

**SEX SELECTION: ETHICAL ISSUES FOR THE
INDIVIDUAL, FAMILY AND SOCIETY**

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To all those who prevented me from sinking.

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ABSTRACT

This thesis examines the ethical issues raised by sex selection for the individual, family and society. Techniques like sperm sorting and preimplantation genetic diagnosis have made it possible for parents to select the gender of their offspring even before they are born. These new reproductive technologies do raise some important ethical questions for us. This thesis briefly considers the morality of the technology being used to achieve sex selection before going on to discuss if there is anything morally objectionable about sex selection, in and of itself. In this thesis I argue that parents ought not to place value on gender when it comes to their children since gender is a morally irrelevant factor in the parent-child relationship and parental love should not be conditioned by characteristics like gender. Hence, this preference of theirs regarding sex cannot be justified. I discuss the right to reproduction, how it applies to sex selection and the limits on procreative liberty. I argue that a right to reproduction, reproductive freedom or reproductive autonomy does not entail a right to sex selection. I also discuss how sex selection could impact children, children's right to an open future and make a case for sex selection as a harm to the child. I analyse Kant's 'Means and Ends' formula and apply it to sex selection, thus concluding that the choice of a particular trait, like gender by a parent undermines the principle of respect for individuals and thus instrumentalises the value of children for their parents. The thesis also looks at discrimination and the impact of sex selection on women and society. With reference to the current situation in India and China where sex selection has led to horrific consequences I discuss the implications of the current situation for society today.

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1. Introduction

It was while taking a module on 'Current Developments in Health Care Ethics' during my Masters at Leeds that I first heard of this new reproductive technology called sex selection. For me, it had only been a few months in England; I was still in that stage where I'd convert pounds to rupees before making any purchase. That day, that class, the mention of this innovative technology left me thinking about innumerable things. Most of all, it got me thinking of where I came from and the particular relevance of this technology in the context of my social system. As a woman from India, I was intrigued and baffled by it. In the months that followed, I found myself getting deeply interested in the moral issues that surrounded this technology; in the years that followed, my questions, my concerns had gone beyond the terrain of an Indian problem and ethic. This thesis is the culmination of that interest and the journey I undertook because of it.

Sex selection is a new reproductive technology. At their heart, the reproductive technologies change the activities and processes by which children come into existence, and they intimately involve individuals beyond the traditional mother

and father in those activities and processes. As a result of these changes, the reproductive technologies potentially affect the relationships of the people involved in reproduction and the nature and significance of the activities and processes of reproduction themselves. At issue in controversies over the reproductive technologies are exactly what changes these technologies do or might bring about, whether these changes are good or bad and what should be done about them.

A common objection raised against new reproductive technologies is that it is unnatural. The Vatican objects to unnatural procreation. One response is to call the Catholic prohibition a naturalistic fallacy, that only what is natural is right. A second response is to claim that manipulation is an important aspect of human nature – that it may even be a duty to use human ingenuity to harness nature for the benefit of mankind, to interfere with nature so as to battle with diseases and accidents and prevent premature death. Another objection is against the use and discarding of embryos, invoking the moral status of the embryo. Other objections skirt around designer babies, eugenics, the safety and risks involved in these new technologies and the treatment of women and children in ways that are considered

unethical. Some of these objections have been discussed in detail in the chapters that follow.

In this thesis, I will be formulating the problem for the moral permissibility of trait selection, sex selection in particular. Besides introducing the topic of sex selection and briefly discussing the medical technology now available for it, I will be concentrating on the moral difficulties that arise with sex selection, the reasons why sex selection raises moral issues. Even though my main concern is with sex selection, I do refer to the selection of other traits as well that might seem as problematic or less than selection of sex.

With advances in medical science and technology, it is now possible for parents to select some kind of traits they would like their children to have. The question whether parents should be allowed to select the traits of their children has sparked off debates in medical, legal, social and philosophical circles. Techniques like preimplantation genetic diagnosis (PGD) have made selection of some traits a reality. Now, the selection of some traits like gender has generated discussion amongst bioethicists and in society in general. In countries like India and China

where there is a marked preference for males, or for that matter a developed country like the USA where there still exists a strong general preference for boys as first borns, the permissibility of sex selection would have bearing on important philosophical concepts like duty, harm, equality, rights, liberty, the value of human beings and also justice.

This thesis is mainly about the ethical issues that sex selection raises for the individual, the family and society. The 'individual' in question here can be the parent, the parents and the child who lie at the centre of this debate, those who stand to gain or lose because of the innovative techniques now available for sex selection, by 'family' I refer to the parent-child relationship and the way sex selection can/may/does influence it, and by 'society' I wish to study the impact of sex selection on a broader scale, going out of the homes and relationships of the individuals directly involved in it.

There are two important questions that need to be considered when analysing the problem of sex selection and these are as follows:

- a) The question regarding the techniques being used to achieve the end, that of sex selection and whether the available technology raises any ethical problems
- b) The second and more important of the questions, one that I am particularly interested in, is analysing the motive, the intention of parents as they go to a clinic to ask for a child of a particular gender, if there is anything morally problematic with this demand regarding their future child and whether it has any ethical bearings on the parent-child relationship and the duties that parents have towards their children.

Also, trait selection in general raises concern for us because it involves decisions which are being made for another human life, another person in the future. However, we as a society allow parents to exercise their right to procreative liberty and make decisions for their children all the time. How then, is this scenario different? Trait selection might be different, and this thesis will try to ascertain if it is in fact so, and whether it presents us with a problem regarding any

harmful impact on the future child. In order to restrict the individual liberty of people, it needs to be shown that some kind of harm is resulting from their actions. Again, harm can be assessed on two different levels: one, on the level of the individual and the other, on the level of society.

When I started researching this topic, I realised that much of the literature concentrated on ethical issues raised by sex selection *as* a new reproductive technology and the morality of the methods used for sex selection seemed to dominate the discussion. In this thesis, I want to explore the issue from outside of the purview of merely the technology being used. Here, I would like to point out that my thesis does not focus as much on policy regulations or recommendations regarding sex selection or even the technology behind it, but more on parents and children - children who are born, unborn and even those not yet conceived. This thesis is also about a social climate where parents and children share a relationship based on love.

The concept of choice lies at the heart of this thesis. The array of new choices that has opened up to parents and prospective parents through advances in medical

technology and through genetics needs to be taken into consideration. I am interested in the way these choices influence parents and the decisions made by them that limit or expand the choices that will be available to their children as they grow up to be adults themselves. The new possibilities throw open a question before us: how should we think in ethical terms of parents' choices with regard to their children's future lives?

The next chapter explores the meaning of sex selection, briefly discussing the history of sex selection and traces the origins of the interest that man has had in it. It also looks at the motivations for sex selection, some of the reasons that people give for wanting to go for it. Chapter 2 also looks at how sex selection is possible, the technology available today to make it happen - a discussion of the methods, success and failure rates and how popular they are. I discuss the law on sex selection, not only the current UK law but I also consider laws in the US, India and China regarding sex selection. In this context, I also look at different cases that have come up in the UK courts with a comparative study of what the situation is like in the US, India and China. I want the thesis to examine the situation in different socio-cultural settings and look at both the developed and the developing worlds.

Most people opposed to sex selection have concerns about the morality of embryo selection, Preimplantation Genetic Diagnosis or PGD. Chapter 3 answers the question: What is wrong with sex selection - is the technology being used morally objectionable? I discuss and evaluate different positions on the moral status of the embryo and argue for a gradualist position concluding that the early embryo used in embryo selection or PGD does not have a moral status and that discarding it or not implanting it would not be unethical.

Chapter 4 is a theoretical analysis and account of parenthood and will be applied to questions that arise in later chapters. I examine parenthood as a role from which rights and duties stem. I look at different theories for parental rights and duties, and critique the 'Children as Property' claim. In this chapter, I also examine parenthood as a relationship of love, arguing that parents ought not to place value on gender when it comes to their children since gender is a morally irrelevant factor in the parent-child relationship and parental love should not be conditioned by characteristics like gender. Hence, their preference cannot be justified.

Chapter 5 focusses on Reproductive Autonomy and Harm. In this chapter, I discuss the concepts of autonomy, liberty, reproductive freedom, the importance of reproductive autonomy. I discuss the right to reproduction, how it applies to sex selection and the limits on procreative liberty. I argue that a right to reproduction, reproductive freedom or reproductive autonomy does not entail a right to sex selection. I also discuss how sex selection could impact children, children's right to an open future, involving the concept of harm.

Chapter 6 is a discussion of Kantian ethics, in particular the 'Means and Ends' formula. As I apply it to sex selection, I discuss how this could lead to commodification. I argue that the choice of a particular trait, like gender by a parent undermines the principle of respect for individuals and thus instrumentalises the value of children for their parents. This chapter also looks at discrimination and the impact of sex selection on women and society. I discuss the current situation in India and China where sex selection has led to horrific consequences and the implications of the current situation for society today.

2. History, Technology, Law and Cases

The question about determination of sex and other characteristics is a very complex one indeed and before I go on to discuss the ethical issues raised by it, it is important to know more about its background. It is important to know what pre-selection of sex means, its origin and its history, the reasons why couples want to opt for it, the techniques available to achieve it, the risks involved in the techniques employed for sex selection, the legal stance regarding sex selection, the most recent cases that have called for judgement with regard to these new technologies, a cross cultural survey of sex selection involving a discussion of the Indian situation, and, in general, everything that sets the stage for the reality of the problem that I am set to examine.

2.1 History of sex selection

‘Sex selection’ is not a recent phenomenon. We might have the technology to achieve it now, and that definitely is new but human interest in it is not. ‘Sex selection’ ordinarily refers to a choice by parents regarding the sex of their

children. Gender of the unborn has always been a matter of curiosity for the parents to be, their family and friends. In fact, it is not merely restricted to those who have been visited by the stork; people have also been interested in it when contemplating their future, a happy life with children, for most.

Many historical documents present us with evidence that humans have always tried to actively influence the sex of their offspring. The earliest document that mentions this subject is a Chinese manuscript dating back to 4,400 years.¹ A document from the ancient Egyptian era indicates that if a pregnant woman's face was of greenish hue, she would have a son, thus suggesting their concern with the gender of their offspring.² There is also some evidence that the Greeks prescribed methods to ensure that the child born was of the gender they wanted. Levin³ discusses many of these theories presented by a number of Greek philosophers. Anaxagoras argued that the male partner could determine the sex of the child, the right testicle containing the male semen and the left the female. In the eighteenth century, French noblemen seemed to have followed his theory in getting their left testicle removed to guarantee a male heir. Hippocrates believed that men and

¹ Gordon, M.J., (1958), 'The Control of Sex', *Scientific American* Nov., p.87

² Nentwig, M.R., (1981), 'Technical Aspects of Sex Selection' in H.B.Holmes et al (ed.) *The Custom-made Child? Women-centered Perspectives* (Clifton,NJ;Humana Press), p.181

³ Levin, R.J., (1987), 'Human Sex Pre-selection', *Oxford Reviews of Reproductive Technology* 9, p.162

women secreted different substances and the mixture of these substances gave rise to males, females or hermaphrodites. Aristotle's theory was that females were formed because of the lack of their parents' heat. Females were supposed to have grown in the left uterine horn and males in the right. Aristotle, therefore, advised women to think male and lie on their right side after intercourse to focus generative heat there since he believed that was the source of male children.⁴

Hence, the historical evidence we have seems to suggest that sex selection has been in the running for a long time now. In the next section I discuss the different methods of sex selection that are and have been in practice.

2.2 Sex selection: methods and techniques

The methods of sex selection range from preconceptual, periconceptual, to postconceptual, abortion and infanticide. Discussions of sex selection usually tend to hover around 'embryo selection' which refers to a process of taking eggs from

⁴ Nentwig, M.R., (1981), 'Technical Aspects of Sex Selection' in H.B.Holmes et al (ed.) *The Custom-made Child? Women-centered Perspectives* (Clifton, NJ: Humana Press), p.181

a female, fertilizing them in vitro, i.e. outside of the woman's body. and then letting the fertilized egg divide to the 8 or 16-cell blastomere⁵ stage. After this, the egg is tested for the presence of certain undesirable genes or defects. If such defects are present, the embryo is discarded. Usually, several cultures are done at a time, and the process continues until a defect less embryo can be found.⁶

2.2.1 Preconceptual method of sex selection

The most reliable preconceptual method of sex selection is flow cytometric separation of X and Y sperm, which is 85% effective at producing a girl and 65% effective at producing a boy.⁷ The sperm sorting technique pioneered at the Genetics & IVF Institute in Fairfax, Virginia involves no loss of human life at any stage. What is involved, rather, is the separation of male sperm from female sperm. This, then, is a technique for separating sperm carrying a Y chromosome (which would create a male embryo) from sperm carrying an X chromosome

⁵ A 'blastomere' is a cell produced during the cleavage of a fertilized egg.

<http://www2.merriam-webster.com/cgi-bin/mwmedn1m>

⁶ Menezo, V.J., Bellec, V. et al, (1997), ' Embryo Selection by IVF, Co-culture and Transfer at the Blastocyst Stage in Case of Translocation', *Human Reproduction* 12, pp.2802-2803

⁷ Fugger, E.F, Black, S.H., Keyvanfar, K., Schulman, J.D., (1998), ' Births of Normal Daughters After Microsort Sperm Separation and Intrauterine Insemination, In-vitro Fertilisation, or Intracytoplasmic Sperm Injection', *Human Reproduction* 13, pp. 2367-2370

(which would create a female embryo). The process involves adding a fluorescent dye to the sperm which enables sperm sorting, since "girl sperm" carry more DNA than "boy sperm." When the sperm is sent through a flow cytometer in which a laser beam causes the dyed DNA to glow, sperm that would create a girl should produce a brighter glow than sperm that would result in a boy.⁸ According to Robert Winston, Professor of Fertility Studies, Imperial College, London, the risks involved in sperm sorting or this commercially trademarked technique called MicroSort is that it may change the nature of the DNA itself and result in long term damage to the children born.⁹

2.2.2 Periconceptual method of sex selection

Periconceptual choice of sex is based on the observation that conception close to ovulation is more likely to result in a boy. Other "folk" methods which include positioning during intercourse, vaginal douching e.t.c., are commonly employed

⁸ Sutton, A.H., (2002), 'Sex Selection Via "Sperm-Sorting": A Morally Acceptable Option?', The Center for Bioethics and Human Dignity, available at http://www.cbhd.org/resources/reproductive/sutton_2002-11-04.htm

⁹ Mayor, S., (2001), ' Specialists Question the Effectiveness of Sex Selection Technique', *British Medical Journal* 323(7304), p. 67

throughout the world but the effectiveness of periconceptual methods has not been well documented.¹⁰

2.2.3 Postconceptual method of sex selection

Postconceptual medically assisted sex selection is possible by in vitro fertilisation (IVF) and Preimplantation genetic diagnosis (PGD), or by employing prenatal testing (chorionic villus sampling, amniocentesis, ultrasound) and termination of pregnancy, or infanticide. Preimplantation genetic diagnosis (PGD) which requires IVF and intracytoplasmic injection is a means to genetically analyze a single cell from an 8-cell embryo in order to determine more accurately if it is 'normal'.¹¹ So, in short, Pre-implantation Genetic Diagnosis or PGD is a complex test which examines the genes of a newly conceived embryo, and can detect certain genetic or chromosomal abnormalities. The test is done at a very early stage after conception - before the embryo has even had a chance to implant or settle into the lining of its mother's womb (hence the term preimplantation). In

¹⁰ Carson, S.A.,(1988), 'Sex Selection: The Ultimate in Family Planning', *Fertility and Sterility* 50, pp.16-19

¹¹ Savulescu, J., (1999). 'Sex Selection: The Case For', *Medical Journal of Australia* 171, pp..373-375

order for this to be possible the embryo must be produced in the laboratory using the well-established techniques of in vitro fertilization (what are commonly called 'test tube babies'). Only those embryos which are found to be healthy are then put back into the mother.¹² PGD was originally developed to sort out human embryos with inherited diseases, and is one of the most reliable and popular methods which provide an alternative that does not involve abortion. However, some risks of failure run in this procedure too.

Last year, the BBC reported that the Genetics unit at London's Guy's Hospital developed a new technology called Preimplantation Genetic Haplotyping (PGH).¹³ The test looks at the whole DNA of a cell rather than focusing on a specific mutation in one gene, making it quicker to identify diseases in embryos. The new "DNA fingerprint" test of a cell can spot from a genetic signature that a condition, such as cystic fibrosis, is present, the scientists behind it say. PGH involves testing parents and any existing children or relations carrying or with a genetic condition, to identify the faulty units of chromosomal DNA. Using this information, it is possible to take a cell from the embryo, treat it in the lab to

¹² 'Q&A: Preimplantation genetic diagnosis', *BBC News*, 10 May 2006, available at <http://news.bbc.co.uk/2/hi/health/4758217.stm>

¹³ Ryan, C., (2006), 'Embryo Test 'Offers Parents Hope'', *BBC News*, 19 June, available at <http://news.bbc.co.uk/1/hi/health/5079802.stm>

create more copies of its genetic material and then look for markers that show an embryo carries two copies of these faulty units, or haplotypes. This would mean it would be affected by the condition. The technique has been used to test for Duchenne Muscular Dystrophy (DMD). It primarily affects boys, who inherit the disease through their mothers. Families with a history of the condition are currently offered embryo sex testing and no male embryos are implanted, as it is not possible to tell if they have the condition - even though they have a 50/50 chance of being affected. But with the new test, doctors are able to see if an embryo carries the tell-tale DMD haplotypes seen in its parents, meaning more embryos can be selected for use. The Guy's team have applied to the Human Fertilisation and Embryology Authority for licences to test for other genetic diseases, such as fragile X- syndrome which affects one in 4,000 boys and myotonic dystrophy, which affects upwards of one in 8,000.

2.3 Motivations for sex selection

There are various reasons for which couples want to make use of the methods and technology available for sex selection. In order to be able to assess the morality of

sex selection, I think it is important to know the motivations that guide would be parents to choose the gender of their offspring.

2.3.1 Avoidance of disease or a genetic disorder

Most people wanting to make use of these techniques are those who want to avoid having a child with a particular disease. One of the most common reasons given by couples going in for sperm sorting or PGD is to avoid sex-linked genetically inherited disorders. There are a number of serious disorders which are linked to a particular sex and are genetically inherited and most of them can prove fatal. Sex-linked disorders such as haemophilia and some muscular dystrophies are caused by genes located on the X chromosome and have severe impact on one's quality of life, causing suffering and pain, physical and mental impairment and often cutting short the patient's life. Colour blindness which is also a sex-linked disorder is neither serious nor fatal. Women are less prone to X linked disorders because they have a normal X chromosome which usually compensates for the abnormal one while males do not.¹⁴ A sex-related genetic blood disorder,

¹⁴ Mahoney, M.J.,(1997), 'Genetic Diseases' in Barry.L.Zaret et al(ed.) *The Yale University School of Medicine Patient's Guide to Medical Tests* (Houghton Mifflin Co.), pp. 500-505

haemophilia, which mostly affects the males leads to constant internal bleeding which can without treatment cripple a person's life with severe pain, joint damage, disability and early death. Tragically, only 25% of the people suffering from haemophilia receive treatment.¹⁵

A genetic disorder, or genetic disease is a disease caused, at least in part, by the genes of the person with the disease. A number of genetic disorders are due to the change of a single gene, resulting in an enzyme or other protein not being produced or having altered functionality, they are called monogenic disorders. The change can be trivial and relatively harmless in its effects, such as colour blindness, or lethal such as Tay-Sachs. Other disorders, though harmful to those afflicted with them, appear to offer some advantage to carriers; as in carriers of sickle cell anaemia and thalassemia appearing to have enhanced resistance to malaria. Several hereditary diseases are sex-linked, meaning that they afflict one sex much more commonly than the other because the mutation is located on the X (or, rarely, on the Y) chromosome.

