better educated couples will stop at two children, particularly so if one of those children is male. The abortion may be no more incompatible with her wellbeing than if she aborted for any other reason, for example because it would be inconvenient to have another child at that time, or because the child was disabled in any way. Yet it can be submitted that if the choice to abort is based on the wishes of others then it will be incompatible with one’s wellbeing and flourishing. Capability Number 3 is important as this requires her to be able to make her own choices regarding reproduction and there is doubt as to whether this is her own decision. Capability Number 7 relates to being able to be treated as a dignified being whose worth is equal to that of others. Although Bishakha is treated much more equitably than Anya, she is nevertheless being considered as a means to an end: the producer of a male for the family. It is therefore established that there is a suspected adaptive preference but, as with Anya, this merely means that Bishakha’s decision requires further scrutiny. It does not necessarily signify that her decision cannot be considered autonomous but at the same time we have to take into account any oppression that may be influencing her decision.

Although it is still a possibility, there is little evidence of complete internalisation of norms which grant a lower status to women so there is not a Paradigmatic Adaptive Preference. Bishakha does not necessarily believe that women are inferior as her choice to study for a career of her own indicates (if indeed this was her own choice rather than that of her parents to make her more attractive as a wife).

As with Anya, there could be a possible trade-off. It is difficult to accept that this is a trade-off between the monetary and psychological cost of sex selection and that of raising another daughter as, unlike Anya, Bishakha and her family are relatively wealthy. Rather, the trade-off is in order to gain the respect and approval of her husband and his family. In addition, as a couple they may have decided to have only two children and the strong cultural traditions in India result in a wish for one of those children to be male. Fertility is thus a strong driver of sex-selective abortion and fertility in India has been gradually falling.[[631]](#footnote-631) If a family want fewer children generally then they may be prepared to use sex selective abortion. In his studies Portner found that women with over 8 years of education were more likely to use sex selective abortion and this may be the case with Bishakha.[[632]](#footnote-632) As a couple who are educated their time is worth more and economics predict that they will want fewer children in order (as in this case) to be able to devote more time to their business. If the first child is a son then a couple are less likely to use sex selective abortion but if the first child is a girl, as in the case of Bishakha, then she may be more likely to avail herself of sex selective abortion services.[[633]](#footnote-633) Although this implies an attempt on Bishakha’s part to control her choices regarding reproduction the impact on those choices from social oppression must be recognised as she is making such choices because of her society’s focus on the importance of producing at least one son. Therefore, in some way, her choice is more a result of internalised oppression than perhaps that of Anya who is making her choice based on financial concerns for her family, albeit again influenced by her society’s views of women. If Anya’s community has started to take on the same customs regarding dowry as the higher classes then the financial pressure the family would be under would be much more onerous than for Bishakha’s family. The instinct is that Bishakha’s education gives her the opportunity to challenge these views of her family and to assert her own opinions so more is expected of her and as a consequence a choice to conform appears more blameworthy. Her decision, like that of Anya, is in response to her life situation, but it is not as extreme a case as that of Anya. Rather, Bishakha is using her education and relative wealth to plan her family more strategically and avail herself of the facilities which will help her to conform to society’s norms. This realisation, of course, then has implications regarding our understanding of the link between the marriage market and the practice of sex selection, as Portner points out. If sex selection is mainly used by women who are better educated then it is unlikely that higher dowries are responsible for the use of sex selection, unless dowries increase more than proportionally with the level of education and income. If dowries are an important consideration then we would expect sex selective abortion to be used among poorer families with many girls, but there is little evidence of this. Portner believes that we will see further increases in the practice as more families will want fewer children.[[634]](#footnote-634) As fertility falls for the rural well educated women and moves towards the same levels as for urban women then Portner expects a corresponding increase in sex selection. As the less educated then start to choose to have smaller families there will be a yet further increase.[[635]](#footnote-635)

Bishakha’s suspected adaptive preference is therefore a result of norms which have been partly internalised and a trade-off which we may expect her not to contemplate, given her education and wealth. The fact that she does so, despite this, may indicate the strength of the internalisation which although not complete is sufficiently influential to warrant further investigation and to be considered when questioning the presence or otherwise of autonomy. Whether her decision can nevertheless be deemed autonomous can be determined by applying the different theories of autonomy. It will also be pertinent to examine whether both feminist intuitions are satisfied.

5.4.3 Application of procedural theories of autonomy to Bishakha’s decision

5.4.3.1Traditional procedural theories

As in the case of Anya there is no indication of direct coercion and this appears to be Bishakha’s own decision rather than an order from the family. However, the influence of the family must be considerable given that Bishakha has conceded to an arranged marriage and hence recognises the authority of her husband’s family. When examining her lower level and higher level desires we would need to know which desires are Bishakha’s and which are those she has as a result of her relatively traditional upbringing. If, in fact, as a couple they have decided to limit themselves to only two children then it may serve Bishakha’s own interests to choose to have a child of each sex as she may wish to undergo the experience of raising both a girl and a boy. Whereas in other cultures this may not be regarded as an acceptable reason there is little to test whether decisions are being made on this basis as other reasons could quite feasibly be submitted for the decision to abort. What will assist Bishakha here is that in India, to abort on the grounds of the wrong sex is considered acceptable, and indeed encouraged by some, even though illegal. She does not have that underlying instinct or doubt that it would be wrong to do this so the motivation could be just as much her own as that of her family to adhere to tradition. Her society’s values would not inhibit her choices in the same way they may in another country. In fact it is the contrary position: her society’s values are encouraging the choice to sex-selectively abort.

Her decision appears to be autonomous as her higher level desire endorses her lower level desire. One feminist objective is satisfied as she is granted respect for her decision but the extent of the influence of oppression on her decision is unascertained and could be just part of her motivation, together with her desire to give birth to a son and enjoy the associated benefits and experiences of raising a son as well as a daughter.

5.4.3.2Relational procedural theories

John Christman’s historical approach would require Bishakha to examine how her wishes have developed and to not resist the development.[[636]](#footnote-636) Bishakha’s level of education would mean that she would be capable of considering how she has arrived at her desires and would probably do so automatically unless she has chosen to not examine the historical background to her wishes. This would be a conscious choice to refuse to reflect whether the desires are genuinely her own or whether her cultural history has imposed them on her. This may be an easier way to cope with her choice and would be no less autonomous if this was a deliberate avoidance of reflection. The internalisation of values which are oppressive to women could be extensive although it may be less likely in her case given her educational background (although this is presuming that education precludes internalisation of oppression which is not necessarily so). Thus, once more, her choice could be considered autonomous which would empower her but the extent of the internalisation of others’ values is uncertain and so may not be adequately addressed.

Applying Friedman’s integration model[[637]](#footnote-637), rather than Dworkin and Frankfurt’s hierarchical models[[638]](#footnote-638), then it is accepted that there could be incoherence between the different levels of desires. However, in order for the decision to not be autonomous there would have to be a more or less complete breakdown between the two levels and there is no evidence of this. As above, with the hierarchical model, there is no real indication as to the extent of the internalisation of others’ values about her sex and it may be that the seeming integration of her higher and lower level desires would result in a finding of autonomy. Bishakha’s choice may indicate that she has taken on values of others as her own but a different motivation could be that she has chosen to abort a female foetus in order to hopefully later give birth to a male so that she may raise him to have different attitudes to women. That other motive would not contradict a finding of autonomy but without that further information the assumption may be that her decision is based on internalised norms, rather than an attempt to subvert those norms in the long term. Accordingly, an apparent endorsement of the low status of women may be an attempt to challenge those values which so comprehensively affect her life. A more in-depth dialogue with Bishakha could identify underlying motives but it would not necessarily do so, particularly if these thoughts are more sub-consciously held and certainly not for open discussion at this stage.

Meyers, in linking self-realisation to self-respect, requires us to examine whether Bishakha’s socialisation has damaged her self-respect so that she is unable to reflectively decide whether or not to sex-selectively abort.[[639]](#footnote-639) There is no indication that Bishakha has not thought this through and weighed up the consequences of each option. In choosing to abort she pleases her husband, her husband’s family, probably her own family who may consider her ability to produce males as an achievement which would reflect well on them, and Bishaka will also benefit as her standing in the family will improve if she later produces the much-revered male child. This reasoning may be sufficient for her decision to be autonomous. The minimal rationality condition will also be satisfied as part of Meyers’ competence skills. Bishakha has the capacity for rational thought as she has ascertained how she can achieve certain ends or goals.

We could question whether she has sufficient information to make a rational life choice but the risks involved in one procedure are not high and in fact an early abortion is clinically a safer option than proceeding with a pregnancy to full term. Unlike Anya, who had already undergone two abortions, this would be Bishakha’s first termination. If she is also aware of the emotional risks (which may be reduced somewhat if her society regards it as acceptable and more as a method of contraception or a legitimate and expected way to reduce the birth rate) then her decision will be deemed autonomous. Both feminist intuitions would appear to be satisfied as she is granted autonomy and the possible internalisation of oppression is addressed. However, although there seems to be a meeting of her different levels of desire and so autonomy, the extent of her oppression and its internalisation is not ascertained.

5.4.4 Application of substantive theories of autonomy to Bishakha’s decision

5.4.4.1Traditional substantive theories

Applying the traditional substantive theory would entail Bishakha having to make a moral choice in order for her decision to be supportable on the basis of autonomy. To abort for other reasons such as when the foetus has been determined as having a serious disability, or when the foetus is carrying a hereditary condition, may be considered acceptable in some cultures but would not be in others which means that there is a potential problem when focusing on the decision to abort on the basis of sex alone. This raises the spectre of relativism as opposed to universalism and the question of whether certain choices will always be considered wrong, no matter what the cultural heritage of the decision-maker. To abort a foetus on the basis that the foetus is of a sex regarded as inferior to another must surely be a universally regarded immoral ground for a decision as it is grounded on inequality, despite claims of respect for others’ cultures and values. We should therefore not have any reservations in finding that decision non-autonomous. Yet it does not mean that Bishakha is not autonomous as she is still making her own choice, albeit one that many of us would not agree with, and it is possible to be autonomous when making poor choices. However, the disabled as a group would undoubtedly claim that to abort a foetus on the basis of a disability, particularly if the child when born would not necessarily suffer and where any medical problem could be rectified relatively easily, would also be immoral on the same grounds of inequality. Applying the substantive theory the woman who made such a decision would not be autonomous in relation to that decision, depending on the values applied. Both decisions suggest that there is inequality and both groups, the disabled and women, would claim that equality should be the objective for all groups. In that respect Western cultural norms which would find aborting a disabled foetus acceptable could be challenged by others in the same way as we are challenging the abortion of a foetus because it is female.

The other question would be in relation to what Bishakha would know of other norms, i.e. how other societies would regard a decision to sex-selectively abort. Living in a society where to abort a foetus on the basis of its sex is acceptable, albeit illegal, would mean that she would not necessarily regard it as immoral herself. If we require her to make good decisions then are we as Westerners in a position to judge when we abort on the grounds of inconvenience or because a child would interfere with career progression, both reasons which may be considered morally wrong by some? I would still argue yes when the basis of the decision is that one sex is of less value than another, not just to that individual, but to the patriarchal society which is driving and controlling the values. The difficulty will be in identifying Bishakha’s motives. This approach will always be troubled by questions of whose standards should be applied but generally a decision to abort on the grounds of the foetus being female would not be autonomous following application of this approach. This would serve to answer one feminist intuition but it would dismiss as non-autonomous all those women making such decisions whatever their motives and would not nurture the autonomy of those women who lack decision-making power in their reproductive lives.

5.4.4.2Relational substantive theories

The issue when applying strong substantive relational accounts would be whether Bishakha can identify between right and wrong. Any oppressive socialisation she has undergone could interfere with this ability and will undermine her normative competence. Would she be able to criticise her own choices when applying relevant normative standards? Stoljar would claim that Bishakha’s decision would not be autonomous if it is based on norms she has internalised and when these norms derive from an oppressive, patriarchal, society.[[640]](#footnote-640) This may be the case if those norms were the only base of her decision and if consequently there was a paradigmatic adaptive preference, but, as we have seen, Bishakha has not necessarily taken those norms on as her own and may be working her way through making her society as it stands work for her. There is a difference, and Stoljar’s intuition would be too presumptuous and would be based entirely on the content of the decision, resulting in all women in India making the same decision being considered as non-autonomous. This would be similar to the position when traditional substantive theories are applied to the same decision. It is a natural conclusion and pleases the feminist in us as we find the decision, and the suspected reasoning behind it, abhorrent. Yet it still does not necessarily signify that the decision made by Bishakha cannot be deemed autonomous if that is what we are focussing on. Even Stoljar appears to concede this when she qualifies her claim by stating that it could depend on the extent of the motivation and whether Bishakha has other motivations in addition to those which conform to oppressive feminine norms.[[641]](#footnote-641) If, as an alternative view, Stoljar’s qualification is based on how damaging those feminine norms are then the decision could not be regarded as autonomous as surely the damage to not just one woman but to women in that society is significant and long-term. Therefore social oppression will be taken into account in such a way to satisfy feminist critics of the more traditional procedural accounts at least, but may be at the expense of a real consideration of whether that decision is the genuine decision of the woman concerned. Self-determination is sacrificed for the requirement to make good or morally acceptable decisions. Bishakha’s decision would certainly be an adaptive preference but it would not necessarily be a non-autonomous decision.

In contrast relational weak substantive theories would not focus on the reasons for the content of Bishakha’s decision, but would ask that she possesses self-respect and self-trust.[[642]](#footnote-642) There is less doubt about Bishakha’s position in relation to this than Anya’s as Bishakha has already demonstrated self-respect and self-trust in furthering her education and establishing a career. Yet her career was short lived as she was asked to then join her husband’s company which may indicate a wish to have some control over her or could merely have been for financial reasons and to benefit the family as a whole. If her status within her society is reflected back at her, however, Bishakha may find it difficult to maintain her self-respect, particularly when she has given up a career and now is regarded as an integral part of her husband’s family with all that entails. Again, this gives considerable power to the oppressors, the males in the family, and other women, as her connections to them are essential to the way she regards herself.

On similar lines Benson would need Bishakha to consider herself able to answer for her decision to sex-selectively abort, but in the context of the normative demands of others.[[643]](#footnote-643) Bishakha would be more likely than Anya to regard herself as able to do this and may have the confidence to argue and explain her decision. She would have sufficient self-respect and self-esteem perhaps to answer to others, even though she may not have enough to challenge the norms of her society and the patriarchal control she still abides by in part. If we demand the latter of her then we are going too far and are placing the burden of emancipation on her shoulders which sets the standard she must reach as more or less impossible. The conclusion is less clear here as we would have to know the damage, if indeed there has been damage, to her self-respect. She may appear more self-confident and self-aware than Anya and so her decision may be autonomous but this apparent self-confidence may mask a complete acceptance of the feminine norms of her society and a lack of questioning of those norms which would signify non-autonomy. This demonstrates one of the problems with this approach which is how this self-respect or self-esteem is expected to manifest itself. An individual who appears outwardly to have considerable self-respect and self-esteem may not be sure of her views internally. It could be a pretence, or a front, concealing the true person. If that external behaviour is not encouraged or regarded well in the woman’s society then she may be culturised not to act in that way but may yet be much stronger than she outwardly appears. It could be Western feminists imposing not only their values but their behavioural and character ideals on others.

5.4.5 Application of Mackenzie’s relational three dimensions of autonomy to Bishakha’s decision

In applying Mackenzie’s theory we are recognising that there are several facets to autonomy, each interdependent.[[644]](#footnote-644) It is possible, using this approach, to satisfy both intuitions: that the woman living under oppression can nevertheless be autonomous and also that we need to examine such decisions further because of the inherent danger that decisions may be unduly influenced by the oppressive norms of her society.

5.4.5.1Relational self-determination

This dimension focuses on the external conditions Bishakha requires to be present in order for autonomy to be found. She would have to enjoy the freedom and opportunity to make choices. Like Khader, Mackenzie uses the capabilities theory to describe opportunity conditions for self-determination. If Bishakha has internalised her oppression to the extent that she chooses not to have one of the capabilities and this is indicated by adaptive preference formation, then her external conditions, which here are her husband’s family and her community, may have affected her skills and the capacities she needs to make choices. The influence of family and community is not clear and even Bishakha herself may not be aware of the extent of this influence on her decisions.

5.4.5.2Relational self-governance

The internal conditions of competence and authenticity are acknowledged to be interlinked with the external conditions addressed above under Relational Self-determination. As we are all socially constituted then Bishakha’s relations with others such as family and community will have shaped her identity and this is the self of self-governance. In addition, the competencies she requires to govern herself will also be influenced by those external factors. It cannot be doubted that social oppression will have influenced how Bishakha has formed her practical identity and her autonomy competence. The extent to which this is the case is not clear, however.

Authenticity conditions refer to Bishakha’s motivational structure and as Mackenzie has used Christman’s analysis of authenticity Bishakha would need to have undergone self-reflection which accepts that her practical identity has developed over time and is influenced by her own history.

The competence conditions required of Bishakha will be achieved not only through reflection upon herself but also through interacting with others. The danger here would be with whom she is interacting and relationships which help with her self-governance should be nurtured over those which seek to weaken or subjugate it. Bishakha would certainly have more opportunities than Anya has to interact with others outside her immediate family but the issue would be whether she has sought out those relationships which would assist rather than hinder her. There would have to be substantial empowerment from others in order to balance the interactions with her family members.

5.4.5.3Relational self-authorisation

Bishakha should regard herself as self-determining and self-governing. This dimension ties in strongly with the relational weak substantive theories, focusing on self-respect and self-esteem. She should also be regarded by others as having that standing. Again, social relations with others are crucial and if Bishakha’s family are unwilling to regard her as an autonomous agent (as could quite easily be the case) then she is particularly at risk of losing that standing. The inequalities of power are not as blatant as in the case of Anya but nevertheless they may still be present, albeit more subtly.

We can see then how her external factors are so essential to each dimension of this approach and how powerful an influence they exert on the individual, from the development of her competence skills to her willingness and ability to challenge others’ norms. The approach attempts to take all aspects of social oppression into consideration but in doing so it asks so much more of the individual than the less onerous traditional procedural autonomy approach. It is more comprehensive and does a much more thorough job of analysing the decision-making of women living under oppression but may be demanding too high a standard to be reached in order for a woman to be regarded as autonomous. Therefore, depending on the standards applied this approach could satisfy both feminist intuitions: Bishakha would be deemed autonomous and would be further empowered to make her own decisions, but the internalisation of oppression and how that relates to her decision-making will also have been taken into account, although not conclusively.

**Summary**

Bishakha’s oppression is less obvious but nonetheless is feasibly present; depending upon how much of Indian society’s views of the status of girls and women she has adopted and accepted as her own. The need to abort a female foetus is not necessary in the financial sense it was for Anya, nor are there any evident trade-offs to provide rational explanations for her decision. However, she may be prepared to make this choice to please her husband and his family and to be seen to be a good wife. Her motivations for her decision are thus less compelling than those of Anya and this choice may be regarded by some to be an unreasonable one. Yet many women make decisions to please others within a marriage and this choice may not seem as abhorrent to Bishakha as it would to others, nor the cost so great, given her society’s acceptance of the practice. Bishakha’s preference may be adaptive and may be a paradigmatic adaptive preference if her sole reason for the sex-selective abortion is her acceptance that it would be bad to give birth to another girl. That is not sufficiently evident, however, and although this is a choice which raises concern, following Khader’s concept of adaptive preferences, as she is perpetuating her oppression by choosing not to have one of Nussbaum’s capabilities, it is merely that and will not result in an automatic conclusion that she does not have autonomy in relation to this decision.

This choice appears to be Bishakha’s own and there may be an assumption that given her education she has the requisite skills to reflect upon her choice. There are no indications of conflict between her levels of desire and so the traditional procedural approach would be likely to result in a finding that the decision can be considered autonomous. This may not identify whether or not Bishakha has internalised society’s norms, however, and in that respect it fails to satisfy one of the feminist intuitions. Traditional substantive approaches to autonomy will, as with Anya, lead to a conclusion that there is no autonomy as the choice is morally wrong, taking a universalist stance. Again this satisfies one feminist intuition but not another, entailing the blanket conclusion that all women making this morally objectionable choice are non-autonomous. The relational approaches to autonomy will take into account her relationships with others but these will not act against her as they did with Anya as superficially her relationships seem to be more equal and there is less evidence of an imbalance of power. That said, there are indications that she has given way to others’ wishes in some important stages in her life and even if she does examine how her wishes have developed she may not have the willpower and confidence to challenge and then reject them. As an educated woman she may be using her knowledge and relative wealth to access abortion in order to enhance her standing as a wife and daughter in law. This decision could be considered and reflected upon and regarded as a rational way of achieving this end. If this is the case then her decision will be autonomous but her motivations will be central to the conclusion. The relational procedural approach would be likely to find her autonomous but we would have to be aware that her ability to articulately defend her decisions may be successfully masking the internalisation of the discriminatory norms and so she may not be autonomous, contrary to appearances. The feminist intuition which doubts the authenticity of a hard case such as sex-selective abortion is then not satisfied, although the requirement to empower and grant autonomy, where possible, is. The relational strong substantive approach may also result in a finding that Bishakha’s decision can be supported on the basis of autonomy. As the focus is not on the content of the decision itself, but whether Bishakha’s sole reasons for acting have been the acceptance of others’ norms, there is sufficient uncertainty here, particularly given Stoljar’s hesitant explanation of her strong substantive relational autonomy theory, to find the decision supportable on the basis of autonomy. The relational weak sustantive approach may, when applied, lead to a conclusion that the decision is autonomous, depending on the outward indicators of self-respect and self-esteem. However, we may be basing findings on what we in the West expect of behaviour characteristics so must be cautious in the confidence we place in our conclusions.

As would be expected, given that the three dimensional approach of Mackenzie is a hybrid of the other relational approaches, this would also be likely to lead to a finding that the decision can be supported on the basis of autonomy. It would also satisfy both feminist intuitions if the possible extent of internalisation has been adequately addressed. Much may depend on the nature of her relationships with those around her, in particular her husband’s family, who have emphasised the importance of her giving birth to a son. Whether these influences have been diluted by her relationships with others is not evident, nor whether relationships have served to nurture or weaken her self-governance, in turn affecting her capacity to self-authorise. However, in recognising the complexity of decision-making it can be argued that this approach leads to yet more uncertainty and a vague set of criteria which do not convince.

**5.5 Case Study 3 - *Chandeep***

*Chandeep was born in England, although both of her parents were born in India. Chandeep studied at University in the North of England and met her husband, Saeed, there who is also the son of immigrant Indian parents. After their marriage Chandeep changed from full time to part time work but since the birth of their two daughters she has remained at home. She is pregnant for a third time and is aware of the importance that this child is a boy as they have decided that they can only afford to have a maximum of three children. Both families have emphasised that it is crucial that the next child is a son. It is difficult to find a doctor who will divulge the sex of the foetus but they have found a contact who is willing to do so. Chandeep is informed that it is a third female foetus and she decides to proceed with an abortion.*

5.5.1 Oppressive socialisation

The extent to which Chandeep will be influenced by Indian society’s norms when living in the U.K. is not known. It could depend on her strength of character, her contact with others from different cultures and how much her own parents and those of her husband are still attempting to impose their culture on their children, or indeed how deeply that culture is still influencing them as they too have been exposed to other values and norms for the length of time they have lived in the U.K.

There is certainly evidence that gender selection occurs within the United States particularly by Chinese and Asian Indian women.[[645]](#footnote-645) There is also evidence of the same in Canada.[[646]](#footnote-646) This indicates that oppressive socialisation still exists and influences even when the women are no longer living in India. Jason Abrevaya’s paper acknowledges that although there is no evidence of gender-selective practice in the aggregate in the United States, there could be evidence of it within certain communities, possibly depending on the extent the immigrant groups have assimilated into their new country. The evidence indicates that gender selection takes place at later births, confirming the findings in India that intended family size now plays a significant role when making such decisions. So the study found that Indian mothers were more likely to undergo an abortion when they had previously given birth to girls only. The likelihood of Indian parents having a son is therefore significantly higher for third-born and fourth-born children and the trends appear to match those observed in India. Abrevaya’s study also confirms that the phenomenon is not limited to women with less education and in fact the statistics were very similar for the less-educated and more-educated mothers.[[647]](#footnote-647)

The motivation for gender selection in immigrants requires further research. Abrevaya points out that the dowry system will not be relevant or should not be. The level of education also did not appear to be a factor. He concedes that the cultural son bias could still be present within those who move from India to live in the United States, although he would expect this son bias to diminish as second and third generation mothers reproduce.[[648]](#footnote-648) Puri et al’s study of 65 women who had immigrated to the U.S. from India, all of whom had used foetal sex selection, found that they considered it their duty to produce a son, not necessarily agreeing with gender inequalities, but conceding the importance to the family, both economically and socially.[[649]](#footnote-649) Although the status of a girl was generally equal to a boy in the United States, within their own culture it would still be the girl who would move out to live with her husband’s family and it would be the son who would care for his parents.

A similar study in England and Wales has indicated an increase in the sex ratio of births to mothers born in India, particularly so in the case of higher-order births.[[650]](#footnote-650) Dubuc and Coleman argue that the preference for a son remains powerful for first-generation immigrants and this, together with the availability of pre-natal sex diagnosis, has resulted in a deficit of female births. They question whether those immigrants born in India are influenced at all by the norms of a Western society. However, later research of the same authors indicates that fertility levels of immigrants from India are lower than in their country of origin and the fertility level reduces again in the next generation who have been born in the U.K.[[651]](#footnote-651) It is conceded that the areas from which the immigrants originate and the social status will influence the data so generalisations are difficult to make. This also does not necessarily signify that this will have an effect on the choice of sex of the child but it may mean that lower fertility levels result in a focus on the importance of giving birth to at least one male within the small number of children each couple choose to have. Chandeep’s parents and those of her husband have been acculturated to different values from those Chandeep has experienced. Her socio-economic status may also have improved and again this tends to translate into lower levels of fertility, although not necessarily a decline in the wish for a male child. Yet, if it is expected that fertility levels of ethnic minorities will decline to the national level then there may also be the possibility that attitudes to the importance of the sex of the child will also be influenced to the extent that they fall in line with those in the U.K. This is only supposition at this point, however, and there is little research, if any, on such trends. Following newspaper reports in 2012[[652]](#footnote-652) that sex selective abortion was prevalent in some parts of the U.K. the Department of Health requested details of the analysis carried out by London’s Imperial College.[[653]](#footnote-653) However a government investigation found no evidence of sex selective abortions being chosen by women from certain ethnic communities.[[654]](#footnote-654)

Yet it is possible that the oppressive socialisation in India has been continued into the next generation here in the U.K. There is no indication that Chandeep’s is an arranged marriage although it could be as that practice still occurs in the U.K. She reduced her working hours to part-time following her marriage and then remained at home after the birth of her children, but again that is no indication that her decision is due to any pressure, overt or otherwise, from either set of parents. Chandeep is aware, however, of the importance of giving birth to a boy. She already has two daughters and if, as a couple, they wish to limit their family to three children then the sex of the next child is very important. This may be the case with many Western couples who would ideally wish for a balance of sex in their offspring. It could also be the case that Western couples would also try to determine the sex of the child and would abort or, alternatively, would attempt to ensure that they have a child of the other sex by using pre-implantation genetic diagnosis. This practice is prohibited if not for a sex-linked medical reason, as is sex selective abortion, although in relation to the latter practice it may be possible to abort without providing the honest reason for the termination and consequently fall within the accepted grounds for abortion. As Chandeep was born in the U.K. we would naturally doubt the strength of the influence of Indian culture yet she has been raised within an Indian family and will have been exposed to Indian cultural values. She has also married a son of Indian immigrants and he too will have been influenced by the same values. Although we cannot assume that the parents feel strongly about the worth or otherwise of a female child there is an indication here that to some extent those views prevail as the importance of having at least one son is clear when they have emphasised the significance of the sex of the next child. To balance those views, however, Chandeep will also have been exposed to other values and norms and it would be expected that this would result in some internal conflict.

5.5.2 Khader’s deliberative perfectionist conception of adaptive preference

Here we need to examine whether Chandeep’s choice is compatible with her basic welfare and whether her choice is causally related to unjust conditions. This may be less straightforward to demonstrate than in the first two case studies. Nussbaum’s Capabilities list can be applied again but to choose to abort would not interfere with Capability Number 2 as it does not prevent Chandeep from enjoying reproductive health. It will only be incompatible with Chandeep’s wellbeing if she is aborting because the two families wish her to do so. Similarly, if she is not making her own choices about reproduction then she will be choosing to do something which is incompatible with her welfare and prevents her flourishing, interfering with Capability Number 3. Capability Number 7 requires her to be treated equally to others. If she is being used as a means to produce for the family the all-important son then this is also compromised. Her decision therefore needs to be examined more stringently although we cannot assume at this stage that she is not autonomous in relation to this decision. It is very doubtful that there is paradigmatic adaptive preference formation here as Chandeep is unlikely to have taken on second-hand cultural values as her sole reason for making the choice to abort. She will have sufficient information as to the procedure and what this may mean for her physically and emotionally but this could be a trade-off to keep both her own family and that of her husband happy. This appears to be a high price to pay and in some ways triggers alarm bells more than in the other two case studies as there does not seem to be pressure on her and she has certainly less to lose than Anya and probably less than Bishakha. If this is her way to navigate cultural oppression it is extreme and we would expect her to challenge the pressure more or to arrive at a more creative way of avoiding having to abort her female foetus. If her choice is just for an easier life then her decision can be supportable on the basis of autonomy but we would need to investigate to discover whether she is considered autonomous when applying the different theories. A trade-off on this much smaller scale could indicate a lack of reflection, or that she is less morally aware, or that her own self-preservation is much more important to her. This may be more morally blameworthy but may not make her any less autonomous.

5.5.3 Application of procedural theories of autonomy to Chandeep’s decision

5.5.3.1Traditional procedural theories

We would expect a conflict between Chandeep’s lower and higher level desires. Similar issues arise as in the case of Bishakha in that again this couple has decided that they wish to limit the number of children they produce and would like at least one of their children to be male. Chandeep could keep reproducing until she gives birth to a male child but this could take its toll on her health and also the finances of the family. It may make sense to her to ensure that this time she does not give birth to a female child, hoping to produce a boy from the next pregnancy so that she will then be able to stop reproducing. The burden of carrying the child and childbirth falls on her and only her and so it would be her interests as well which she may be considering. This may be the case for many families who have more of one sex than another and who would wish to ‘balance’ the family. The difference for Chandeep is the importance placed on having a male child, not just by her (if indeed she does wish for a boy) but also by her husband and both families. If her higher level desire endorses her lower level desire, then her decision will be autonomous. The question, then, would be whether the higher level desire, which endorses the lower level desire, is in itself autonomous or whether that too is influenced by oppression. This is unlikely in Chandeep’s case although the extent of any oppression from her parents is unknown. It may be that the conflict is not felt too deeply as she may know of others in her inner community who have resorted to aborting a female foetus and this may mean that it is regarded as more acceptable. Her decision is likely to be deemed autonomous as she will have appeared to have reflected on her decision and both her lower level and higher level desires seem to be in agreement. In some ways, however, given that there are no other motivations in evidence for choosing to abort a female foetus, this decision is more likely to be a result of an internalisation of norms as to the worth of the female. Anya and Bishakha may be making decisions in order to improve their lives or to navigate the effects of patriarchy, but Chandeep does not have to do this. She may be likely to be considered autonomous but there are nevertheless doubts as to her autonomy in relation to this particular decision.

5.5.3.2Relational procedural theories

Of the three Imaginary Women, Chandeep is more likely to be able to reflect at this further level, and will be aware that this choice is not really her own but more that of her family and her family’s cultural heritage. If, however, applying Christman’s historical approach, she rejects the process which has led to her desire for a male child following reflection then the decision would not be autonomous.[[655]](#footnote-655) It is doubted that Chandeep would regard influences from her family and community as illegitimate, as these are influences she has been living with throughout her life and will have come to regard as appropriate. There is the possibility that contact with other women outside her immediate social circle and family, at University or at her place of employment, has caused her to question them and if that is so then her decision may not be autonomous. This is more likely to have occurred with Chandeep than with either Anya or Bishakha as she is more likely to have been exposed to other cultures’ views of the practice of sex-selective abortion.

Of course we cannot assume that there is a conflict at all or any incoherence between her different levels of desire.[[656]](#footnote-656) She may have her own motives for choosing to abort even though the primary motive may be to avoid giving birth to a further girl in order to please others. In addition there is no indication that her self-respect has been damaged in any way which, as Meyers points out, could have affected her self-realisation.[[657]](#footnote-657) This approach emphasises the skills and capacities Chandeep must have to fully realise herself. Given that these skills can only be nurtured in particular social contexts or within certain social relationships we would need to know much more about the dynamics of the relationship Chandeep has with her own family and that of her husband. She will develop aspects of herself which are socially reinforced and some skills may have been developed at the expense of others. Her role as the provider of a son for the family may have been focussed on at the expense of other roles she may have, or may have had in the past. Chandeep may demonstrate high degrees of autonomy in relation to some decisions but not others so may appear strong and independent when making certain choices but less so when making this decision. We may have suspicions that she has been influenced by the norms of others but there is little evidence of that in this account. Given that there has not been a concentration of relationships solely with her family and that other relationships with outsiders to her culture may have diluted their influence it is likely that her decision will be deemed autonomous. What is interesting here, however, is that the fact that she enjoys other relationships and potentially is open to other influences, has led to a conclusion that she must be autonomous, when her decision is essentially the same as that of Anya and Bishakha. The possible external influences are assisting with that presumption rather than a genuine scrutiny of her reflections. We still may not be examining the extent of internalisation of others’ norms to a satisfactory extent. One feminist intuition seems much stronger here: that we should acknowledge her autonomy, but this may be because she is now living as part of our culture and we would find internalisation of norms which are remote to us in the light of this difficult to accept.

5.5.4 Application of substantive theories of autonomy to Chandeep’s decision

5.5.4.1Traditional substantive theories

If we require Chandeep’s choice to be a moral choice according to our society’s norms then her decision to abort on the basis of the sex of the foetus being female would result in a conclusion that her decision would not be autonomous. Yet arguably that decision does not negate her autonomy if the choice is hers, whether its content is good or otherwise. We do not try to claim that each woman who aborts for a reason many of us would find morally wrong does not possess autonomy.

The substantive approach is a response to perceived shortcomings with the procedural accounts which do not sufficiently identify when socialisation may have influenced the choice, usually because the choice is contrary to our own ideas of what is right or wrong. Strong substantive theories require agents to be able to identify the difference between right and wrong. Oppressive socialisation may affect that capacity but there has to be care not to assume that that is what has occurred based only on the content of the decision. When determining what is ‘right’ or ‘wrong’ we may apply Susan Wolf’s ‘widespread inter-subjective agreement’[[658]](#footnote-658) and in relation to sex-selective abortion that would surely be satisfied as the majority view would be that the procedure is immoral, given that it makes a statement about the female foetus being worth less than the male foetus. There is also the fact that it is unlawful in the U.K. which makes it clear that society has taken a moral stance on this practice. It would be tempting to then conclude that the woman’s decision would not be autonomous but the two positions do not equate as autonomy and moral responsibility are not the same. The problem with universalism versus relativism is raised again and as Chandeep is part of a different culture the issue is still present, whether or not she is living in a country which would find that choice unacceptable. Yes, she will have been exposed to other views as she has only lived in the U.K. but there is still a conflict between two contrasting cultural approaches: that of her parents and her husband’s parents and that to which she is exposed living in the U.K. and having been educated here.

If the weak substantive theories are applied then we move away from a focus on the actual content of the decision and instead require the agent to have a sense of worth. This imposes constraints on the woman’s attitude to herself but because there is a social dimension added to what would otherwise be a purely procedural approach it is probably better suited to being discussed under Relational Substantive Theories below.

5.5.4.2Relational substantive theories

Natalie Stoljar’s strong substantive relational theory advances that if the woman’s choice is solely based on the norms imposed on her by society then the decision would not be autonomous. This attempts to answer the criticism of basing autonomy on the content of the decision but it is still arguably the content of the decision which is triggering the approach as if the woman's choice was based on others’ norms but the content did not instinctually feel wrong then we would presumably not question the autonomy of the decision-maker. There is also uncertainty as to how prescriptive this theory is intended to be and this vagueness results in the theory lacking conviction.[[659]](#footnote-659) Depending on Stoljar’s intended ambit of the theory Chandeep’s decision may not be deemed autonomous if she is primarily motivated by oppressive feminine norms but there is no evidence of this, her motivations possibly being several and complex. Alternatively, as with Anya and Bishakha, if she is deemed to be complying with feminine norms which are very damaging then her decision would not be regarded as autonomous.

The weak substantive theories belong more clearly in this relational section as an attempt to move away from a potential criticism of the actual moral content of the decision yet still requiring the woman to possess certain moral attitudes to herself. There could be an expectation that Chandeep, as a well-educated previously independent woman with a career of her own, would have self-respect and self-trust but further scrutiny would be required to determine this and this should not be presumed. Much may depend on how she is regarded and treated by others and any confidence in herself she may have possessed in the past could have been eroded if she has been regularly treated as inferior and of lower status than her husband. Cumulative disappointment expressed by her family as she has given birth to two daughters could also undermine her self-esteem if giving birth to a son is considered a measure of her worth. The approaches of Dillon and Govier are similar to that of Benson who would require Chandeep to have a sense of worthiness to act.[[660]](#footnote-660) The limited information we have about Chandeep would be insufficient to establish this and so in that respect as the evidence of oppression is not clear, nor would whether or not she possesses such character traits, and how burdensome it would be to expect her to possess them. Chandeep is not living in the same patriarchal, oppressive society as Anya and Bishakha but may be subject to similar conditions within her own micro-society.

5.5.5 Application of Mackenzie’s relational three dimensions of autonomy to Chandeep’s decision

Finally, the approach of Mackenzie can be applied, recognising the different dimensions to autonomy and how they are causally related.[[661]](#footnote-661)

5.5.5.1Relational self-determination

Chandeep must have the freedom to make choices and this relates to the importance of external conditions which need to be in place for autonomy. External conditions such as social oppression which could then have been internalised will clearly affect Chandeep’s self-governance and self-authorisation. Her external conditions may well be the same as those for Anya and Bishakha but it is less likely given the exposure of Chandeep and her extended family to other societal norms than those traditionally applied in India. We would need to analyse the opportunity conditions she has experienced for self-determination. If there has been an internalisation of any constraints then this will be part of her sense of who she is.

5.5.5.2Relational self-governance

As it is acknowledged that relations with others shape identity, then they will also affect the skills required to govern that self. The extent of this influence may depend on the range of other people with whom a person has relations, and the diversity of others. As Chandeep will have had contact with a wider variety of people in her life, and certainly a wider range of influences and ideas, the impact may be more diluted.

MacKenzie requires that Christman’s concept of authenticity be applied here so that there should be not just adequate self-reflection but also historically sensitive self-reflection. This brings in the procedural theories, both traditional and relational. It would mean that Chandeep would not only have to reflect on her motivations but also how she has arrived at them. There is no guarantee that this would result in a lack of cohesion between levels of desire but it may lead to a deeper reflection and consequently further questioning or internal challenging of her decisions.

Skills of competence are also important and in order for Chandeep to achieve self-knowledge she would have to interact with others. Chandeep will have the opportunity to mix with others who are not of the same culture as her parents and her husband’s parents, others who may cause her to doubt her initial decision. It is thought that her competence skills will be more refined that those of Anya certainly, and Bishaka possibly.

5.5.5.3Relational self-authorisation

Again, we can observe how external factors, such as how she is regarded by others, will affect how Chandeep regards herself and whether this includes the normative authority to be self-determining and self-governing. Whether she possesses the requisite self-respect, self-trust and self-esteem and whether she is considered as an autonomous agent by others, will be crucial to this dimension of relational autonomy. As Mackenzie believes that our values are based on dialogical interaction with others the presence of this dimension will depend on intersubjective social relations. The possible inequality of power between Chandeep and her family and also her husband’s family is what may determine how vulnerable Chandeep is and whether she has internalised non-recognition. So if Chandeep has always deferred to others’ judgments and automatically taken on others’ values, there will be doubt as to whether she has self-authorisation. However, as Mackenzie only requires her to have ‘appropriate’ self-evaluative attitudes then much will depend on the context and the extent to which her self-regard may have been harmed. This, in turn, could depend on her strength of character and her wish to conform to others’ values, whether this is merely to gain an easier life or because she believes it is necessary to maintain her marriage. There are several variables here and we should recognise that others’ approaches to her may be instrumental. However, we would also need more guidance on how much of a self-evaluative attitude is ‘appropriate’. Mackenzie’s unitary approach is valuable but, as with Stoljar’s strong substantive relational autonomy approach, it requires much more detail so that its potential vagueness does not detract from its utility and authority. The approach requires much more development at a conceptual level in order for it to be of practical application. Certainly it needs to be sufficiently general to apply to different situations but if it is too general it loses clarity and certainty. We could speculate as to the extent of Chandeep’s vulnerability and her relationships with others but unless we have more guidance as to when ‘appropriate’ becomes sufficient, and in turn whether the satisfaction of one dimension can compensate for the failing in another, then we will not be able to reach any worthwhile conclusions.

**Summary**

The degree of social oppression to which Chandeep is subjected is expected to be limited, given that she was born and educated in the U.K. That said, there are indications that immigrant women are sex-selectively aborting in other countries and this implies that adaptive preferences may have been made, particularly at the stage of later births. However, this does not confirm the extent of the internalisation of the values of Indian society.[[662]](#footnote-662) The compliance with cultural practices such as the dowry system, arranged marriages and sex-selective abortion has not been ascertained in immigrant groups and this may also vary depending upon the generation examined. Chandeep’s parents and her husband’s parents are the immigrants but she has been raised from birth in the U.K. and this could affect the sway of those customs and values. Yet she is aware of how important the birth of a boy is to both families and although the weight of this pressure may be less than it is to Bishakha, who is surrounded by a society where many believe the same, Chandeep will still wish to please her husband and both families. She will also wish to see herself reflected as a successful mother because she has produced a son. She is therefore exposed to Indian values but may not feel as compelled as Bishakha to respect them when it would mean aborting her child because it is female.

Khader’s conception of adaptive preference, when applied here, would lead us to decide that there is evidence of a possible adaptive preference. It could be of concern given that it serves to perpetuate oppression and prevents flourishing but it will not be paradigmatic if there are other motivations which contribute to Chandeep’s decision. As the couple wish to limit their family to three children then this, *together with* the need for a son could place a heavy burden on her if she is in control of her reproduction. These factors may mean that she is prepared to sacrifice the foetus for the benefit of the family and her standing within it. This could once more be a trade-off but the price to pay for pleasing her extended family will seem higher to Chandeep as she *will* be aware of the views of those around her other than her immediate family. Whereas Bishakha’s society would generally condone her act, and Anya’s would positively promote it, Chandeep’s would not, if she feels aligned to U.K. society rather than Indian society. This leads us to conjecture that if she makes this choice with little or no reflection then she may have deeply internalised the norms. However, if there is internal conflict when making this decision, following reflection, then an eventual agreement in her levels of desire will signify that the decision can be deemed autonomous. This will satisfy the traditional procedural theories of Dworkin and Frankfurt[[663]](#footnote-663) and the two feminist intuitions if her possible internalisation of others’ norms has been recognised and found to be insufficient for an alternative conclusion. The traditional substantive theories would be more conclusive in this case as we are not imposing our cultural mores on another culture in another country and there is extensive evidence of our position on sex-selective abortion in our legislation which prohibits the practice. There would consequently be fewer grounds for criticism on the basis of relativism. In addition, the ‘widespread inter-subjective agreement’ of Susan Wolf may be complied with, depending on the definition we give to ‘widespread’.[[664]](#footnote-664) Chandeep’s decision would not be autonomous using this approach. However, the conclusion would be based on whether it is the morally right thing to do, not a focus on her self-determination.

The relational versions of procedural and substantive autonomy would expect more from Chandeep in respect to reflection on how she has historically acquired this desire for a male child, if indeed it is her own desire. She will certainly be aware that the preference for a male derives from her family’s cultural heritage. An acceptance without reflection may indicate internalisation of those norms but this is unlikely and if she reflects but does not reject how she has acquired those values then her decision will be autonomous. Conflict is likely, given her relationships with others outside her immediate community, but an alignment or integration between her different levels of desire will be sufficient to satisfy this approach. It is doubtful that her skills and capacity to reflect have been damaged as the influence in terms of relationships will be varied and some relationships will have nurtured certain aspects of her development. This assists in a finding of autonomy although it has to be noted that Chandeep’s decision is the same as that of Bishakha and Anya and it is the possibility of dilution of influences which is leading to a conclusion of autonomy rather than real confirmation of the same. The relational strong substantive approach will not analyse the content of Chandeep’s decision (although it is conceded that the content will trigger the further inquiry). Should there be an indication that Chandeep has based her decision entirely on the norms of others then the finding would be that her decision would not be autonomous as her reasons would be based on others’ values and not her own. It would be wrong then to find autonomy even if one feminist intuition wishes us to do so wherever we can in order to empower women when making decisions about their reproduction. This is doubtful in Chandeep’s case and it is more likely that her decision will be held to be autonomous. She is educated and will be accustomed to critical thinking. She is unlikely to have internalised values as to the worth of the female child given the dilution from exposure to other values. The weak relational substantive theories will ask her to have sufficient self-esteem and a sense of worthiness to act. It is not possible to establish whether Chandeep possesses these but it will be expected that she has them to a sufficient degree given her education and development. If they are indeed present then her decision can be considered autonomous. Using the three dimensional approach Chandeep’s competence skills should be more advanced than those of the other Imaginary Women, she certainly has more freedom to make choices and her intersubjective social relations will confirm her social esteem which should then affect her level of self-respect and self-esteem. Even if her family does not grant her this she would receive it from others in her social and professional circle. This would lead to a conclusion that her decision is autonomous and in addition both feminist intuitions are satisfied as there has been sufficient questioning of possible internalisation of societal norms but also a granting of autonomy where possible.