¹⁵ World Federation of Haemophilia, Frequently Asked Questions, available at <http://www.wfh.org/index.asp?lang=EN>

The inheritance pattern of single gene disorders falls mainly into four categories:

- a) Autosomal dominant in which only one mutated copy of the gene is needed for a person to be affected by an autosomal dominant disorder. Each affected person usually has one affected parent. There is a 50% chance that a child will inherit the mutated gene. An example of this is Huntington's chorea.¹⁶
- b) Autosomal recessive in which two copies of the gene must be mutated for a person to be affected by an autosomal recessive disorder. An affected person usually has unaffected parents who each carry a single copy of the mutated gene (and are referred to as carriers). Two unaffected people who each carry one copy of the mutated gene have a 25% chance with each pregnancy of having a child affected by the disorder. Diseases include cystic fibrosis, sickle cell anemia, Tay Sachs disease.¹⁷
- c) X-linked dominant which are caused by mutations in genes on the X chromosome. Only a few disorders have this inheritance pattern. Females are more frequently affected than males, and the chance of passing on an X-linked dominant disorder differs between men and women. The sons of a man with an X-linked dominant disorder will not be affected, and his

¹⁶ Firth, H.V., Hurst, J.A., Hall, J.G., (2005), *Oxford Desk Reference :Clinical Genetics* (Oxford:Oxford University Press), pp.6-7

¹⁷ Ibid., pp.8-9

daughters will all inherit the condition. A woman with an X-linked dominant disorder has a 50% chance of having an affected daughter or son with each pregnancy. An example of this is X linked hypophosphatemia.¹⁸

- d) X-linked recessive which are caused by mutations in genes on the X chromosome. Males are more frequently affected than females, and the chance of passing on the disorder differs between men and women. The sons of a man with an X-linked recessive disorder will not be affected, and his daughters will carry one copy of the mutated gene. With each pregnancy, a woman who carries an X-linked recessive disorder has a 50% chance of having sons who are affected and a 50% chance of having daughters who carry one copy of the mutated gene. Diseases include haemophilia, Duchenne Muscular Dystrophy.¹⁹

Embryo selection or PGD is generally used to test for single-gene defects like cystic fibrosis. If a family knows that they are at risk for a disease like cystic fibrosis, Huntington's disease, Sickle Cell Anaemia, or Muscular Dystrophy, they may opt to use PGD in order to have a child that will not be at risk for these diseases.²⁰ Cystic fibrosis (CF) is the most common genetic disorder affecting the lungs, sweat glands and the digestive system. The symptoms of CF usually

¹⁸ Ibid., pp.32-33

¹⁹ Ibid., pp. 34-35

²⁰ 'Risk-Free Babies', *Newsweek*, 11 March 2002, p. 58

develop during early childhood. Both lungs and pancreas produce abnormally viscous mucus. This mucus begins to build up and starts to clog the opening to the pancreas and the lungs. The mucus in the lungs can become a growth medium for bacteria, resulting in chronic respiratory infections and eventual permanent damage to the lung tissue. As lung function deteriorates, CF patients develop pulmonary hypertension and eventually a failure of the right side of the heart. Death usually occurs from severe infection or heart failure. These thick secretions also obstruct the pancreas, preventing digestive enzymes from reaching the intestines to help break down and absorb food. The disease can be diagnosed by symptoms such as a high salt concentration in a baby's sweat or by genetic testing. Males are also frequently sterile because of the obstruction or absence of the vas deferens. Daily chest physiotherapy and aerosol breathing treatments are very commonly prescribed for CF treatment. Typical physical therapy involves manual chest percussion (pounding). CF patients are typically hospitalised somewhat regularly, often every 6 months depending on the severity of the case. Patients often have intravenous antibiotics. Due to advances in medical treatment, the median life expectancy of a newborn with cystic fibrosis increased from 4 years (in the 1960s) to 32 years today. These procedures include the intake of digestion enzymes, nutritional supplements, percussion and postural drainage of the lungs, improved antibiotics and inhalation of aerosols containing medication.²¹

²¹ Firth, H.V., Hurst, J.A., Hall, J.G., (2005), *Oxford Desk Reference :Clinical Genetics*

Huntington's disease is characterised by abnormal body movements called chorea and loss of memory. The symptoms include loss of cognitive ability (thinking, speaking), changes in personality, jerking movements of the face and body in general and unsteady walking. These symptoms develop into dementia and cognitive decline (not mental retardation which is an older term referring to the lack of development of mental ability rather than loss of it.) and an advanced form of jerking, chorea. It usually takes between 10-25 years for the disease to kill someone, and it is invariably fatal. The disease onset is in the 30s and 40s in most cases. One interesting fact about the disease is that it contributes to a chemical imbalance that leads many victims to commit suicide. This is also believed in part to be a result of the position in which sufferers find themselves. There is no treatment to help stop the progression of the disease. Fortunately, there are treatments available to help reduce some symptoms of the disease. Unfortunately, these treatments aggravate other symptoms like bradykinesia and dystonia (very slow movement and stiffness). There are also treatments to control abnormal movements and emotional symptoms like antidepressants, sedatives, and tranquilizers.²²

(Oxford:Oxford University Press), pp. 292-294

²² Ibid., pp.354-356

Sickle cell anaemia is a disorder in which red blood cells may change shape under certain circumstances. This causes the cells to become stuck in capillaries which deprives the downstream tissues of oxygen and causes a restriction in blood supply which results in necrosis. The disease usually occurs in periodic painful attacks, eventually leading to damage of internal organs, stroke, or anemia, and usually resulting in decreased lifespan. Most patients with sickle cell anemia have intensely painful episodes. People who are known carriers of the disease often undergo genetic counseling before they have a child.²³

Duchenne muscular dystrophy is characterised by rapidly progressive muscle weakness which starts in the legs and pelvis and later affects the whole body. Boys with DMD develop weak muscles because the muscle fibers that were present at birth are destroyed. Symptoms usually appear in males between 1 and 6 years of age, however females, on rare occasions, can develop the disease. By age 10, braces may be required for walking, and by age 12, most children require use of a wheelchair for mobility. Bones may develop abnormally, causing skeletal deformities of the spine and other areas due to contractions. Muscular weakness and skeletal deformities contribute to frequent breathing disorders. The deterioration of the cardiac muscle of the heart wall occurs in almost all cases.

²³ Ibid., p.335

Intellectual impairment occurs in approximately 30% of Duchenne's patients, but does not worsen as the disorder progresses. There is no known cure for Duchenne muscular dystrophy. Treatment is aimed at control of symptoms to maximize the quality of life and activity is encouraged.²⁴

One should be aware however of the fact that although an embryo may test negative for a certain disease and will not grow up to develop that disease, when the adult reproduces, he or she could still pass on genes to his or her offspring that contribute to that particular disease. For example, a woman possesses the **aa** double recessive genotype for a certain recessive disease, so we know that she will develop it later in life. Her husband's genotype is **Aa**, and thus he will not develop the disease. Fertilized embryos from this couple could be either **Aa** or **aa**. Embryo selection will eliminate all the embryos that are **aa**, so the **Aa** embryos will grow up healthy, but will still be able to pass on a defective **a** gene to their offspring.²⁵ Thus, embryo selection is a one-generation solution only.

²⁴ Ibid., pp.308-311

²⁵ Campbell, N. A, Reece, J.B., (2002), *Biology* 6th ed. (SF,London: Benjamin Cummings), pp.235-247

However, embryo selection or PGD, like in vitro fertilization, is still a very lengthy and expensive process. Many trials may be necessary before a blastomere can be found that does not possess the undesirable genes. If multiple trials are required to obtain a viable fertilized egg, the process will involve the discarding of embryos that do not possess the desired genetic makeup. In addition, it is very important to realize that embryo selection is only truly useful for single-gene defects. When one gets into a discussion of testing embryos for specific traits, like height, and attempting to select an embryo because it will produce a taller child, the process becomes dicey. The problem is that many traits, like height, are influenced by more than one gene, it isn't feasible to test for all those particular genes.

2.3.2 To balance one's family

Moving on from selection for reasons centring around avoiding disease or picking for a certain trait that normally counts as a disability, in the last one or two decades there has been a talk about sex selection for 'family balancing'. Couples who already have one or two daughters want to use the technology to have a son because they feel that their family would become balanced or in other words,

complete, with children of both the sexes. There were appeals made to courts in the U.K by couples who wanted to go in for pre-selection of sex for reasons of balancing their family but in accordance with the current HFEA Act, which I discuss in the next section, they were denied permission.

2.3.3 A matter of cultural preference

The sorts of reasons I have discussed in the above two sections are more common in the Western countries. Going to the East, especially in Asian countries like India and China or parts of Africa, where sex selection is usually practised in the form of foeticide and infanticide, people have other kinds of reasons for wanting a child of a particular sex. In these countries, there is a strong preference for males for reasons pertaining to culture, traditions and religion.

In China, certain religious rituals can be performed only by a male offspring.²⁶ So is it in India, where funeral rights like lighting the pyre of the dead parent,

²⁶ Warren, M.A.,(1999), ‘ Sex Selection : Individual Choice or Cultural Coercion?’ in H. Kuhse and P. Singer (ed.) Bioethics: An Anthology (Oxford: Blackwell Publishers Ltd.), p.138

amongst the Hindus, is not granted to a daughter, a duty which can be fulfilled only by a son.²⁷ In a family where there are no sons, the body may be lit by another male relative but not by the deceased's daughter. In fact, females are not even permitted to go to the funeral ground.

In India, the society being predominantly patriarchal, the family name gets passed on from the father to the son. People bearing only daughters feel that there is nobody to carry on the lineage. Daughters are even denied property rights. In the Hindu Undivided/Joint family the eldest male member or 'karta' is empowered to make all the decisions concerning the family business, property, marrying off the children, paying off the family's debts and all others regarding the family members' welfare.²⁸

According to the Hindu Succession Act 1956, women do not get a share in their ancestral property. The property gets passed on from the karta to his son and in the event of his having no offspring or only daughters, to his wife or the next

²⁷ Limbu, R., (2000), 'Breaking Barriers from the Bench', *Asia Times*, 3 March, available at <http://www.atimes.com/ind-pak/BC03Df01.html>

²⁸ Chaturvedi, S. and Kumar, R., (2000), 'Law Panel Proposes Equal Share in Ancestral Property for Hindu Women', *The Indian Express*, 12 May

eldest male member in the family. Currently, women in India have no rights by birth. They can claim an equal share in their parent's self-acquired property and can demand dwelling rights in their parental house only in the event of their divorce, widowhood or desertion by husband.²⁹

Hence, in Asian countries, there are numerous socio-religious reasons for preferring a son over a daughter.³⁰ To have a daughter is economically straining as well. It is the duty of the parent to marry off his children. To marry off a girl the parents have to pay a huge dowry to the boy's family. So, from the time a girl is born her parents start saving up for her dowry. Everyday one comes to hear of numerous incidents in India related to atrocities on women like bride-burning, beating, extreme physical and mental abuse, torture, domestic violence and sometimes even murder, just for the reason that her parents didn't pay the boy and his family the promised sum of money or because they are unable to meet their increasing demands after marriage.

²⁹ *The Hindu Succession Act* (1956), Act No. 30, Sections 1-31, available at <http://www.indianlegaleagle.com/bareacts/hsa/01.htm>

³⁰ Mallik, R., (2002), 'A Less Valued Life: Population Policy and Sex Selection in India', Center for Health and Gender Equity, available at <http://www.genderhealth.org/pubs/MallikSexSelectionIndiaOct2002.pdf>

On the other hand, sons can contribute to their families' support early in life, by working in the fields, or in a factory, in an industry, or make a living by selling goods, something that women cannot. The schooling of men is always given priority over that of women. They inherit property on their parents' deaths, bring brides home and give their children their families' names and status. Where parents have no public financial support, they have to depend on their sons for maintenance in their old age, since daughters leave their parental home at marriage and, if unmarried, lack means to support dependents. In the light of such a social setup, parents more often than not voice a preference for the male sex.

2.3.4 A matter of personal preference

Lastly, there is a class of parents who want a child of a particular sex as a matter of personal preference. Just as some people prefer the colour white over black, some parents prefer girls over boys and so they want their child to be of the sex they like. Some couples prefer bringing up a girl rather than a boy because they would like to personally experience that. They may feel that boys are naughtier or more difficult to control and hence, prefer bringing up a girl.

Some of the reasons discussed above might seem serious and compelling while some others might seem trivial and frivolous to opt for sex selection. In this thesis, I will argue that some of the reasons cited above provide us with grounds that make sex selection morally permissible while others do not.

2.4 Law and Cases

2.4.1 In the United Kingdom

At present, medically assisted sex selection for non-medical reasons is banned in the U.K, Canada and Australia.³¹ The British law states that parents can only select the sex of their child if there is a substantial risk that gender-related hereditary or genetic diseases could be passed on. The most reliable technique which can be employed for sex selection, Preimplantation genetic diagnosis (PGD) is regulated in the U.K by the Human Fertilisation and Embryo Authority (HFEA) which says that it should be used only for detecting serious, life-threatening

³¹ Jansen, R.P.S., (1998), 'Evidence Based Ethics and the Regulation of Reproduction', *Human Reproduction* 9, pp. 2068-2075

conditions and not for minor genetic abnormalities.³² The Authority in 1993 made it clear that PGD for sex selection for social reasons would not be licensed.³³ The selection of certain traits in a child using new reproductive technologies has been controversial in the UK courts recently.

In 2003, a UK appeal court judgement overturned a ban on the use of tissue typing treatment to help save the life of a terminally ill boy. The appeal court allowed the parents of a boy with beta thalassaemia to go ahead with PGD to preselect an embryo that could be a bone-marrow donor for their terminally ill son. Raj and Shahana Hashmi wanted to undergo in vitro fertilisation treatment and PGD to screen embryos to provide a genetic match for Zain, their 4-year-old son. In December 2001, the Hashmis were the first couple in the UK to be approved by the Human Fertilisation and Embryology Authority (HFEA) to use embryo selection by tissue typing to create a suitable bone marrow donor. However, after two failed attempts at obtaining a suitable match, a high court ruled that the HFEA had acted outside its powers. The three appeal court judges overruled the High Court decision from December 2002 which said the HFEA did not have the power to license the technique under current legislation. The HFEA welcomed the

³² *Human Fertilisation and Embryology Act (1990)* (Norwich: HMSO), C.37, available at www.hmso.gov.uk/acts/acts1990/Ukpga_19900037_en_1.htm

³³ Human Fertilisation and Embryology Authority, *Revised Code of Practice (2001)*, 5th edition, available at www.hfea.gov.uk/

decision and said it did not fear that the ruling would open the way to so-called "designer babies", with preselected features such as eye colour.³⁴

The judges were unanimous in ruling that the case hinged on the interpretation of two provisions of the 1990 Human Fertilisation and Embryology Act: whether the proposed treatment could be described as providing treatment services "for the purpose of assisting women to carry children", and whether it involved a practice to determine "the suitability of an embryo to be placed in a woman". The judges ruled that these clauses did not have to be interpreted in the very narrow way claimed by the campaign group, Comment on Reproductive Ethics (CORE) which had brought the case against the HFEA. In the Hashmi case, the couple needed assistance in order to have a child that was healthy and a tissue match for Zain; the 'suitability' of the embryo in their case depended on these same characteristics, which would together ensure both the well-being of the new child and of the whole family. It is within the powers of the HFEA, the law lords decided, to weigh the ethical issues involved in each licence application and decide whether or not to allow treatment.

³⁴ Ashraf, H., (2003). 'UK appeal court upholds embryo selection ruling' , *The Lancet* 361 (9366), p.1354

In reaching their conclusions, the judges also took account of the 1989 Warnock report and the subsequent White Paper, which led to the 1990 Act. Both mention the potential for the development of treatments with much wider application than simply assisted reproduction for infertile couples. It does not seem reasonable, concluded the judges, for parliament to sanction such research but prohibit its application in medical practice. The judgement also points out the very specific nature of the licence granted for the Hashmi's treatment: it applies only to their case, and the HFEA has insisted that every case will be considered on its individual merits.³⁵ Based on the appeal court judgement in the Hashmi case, in 2005, the House of Lords ruled unanimously that the practice of tissue typing could be authorised by the Human Fertilisation and Embryology Authority (HFEA).³⁶

A contrast to the Hashmi case was that of the Whittakers who had asked regulators to allow doctors to use IVF techniques to select a baby who would provide a perfect tissue match for their three-year-old son Charlie. He had a rare blood disorder and required a perfect match so he could undergo a bone marrow

³⁵ 'Appeal Court judgement in the Hashmi case', *The Human Genome*, 23 May 2003, available at <http://genome.wellcome.ac.uk/doc%5Fwtd020987.html>

³⁶ Andalo, D., (2005), 'Law Lords Back 'Designer Babies'', 28 April, available at <http://society.guardian.co.uk/health/news/0,8363,1472256,00.html>

transplant and live a normal life. The Human Fertilisation and Embryology Authority (HFEA) ruled the procedure could not be carried out by doctors in the UK. Charlie Whitaker was suffering from Diamond Blackfan Anaemia (DBA) which meant his body didn't produce enough red blood cells. His only chance of living a normal life was if bone marrow could be donated by a sibling who was a perfect match.³⁷

In June 2003, Jamie Whittaker was born in Sheffield but the whole procedure took place in the United States. Doctors in the UK then planned to use stem cells from the blood in Jamie's umbilical cord to "kickstart" Charlie's body into fighting his condition - and creating a healthy supply of red blood cells. Jamie was genetically matched, while still an IVF embryo, to his brother. He was one of the nine embryos produced by his parents. Two tissue-matched embryos were selected and implanted in his mother's womb. Jamie was the one that survived. The HFEA had ruled that there were both legal and ethical uncertainties: the selection technique required one cell from the embryo being removed by biopsy and tested. Suzi Leather, the HFEA chairman was quoted in the Guardian as saying: "We don't know what the longterm consequences of that will be for the

³⁷ English, V., Romano-Critchley G. et al, (2002), 'Ethics Briefings', *Journal of Medical Ethics* 28(6), pp.384-385

child being created".³⁸ Critics suggest this ruling is in contradiction with the Hashmi case.

There is an important distinction between the two cases. Zain was suffering from a genetic disorder, which under current HFEA legislation made it ethically permissible to carry out a biopsy on any new embryos to ensure the new baby was not suffering from the same disease. One cell was sufficient to test both whether there was a risk of the genetic disorder and whether there was a perfect tissue match. In the Whittaker case, Charlie's disease was not hereditary. Thus Jamie's embryo was subjected to a biopsy, with all its accompanying risks, not for the benefit of Jamie, but for his brother. HFEA rulings distinguish between biopsies where there is a significant risk of a serious disease (the Hashmis), and one where there would be no benefit to the embryo, but to another person (Charlie).³⁹

In 2000, the Mastertons from Dundee were at the centre of a controversy when every clinic in Britain refused to allow them to choose the sex of their child. The couple, who had four sons had lost their three year old daughter, Nicole in an

³⁸ 'The Price of Life', The Guardian, 20 June 2003, available at <http://www.guardian.co.uk/genes/article/0,2763,981115,00.html>

³⁹ Ibid.

accident and were wanting to use PGD to have another child but were insistent on having a female only. They were adamant that they were not trying to replace Nicole but only wanted to get the “female dimension” back into their family again. Their case sparked a national debate when they, unsuccessfully, tried to overturn the British ban on sex selection. With no luck with the HFEA, the Mastertons traveled to Italy to undergo PGD but were unable to produce any female embryos. They donated their male embryo to a childless couple.⁴⁰

2.4.2 In the United States

It's interesting to note that the American Society for Reproductive Medicine (ASRM) is of the opinion that sex selection by sperm sorting is acceptable for reasons of gender variety. A background paper for the President's Council on Bioethics points out the ambivalence in the ASRM's ruling that allows sex selection by sperm sorting but not PGD. The ASRM seems to have kept vacillating between concerns about gender bias and concerns for the embryo, asserting that the “discarding of embryos based on their sex surely deserves more

⁴⁰ Seenan, G., (2001), ' 'Designer Baby' Parents Give Away Male Embryo', 5 March, available at <http://www.guardian.co.uk/genes/article/0,2763,446411,00.html>

consideration”⁴¹. The Genetics and IVF Institute where MicroSort is performed has decided to use it only for family balancing and avoidance of genetically inherited sex-linked diseases. The Ethics Committee of the American Society for Reproductive Medicine, in May 2001, has allowed MicroSort to be performed for gender selection if certain guidelines are adhered to.⁴² In line with such rulings for nonmedical reasons, there are some people in the U.K. too who feel that legal restriction on sex selection should be lifted and the HFEA should relax its laws.

In the US, a case that attracted a lot of criticism was that of a deaf lesbian couple who sought a sperm donor with a family history of deafness in order to have a child they hoped would be deaf. They were criticised for deliberately creating a deaf child, for denying their child a hearing aid, and for raising the child in a homosexual household. News of the couple choosing to have a deaf child was only revealed after the birth of their son Gauvin.⁴³ With PGD now, the selection of a desired deaf child which would suit the needs and environment of its parents, has become a reality.

⁴¹ President’s Council on Bioethics, (2002), *Staff Background Paper: Thinking About Sex Selection*, available at <http://bioethics.gov/background/background2.html>

⁴² Ethics Committee of the American Society for Reproductive Medicine, (2001), ‘Preconception Gender Selection for Nonmedical Reasons’, *Fertility and Sterility* 75(5), pp.861-864

⁴³ Spriggs, M., (2002), ‘Lesbian Couple Create a Child Who is Deaf Like Them’, *Journal of Medical Ethics* 28(5), p. 283

2.4.3 In China

China has national legislation prohibiting sex selection, in particular ultrasound tests to reveal the sex of the foetus. However, the law is hardly enforced and often flouted.⁴⁴ In June 2004, the Institute of Philosophy of the Chinese Academy of Social Sciences co-organised a workshop with the Research Center for Bioethics of Peking Union Medical College, to propose improved legal controls on sex selection techniques. Criminal sanctions were proposed for clinics that unlawfully identify foetal sex and/or perform sex based abortions. Limiting the sale of diagnostic ultrasound and other equipment to licensed medical facilities was proposed, with quotas on use.⁴⁵

2.4.4 In India

In 1988, the Indian state of Maharashtra enacted the Regulation and Use of Pre-Natal Diagnostic Techniques Act to prevent misuse for detection of female

⁴⁴ French, H.W., (2005), 'As Girls "Vanish", Chinese City Battles Tide of Abortions', *New York Times* 17 February, p.A3

⁴⁵ Institute of Philosophy, Chinese Academy of Social Sciences, (2004). *Action Recommendations on Correcting the Birth Sex Ratio Imbalance* (Beijing: Chinese Academy of Social Sciences)

foetuses. In 1994, the Indian Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, which drew on some provisions of this law. The focus of the 1994 Act is on regulation and punishment of misuse of “pre-natal diagnostic techniques,” which include procedures and tests. “Pre-natal diagnostic procedures” mean “all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood or any tissue of a pregnant woman” for pre-natal tests (section 3(i)). Such tests mean those “conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked disease” (section 3(k)).

The Act appears comprehensive in regulation of genetic counselling centres, clinics and laboratories, and physicians, medical geneticists and others, including patients and their family members. “No person conducting a pre-natal diagnostic procedure shall communicate to the pregnant woman concerned or her relatives the sex of the foetus, by words, signs or in any other manner” (section 5(2)). However, the Act governs only treatment of a “pregnant woman” and diagnosis of “a foetus”. The Act does not appear to govern new techniques such as PGD, nor sperm-sorting preconception techniques.

On coming into effect in 1996, the Act was hardly enforced by the central and state authorities, and was openly disregarded. In 2000, a petition for enforcement was filed in the Supreme Court of India by two non-governmental organizations (NGOs), resulting in the Court's order of May 4, 2001.⁴⁶ In 2003, the Government of India made its previously enacted anti sex selections laws of 1994 more comprehensive as the “Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act”.⁴⁷

Two years ago, an Indian couple who already had two daughters filed a petition in the Bombay High Court seeking permission to undergo treatment to have a male child. They said they loved their girls but wanted a son to complete their family. Being “God-fearing Brahmins”, they did not want to undergo abortion if they had a female child and hence, wanted to make use of PGD which is banned under the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.⁴⁸ The Union of India told the Bombay High Court in its affidavit that there was no question of lifting the ban since the Act had been passed by Parliament to prevent

⁴⁶ Supreme Court of India, (2001), *Centre for Enquiry into Health and Allied Themes (CEHAT) and others v. Union of India*, SOL Case no. 340

⁴⁷ Pereira, M., (2006), ‘Female Foeticide: Unfair Deal for the Fairer Sex’, *Hindustan Times*, 6 July 2006

⁴⁸ Bhuyana, N., (2007), ‘ We Love our Girls but Want a Son, Says Couple’, *Hindustan Times*, 28 February 2007

any catastrophe resulting from a severe sex ratio imbalance in the country as is anticipated by the Government of India.⁴⁹ It might be worth noting that the case of China and India is special in many ways and I will take a closer look at it in a later chapter.

⁴⁹ 'Ban on Sex Determination Needed for Balance in Society', *The Times of India*, 27 March 2007

3. Trait Selection and the Moral Status of the embryo

As discussed in the previous chapter, the most popular technology available today to achieve trait or sex selection is preimplantation genetic diagnosis (PGD) which basically involves removing one or more eggs from a woman's ovary, placing them in culture medium in a glass dish, and then adding sperm to the culture. This leads to fertilisation in eighty percent of the eggs thus treated. The embryo is then kept in culture for two to three days, while it grows and divides into two, four and then eight cells. After this, the embryo is tested for genetic defects or traits including gender. The defectless embryo or the one of the desired sex, as the case may be, is then implanted into the woman's uterus. It should be noted that this procedure is done at a very early stage after conception - before the embryo has even had a chance to implant or settle into the lining of its mother's womb (hence the term pre-implantation). It examines the genes of a newly conceived embryo. The other technique which is used mainly for sex selection is flow cytometric separation of X and Y sperm with the chosen and sorted sperm then being made to fuse with the ovum. Hence, this second procedure does not involve the creation of several embryos; there is no screening for genetic or chromosomal abnormalities and no question of destruction of embryos raised in this second procedure.

Several questions have been raised regarding the selection procedure and the implications it has on the moral status of the embryo. The question that arises here is whether anyone is wronged by these selection procedures. Can the sperm that was not sorted lose out on anything? Was the embryo that was not implanted because it did not have the desired traits, wronged in any way because the opportunity to become a being like you and me was taken away from it? Do any of these questions make sense? Are they even remotely relevant? The simple answer is No. Neither the sperm that was discarded in the drain, nor the embryo that was not implanted, is the sort of thing that can be wronged, the sort of thing that can 'lose out'. In a nutshell, there was no one present at those two stages. No one. Some people who have opposed sex selection have opposed it on grounds that PGD does a moral wrong to the embryo. Helen Watt has argued that there is a serious problem in defending PGD because the embryo is the same individual as the child who may be born, with the same moral status as the older human being, the same organism, with the same interests.⁵⁰

In the light of this argument opposing PGD and sex selection, I am going to discuss in this chapter the several positions that have been adopted on the issue of

⁵⁰ Watt, H., (2004), ' Preimplantation Genetic Diagnosis: Choosing the "Good Enough" Child', *Health Care Analysis* 12(1), pp. 54-55

the moral status of the embryo and formulate my own arguments on this topic, concluding that if embryo or sex selection is to be opposed, it cannot be done from the perspective of the embryo's moral status. The meaning of moral status and the question whether the embryo is the same individual as the child will also be discussed. Much of the discussion on trait selection, sex selection, embryo selection has focussed on the morality of the technology being used, with objections being raised on the creation and discarding of embryos. I will stress here that the question regarding the ethics of the techniques used to achieve sex selection is only a secondary one for me and therefore, this thesis will only very briefly touch upon this discussion.

3.1 On 'being the same individual'

John Harris presents an argument similar in nature to Watt's in his 'Beethoven fallacy'⁵¹. It is claimed by many disability rights activists that aborting a child because it was congenitally deaf would mean that one had just aborted Beethoven. However, one could argue that neither Beethoven nor anyone existed when the

⁵¹ Harris, J., (1992), *Wonderwoman and Superman* (Oxford: Oxford University Press),p.179

abortion was done. Elizabeth Anscombe⁵² makes this point much clearer by arguing that a human zygote is alive, and is a human thing, a new beginning of human life, and not a part of any human being. By 'human' is only implied the biological components of the cells that form the zygote.

What Watt's claims amount to is that the newly fertilised egg, the early embryo and I, are the same individual. It is obvious that the zygote that gave rise to me and I, the adult are not the same individual; clearly, the former is a unicellular being totally devoid of consciousness whereas I am a conscious being consisting of millions of cells. So the claim that the zygote and I are the same individual must rely on a different sense of 'individual'. Now, there is definitely a genetic continuity between the zygote and me so that we share the same genetic code. It might also be thought that we are the same single thing, so the zygote is from the first moment of its existence already a particular individual. However, as we shall see, recent scientific findings do not support the view that fertilisation marks the event when a particular, identifiable individual begins to exist.

⁵² Anscombe, G.E., (1985), 'Were You a Zygote?' in P.A. Griffiths (ed.) *Philosophy and Practice* (Cambridge: Cambridge University Press), pp.111-115

It is true that the life of the fertilised ovum is a genetically new life in the sense that it is neither genetically nor numerically continuous with the life of the egg or the sperm before fertilisation. Before fertilisation, there were two genetically distinct entities, the egg and the sperm; now there is only one entity, the fertilised egg or zygote, with a new and unique genetic code. It is also true that the zygote will, other things being equal, develop into an embryo, foetus, and baby with the same genetic code.

The process of twinning raises doubts over the numerical continuity of the zygote and the adult. After fertilisation, a genetically new zygote is formed, X, which has a specific genetic identity which gets repeated in every cell once the first cell begins to split. If on day 8, the group of cells which is X divides into two separate identical cell groups which continue to develop and after nine months, identical twins are born, is there a question of which one of them is X? The twinning process is quite symmetrical and both twins have the same genetic blueprint as the original X. However, it cannot also be said that both of them are X because that conflicts with numerical continuity: there was one zygote and now there are two babies. Is it feasible to suggest that when the original cell split, X ceased to exist and two new individuals, X1 and X2 came into existence? If one were to concur

with that suggestion, it would no longer be true that the existence of babies X1 and X2 began at fertilisation. There are also cases in which two eggs get fertilised and two zygotes come into existence and then as the zygotes begin to divide, the two embryos combine to form a chimera and will continue to develop as a single organism which will eventually become a baby. In this case, who do we say is the baby, zygote1 or zygote2 or is the baby someone altogether different?

With fertilisation, a new organism does come into existence and has a new genetic make up but until 14 days after fertilisation, the cells that make up the zygote can undergo cleavage to form twins, and then we have two materially distinct carriers of the life that started with the formation of the zygote. Hence, till the possibility of twinning has ceased, that is till after the formation of the primitive streak, it cannot be said that an individual has begun to exist. Since early embryonic cells are totipotent, that is, an early human embryo is not one particular individual but rather has the potential to become one or more different individuals, it cannot be claimed that the baby born is the same individual as the zygote. It is only 14 days after fertilisation that totipotency has been lost and the development of the primitive streak precludes the embryo from becoming two or more different individuals through twinning. Prior to this phase, it is not even certain that the

embryo will gradually become a human being; it is very much possible that it could be a malformation of the placenta (or a hydatidiform mole) which will never have the capacity to become human. An embryo at conception and a few days after that is at best a cluster of cells with no distinction between those cells that will become an individual, unique embryo and those that will become the placenta.

Hence, PGD and embryo selection cannot be objected to on these grounds since they involve very early embryos, two or three days old that have grown to the 8-cell stage. Besides the point of individuality, there are concerns raised regarding the moral wrong these procedures do to the embryos. For this we need to explore the meaning of moral status.

3.2 Moral status

To have moral status is to be morally considerable, or to have moral standing. It is to be an entity towards which moral agents have or can have moral obligations. To have moral obligations towards someone or something means that that entity

has a moral status and that we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations and actions to its needs, interests or well-being. We are morally obliged to do this not merely because protecting it may benefit us or other persons but because its needs have moral importance in their own right.

The concept of moral status is a means of specifying those entities towards which we believe ourselves to have moral obligations, as well as something of what we take these obligations to be. Ascriptions of moral status serve to represent very general claims about the ways in which moral agents ought to conduct themselves towards entities of particular sorts. An important feature of this concept is its generality. Moral status is usually ascribed to members of a group rather than merely to specific individuals. Moreover, it is usually ascribed on the basis of some property or properties that are thought to be possessed by all or most group members. Therefore, the moral obligations that are implied by the ascription of moral status to an entity are obligations to that entity. While adult, mentally able human beings may be said to have full moral status, a stone has none.

The debate regarding the moral status of embryos has been going on for years and it has found an important place in the literature on abortion, from the moral, legal, social and biological perspectives. Within this debate, there are two extreme positions, the conservative and the liberal. In what follows, I am going to discuss the different perspectives on this issue and in the later half of the chapter argue for my own.

3.3 Different perspectives on moral status of embryo

3.3.1 The conservative position

The most extreme antiabortion position holds that a fertilised human ovum is a human being, with a right to life, like any other human being. For the conservative, it is humans, all humans, who have moral status as such. This is often called the extreme conservative position. The argument for this view has two parts. First, the conservative points out that the foetus is indisputably genetically human. Moreover, it is not merely a human cell, like any other cell of the body. At fertilisation, the egg and the sperm combine to form a new genotype. The fertilised egg or the single celled zygote has the full complement of 23 pairs of

chromosomes, one in each pair from each parent. From this single cell develop all the different types of tissue and organs that make up the human body. Fertilisation thus marks the spatiotemporal beginning of a new human being. John Noonan points out, “The positive argument for conception as the decisive moment of humanisation is that at conception the new being receives the genetic code. It is this genetic information which determines his characteristics, which is the biological carrier of the possibility of human wisdom, which makes him a self-evolving being. A being with a human genetic code is man.”⁵³

The second part of the conservative argument maintains that, after fertilisation, there is no event or change in the unborn that has such moral significance that we could say that now we have a human being and before this event it was not human. Traditionally, birth has been held to mark the beginning of human life. At birth, the foetus is separated from the mother and is no longer physiologically dependent on her. Birth as a dividing line has the advantage of being objective and definite. However, the conservative denies that birth has such enormous moral significance. For him, a change in the location cannot have such drastic

⁵³ Noonan, J.T., Jr., (1970), ‘ An Almost Absolute View in History’ in J.T.Noonan, Jr. (ed.) *The Morality of Abortion: Legal and Historical Perspectives* (Cambridge, Mass.: Harvard University Press). Reprinted in J.D.Arras and N.K.Rhoden (eds.) *Ethical Issues in Modern Medicine*, 3rd edition (Mountain View, Calif.; Mayfield Publishing Company, 1989), pp. 261-265.

effects on the moral status since there is not much difference between a newborn moments after birth, and a foetus moments before it is born.

The conservative then moves backwards through pregnancy, dismissing other suggested landmarks. Viability, defined as “when the foetus is potentially able to live outside the mother’s womb, albeit with artificial aid”⁵⁴ is said to be one of the important cut off points. The argument might be that before the foetus can survive independently of the mother, it is really only a part of her body, like an organ or a limb. However, a viable foetus though within the body of the mother is not merely a part of her. A mere body part is not capable of living on its own. A viable foetus can be separated from its mother and remain alive. The conservative responds that it is a mistake to identify independent existence with separate existence. The nonviable foetus can surely not exist independently of its mother, but it is nevertheless a separate individual, with its own genetic code. It is not merely a part of the pregnant woman’s body. Moreover, the conservative denies that independent existence has the moral significance ascribed to it by the viability criterion. Babies and young children are also dependent on the care of others for

⁵⁴ *Roe v. Wade* (1973), 410 U.S.113 , p. 160

their survival and people dependent on iron lungs or respirators are not less human, less worthy of protection, than the rest of us.⁵⁵

Nor does the conservative find moral relevance in any earlier stages, like quickening which refers to the mother's ability to perceive foetal movement. Probably the view that human life begins at quickening stems from the biologically inaccurate view that the foetus is not alive before it moves. We now know that even the single celled zygote or the sperm or ovum for that matter are alive, there is no reason to base moral status on the foetus's ability to move and even less reason to make its moral status depend on its mother's alertness in detecting movement.

The foetus begins to look recognisably human between 12 and 16 weeks of gestation. It may not look much like a baby, but it is clearly a human foetus. There is clearly a difference between an early foetus and a late one, the former being difficult to distinguish from an animal foetus at the same stage of development. But does this difference in appearance have moral significance? The conservative

⁵⁵ Warner, R., (1974), 'Abortion: The Ontological and Moral Status of the Unborn', *Social Theory and Practice* 3 (4). Revised and reprinted in R.A.Wasserstrom (ed.) *Today's Moral Problems*, 2nd edition (New York: Macmillan Publishing Co., 1979), p.55

denies that it does, on the grounds that this suggests that deformed human beings who do not look like other people lack human moral status.

Finally, it has been suggested that human life begins when brain waves first appear. After all, the absence of brain function marks the end of human life. The extreme conservative attaches no more significance to the emergence of brain waves than to any other developmental stage in the life of the unborn. If the embryo is not killed, it has a good chance of acquiring brain waves, human form, the capacity for movement, viability, and every other human feature. The extreme conservative therefore, concludes that no stage or feature can have decisive moral significance such that procedures like abortion are permissible before the foetus attains it, but not after. For them, every successive stage is just development from the beginning.

So, the first part of the extreme conservative position attaches moral significance to the genetic humanity of the foetus. The second argues that this humanity is present from conception onward. Baruch Brody, who holds a modified conservative position, bases the moral status of the unborn on its being human.

However, he, unlike Noonan, does not agree that humanity begins at conception. Brody argues that a functioning brain is essential for being human. When the brain stops functioning, the person dies and goes out of existence. By the same reasoning, the foetus starts to count as human when its brain begins to function. So the human being who begins when brain function starts is not identical with the embryo whose brain has not yet begun to function.⁵⁶

The onset of brain function, taken as a physiological occurrence, is not different from any other change in the foetus. The significance of brain function lies rather in its connection with or the capacity for mental states, such as conscious experience. Brody suggests this when he says, “ One of the characteristics essential to a human being is the capacity for conscious experience, at least at a primitive level. Before the sixth week, the foetus does not have this capacity. Thereafter as the electroencephalographic evidence indicates, it does. Consequently, that is the time at which the foetus becomes a human being.”⁵⁷

⁵⁶ Brody, B., (1975), *Abortion and the Sanctity of Life* (Cambridge, Mass. : The MIT Press), p.111

⁵⁷ *Ibid.*, p.83

However, the phrase “capacity for conscious experience” is ambiguous. It might refer to the physiological capacity of a being to have conscious experiences at some point in its development. The foetus at six weeks after conception certainly has the capacity for conscious experience in this sense, but so does the single celled zygote. So this must not be what Brody intends. In another sense of ‘capacity’, a being has the capacity for an experience x if x occurs, given the appropriate stimulus. A frog has the capacity to feel pain if, on being subjected to certain kinds of stimuli, the frog feels pain. However, in this sense of ‘capacity’, neither a zygote nor a six weeks old foetus has the capacity for conscious experience. The emergence of brain waves is only a necessary, not a sufficient, condition of conscious experience.

The physiology of pain perception indicates that the foetus during the first trimester and probably well into the second trimester, is not sentient. The neural pathways are not sufficiently developed to transmit pain messages to the foetal cortex until 22-24 weeks of gestation.⁵⁸ If the early foetus is not sentient, it is unlikely to have conscious experience of any kind. The ability to feel pain would precede more highly developed cognitive states, such as thoughts, emotions, and

⁵⁸ Anand, K.J.S. and Hickey, P.R., (1987). ‘ Pain and Its Effects in the Human Neonate and Foetus’, *The New England Journal of Medicine*, 317 (21), p.1322

moods. Now, if the capacity for conscious experience is a necessary condition of humanity, as pointed out by Brody, then the foetus is not human until the end of the second trimester. This criterion for moral status supports a liberal, rather than a conservative stance on abortion.

There is also another modified conservative position which maintains that implantation has moral significance, because the numerical identity of the unborn is decided then. Implantation begins approximately on the sixth day following fertilisation, and takes about a week. Mary Warnock notes, “Both the internal and external processes of development are crucial to the future of the embryo. If the inner cell mass does not form within the blastocyst, there is no further embryonic development; while if implantation does not occur, the blastocyst is lost at or before the next menstrual period.”⁵⁹

The chances of an embryo’s developing into a foetus improve significantly after implantation occurs. This is one reason for choosing implantation as the decisive moment of humanisation. Another reason is that implantation coincides with the

⁵⁹ Warnock, M., (1985), *A Question of Life: The Warnock Report on Human Fertilisation and Embryology* (Oxford: Blackwell), pp.59-60

formation of the primitive streak which is the precursor of the spinal cord. After the primitive streak forms, embryonic fission, which produces identical twins, cannot occur. As Mary Warnock says, "Before 14 days, the embryo hasn't yet decided how many people it is going to be".⁶⁰ The chance of twinning, though very small, makes it impossible to say that at fertilisation there exists a unique human being. Once implantation has taken place, there is only one, unique individual. Adoption of this implantation criterion for humanity would rule out all surgically induced abortion as well as abortions induced by certain pills that occur after implantation. However, it would permit abortion caused by the morning after pill or menstrual extraction and indeed some birth control devices such as the IUD may prevent conception by preventing implantation. They are actually therefore very early abortion techniques which work strictly not as contraceptives, that is not by preventing conception but by ensuring that any egg that is fertilised will fail to implant in the womb.

Now, there is an objection to the conservative position which maintains that the assumption that genetic humanity is relevant to moral status, is radically confused.

⁶⁰ Lockwood, M., (1988), 'Warnock versus Powell (and Harradine): When does Potentiality Count?', *Bioethics* 2(3), p.190

This will be dealt with in the next section and it is from this debate that the personhood view takes its name.

3.3.2 The position on personhood

Proponents of the person view accuse the conservatives of believing that all humans have moral status as such, for being 'human'. They maintain that the conservative position is based on a narrow interpretation of the word 'human', that it ignores a deeper understanding of moral status and the kinds of beings it can be attributed to. A human foetus is undeniably genetically human but this sense of human lacks moral relevance, according to person-view proponents, such as Mary Anne Warren. It is not genetic human beings who have a special moral status and a right to life, but persons. The special moral status cannot be based on anything so arbitrary as species membership but must instead be defined in terms of the possession of certain psychological and cognitive capacities, including consciousness, self-awareness, reasoning, language, self-motivation. Warren concedes that the possession of all these capacities may not be necessary for personhood, but a being who possessed none of these characteristics is clearly not a person. So a foetus is clearly not a person and even a late gestation foetus with

some degree of conscious awareness has fewer of the person-making characteristics than does a dog. Warren therefore concludes that it is not seriously wrong to kill a foetus.⁶¹

A worrisome objection to the person view is that it justifies not only abortion but also infanticide. A newly born infant is not significantly different from a late foetus in terms of person-making characteristics. A newborn is conscious and sentient, but then so is a late-gestation foetus and so are many nonhuman animals. If the advocates of the personhood view set the requirements for it low enough to include newborns, they will have to acknowledge the personhood of late gestation foetuses and also most animals. So if infanticide is wrong, then so is killing animals for food. On the other hand, if they require more than sentience for personhood, neither animals nor human babies will be persons. Most people would regard this true for animals but would object to the killing of babies. Michael Tooley, another proponent of the person view maintains that the opposition to infanticide is not based on rational principles. It is a mere taboo, like the taboo against masturbation or oral sex.⁶²

⁶¹ Warren, M.A., (1973), 'On the Moral and Legal Status of Abortion', *The Monist* 57(1), pp.43-61

⁶² Tooley, M., (1983), *Abortion and Infanticide* (Oxford: Clarendon Press)

One objection to Warren's analysis is that it relies on an ambiguity of the word 'person', between its descriptive and normative senses. In its descriptive sense, the word 'person' refers to a being with certain psychological traits, such as consciousness, self-consciousness and rationality. In its normative sense, a person is someone with full moral standing and, in particular, a right to life. Warren simply assumes that all and only descriptive persons are normative persons. She overlooks in her account an explanation of the moral significance of the capacities that make someone a descriptive person. Without this explanation, the person view is also an arbitrary criterion.⁶³

The moral significance of rationality and self-consciousness lies in their connection with moral agency. A moral agent is someone who is responsible for his or her own actions, who can be held accountable, praised and blamed. This requires the ability to consider the merits of possible courses of action, decide which is the best thing to do, and to act on that judgement. Such activity is possible only for intelligent, reflective and self-aware beings. Moral agents are also capable of moral reasoning, which involves detachment from one's own

⁶³ Feinberg, J., (1986), 'Abortion' in T.Regan (ed.) *Matter of Life and Death :New Introductory Essays in Moral Philosophy*, 2nd ed. (New York: Random House), p.259

personal perspective and interests. Due to their ability to engage in moral discourse, to change their behaviour in response to rational considerations, to refrain from injurious behaviour if others are willing to refrain likewise, moral agents thus possess a unique moral status.