This analysis of the decisions of the women in the three case studies is useful as it tests the theories by applying them to women with different backgrounds, subjected to varying degrees of oppression, and with a complex range of motives for their choice. The details have been kept deliberately vague so that different possibilities can be examined and discussed.

The analysis demonstrates that if a woman has little education and has poor communication skills then we are more likely to assume that her choice indicates a lack of autonomy. Not only does this illustrate the importance we place on the ability to reflect (and the assumption that a woman with little education will be less able to do so) but she will also be deemed to have insufficient self-esteem and self-worth. She will accept the view of herself she sees reflected in the relationships which shape her. Yet her environment provides her with rational reasons for wishing to abort a female and the choice could benefit her in various ways. She may be autonomous *despite* the lack of self-esteem and self-worth, but also *because* of it, as she strives to achieve some level of improvement in how she is viewed by others. Strangely, her oppressive environment provides her with motivation to improve her situation and consequently her self-esteem but this can only be achieved by sacrificing her female foetus. Even wishing to improve her standing can be evidence of a certain level of self-esteem as she is then held to value herself enough to want better for herself.

If the woman has received education to a high standard then her ability to articulate arguments and defend her choices will signify autonomy. The relational autonomy theories lend themselves to recognition of the woman’s autonomy if she is more likely to fit the character traits of the ideal feminist: a woman who is strong in character, who believes in herself and can defend her decisions. Many women living in an oppressive society will not be able to demonstrate such traits. As relational autonomy was conceived in order to escape the very masculine ideal of the autonomous individual there is concern that feminists have merely replaced that with their own version. Of course the apparent self-confidence could be concealing what may yet be a deep-seated internalisation of norms. Her appearance of self-confidence could hide a willingness to conform and a lack of autonomy. This woman will be left to her label of autonomous because superficially she satisfies the feminist ideal but her decision requires just as much investigation as that of the woman who superficially appears to be the oppressed woman.

**CHAPTER 6**

**REFLECTION AND CONCLUSIONS**

This chapter firstly reflects on the position of the researcher and how that must be explained and acknowledged in the context of the conclusions reached. It recognises the potential criticisms of paternalism which could be aimed at the work and pre-emptively addresses them.

Secondly, it analyses which elements of the theories of autonomy could explain the choices in the three hypothetical case studies as autonomous or non-autonomous. Given the complexity of the theories no definite conclusions can be drawn as to the presence or absence of autonomy but theory demonstrates that there is the *possibility* of autonomy, even in the context of an oppressive environment. Nevertheless it is mooted that this theoretical approach may not be the most appropriate when decisions are being made in a context where respect for autonomy is not central to the delivery of treatment in India.

Thirdly, there is a risk that a focus on autonomy sidetracks us from the content of the decision to sex selectively abort and the thesis has shown that, whether or not the woman is deemed autonomous, there is still a need to condemn the practice as unacceptable, notwithstanding concerns that this could appear patronising and colonialist. If autonomy is the focal point then it could be used to avoid direct censure of the phenomenon that is taking place in India and other countries. It is important to continue to debate the invidious choices made by Indian society.

Despite this concern the final section concludes that the thesis has demonstrated that autonomy as a concept should remain an essential element in the analysis and to any potential development work aimed at instigating change. Only when respect for autonomy is at the heart of medical decision-making will changes to the practice of sex selective abortion start to materialise. Both the woman and the medical practitioner require an awareness of the importance of the right to self-determination. However, given the conclusion that sex selective abortion should be strongly denounced in order to respect the human dignity of women in India, this respect for autonomy has to be constrained so that sex selective abortion is not a possible choice.

**6.1 Reflection on the researcher’s position**

The conclusion that not all women will be making adaptive preferences which are non-autonomous, that the practice of sex-selective abortion should be condemned nevertheless, and that there should be more awareness of rights to self-determination both within the medical profession and among women in India, may be open to accusations of imperialism and paternalism. At this point it is good practice to critically reflect on my position as researcher in the process of presenting the findings. It is conceded that my own political views and ethical perspective, as well as my social situation, has inevitably influenced the methodology employed. There is also a political dimension to the claims of what these women’s lives are like and the problems they face.[[665]](#footnote-665) There is a denial of the patriarchal claim that women are inferior to men and an underlying moral and political position justifying the exposure of the unjust subordination of women. I make no apology for this and believe that the conclusions have force. My opposition to the practice of sex-selective abortion should be declared here, at the same time recognizing that this could seem to conflict with being a proponent for the woman’s right to choose. Although sex-selective abortion may be deemed to be included in the right of a woman to decide to abort for whatever reason there is something abhorrent in choosing to abort a foetus because of its sex, in particular when it is because that sex is deemed inferior by others of the opposite sex.

The purpose here then is to question those ‘truths’ promulgated by a patriarchal society, in this case that the women’s choices to sex-selectively abort reflect their own values and beliefs. Feminist research should be grounded in the experiences of women and how those women feel to live in relationships where there is an imbalance of power. The hypothetical case studies aim to reflect this approach. Those who are trying to survive, reproduce, and generally deal with social and gender oppression do not have the luxury or the resources to be able to address or examine these injustices. The women are living with unequal gender relations and have limited opportunities to change their everyday lives. In that respect then there is a role for researchers who *do* have the resources.[[666]](#footnote-666)

There are conceded differences between the researcher and those women who are the subject of the research but this then requires a concerted effort to understand the distinct social environment within which decisions are being made. I argue that if such concerns were to result in non-engagement with a feminist discussion of the practice of sex-selective abortion and the reasons behind it then that would be ethnocentric: the gender oppression and substantive inequality it reflects would not be considered culturally acceptable in the West and nor should it be for women in other cultures. An outsider’s concern about the situation of women in India who are choosing to sex-selectively abort should not be prohibited or denigrated. This is *not* an instance of cultural imperialism, rather it is an analysis of whether cultural and gender oppression may have been internalised and whether choices within that environment can ever be deemed autonomous.

It has admittedly proved challenging to examine and present the problem from the perspective of the Indian woman: it is not easy for a white Western woman, who has taken for granted equality, access to contraception and control over reproductive decisions, to imagine how it would feel not to have those rights. It is difficult to contemplate a life where children can be used, and are considered important, solely for the income they can bring into the family, in order for that family to survive. Yet that is the reality for many in India, sometimes in relation to female children as well as male.[[667]](#footnote-667) An intellectual analysis of autonomy by an outsider can then appear superior and inappropriate when survival is palpably the main concern for many Indian women, whether that is because of the imminence of extreme poverty, or a fear of a husband’s displeasure and that of his family. In effect a sex-selective abortion can be a luxury for some in India and a natural solution for those who are able to access it and pay for it. The alternative for the majority of women will be no access to female contraception, a husband who refuses to use a male contraceptive, and a constant round of pregnancies, eventually taking their toll on the woman’s health.

In addition, the two feminist intuitions, which have been integral to the analysis of the decision to sex-selectively abort contained in the thesis, are those of white Western commentators. The discussion of rights, and capabilities to which women should have access, is carried out in an intellectual idealistic style, clearly far removed from the reality of these women’s circumstances. This disparity between the position of the researcher and the Indian woman could result in doubts as to the credibility of any commentary, given that one is too far removed from the experience of the other. This possibility is conceded but again I defend the Western researcher’s role here, given the obstacles in place for many Indian women to engage in the same.

Further, I argue that care must be taken to ensure that this recognition of differences and any consequent epistemic humility does not lead to an automatic reluctance to judge what is good for another. There may be a compulsion to find autonomy, to acknowledge the woman’s normative authority over her choices, even where application of the different theories of autonomy indicate that that conclusion is not justified.[[668]](#footnote-668) However well-intentioned the approach may be, it may not be prudent if there is doubt as to the woman’s normative authority because of oppressive social conditioning.[[669]](#footnote-669) A wish to not appear condescending may unfortunately then leave the woman with the status of being autonomous but at the cost of being abandoned to her oppression. Rather, the thesis confirms that it is better to strive to understand another’s subjective view but to acknowledge that the person’s normative authority may be impaired if she has internalised her oppression. In such cases, rather than a respect for autonomy resulting in a *finding* of autonomy, it would entail an obligation to *promote* autonomy.[[670]](#footnote-670) This, as Mackenzie believes, requires a perfectionist commitment to promoting the conditions that are required for autonomy to be developed and applied. The focus then changes from whether or not autonomy is present to how to achieve a more optimum framework to nurture autonomy and is in line with one of the premises to which relational autonomy theorists are committed.[[671]](#footnote-671)

**6.2 Critical discussion of the application of the autonomy theories to the hypothetical decisions**

In the thesis Serene Khader’s concept of adaptive preference formation was taken as a starting point. It acknowledges that choices which some have assumed to be a product of false consciousness may nevertheless be autonomous. That proposition was then tested by the application of the different theories of autonomy and this section critiques the various theories as they have developed and evolved. In particular, it examines their ability to explain the presence or otherwise of autonomy in the context of cultural or gender oppression.

6.2.1 Critique of the traditional procedural theory of autonomy

The traditional procedural theory of autonomy has been the subject of criticism by feminist commentators for some time as its individualistic approach fails to sufficiently take into account the relevance of relationships with others, and in particular how internalised oppression could determine a person’s choices.[[672]](#footnote-672) The three case studies demonstrate that an apparent agreement between higher and lower levels of desire *may* imply autonomy but may also hide a lack of reflection or an inability to examine one’s own desires. A person may be unaccustomed to reflecting on her decisions, or may not have the skills that are required to carry out that reflection, but the choice will not provide evidence of that without much deeper analysis of the reasons or motivations for the decision. There is thus a willingness to be convinced of the authenticity of the decision by superficial evidence when in fact, I argue that a struggle between the higher and lower levels of desire is more likely to demonstrate reflection at some level and would be more persuasive. The decision may appear to be autonomous but the analysis of the case studies demonstrates that the procedural theory is unsatisfactory as an accurate indicator of the presence or otherwise of autonomy. The application of the theory satisfies one feminist intuition as it considers the woman autonomous, but does not satisfy the other as her decision is accepted as her own merely at face value.

6.2.2 Critique of the traditional substantive theory of autonomy

The traditional substantive approach to autonomy focuses on the content of the decision and leads to a conclusion that the decision-maker is not autonomous if the choice does not satisfy certain norms. There is an assumption that the individual is unable to tell right from wrong and so cannot be autonomous. This approach is satisfactory in one respect in that if the choice does not reflect specific values (and we would use Western values regarding equality) then it will be discounted as non-autonomous. This satisfies one of the feminist intuitions as it is presumed that the oppression to which the woman is subjected has affected her ability to distinguish right from wrong. However, it does not satisfy the other as it denies her the status of being autonomous, which she could be despite making a decision, the moral content of which we find to be in conflict with our own principles. Yet autonomy refers to *self*-determination and an individual can make a morally unacceptable decision autonomously. In addition, the approach entails imposing Western values on a developing country, only allowing for the status of autonomous when the decision meets those values. The decision may appear not to be autonomous but again this may not be an accurate representation of the presence or otherwise of autonomy.

6.2.3 Critique of the relational theories of autonomy

The relational re-conceptualisations of the traditional procedural and substantive theories were established by relational autonomy theorists because of the concern that the internalisation of oppression was not being identified or adequately addressed. The possibility of internalisation of oppression is therefore the starting point when applying the relational theories. The analysis of the case studies indicates that there is, as a consequence, almost an assumption that where there is an imbalance of power then such relationships will be detrimental to autonomy and so the decision-maker has more to prove to recover from that initial position. The decisions could be deemed autonomous but more will depend on the skills of the individual to reflect and consider as well as the self-regard the individual must possess. This will be partly based on the relationships the individual has with others and how they will influence her self-esteem. Given that the relationships are already established as potentially harmful in this respect this means that her decision could be less likely to be considered autonomous. The variables will be out of her control to a large extent and will act against her in terms of acknowledging any autonomy she may possess. The relational versions of both traditional approaches are so concerned with the possibility of the internalisation of society’s norms that the bar is set too high for many women to achieve the competencies required for them to be considered autonomous. The theories are admirable in their concerted efforts to address the internalisation of oppression and its influence on autonomy but the approach is to focus on the *effects* of internalisation of oppression, such as a dilution of self-esteem and self-worth. I argue that if that is taken as the benchmark for autonomy then it is destined to be found absent within an environment of oppression. The aim may be to protect the oppressed woman but in fact it leaves her more isolated and vulnerable. In attempting to satisfy one feminist intuition (that her decision should not be taken at face value to be her own), autonomy (or the criteria demanded in order to be considered autonomous) has been intellectualised to the extent that the other feminist objective, which is to recognise her as autonomous, is destined to fail. The oppressive environment is so central to the external and internal conditions relevant to autonomy that it governs any findings. The relational approaches are therefore also imperfect and do not lend themselves to application to real-life decisions. Although the ultimate aim of relational autonomy theorists may be to promote autonomy for those women who are non-autonomous, which is a worthy objective, I believe that at this point the damage has been done and those same women have been labelled as non-autonomous. The woman living in a Western culture would have to do less to prove her autonomy, and this is seen in Chandeep’s case study. There is a weaker presumption that she has internalised Indian’s values on the low worth of a female foetus and this is primarily because she has been exposed to our values at the same time. Yet it could be that despite that alternative exposure she has taken on the Indian views as her own and is not autonomous.

6.2.4 A new relational approach

Mackenzie’s three-dimensional approach attempts to include the best of all approaches and she argues that the complexity of autonomy requires such an analysis to do it justice.[[673]](#footnote-673) She does not take an ‘all or nothing’ approach and concedes that autonomy can be a matter of degree and dependent on the domain. However, I argue that the focus on the need for freedom and opportunity, the high level of competence skills required and the self-evaluative attitudes also demanded, will disenfranchise women who are exposed to oppression. Whether the decision can be deemed autonomous, therefore, is more likely to depend on the woman’s ability to articulate her own views, her apparent confidence, and the relationships she experiences with others. Although relevant these should not be determinative of whether or not she is autonomous.

Perhaps pre-empting this criticism Mackenzie states that some of the dimensions will be more salient than others. This could be a way of finding autonomy where possible, and one would expect it to provide the requisite flexibility. However, in order for the approach to have real authority I believe that more guidance is required as to the weighting of each dimension and any possible compensation between the three. Too much flexibility is always at the expense of certainty and could be manipulated by those applying the theory to achieve a pre-determined conclusion. Her references to different degrees of autonomy appease those who wish to find autonomy but also mean that the theory lacks conviction. Nevertheless, I consider Mackenzie’s approach has the most potential for development in order to eventually provide a nuanced but more accurate representation of autonomy of women making choices in a patriarchal environment.

6.2.5 Theories of autonomy and suitability for application

When so much is based on suppositions the application of each theory of autonomy presented specific challenges. The thesis has demonstrated that each theory can be used to find whatever is in line with our preconceived ideas of whether or not autonomy could be present. A theoretical discourse on autonomy does not easily translate to practical application as it is too intellectual and imprecise and so it may be that decisions such as choosing to sex selectively abort within an oppressive environment are not then suitable for analysis on this basis.

The case studies have certainly served their purpose as they have acted as tests for the different theoretical approaches when applied to a decision made in the context of social and gender oppression and have highlighted the shortcomings of each one. They have also demonstrated that there is the possibility of autonomy even where the environment within which the woman exists is oppressive and constraining.

However, I question whether an intellectual analysis is appropriate to apply to decisions made by women who are not living in an environment which has taken on board the concept of autonomy in the same way as in the West. The discussion or debate has evolved much further in the West and so lends itself to a detailed examination of different theories of autonomy. Perhaps when the recognition of autonomy has become an essential part of providing medical treatment in India then further discussion of it will be necessary and welcomed. However, I argue that India is not yet at that point.

**6.3** **Embracing moral perfectionism**

Throughout the thesis the focus has been on autonomy, which has come to be considered a Western obsession. It is certainly welcomed as an alternative to the paternalism of the past and has been useful to feminists as a general concept, as it centres on the individual being able to make her own choices rather than have them imposed on her by others. It has been useful here as a starting point to investigate the phenomenon of sex selective abortion from a different perspective. However, the emphasis on autonomy could cause us to neglect other values which could in turn act against women’s interests. If autonomy is at the core of acceptance of preferences, but patriarchy engineers society so that autonomy is difficult to attain for women, then we are not helping those who are the subjects of oppression. Whichever conclusion is reached as to the presence or absence of autonomy the Indian woman suffers. If she is considered autonomous then she is closely allied to the practice, if she is regarded as non-autonomous she loses status. Therefore, in addition to proposed changes to reflect the importance of self-determination and bodily integrity, a second strategy is also required which is to continue to condemn sex selective abortion as a symptom and product of patriarchal oppression. If we do so, however, we then face potential criticism of the desire for moral perfectionism and the lack of respect for moral diversity.

Multiculturalism has resulted in a fear of criticising another culture. The danger is that this could lead to a respect for cultural diversity to the extent that we are prepared to accept mores that devalue women. If an anthropological perspective is taken (i.e. that we should learn about other cultures but should refrain from criticising them) then there is the risk that we fail to recognise unjust social practices or are unwilling to voice our opinions of them in order to avoid appearing arrogant or superior.[[674]](#footnote-674) There would also be a failure to engage with the aim of feminist solidarity across cultures and consequently I concur with Uma Narayan’s call for internationally unrestrained political and moral critique.[[675]](#footnote-675)

The general context of this analysis has been the structural misogyny in Indian society and the patriarchal denigration of women. Women tend to have less power and are more subjugated to men.[[676]](#footnote-676) Of particular concern is the institutionalisation of the inferior status of women, which has resulted in practices such as sex determination and then the termination of female foetuses, as well as female infanticide and female child neglect. Moral perfectionism requires us to condemn these practices, despite the arguments presented for multiculturalism and moral pluralism.

Indian society has been set up to instil values that focus on the inferiority of women. It has also taken away reproductive decision-making from women and, further, blames them for any harm that befalls them. So, if the woman is raped, she is made to feel the wrongdoer and is shunned by her community. If she is made to work as a prostitute to earn money for her family she is again rejected by her community and is considered unsuitable for marriage. If she is unable to produce a male child she is regarded as inferior, shunned or discarded by the family. If she chooses to sex-selectively abort, driven by the values of her society, then she can be prosecuted for doing so but may be spurned by the family if she does not. The woman’s choice to sex-selectively abort is a reaction to these societal norms, a means to an end in order to find a way through a labyrinth of fear. A belief in equality entails recognising the equality of reasons for acting. The women who are the subject of the thesis are agents who have purposes and have rights to pursue those purposes. It is therefore possible to recognise them as autonomous beings and to understand their problems but that does not mean that all the different routes they take to survive their oppression have to be condoned. The choices may be autonomous but they are not necessarily virtuous. In other words this examination of the decision to sex-selectively abort requires more than an analysis of autonomy: it also requires a judgement of the practice.

A move away from autonomy as the Holy Grail could result in a focus instead on moral perfectionism as a fulcrum. Despite fears that this would signify an authoritarian approach it is important to maintain the perfectionist view that sex selective abortion is wrong in any culture. The claim would not be because the woman is choosing to abort for a ‘bad’ reason (otherwise arguments of who should decide whether a reason is acceptable or not will be raised), but because the reason is founded on inequality and equality should be a baseline right. There is hesitancy evident in some of the more recent feminist writing on this and other controversial practices, an unwillingness to criticise a custom for fear of appearing judgmental of another culture.[[677]](#footnote-677) However, if a practice is inherently injurious to women only, and indicative of a skewed attitude to one half of the population, then there should be no question of being entitled to denounce it. Certain practices, such as sex selective abortion because the foetus is female, should always be perceived as wrong, no matter where it takes place and whatever the cultural reasons offered to support it. In addition, within a culture, the internal standards or values may have been set by a privileged group and so do not always reflect the values of the whole group. In India the values will be those which men endorse but which may oppress women and this would be good reason not to legitimise them. Respecting multiculturalist policies could result in reinforcing the oppression of women as the marginalised group within the cultural group.[[678]](#footnote-678) Although the approach is well meaning it could be that it leads to injustice to a part of the cultural group: women in the case of India. Those claiming group rights tend to be patriarchal and so there is self-interest in having their culture respected and not challenged.

Even Serene Khader is nervous about defining her concept of basic flourishing as part of her deliberative perfectionist approach to adaptive preference formation, aware that she could face objections based on moral diversity. As a consequence she demands that her concept is arrived at through a cross cultural, deliberative process, and that it has to be justificatorily and substantively minimal as well as vague.[[679]](#footnote-679) This would not entail criticism of the content of a decision but would result in further examination of a decision a woman made which is not conducive to her basic flourishing. This, she points out, respects cultural diversity as it recognises that individuals flourish in different ways. There is thus an attempt to couch criticism of decisions in terms that are more acceptable and appear more liberal. There is a fear of offending, a hesitancy to boldly state that a practice is wrong. It is conceded that as Khader is addressing adaptive preference formation and autonomy generally then she does have to maintain a more neutral stance on what capabilities a person should claim to have access to. However her hesitancy is very revealing and reflects a general concern about judging others. Yet I argue that without strong condemnation from those outside a community there will not be a considered push for change. There should remain international condemnation of the practice of sex-selective abortion, a clear message that this is a wrong carried out on women in India and on women generally: there should be no hesitancy about censuring the country’s cultural practices.

**6.4** **Autonomy to remain the focus of decision-making**

Yet, in the same way that feminist theorists did not wish to discard the concept of autonomy but rather re-conceptualised the more traditional conceptions, I maintain that autonomy still holds an important place in the context of the decision to sex selectively abort in India. Where there is an imbalance of power within the decision-maker’s environment, ascertaining autonomy will always be complex and will be accompanied by doubt as to whether a choice is that person’s own. If one of the factors of influence is the possibility of the internalisation of oppression, and if the effect of the decision is contrary to the flourishing of the decision-maker, then further scrutiny of the decision should be required. Apparent adaptive preferences could yet be deliberative actions in response to the circumstances the woman is experiencing rather than being totally influenced by the collective thinking of her society. What has been evident throughout this study is that in India there is insufficient attention paid to the need to ascertain autonomy and in particular for a reproductive decision to be the woman’s own, and this is evidenced in legislation and practice. The thesis has therefore exposed that the focus on autonomy is absent in India and needs to be remedied, firstly on a practical level in the context of consent to treatment, and then later it can be debated at a more complex, theoretical level.

6.4.1 Respect for autonomy should underpin medical education, training and practice

In addition to a strengthening of the legislation as proposed in Chapter 2, a real change has to be made in practice and this must start early in the training of medical professionals. The Medical Council of India (MCI) does not currently require medical ethics as a distinct subject on any of its courses although some universities and medical colleges are now introducing it into their curriculum.[[680]](#footnote-680) The National Medical Commission Bill of 2016, which was recently introduced to reform the structure and functioning of the medical commission, has been criticised as falling short of what changes are required, one of which is that the medical curriculum should integrate subjects such as medical ethics.[[681]](#footnote-681) Ravindran draws attention to the lack of awareness and focus on ethics within medical teaching noting that there are few Indian textbooks or journal articles available on medical ethics.[[682]](#footnote-682)

Some doctors justify the continuation of the practice of sex selective abortion by claiming a respect for autonomy. They argue that they are respecting the woman’s decision to determine the number and sex of her children but make little or no attempt to establish that the decision is the woman’s true preference. Although the following extract from an email sent to the Editor of Human Reproduction in 2002 by two doctors concerned sex selection by pre-implantation genetic diagnosis the sentiments towards the rights of parents and the birth of female children are clear.