Like Warren, Tooley maintains that all and only descriptive persons have a right to life. Whereas Warren takes this to be self-evident, Tooley has an argument which starts by adopting Feinberg's interest principle. According to the interest principle, all and only beings that can have interests can have rights. Tooley takes this one step further and argues that particular rights are connected with specific sorts of interests. So, an individual cannot have a particular right R unless that individual is capable of having some interest I that is furthered by its having right R.⁶⁴ The desire protected by a right to life is a desire for one's own continued existence. The thinking behind this may be that your life is your own and does not belong to anyone else. To have this desire to go on living your own life, one must possess a bundle of fairly complex concepts, including the concept of something continuing to exist and the concept of a continuing subject of experiences. In addition, the desire for one's own continued existence is a desire that this subject of experiences should continue to exist. Thus, to have the desire for continued

⁶⁴ Tooley, M., (1983), *Abortion and Infanticide* (Oxford: Clarendon Press), p.100

existence, one has to be able to think of oneself as a subject of continuing experiences. Tooley concludes that only beings who have this concept can have a right to life.⁶⁵

Two responses might be made to this argument. It might be argued that a desire to live does not require the concept of oneself as a continuing subject of experiences. All that is necessary is the capacity to have desires in general, and a preference for survival, which can be expressed in some form in one's behaviour. Plants cannot have a desire to live, because they do not have desires at all. But conscious, sentient beings who struggle to avoid death may be said to want to live, and so to have an interest in continued existence.

The other response to Tooley takes account of the two senses of the word 'interest'. Whatever promotes a being's good or welfare is in its interest, let's call it interest¹. The things that one wants or pursues, the things in which one takes an interest, are interest². Only beings that have the concept of a self can have an interest² in continued existence. But it doesn't follow that only beings with a

⁶⁵ Tooley, M., (1984), 'A Defense of Abortion and Infanticide' in J. Feinberg (ed.) *The Problem of Abortion* 2nd ed. (Belmont, Calif.: Wadsworth Publishing Company), p.73

concept of a self can have an interest¹ in continued existence. Rights can surely protect interests¹, as well as interests². So, if continued existence is in a being's interest, it can have a right to life, even if it cannot take an interest in its own continued existence. Is there any reason to deny that life can be in the interest of animals, babies and other individuals without concepts of self?

Tooley gives us the example of a preconscious embryo that develops into a person, Mary. Mary has a happy life and is glad that her mother did not abort her. So it may be said that it was in Mary's interest that the embryo from which she developed was not destroyed. However, Tooley argues that it is a mistake to think that therefore not killing it was in the embryo's interest. The embryo, he says is not a subject of consciousness and does not have any interests at all, and so cannot have an interest in its own continued existence.

He extends the same reasoning to children as well. A human baby that is sentient and has simple desires, but is not yet capable of having a desire for its own continued existence, even if it will develop into an individual with a happy life, Tooley denies that it is in the baby's interest not to be killed. He says that we

mistakenly attribute to the baby an interest in continued existence because we wrongly identify the baby with the adult person she becomes. We then think that because it is in the adult Mary's interest that she was not destroyed when she was a baby that it must be also in the baby Mary's interest not to be destroyed. Tooley maintains that such an identification is justifiable only if there are causal and psychological connections between adult Mary and baby Mary. ⁶⁶

It can be objected that Tooley assumes that there are no causal or psychological connections between a baby and the adult person she becomes, which is very much opposed to the research findings of psychology. And, even if there is a radical discontinuity between the baby and the adult it becomes, it does not follow that the baby cannot have an interest in its own continued existence. The baby cannot take an interest in its continued existence because it lacks the necessary concepts for that desire. Still, life can be in the baby's interest. Life is in a being's interest if the experiences that comprise its life, on the whole, are happy and enjoyable ones. Such a life is a good to the being in question. Infants, animals, severely mentally retarded humans, can enjoy their lives and we can certainly preserve their lives for their own sake. It is only when life is miserable that we

⁶⁶ Tooley, M., (1984), 'A Defense of Abortion and Infanticide' in J. Feinberg (ed.) *The Problem of Abortion* 2nd ed. (Belmont, Calif.:Wadsworth Publishing Company), p.120

begin to doubt whether continued existence is a benefit. If this is right, then we do not need a self-concept to have interest¹ in continuing to exist. All that is necessary is the ability to enjoy one's life. Continuing to live is then certainly in the baby's interest, because of the value to him of his life right now. A right to life protects his interest¹ in his life. So it could be concluded that there is no bar to ascribing a right to life to newborns.⁶⁷ The same could be said of the late gestation foetus as well.

There is another sophisticated conservative position which acknowledges that zygotes, embryos and early foetuses do not suffer from being aborted, nor does death deprive them of happy lives. Nevertheless, it maintains that even a zygote has an interest in not being killed. This interest in continued existence does not derive from the kind of life it has now, but rather from the kind of life it will have, if it is allowed to develop and grow. Such arguments are known as arguments from potential.

⁶⁷ Strong, C., (1991), 'Delivering Hydrocephalic Foetuses', *Bioethics* 5(1), pp.7-11

3.3.3 The potentiality argument

The basic idea behind this argument is that it is wrong to kill, or otherwise prevent the development of, a human fertilised egg because it possesses the potential to be a descriptive person. It is potentially like us and so we cannot deny it any rights or other forms of protection that we accord ourselves. A fertilised egg does not now have any of the properties of a person. It isn't even sentient but this does not matter because left alone and allowed to develop, the zygote will become a person. So, it is not yet just like us. The argument concludes that we should not interfere with its natural development towards becoming a rational, self-conscious being. Hence, we should treat a potential human subject as if it were already an actual human subject.⁶⁸

A standard objection to the argument from potential is that it involves a logical mistake. The mistake consists in thinking of a potential person as a kind of a person, and on this basis ascribing to a potential person the rights of other persons. But potential persons are not persons, they do not now have the characteristics of

⁶⁸ Buckle, S., (1988), 'Arguing from Potential', *Bioethics* 2(3), p.227

persons. For if A had rights only because he satisfies some condition P, it does not follow that B has the same rights now because he could have the property P at some time in the future. It only follows that he will have rights when he has P. He is a potential bearer of rights as he is a potential bearer of P.⁶⁹ However, it could be said that the defender of the argument from potential is only saying that potential persons ought to have the same rights as actual persons.

Don Marquis argues that abortion is seriously immoral for the same reason as killing an adult human being is.⁷⁰ What makes killing wrong is not primarily the effects on other people, or the threat to the fabric of society. What makes killing wrong is the effect on the victim. The loss of one's life is one of the greatest losses one can suffer. The loss of one's life deprives one of all the experiences, activities, projects, and enjoyments that would have otherwise constituted one's future. When I am killed I am deprived of the values of my future. Hence, abortion is prima facie morally wrong. Marquis maintains that this is not an argument based on the wrongness of killing potential persons, since the central category here is of having a valuable future like ours. For him, the value of one's

⁶⁹ Benn, S., (1984), 'Abortion, Infanticide and Respect for Persons' in J. Feinberg (ed.) *The Problem of Abortion* 2nd ed. (Belmont, Calif.:Wadsworth Publishing Company), p. 143

⁷⁰ Marquis, D., (1989), 'Why Abortion is Immoral?', *The Journal of Philosophy* 76(4), pp.183-202

present life is irrelevant, what matters is the future of which one is deprived by death.

The strongest objection to the argument from potential is that it seems to make contraception morally wrong. If the objection to abortion is that it deprives the zygote of a future like ours, then the same complaint can be made of contraceptive techniques that kill sperm, or prevent fertilisation. Why don't gametes have a future like ours? Why aren't unfertilised eggs and sperm also potential people? John Harris argues that to say that a fertilised egg is potentially a human being is just to say that if certain things happen to it, like implantation and certain others do not, like abortion, it will eventually become a human being. But the same is also true of the unfertilised egg and sperm, that if certain things happen to the egg, like meeting a sperm and likewise certain things happen to the sperm, like meeting an egg, and thereafter certain things do not happen, like meeting a contraceptive, then they will eventually become a new human being.⁷¹ However, very few defenders of the potentiality principle are willing to accept this conclusion. R.M.Hare is perhaps the only potentiality theorist who is willing to

⁷¹ Harris, J., (1985), *The Value of Life: An Introduction to Medical Ethics* (London : Routledge & Kegan Paul), pp. 11-12

accept that not only is abortion morally wrong, but so is contraception and abstinence.⁷²

Although the chances of any particular sperm becoming a person are very small, why should that prevent its being a potential person? Is not every entrant in a lottery a potential winner, even if the odds of winning are extremely low? Every gamete may be said to have the potential to develop into a person, even though very few do. Rosalind Hursthouse maintains that thinking about potentiality in terms of the chance to become a human being involves confusion about the conception of potentiality. It is not the probability of a foetus' becoming a human being that make it a potential person, but rather the fact that this is the result of natural development or what the foetus will become if nothing external intervenes.⁷³

It could be said that while neither the sperm nor the egg is a particular potential person, each is potentially some person, that is the person it will develop into if it fuses with another gamete. Why should its potential personhood be diminished

⁷² Hare, R.M., (1975), ' Abortion and the Golden Rule', *Philosophy and Public Affairs* 4(3),pp.201-222

⁷³ Hursthouse, R., (1987), *Beginning Lives* (Oxford: Blackwell &Open University). p.80

because we are unable to say which person it will be? As Singer puts it, “Potentiality is one thing: uniqueness is something quite different”.⁷⁴ From a consequentialist standpoint, there is no crucial difference between the fertilised egg, on the one hand, and the sperm and unfertilised egg on the other. The sperm and egg when considered jointly, also have the potential to produce a future human subject, even though that potential is not activated until fertilisation occurs.⁷⁵ Buckle refers to the deontological version of the argument from potential as well, which he calls ‘respect for capacities of individuals’ argument. Respect is due to an existing being because it possesses the capacity or power to develop into a being which is worthy of respect in its own right. Respect is owed to such a being because it is the very same being as the later being into which it develops.⁷⁶ It is the identification of the zygote with the later person that makes both a zygote a potential person and entitles it to respect and concern. Neither the sperm nor the unfertilised egg has the same genetic code as the being who develops from their union, so neither is the same being as the fertilised egg. Although the sperm and egg considered jointly have the potential to produce a human subject, they do not have the potential to become a human subject. However, what makes it seriously

⁷⁴ Singer, P., and Dawson, K., (1988), ‘IVF Technology and the Argument from Potential’, *Philosophy and Public Affairs* 17(2), p.96

⁷⁵ Buckle, S., (1988), ‘Arguing from Potential’, *Bioethics* 2(3), p.241

⁷⁶ *Ibid.*, p.230

wrong to kill entities that can become persons, but not at all morally wrong to destroy entities that can produce persons?

A different perspective in the abortion debate which could be bracketed in the liberal position comes from Judith Jarvis Thomson. It is the argument that centres on the mother's right to her body and considers that the status of the embryo is not important when deciding whether to have an abortion or not.

3.3.4 The argument from bodily self-determination

In 1971, J.J. Thomson came up with a different view on the abortion debate.⁷⁷ She noted that most debates about abortion centre on the moral status of the embryo, whether it is a person and can have a right to life. This is because people have generally thought that if we accept the premise that the foetus is a person, then it follows that abortion is always wrong. The argument goes like this: All persons have a right to life (let us assume that for the sake of argument). The foetus is a

⁷⁷ Thomson, J.J., (1971), 'A Defense of Abortion', *Philosophy and Public Affairs* 1(1), pp.47-66

person, and so it has a right to life. The mother has the right to decide what happens to her body but the right to life is stronger than the woman's right to decide, and so outweighs it. So the foetus may not be killed.

Thomson challenges this argument. She argues that even if we grant the personhood of the foetus, abortion is not necessarily wrong since in some cases abortion does not violate the foetus-person's right to life. For her, having a right to life does not entitle a person to whatever he or she needs to stay alive, and in particular does not entitle him to the use of another person's body. She illustrates this with her example of the unconscious violinist who has been found to have a fatal kidney ailment, and you alone have the right blood type to help. So the Society of Music Lovers has kidnapped you and the circulatory system of the violinist has been plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. This is a matter of nine months only.

Thomson questions whether it is morally incumbent on you to accede to this situation. This example perfectly exemplifies the pregnancy situation without casting any doubts on the personhood of the victim. Given that the violinist is a

person, do you murder him or violate his right to life if you unplug yourself? Thomson's central theme is very well demonstrated here, that the right to life does not necessarily include getting whatever you need to live. The right to life does not imply a right to use another person's body.

It could however be objected that the foetus does have a right to use the pregnant woman's body because she is partly responsible for its existence. By engaging in intercourse, by knowing that this may result in the creation of a person inside her body, she implicitly gives the resulting person a right to remain. Of course, this argument would not work in a case close to the violinist example, that of pregnancy due to rape. A woman who is pregnant due to rape does not voluntarily engage in sexual intercourse, and so cannot be said to have given the foetus the permission to use her body. According to Thomson, the foetus whose existence is caused by rape has no right to use the pregnant woman's body. Killing it therefore, does not violate its right to life. But what about pregnancies resulting from voluntary intercourse? Thomson responds that even when the woman voluntarily engages in sex, she may not be responsible for the presence of the foetus. She argues that responsibility for an outcome depends on what one has done to prevent it. She suggests that if one has taken all reasonable precautions to prevent

something from happening, then she has not been negligent and should not be held responsible for its having occurred. So whether the woman can be said to have given the foetus a right to use her body would depend on such variables as whether she was using a reliable contraceptive that happened to fail.⁷⁸

Some critics of Thomson like Warren have objected to her defence of abortion for concentrating exclusively on rights. The real question, they say, is not what constitutes giving the unborn person a right to use one's body, but rather the conditions that make aborting the foetus morally permissible. This gives us a very narrow defence of abortion.⁷⁹

⁷⁸ Ibid.

⁷⁹ Warren, M.A., (1973), 'On the Moral and Legal Status of Abortion', *The Monist* 57(1), pp.43-61

3.4 A different stand: my gradualist position

Before I go on to spell out my arguments on this issue, I would like to tie in the concept of moral status that we discussed earlier with a theory of value. This is important for my purpose since I intend to establish the value of life for a being. Something can be said to have an instrumental value, that is it is valued only as a means to gain an end. Money for instance is valued only because of what it can buy, and what those things mean to us and how they contribute to our pleasure or well being. A thing can be said to have a limited value, that is its value is limited to a certain characteristic, like the capacity to feel pain. Since the value is limited to this characteristic, the obligations are limited to it. So we may kill animals for meat and fur, as long as we do not inflict pain unnecessarily. Individual value however, involves treating an individual as an end in itself and their value is based on intrinsic characteristics which refers direct obligations toward the being as a whole.

So in order to ascertain the moral status of something, that is to find out what moral obligations we have toward something, we need to first fix what kind of a

value can be attributed to the being/thing in question. For this we need to look at the object of our study in question and ask why it has any value at all, when it begins to acquire this value and what is it that gives it the value that requires our moral consideration. In this thesis, my main concern is the embryo, the child and the adult human and even though my position may have immense implications for other creatures, I will not be taking those into consideration since it does not serve my purpose and answer the question on which this thesis is based.

Let me begin with a category that without any doubt or dispute is believed to have such value that its life requires protection and anyone who violates this is said to have done a grave moral wrong to the subject in question. The category I am talking about is that of adult humans. Let me add here that adult humans therefore belong to the category of persons, which is just a label for those beings who have individual value. So why is it that my life has a value that requires others to refrain from doing any harm to me and my life, and to take my needs, interests and wellbeing into consideration while acting? What is it that accords adult humans the individual value that requires them to be treated as ends in themselves? The answer lies in the fact that I am a rational, moral being, who values his own life, is self-conscious as also conscious about others, who has the ability to think

of himself as an entity that continues over time and one who has the ability to make future plans for his life. John Locke in his *Essay Concerning Human Understanding* defines a person as a thinking intelligent being, that has reason and reflection, and can consider itself the same thinking thing, in different times and places; which it does only by that consciousness which is inseparable from thinking and seems to me essential to it.⁸⁰

So it is this capacity for self-consciousness coupled with minimal intelligence that is not only considered the necessary condition for moral agency but minimum condition for almost any deliberative behaviour. It is these capacities that allow individuals to value their own existence and that of others. It allows individuals to take an interest in their own futures and to take a view about how important it is for them to experience whatever future is available. On this account the wrong done to an individual when his existence is ended prematurely is the wrong of depriving that individual of something he values.⁸¹ What comes out of this is that adult persons have full moral status, we accord them individual value because of certain defining characteristics and abilities that they have; in a nutshell, that they

⁸⁰ Locke, J., (1690/1964), *Essay Concerning Human Understanding*, A.S.Pringle-Pattison (ed.) (Oxford: Clarendon Press), p.188

⁸¹ Harris, J., (1985), *The Value of Life* (London: Routledge & Kegan Paul), p.17

have value because they can value their own lives. I will come back to this later when I tie this in with my argument on the moral status of the embryo.

Hence, on Locke's view, a stone or a plant would be a non-person, something bereft of moral status. We do not take away anything from them that they would prefer not to have taken from them. For this activity of conceiving a harm, it has to be able to value that which is being taken from it. However, taking the life of a sentient creature will count as a moral wrong that may have something to do with causing pain or suffering to it.

Talking about the value of life, I would like to bring into discussion the view held by Ronald Dworkin⁸². Dworkin argues that human life is sacred or inviolable because of what it represents or embodies, that once a human life is begun, it is very important that it flourish and not be wasted. According to Dworkin, something is sacred or inviolable when its deliberate destruction would dishonour what ought to be honoured. He goes on to state that it is a kind of cosmic shame when a species that nature has developed ceases, through human actions, to exist.

⁸² Dworkin, R., (1993), *Life's Dominion : An Argument about Abortion and Euthanasia* (London : HarperCollins)

There are two problems that I see with this view. Firstly, it begs the question as to why human life is sacred, why it ought to be honoured, what is in it that requires moral protection and sustenance. It seems as if Dworkin is talking of human life as a valuable thing in itself, without the involvement of the being at all who is going to live this life and what his own life means to him. What does 'human life' mean anyway? On his account, we would have to save every 'human life' that came into existence, does that mean measures should be taken that every conception results in the birth of a child? On the talk of the species, I do not see why we are morally obliged to protect a particular species that is causing immense harm to persons. If a plague spreads in a city, there is no reason why we should be morally obliged to protect the particular species of rats that are causing the disease and leading to the death of people who matter morally.

Dworkin goes on to argue that the life of a single human organism commands respect and protection no matter in what shape or form because of the complex creative investment it represents and because of our wonder at the divine or evolutionary processes that produce new lives from old ones. If that holds true for single human organisms, it should also hold true for certain plant or animal forms, because there may be a hugely complex creativity at work that escapes our

understanding and which might cause wonder in us. Mutations in genes, cancerous cells, viruses, why should they be left out of that complexity, creativity, processes that happen in nature which leave us in awe of them? We would thereby be required to allow all of these to flourish and be morally obligated to do so!

Moving away from adult human persons then to embryos or foetuses that they came from, the question that needs answering is what kind of beings are these foetuses, do they fall in the purview of moral consideration, do they have any value, what about their moral status, what kind of obligations do we have towards them, or do they not matter at all? In answering this question, I am going to move away from the traditional camps, that of the conservatives and the liberals. The entire debate on abortion and killing of the foetus seems to be centred on the question of personhood. It seems as if an answer to that question gives us an instant answer to the all important moral question regarding the permissibility of killing a foetus. The conservatives seem to be saying that conception is the beginning of human life and since human life is sacred, the foetus should not be treated in any which way as one wants. The liberals stand on the extreme end of this debate and oppose the conservatives by arguing that a foetus does not have the properties that an adult human has, it has no characteristics that qualify it as a

person, and therefore, we have no obligation to respect them. Thus, the tussle between the two camps continues and the central question which comes up in the debate is whether the foetus is a person that needs to be protected, who is harmed by the act of killing. The conservative answers this question in the affirmative and thus becomes an antiabortionist whereas the liberal answers this question in the negative and becomes a proabortionist. However, neither agrees with the other and the dispute continues over the moral status of the foetus and the stance on the moral permissibility and implications of killing it or treating it in ways humans desire.

I am uncomfortable with these two positions and I do not find myself belonging to either camp. One of the reasons for it being that I am unhappy with the very question itself on which the entire debate revolves. Rather than asking the question whether the foetus is a person or not, the dog is a person or not, whether the lives of any of these creatures is in any way similar or dissimilar to the life of an adult human being, we should be asking what sort of a being the creature in question is, what sort of a value do we attribute to its life.

I have two main reasons for making the claim that I am attempting to redefine this debate, by shifting the focus from person to moral status on account of the gradual acquisition of value and respect. Firstly, the personhood debate so far has only yielded answers in the form of Yes or No, in the form of an All or Nothing with respect to the value of the foetus. The personhood debate polarises itself on the two extreme ends of the scale called moral status and does not allow the embryo to have anything apart from either 'a moral status' or 'no moral status'. In this chapter, I wish to reject the extremes of the personhood debate and argue for 'some moral status' for the embryo and allow more flexibility to the debate.

My second reason for moving out of that debate is due to the nature of the questions that I ask, which seem to be very different from those that the personhood debate addresses. Whereas the personhood debate deals with more practical questions, such as whether abortion is permissible or not, questions which may have to have a Yes or a No with regard to the moral status of the foetus, the kind of questions that I am interested in answering in this thesis does not deal with the same kind of practical issues, those that have to be answered either directly in the affirmative or the negative. My main questions related to the moral status of the foetus are concerned with choices, what kind of parental

choices are permissible, when does the State have the right to interfere, what can cause harm and what kind of harm. What I am interested in knowing is when the foetus begins to matter morally, when does the biological human life begin to attract moral considerations from other moral agents, why does anyone have to be morally considerate of adult humans and would that apply to foetuses which became them. My questions can have answers which lie anywhere between the two extremes of the scale of the moral status of the embryo. My answers can attribute 'some moral status' to the embryo.

I remove myself from the debate where the fulcrum is the adult human being and all comparisons have that as their point of reference. To be more precise, the personhood debate asks a very specific question; how does a foetus compare to a person, where the standard example of a person is the adult human being. Rather than focusing on adult human beings as unquestioning examples of personhood, we should ask why do adult human beings possess moral status and whether foetuses, without being adult human beings, can share in this status.

In the discussion carried above, I have tried to ascertain why and what gives adult human beings full moral status. In what will follow, I try and question if the foetus could count as a being with any value and thus if any moral status could be accorded to it. In doing so, I shall look at what makes the foetus what it is and whether its characteristics give rise to moral considerations to the foetus.

Before embarking on a fully-fledged discussion of this topic, I want to set aside the talk of moral status of the foetus and the philosophical arguments regarding it. Instead, I want to talk a little bit about the reactions that people normally have when abortion is mentioned, their intuitions regarding embryos and their importance. One comes across very emotive responses when the option of abortion is mentioned to a woman who is pregnant, or even generally when the discussion of abortion is thrown open. And this reaction is very different from what one comes across if the option of surgery is mentioned to someone who is suffering from appendicitis or even cancer. There is a belongingness, there is an attachment that is so vividly present in matters of removal of the foetus and so vividly absent in matters of removal of a cluster of cells or an appendix. And this might be because of the nature of the entity that we are talking about, the foetus as opposed to an organ of the body or a mass of tissues and cells. There may be

psychological reasons against abortion, the emotional distress that one goes through when thinking that one is actually making a decision that will stop something from becoming one's own child, or that one is curtailing a process that would result in a human life, which may be considered valuable in itself. I am not appealing to any of the general gut reactions of people as the basis of my philosophical position and arguments on this topic. However, having said that, it's always very interesting to look out and see what and why people feel the way they do. It might just be a pointer in a direction that I want to head in!

Coming back to the central theme of this section, according to the theory which I am going to discuss here, the foetus has a varying moral status. Initially, it is like a bit of tissue or an organ of the body. As it develops gradually, it becomes in most morally relevant respects, like a lower animal, then like a higher one, and in the later stages of its development, it is like a baby and has equivalent moral status. This view seems to be the only reasonable reaction to the difficulties that we have encountered with the previous ones, the conservative and the liberal.

If we want to hold on to the premise that infanticide is wrong and research on babies and breeding them for that purpose is totally impermissible, then any of the liberal views about the status of the foetus would require birth as the all important boundary line. But the fact of premature birth tends to shift the birth boundary line back to viability and the possibility of advancement in medical technology threatens to shift the viability boundary line all the way back to conception. In trying to maintain that babies are, as the conservative view maintains, like adult human beings when considering questions of killing, the liberal views are actually driven towards the conservative. However, a defence of an early abortion to avoid risks to the mother's life or because the pregnancy has resulted from rape, and holding the belief at the same time that that killing is not on par with the killing of a baby for the same reasons, would require a moral distinction between the early and late foetus, and hence, one would have to abandon the conservative view. Therefore, the gradualist position seems to be a sensible compromise to deal with the difficulties that arise with the liberal and the conservative views.

The argument of the gradualist borrows a premise from each of the conservative and the extreme liberal views. It agrees with the conservative that there is no morally significant difference between a newly born baby and a baby about to be

born. It also agrees with the extreme liberal view that there is no morally significant difference between the fertilised ovum or the embryo in its early stages of development and a piece of tissue or organ of the human body. It also agrees with both views that the development from fertilised ovum to the baby that has been born is gradual, but unlike the other views it does not try to infer from this that the foetus has the same moral status through out its development. The gradualist position holds that from the fact that the development is gradual, one can infer that so too is the development of moral status and standing. Also, the conservative and the liberal views select a precise point, conception, birth etc., as the threshold of moral standing, implying that the transition from no standing to full standing occurs abruptly. In doing so they rest more weight on these sudden events than they are capable of bearing. A view that avoids this defect will allow full moral standing to be acquired gradually. It will therefore attempt to locate not a threshold point but rather a threshold period or stage.

As we saw earlier, both the established views attribute a uniform moral status to all foetuses, regardless of their dissimilarities, each counting a newly conceived zygote the same as a full term foetus, despite their enormous differences. The gradualist position avoids this defect by assigning moral status differentially, so

that the threshold stage occurs sometime during pregnancy. A drawback of the uniform approach adopted by the established views is that neither of them can attach any significance to the development of the foetus during gestation when this development is the most obvious feature of gestation. The gradualist position by basing the differential moral standing of the foetus in part on its level of development avoids the defect of the established views. So then, the moral status of the foetus must be gradual, differential and developmental. It also must connect moral standing with the empirical properties of such beings.

Warren Quinn ⁸³ has written extensively on the gradualist position of the moral status of the embryo. He points out that even a very early abortion stands in need of moral justification in a way that the surgical removal of a mere mass of tissue does not. Abortion is primarily of importance because of its impact on the organism that is killed and removed. However, early abortion occurring before the organ systems of the foetus are complete is not morally equivalent either to the killing of an adult or the killing of an infant. The early foetus not only fails to be morally protected by the same kind of right to life that mature persons possess but its moral status also differs in some important way from that of the neonate. This

⁸³ Quinn, W., (1984), 'Abortion: Identity and Loss', *Philosophy and Public Affairs* 13 (1) pp.24-54

is so because of the kind of being it is in those different stages, because of its ability and inability to do and not do certain things, to feel and not feel certain things, the building of certain capacities that bring it closer to the category that deserves respect on account of its nature. Quinn is quick to add that the early foetus is not as the conservative thinks, under the same moral protection as a mature human being but it is also not morally negligible as the liberal seems to think it is. He goes on to say that as pregnancy progresses abortion becomes increasingly problematic from the moral point of view, there is more that is required to justify an abortion at six months than at one month.⁸⁴

I however disagree with Quinn in that early abortion on my view is not in need of justification, because I do not see it any differently from a mere mass of cells which is 'human' only in that it is biologically and genetically similar to an adult human. As I have shown earlier, this mere mass of cells does not even contain an individual, so there is no being at that stage who can be said to be harmed in any way, to whom it is of any importance that it is not killed. What appeals to me in Quinn's theory is that there is a gradual attainment of respect and moral considerations. However, I disagree that this process begins from the time conception takes place. Quinn cites the example of the building of a house,

⁸⁴ Ibid.

materials are gathered, the foundation is laid, wooden skeleton is erected, plumbing and electrical work is done, bricks are laid and so on till the house is completed. But in all this there is no point at which a house suddenly begins to exist, the degree to which it exists increases as the work progresses. In the theory that I outline, I am going to admit of degrees in moral status which would in turn affect what we owe to different beings, in this case the embryo.

Since my gradualist position treats the early embryo as no different from a tissue or a bundle of cells and therefore assigns no moral status to it, we are left to think when the foetus begins to acquire moral status and what the criterion is for it. This will also clarify why the early embryo has no moral standing. A criterion of sentience for moral standing can be justified as the beginning of assigning any moral status to the foetus, for our purposes. Sentience is the capacity for feeling, in the most basic form, it is the ability to experience sensations of pain and pleasure and thus the ability to enjoy and suffer. In its more developed form, it includes wants, aims, and desires, thus providing the ability to be satisfied and frustrated, and then this can go on to include tastes, attitudes, values, moods, emotions, sentiments and passions. Consciousness is a necessary condition of sentience for feelings are states of mind of which their owner is aware. However,

it is not sufficient for we can have conscious beings who utterly lack feelings. And it is in the virtue of being sentient that creatures have interests. If morality has to do with the promotion and protection of interests, then we owe moral duties to all those beings capable of having interests and this includes all sentient beings.

It makes sense to think of sentience as admitting of degrees. When considering the perception of pain, one creature may be more or less sensitive than another. More developed and rational beings also possess a higher degree of sentience since the expansion of consciousness and intelligence opens up new ways of experiencing the world and therefore new ways of being affected by the world. More rational beings are capable of finding either fulfillment or frustration in activities and states of affairs to which less developed creatures are, both cognitively and affectively, blind. It is in this sense of a broader and deeper sensibility that a higher being is capable of a richer, fuller and more varied existence. The fact that sentience admits of degrees enables us to employ it both as an inclusion criterion and as a comparison criterion of moral standing. The animal kingdom presents us with a hierarchy of sentience. Non sentient beings have no moral standing and among sentient beings the more developed have greater standing than the less developed. A criterion of sentience can thus allow

for a gradual emergence of moral standing in the order of nature. It can explain why no moral issues arise in our dealings with inanimate objects, plants and the simpler forms of animal life.

This criterion of moral status also ties in neatly with Peter Singer's principle of equal consideration of interests which acts like a pair of scales, weighing interests impartially. True scales favour the side where the interests is stronger or where several interests combine to outweigh a smaller number of similar interests; but they take no account of whose interests it is that they are weighing.⁸⁵ If a being suffers, there can be no moral justification for refusing to take that suffering into consideration and no matter what the nature of the being, the principle of equality, Singer argues, requires its suffering be counted equally with the like suffering of any other being. If a being is not capable of suffering, or of experiencing enjoyment or happiness, there is nothing to be taken into account, nothing that we can do to it could possibly make any difference to its welfare. Hence, the limit of sentience is the only defensible boundary of concern for the interests of others.⁸⁶

⁸⁵ Singer, P., (1979), *Practical Ethics* (Cambridge: Cambridge University Press), p.19

⁸⁶ *Ibid.* , p.50

The adoption of sentience as a criterion determines the location of a threshold of moral standing. So the minimal characteristic required to give the embryo a claim to consideration is sentience. Until that point is reached, the embryo does not have any interests and like other nonsentient organisms like a human egg or sperm cannot be harmed in a morally relevant sense by anything that we do. We can of course damage the embryo in such a way as to cause harm to the sentient being it will become if it lives, but if it never becomes a sentient being, the embryo has not been harmed because of its total lack of awareness and therefore, lack of interests as well. Since sentience admits of degrees, we can in principle construct a continuum ranging from fully sentient creatures at one extreme to completely non sentient creatures at the other. The threshold of moral standing is that area of the continuum through which sentience fades into non sentience.

As the foetus develops, its psychological capacities mature and it becomes more closely related to its future self. Its interests also increase on this scale of development since slowly the levels of consciousness and therefore sentience also start attaining a higher degree. First trimester foetuses are clearly not sentient, third trimester foetuses possess some degree of sentience, it seems that the threshold of sentience falls somewhere towards the end of the second trimester. A

late abortion is more morally objectionable since as the developed foetus matures, the psychological capacities become more advanced and the degree to which it would be psychologically continuous with itself in the future increases gradually and correspondingly. This is how Jeff McMahan brings his account of time-relative interests account of the badness of killing into the debate on abortion.⁸⁷

Joel Feinberg discusses gradualism as a modified version of the potentiality argument and attacks it on the same grounds that are raised as objections to the potentiality view.⁸⁸ I would like to clarify here that the gradualist does not accord moral status to the embryo on the grounds that it will someday become an adult person who is given full moral standing. The gradualist position in turn looks at the foetus, its own properties, the nature of the being it is and whether any of that is of moral relevance and requires moral consideration on our part. It does not ask for any moral protection in virtue of the kind of being the foetus will become some day. On the other hand, it completely overlooks the potential of the embryo, concentrating at what every stage of development does to the embryo, in terms of providing it with more interests or capacities.

⁸⁷ McMahan, J., (2002), *The Ethics of Killing: Problems at the Margins of Life* (New York:Oxford University Press), p. 276

⁸⁸ Feinberg, J., and Levenbook, B.B., (1993), 'Abortion' in T.Regan (ed.) *Matters of Life and Death: New Introductory Essays in Moral Philosophy* 3rd ed. (New York: Tata McGraw Hill), pp. 207-212

I have argued thus in this chapter that a gradualist position based on sentience which thus generates interests is a defensible position to take on the moral status of the embryo. It is the only position which takes the moral relevance of the development of the foetus into consideration in the moral paradigm and justifies why an early abortion is not as bad as a late abortion. Since PGD and embryo selection deal only with very early embryos, sex selection or trait selection cannot be objected to on the grounds that unethical methods are being used to achieve the end, they cannot be objected to on the grounds that they do a moral wrong to the embryo.

4. Parenthood

In this chapter I am going to look into the concept of parenthood, the various accounts of parenthood, list the different rights that we give parents with regard to their children and discuss the theories of parental rights. In this chapter I am also going to critique the 'Children as Property' claim and develop an account of how parenthood is a relationship of love.

4.1 The parent and the child

The relationship between a parent and a child is a very unique one. From the day a baby first opens his eyes to the world, unable to provide for himself and attend to his needs, unable to make his wants understood, in the fragile, incomprehensible cradle of childhood, a bond is formed with the one who feeds for him, listens to his cries and turns it into a smile, rocks him to sleep with a gentle touch, treating it like a delicate bud that needs tendering. During most of his growing up years the figure of the parent looms large, that of course being his first contact with a world

he is a stranger in. So much of what a child becomes depends on the kind of environment he has been brought up in and the first set of lessons being taught at home, the parent being the book at hand which contains guidelines on living in the world. For some, their parents become their role models while for some others, especially those who have had a difficult childhood, they grow up with the desire to not become the persons that their parents were or are. The role of the parent in a child's life is crucial and it is in no way minimal.

Most children are reared within a family, the conception of a family being very different across cultures and societies. While in the West, the nuclear family model which consists of parent(s) and child(ren) is the norm, in the East, especially India and China, the extended family model which consists of mostly two generations living in close proximity, still continues to be the standard model. It may be noted that within the extended family system, it is usually a group of women, the grandmothers and aunts, who bring up a child. In some homes, children grow up calling their aunts and uncles similar words that they use to call their parents. For instance, if the father is addressed as "Papa" then the father's older brother would usually be called "Bade Papa" which literally means "Elder Father" and similarly for the aunt who is the father's older brother's wife "Badi

Mummy”. This is not to say however that the father or the mother are given any less importance or respect by the child. It is merely to acknowledge the role that the aunts and uncles have played, in some cases almost equally, in the rearing of the child. And the child is never allowed to lose sight of the fact that the biological parents are the ‘real parents’ of the child and at the end of the day he has to return to them. The hallmark of a family is that it is a social unit with a degree of mutual inter-dependence, of the sharing of lives, of caring and love, of commitment and support.

There have been various changes in the notion of the family from the traditional perspective of people having two parents, a mother and a father, each of whom contributed to the child’s biological makeup to an acceptance of adoptive or foster parents, single parents, of cohabiting couples or partners not married to each other having children, to having surrogacy arrangements where a woman agrees to bear a child for an infertile couple, to using science and technology in the field of reproduction to carry out invitro fertilisation (IVF), to donating your sperms and ovaries at a bank for use by infertile couples. As the social arrangements have changed in our society and science has advanced in providing us with newer tools for reproduction, the questions of how to define a parent,

whom to assign parenthood and give rights and responsibilities, has not only become more complex and difficult but also gained more importance, especially in the context of the law.

In the next section, I am going to deal with this very question of what it means to be a 'parent' and discuss the different accounts of parenthood.

4.2 What is parenthood?

In law as much as in philosophy, there has been much argument and debate over an agreeable account of parenthood, the definition of a parent and the assigning of rights to parents. In the latter case, parents and children are often discussed as if placed in opposite camps. This often comes up in the discussions of children's rights – if the child has a right to do something, then it maybe argued that the parents cannot have the same right. But it must be noted that parenthood and childhood are not co-relative concepts. Parenthood denotes a relationship with a child; one cannot be called a 'parent' unless one stands in some relation to a

person of a succeeding generation. Although parents may have created a child through procreation, parental status is derivative- it depends on the existence of a child. The concept of childhood however, is different. A 'child' can be a person who is young, who stands in a particular relation to an adult who may or may not be his parent. So while parenthood denotes the state of being a parent and fulfilling the roles expected of parents, childhood means a state of being young.

It may be that parenthood is a fragmented concept in itself. It is possible to distinguish various roles within it, any or all of which may be played by the same parent figure. The procreative or biological role is distinct from the social role; a person may provide the genetic material for a child's creation but play no part in the child's upbringing. Or as it happens in surrogacy arrangements, it is possible for a woman to act as the gestational mother and carry the child to term even though she is not the genetic mother and will not be the child's carer after birth. The social role may be carried out by a person who is genetically unrelated to the child while the 'psychological parent' may be the one who provides the emotional bonding with the young child. It may be held that parenthood is an amorphous

concept, with roots in biology but the social construction of which changes with time, culture and the status of the observer.⁸⁹

The concept of parenthood is far from being straightforward and it is no surprise that the law has a variety of understandings on being a parent. Bainham has usefully explained that the law distinguishes between parentage, parenthood and parental responsibility.⁹⁰ Parentage is attributed to those who are genetically related to the child. So it technically refers to the man who provided the sperm and the woman who provided the egg, which were combined to produce the foetus which became the child. Parenthood on the other hand, is for those who are regarded in the law as parents. In many cases, they will be those who have parentage but it need not be so. The law may decide that a man who donates sperm to the clinic will not be legally regarded as the father of the child. Parental responsibility is different from parentage and parenthood, in that it is attributed to those who are to have the legal responsibilities and rights that are attached to being a parent. The legal parent in the case of a genetic father not married to the mother, lacks parenthood in the full sense, in that the law withholds from him

⁸⁹ Strathern, M., (1993), 'A Question of Context' in J. Edwards et al (ed.) *Technologies of Procreation* (Manchester: Manchester University Press)

⁹⁰ Bainham, A., (1999), 'Parentage, Parenthood and Parental Responsibility: Subtle, Elusive Yet Important Distinctions' in A. Bainham, S. Day Sclater and M. Richards (eds.) *What is a Parent?* (Oxford: Hart)

parental responsibility. Thus it is necessary, at least from a legal perspective, to distinguish between being a parent and having parental responsibility.

In this thesis, the usage of 'parent' will be limited to referring to someone who has the primary responsibility for and rights over a child. There has been much discussion on what is at the heart of the concept of parenthood. There are four main approaches to parenthood: genetic account, gestational account, intentional account and causal account. In the next section, I am going to discuss each one of them.

4.3 Grounds for granting parenthood

4.3.1 Genetic account

This account claims that the core notion of parenthood is genetic parenthood. So the main ground of parenthood is in the relation of direct genetic derivation.

Hence, parenthood falls into the category of other familial relations like being a sibling, a cousin and so on. The vast majority of genetic parents are parents in law although not all genetic fathers are awarded parental responsibility. However, if genetic parentage were at the heart of legal parenthood, it is surprising that the law does not take stronger steps to determine genetic parentage. If it were that important, the legal system would require the genetic testing of all children born in order to ensure that their paternity is known, but it does not. Also, the genetic account may appear inconsistent with our attitudes to sperm and egg donors who are genetic parents but do not acquire the rights and responsibilities of parenthood. The main arguments for the genetic account that have relied upon in favour of biology⁹¹ rest on genetic identity and genetic contribution.

It is argued that our genetic parents play a crucial role in our self-identity. The strongest evidence for this is in relation to adopted children who often seek to find information about their genetic parents. However, this could be taken to involve two issues: a curiosity or an interest shown by adopted children in knowing where they come from and gaining knowledge of why these genetic parents did not bring them up, why they were abandoned, why they were not one of the many who were

⁹¹ Hill, J., (1991), 'What does it mean to be a "parent"? The claims of biology as the basis for parental rights', *New York University Law Review* 66, pp.353-420

born and brought up by those whose genetic material they carry. This curiosity or interest cannot be taken as a sure indicator that adopted children suffer from problems regarding their identity. Some also argue that the genetic link is important because the child has been born out of the genetic contribution of the parents and the child's being results from this and hence, should be acknowledged. One might want to argue against this by taking into account the fact that a child's physical being is not the only thing that matters, its social and psychological being matter much more as it grows and the role of the parent is crucial in developing these and there is no clear reason why a mere genetic link, as in the case of a gamete donor should contribute towards his/her parenthood with regard to being a mere contributor of a physical being. Also, it's not obvious that genetic parents do provide the material from which the child is constituted since the bulk of the matter from which the child is formed derives from the gestational mother, not the genetic parents. It cannot be denied that the genetic material from the genetic parents gives structure to that matter but to acknowledge only the contribution of the genetic material in the child's physical existence without taking into account the role of gestation would be a case of prioritizing form over matter and it's not obvious that this can be done.

Hall⁹² defends the genetic account of parenthood by appealing to the Lockean notion of self-ownership. The argument goes that since the genetic parents own the genetic material from which the child is constituted, it follows that they have a claim to the child. This argument treats the parent-child relationship in proprietary terms and I have dealt with it in greater detail, criticising this view in a later section.

4.3.2 Gestational account

Some authors have argued that the primary ground of parenthood is the gestational relation.⁹³ In the reproductive context, where a child's gestational mother differs from its genetic mother, as happens in gamete donation and surrogacy arrangements, it is the gestational mother who has the primary claim to parental rights and responsibilities. The law is regarded as having a commitment to gestationalism since the husband of the gestational mother is presumed to be the father of the child. It could be argued that the law favours this account with the intent to save children from the stigma of illegitimacy, which was quite

⁹² Hall, B., (1999), 'The origin of parental rights', *Public Affairs Quarterly* 13, pp.73-82

⁹³ Rothman, B., (1989), *Recreating Motherhood: Ideology and Technology in a Patriarchal Society* (New York: W.W.Norton) and Feldman, S., (1992), 'Multiple Biological Mothers: The Case for Gestation', *Journal of Social Philosophy* 23, pp. 98-104

dominant in the earlier years. However, the gestational account of parenthood suffers from an inherent problem, that if gestation is required to grant parenthood then how can men ever be parents.