I do not understand why Dr Hansotia feels that sex preselection by preimplantation genetic diagnosis (PGD) does not have any role in a country like India where the female child faces many disadvantages. In fact, if the female child in India is disadvantaged, then it is a very rational decision on the part of couples to use PGD to choose to have boys! Why would any parent want to have ‘disadvantaged’ children? [[683]](#footnote-683)

And ‘... there is no reason why Indians should be ashamed of their desire to have boys. This is a part of our ancient culture and tradition, and we need to accept this.’[[684]](#footnote-684)

If awareness of the need for a respect for autonomy and bodily integrity was incorporated into the medical curriculum as part of a compulsory medical ethics course then this would instigate a change in attitude by the medical profession. This should include an awareness and understanding of the relevant legislation prohibiting sex determination and sex selective abortion but also the need for a valid consent and the ethical considerations that underpin such practices.[[685]](#footnote-685)

6.4.2 Consciousness-raising: an awareness of the right to self-determination

The relational theories aim to take into account cultural oppression and its effect on autonomy. In addition the theorists, in particular Catriona Mackenzie, are committed to supporting and encouraging the establishment of conditions which will facilitate the development and nurturing of autonomy.[[686]](#footnote-686) Therefore, women need to be more informed as to their right to make their own decisions, to assert their right to self-determination and demand that this is respected. The case studies are relevant here as the type of adaptive preference identified as a possibility, and the reasons for making the choice to sex selectively abort, will be germane to potential development strategies. They should assist in recognising what beliefs or values underlie the choice and what changes are appropriate and feasible. Currently many Indian women are not aware of their rights but to be informed of their entitlements will facilitate claiming them. However, how this is carried out requires sensitivity to the Indian woman’s cultural environment and her choice constraints within that. Inappropriate development policies may not improve the woman’s position and could even make her situation worse. Consciousness-raising plays a role here and as the case studies have provided a more authentic account of why women choose to carry out a sex selective abortion then this should lead to a collective recognition of injustice. The women’s standpoint can then be employed to challenge the practice against their own sex.

Objective data can certainly be used to document the inequalities for women and this data can be obtained from the various Censuses of India and National Family Health Surveys.[[687]](#footnote-687) There is therefore already an awareness of the extent of the practice of sex-selective abortion. However, the same data will not demonstrate the real-life experiences of women who are oppressed, objectified and deprived of power in relation to their own reproduction. Information on what is happening can be shared with those who are the subject of patriarchal dominance but consciousness-raising causes women to see for themselves the imbalance of power and how it affects them, as well as how their position could change. The more inequality is pervasive, the more it may be accepted as the truth by these women. Consciousness-raising holds up a mirror to show the women their situation but also to affirm that it can be changed. The women can then be critical of their environment together as they collectively share feelings and experiences. A woman may not be aware of the situation she is living in or may have repressed her dissatisfaction with her life. She may only comprehend when she begins to discuss her situation with other women.[[688]](#footnote-688) She may not appreciate other values as she has not been exposed to them. Again, consciousness-raising serves to inform and explain, to enable the women to make a more informed choice.

The analysis of the hypothetical case studies suggests that women need to be made aware of the right to make decisions concerning reproduction, free from coercion or discrimination, the right to assert their autonomy.[[689]](#footnote-689) At present in India there is a lack of understanding of the legal status of abortion services and also of women’s rights under the existing law.[[690]](#footnote-690) The awareness varies throughout the country and studies have shown that few are aware that abortion is legal, and even if aware then they may not be fully cognisant of the grounds allowed for abortion.[[691]](#footnote-691) Many believe that the husband’s consent is required. A belief that abortion is illegal may mean that women seek out unqualified providers so are undergoing unsafe abortions.[[692]](#footnote-692)

There are therefore identified problems with any kind of generalised conclusions about how women making these decisions feel and what factors have influenced them. Consciousness-raising cannot, at this stage, take the form of support groups, given the issues of language and access and possible lack of trust of an outsider. What the approach in this thesis does, however, is raise awareness that some women are making these choices under conditions that are constrained and overly influenced by their patriarchal society. The recognition that the choice is not easily labelled as autonomous or non-autonomous, but also that the focus on autonomy is probably of more import to feminist western writers than the women making reproductive decisions, also serves to aid understanding of the difficulties these women face which are so far removed from those faced by women in the West.

Raising awareness is thus an important stage in achieving greater independence and has been integral to the development of feminist ideas and individual campaigns in the past.[[693]](#footnote-693) It is one step towards potential change, possibly the first one, as those who are oppressed become aware of their oppression and fight for shifts in attitudes to women.

**Conclusion**

The thesis has demonstrated that a decision to sex-selectively abort by a woman in India *may* be deemed autonomous but it is difficult to judge whether her actions are a result of false consciousness or whether the choice is her own in response to her individual circumstances. The feminist intuition that her decision must be an adaptive preference as a consequence of internalisation of oppression, and so non-autonomous, is just that, an intuition, and a conclusion cannot be reached on that alone. Although no one theory of autonomy has been shown to be the ‘magic formula’ to be used to determine the presence or otherwise of autonomy, the analysis of the different concepts of autonomy has served to demonstrate the complex nature of decision-making, particularly in an environment where there is an unequal power base. Whether the re-conceptualisation of the traditional procedural and substantive theories in establishing the relational autonomy theories has made the application to real-life cases too intellectualised, it has nevertheless served to raise awareness of the potential hazards of internalisation of oppression and adaptive preference formation as a consequence, i.e. there will always be the doubt that the decision is not autonomous. The three dimensional approach advocated by Catriona Mackenzie stands out as one which may best address the possibility of internalisation of oppressive norms yet recognise autonomy where possible, satisfying both feminist intuitions. Nevertheless, the theory needs to be enhanced by providing more detail as to how these dimensions can be applied to such choices.

What has become clear in the course of this analysis is that the practice of sex-selective abortion is a product of patriarchy and a perpetuation of a particular view of women as inferior. It is a practice which should not be condoned, nor accepted as just an example of another country’s culture. It should be condemned for what it is: an attempt to maintain the secondary importance of women.

This alone will not change the ingrained norms of generations and at present there appears to be insufficient willpower to transform them. The Indian government will counter that they have made the legal position clear: sex determination and sex-selective abortion are unlawful. Yet the message has to be more explicit. They have also been complicit in the practice in their lack of conviction in denouncing it and in failing to enforce the legislation. Further, they have introduced aggressive population control policies which, given the preference for a son, encourages the aborting of females.[[694]](#footnote-694) In effect sex-selective abortion has been a pragmatic way of keeping the population under control but at the same time satisfying the patriarchal desire for sons.[[695]](#footnote-695)

A real change would be to incorporate respect for bodily integrity into education generally and medical treatment in particular. A respect for autonomy would require a genuine effort to ensure that each decision is in fact that of the decision maker, and in that India has undoubtedly failed. This would entail more than lip service to the centrality of a respect for self-determination. A valid consent (and information as to what is required for a valid consent) should be listed as required in the relevant legislation and sufficient procedural safeguards should be put in place. These would be steps towards providing the scaffolding needed to support and promote autonomy.

This acknowledgement of the importance of the right of the woman to self-determination in terms of reproductive rights is now accepted as a basic norm in many jurisdictions but in India there is little reference made to that right as a baseline. Admittedly, this may come in time, as it has in other countries, where the medical profession has lost its paternalistic power and where decisions are more the result of a dialogue between doctor and patient. However, given the identified imbalance in the sex of the population and the impact this has had on women in particular, the need for change is now urgent.

Such changes will not lead immediately to fewer sex-selective abortions as son preference will not disappear easily, nor will the terrible consequences for some women should a further girl be born. It will still be possible to circumnavigate the legislation by attending different clinics for sex-determination and abortion. Doctors will still be able to indicate surreptitiously whether the foetus is male or female. But it should result in more women taking responsibility for their choices and being made to really think about what the consequences of each decision will be. The change in attitudes to consent could be part of a move towards more empowerment for women, which could lead to further shifts in attitudes to women and their role in Indian society. If there were also more credible attempts by state authorities to address the issue, and to incorporate stringent procedures, then there could be hope that a potential female child will no longer be considered as a disappointment.

**APPENDIX ONE**

**Map of sex ratios at birth for all births in India in the five years preceding the NFHS-3 survey**



**APPENDIX TWO**

**Statistics of sex ratio at birth (female per 1,000 males) for all births in the five years preceding the survey and sex ratio at birth for all last births, by state, NFHS-3, India**

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| **Appendix 2 Sex ratio at birth (female per 1,000 males) for all births in the five years preceding the survey and sex ratio at birth for all last births, by state, NFHS-3, India** |
|  | **Sex ratio at birth for births in past five years\*** | **Sex ratio at birth for all last births to women age 15-49** |
| **North** |
| Delhi | 848 | 681 |
| Haryana | 756 | 540 |
| Himachal Pradesh | 901 | 572 |
| Jammu & Kashmir | 912 | 770 |
| Punjab | 728 | 504 |
| Rajasthan | 894 | 717 |
| Uttarakhand | 892 | 633 |
| **Central** |
| Chhattisgarh | 948 | 807 |
| Madhya Pradesh | 968 | 741 |
| Uttar Pradesh | 949 | 790 |
| **East** |
| Bihar | 902 | 784 |
| Jharkhand | 1,102 | 891 |
| Orissa | 932 | 723 |
| West Bengal | 963 | 819 |
| **Northeast** |
| Arunachal Pradesh | 1,009 | 809 |
| Assam | 985 | 830 |
| Manipur | 1,001 | 834 |
| Meghalaya | 891 | 877 |
| Mizoram | 1,087 | 944 |
| Nagaland | 945 | 938 |
| Sikkim | 974 | 805 |
| Tripura | 907 | 856 |
| **West** |
| Goa | 933 | 783 |
| Gujarat | 900 | 615 |
| Maharashtra | 860 | 667 |
| **South** |
| Andhra Pradesh | 876 | 844 |
| Karnataka | 914 | 761 |
| Kerala | 902 | 973 |
| Tamil Nadu | 930 | 819 |
| **India** | 920 | 756 |
| \*Sex ratios based on live births in the five-year period before the survey, and not the five complete calendar years before the survey. |

**APPENDIX THREE**

**The Central Human Capabilities List**

**The Central Human Capabilities[[696]](#footnote-696)**

1. **Life.**

Being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living.

1. **Bodily health.**

Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.

1. **Bodily integrity**.

Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.

1. **Senses, Imagination and Thought.**

Being able to use the senses, to imagine, think and reason – and to do these things in a ‘truly human’ way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one’s own choice, religious, literary, musical, and so forth. Being able to use one’s mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.

1. **Emotions.**

Being able to have attachment to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one’s emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)

1. **Practical reason.**

Being able to form a conception of the good and to engage in critical reflection about the planning of one’s life. (This entails protection for the liberty of conscience and religious observance.)

1. **Affiliation.**

A Being able to live with and toward others, to recognise and show concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)

B Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, and national origin.

1. **Other species**.

Being able to live with concern for and in relation to animals, plants, and the world of nature.

1. **Play.**

Being able to laugh, to play, to enjoy recreational activities.

1. **Control Over One’s Environment.**

A Political. Being able to participate effectively in political choices that govern one’s life; having the right of political participation, protection of free speech and association.

B Material. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

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72. The National Family Health Survey of 2005-06 shows that the sex ratio at birth by state varies from a low of 728 in Punjab and 756 in Haryana (North) to a high of 1,102 in Jharkhand (East) but for 18 of the 29 states the sex ratio at birth is below the normal level expected and even the southern states have lower than normal ratios. [↑](#footnote-ref-72)
73. Historically daughters were not allowed to inherit immovable property and the dowry was the movable property they could take with them when they married. Clara Nubile, *The Danger of Gender: Caste Class and Gender in Contemporary Indian Women’s Writing* (New Delhi: Sarup & Sons 2003). [↑](#footnote-ref-73)
74. The Dowry Prohibition Act 1961 (Act No. 28 of 1961). Amended in 1984 and 1986. [↑](#footnote-ref-74)
75. Throughout most of India although it does not exist in the north-east. Priya Virmani, ‘Dowry deaths are the hidden curse of the big fat Indian wedding’, *The Guardian* (London, 23 May 2012). [↑](#footnote-ref-75)
76. The practice of marrying into an equal or more prestigious social group or caste. [↑](#footnote-ref-76)
77. S Sudha and S Irudaya Rajan, ‘Female demographic disadvantage in India 1981-1991: sex selective abortion and female infanticide’ (1999) 30 Development and Change, special issue on Gender, Poverty and Well-being 585. [↑](#footnote-ref-77)
78. 80% of bank loans in India are taken out to pay for the cost of a dowry and marriage. Priya Virmani, ‘Dowry deaths are the hidden curse of the big fat Indian wedding’, *The Guardian*  (London, 23 May 2012). [↑](#footnote-ref-78)
79. Marriage within a particular group in accordance with custom or law. [↑](#footnote-ref-79)
80. Siwan Anderson, ‘Why dowry payments declined with modernization in Europe but are rising in India’, (2003) 111 2 Journal of Political Economic 269. [↑](#footnote-ref-80)
81. ibid [↑](#footnote-ref-81)
82. In a recent article on the incidence of breast cancer in India it was reported that additional dowry could be justified for the costs of treatment. Harmala Gupta, ‘Fighting A Silent Epidemic’, *The Times of India* (Mumbai, November 19 2013). [↑](#footnote-ref-82)
83. Dowry deaths refer to women who have been murdered or driven to suicide as a result of harassment and torture by the husband and his family in order to obtain an increased dowry sum. [↑](#footnote-ref-83)
84. In 2010 8,391 dowry deaths were reported. [↑](#footnote-ref-84)
85. Priya Virmani, ‘Dowry deaths are the hidden curse of the big fat Indian wedding’, *The Guardian* (London, 23 May 2012). [↑](#footnote-ref-85)
86. Sughanda Nagpal, ‘Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses’ (2013) 3 McGill Sociological Review 18. [↑](#footnote-ref-86)
87. ‘The Human Development Report of the United Nations’ (2015) <http://hdr.undp.org/en/content/human-development-report-2011> [↑](#footnote-ref-87)
88. Tim Dyson and Mick Moore, ‘On Kinship Structure, Female Autonomy, and Demographic Behavior in India’ (1983) 9 1 Population and Development Review 35, Published by: [Population Council](http://www.jstor.org/action/showPublisher?publisherCode=popcouncil) Article Stable URL: <http://www.jstor.org/stable/1972894> [↑](#footnote-ref-88)
89. Monica Das Gupta, ‘Selective Discrimination against Female Children in Rural Punjab, India’, (1987) 13 1 Population and Development Review 77. [↑](#footnote-ref-89)
90. Monica Das Gupta, ‘Selective Discrimination against Female Children in Rural Punjab, India’, (1987) 13 1 Population and Development Review 77. [↑](#footnote-ref-90)
91. Tim Dyson and Mick Moore, ‘On Kinship Structure, Female Autonomy, and Demographic Behaviour in India’ (1983) 9 1 Population and Development Review 35. Published by: [Population Council](http://www.jstor.org/action/showPublisher?publisherCode=popcouncil) Article Stable URL: <http://www.jstor.org/stable/1972894> [↑](#footnote-ref-91)
92. ibid. [↑](#footnote-ref-92)
93. Tim Dyson and Mick Moore, ‘On Kinship Structure, Female Autonomy, and Demographic Behaviour in India’ (1983) 9 1 Population and Development Review 35. Published by: [Population Council](http://www.jstor.org/action/showPublisher?publisherCode=popcouncil) Article Stable URL: <http://www.jstor.org/stable/1972894> [↑](#footnote-ref-93)
94. Ibid. [↑](#footnote-ref-94)
95. Monica Das Gupta, ‘Selective Discrimination against Female Children in Rural Punjab, India’, (1987) 13 1 Population and Development Review 77. [↑](#footnote-ref-95)
96. Starting in the early 1960s food grain production increased as a result of improvements in agronomic technology. [↑](#footnote-ref-96)
97. Although Das Gupta disputes this as in Haryana women carry out most of the manual labour and in fact their work has increased. Monica Das Gupta, ‘Selective Discrimination against Female Children in Rural Punjab, India’, (1987)13 1 Population and Development Review 77. [↑](#footnote-ref-97)
98. S Sudha and S Irudaya Rajan, ‘Female demographic disadvantage in India 1981-1991: sex-selective abortion and female infanticide’ (1999) 30 Development and Change, Special Issue on Gender, Poverty and Well-being 585. [↑](#footnote-ref-98)
99. Silvia H Barcellos, Leandro Carvalho and Adriana Lleras-Muney, ‘Child Gender and Parental Investment in India: Are Boys and Girls Treated Differently?’ (2012) NBER Working Paper 17781 <http://www.nber.org/papers/w17781> accessed 18 June 2012 [↑](#footnote-ref-99)
100. Bina Agarwal, ‘Gender and Legal Rights in Agricultural Land in India’, (1995) 12, Economic and Political Weekly A39. [↑](#footnote-ref-100)
101. Kerala in 1976, Andhra Pradesh in 1986, Tamily Nadu in 1989, Maharashtra and Karnataka in 1994. [↑](#footnote-ref-101)
102. Daniel Rosenblum, ‘Unintended Consequences of Women’s Inheritance Rights on Female Mortality in India’ (2014) Economic Development and Cultural Change, 223. [↑](#footnote-ref-102)
103. Sanchari Roy, ‘Empowering Women: Inheritance Rights and Female Education in India’ (2011) CAGE Working Paper Series no. 46, Competitive Advantage in the Global Economy, University of Warwick [↑](#footnote-ref-103)
104. The Hindu Succession (Amendment) Act 2005 amended Sections 4, 6, 23, 24 and 30 of the Hindu Succession Act 1956. It revised rules on coparcenary property and gave daughters of the deceased equal rights with sons. [↑](#footnote-ref-104)
105. Daniel Rosenblum, ‘Unintended Consequences of Women’s Inheritance Rights on Female Mortality in India’ (2014) Economic Development and Cultural Change, 223. [↑](#footnote-ref-105)
106. See 1.4.7 on the role of religion. [↑](#footnote-ref-106)
107. The Muslim Personal Law (Shariat) Application Act, 1937 (Act No. XXVI of 1937). [↑](#footnote-ref-107)
108. Sona Khan, ‘Inheritance of Indian women: a perspective’ (Summer 2000) 27 2 India International Centre Quarterly 139. [↑](#footnote-ref-108)
109. Daniel Rosenblum, ‘Unintended Consequences of Women’s Inheritance Rights on Female Mortality in India’ (2014) Economic Development and Cultural Change 223. [↑](#footnote-ref-109)
110. Less than one in ten workers are part of a pension plan. R. Palacios, ‘Challenge of pension reform in India’ in A Bordia and G Bhardwaj (eds) *Rethinking Pension Provision for India* (New Delhi, Tata McGraw Hill 2003). <http://www.iief.com/pensions/Chapter3.pdf> accessed 20 September 2012 [↑](#footnote-ref-110)
111. R. Palacios, ‘Challenge of pension reform in India’ in A Bordia and G Bhardwaj (eds*) Rethinking Pension Provision for India* (New Delhi, Tata McGraw Hill 2003) <http://www.iief.com/pensions/Chapter3.pdf> accessed 20 September 2012 [↑](#footnote-ref-111)
112. Entry 24 in List III of Schedule VII of the Constitution of India deals with old age pension. [↑](#footnote-ref-112)
113. R. Palacios, ‘Challenge of pension reform in India’ in A Bordia and G Bhardwaj (eds) *Rethinking Pension* *Provision for India* (New Delhi, Tata McGraw Hill 2003) <http://www.iief.com/pensions/Chapter3.pdf> accessed 20 September 2012 [↑](#footnote-ref-113)
114. R. Palacios, ‘Challenge of pension reform in India’ in A Bordia and G Bhardwaj (eds) *Rethinking Pension* *Provision for India* (New Delhi, Tata McGraw Hill 2003) <http://www.iief.com/pensions/Chapter3.pdf> accessed 20 September 2012 [↑](#footnote-ref-114)
115. The objective is a level of 1533 million by 2050. Anima Haldar, Urmila Dasgupta, Sumitra Sen and Kirshna Laskar, ‘Influence of Social Correlates on Gender Preference and Small Family Norm: an Impression from West Bengal’ (2011) 57 1 The Journal of Family Welfare 79. [↑](#footnote-ref-115)
116. Anima Haldar, Urmila Dasgupta, Sumitra Sen and Kirshna Laskar, ‘Influence of Social Correlates on Gender Preference and Small Family Norm: an Impression from West Bengal’ (2011) 57 1 The Journal of Family Welfare 79. [↑](#footnote-ref-116)
117. Therese Hesketh and Zhu Wei Xing, ‘Abnormal sex ratios in human populations: causes and consequences’, (2006) 103 36 Proceedings of the National Academic of Sciences of the United States of America 13271. [↑](#footnote-ref-117)
118. States with active two-child norm are Andhra Pradesh, Gujarat, Maharashtra, Odisha and Rajasthan. [↑](#footnote-ref-118)
119. Maternity benefit is given to pregnant women of 19 and above for the first two live births, a cash incentive of Rs 5000 is awarded at the birth of the first or second girl child , Rs. 5000 deposited at the time of the birth of a girl if the parents have adopted the two child norm (Government of Punjab), Rs. 5000 deposited at the time of the birth of a girl if the family has adopted the two child norm (Government of Assam) and women with more than two children are not allowed to benefit from the Public Distribution System in Maharashtra and Rajasthan. [↑](#footnote-ref-119)
120. The Hunger Project, June 2013 [↑](#footnote-ref-120)
121. Swapna Majumdar, ‘India: The two-child norm, a sword hanging over women’, (*OneWorld South Asia,* 25 April 2013). <http://southasia.oneworld.net/features/india-the-two-child-norm-a-sword-handing-over-women#.VukssuKLSUk> accessed 16 March 2016 [↑](#footnote-ref-121)
122. Adv. Vijay Hiremath and Adv. Kamayani Bali Mahabal, ‘Reproductive Rights’ in Desai M & Mahabal K B (eds), *Health care case law in India* (Mumbai: Satam Udhog 2007). [↑](#footnote-ref-122)
123. Sama ‘Beyond Numbers: Implications of the Two-Child Norm’ (New Delhi, Sama 2006) <http://www.samawomenshealth.in/beyond-numbers-implications-of-the-two-child-norm/> [↑](#footnote-ref-123)
124. Swapna Majumdar, ‘India: The two-child norm, a sword hanging over women’, (*OneWorld South Asia,* 25 April 2013) <http://southasia.oneworld.net/features/india-the-two-child-norm-a-sword-handing-over-women#.VukssuKLSUk> accessed 16 March 2016 [↑](#footnote-ref-124)
125. L Visara, A Acharya, F Raj, ‘Two-Child Norm: Victimising the Vulnerable?’ (2006) 41 1 Economic & Political Weekly 41. [↑](#footnote-ref-125)
126. The 2001 Census showed that 80.5% of the population are Hindi. Census of India, 2001. It appears that the Census of 2001 was the last to analyse the population according to religion followed. [↑](#footnote-ref-126)
127. Three surveys were carried out – in 1992-93, 1998-99 and 2005-06. [↑](#footnote-ref-127)
128. Luojia Hu and Analia Schlosser, ‘Trends in Prenatal Sex Selection and Girls’ Nutritional Status in India’ (2012) CESifo Economic Studies, doi: 10.1093/ifs022 [↑](#footnote-ref-128)
129. Traditionally women were not permitted to offer sacrifices to gods as they were regarded as polluted. Clara Nubile, *The Danger of Gender: Caste Class and Gender in Contemporary Indian Women’s Writing* (New Delhi: Sarup & Sons 2003). [↑](#footnote-ref-129)
130. Anima Haldar, Urmila Dasgupta, Sumitra Sen and Kirshna Laskar, ‘Influence of Social Correlates on Gender Preference and Small Family Norm: an Impression from West Bengal’, (2011) 57 1 The Journal of Family Welfare 79. This study indicates male preference to be higher among Hindu (25.8%) compared to Muslim women (14.9%). [↑](#footnote-ref-130)
131. This is the offering of food and clothing to Brahmins and the poor during certain times of the year. [↑](#footnote-ref-131)
132. Fred Arnold, Minja Kim Chose and T K Roy, ‘Son preference, the family building process and child mortality in India’ (1998) 52 Population Studies 301. [↑](#footnote-ref-132)
133. Tim Dyson and Mick Moore, ‘On Kinship Structure, Female Autonomy, and Demographic Behavior in India’ (1983) 1 Population and Development Review 35. Published by: [Population Council](http://www.jstor.org/action/showPublisher?publisherCode=popcouncil) Article Stable URL: <http://www.jstor.org/stable/1972894> [↑](#footnote-ref-133)
134. Sonia Bhalotra and Tom Cochrane, ‘Where Have All the Young Girls Gone? Identification of Sex Selection in India’, (December 2010) Discussion Paper No. 5381, IZA. [↑](#footnote-ref-134)
135. Although the law in India states that the marriageable age for girls is 18 under the Prohibition of Child Marriage Act 2006, Muslim girls can marry at 15. [↑](#footnote-ref-135)
136. Shakeel Ahmad, *Muslim attitude towards family planning*, (New Delhi, Sarup & Sons 2003). [↑](#footnote-ref-136)
137. Disturbingly,Haryana has been accused of inflating the birth rate of girls to conceal a gender imbalance which suggests that there is still a high number of sex selective abortions taking place. Hugh Tomlinson, ‘Indian birth figures ‘hide abortion of girls’’ *The Times* (London, 17 May 2017) 34. [↑](#footnote-ref-137)
138. Census of India, 2011, Chapter 5 ‘Gender Composition of the Population’. [↑](#footnote-ref-138)
139. P Jha, R Kumar, V Pa, N Dhingra, D Tiruchelvam and R Moineddin, ‘Low female to male sex ratio of children born in India: national survey of 1.1 million households’ (2006) 367 Lancet 211 cited in Sunita Puri, Vincanne Adams, Susan Ivey, Robert D. Nachtigall, “There is such a thing as too many daughters, but not too many sons”: A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States’ (2011) 72 Social Science & Medicine 1169. [↑](#footnote-ref-139)
140. Anita Raj, ‘Sex-selected abortion in India’, (2011) 378 9798 The Lancet 1217. [↑](#footnote-ref-140)
141. Daniel Rosenblum, ‘Economic Incentives for Sex-Selective Abortion in India’, Working Paper No: 2014-13, Canadian Centre for Health Economics, August 22, 2014.<<https://www.canadiancentreforhealtheconomics.ca/wp-content/uploads/2014/08/Rosenblum.pdf>> accessed 9 July 2012 [↑](#footnote-ref-141)
142. Nistha Sinha, Joanne Yoong, ‘Long-Term Financial Incentives and Investment in Daughters, Evidence from Conditional Cash Transfers in North India’, Working Paper (February 2009) RAND Labor and Population. [↑](#footnote-ref-142)
143. A girl would have to be the first, second or third child in the family, the family would have to be below the poverty line or from a disadvantaged caste background. Nisthat Sinha and Joanne Yoong, ‘Long Term Financial Incentives and Investment in Daughters, Evidence from Conditional Cash Transfers in North India’, Working Paper (February 2009 RAND Labor and Population. [↑](#footnote-ref-143)
144. Ibid. [↑](#footnote-ref-144)
145. Sabu M George, ‘Female Infanticide in Tamil Nadu, India: From Recognition Back to Denial?’(1997) Bi 10 Reproductive Health Matters 124. [↑](#footnote-ref-145)
146. Mallika Kaur, ‘To quell ‘sex selection’, no substitute for courage’ IntlLawGrrls*,* 7 June 2011. [↑](#footnote-ref-146)
147. Which means ‘Girl child prosperity scheme’. [↑](#footnote-ref-147)
148. Nistha Sinha and Joanne Yoong, ‘Long Term Financial Incentives and Investment in Daughters. Evidence from Conditional Cash Transfers in North India’, Working Paper (February 2009) RAND Labor and Population. [↑](#footnote-ref-148)
149. Mallika Kaur, ‘To quell ‘sex selection’, no substitute for courage’, IntlLawGrrls 7 June 2011. [↑](#footnote-ref-149)
150. Helen Pidd, ‘Indian campaign confronts prevalence of female foeticide’ *The Guardian* (London, 13 July 2012). [↑](#footnote-ref-150)
151. Sex ratio of total population and child population 0-6 years. Census of India 2011, Chapter 5, Gender Composition of the Population. [↑](#footnote-ref-151)
152. Admittedly the solutions only appear to be penalties rather than resulting in a real change in attitudes. [↑](#footnote-ref-152)
153. Ibid. [↑](#footnote-ref-153)
154. Robert Jensen and Emily Oster, ‘The Power of TV; Cable Television and Women’s Status in India’ (2008) 124 3 Quarterly Journal of Economics 1057. Referenced in Monica Das Gupta, Woojin Chung and Li Shuzhuo, ‘Is there an incipient turnaround in Asia’s ‘Missing Girls’ phenomenon?’, Policy Research Working Paper 4846, (February 2009) The World Bank Development Research Group, Human Development and Public Services Team. [↑](#footnote-ref-154)
155. ‘Programme of Action of the United Nations International Conference on Population and Development’, United Nations International Conference on Population and Development (Cairo 5-13 September 1994) [↑](#footnote-ref-155)
156. International Conference on Population and Development, (Cairo 1994) [↑](#footnote-ref-156)
157. Ming-Jen Lin, Nancy Qian, Jin-Tan Liu, ‘More Women Missing, Fewer Girls Dying: The Impact on Abortion on Sex Ratios at Birth and Excess Female Mortality in Taiwan’*,* (December 2008) Working Paper 14541. <http://www.nber.org/papers/w1451> accessed 14 June 2012. [↑](#footnote-ref-157)
158. UNFPA,‘Culturally Sensitive Approaches, India – Restoring the Sex-ratio Balance’, <<http://www.unfpa.org/culture/case_studies/india_study.htm>> accessed 15 March 2012 [↑](#footnote-ref-158)
159. Woojin Chung, Monica Das Gupta, ‘Why is Son Preference Declining in South Korea?’ Policy Research Working Paper 4373, The World Bank Development Research Group Human Development and Public Services Team, October 2007 [↑](#footnote-ref-159)
160. Ibid 12. [↑](#footnote-ref-160)
161. Daniel Rosenblum, ‘Economic Incentives for Sex-Selective Abortion in India’, Working Paper No: 2014-13, Canadian Centre for Health Economics, August 22, 2014.<<https://www.canadiancentreforhealtheconomics.ca/wp-content/uploads/2014/08/Rosenblum.pdf>> accessed 9 July 2012 [↑](#footnote-ref-161)
162. Daniel Rosenblum, ‘Economic Incentives for Sex-Selective Abortion in India’, Working Paper No: 2014-13, Canadian Centre for Health Economics, August 22, 2014.<<https://www.canadiancentreforhealtheconomics.ca/wp-content/uploads/2014/08/Rosenblum.pdf>> accessed 9 July 2012 [↑](#footnote-ref-162)
163. Edgar Dahl, ‘Gendercide? A Commentary on *The Economist’s* Report About the Worldwide War on Baby Girls’, (2010) 21 2 Journal of Evolution and Technology 20.