There are two arguments justifying gestationalism. The first is a consequentialist one, that since the gestational mother unlike the genetic mother is guaranteed to be identifiable at birth⁹⁴, it is in the best interests of the child that the gestational mother be regarded as the mother. The second one rests on the unique relationship that is supposed to exist between the gestational mother and the child. The mother and foetus are obviously related physically with the foetus being inside the mother's body and also a part of it; it is dependent on the gestational mother in a way that it is not dependent on anyone else including the genetic parents. The mother also invests a substantial amount of effort into the account, undergoing considerable discomfort, effort and risk in the course of pregnancy and childbirth. The third argument for the gestational account of parenthood appeals to gestation being a process that can foster emotional and effective bonds. This however, is quite a controversial point. One might be in a position to grant that the gestational

⁹⁴ Annas, G., (1984), 'Redefining Parenthood and Protecting Embryos: Why We Need New Laws', *The Hastings Center Report* 51, pp. 50-52 and Charo, R., (1990), 'Legislative Approaches to Surrogate Motherhood' in L. Gostin (ed.) *Surrogate Motherhood: Politics and Privacy* (Bloomington: Indiana University Press)

mother does undergo a lot emotionally and physically during the course of the pregnancy but it's questionable whether this relationship that ensues is such as to give the gestational mother a unique claim to parenthood. It might be the case that the woman's partner has been highly supportive in helping her deal with the stresses of pregnancy, undergoing a considerable amount of discomfort and effort himself, and has therefore developed a strong bond with the child through indirectly caring for it. The gestational account leaves no room for the father's claim to paternity, disregarding all his efforts and any bond that he might have developed with the foetus which he dreams would be his future child.

4.3.3 Intentional account

Some theorists have argued that less emphasis should be placed on genetic parentage and that instead, the intent to be a parent is of far more importance. A parent is a parent only if he or she intends to be a parent. So this third approach to parenthood appeals to intentions as the ground of parenthood and this has been very popular with legal theorists. According to Hill, one of the supporters of this theory, the more fundamental basis of the parent – child relationship is not

biology as such, but intentionality, which is usually but not always, signified by the biological relationship. He identifies three conditions that must be met by intentional parents⁹⁵ : (i) They must desire and intend to have a child prior to the conception of the child which they claim to be their own (ii) They must take morally and legally permissible measures pursuant to this intention which results in the conception of the child (iii) They must possess the intention and the ability to care for the child. This account of parenthood based on intention certainly has the strength of supporting the view that voluntary action is the ground of responsibilities. The intentional account also helps to resolve cases like that of the misplaced sperm⁹⁶ in which a person's sperm gets swapped with that of a sperm donor's at a sperm bank and is used by a woman to produce a child. Certainly, the person who was only storing his sperm cannot be said to acquire rights and responsibilities over the child that has come into being.

The supporting argument for the intentional account is that the child would not have been born were it not for the intentions and initial actions of the intending parents. However, there are problems in emphasizing intent when considering the most common origin of parenthood, where normal sexual intercourse is involved.

⁹⁵ Hill, J.L., (1990), 'The Case for Enforcement of the Surrogate Contract' , *Politics and the Life Sciences* 8 , p.155

⁹⁶ *Guardian Weekly*, (2002), 'Donor joins IVF sperm mix-up case', 26-31 July, p.11

It could be argued that to have sexual intercourse reveals an intent to be a parent. But surely this cannot be the case given the rising number of unintended pregnancies. However, it could also be argued that given the availability of contraception and abortion, a case in which the couple still do decide to go ahead with the pregnancy manifests an intent to be a parent. But the cases can be tricky if people's moral or religious beliefs come in the way of their using contraception or aborting an unwanted and unintended pregnancy. Hence, the decision not to go ahead with birth control or abortion may not be a sure indicator of a couple's intent to become parents. It could also be argued that each time a couple engage in sexual intercourse they willingly accept the risk of becoming parents, and that this is a sufficient condition for parenthood.

There are a few problems with this account which makes one wonder what precisely is the exact content of the intentions that are supposed to ground parenthood. For instance, if someone sees a neighbour and on finding that she is pregnant, decides that he would like to act as the father of the child, he cannot claim an intent to be the child's parent, which should be recognized by the law. One could also imagine a case where a couple realize that they are pregnant by accident and decide that they would go through the pregnancy and upon delivery,

put up the child for adoption rather than bring it up themselves. They carry on with the pregnancy as decided but a short while after the birth of the child, they decide against what they had initially intended and decide to rear the child as theirs, themselves. It is difficult to say that for the short while after the birth of the child when they still had the intention to put it up for adoption, they were not the parents of the child since they did not intend to parent it. Also, how does one prove one's intent to be a parent and what exactly does this intention constitute?

The intentional account could be a good argument that could be useful where there are competing claims based on biology, as often happens in surrogacy arrangements. It would also permit more than two people to be the parents of a child and they need not be of the opposite sex.

4.3.4 Causal account

The causal account of parenthood holds that causing a child to exist is a ground for granting parenthood, for generating parental rights and responsibilities. It has

been advocated by Nelson⁹⁷, Bigelow et al⁹⁸ and Blustein⁹⁹. An important distinction that needs to be made here is that the causal account differs from the intentional account in that one can cause something to happen without intending to bring it about. It could be that a particular state of affairs or chain of events are brought about without one being aware of the resulting consequences or possible effects of one's actions. In this case, teenagers without adequate sex education could end up in a situation where they haven't grasped the connection between sexual intercourse and pregnancy and thus become the cause of a child's existence.

Hill¹⁰⁰ ties in the intentional and causal accounts of parenthood when he argues that the intending parents are the first cause of the procreative relationship, they being the ones who have engineered the birth of the child. It is their desire and intention set into motion that leads to the creation of a child. He argues that what is essential to parenthood is not the biological tie between parent and child but the preconception intention to have a child, accompanied by undertaking whatever action that is required to bring a child into the world. Hence, it is the

⁹⁷ Nelson, J.L., (1991), 'Parental Obligations and the Ethics of Surrogacy: A Causal Perspective', *Public Affairs Quarterly* 5, pp.49-61

⁹⁸ Bigelow, J., J. Campbell, S. Dodds, R. Pargetter, E. Prior and R. Young, (1988), 'Parental Autonomy', *Journal of Applied Philosophy* 5, pp. 3-16

⁹⁹ Blustein, J., (1982), *Parents and Children: The Ethics of the Family* (Oxford: Oxford University Press)

¹⁰⁰ Hill, J.L., (1991), 'What Does it Mean to be a Parent? The Claims of Biology as the Basis of Parental Rights', *New York University Law Review* 66, p.414-416

preconception intention coupled with the preconception and postconception actions that make a parent. Hill further maintains that while all the players in the procreative arrangement are necessary in bringing a child into the world, the child would not have been born but for the efforts of the intended parents. So, he argues, the status of parent should go to the persons who constitute the “but for” cause of the child’s birth.

Even though the causal account is able to account for the genetic, gestational and intentional accounts, it is riddled with its own set of problems ranging from what exactly is meant by causation to what the implications of this theory would be. It could be that my mother during the first few years did not want a child but after persuasion from my grandmother decided to finally try conceiving. So, I would not have been born had my grandmother not intervened and influenced my mother’s decision on this issue. Now, one could say that it is in fact my grandmother who is the first cause of me being present in this world, but would she be considered my parent on that account? Also, it could be that my grandmother wouldn't have herself existed had India not gained independence and India would not have gained independence had it not been due to the actions of Mahatma Gandhi. So, could one argue then that Gandhi was my father? Arguing

on the basis of the first cause could take one on a loop of causes, regressing infinitely.

4.3.5 An account of earned parenthood

It can be argued that parenthood must be earned. That is the mother, through pregnancy has demonstrated a commitment to the child and has formed a bond with the child. If the father has married the mother and can therefore be presumed to have offered the mother support through the pregnancy, this also indicates a commitment to the child. But the unmarried father has not earned the parenthood, as he has not shown commitment to the mother and child by marrying the mother. It could be argued that this account does not provide a sufficient explanation for who is a parent. A genetic father can be regarded as the father even though he has done nothing to 'earn the parentage'. Also, it rests on an assumption that marriage is the only way that a man can show commitment to a woman who is going to have his child and also, to his child.

4.3.6 An account of social parenthood

Psychologists have stressed the importance of psychological parents. This has led some to argue that the law should recognise the day to day work of parenting, rather than the more abstract notions of genetic, intentional and other accounts of parenthood. In light of the psychological evidence we have, the child seems to develop an emotional relationship with the person who provides their constant care for him/her and it is this person who is most important for the child. The emphasis on social parenthood would also appeal to those who would argue that the law should emphasise and value caring interdependent relationships between parties.

Each of the above accounts has its own plus and minus points, each of the positions can be endorsed in a number of forms. These accounts are not mutually exclusive and hence, a monistic account of parenthood would not work. Whereas in ancient times, biology was considered as the only ground of parenthood, the advancement in science and technology have forced us to broaden our horizons and think of other grounds on which parenthood could be sufficiently based.

Parenthood should be considered as a multicriterion concept rather than a unicriterion one.

Before I go on to discuss the connection between parenthood and the right to sex selection, I would like to take an overview of the sorts of rights that are already given to parents.

4.4 Parental rights

A distinction that needs to be made here is between a right to be a parent and the rights of a parent. The right to be a parent is the right to stand to a specific child in the relationship of a parent. The rights of a parent are the rights of custodianship over that child which helps to specify the relationship. So, when talking of parents' rights, one needs to remember the rights that a parent might have as a human being, like the right to life, free speech etc. and the rights that a parent may have because he or she is a parent. Following is a set of rights that are assigned to parents by the law in virtue of their relationship with a specific child.

At common law, a parent has the right to possession of his child. A person who had parental responsibility could require any other person who had possession of the child to hand him or her back. While the child remained in another's care, the parent could also rely on this right to control the child's movements. Parents have the right to control or direct the child's upbringing. This right however is dependent on the child's stage of development. The person with parental rights could determine what education, if any, the child would receive, the kind of school they should attend. A parent is also given the right to discipline his child. A person with parental responsibility has the common law right to determine the child's religious education and may by statute require the child's exclusion from religious studies lessons and school assembly. This freedom of religion is protected by the European Convention on Human Rights. Parents also have, at common law, the right to the domestic service of their unmarried minor children. A parent has the right over his child's property together with such rights as a guardian of the child's estate would have. A person with parental responsibility is prima facie entitled to act in the capacity of a representative of the child in legal proceedings. A person with parental responsibility has some rights to consent to the treatment of his children but treatment may be given or refused against such a person's wishes. One of the grounds for doing so could be taking into account the

best interests of the child. A parent has the right to consent to marriage of his children though parental refusal could be overridden by the court. It has been asserted that a parent has a common law right to contact with his children, subject to the welfare of the child. Parents also have apart from other miscellaneous rights, the right to choose the name of their child.

4.5 A right to sex select

A right to sex select would involve couples having a right to choose the gender of their offspring. Such a right could be generated on account of the different theories of parenthood and parental rights that we examined in detail above. There could be four arguments for purporting such a right to sex select and these are : (i) That the law of the land or the natural law grants such a right (ii) That such a right is a part of the nature of parenthood, that this right comes attached with the parental role and responsibility (iii) That parents own their children and hence, have this right just like they have various other parental rights that enable them to make decisions regarding their children (iv) That a right to sex select is a part of one's personal autonomy, that it is an extension of procreative liberty and reproductive autonomy granted to parents.

One often wonders if there is a right to be a parent. It is hard to claim a positive right to procreation, not least because natural procreation involves two people. Few people would seriously suggest that the state should be obliged to provide partners for anyone who wishes to produce a child. Article 12 of the European Convention on Human Rights states that 'men and women of marriage age have the right to marry and according to the national laws governing the exercise of this right found a family'. There is little here however to suggest that this is an expression of a positive right to procreate or become a parent. It can be said that there is a right not to have your natural abilities to procreate removed by the state. Hence, in this it is only a negative right. The second sense in which one might claim a right to procreate is to argue that one should not be denied fertility treatment without a good reason, for example, that gay or lesbian people should not be denied treatment because of their sexual orientation. Hence, it could be argued that this does not provide a sufficient ground for granting a right to sex select because what the European Convention asserts is the right to found a family, not what kind of a family and certainly not what kind of children one should or should not have.

Then it could be argued that it is in the nature of parenthood, that the roles and responsibilities of being a parent form a basis for grounding such a right. Since on the birth of a child, the mother and father are under legal and moral obligations concerning the child, they have the right to care for the child. So if the children are going to be in the custody of the parents, then they should have a say in what kind of children they want to bring up, adhering very closely to the parents' preferences and desires. This does not seem like a plausible argument for a right to sex selection since there is nothing specific in parenthood, the roles or responsibilities that parents have regarding their children that establishes a connection between the gender of the child and the kind of support and care that they should provide them. Parenthood in itself ought to be gender neutral.

The third argument is that children can be seen as the fruit of the parents' labour through procreation and therefore as the property of the parent. This could be seen as the basis of parental rights. If the proprietary argument is valid, then by virtue of parents owning their children, they could possibly have the right to choose the gender of their children as well. I am going to deal with this argument of children as property in greater detail in the next section.

Lastly, one of the main arguments given to support a right to sex select has been the argument from reproductive autonomy and procreative liberty. This right is an extension of the right to self determination or autonomy that we as human beings possess, the right to make decisions about our lives without interference from third parties. It could be argued that a right to reproductive autonomy grants a person who is to be a parent the right to sex select since it falls under the right to individual autonomy or privacy that we generally possess. This argument will be examined in the next chapter, with a view to how the concepts of harm and interests can limit individual liberty.

The next section deals with the question of why only parents and not strangers are given certain rights over their children. I am going to call this the ‘Children as Property’ claim.

4.6 Children as property

One explanation for the unique privileges that parents have with regard to their children is that children are the property of those parents: just as I own my arms

and legs, or, more controversially, my genetic information, so I own the children that issue from me. There is something very uncomfortable about this thought: to accept it would be to accept that every child is born into a kind of slavery. But if one accepts certain prominent theories of property ownership, then it is difficult to avoid accepting this approach to parental rights as well.

And there are good reasons to avoid accepting this view of parental rights. The relationship between an owner and the thing she owns is generally one characterised by rights rather than responsibilities. If I own a car, the rights that I have over it are not conditional upon my taking care of it: I can smother it with oil and adoration or leave it to slowly rust into oblivion, or strip its innards and transplant them into another car according to my merest whim. In general, we don't think that we owe anything to the things that we own. There are some exceptions to this general rule: if I own a house that is listed because of its perceived historical value, I might be bound by the conditions of my purchase to preserve it in particular ways. This is presumably because, unlike other privately owned possessions, which are supposed to be of importance exclusively to the owner (at least in ways that the law would recognise), society in general is thought to have an interest in the preservation of its heritage, and this interest

impinges upon the absolute control that owners generally enjoy over their property. Children might be seen in a similar vein: the rights that their parents have in them, (which might still constitute a kind of ownership right) are limited by the interest that society has in their wellbeing. However, we do think that parents owe their children certain things and consider that the way they treat their children should be governed by more than their personal whims, but by a respect for, and desire to protect, their children's welfare. Ownership doesn't seem to encapsulate the subtle weave of rights and responsibilities that tie parents and children together, but, despite its problems and distastefulness to the modern, (Western) ear, many theorists of parenthood have been persuaded by this kind of claim. Aristotle cited ownership as one of the reasons to preserve the institution of the family: 'for the product belongs to the producer...but the producer does not belong to the product, or belongs to a lesser degree'¹⁰¹, and Filmer famously argued for the right of ownership of father over son¹⁰², much to the abhorrence of his critic Locke. So, despite its lack of common currency now, at least in academic writing, the great historical significance of the notion that parents own their offspring renders it ripe for study: what was appealing about this idea to so many and for so long- and why does it seem so unpalatable now?

¹⁰¹ Aristotle, *Nicomachean Ethics*, 1161b19, quoted in Blustein, J.,(1982), *Parents and Children: The Ethics of the Family*, (NY: Oxford University Press), p.42

¹⁰² Blustein, J.,(1982), *Parents and Children: The Ethics of the Family* (New York: Oxford University Press), p.75

Despite his opposition to the ownership account of parental rights, it is Locke's theory of Just Acquisition that has become the lynchpin in the construction of the parental property position in modern literature. Barabara Katz Rothman suggests that Locke's theory of ownership is so central to the issue of child-bearing that it has become embedded in the very words we use to describe it when she writes... "reproduction", a word that implies that making babies is a form of production—raw material transformed by work into a product.'¹⁰³ Whilst Locke himself denied that children are the property of their parents, arguing instead that God owns all people and that parental rights are the rights of a guardian rather than an owner, his account of how private property comes about can be directly applied to child-bearing and rearing, and his insistence that it ought not to be is based on highly questionable foundations. I will focus this discussion around the Lockean account of property acquisition and consider the problems that such an account raises for a theory of parental rights.

¹⁰³ Katz Rothman, B., (1990), 'Recreating Motherhood: Ideology and Technology in American Society' in Dorothy E Vawter and Arthur L Caplan (eds)*Beyond Baby M: Ethical Issues in New Reproductive Technologies*, (New Jersey: Humana Press), p.9

Locke's Theory of the Just Acquisition of Property, detailed in the *Second Treatise of Government*, is essentially that:

“when one acts to mix one's labour with X (X being unowned) one justly obtains X...[J]ustice gives every man a title to the product of his honest industry”¹⁰⁴

The reason that Locke gives to support this is that each individual owns his or her own body, and therefore the product of that body, that is, the labour it performs, also belongs to that individual. There are two conditions governing what one can rightly mix one's labour with in such a way as to create ownership rights. Firstly, there must be 'enough and as good' of the resource being appropriated left for others to use or to create property rights of their own in, because the earth and all its bounty were given to all mankind equally, and each should have an equal chance to acquire some of it for himself. Secondly, one may only appropriate resources that one can use before they spoil.

¹⁰⁴ Locke, J., (1980), *Second Treatise of Government*, (USA, Hackett Publishing Company,), Chapter 5, Of Property

It is easy to see how this theory of property acquisition could be applied to the covetable resource that children represent. Because individuals own their bodies and their labour, the product of that labour is theirs, provided that no-one else's claim is unfairly impinged upon. If the product of the labour in question happens to be a child, then surely that child belongs to the persons whose labour was invested in its production. In the absence of conditions of extreme overpopulation, it would not be plausible to hold that one couple's conception of a child interferes with any other couple's ability to also conceive, and the second condition upon property acquisition; that one take only as much as one can use, also appears inapplicable to procreation (although this condition might seem to suggest that a couple should only conceive children that they can 'use', the rationale behind it, which is to prevent resources being stockpiled and wasted by miserly individuals, does not apply.) Although advances in reproduction have opened the door to procedures like the donation of sperm and ova and gestational assistance via surrogacy, all of which assist infertile couples to conceive, in general, I do not deprive others of an opportunity or possession that they might have otherwise had by electing to use my reproductive capacities myself, to bear a child. So, it would seem that, according to Locke's theory of Just Acquisition, every child that is conceived and born is the justly acquired property of his or her biological parents.

It is plausible to hold that ownership rights in children are not merely as justifiable as ownership rights in other resources, but that they are even more justifiable. The reason for this is that a child is created solely through the bodily material of the procreating man and woman: their labour is not mixed with external objects which are held in common with all humankind, but with the labour and genetic material of their partner. None of the standard objections to individual instances of appropriation are likely to apply in the case of children: questions like how much labour must be mixed to generate ownership rights, or whether enough of a given resource will be left to render an appropriation valid are not relevant in the case of the conception and nurture of a child. Childbirth is not an act of appropriation so much as one of creation: if one can own the things that one mixes labour with, surely one can own the things that one manufactures from scratch using only one's labour and one's body (which, according to Locke, one owns) and those of your willing partner.

These arguments are especially powerful in the case of the mother, whose labour extends far beyond conception and whose physical contribution is not limited to the initial provision of genetic material. The mother's body houses, supports and nourishes the ovum into existence and through gestation: few tasks could involve

more intensive labour than this and few instances of labour could create a more complete claim to ownership than those in which the claimant actually supplies the physical goods with which her labour is then mixed.

Despite the strength of the case for thinking that Locke's Theory of Just Acquisition creates the most unassailable case for ownership rights in the context of production of children, Locke himself disputed the theory's application in this case. The grounds he cites for this exception are weak, but other more plausible ways to position children outside the realm of ownership might be found. I will consider two ways in which to avoid the conclusion that children are the property of their parents.¹⁰⁵

There are two ways of disputing parental ownership rights in children that may fare rather better than those that Locke advances. One is to challenge the Theory of Just Acquisition itself; the other is to assert that children are not valid objects of that theory. I will start with the former and discuss the general weaknesses in

¹⁰⁵ See Locke, J., (1967), *Second Treatise of Government*, op cit, chapter six, Of Paternal Power; 'First Treatise of Government' in *Two Treatises of Government*, Peter Laslett (ed.) (Cambridge: Cambridge University Press), sections 52-54, and Archard, D., *Children: Rights and Childhood* op cit, p.8-9 and Nozick, R. (1974), *Anarchy, State and Utopia*, (Oxford: Blackwell), p.288

Locke's Theory itself before making an argument for children as an exception to it.

The first way to deal with the prospect of parental ownership rights is to undermine the Theory of Just Acquisition, the acceptance of which leads to the conclusion that such rights exist. Robert Nozick provides a powerful critique of the theory which he encapsulates thus:

“Why does mixing one's labour with something make one the owner of it? Perhaps because one owns one's labour, and so one comes to own a previously unowned thing that becomes permeated with what one owns. Ownership seeps over into the rest. But why isn't mixing what I own with what I don't a way of losing what I own rather than a way of gaining what I don't? If I own a can of tomato juice, and spill it into the sea so that its molecules (made radioactive, so I can check this) mingle evenly throughout the sea, do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?”¹⁰⁶

¹⁰⁶ Nozick, R.,(1974), *Anarchy, State and Utopia*, op cit, pp.174-5

Nozick goes on to consider the possibility that, if the addition of your labour creates extra value in the thing that you labour upon, this might give you some claim to the thing itself, by virtue of your contribution. But, once again, it is not obvious why that claim would extend to the whole of that thing, rather than to the extra value for which you are responsible, or some equivalent. This is a substantial problem for the Theory of Just Acquisition, and is enough, in my view, to discredit it entirely, unless a defender is able to provide some convincing way of explaining why labour is different from tomato juice when property rights are in question.

Nozick's work provides good grounds to reject the Theory of Just Acquisition with regard to objects and entities in the world that an individual might mix her labour with and thereby come to own. But it doesn't apply so neatly to the labour that parents invest in the growth and development of their children. This is because the labour involved in conceiving a child is not mixed with anything external, in the way that a carpenter's might be mixed with a stump of wood, so that we may think, like Nozick, that the carpenter's rightful assets could be depleted (he loses his labour), rather than multiplied (he gains a stool), through his act of mixing. Reproductive labour is different in the sense that there is no

external object, such as a stump, upon which the procreating partners have no prior claim, but which is nevertheless smuggled into their possession through the contribution of their labour. In ordinary cases of reproduction (assisted conception techniques such as IVF and also surrogacy can complicate this a bit, as the resources and labour of third parties are also involved), the only resources required are the labour and bodily matter of the procreating partner, all of which are already 'owned' by them. At the time of conception, those contributions are more or less equal, and equally essential. The gestating mother obviously goes on to invest a great deal more (direct) labour in the production of the child than her partner is able to, but the labour that her partner does invest initially is essential to the creation of the zygote or foetus that exists for the mother to labour on at all. The contributions that the procreating couple make in conceiving a child are unlike the contributions that a carpenter makes when he fells a tree and fashions a stool from it, or a fruit picker makes when he forages for raspberries and turns them into jam: in these cases, the labourer combines what they do have with something that they don't in order to make the something that they don't have, become theirs. But the procreating couple's contribution is complete in the sense that every element of the process, from the raw material that they labour upon to their labour itself, is provided and owned by them; nothing in the outside world is appropriated.

So Nozick's criticism, which strikes such a fatal blow to the Theory of Just Acquisition when applied to objects in the external world, doesn't really touch parental rights, earned through the creation and nurture of children. It might be the case, then, that Locke's theory, which he so earnestly intended not to apply to the relationship between parents and children, might be nowhere so convincing as it is with regard to this very relationship. We tend to think that we own the things that we create from scratch (the existence of and healthy trade in intellectual property law reflects this and often deals with instances similar to that of procreation, in that the labouring parties are responsible for the creation of a good or resource without the direct use of external objects), or at least that nobody else has a greater claim to these things than we do. If this general intuition is justified, we could reject the Theory of Just Acquisition with regard to jam and wooden stools and other things that are created through the addition of labour to an external object on the grounds that Nozick delineates, whilst accepting it in the case of parental labour (and intellectual labour).

It is important to note at this point that Nozick's objection is only defeated here with regard to the labour involved in producing a child, not the labour involved in raising one. The genetic parents of a given child (except in cases of assisted

reproduction) are the only people that can claim to have donated both labour and raw material to this act of creation, so, on the grounds discussed in the above paragraph, their parental claims fall outside the realm of Nozick's objection. Even if a stepmother or a grandparent or a foster parent does the majority of the nurturing and caring for a child after birth, the fact that they cannot claim that this child is the product of their body and labour means that their claim with regard to that child will always be susceptible to Nozick's objection. This really limits the types of labour that can ground valid claims to parental status if one accepts the ownership account of parental rights. The only people who can ever claim ownership rights over children, on this account, are their genetic parents, because only the labour that they invested in their creation, together with the contribution of their genetic material, can justify such a claim.

So far so good, it would seem, for the application of the Theory of Just Acquisition of Property to children, except, that is, for one highly significant catch. Reproductive labour may seem to meet the Lockean conditions of ownership in textbook fashion, but maybe children don't qualify so neatly as objects of ownership. Perhaps it is the case that children are simply not the kinds of things that can be owned. This approach constitutes the second way of disputing the

application of Locke's theory of ownership to children, and to my mind it is the more convincing.

It is possible to deny that parents own children without refuting Locke's views on property acquisition (at least with respect to reproductive labour) by holding that, whilst labour in general might justify ownership claims (although reasons to doubt this have been presented), parental labour does not, on the grounds that children are simply not the sorts of thing that can be owned. Archard expresses this position thus:

“[there is] the far more productive suggestion that what is different about the production of a child is that it is the bringing into being of a human life. Now what matters is not that human life is ultimately God's gift, nor that its creation is a mystery to us, but that to be or have a human life is to be in possession of rights to continued life and liberty.”¹⁰⁷

This position appears natural, even obvious, to the modern mind, yet, interestingly, it is not the position that Locke takes. Locke does not even hold that fully matured

¹⁰⁷ Archard, D., (2004), *Children: Rights and Childhood* (London: Routledge), pp.8-9

adults are the kind of things that cannot be owned: although humans cannot deprive other humans of their liberty, that liberty is always limited by the fact that God, as the Creator, owns us all.¹⁰⁸

The view that it is the character of the product rather than the labour that blocks ownership claims with respect to children, can be cashed out as follows. Ordinarily, when we take possession of a thing according to the conditions of the Theory of Just Acquisition, we are laying claim to something that doesn't have rights of its own. In some cases the thing in question is considered eligible for some rights (if it is a higher order mammal, say), but not the kind of rights that we think are contravened by our taking possession of it. It is widely thought that children, on the other hand, do have the kind of rights that prevent ownership and a defence of this conviction can be mounted through reference to their personhood or high moral status. For the same reasons that slavery is morally wrong, parental ownership of children is morally wrong: it violates the rights of children.

¹⁰⁸ This argument is used to sustain Locke's position on suicide. Locke, John, *Second Treatise of Government*, op cit, II.ii.5

4.7 The parent-child relationship

If children are not owned by their parents then why is it so that parents are given rights and duties with regard to their children? My answer would be that parents and children share a special relationship. This relationship is based on trust, on intimacy, on friendship and on love. The basis for this relationship is genuine interest in the welfare of the other, loving and caring for that being you choose to bring into the world and raise. Parenthood is a role, a social role. It is a relationship in the context of society, a large group of people. It is a socially recognised role and the rights and duties that parents have towards their children and with regard to them all stem from this role and relationship. So parenthood can be defined as a social phenomena embedded in a network of socially meaningful relationships. The norms and duties arise from the social meaning of the institution to which the role belongs or within which it operates.

The meaning of parenthood, the point of it is the care, the rearing, and education of children so that they become capable, independent adults. One might want to ask how biology fits into all this. A plausible answer could be that it is due to

mere habit and the overwhelming historical precedent we have. We are sexually reproducing animals and our young cannot care for themselves. We do make exceptions, for example, when we take care of stepchildren, adopted children and those that come into being by the use of new reproductive technologies, those that do not carry our genes. In all of these cases, we opt to be in a position where we can care for the young child. Another way of looking at it would be in terms of the 'telos', the end of this relationship. Parents have to undergo a lot of sacrifices and difficulties for their young ones. Nature gives us an instinct to rear successfully a child into an adult. The parent-child relationship exploits the natural instinct that people have. A third way of looking at it would be to view it from the perspective of posterity, that people have a desire to continue their own, have children who are their own and share their life with them.

Contemporary parenting is not simply a matter of education and training. Emotions enter into good parenting in crucial ways. Love is important in successful parenting and one cannot be trained to love one's charges. So too are pride, anxiety etc. and none of these are to be instilled in a training course.¹⁰⁹ These commonsense observations give a clue to the reason for a presumption in favour of natural parenting- parents are more likely to love, be proud of, worry

¹⁰⁹ Graham, G., (1988) *Contemporary Social Philosophy* (Oxford : Basil Blackwell), p.149

about their own children than they are about other people's, and the presence of these emotions makes for better parenting. This is why natural parents are likely to be better custodians of the interests and welfare of their own children than any state appointed guardians, however well trained, could reasonably be expected to be.¹¹⁰

The family is an institution formed in all societies that are committed to their biological and social reproduction. The Latin origin of the word family or familia implies domestic, or household - a group habitually sharing a common dwelling. The family can have several aspects based on different criteria - locational, kinship, functional, biological, reproductive focus.¹¹¹

In most human societies, the family is the fundamental unit of sexual and social organisation- largely through selected mating on the pattern of monogamy. Families can supply a collective well-being for all their members: for children, this means parents meeting adequately a multiplicity of needs. The family, as the first instrument of socialisation and education for the young, can contribute to the

¹¹⁰ Ibid.

¹¹¹ Ulanowsky, C., (1988), 'The Family' in Ruth Chadwick (ed.) *Encyclopedia of Applied Ethics* (San Diego: Academic Press) v.2, p. 233

well-being and stability of the society of which it is a part. Psychological studies suggest that the family from which people originate and the one that they might create have the potential for influencing significantly what individuals are and what they might become from birth to death.¹¹²

Self-centred, atomised individuals will create self-centred, atomised societies, and parents as the first and most critical role models have the potential to influence their children in the way they think best. Functioning with integrity and altruism, and directing their energies to positive ways both externally and within the home, it is argued that parents can contribute through example, to their children's moral well-being and ultimately to the future well-being of the society of which they are a part.

Personal relationships are fairly long standing relationships between individual persons who know each other to a substantial degree and who normally have some degree of emotional attachment to one another. Aristotle gave friendship a central place in his ethical theory. Personal relationships can be wholly involuntary, as in the relationship between child and parent. They can be wholly

¹¹² Ibid., p.234

voluntary in the sense that it is entirely up to the individual whether to enter into them or not, e.g., marriage and friendship. There may be cases in between, such as the relation of parent to child; the parent may choose to have a child, but does not choose to have the particular child he or she does end up having. But the voluntariness of entering into these relationships is not paralleled by a complete voluntariness in exiting from them.¹¹³

To act from friendship is to act for the sake of one's friend. The value of personal relationships is not just their general value as components of human good. Rather, each particular friendship has its own unique value; each relationship is incommensurable with any other. The value of friendship involves the irreplaceable and non-comparable value of each particular friendship.¹¹⁴ A second source of interest in personal relationships, as a distinctly moral phenomena comes from recognising that there are many kinds of special moral relationships.

The paradigm, and in an ultimate sense only, moral relationship in impartialist ethical thinking is of persons regarded simply as persons, human beings, rational

¹¹³ Blum, L., (2001), 'Personal Relationships' in Lawrence C. Becker and Charlotte B. Becker (eds.) *Encyclopedia of Ethics* (New York : Routledge), p.1299

¹¹⁴ *Ibid.*, p.1300

beings, or the like. This perspective is insufficient in that we are subject to certain norms, responsibilities, and perhaps duties to specific other persons in virtue of the type of specific relationship we stand to them – professional to client, friend to friend, and parent to child. This point of view can be associated historically with intuitionism (advocated to W.D.Ross) and discussed by Sidgwick. The intuitionist perspective involves a multiplicity of distinct and irreducible principles, not all applicable to all persons simply as persons.

While accepting that there can be norms and obligations in, for e.g., professional relationships, some nevertheless object to seeing personal relationships in this way. For, they say, action on behalf of friends and family must stem from personal affection or caring. If it stems from duty or obligation, something is wrong: this is not what our friends, spouses and children need or want from us. Yet we do speak of duties at least of parents toward their children (to nurture, support, take care of). Sidgwick¹¹⁵ suggests that we do have duties to have affection for our friends and family but that in the absence of such affections we also regard parents as under a duty to provide certain goods to their children. Many goods however, within personal relations, like a child's self-esteem or a

¹¹⁵ Sidgwick, H., (1901), *The Methods of Ethics* (London : MacMillan and Co.), Book III, Chapter IV, Section 1

friend's self-confidence cannot be brought about by the parent or friend unless doing so is motivated by certain emotions or emotional attitudes, of love, care, valuing, rather than by duty. Perhaps it can be argued that there are duties of personal relationship, but that discharging those duties requires motives other than duty itself.

There seem to be grounds for saying that moral norms operate within personal relationships, though these norms sometimes involve emotion and feeling in ways that norms do not do in other relationships. In addition, an ethic for personal relationships will have to be decidedly more particularistic than so far indicated, and more particularistic than the way obligations are portrayed on standard accounts. For if there are duties to friends, these are not just general duties but ones very specific to the particular relationship in question.

Just as each personal relationship has its own irreplaceable value, so each has its own unique history, character, and set of implicit and explicit understandings about what is to be expected of the parties. What I ought to do for my friend or

child or spouse, is often not what I ought to do for any friend in comparable circumstances but rather depends on the particularities of the relationship.

The normal motivation for interacting with our families is different. We often do things for our family not to promote our own interests, but rather to promote theirs. Strong family relationships are based on love. Love is a gift, and, as in giving a gift, we do not expect it to be reciprocated. That explains why, English claims, grown children do not owe anything to their parents. Healthy family relationships are not governed by moral rules, but by care. Of course, if parents had good relationships with their children, then we would anticipate that the children would care for and help their ailing parents. However, that is a prediction of how we think children will act; it in no way implies that the children are obligated to do so.

Jane English¹¹⁶ argues that love for others does call for caring about and caring for them. Some other parental requests, such as for more sweeping changes in the child's lifestyle or life goals, can be seen to be insupportable, once we shift the justification from debts owed to love. The terminology of favours suggests the reasoning, "Since we paid for your college, education, you owe it to us to make a career of engineering, rather than becoming a rock musician." This tends to

¹¹⁶ English, J., (2002), 'What Do Grown Children Owe Their Parents' in Hugh La Follete (ed.) *Ethics in Practice: An Anthology* (Oxford: Blackwell), pp. 152-155

alienate affection even further, since the tuition payments are depicted as investments for a return rather than done from love, as though the child's life goals could be "bought". Basing the argument on love leads to different reasoning patterns. The suppressed premise, "If A loves B, then A follows B's wishes as to A's lifelong career" is simply false. Love does not even dictate that the child adopt the parents' values as to the desirability of alternative life goals. So the parents' strongest available argument here is, "We love you, we are deeply concerned about your happiness, and in the long run you will be happier as an engineer".¹¹⁷

The many kinds of love that humans experience can be differentiated and categorised in several ways. First, we can distinguish loves in terms of its objects, those pieces of the world that are the recipients of our love. We can love our spouses, parents, siblings, children, pets, country, abstract ideals, geometrical theorems, God, food, movies, books, nature, personal belongings. In some cases it is possible for these items to return our love. Second, loves can be differentiated by their basis, that which accounts for the existence of the love or grounds it. Loves can also be differentiated by their typical or constitutive causal effects, whether, say, the love leads to a desire to benefit the beloved or to a desire for

¹¹⁷ Ibid., p.155

union with the beloved, or to a desire to possess the beloved. Some languages partially distinguish different loves by using different nouns. The ancients made a linguistic, philosophical and theological distinction among the Greek terms eros (romantic love), agape (Christian giving love) and philia (friendship love).¹¹⁸

We commonly both want something and like it. We want it, usually because we like it. We do not like it because we want it. There are times, however, when we do like something just because we want it. Similarly, there is a correlation between our loving something and our finding value in it. Do we love this thing because we find value in it, or do we find value in it because we love it? In particular, the correlation between our love for persons and the value they have can be understood in two ways¹¹⁹:

- a) Person X loves person Y because X finds the property of Y to be valuable/attractive (e-type love)
- b) X finds properties of Y to be valuable because X loves Y. (a-type love)

¹¹⁸ Soble, A., (1998), *The Philosophy of Sex and Love: An Introduction* (St. Paul: Paragon House), p.95

¹¹⁹ Ibid., pp.95-96

The love that forms the foundation of the parent-child relationship should be an a-type love, the love a parent feels for his or her child should be an unconditional one, the child's merit, properties, characteristics should be irrelevant to their love. The child should be loved because it exists not because it is of a particular sex or a particular height. If love is conditional, it would only provide for love of that abstract version of persons which consists of the complex of their best qualities or the ones that are preferred or valued by the parent. But this is not the kind of love that ought to characterise a parent-child relationship. The love that parents should strive for is an unconditional acceptance of the other person, the child, only then would the whole of this other being, the child be loved and appreciated. Loving someone or something essentially means or consists in, among other things, taking its interests as reasons for acting to serve those interests. A parent loves his or her children not because of any special merits or virtues they have but because they are his children. It is this unconditional acceptance that forms trust, the foundation of the parent-child relationship.

The most fundamental calling of parents to their children is to love them. Children are to be loved and cherished by their parents, not to be used or manipulated by them for mere personal advantage. Parental love should be understood as an

unconditional commitment to nurture one's child, providing it with the care, affection and guidance it needs to develop its capacities to maturity. This understanding of the parent-child relationship informs our understanding of parental rights and duties. Parental rights are trusts, which they must exercise for the sake of the child. The proper exercise of parental rights includes the making of those choices and the acting in such ways that promote their shared life as a family, realizing the shared interests of parents and children.

The unpredictability of the child produced is an intrinsic feature of human reproduction. The set of characteristics that one's child will possess at a particular time is inherently unpredictable. Even if a child's genetic make up was entirely known, the immense complexity of every child's environment necessarily makes his or her characteristics unpredictable to some extent. In the case of most naturally conceived children, for example, we would have no idea which of a range of hair colours the child would have aged eight. Even if the precise genetic determinants of hair colour were known, some unpredictability would always remain; the environmental factors to which the child was exposed (perhaps sun exposure in the hair colour example) would inject a degree of randomness into the characteristic actually displayed. Also contributing to the inherent unpredictability of every child's characteristics are the environmental events that produce traits

without any genetic input. A child may, for example, be blinded by an accident or made anaemic by the non-availability of particular foods. So it is an intrinsic feature of a child that his or her characteristics will be, to some extent, unpredictable.

Because a child's characteristics are unpredictable, acceptance is a parental virtue. The flourishing of the child is facilitated by the parent's embracing of the child regardless of his or her specific characteristics. Unless the parents act acceptingly toward the child's characteristics, the child's contentment and self esteem, and the parents' ability to enjoy that child, are all in jeopardy. Thus, just as courage is a human virtue because it is conducive to flourishing in light of the fact that humans are subject to pain and challenge, acceptance is a parental virtue because it is conducive to flourishing in light of the fact that human reproduction inevitably produces a child whose characteristics are unpredictable. Because of the way that children are, the good parent (in part) is one who has the character trait of acceptance with respect to his or her child, an accepting attitude that transcends the child's specific characteristics.

Accepting one's child, regardless of his or her particular current characteristics, is already perceived as a necessary characteristic of the good parent. When someone becomes a parent, we expect him or her to maintain that role regardless of the specific features of his or her child at any particular time. We would think extremely badly, for example, of parents who severed their relationship with their daughter once she developed leukaemia, or even treated their son differently purely on the basis that the blond hair of his childhood had now darkened to brown. Thus the claim that acceptance is a parental virtue is a compelling one, both in terms of its relationship to the fact of unpredictability in reproduction and its consistency with current prevailing attitudes.

The child's sex is a characteristic that falls within the scope of this parental virtue of acceptance. Sex selection defies the loving and trusting relationship that forms the cornerstone of family life because parents who want to select the sex of their children change camps from a-type love to the property based e-type love. They will have a child only if it has a particular property, and that is a specific gender. Values such as love, loyalty, intimacy, steadfastness, acceptance, and forgiveness are crucial to well-functioning families, which are also the most robust settings for raising children to become confident, competent, loving and emotionally resilient

adults. With control and choice over the traits of our children, trait and sex selection fails to acknowledge the values at the heart of family life and a good parent-child relationship. Sex selection ignores the role that enduring relationships based on love and trust play in our flourishing as human beings.

5. Reproductive Autonomy and Harm

Defenders of sex selection argue that people have a right to reproduction and this gives them the liberty to make all kinds of reproductive choices including choosing the gender of their offspring. This, they consider, is an indispensable part of parental rights, that couples can make decisions regarding their children. They posit individual choices, like procreation, as holding supreme and do not approve of any interference from the state regarding these decisions. In this chapter, I am going to look into the concepts of reproductive autonomy and procreative liberty, and examine the claim made above regarding sex selection in the light of notions such as autonomy, liberty, rights, the right to reproduction, harm and where sex selection fits into this.

5.1 Autonomy

As outlined by Gerald Dworkin¹²⁰, the usage of the word 'autonomy' is extremely broad. It is used sometimes as an equivalent of liberty, sometimes as equivalent to self-rule or sovereignty, sometimes as identical with freedom of the will. It is equated with dignity, integrity, individuality, independence, responsibility and self-knowledge. It is identical with qualities of self-assertion, critical reflection, freedom from obligation, absence of external causation, with knowledge of one's own interests. It can be applied to actions, beliefs, reasons for acting, to rules, to the will of other persons, thoughts, and to principles. He goes on to say that autonomy functions as a moral, political and social ideal and in all three cases, there is value attached to how things are viewed through the reasons, values, and desires of the individual and how those elements are shaped and formed. Common to the different ways in which the word is used, is a shared assumption of what and who a person is. What makes an individual the particular person he is is his life's plan, his projects. In pursuing autonomy, one shapes one's life, one constructs its meaning; the autonomous person gives meaning to his life. In particular, then, autonomy is used to oppose perfectionist or paternalistic views.

¹²⁰ Dworkin, G., (1988), *The Theory and Practice of Autonomy* (Cambridge:Cambridge University Press), pp.6-20

It is also related to a principle of respect with a correlative right to choose. To respect an autonomous person is, at a minimum to acknowledge that person's right to hold views, to make choices, and to take actions based on personal values and beliefs. Dworkin concludes then that autonomy is a term of art introduced by a theorist in an attempt to make sense of a tangled set of intuitions, conceptual and empirical issues, and normative claims.

As a moral notion, it has been shared by philosophers like Kant, Kierkegaard, Nietzsche, Royce, Hare and Popper. The argument supporting the moral notion is about the necessity or desirability of individuals choosing or willing or accepting their own moral code. We are all responsible for developing and criticising our moral principles, and individual conscience must take precedence over authority and tradition. There is a notion of the self which is to be respected, left unmanipulated, and which is in certain ways independent and self-determining. The central idea that underlies the concept of autonomy is indicated by the etymology of the term: *autos* (self) and *nomos* (rule or law). The term was first applied to the Greek city state where a city had 'autonomia' when its citizens made their own laws, as opposed to being under the control of some conquering power.