 [↑](#footnote-ref-163)
164. Ram Mashru, ‘It’s a girl: The three deadliest words in the world’, *The Independent* (London, 18 January 2012). [↑](#footnote-ref-164)
165. Helen Pidd, ‘Indian campaign confronts prevalence of female foeticide’, *The Guardian* (London, 13 July 2012). [↑](#footnote-ref-165)
166. Dr. Nina Puri in ‘Sex Selection in India’ (June 1 2001) 440 Religion and Ethics News Weekly <http://www.pbs.org/wnet/religionandethics/2001/06/01/june-1-2001-sex-selection-in-india/15770/> [↑](#footnote-ref-166)
167. Patriarchy exists where men predominate in terms of power and in this context set the rules of moral authority. [↑](#footnote-ref-167)
168. On this point see the remarks made by Cooke J in *R v Sarah Louise Catt* 17 September 2012, who made it clear that there should be no liberal interpretation of the Abortion Act and that abortion was not available on demand prior to 24 weeks. [↑](#footnote-ref-168)
169. Raka Ray, ‘Feminism and the History of the Indian Nation’, (2004) Vol. 33, No. 6, Contemporary Sociology, 640, Review of Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women’s Rights and Feminism in India, 1800 to 1990*, (2nd ed. New Delhi: Kali for Women, 2002) [↑](#footnote-ref-169)
170. This is the practice of self-immolation by a widow. Sati means ‘a virtuous woman’ and the act was believed to bring the woman the highest religious merit. Clara Nubile, *The Danger of Gender: Caste Class and Gender in Contemporary Indian Women’s Writing* (New Delhi: Sarup & Sons 2003) [↑](#footnote-ref-170)
171. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-171)
172. Although women in Europe still had low status in many aspects of their lives. [↑](#footnote-ref-172)
173. A recognition of this input by males has resulted in a reluctance by some women to pit themselves against men as the enemy sex and to deny that the male oppresses the female. [↑](#footnote-ref-173)
174. 1772-1833, founder of the Brahmo Samaj, a socio-religious reform movement. He was known for trying to abolish the practice of sati. [↑](#footnote-ref-174)
175. 1820-1891. Vidyasagar attempted to improve the status of women. [↑](#footnote-ref-175)
176. 1838-1884. A Hindu philosopher and social reformer. [↑](#footnote-ref-176)
177. 1853-1912. A poet, publicist, author and social reformer. He was an advocate for the protection of women’s rights and was against child marriage. [↑](#footnote-ref-177)
178. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-178)
179. The first popular leader of the Indian Independence Movement. [↑](#footnote-ref-179)
180. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-180)
181. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-181)
182. Mary E. John, ‘Feminism in India and the West’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-182)
183. Raka Ray, Review of *The History of Doing: An Illustrated Account of Movements for Women’s Rights and Feminism in India, 1800 to 1990* by Radha Kumar, (2nd ed. New Delhi: Kali for Women 2002) in Contemporary Sociology, (2004) Vol. 33, No. 6, 640 [↑](#footnote-ref-183)
184. Martha Nussbaum, ‘Body of the nation: Why women were mutilated in Gujarat’, (2004), Summer, Boston review: A political and literary forum.

<http://bostonreview.net/BR29.3/nussbaum.html> cited in Shari Daya, ‘Embodying modernity: reading narratives of Indian women’s sexual autonomy and violation’, (2009) 16:1, Gender, Place & Culture: A Journal of Feminist Geography, 97. [↑](#footnote-ref-184)
185. Mary E. John, ‘Feminisms and Internationalisms: A Response from India’, (1998) Vol. 10, No. 3, Gender & History, 539. [↑](#footnote-ref-185)
186. Martha C. Nussbaum, ‘Sex, Laws, and Inequality: What India can teach the United States’, (2002), Winter, Daedalus. [↑](#footnote-ref-186)
187. The Constitution of India (as modified up to the 1st December 2007),

lawmin.nic.in/coi/coiason29july08.pdf [↑](#footnote-ref-187)
188. The Constitution of India (as modified up to the 1st December 2007),

 lawmin.nic.in/coi/coiason29july08.pdf [↑](#footnote-ref-188)
189. Pratibha Jain, ‘Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women’s Rights in India’ (2005) 23 1 Berkeley Journal of International Law 201. [↑](#footnote-ref-189)
190. Gopika Solanki, ‘Beyond the Limitations of the Impasse: Feminism, Multiculturalism, and Legal Reforms in Religious Family Laws in India’, (2013) 40:1,Politikon: South African Journal of Political Studies 83. [↑](#footnote-ref-190)
191. The Dowry Prohibition Act 1961. [↑](#footnote-ref-191)
192. The Commission of Sati (Prevention) Act 1987. [↑](#footnote-ref-192)
193. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. [↑](#footnote-ref-193)
194. Geetanjali Gangoli, *Indian feminisms: law, patriarchies and violence in India,* (Aldershot, Ashgate, 2007). [↑](#footnote-ref-194)
195. India’s secular democracy was threatened in the 1990s by the rise in Hindu nationalism and the BJP and the resulting fatal clashes between the Muslims and the Hindus in Gujarat. Sumit Ganguly, ‘The Crisis of Indian Secularism’, (2003) 14 4 Journal of Democracy 11. [↑](#footnote-ref-195)
196. Gopika Solanki, ‘Beyond the Limitations of the Impasse: Feminism, Multiculturalism, and Legal Reforms in Religious Family Laws in India’, (2013) 40:1,Politikon: South African Journal of Political Studies 83. [↑](#footnote-ref-196)
197. The Indian Divorce Act 1869 which applies to Christians was amended in 2001 and the Indian Succession Amendment Act 1991 granted women equal inheritance rights. [↑](#footnote-ref-197)
198. See Dean Nelson, *The Daily Telegraph,* 4 January, 2013 who referred to Nilanjana Roy’s view that the growing violence is a punitive response to women’s new independence and the rejection of traditional roles.Also, *India’s Daughter*, BBC 4, March, 2015 Produced by Leslee Udwin. [↑](#footnote-ref-198)
199. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-199)
200. Amartya Sen, ‘Gender bias isn’t set in stone. We just need to challenge it.’, *The Independent*, 15 January 2014 [↑](#footnote-ref-200)
201. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-201)
202. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). Chitnis points out that they are more used to more immediate redress through the caste or tribal council or the village *panchayat*. [↑](#footnote-ref-202)
203. Pratibha Jain, ‘Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women’s Rights in India’ (2005) 23 1 Berkeley Journal of International Law 201. [↑](#footnote-ref-203)
204. Ibid, 201 [↑](#footnote-ref-204)
205. Shirin Rai, ‘Women and the state in the Third World’ in Haleh Afshar (ed) *Women and Politics in the Third World* (Routledge 1996) [↑](#footnote-ref-205)
206. Martha C. Nussbaum, ‘Sex, Laws, and Inequality: what India can teach the United States’, (2002) Winter, Daedalus. [↑](#footnote-ref-206)
207. *Mohammed Ahmed Khan v Shah Bano Begum* 1985 AIR SC 945. [↑](#footnote-ref-207)
208. Sumit Ganguly, ‘The Crisis of Indian Secularism’, (2003) 14 4 Journal of Democracy 11. DOI:https://doi.org/10.1353/jod.2003.0076 accessed 5th May 2017 [↑](#footnote-ref-208)
209. Siobhan Mullally,’Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case’, (2004) 24 4 Oxford Journal of Legal Studies 671. [↑](#footnote-ref-209)
210. The Muslim Women (Protection of Rights on Divorce) Bill was enacted in 1986. It governed postnuptial rights of divorced Muslim women but this meant that they were no longer able to sue their husbands for maintenance under the Criminal Procedure Code. Sylvia Vatuk, ‘Islamic Feminism in India: Indian Muslim Women Activists and the Reform of Muslim Personal Law’, (2008) 42 (2/3) Modern Asian Studies 489. [↑](#footnote-ref-210)
211. In *Danial Latifi v. Union of India* (2001) 7 S.C.C. 740, 742 the Supreme Court read the Act with Art 14 and 15 of the Constitution. This prevents discrimination on the basis of sex and it was held that the intention could not have been to deprive Muslim women of their rights. Section 3(1)(a) was read so that it did not breach Articles 14 and 15 which meant that maintenance would not be limited to the iddah period but would extend to the life of the divorced wife until she remarried. [↑](#footnote-ref-211)
212. Siobhan Mullally,’Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case’, (2004) Vol. 24, No. 4, Oxford Journal of Legal Studies, 671. [↑](#footnote-ref-212)
213. Gopika Solanki, ‘Beyond the Limitations of the Impasse: Feminism, Multiculturalism, and Legal Reforms in Religious Family Laws in India’, (2013) 40:1,Politikon: South African Journal of Political Studies, 83. [↑](#footnote-ref-213)
214. Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2, Journal of Human Development, 167. DOI: 10.1080/14649880500120509 [↑](#footnote-ref-214)
215. B. Agarwal and P. Panda, ‘Home and the world: revisiting violence’, (2003) 7 August, Indian Express, 9, cited in Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2, Journal of Human Development, 167. DOI: 10.1080/14649880500120509 [↑](#footnote-ref-215)
216. Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2, Journal of Human Development, 167. DOI: 10.1080/14649880500120509 [↑](#footnote-ref-216)
217. A. Sen ‘Gender inequality and theories of justice’, in M. Nussbaum and J. Glover (Eds), *Women, Culture and Development*, (Clarendon Press, Oxford, 1995) and Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2, Journal of Human Development, 167. DOI: 10.1080/14649880500120509 [↑](#footnote-ref-217)
218. The right to bodily integrity in the context of the thesis means the right not to be touched or treated without that person’s consent. It recognises the importance of autonomy and the inviolability of the body. A slightly wider meaning is given in Nussbaum’s List of Capabilities on page 318: Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction. [↑](#footnote-ref-218)
219. A belief that all cultural beliefs are equally valid. P.R. Niles and Rose R.

 Matthews, ‘Cultural Relativism’, *All About Philosophy*,

 <http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Cultural_relativism.html> [↑](#footnote-ref-219)
220. M. Nussbaum and A. Sen (Eds) *The Quality of Life*, (Clarendon Press, Oxford 1993). [↑](#footnote-ref-220)
221. Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2, Journal of Human Development, 167. DOI: 10.1080/14649880500120509 [↑](#footnote-ref-221)
222. There is considerable debate at present on this issue in the British press and the possible need for this prohibition to be made explicit in the legislation. See Steve Connor, Science Editor, ‘The lost girls’, *The Independent*, 15 January 2014, pp 1, 4-6 and 9. [↑](#footnote-ref-222)
223. The grounds for abortion permitted under the Act are explained on page 21. The 1971 Act only permits abortions up to 20 weeks however and under specified grounds. [↑](#footnote-ref-223)
224. The two procedures are commonly undergone in different clinics, often private clinics, to avoid any possible monitoring of the link between them. Sugandha Nagpal, ‘Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses’, (2013) 3 McGill Sociological Review 18. [↑](#footnote-ref-224)
225. Varsha Chitnis and Danaya Wright, ‘The Legacy of Colonialism: Law and Women’s Rights in India’, (2007) 64 Wash. & Lee L. Rev. 1315. [↑](#footnote-ref-225)
226. The section refers to ‘whoever causes a woman with child to miscarry’ and a woman who causes herself to miscarry is held to be within the meaning of the section. [↑](#footnote-ref-226)
227. Similar to the offence in the U.K. under s.58 Offences Against the Person Act 1861. This legislation and the later restrictive abortion laws are a legacy of colonialism. [↑](#footnote-ref-227)
228. Quickening is when movement of the foetus is felt by the mother, usually between 16 to 20 weeks. [↑](#footnote-ref-228)
229. This is similar to s.58 Offences Against the Person Act 1861 and the defence in s.1 Infant Life (Preservation) Act 1929. [↑](#footnote-ref-229)
230. Its members were five women social workers and four medical doctors. [↑](#footnote-ref-230)
231. S. Sudha and S. Irudaya Rajan, ‘Female demographic disadvantage in India 1981-1991: sex-selective abortion and female infanticide’ (1990) 30 Development and Change, special issue on Gender, Poverty and Well-being, 585, and Siddhivinayak S Hirve, ‘Abortion Law, Policy and Services in India: A Critical Review’, (2004) 12 (24 Supplement) Reproductive Health Matters 114. [↑](#footnote-ref-231)
232. Note that the time limit is thus 20 weeks’ gestation, in contrast to the time limit in the U.K. of 24 weeks under the social ground and later if the woman’s life is at risk or there is a substantial risk of a serious disability of the foetus. [↑](#footnote-ref-232)
233. The lower house of Parliament in India. [↑](#footnote-ref-233)
234. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law*, (Permanent Black 2004) 66-105. [↑](#footnote-ref-234)
235. Amar Jesani, and Aditi Iyer. "Abortion: Who is responsible for our rights?." *Our Lives, Our Health. New Delhi: Coordination Unit, the World Conference on Women, Beijing*. 1995. [↑](#footnote-ref-235)
236. Varsha Chitnis and Danaya Wright, ‘The Legacy of Colonialism: Law and Women’s Rights in India’, (2007) 64 Wash. & Lee L. Rev. 1315. [↑](#footnote-ref-236)
237. Government of India. Medical Termination of Pregnancy (Amendment) Act [No. 64 of 2002]. New Delhi: Ministry of Health and Family Welfare, 2002. [↑](#footnote-ref-237)
238. Government of India. Medical Termination of Pregnancy Rules and Regulations. Vide GSR 485[E] and 486[E]. New Delhi: Gazette of India, 2003. [↑](#footnote-ref-238)
239. Siddhivinayak S Hirve, ‘Abortion Law, Policy and Services in India: A Critical Review’, (2004) 12 (24 Supplement) Reproductive Health Matters 114. [↑](#footnote-ref-239)
240. M.E. Khan, S. Rajagopal, S. Barge et al. ‘January 1998, ‘Situational analysis of medical termination of pregnancy services in Gujarat, Maharashtra, Tamil Nadu and Uttar Pradesh.’ Paper presented at International Workshop on Abortion Facilities and Post-Abortion Care and Operations Research, New York, 19. [↑](#footnote-ref-240)
241. Amar Jesani, and Aditi Iyer. "Abortion: Who is responsible for our rights?." *Our Lives, Our Health. New Delhi: Coordination Unit, the World Conference on Women, Beijing*. 1995. [↑](#footnote-ref-241)
242. Amar Jesani, and Aditi Iyer. "Abortion: Who is responsible for our rights?." *Our Lives, Our Health. New Delhi: Coordination Unit, the World Conference on Women, Beijing*. 1995. [↑](#footnote-ref-242)
243. Malini Karkal "Abortion laws and the abortion situation in India." (1991) 4:3, Issues in Reproductive and Genetic Engineering 223. [↑](#footnote-ref-243)
244. See the International Conference on Population and Development programmes of Bucharest in 1974 and Mexico City in 1984. Referenced in Rosalind Pollack Petchesky, ‘From Population Control to Reproductive Rights: Feminist Fault Lines’, (1995) 6 Reproductive Health Matters 152. [↑](#footnote-ref-244)
245. Amar Jesani and Aditi Iyer. "Abortion: Who is responsible for our rights?." *Our Lives, Our Health. New Delhi: Coordination Unit, the World Conference on Women, Beijing*. 1995. [↑](#footnote-ref-245)
246. This is surprising when the main religions in India such as Hinduism, Christianity and Islam all consider abortion to be a sin. [↑](#footnote-ref-246)
247. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law*, (Permanent Black 2004) 66-105. [↑](#footnote-ref-247)
248. Illegal abortions which are unsafe make up approximately 25% of the 100,000 maternal deaths in India per year. Ford Foundation. ‘Legal but Still Unsafe: The Complexity of Abortion in India’, (1997) Autumn/Winter Ford Foundation Bulletin, 9-12, cited in KI. Shanthi, ‘Reproductive Rights of Women in India’, in Susan Sherwin (ed) *The Politics of Women’s Health: Exploring Agency and Autonomy* (Temple University Press 1998) [↑](#footnote-ref-248)
249. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law*, (Permanent Black 2004) 66-105. Also see K G Santhya and Shalini Verman, ‘Induced Abortion: The Current Scenario in India’, (2004) 8 2 Regional Health Forum 1. [↑](#footnote-ref-249)
250. Tanya Manglik, ‘Supreme Court Allows Woman, 24 Weeks Pregnant, to Have an Abortion’, (*The Ladies Finger!,*  25 July 2016) <http://theladiesfinger.com> accessed 27 July 2016. See also Neha Madhiwalla, ‘The Niketa Mehta case: does the right to abortion threaten disability rights?’ (2008) Vol 5, No 4, Editorial, Indian Journal of Medical Ethics, <http://www.issuesinmedicalethics.org/index.php/ijme/rt/printerFriendly/456/1110> accessed July 2016. [↑](#footnote-ref-250)
251. *Mrs X and Mrs Y vs Union of India & Ors*,W.P.(C) No. 308/2014 [↑](#footnote-ref-251)
252. Abantika Ghosh, ‘MTP Act: What 45-year-old abortion law says, why it must change’ (*The Indian Express,* 26 July 2016) <http://indianexpress.com/article/explained/abortion-law-rape-victim-terminate-pregnancy-suprme-court-20-weeks-pregnant-2935481/>> accessed 9 September 2016. [↑](#footnote-ref-252)
253. Malini Karkal, ‘Abortion laws and the abortion situation in India’, (1991) 4 3  Issues in Reproductive and Genetic Engineering 223. [↑](#footnote-ref-253)
254. Although population control usually relates to numbers, rather than gender, the termination of female foetuses will still achieve a reduction in numbers overall which appears to be the principal aim. [↑](#footnote-ref-254)
255. Malini Karkal, ‘Abortion Laws and the Abortion Situation in India’, (1991) 4.3, Issues in Reproductive and Genetic Engineering 223. [↑](#footnote-ref-255)
256. Richard H. Thaler, Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness*, (Yale University Press 2008) [↑](#footnote-ref-256)
257. Some of the population in fact believed that the tests were designed for the purpose of sex selection. K. Shanthi, ‘Feminist Bioethics and Reproductive Rights of Women in India: Myth and Reality’, in Rosemarie Tong, Anne Donchin and Susan Dodds (eds), *Linking visions: feminist bioethics, human rights and the developing world* (Rowman & Littlefield Publishers, Inc. 2004) [↑](#footnote-ref-257)
258. Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act 1988. [↑](#footnote-ref-258)
259. Following pressure from the Forum Against Sex Determination and Sex Preselection formed in 1985 which linked sex-selective abortions with female oppression. F. Arnold, S. Kishor and T.K. Roy, ‘Sex-Selective Abortions in India’, (2002) 28 Population and Development Review 759. [↑](#footnote-ref-259)
260. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, Act No. 57 of 1994. [↑](#footnote-ref-260)
261. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, s 4(2). [↑](#footnote-ref-261)
262. Ibid, s 4(3). [↑](#footnote-ref-262)
263. Ibid, s 5(2). [↑](#footnote-ref-263)
264. Ibid, s 22. [↑](#footnote-ref-264)
265. Ibid, s 23. [↑](#footnote-ref-265)
266. Ibid, s 23(3). [↑](#footnote-ref-266)
267. Ibid,s 24. [↑](#footnote-ref-267)
268. *C A Muthu Krishnan v M Rajyalakshmi,* AIR 1989 SC 2039 in Omprakash V Nandimath, ‘Consent and medical treatment: The legal paradigm in India’, (2009) Indian Journal of Urology 343. [↑](#footnote-ref-268)
269. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law*, (Permanent Black 2004) 66-105. [↑](#footnote-ref-269)
270. Although this is not a presumption of autonomy as capacity alone is insufficient for that. [↑](#footnote-ref-270)
271. CEHAT (Centre for Enquiry into Health and Allied Themes) and MASUM (Banglar Manabadhikar Suraksha Mansha). [↑](#footnote-ref-271)
272. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse ) Amendment Act 2002, Act No. 14 of 2003. Case study on India ‘Culturally Sensitive Approaches, India – Restoring the Sex-ratio Balance’, <http://www.unfpa.org/culture/case_studies/India_study.htm> accessed 15 March 2012. [↑](#footnote-ref-272)
273. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002, Act No. 14 of 2003, Section 22(1) and (2). [↑](#footnote-ref-273)
274. Sandhya Srinivasan, ‘India: Challenges in implementing the ban on sex-selection’, (August 2008) Women Living Under Muslim Laws, <http://www.wluml.org/node/4760> accessed 13 July 2012. [↑](#footnote-ref-274)
275. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002, s 24 [↑](#footnote-ref-275)
276. s 4(2). [↑](#footnote-ref-276)
277. Constituted under Section 7. [↑](#footnote-ref-277)
278. The Hindu, 14 January, 2012 [www.thehindu.com](http://www.thehindu.com) accessed on 24 January, 2012. [↑](#footnote-ref-278)
279. The Hindu, 14 January, 2012 [www.thehindu.com](http://www.thehindu.com) accessed on 24 January, 2012. [↑](#footnote-ref-279)
280. Presentation made by Saheli at *Sex Selection: Technologies, Populations and Social Relations*, a two day seminar organised by NMML, Action India and CWDS, 23-24 January, 2006 referring to the report ‘A Study of Ultrasound Sonography Centres in Maharashtra’ prepared by the Population Research Centre, Gokhale Institute of Politics and Economics, Pune. [↑](#footnote-ref-280)
281. Sunita Puri, Vincanne Adams, Susan Ivey, Robert D. Nachtigall, ‘”There is such a thing as too many daughters, but not too many sons”: A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States’, (2011) 72 Social Science & Medicine, 1169. [↑](#footnote-ref-281)
282. Sandhya Srinivasan, ‘India: Challenged in implementing the ban on sex-selection’ (August 2008) Women Living Under Muslim Laws http:www.wluml.org/node/4760 accessed 13 July 2012. [↑](#footnote-ref-282)
283. 1,000 rupees equates to approximately £10. [↑](#footnote-ref-283)
284. An earlier case had also resulted in a successful prosecution but the defendant had received a reduced punishment. [↑](#footnote-ref-284)
285. See Shirin Rai, ‘Women and the state in the Third World’ in Haleh Afshar (ed) *Women and Politics in the Third World* (Routledge 1996) who describes India as a ‘weak’ post-colonial state as characterised by Chalmers Johnson in C Johnson, *MITI and Japanese Miracle* (Stanford, Calif: Stanford University Press 1982) where an excess of bureaucracy and resulting corruption leads to the subversion of the implementation of state policy. [↑](#footnote-ref-285)
286. See Robert Baldwin, Martin Cave, Martin Lodge, *Understanding Regulation* (Second Edition, Oxford University Press 2012) Chapter 5 on Regulatory Failure. [↑](#footnote-ref-286)
287. Leela Visaria, ‘Female Deficit in India: Role of Prevention of Sex Selective Abortion Act’, (2005) Seminar on Female Deficit in Asia: Trends and Perspectives, Singapore [↑](#footnote-ref-287)
288. Sandya Srinivasan, ‘India: Challenges in implementing the ban on sex-selection’ (August 2008) Women Living Under Muslim Laws http:www.wluml.org/node/4760 accessed 13 July 2012. [↑](#footnote-ref-288)
289. Nadini Oomman, Bela R. Ganatra, ‘Sex Selection: The Systematic Elimination of Girls’, (2002) 10(19) Reproductive Health Matters 184. [↑](#footnote-ref-289)
290. Arindam Nandi and Anil B Deolalikar, ‘Does a Legal Ban on Sex-Selective Abortions Improve Child Sex Ratios? Evidence from a Policy Change in India’ (April 1 2011). Available at SSRN: http://ssrn.com/abstract=1824420 or http://dx.doi.org/10.2139/ssrn.1824420 [↑](#footnote-ref-290)
291. Arindam Nandi and Anil B Deolalikar, ‘Does a Legal Ban on Sex-Selective Abortions Improve Child Sex Ratios? Evidence from a Policy Change in India’ (April 1 2011). Available at SSRN: http://ssrn.com/abstract=1824420 or http://dx.doi.org/10.2139/ssrn.1824420 [↑](#footnote-ref-291)
292. Ming-Jen Lin, Nancy Qian, Jin-Tan Liu, ‘More Women Missing, Fewer Girls Dying: The Impact of Abortion on Sex Ratios at Birth and Excess Female Mortality in Taiwan’ (December 2008) Working Paper 14541, <http://www.nber.org/papers/w14541> accessed 14 June 2012 [↑](#footnote-ref-292)
293. Ming-Jen Lin, Nancy Qian, Jin-Tan Liu, ‘More Women Missing, Fewer Girls Dying: The Impact of Abortion on Sex Ratios at Birth and Excess Female Mortality in Taiwan’ (December 2008) Working Paper 14541, <http://www.nber.org/papers/w14541> accessed 14 June 2012 [↑](#footnote-ref-293)
294. Mallika Kaur, ‘To quell ‘sex selection’, no substitute for courage’, (*IntlLawGrrls* 7 June 2011) [↑](#footnote-ref-294)
295. Mallika Kaur, ‘To quell ‘sex selection’, no substitute for courage’, (*IntlLawGrrls* 7 June 7 2011) [↑](#footnote-ref-295)
296. B M Dickens, G I Serour, R J Cook, R-Z Qiu, ‘Sex selection: Treating different cases differently’, (2005) 90 International Journal of Gynecology and Obstetrics 171. [↑](#footnote-ref-296)
297. Binaya Kumar Bastia, ‘Consent to treatment: practice vis-a-vis principle’, (2008) Vol V No 3 Indian Journal of Medical Ethics 113. [↑](#footnote-ref-297)
298. Indian Contract Act 1872 [↑](#footnote-ref-298)
299. Binaya Kumar Bastia, ‘Consent to treatment: practice vis-a-vis principle’, (2008) Vol V No 3 Indian Journal of Medical Ethics 113 [↑](#footnote-ref-299)
300. Binaya Kumar Bastia, ‘Consent to treatment: practice vis-a-vis principle’, (2008) Vol V No 3 Indian Journal of Medical Ethics 113 [↑](#footnote-ref-300)
301. Omprakash V Nandimath, ‘Consent and medical treatment: The legal paradigm in India’, (2009) Indian Journal of Urology 343. [↑](#footnote-ref-301)
302. *C A Muthu Krishnan v M Rajyalakshmi,* AIR 1989 SC 2039 in Omprakash V Nandimath, ‘Consent and medical treatment: The legal paradigm in India’, (2009) Indian Journal of Urology 343 [↑](#footnote-ref-302)
303. A DeCosta, N D’Souza, S Krishnan, M S Chhabra, I Shihaam, K Goswami, ‘Community based trials and informed consent in rural north India’, (2004) 30 Journal of Medical Ethics 318. Doi: 10.1136/jme.2002.001065 [↑](#footnote-ref-303)
304. A DeCosta, N D’Souza, S Krishnan, M S Chhabra, I Shihaam, K Goswami, ‘Community based trials and informed consent in rural north India’, (2004) 30 Journal of Medical Ethics 318. Doi: 10.1136/jme.2002.001065 [↑](#footnote-ref-304)
305. See Sections 87 to 92 of the Indian Penal Code which focus on consent and good faith as key defences to most negligence suits. [↑](#footnote-ref-305)
306. AIR 2003 SC 3309 [↑](#footnote-ref-306)
307. Adv. Vijay Hiremath and Adv. Kamayani Bali Mahabal, ‘Reproductive Rights’ in Desai M & Mahabal K B (eds), *Health care case law in India* (Mumbai: Satam Udhog 2007) [↑](#footnote-ref-307)
308. *Javed vs State of Haryana and Ors* AIR 2003 SC 3057 [↑](#footnote-ref-308)
309. Ibid [↑](#footnote-ref-309)
310. AIR 2005 SC 3280 [↑](#footnote-ref-310)
311. Carolyn Heitmeyer & Maya Unnithan, ‘Bodily rights and collective claims: the work of legal activists in interpreting reproductive and maternal rights in India’, (2015) 21 Journal of the Royal Anthropological Institute 374. [↑](#footnote-ref-311)
312. Although see Sally Sheldon, ‘British Abortion Law: Speaking from the Past to Govern the Future’, (2016) 79(2) Modern Law Review 283 who argues that the dated legislation on abortion requires reform given the changes in clinical practice and ethical norms to better recognise the self-determination of women. [↑](#footnote-ref-312)
313. *Paton v British Pregnancy Advisory Service Trustees*  [1979] QB 276 [↑](#footnote-ref-313)
314. *St George’s NHS Trust v S* [1999] Fam 26 [↑](#footnote-ref-314)
315. Of course it is not known what approach the U.K. would take if there were population problems similar to those in India. [↑](#footnote-ref-315)
316. Rosalind Pollack Petchesky, ‘From Population Control to Reproductive Rights: Feminist Fault Lines’, (1995) 6 Reproductive Health Matters 152. [↑](#footnote-ref-316)
317. Mala Htun and S Laurel Weldon, ‘When Do Governments Promote Women’s Rights? A Framework for the Comparative Analysis of Sex Equality Policy’ (2010) 8 1 Perspectives on Politics 207. [↑](#footnote-ref-317)
318. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002 [↑](#footnote-ref-318)
319. For example see Schedule 2 para 1ZB in the Human Fertilisation and Embryology Act 2008 regarding the use of preimplantation genetic diagnosis for sex selection. [↑](#footnote-ref-319)
320. *C A Muthu Krishnan v M Rajyalakshmi,* AIR 1989 SC 2039 in Omprakash V Nandimath, ‘Consent and medical treatment: The legal paradigm in India’, (2009) Indian Journal of Urology 343. [↑](#footnote-ref-320)
321. Malini Karkal, ‘Abortion Laws and the Abortion Situation in India’, (1991) 4.3 Issues in Reproductive and Genetic Engineering 223. [↑](#footnote-ref-321)
322. Sandhya Srinivasan, ‘India: Challenges in implementing the ban on sex-selection’ (August 2008) Women Living Under Muslim Laws http:www.wluml.org/node/4760 accessed 13 July 2012 [↑](#footnote-ref-322)
323. Leela Visaria, ‘Female Deficit in India: Role of Prevention of Sex Selective Abortion Act’, (2005) Seminar on Female Deficit in Asia: Trends and Perspectives, Singapore [↑](#footnote-ref-323)
324. Nandini Oomman, Bela R. Ganatra, ‘Sex Selection: The Systematic Elimination of Girls’, (2002) 10(19) Reproductive Health Matters 184. [↑](#footnote-ref-324)
325. BMA handbook of ethics and law, 2012 [↑](#footnote-ref-325)
326. s1(1)(a) Abortion Act 1967 [↑](#footnote-ref-326)
327. Clare Dyer, ‘Public prosecutor explains reasons for not prosecuting doctors who agreed to abort female foetuses’, (2013) BMJ, doi:http://dx.doi.org/10.1136/bmj.f6089 (Published 08 October 2013) [↑](#footnote-ref-327)
328. Although a respect for autonomy should only be if the woman has the freedom to choose. [↑](#footnote-ref-328)
329. ‘MPs reject backbench bid to amend abortion laws’, (BBC website 24 February 2015) http://www.bbc.co.uk /news/uk-politics-31596968 [↑](#footnote-ref-329)
330. Department of Health, *Abortion on grounds of sex of the foetus* 27 August 2015 <https://www.gov.uk/government/publications/aborton-on-grounds-of-sex-of-the-foetus> [↑](#footnote-ref-330)
331. Dr. Sarah Wollaston, chairwoman of the Health Select Committee, claimed that there was no evidence of a systematic practice and thought that it could stigmatise certain communities by implying that it was widespread. [↑](#footnote-ref-331)
332. Emily Jackson, ‘Abortion, Autonomy and Prenatal Diagnosis’, (2000) 9 Social & Legal Studies 467. [↑](#footnote-ref-332)
333. Jeremy Williams, ‘Sex-Selective Abortion: A Matter of Choice’, (2012) 31 Law and Philosophy 125. [↑](#footnote-ref-333)
334. Jeremy Williams, ‘Sex-Selective Abortion: A Matter of Choice’, (2012) 31 Law and Philosophy 125. [↑](#footnote-ref-334)
335. Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law*, (Permanent Black 2004) 66-105. [↑](#footnote-ref-335)
336. Referred to as such by Amartya Sen, ‘Gender bias isn’t set in stone. We just need to challenge it.’, *The Independent*, 15 January 2014 [↑](#footnote-ref-336)
337. Martha Nussbaum, ‘Human capabilities: female human beings’ in *Women, Culture, and Development* (Oxford: Clarendon, 1995) at p. 91, Susan Okin, ‘Feminism and multiculturalism: some tensions’, (1998) 108 4 Ethics 661 in S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) 29 4 Journal of applied philosophy: Journal of the Society for Applied Philosophy 302 and A. Sen, *Rationality and Freedom*, (Belknap, Cambridge 2002), in Serene J Khader, ‘Adaptive Preferences and Procedural Autonomy’, (2009) 10:2 Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development 169 [↑](#footnote-ref-337)
338. Brooke Ackerly, *Political Theory and Third World Social Criticism,*  (New York: Cambridge University Press 2001) and Alison Jagger, ‘Reasoning about Well-Being: Nussbaum’s Methods of Justifying the Capabilities Approach’, (2006) 14 (3) The Journal of Political Philosophy 301, both referenced in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. [↑](#footnote-ref-338)
339. Serene J Khader, *Adaptive Preferences and Women’s Empowerment*, (Oxford University Press 2011). [↑](#footnote-ref-339)
340. Khader’s work on APF comes from the perspective of development and intervention but is useful here as it is so interlinked with the concept of autonomy. [↑](#footnote-ref-340)
341. Often referred to as ‘bride-burning’. Radha Kumar, ‘Contemporary Indian Feminism’ (1989) 33 Feminist Review, 20 and Rita Banerji, ‘The Pink Panties Campaign: The Indian Women’s Sexual Revolution’, (2010) 23 Intersections: Gender and Sexuality in Asia and the Pacific and ‘Female Genocide in India and the 50 Million Missing Campaign’, (2009) 22 Intersections: Gender and Sexuality in Asia and the Pacific. [↑](#footnote-ref-341)
342. In fact it is claimed by Kumar that police constitute a high number of rapists in India and this has been the issue of several feminist campaigns. See Radha Kumar, ‘Contemporary Indian Feminism’ (1989) 33 Feminist Review 20. Also ‘India’s Daughter’ documentary on BBC 4, first shown on 4 March 2015 [↑](#footnote-ref-342)
343. Rita Banerji, ‘Why Kali Won’t Rage: A Critique of Indian Feminism’, (2012) Issue 38 Gender Forum: An Internet Journal for Gender Studies, <http://www.genderforum.org/print/issues/passages-to-india/why-kali-wont-rage/?prnt=1> accessed 10 June 2014 [↑](#footnote-ref-343)
344. Rita Banerji, ‘Why Kali Won’t Rage: A Critique of Indian Feminism’, (2012) Issue 38, Gender Forum: An Internet Journal for Gender Studies, <http://www.genderforum.org/print/issues/passages-to-india/why-kali-wont-rage/?prnt=1> accessed 10 June 2014 [↑](#footnote-ref-344)
345. Rita Banerji, ‘Why Kali Won’t Rage: A Critique of Indian Feminism’, (2012) Issue 38, Gender Forum: An Internet Journal for Gender Studies, <http://www.genderforum.org/print/issues/passages-to-india/why-kali-wont-rage/?prnt=1> accessed 10 June 2014. This may be explained by studies which have demonstrated that anger tends to be an emotion only allowed to those with social power whereas those who are subordinated tend to respond with sadness and remorse. [↑](#footnote-ref-345)
346. Rita Banerji, ‘Why Kali Won’t Rage: A Critique of Indian Feminism’, (2012) Issue 38, Gender Forum: An Internet Journal for Gender Studies, <http://www.genderforum.org/print/issues/passages-to-india/why-kali-wont-rage/?prnt=1> accessed 10June 2014 [↑](#footnote-ref-346)
347. Rita Banerji, ‘Why Kali Won’t Rage: A Critique of Indian Feminism’, (2012) Issue 38, Gender Forum: An Internet Journal for Gender Studies, <http://www.genderforum.org/print/issues/passages-to-india/why-kali-wont-rage/?prnt=1> accessed 10 June 2014 [↑](#footnote-ref-347)
348. Rita Banerji, ‘The Pink Panties Campaign: The Indian Women’s Sexual Revolution’, (2010) 23 Intersections: Gender and Sexuality in Asia and the Pacific and ‘Female Genocide in India and the 50 Million Missing Campaign’, (2009) 22 Intersections: Gender and Sexuality in Asia and the Pacific. [↑](#footnote-ref-348)
349. Martha Nussbaum, *Sex and Social Justice*, (Oxford University Press 1999). [↑](#footnote-ref-349)
350. Geetanjali Gangoli, ‘Engendering genocide: Gender, conflict and violence’, (2006) 29 Women’s Studies International Forum 534. [↑](#footnote-ref-350)
351. Suma Chitnis, ‘Feminism: Indian Ethos and Indian Convictions’ in Maitrayee Chaudhuri (ed), *Feminism in India* (Zed Books Ltd 2004). [↑](#footnote-ref-351)
352. Geetanjali Gangoli, ‘Engendering genocide: Gender, conflict and violence’, (2006) 29 Women’s Studies International Forum 534. [↑](#footnote-ref-352)
353. J. Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge, Cambridge University Press 1987) referenced in Serene J Khader, ‘Adaptive Preferences and Procedural Autonomy’, (2009) 10:2 Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development169. [↑](#footnote-ref-353)
354. Brooke Ackerly, *Political Theory and Third World Social Criticism,*  (New York: Cambridge University Press 2000) and Alison Jagger, ‘Reasoning about Well-Being: Nussbaum’s Methods of Justifying the Capabilities Approach’, (2006) 14 (3), The Journal of Political Philosophy, 301-322, both referenced in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. Yet Khader still acknowledges their level of empirical engagement in S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’ (2012) 29 4 Journal of applied philosophy: journal of the Society for Applied Philosophy 302. [↑](#footnote-ref-354)
355. Martha Nussbaum, ‘Human capabilities: female human beings’ in *Women, Culture, and Development* (Oxford: Clarendon, 1995) at p. 91 in S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) 29 4 Journal of applied philosophy: journal of the Society for Applied Philosophy 302. [↑](#footnote-ref-355)
356. Susan Okin, ‘Feminism and multiculturalism: some tensions’, (1998) 108 4 Ethics 661 in S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) 29 4 Journal of applied philosophy: journal of the Society for Applied Philosophy 302. [↑](#footnote-ref-356)
357. A. Sen, *Rationality and Freedom*, (Belknap, Cambridge 2002), in Serene J Khader, ‘Adaptive Preferences and Procedural Autonomy’, (2009) 10:2 Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development 169. [↑](#footnote-ref-357)
358. S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) Vol. 29 Issue 4 Journal of applied philosophy: journal of the Society for Applied Philosophy 302 [↑](#footnote-ref-358)
359. Alison Jagger, ‘Saving Amina: Global Justice for Women and Intercultural Dialogue’, (2005) 19 Fall Ethics and International Affairs 55 and Uma Narayan, ‘Minds of Their Own: Choices, Autonomy, Cultural Practices, and Other Women’, in Louise M Antony and Charlotte E Witt (eds), *A Mind of One’s Own: Feminist Essays on Reason and Objectivity*, (Boulder, CO: Westview Press 2002), both in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. [↑](#footnote-ref-359)
360. Uma Narayan, ‘Minds of Their Own: Choices, Autonomy, Cultural Practices, and Other Women’, in Louise M Antony and Charlotte E Witt (eds), *A Mind of One’s Own: Feminist Essays on Reason and Objectivity*, (Boulder, CO: Westview Press 2002), in Serene Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311 [↑](#footnote-ref-360)
361. Moazam, Farhat. ‘Feminist discourse on sex screening and selective abortion of female foetuses’, (2004) 18.3 Bioethics 205. [↑](#footnote-ref-361)
362. Serene Khader, *Adaptive Preferences and Women’s Empowerment*, (Oxford University Press 2011), 55-56 [↑](#footnote-ref-362)
363. The difference between lower order and higher order preferences is explained in more detail under the Structural Approach in Chapter 4, (4.3.1). [↑](#footnote-ref-363)
364. Uma Narayan, ‘Minds of Their Own: Choices, Autonomy, Cultural Practices, and Other Women’, in Louise M Antony and Charlotte E Witt(eds), *A Mind of One’s Own: Feminist Essays on Reason and Objectivity*, (Boulder, CO: Westview Press 2002) in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. [↑](#footnote-ref-364)
365. Brooke Ackerly, *Political Theory and Third World Social Criticism,* (New York: Cambridge University Press 2001) in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. [↑](#footnote-ref-365)
366. Deniz Kandiyoti, ‘Bargaining with Patriarchy’, (1980) 2 3 Gender and Society 274. [↑](#footnote-ref-366)
367. Although this is still within the subservience to patriarchy as pointed out by Geetanjali Gangoli in *Indian feminisms: law, patriarchies and violence in India*, (Aldershot Ashgate 2007) [↑](#footnote-ref-367)
368. Deniz Kandiyoti, ‘Bargaining with Patriarchy’, (1980) 2 3 Gender and Society 274. [↑](#footnote-ref-368)
369. Hanna Papanek, ‘To Each Less than She Needs, from Each More than She Can Do: Allocations, Entitlements and Value’, in Irene Tinker (ed), *Persistent Inequalities: Women and World Development,* (New York: Oxford University Press, 1990), 162. [↑](#footnote-ref-369)
370. Susan Moller Okin, ‘Gender Inequality and Cultural Differences’, Vol. 2 No. 1 (1994) Political Theory 5 [↑](#footnote-ref-370)
371. Hannah Papanek, ‘To Each Less Than She Needs, From Each More than She Can Do: Allocations, Entitlement and Value’, in I Tinker (ed), *Persistent Inequalities: Women and World Development*, (Oxford University Press 1990) in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311 [↑](#footnote-ref-371)
372. See Chapter 4 for an explanation and examination of the procedural, substantive and relational theories of autonomy. [↑](#footnote-ref-372)
373. S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) Vol. 29 Issue 4 Journal of applied philosophy: Journal of the Society for Applied Philosophy 302 [↑](#footnote-ref-373)
374. Martha Nussbaum, ‘Symposium on Amartya Sen’s philosophy: 5 Adaptive preferences and women’s options’ (2001) Economics and Philosophy 67. doi:10.1017/SO266267101000153 [↑](#footnote-ref-374)
375. The full list is contained in Appendix Three. [↑](#footnote-ref-375)
376. Martha Nussbaum, ‘Symposium on Amartya Sen’s philosophy: 5 Adaptive preferences and women’s options’ (2001) Economics and Philosophy 67. doi:10.1017/SO266267101000153 [↑](#footnote-ref-376)
377. Martha C. Nussbaum, ‘Women’s Bodies: Violence, Security, Capabilities’, (2005) 6:2 Journal of Human Development 167. DOI:10.1080/14649880500120509 [↑](#footnote-ref-377)
378. Alison M. Jaggar, ‘Reasoning About Well-Being: Nussbaum’s Methods of Justifying the Capabilities’ (2006) 14 3 The Journal of Political Philosophy 301 and Brooke A Ackerly, *Political Theory and Feminist Social Criticism,* (Cambridge University Press 2000) reviewed by Susan Miller Okin in ‘Well-Being, and Gender: What Counts, Who’s Heard?’ (2003) 31 3 Philosophy & Public Affairs 280. [↑](#footnote-ref-378)
379. Brooke A. Ackerly, *Political Theory and Feminist Social Criticism,* (Cambridge University Press 2000) reviewed by Susan Miller Okin in ‘Well-Being, and Gender: What Counts, Who’s Heard?’ (2003) 31 3 Philosophy & Public Affairs 280-316. [↑](#footnote-ref-379)
380. S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) Vol. 29 Issue 4 Journal of applied philosophy: Journal of the Society for Applied Philosophy 302. Khader singles out Nussbaum and Okin in particular: Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge, 2001 and Susan Okin, ‘Gender inequality and cultural differences’ in T Pogge & K Horton (eds) *Global Ethics* (St Paul, MN: Paragon, 2008) at p 249. [↑](#footnote-ref-380)
381. S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’, (2012) Vol. 29 Issue 4 Journal of applied philosophy: Journal of the Society for Applied Philosophy 302. Khader refers to Brooke A Ackerly, *Political Theory and Feminist Social Criticism* (Cambridge: Cambridge University Press, 2000) and Uma Narayan, ‘Minds of their own: choices, autonomy, cultural practices, and other women’ in L Antony & C Witt (eds) *A Mind of One’s Own* (Boulder, CO: Westview Press, 2002) pp 418-433. [↑](#footnote-ref-381)
382. This clash of feminist intuitions is recognised by Diana Tietjens Meyers in ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014) [↑](#footnote-ref-382)
383. *Re MB (Adult Medical Treatment)* [1997] 2 FLR 426, CA [↑](#footnote-ref-383)
384. Brooke Ackerly, *Political Theory and Third World Social Criticism,* (New York: Cambridge University Press 2000) and Alison Jagger, ‘Reasoning about Well-Being: Nussbaum’s Methods of Justifying the Capabilities Approach’, (2006) 14 (3), The Journal of Political Philosophy 301-322, both referenced in Serene J Khader, ‘Identifying adaptive preferences in practice: lessons from postcolonial feminisms’, (2013) 9:3 Journal of Global Ethics 311. [↑](#footnote-ref-384)
385. Catriona Mackenzie, ‘Relational Autonomy, Normative Authority and Perfectionism’, (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-385)
386. Catriona Mackenzie, ‘Relational Autonomy, Normative Authority and Perfectionism’, (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-386)
387. David McCarthy, ‘Why sex selection should be legal’ (2001) 27 Journal of Medical Ethics 302 who argues in relation to sex selection that a non-consensus as to the morality of an act should not necessarily result in legislation prohibiting that act as many also believe that the individual’s right to choose is more important. [↑](#footnote-ref-387)
388. J Zilberberg ‘Sex selection and restricting abortion and sex determination’ (2007) 21(9) Bioethics 517 and M B Mahowald, *Genes, women, equality (*New York: Oxford University Press 2000) [↑](#footnote-ref-388)
389. M B Mahowald, *Genes, women, equality (*New York: Oxford University Press 2000). [↑](#footnote-ref-389)
390. John A Robertson ‘Preconception Gender Selection’ (2001) 1:1 The American Journal of Bioethics 2. [↑](#footnote-ref-390)
391. Tom L Beauchamp, James F Childress, *Principles of Biomedical Ethics*, (Sixth Edition, Oxford University Press 2009) [↑](#footnote-ref-391)
392. T L Beauchamp and L B McCullough, *Medical Ethics*, (Englewood Cliffs: Prentice Hall 1984). [↑](#footnote-ref-392)
393. Paul Benson, ‘Autonomy and Oppressive Socialization’, (1991) 17 Social Theory and Practice 385. [↑](#footnote-ref-393)
394. An example of this has been illustrated in the Haryana Panchayati Act of 1994, discussed in Chapter 2 which disqualified those with more than two living children from holding specific positions in panchayats. Interestingly in India it is the more subtle factors which have more of an effect on decisions such as that to sex selectively abort. [↑](#footnote-ref-394)
395. Paul Benson, ‘Autonomy and Oppressive Socialization’, (1991) 17 Social Theory and Practice 385. [↑](#footnote-ref-395)
396. C Mackenzie and N Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*, (New York: Oxford University Press, 2000). [↑](#footnote-ref-396)
397. Although this is the stated position, should the content of the choice be unproblematic there is unlikely to be a questioning of this ability to reflect. This is the approach currently in the U.K. If a patient agrees with the treatment proposed by the doctor then there is unlikely to be a challenge as to whether or not the consent is valid. [↑](#footnote-ref-397)
398. Gerald Dworkin, ‘The Concept of Autonomy’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-398)
399. Harry G Frankfurt, ‘Freedom of the Will and the Concept of a Person’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-399)
400. Gerald Dworkin, ‘The Concept of Autonomy’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-400)
401. Harry Frankfurt, ‘’Freedom of the Will and the Concept of a Person’ (1971) 68 Journal of Philosophy 5. [↑](#footnote-ref-401)
402. Gary Watson, ‘Free Agency’ (1975) 72 Journal of Philosophy 205. [↑](#footnote-ref-402)
403. James Stacey Taylor (ed) *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005). [↑](#footnote-ref-403)
404. Harry Frankfurt, ‘Identification and Wholeheartedness’ in F. Schoeman (ed), Responsibility, Character and the Emotions (Cambridge University Press 1987). [↑](#footnote-ref-404)
405. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989) [↑](#footnote-ref-405)
406. Gary Watson, ‘Free Agency’, (1975) 72 Journal of Philosophy 205. [↑](#footnote-ref-406)
407. Harry Frankfurt, ‘The Faintest Passion. Proceedings and Addresses of the American Philosophical Association’ (1992) 66 Newark, Del.: American Philosophical Association 5, referenced in John Martin Fischer, ‘Recent Work on Moral Responsibility’ (1999) 110 1 Ethics 93. [↑](#footnote-ref-407)
408. Michael E Bratman, ‘Identification, Decision and Treating as a Reason’ (1996) 24 Philosophical Topics 1, referenced in John Martin Fischer, ‘Recent Work on Moral Responsibility’ (1999) 110 1 Ethics 93. [↑](#footnote-ref-408)
409. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-409)
410. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-410)
411. Irving Thalberg, ‘Hierarchical Analyses of Unfree Action’ (1978) 8 Canadian Journal of Philosophy 211. Watson also refers to the judgment deriving from the id or the super-ego in his discussion of the distinction between valuing and desiring. (n 397). [↑](#footnote-ref-411)
412. Wright Neely, ‘Freedom and Desire’ (1974) 83 Philosophical Review 32. [↑](#footnote-ref-412)
413. Freud recognised the possible conflict between the three elements of personality – the id, ego and superego which together resulted in complex behaviour. [↑](#footnote-ref-413)
414. Irving Thalberg, ‘Hierarchical Analyses of Unfree Action’ (1978) 8 Canadian Journal of Philosophy 211. [↑](#footnote-ref-414)
415. See 4.4. [↑](#footnote-ref-415)
416. Marilyn Friedman, ‘Autonomy and the Split-Level Self’ (1986) 24 Southern Journal of Philosophy 19. [↑](#footnote-ref-416)
417. Marilyn Friedman, ‘Autonomy and the Split-Level Self’ (1986) 24 Southern Journal of Philosophy 19. [↑](#footnote-ref-417)
418. Friedman’s alternative approach is included in the section on Relational Autonomy later in the chapter. [↑](#footnote-ref-418)
419. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-419)
420. Irving Thalberg, ‘Hierarchical Analyses of Unfree Action, in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-420)
421. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-421)
422. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-422)
423. This historical approach of Christman is addressed later in the chapter in the section on Relational Autonomy as a version of the procedural approach which more directly addresses cultural and historical influences. [↑](#footnote-ref-423)
424. Robert Noggle, ‘The Public Conception of Autonomy and Critical Self-reflection’ (1997) Vol. XXXV The Southern Journal of Philosophy 495. [↑](#footnote-ref-424)
425. Robert Noggle, ‘The Public Conception of Autonomy and Critical Self-reflection’ (1997) Vol. XXXV The Southern Journal of Philosophy 495. [↑](#footnote-ref-425)
426. Timothy Kolke, ‘Procedural vs. Substantive Theories of Autonomy: Reinterpreting the Connection Between Good Values and Autonomy’ (2003) Winter Prolegomena 1.Kolke refers specifically to Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in *Relational Autonomy*, (Oxford University Press 2000), p 94. [↑](#footnote-ref-426)
427. Timothy Kolke, ‘Procedural vs. Substantive Theories of Autonomy: Reinterpreting the Connection Between Good Values and Autonomy’ (2003) Winter Prolegomena 1. [↑](#footnote-ref-427)
428. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in *Relational Autonomy*, (Oxford University Press 2000), referenced in Timothy Kolke, ‘Procedural vs. Substantive Theories of Autonomy: Reinterpreting the Connection Between Good Values and Autonomy’ (2003) Winter Prolegomena 1. [↑](#footnote-ref-428)
429. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in *Relational Autonomy*, (Oxford University Press 2000), p 95, referenced in Timothy Kolke, ‘Procedural vs. Substantive Theories of Autonomy: Reinterpreting the Connection Between Good Values and Autonomy’ (2003) Winter Prolegomena 1. [↑](#footnote-ref-429)
430. Susan Wolf, *Freedom Within Reason* (Oxford University Press 1993). [↑](#footnote-ref-430)
431. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989), 137-151 [↑](#footnote-ref-431)
432. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) 148. [↑](#footnote-ref-432)
433. i.e. more than the higher level volitions or second order desires of Dworkin and Frankfurt. [↑](#footnote-ref-433)
434. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-434)
435. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) where Wolf considers objections to her approach. [↑](#footnote-ref-435)
436. Paul Benson, ‘Freedom and Value’ (1987) 84 Journal of Philosophy 465. [↑](#footnote-ref-436)
437. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy’ James Stacey Taylor (ed), in *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005). [↑](#footnote-ref-437)
438. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy’ James Stacey Taylor (ed), in *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005). [↑](#footnote-ref-438)
439. This distinction is discussed later in the chapter, in particular the work on this by Tom O’Shea. [↑](#footnote-ref-439)
440. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-440)
441. See s.24 Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. [↑](#footnote-ref-441)
442. John Mizzoni, *Ethics: The Basics*, (Wiley-Blackwell 2010). [↑](#footnote-ref-442)
443. It may be that the number of states parties to an international treaty could be evidence of the acceptance of norms by the international community. Christina M Cerna, ‘Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts’ (1994) 16 4 Human Rights Quarterly 740. [↑](#footnote-ref-443)
444. John Mizzoni, *Ethics: The Basics*, (Wiley-Blackwell 2010). [↑](#footnote-ref-444)
445. See Chapter 3. [↑](#footnote-ref-445)
446. Martha C. Nussbaum,’Women’s Bodies: Violence, Security, Capabilities’ (2005) 6:2 Journal of Human Development 167. DOI:10.1080/14649880500120509 [↑](#footnote-ref-446)
447. Which Peter Nelsen refers to as a weak form of relational autonomy in Peter Nelsen, ‘Oppression, Autonomy and the Impossibility of the Inner Citadel’ (2010) 29 Stud. Philos Educ. 333. [↑](#footnote-ref-447)
448. Paul Benson, ‘Free Agency and Self-Worth’ (1994) 91 Journal of Philosophy 650. [↑](#footnote-ref-448)
449. And here it can be understood why Nelsen referred to it as a form of relational autonomy in that it is inextricably linked to what others may demand in the form of explanations for one’s actions. Peter Nelsen, ‘Oppression, Autonomy and the Impossibility of the Inner Citadel’ (2010) 29 Stud. Philos Educ. 333. [↑](#footnote-ref-449)
450. Paul Benson, ‘Free Agency and Self-Worth’ (1994) 91 Journal of Philosophy 650. [↑](#footnote-ref-450)
451. Robin Dillon, ‘Toward a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52. [↑](#footnote-ref-451)
452. Trudy Govier, ‘Self-Trust, Autonomy, and Self-Esteem’ (1993) 8 1 Hypatia 99. [↑](#footnote-ref-452)
453. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’, (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-453)
454. S. Kristinsson, ‘The limits of neutrality: toward a weakly substantive account of autonomy’, (2000) 30 2 Canadian Journal of Philosophy 257. [↑](#footnote-ref-454)
455. Robert Noggle, ‘The Public Conception of Autonomy and Critical Self-reflection’, (1997) Vol. XXXV The Southern Journal of Philosophy 495. [↑](#footnote-ref-455)
456. Victoria Chico *Genomic Negligence: An Interest in Autonomy as the Basis for Novel Negligence Claims Generated by Genetic Technology (*Routledge-Cavendish 2011). [↑](#footnote-ref-456)
457. Diana T Meyers, ‘Personal Autonomy and the Paradox of Feminine Socialization’ (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-457)
458. David van Mill, ‘Rationality, Action and Autonomy in Hobbes’s *Leviathan*’, (1994) Vol XXVII 2 Polity. [↑](#footnote-ref-458)
459. David van Mill, ‘Rationality, Action and Autonomy in Hobbes’s *Leviathan*’, (1994) Vol XXVII 2 Polity. [↑](#footnote-ref-459)
460. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-460)
461. David McCarthy, ‘Why sex selection should be legal’, (2001) 27 Journal of Medical Ethics 302. [↑](#footnote-ref-461)
462. Jeffrie G. Murphy, ‘Moral Reasons and the Limitation of Liberty’ (1999) 40 William & Mary Law Review 947. [↑](#footnote-ref-462)
463. Marina A L Oshana, ‘The Misguided Marriage of Responsibility and Autonomy’ (2002) 6 The Journal of Ethics 261. [↑](#footnote-ref-463)
464. Samuel Scheffler, in Derek Parfit, *On What Matters,* Volume One (Oxford University Press 2011) Introduction. [↑](#footnote-ref-464)
465. ‘Autonomy in Moral and Political Philosophy’, in *Stanford Encyclopaedia of Philosophy* at <http://plato.stanford.edu/entries/autonomy-moral/> (accessed 17 February 2011) [↑](#footnote-ref-465)
466. Sigurdur Kristinsson opines that Kant goes too far in claiming that self-legislation has to be grounded in pure reason. S Kristinsson, ‘The limits of neutrality: toward a weakly substantive account of autonomy’, (2000) 30 2 Canadian Journal of Philosophy 257. [↑](#footnote-ref-466)
467. Opposing David Hume’s argument that ethics depended on sentiment and feelings rather than reason. In John Mizzoni, *Ethics: The Basics* (Wiley-Blackwell 2010). [↑](#footnote-ref-467)
468. Thomas E Hill, Jr, ‘The Kantian Conception of Autonomy’, in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-468)
469. Thomas E Hill, Jr, ‘The Kantian Conception of Autonomy’, in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) [↑](#footnote-ref-469)
470. Thomas E Hill, Jr, ‘The Kantian Conception of Autonomy’, in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) [↑](#footnote-ref-470)
471. Onora O’Neill, ‘Kant: Rationality as Practical Reason’, in Alfred J Mele and Piers Rawling (eds), *The Oxford Handbook of Rationality,* (Oxford University Press 2004). [↑](#footnote-ref-471)
472. Onora O’Neill, ‘Kant: Rationality as Practical Reason’, in Alfred J Mele and Piers Rawling (eds), *The Oxford Handbook of Rationality,* (Oxford University Press 2004). [↑](#footnote-ref-472)
473. Alison M Jaggar, *Feminist Politics and Human Nature*, (Totowa, NJ: Rowman & Allenheld, 1983), Annette Baier, ‘Cartesian Persons’, in *Postures of the Mind: Essays on Mind and Morals* (Minneapolis: University of Minnesota Press, 1985). [↑](#footnote-ref-473)
474. Lorraine Code, *What Can She Know?*, (Ithaca, N.Y.: Cornell University Press 1983). [↑](#footnote-ref-474)
475. Tom O'Shea, O’Shea T, ‘Autonomy and Orthonomy’, (2014) May Journal of Moral Philosophy

<<http://booksandjournals.brillonline.com/content/journals/10.1163/17455243-4681051;jsessionid=6f43toc6d1098.x-brill-live-02>> accessed 10 March 2016 [↑](#footnote-ref-475)
476. Philip Pettit and Michael Smith, ‘Freedom in Belief and Desire’, (1996) Vol. 93 No. 9 The Journal of Philosophy 429. [↑](#footnote-ref-476)
477. This also appears to agree with Susan Wolf’s external conditional of rationality that the woman must be able to cognitively and normatively appreciate the world for what it is. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) [↑](#footnote-ref-477)
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479. Gary Watson, ‘Free Agency’, (1975) 72 Journal of Philosophy 205 in Tom O'Shea, (forthcoming) 'Autonomy and Orthonomy' Journal of Moral Philosophy [↑](#footnote-ref-479)
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481. See Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) and Paul Benson, ‘Freedom and Value’ (1987) 84 Journal of Philosophy 465. [↑](#footnote-ref-481)
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483. Ibid [↑](#footnote-ref-483)
484. John Christman,’ Autonomy and Personal History’, (1991) 21 1 Canadian Journal of Philosophy 1. [↑](#footnote-ref-484)
485. Philip Pettit and Michael Smith, ‘Freedom in Belief and Desire’ (1996) Vol. 93 No. 9 The Journal of Philosophy 429. [↑](#footnote-ref-485)
486. Philip Pettit and Michael Smith, ‘Freedom in Belief and Desire’ (1996) Vol. 93 No. 9 The Journal of Philosophy 429. [↑](#footnote-ref-486)
487. John Harris, ‘Justice and Equal Opportunities in Health Care’ (1999)13 5 Bioethics 392. [↑](#footnote-ref-487)
488. Derek Parfit, *On What Matters*, Volume One, (Oxford University Press 2011). [↑](#footnote-ref-488)
489. Lene Koch, ‘An Irrational Choice?’ (1990) Reproductive and Genetic Engineering: Journal of International Feminist Analysis 3. [↑](#footnote-ref-489)
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492. Julian Savulescu and Richard W Momeyer, ‘Should informed consent be based on rational beliefs?’ (1997) 23 Journal of Medical Ethics 282. [↑](#footnote-ref-492)
493. Victoria Chico *Genomic Negligence: An Interest in Autonomy as the Basis for Novel Negligence Claims Generated by Genetic Technology (*Routledge-Cavendish 2011). [↑](#footnote-ref-493)
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513. Catriona Mackenzie and Natalie Stoljar, *Autonomy Refigured,* in C Mackenzie and N Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*, (New York: Oxford University Press, 2000). [↑](#footnote-ref-513)
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524. Paul Benson, ‘Autonomy and Oppressive Socialization’, (1991) 17 Social Theory and Practice 385. [↑](#footnote-ref-524)
525. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-525)
526. Gerald Dworkin *The Theory and Practice of Autonomy* (Cambridge University Press 1988). Andrea Westlund is not satisfied with Dworkin’s proposed connection between critical reflection and autonomy and requires more as to the form the relevant reflection should take. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-526)
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528. Diana Meyers, ‘Self, Society, and Personal Choice’, (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-528)
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530. Diana T Meyers, ‘Personal Autonomy and the Paradox of Feminine Socialization’ (1987) 84 11 The Journal of Philosophy 619. In this article Meyers refers to feminine socialisation but her arguments apply equally to oppressive socialisation which instils in girls the belief that they are the inferior gender. [↑](#footnote-ref-530)
531. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy’ in James Stacey Taylor (ed), *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005). [↑](#footnote-ref-531)
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535. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000). [↑](#footnote-ref-535)
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537. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in C Mackenzie and N Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*, (New York: Oxford University Press, 2000). [↑](#footnote-ref-537)
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543. Robin Dillon, ‘Toward a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52. [↑](#footnote-ref-543)
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545. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52. [↑](#footnote-ref-545)
546. See Annette Baier, ‘Cartesian persons’ In *Postures of the mind: Essays on mind and morals* (University of Minnesota Press 1985), Lorraine Code ‘Second Persons’ in Marsha Hanen, Kai Neilsen (eds), *Science, morality, and feminist theory*, (University of Calgary Press 1987). [↑](#footnote-ref-546)
547. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’, (1992) Vol. 7 no. 1 Hypatia 52. [↑](#footnote-ref-547)
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549. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’, (1992) Vol. 7 no. 1 Hypatia 52. [↑](#footnote-ref-549)
550. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’, (1992) Vol. 7 no. 1 Hypatia 52. [↑](#footnote-ref-550)
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552. Trudy Govier, ‘Self-Trust, Autonomy, and Self-Esteem’ (1993) 8 1 Hypatia 99. [↑](#footnote-ref-552)
553. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-553)
554. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-554)
555. Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. Of course Robert Noggle would not agree with this as it goes further than the initial critical reflection required under the traditional procedural account. See n.36. [↑](#footnote-ref-555)
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557. S. Kristinsson, ‘The limits of neutrality: toward a weakly substantive account of autonomy’, (2000) 30 2 Canadian Journal of Philosophy 257. [↑](#footnote-ref-557)
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559. Marina A L Oshana ‘The Misguided Marriage of Responsibility and Autonomy’ (2002) 6 The Journal of Ethics 261. [↑](#footnote-ref-559)
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569. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression and Gender* (Oxford University Press 2014). [↑](#footnote-ref-569)
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571. See Gita Aravamudan’s book, ‘*disappearing daughters: the tragedy of female foeticide*’, (Penguin Books India 2007) which exposes the practice of sex selective abortion through investigative reporting. [↑](#footnote-ref-571)
572. Services offered over the internet which will test blood samples sent in to specialist clinics through the post. [↑](#footnote-ref-572)
573. Gita Aravamudan, *disappearing daughters: The Tragedy of Female Foeticide*, (Penguin Books India 2007) [↑](#footnote-ref-573)
574. A Sen, ‘Missing women—revisited: Reduction in female mortality has been counterbalanced by sex selective abortions’ (2003) 327 (7427) British Medical Journal 1297. [↑](#footnote-ref-574)
575. Vrinda Nabar, *Caste as Woman* (New Delhi: Penguin Books 1995). [↑](#footnote-ref-575)
576. Valerie Hudson, professor of political science at Brigham Young University, referenced in Chris Arsenault, ‘Millions of aborted girls imbalance India’, Al Jazeera English, 30 Oct 2011 [↑](#footnote-ref-576)
577. This figure represents the number of females per 1000 males in the population. Data taken from the Census of India 2011 [↑](#footnote-ref-577)
578. Maria Caspani, ‘UK government to probe report of sex-selective abortions-paper’ *Thomson Reuters Foundation* (London, 16 January 2014), Steve Connor, ‘The lost girls: Illegal abortion widely used by some UK ethnic groups to avoid daughters ‘has reduced female population by between 1,500 and 4,700’ *The Independent* (London, 15 January 2014) 1, 4-6, 9. [↑](#footnote-ref-578)
579. See Chapter 1, para 1.4.7 for a more detailed discussion of the role of religion. [↑](#footnote-ref-579)
580. Sonia Bhalotra and Tom Cochrane, ‘Where Have All the Young girls Gone? Identification of Sex Selection in India’, (December 2010) Discussion Paper No. 5381, IZA. [↑](#footnote-ref-580)
581. Anima Haldar, Urmila Dasgupta, Sumitra Sen and Kirshna Laskar, ‘Influence of Social Correlates on Gender Preference and Small Family Norm: An Impression from West Bengal’, (2011) 57 1 The Journal of Family Welfare 79. [↑](#footnote-ref-581)
582. Julia Bard, ‘Women Against Fundamentalism and the Jewish Community’, (1992-1993) (4), WAF Journal 3 in Samia Bano, ‘In the Name of God? Religion and Feminist Legal Theory’, in Davies, Margaret and Munro, Vanessa E. (eds), *The Ashgate Research Companion to Feminist Legal Theory*, (Ashgate 2013). [↑](#footnote-ref-582)
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584. Serene J Khader, *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011). [↑](#footnote-ref-584)
585. S J Khader, ‘Must theorising about adaptive preferences deny women’s agency?’ (2012) 29 4 Journal of applied philosophy: journal of the Society for Applied Philosophy 302. [↑](#footnote-ref-585)
586. Sara S Mitter, *Dharma’s daughters: Contemporary Indian women and Hindu culture*, (Rutgers University Press 1991). [↑](#footnote-ref-586)
587. Serene J Khader, *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011). [↑](#footnote-ref-587)
588. Serene J Khader, *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011). [↑](#footnote-ref-588)
589. Gerald Dworkin, ‘The Concept of Autonomy’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) and Harry G Frankfurt, ‘Freedom of the Will and the Concept of a Person’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). Dworkin refers to higher and lower level desires, Frankfurt to first order and second order desires. To avoid confusion I have used Dworkin’s references throughout. [↑](#footnote-ref-589)
590. See Chapter 4, para 4.3.1. [↑](#footnote-ref-590)
591. Catriona Mackenzie argues that Christman’s version of the procedural approach could be regarded as relational as he recognises that an agent is socially embedded and historically situated. Catriona Mackenzie, ‘Relational Autonomy, Normative Authority and Perfectionism’, (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-591)
592. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-592)
593. Marilyn Friedman, ‘Autonomy and the Split-Level Self’ (1986) 24 Southern Journal of Philosophy 19. [↑](#footnote-ref-593)
594. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000). [↑](#footnote-ref-594)
595. Marilyn Friedman, *Autonomy, Gender, Politics*, (Oxford University Press 2003). [↑](#footnote-ref-595)
596. Natalie Stoljar, ‘Autonomy and the Feminist Intuition, in C Mackenzie and N Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self* (New York: Oxford University Press 2000). [↑](#footnote-ref-596)
597. Paul Benson, ‘Feminist Commitments and Relational Autonomy’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-597)
598. See Diana Tiietjens Meyers in ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014) where she outlines her Double Axis Thesis. [↑](#footnote-ref-598)
599. Diana Meyers, ‘Self, Society and Personal Choice’ (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-599)
600. Diana T. Meyers, ‘Personal Autonomy and the Paradox of Feminine Socialization’, (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-600)
601. Tore Sandven, ‘Autonomy, Adaptation, and Rationality – A Critical Discussion of Jon Elster’s Concept of “Sour Grapes,” Part I’ (1999) 29 1 Philosophy of the Social Sciences 3. [↑](#footnote-ref-601)
602. John Harris and Kirsty Keywood, ‘Ignorance, Information and Autonomy’ (2001) 22 Theoretical Medicine 415. [↑](#footnote-ref-602)
603. Also see later discussions of Mackenzie’s Three Dimensions of Autonomy which makes a clear causal link between external constraints and the ability to self-govern. [↑](#footnote-ref-603)
604. Sonya Charles, ‘How Should Feminist Autonomy Theorists Respond to the Problem of Internalised Oppression?’ (2010) 36 3 Social Theory and Practice 409. [↑](#footnote-ref-604)
605. Paul Benson, ‘Freedom and Value’ (1987) 84 Journal of Philosophy 465. [↑](#footnote-ref-605)
606. Susan Wolf, *Freedom Within Reason* (Oxford University Press 1993). [↑](#footnote-ref-606)
607. Susan Wolf, ‘Asymmetrical Freedom’, (1980) 77 3 The Journal of Philosophy 151. [↑](#footnote-ref-607)
608. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000). [↑](#footnote-ref-608)
609. Diana Tietjens Meyers, ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-609)
610. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy* (New York: Oxford University Press 2000) 95. [↑](#footnote-ref-610)
611. Diana Tietjens Meyers, ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-611)
612. Paul Benson, ‘Feminist Commitments and Relational Autonomy’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-612)
613. Serene J. Khader, *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011). [↑](#footnote-ref-613)
614. Marina Oshana, ‘Personal Autonomy and Society’ (1998) 29 1 Journal of Social Philosophy 81. [↑](#footnote-ref-614)
615. This is picked up again in Mackenzie’s Three Dimensions of Autonomy, in particular the recognition that connections to others affect these attitudes to oneself. This more holistic approach to relational autonomy is discussed further in the last section of this case study. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-615)
616. This appears to overlap with the competence skills advocated by Meyers: Diana T. Meyers, ‘Personal Autonomy and the Paradox of Feminine Socialization’, (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-616)
617. Stephen Darwall, ‘Two kinds of respect’, (1977) 88 Ethics 36. [↑](#footnote-ref-617)
618. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52. [↑](#footnote-ref-618)
619. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy in James Stacey Taylor (ed), *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005). [↑](#footnote-ref-619)
620. See for example Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483 who requires the woman to subject herself to self-criticism and be prepared to engage in a critical dialogue. [↑](#footnote-ref-620)
621. Catriona Mackenzie, Relational Autonomy, Normative Authority and Perfectionism’ (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-621)
622. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-622)
623. The Central Human Capabilities are identified by Martha Nussbaum in ‘Symposium on Amartya Sen’s philosophy: 5 Adaptive preferences and women’s options’, (2001) Economics and Philosophy 67 doi:10.1017/SO266267101000153. These are listed in Appendix Four. [↑](#footnote-ref-623)
624. Marina Oshana, ‘Commitment to Autonomy is a Commitment to Feminism’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-624)
625. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-625)
626. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy in James Stacey Taylor (ed), *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy* (Cambridge University Press 2005), Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52, Andrea Westlund, ‘Selflessness and Responsibility for Self: Is Deference Compatible with Autonomy?’ (2003) 112 4 The Philosophical Review 483. [↑](#footnote-ref-626)
627. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-627)
628. Diana Tietjens Meyers, ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-628)
629. For a strong relational autonomy approach see Marina Oshana, ‘Personal Autonomy and Society’ (1988) 29 1 Journal of Social Philosophy 81. [↑](#footnote-ref-629)
630. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-630)
631. The predicted completed fertility of urban women went from 2.3 during the 1985-1994 period to just over 2 during the 1995-2006 period. [↑](#footnote-ref-631)
632. Claus Portner podcast CSDEoutloud, Centre for Studies in Demography and Ecology, University of Washington and paper March 2014 ‘Sex Selective Abortions, Fertility, and Birth Spacing’. [↑](#footnote-ref-632)
633. Portner analysed birth histories from India’s National Family Health Surveys for Hindu women from 1972 to 2006. [↑](#footnote-ref-633)
634. Claus Portner podcast CSDEoutloud, Centre for Studies in Demography and Ecology, University of Washington and paper March 2014 ‘Sex Selective Abortions, Fertility, and Birth Spacing’. [↑](#footnote-ref-634)
635. Ibid at 51. [↑](#footnote-ref-635)
636. John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy,* (Oxford University Press 1989). [↑](#footnote-ref-636)
637. Marilyn Friedman, ‘Autonomy and the Split-Level Self’, 24 Southern Journal of Philosophy 19. [↑](#footnote-ref-637)
638. Gerald Dworkin, ‘The Concept of Autonomy’ in John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy,* (Oxford University Press 1989) and Harry G Frankfurt, ‘Freedom of the Will and the Concept of a Person’ in John Christman (ed), *The Inner Citadel: Essays on Individual Autonomy*, (Oxford University Press 1989). [↑](#footnote-ref-638)
639. Diana Meyers, ‘Self, Society and Personal Choice’ (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-639)
640. Natalie Stoljar, ‘Autonomy and the Feminist Intuition’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford University Press 2000). [↑](#footnote-ref-640)
641. Diana Tietjens Meyers, ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-641)
642. See Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52 and Stephen Darwall, ‘Two kinds of respect’, (1977) 88 Ethics 36. [↑](#footnote-ref-642)
643. Paul Benson, ‘Feminist Intuitions and the Normative Substance of Autonomy’, in James Stacey Taylor (ed) *Personal Autonomy: New Essays on Personal Autonomy and Its Role in Contemporary Moral Philosophy (*Cambridge University Press 2005) but also see Catriona Mackenzie, Relational Autonomy, Normative Authority and Perfectionism’ (2008) 39 4 Journal of Social Philosophy 512 who refers to requiring the woman to be able to have a sense of a rightful claim to normative authority. [↑](#footnote-ref-643)
644. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression and Gender* (Oxford University Press 2014). [↑](#footnote-ref-644)
645. Jason Abrevaya, ‘Are There Missing Girls in the United States? Evidence from Birth Data’, (2009) 1(2) American Economic Journal: Applied Economics 1. The empirical analysis is based on federal birth data, California birth data and census data as there are no official statistics on the use of sex-determination tests and gender-selection techniques and Sunita Puri, Vincanne Adams, Susan Ivey, Robert D Nachtigall, ‘”There is such a thing as too many daughters, but not too many sons”: A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States’ (2011) 72 Social Science & Medicine 1169. [↑](#footnote-ref-645)
646. Lauren L Vogel, ‘Sex selection migrates to Canada’ (2012) 184 3 Canadian Medical Association Journal E163-4 and Joel G Ray, David A Henry, Marcelo L Urquia, ‘Sex ratios among Canadian liveborn infants of mothers from different countries’, (2012) Vol. 184, Issue 9, Canadian Medical Association Journal DOI:10.1503/emaj.120165. [↑](#footnote-ref-646)
647. Jason Abrevaya, ‘Are There Missing Girls in the United States? Evidence from Birth Data’, (2009) 1(2) American Economic Journal: Applied Economics 1. [↑](#footnote-ref-647)
648. Jason Abrevaya, ‘Are There Missing Girls in the United States? Evidence from Birth Data’, (2009) 1(2), American Economic Journal: Applied Economics 1. [↑](#footnote-ref-648)
649. Sunita Puri, Vincanne Adams, Susan Ivey, Robert D Nachtigall, ‘”There is such a thing as too many daughters, but not too many sons”: A qualitative study of son preference and fetal sex selection among Indian immigrants in the United States’ (2011) 72 Social Science & Medicine 1169. [↑](#footnote-ref-649)
650. Sylvie Dubuc and David Coleman, ‘An Increase in the Sex Ratio of Births to India-Born Mothers in England and Wales: Evidence for Sex-Selective Abortion’, (2007) 33 2 Population and Development Review 383. [↑](#footnote-ref-650)
651. D A Coleman & S Dubuc, ‘The fertility of ethnic minorities in the UK, 1960s-2006’, (2010) 64:1 Population Studies: A Journal of Demography 19 [↑](#footnote-ref-651)
652. Claire Newell and Holly Watt, ‘Sex-selection abortions are ‘widespread’’, *The Telegraph* (London 24 February 2012). [↑](#footnote-ref-652)
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654. Maria Caspani, ‘UK government to probe report of sex-selective abortions-paper’, *Thomson Reuters Foundation (*16 January 2014). [↑](#footnote-ref-654)
655. John Christman, ‘Autonomy: A Defense of the Split-level Self’, (1987) 25 Southern Journal of Philosophy 281. [↑](#footnote-ref-655)
656. This refers to Friedman’s integration model. Marilyn Friedman, ‘Autonomy and the Split-Level Self’ (1986) 24 Southern Journal of Philosophy 19. [↑](#footnote-ref-656)
657. Diana Meyers, ‘Self, Society, and Personal Choice’ (1987) 84 Journal of Philosophy 619. [↑](#footnote-ref-657)
658. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-658)
659. Discussed in Diana Tietjens Meyers, ‘The Feminist Debate over Values in Autonomy Theory’ in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-659)
660. Robin S Dillon, ‘Towards a Feminist Conception of Self-Respect’ (1992) 7 1 Hypatia 52, Trudy Govier, ‘Self-Trust, Autonomy, and Self-Esteem’ (1993) 8 1 Hypatia 99, Paul Benson, ‘Free Agency and Self-Worth’ (1994) 91 Journal of Philosophy 650. [↑](#footnote-ref-660)
661. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’, in Andrea Veltman and Mark Piper (eds), *Autonomy, Oppression, and Gender* (Oxford University Press 2014). [↑](#footnote-ref-661)
662. Jason Abrevaya, ‘Are There Missing Girls in the United States? Evidence from Birth Data’, (2009) 1(2) American Economic Journal: Applied Economics 1. Also see Sylvie Dubuc and David Coleman, ‘An Increase in the Sex Ratio of Births to India-Born Mothers in England and Wales: Evidence for Sex-Selective Abortion’, (2007) 33 2 Population and Development Review 383. [↑](#footnote-ref-662)
663. Gerald Dworkin, ‘The Concept of Autonomy’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989) and Harry G Frankfurt, ‘Freedom of the Will and the Concept of a Person’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-663)
664. Susan Wolf, ‘Sanity and the Metaphysics of Responsibility’ in John Christman (ed), *The Inner Citadel, Essays on Individual Autonomy* (Oxford University Press 1989). [↑](#footnote-ref-664)
665. Caroline Ramazanoglu with Janet Holland, *Feminist Methodology: Challenges and Choices* (Sage Publications 2004). [↑](#footnote-ref-665)
666. Caroline Ramazanoglu with Janet Holland, *Feminist Methodology: Challenges and Choices* (Sage Publications 2004). This is explored further in Chapter 4 where the relational autonomy approaches are addressed. [↑](#footnote-ref-666)
667. There have been anecdotes of some tribal villages in India who are choosing to give birth to girls. Initially alert to the possibility of girls being regarded more positively, on further investigation it was discovered that it was thought more important to give birth to a girl, not because the girl is regarded as equal, rather because she can be prostituted at a very young age and start to earn money for the family. Andrew MacAskill and Bibhudatta Pradhan, ‘Sold for Sex at Puberty Village Girls’ Fate in India’, (*Bloomsberg Business*, 18 September 2013) <http://www.bloomberg.com/news/articles/2013-09-18/sold-for-sex-at-puberty-village-girls-fate-in-wealthier-india> accessed 7 January 2016. [↑](#footnote-ref-667)
668. Kim Atkins, ‘Autonomy and the Subjective Character of Experience’, (2000) 17 1 Journal of Applied Philosophy 71. [↑](#footnote-ref-668)
669. Catriona Mackenzie, ‘Relational Autonomy, Normative Authority and Perfectionism’, (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-669)
670. Catriona Mackenzie, ‘Relational Autonomy, Normative Authority and Perfectionism’, (2008) 39 4 Journal of Social Philosophy 512. [↑](#footnote-ref-670)
671. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’ in Veltman A and Piper M (eds), *Autonomy, Oppression and Gender* (Oxford University Press 2014). [↑](#footnote-ref-671)
672. Lorraine Code, “Second Persons”, in *What Can She Know? Feminist Theory and the Construction of Knowledge,* (Ithaca, N.Y.: Cornell University Press 1991) in C Mackenzie and N Stojar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self*, (New York: Oxford University Press 2000). [↑](#footnote-ref-672)
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674. Marilyn Friedman, book review of Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism* (Routledge, New York 1997), (1999) 109 3 Ethics 668. [↑](#footnote-ref-674)
675. Marilyn Friedman, book review of Uma Narayan, *Dislocating Cultures: Identities, Traditions, and Third World Feminism*, (Routledge, New York 1997), (1999) 109 3 Ethics 668. [↑](#footnote-ref-675)
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679. Khader, Serene J., *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011). [↑](#footnote-ref-679)
680. G D Ravindran, ‘Medical ethics education in India’ (2008) V 1, Indian Journal of Medical Ethics 18. [↑](#footnote-ref-680)
681. Abhishek Jain, ‘India’s Medical Council Needs Urgent Reforms, But the Proposed Draft Bill is Flawed’, *The Wire* (21 October 2016) <https://thewire.in/74605/indias-medical-council-needs-urgent-reforms-proposed-draft-bill-isnt-free-flaws/> [↑](#footnote-ref-681)
682. G D Ravindran, ‘Medical ethics education in India’ (2008) V 1 Indian Journal of Medical Ethics 18. [↑](#footnote-ref-682)
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686. Catriona Mackenzie, ‘Three Dimensions of Autonomy: A Relational Analysis’ in Veltman A and Piper M (eds), *Autonomy, Oppression and Gender* (Oxford University Press 2014). [↑](#footnote-ref-686)
687. The most recent referred to in the thesis are The Census of India for 2011 and the National Family Health Survey (NFHS-3) India 2005-06. [↑](#footnote-ref-687)
688. Khader, Serene J., *Adaptive Preferences and Women’s Empowerment* (Oxford University Press 2011), [↑](#footnote-ref-688)
689. within the legislative framework. [↑](#footnote-ref-689)
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693. One example is the organisation of women’s *shibirs* in the late 70’s which were camps used by rural women’s organisations to campaign for land redistribution. Radha Kumar, ‘Contemporary Indian Feminism’ (1989) No 33 Feminist Review 20. [↑](#footnote-ref-693)
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