The same concept is presented by Berlin under the heading of “positive liberty”:

“I wish to be an instrument of my own, not other men’s acts of will. I wish to be a subject, not an object...deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realising them.”¹²¹

5.2 Liberty and autonomy

The question then arises of the relationship between liberty or freedom of an individual and his autonomy. One wonders if these are two distinct notions, whether, say, interference with liberty is always interference with autonomy. For John Stuart Mill, liberty is a necessary condition for the full development of the individual as a human being. By saying that the goal of self-development is ‘individuality’, he placed high value on the fact that each individual should be making their own choices and following their own inclinations rather than slavishly following public opinion or custom. For Mill, individuality meant a

¹²¹ Berlin, I., (1969), *Four Essays on Liberty* (Oxford: Oxford University Press), p.131

certain sort of autonomy, the capacity to make judgements and choices that are genuinely one's own and not merely a reflection of the judgements and choices of others. Mill's argument is that liberty, in the sense of freedom from pressure to conform to the views of others, is a necessary condition for the exercise and development of certain central human faculties that are employed in making choices. Hence, his view is that liberty is self-mastery.¹²²

If we take liberty to be the ability of a person to do what he wants, to have significant options that are not closed or made less eligible by the actions of other agents, the typical ways of interfering with the liberty of an agent, through coercion or force, would seem to also interfere with his autonomy, the power of self-determination. If we force a Jehovah's Witness to have a blood transfusion, this not only is a direct interference with his liberty, but also a violation of his ability to determine for himself what kinds of medical treatment are acceptable to him. So then it seems, autonomy cannot be identical to liberty for, when we deceive a patient, we are also interfering with his autonomy but deception would not be a way of restricting liberty because it does not literally reduce one's options but only one's beliefs about one's options. Gerald Dworkin thus argues

¹²² Ross, A., (1996), 'J.S. Mill and Durkheim on Individualism' in R. Bellamy and A. Ross (ed.) *A Textual Introduction to Social and Political Theory* (Manchester: Manchester University Press), pp.281-284

that autonomy and liberty are related but distinct notions; that liberty, power, control over important aspects of one's life are not the same as autonomy, but are necessary conditions for individuals to develop their own aims and interests and to make their values effective in the living of their lives.¹²³

He goes on to state that autonomy is a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values. Hence, by exercising such a capacity, people define their nature, give meaning and coherence to their lives, and take responsibility for the kind of person they are.¹²⁴ On the view that he defends, autonomy is a capacity that is constitutive of what it is to be an agent. It is a capacity that we have a responsibility to exercise and that grounds our notion of having a character. Our notions of who we are, of self-identity of being a particular person is linked to our capacity to find and refine oneself. The exercise of the capacity thus is what makes a life mine.

¹²³ Dworkin, G., (1988), *The Theory and Practice of Autonomy* (Cambridge: Cambridge University Press), p.18

¹²⁴ *Ibid.*, p.20

“Over himself, over his own body and mind, the individual is sovereign...the only part of the conduct of anyone, for which he is amenable to society, is that which concerns others”.¹²⁵ But for Mill, as well as other libertarians too, individual liberty has certain limitations. Mill’s harm principle insists that one individual’s liberty may be restricted where this is necessary to prevent harm to others. He recognises the importance of society, saying that everyone who receives the protection of society owes a return for the benefit, and the fact of living in a society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest and that this conduct consists in not injuring the interests of one another and that where there is a definite risk of damage, the case is taken out of the province of liberty, and placed in that of morality or law.¹²⁶

5.3 Reproductive autonomy

Procreation involves three main elements: begetting- which is producing offspring that are one’s own – gestating, and rearing children.¹²⁷ However, what makes procreation such an important part of one’s life is the intention, the desire, the

¹²⁵ Mill, J.S.,(1859), *On Liberty* (London: John. W. Parker & Sons, W. Strand), pp.21.22

¹²⁶ Ibid., pp. 134,147

¹²⁷Strong,C.,(1997), *Ethics in Reproductive and Perinatal Medicine, A New Framework* (New Haven and London: Yale University Press), p.13

want to rear a child. Reproductive freedom involves, first, uncoerced choice about whether to procreate at all, or more precisely, whether to participate in procreative activity with a willing partner. This includes choices intended to lead to or prevent reproduction. Secondly, the advent of modern methods of contraception and procreation makes the choice of when to reproduce an increasingly important component of reproductive freedom and so is the control over the decision about how many children to have. One of the most controversial components of reproductive freedom however, is the freedom to choose what kind of children to have and it is this particular aspect of procreative autonomy that needs discussion for our purposes.

As discussed by Buchanan et al¹²⁸, the proper moral protection that reproductive freedom should have depends on what moral interests or values support preserving and protecting it. The first moral basis for the importance and support of reproductive autonomy is individual self-determination. The second moral basis is the utilitarian view taking account of the important contribution that reproductive freedom typically makes to individuals' good or well-being. The

¹²⁸Buchanan, A., Brock, D., Daniels, M., Wilker, D., (2000), *From Chance to Choice: Genetics and Justice* (Cambridge: Cambridge University Press), pp.214-221

third moral basis appeals to a principle of equality, equality of expectations and opportunities between men and women.

People's interest in self-determination is their interest in making significant decisions about their own lives for themselves, according to their own values or conceptions of a good life, and having those decisions respected by others. John Rawls¹²⁹ has characterised this interest as based in people's capacity to form, revise over time, and pursue a plan of life or conception of the good. By having their choices about the life they want for themselves respected by others, in the sense of not being interfered with even if others disagree with them, people are able to take some responsibility and control for their lives and the kind of persons they become. The exercise of self-determination is the process by which individuals help shape their own unique destiny and the capacity to be autonomous is a central condition of personhood. A second line of moral argument in defence of reproductive freedom appeals to the contribution it makes to the welfare, well-being or good of the individuals concerned. Securing and respecting individuals' reproductive freedom makes a positive overall contribution to their happiness, since competent individuals are the best judges of

¹²⁹Rawls, J., (1971), *A Theory of Justice* (Cambridge MA: Harvard University Press)

what reproductive choices will best promote their happiness. Reproductive freedom also serves equality by helping mitigate unjust gender disadvantages that women suffer that are specifically tied to reproduction as also those that are not.

However, having said all that, it is worth adding that though respect for individual choices in reproduction hail supreme, there are certain boundaries that need to be drawn on this individual liberty. This freedom extends only so far as it has no significant harm on others and does not come into conflict with what would be good for the individual whom their self-determining decisions would affect.

5.4 The right to reproductive autonomy

This leads us to ask our second question – what are rights and what is the right to reproductive freedom. Rights are claims, powers, liberties or immunities. Joel Feinberg¹³⁰ points out that to have a moral right is to have a claim, the recognition of which is called for by moral principles. To have a claim, in turn, is to have a case meriting consideration, to have grounds that put one in a position to demand

¹³⁰Feinberg,J.,(1970), ‘ The Nature and Value of Rights’, *Journal of Value Inquiry* 4 , pp.243-257

one's due. Some rights are powers, like the Principal of a school has rights which give him the power to suspend a student from school. Other rights are liberties, like an Indian citizen has the right to religious freedom, that is the liberty to practise any religion and worship in the way he likes. The right to reproductive freedom would be more of an immunity rather than a claim, power or liberty, an immunity from society and other individuals to make personal choices regarding procreation. A right to reproduce is included in widely accepted manifestos of fundamental human rights. The Universal Declaration of Human Rights, issued in 1948 by the General Assembly of the United Nations, Article 16, paragraph 1, states, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family".¹³¹

Various criteria for possessing rights have been discussed from time to time, like the ability to have interests, capacity to suffer, possessing reason and the capacity to make a voluntary, independent choice and lastly, the requirement of being a person. There are certain rights which are claimed to be absolutely fundamental like the right to life whereas others are given to us by way of our membership to a particular group or nation, like the right to equal access to health care enjoyed by

¹³¹Meltzer, M., (1979), *The Human Rights Book* (New York: Farrar, Straus and Giroux) , pp. 172-178

British nationals or the right to vote. Rights have been justified on the social contract theory, by utilitarians like Mill as contributing in the long run to happiness and by philosophers like Alan Gewirth as necessary for humans to be able to function as moral agents, displaying autonomy in the exercise of choice. The right to reproduction is more of a negative right, in the sense of a valid claim to non-interference with activities or states of affairs. Interference with such a right is justifiable only if there is a sufficiently weighty moral reason supporting the interference.¹³² This implies that negative rights are *prima facie* claims, that others should avoid interference but, in special circumstances, involving not just utility considerations, though, such presumptions can be overridden by other moral concerns. Positive rights on the other hand are valid claims to be provided with something by others. As is evident, the right to reproduction does not mean that as a part of this right, I can force someone to have sex with me. It might to some extent involve some assistance from the State to provide for medical help and care to ensure safety during pregnancy and delivery. But again, this would not mean that the State has a duty to see to it that every couple who wants a child has one and in case of infertility, provide for infertility treatment.

¹³²Dworkin, R., (1977), *Taking Rights Seriously* (Cambridge MA: Harvard University Press) , pp. 184-205

5.5 The meaning of harm

Our most cherished ideals of individual autonomy and the right to choose preclude an unambiguous condemnation of sex control. Our society, to be sure, deeply cherishes liberty and rightfully gives a wide berth to its exercise. But liberty is never without its limits. What puts a limit on liberty is harm. In this section, I would like to examine what it means to 'harm' someone.

The concept of harm is very intricately tied up with interests and rights. A necessary element of all harming is that it has an adverse effect on someone's interests or in another way, violates someone's rights. According to Feinberg¹³³, having an interest in something means to have a stake in it. This only means that the person stands to gain or lose depending on the nature and condition of X. If I say that something is in my interest then I am implying that I will be better off if the things in which I have a stake, flourish or prosper. Now what we have a stake in is defined by our concerns and there seems to be a legitimate connection between interests and the capacity for conscious awareness. Our interests are after

¹³³ Feinberg, J., (1984), *Harm to Others* (New York: Oxford University Press). p.34

all compounded out of beliefs, aims, goals and concerns and conscious awareness is a prerequisite to desires, preferences, hopes, aims and goals.

We can have obligations regarding mere things but these obligations are not to them. We have no obligations to them because it does not matter to them how we treat them. It is not for their sake that we take steps to preserve them, but for the sake of beings who can have interests in them and such beings can be existing people, animals with higher capacities or future generations.

So we would then be correct in asserting that a being can have interests only if it can matter to the being what is done to it. Such beings can often be wrong about what is in their interest but this would not mean that the being cannot have interests. If someone asserts that he does not care about X, then it is not the case that X is not in his interest. It might only be that though X is necessary for the being or person to achieve a certain goal, the person is unaware or ignorant about the connection between X and his goal. However, if we have a being to whom nothing can possibly matter, then that being can have no interests. On Feinberg's

account, biological life alone does not endow a being with interests. Permanently nonsentient and nonconscious beings cannot have interests.

Most discussions regarding trait selection are about children who are not yet conceived or born. They are only possible children and hence, it is often questioned how such children, who are only possible now, can have their interests jeopardised or be harmed. Ethical discussions of sex selection often have to encounter a pitfall that centers on this problem often termed as the wrongful life problem¹³⁴. Often parents are criticized for bringing into the world a child who is physically or mentally damaged in some way that seems very likely to cause that child a degree of suffering greater than that of normal children. Some writers however argue that this criticism is misplaced because counter to our intuitions, no one has actually been harmed, as the child could not have existed were it not to be born in this state. Thus unless the child's suffering is so great and his existence so terrible that he would have been better off never having being born, he has not been harmed by being born in this damaged state. To illustrate this problem, let's take the example of a couple who are told by their doctor that if they get pregnant in May, they have a very great likelihood of conceiving a child who would be

¹³⁴ Steinbock, B., (1986), 'The Logical Case for the 'Wrongful Life'', *Hastings Center Report* 16(2), pp.15-20

born with a missing limb, however, if they waited until June, their risk for a child with a birth defect would be no greater than that of the general population. The couple go ahead and conceive; a baby girl Mary is born with only one leg.¹³⁵

Most of us would be highly critical of this couple. Yet the question that is raised by the wrongful-life problem is: who is harmed? Mary could not be harmed because if her parents had waited an extra month, she would not have been conceived. The only option for her was to be born in this damaged state. Mary could not have been born in any other state but this. An alternative to being born in this state was not being born at all. Had her parents waited an extra month, they might have had a nondamaged child but this child would be a different individual and not Mary. So unless one were to believe that life with only one leg is worse than no life at all, Mary herself has no cause for complaint and has not been harmed. This is an objection that has often been raised in discussions of deaf couples wanting to select for a deaf child.

¹³⁵ This is a hypothetical example, a different version of it was originally put forward by Derek Parfit, (1984), *Reasons and Persons* (Oxford: Oxford University Press)

In the case of the deaf child being selected, an objection raised against it is that this selection is wrong for the sake of the child itself. John Robertson¹³⁶ asserts that this kind of claim can only be sustained in very horrible instances, because it relies on the assertion that the child's life will be so terrible that it would have been better off not being born at all. One must be cautious to distinguish between cases where the parents are genetically deaf and those who are not. In the former case, deafness is a part of their genes and therefore, if they used PGD to select for a child, Mark who carried their genes for deafness, there would be no alternative for Mark but to be born deaf. Mark could not have been born hearing. However, now imagine another deaf couple who are deaf due to nongenetic reasons. If they were to increase their chances of having a deaf child, they would have to deliberately expose the foetus to some teratogen like German measles to ensure that the child was born deaf. In this case, it would be easier to show that the child, Emily, has been harmed since she had two possibilities: to be born with hearing or deaf. Her parents deliberately did something to ensure that she was not born hearing. If being born deaf is less desirable than being born hearing, then Emily would have been harmed by her parents' decision.

¹³⁶ Robertson, J., (1986), 'Embryos, Families, and Procreative Liberty': The Legal Structure of the New Reproduction', *Southern California Law Review* 59, pp. 987-1000

Going back to Mark's and Mary's case for a moment, when a child is born in less than ideal circumstances or is partially disabled in ways that do not make for a life of horrendous suffering, there seems no way to argue that the child, Mark or Mary has been harmed. This may appear to entail the conclusion, counter to our own moral sense, that therefore no harm has been done. "A wrong action must be bad for someone but a choice to create a child with its handicap is bad for no one".¹³⁷

One could offer a partial solution by saying that by simply waiting for another month to conceive, Mary's parents could have had a child who probably would have experienced less suffering than will Mary. Thus harm has been done, even though one cannot attach it to a specific entity, such as Mary. In Mary's case, it is easy to see that no one really gained any happiness from Mary's missing leg, and also that being born with two legs is preferable, despite the many ways in which Mary might grow up to overcome her handicap. In the case of Mark however, his parents made a deliberate choice to have a deaf baby and they are the ones who stand to gain happiness from this state of his. So there are two issues to deal with here: the question of whether being able to hear is better than being deaf and one

¹³⁷ Brock, D., (1995), 'The Non-Identity Problem and Genetic Harms-The Case of Wrongful Handicap', *Bioethics* 9, p.84

also needs to balance the satisfaction that his parents feel in raising a deaf child like themselves against the limitations experienced by Mark.

One of the reasons why this debate regarding selection has proved to be so difficult is because of the way it has been discussed, in mostly legal terms, from the narrow perspective of procreative liberty. John Robertson, a law professor, who has been a strong voice in this debate, is a proponent of procreative liberty and his arguments tend to rely heavily on the constitutional protection of procreative liberty. His main point is that the state can limit procreative liberty only when its exercise places a substantial burden on others. Unavoidable harm to the children expected to result from trait selection techniques certainly qualifies as a reason for the state to limit procreative liberty if the harm is likely to be substantial. But if the only way this child could be born at all is through the new technology, in order for the child to be harmed, it must be put in a state so bad that nonexistence would be preferable.¹³⁸ Robertson's argument covers very narrow ground, his analysis offering little on the part of the ethical evaluation of the various uses of assisted reproductive technologies, or evaluating couples' reasons and motives behind such selection procedures.

¹³⁸ Robertson, J., (1986), 'Embryos, Families, and Procreative Liberty': The Legal Structure of the New Reproduction', *Southern California LawReview* 59, pp. 989

Ronald Green points out that “harms can occur without someone being made worse off than they were before...there are forms of conduct we are unwilling to tolerate that do not make people worse off in the strict sense”¹³⁹. A number of philosophers working in applied ethics have tried to deal with the harm conundrum. Dan Brock argues from the principle that it is morally good to act in a way that results in less suffering and less limited opportunity in the world.¹⁴⁰ A parent violates that principle if, due to her negligence, her child loses a hand to blood poisoning. But she also violates that principle if, through her negligence she conceives a child with one leg when she could almost as easily have conceived one without any disability. Without getting drawn into the complexities of comparing two periods of time in a child’s life, that of his present state and his hypothetical state as a nonborn being, it can be held that a life with serious, but not devastating deficits, could be bad. It would be a mistake to equate the harm of nonexistence, which is really no harm at all, with the harm of death. To say that I will allow myself to get pregnant now, even though I live in a house with asbestos, both my husband and I are out of work, I already have two very young children ,

¹³⁹ Green, R.M., (2000), ‘Much Ado about Mutton: An Ethical Review of the Cloning Controversy’ in Paul Lauritzen(ed.) *Cloning and the Future of Human Embryo Research* (New York: Oxford University Press), pp.114-131

¹⁴⁰ Brock, D., (1995), ‘The Non-Identity Problem and Genetic Harms-The Case of Wrongful Handicap’, *Bioethics* 9, p.274

because, after all, whatever child I have in the present conditions would be better off than had it not been born at all, is an absurd conclusion.

In the next section I focus on the harm done to children when parents significantly limit the range of choices open to them when they become adults, whether that limitation is due to a physical disability or due to intensified parental expectations engendered by their parents' ability to use modern technology to create children with desired traits, such as gender.

5.6 Procreative liberty, harm and the right to sex select

Let us see how this overview of liberty, reproductive freedom, rights and harm applies to sex selection. As has been pointed out earlier, the issue of defending sex selection on the grounds of reproductive liberty is a complex one. John Robertson characterises procreative liberty as the “freedom in activities and choices related to procreation”¹⁴¹, but it is to be noted that the term does not tell us what activities fall within its scope. Applying the above discussed concepts, we need to first ascertain whether a right to select the sex of one’s child is a valid claim.

A right to reproduction exists because it is imperative to human beings and to the progress of human civilisation. It is an important part of people’s control over their own body and helps fulfil their desires to bring a life into the world which is the symbol of the love and relationship between two partners. If we grant that people have a right to pre-select the characteristics of their children as a part of their reproductive liberty, then we would be thereby also granting people the right

¹⁴¹Robertson,J..(1986). ‘ Embryos, Families and Procreative Liberty: The Legal Structure of the New Reproduction’ , *Southern California Law Review* 59 , p.955

to 'design' or 'engineer' their offspring according to their own needs, desires, expectations and conception of what a 'good' or the 'perfect and best' human being ought to be like. What is troubling about this is that these are decisions being made for someone else, decisions which affect the life of a potential human being in a way that does not take into consideration the welfare or the interests of the person to be. Reproduction involves a future life and choices such as whether or not to reproduce, and how many children to have do not trample the interests of the child to be in the same way as predetermination of sex does.

As pointed out earlier, procreative liberty, like any other, is constrained by the requirement that its exercise should not pose a risk of harm to others, in particular to the children thus conceived; and it is worth noting that J S Mill remarks that for this reason the application of the principle of liberty to family life is not straightforward:

“It is in the case of children, that misapplied notions of liberty are a real obstacle to the fulfilment by the State of its duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself,

so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them."¹⁴²

In the case of actions that are purely self-regarding, i.e., actions that affect only ourselves – society tends to give the greatest protections to individual autonomy and liberty. But as we move outwards, away from purely self-regarding actions to those actions that affect others, our liberty is necessarily more liable to restraint. Sex determination clearly does not belong in the category of purely self-regarding action. The parents' actions (their choice of a boy or a girl) are directed not towards themselves but towards the child-to-be. One might argue that, since each child must be either a girl or a boy, the parents' actions in controlling sex do not constitute much of an intrusion on the prospective child's freedom and well being. But the binary choice among highly natural and familiar types hardly makes the choice a trivial one. And having one's sex foreordained by another is different from having it determined by the lottery of sexual union. There is thus at least a prima facie case for suggesting that the power to foreordain or control the nature of one's child's sexual identity is not encompassed in the protected sphere of inviolable reproductive liberty.

¹⁴² Mill, J.S., (1989), 'On liberty' in S. Collini (ed). *On Liberty and Other Writings* (Cambridge: Cambridge University Press), p. 105

Joel Feinberg¹⁴³ talks of the concept of a child's 'right to an open future', an idea that parents have a moral responsibility to help their children during their growth to adulthood to develop capacities for practical judgement and autonomous choice, and to develop as well at least a reasonable range of skills and capacities necessary to provide them with the choice of a reasonable array of different life plans available to members of their society. Hence, on this view, it would be wrong for parents to substantially close off most opportunities that would otherwise be available to their children, in order to impose their own particular conception of a good life or in order to continue their own community that is committed to that conception of a good life.

By preselecting the gender of one's offspring, parents are doing just that, not giving their child the opportunity to develop into an autonomous human being because with their choice of sex selection comes the baggage of expectations and gender stereotyping of how they envision their children to be. Predetermination of sex is a harm to the child who may be born because it concretizes the parental gender expectations and thus makes it difficult for the children to escape gender stereotypes. Since they have made use of expensive painful techniques to ensure

¹⁴³ Feinberg, J., (1980), 'The Child's Right to an Open Future' in W. Aiken and H. LaFollette (ed.) *Whose Child? Children's Rights, Parental Authority and State Power* (Totowa NJ: Rowman and Littlefield), pp.124-153

that their child is of a particular sex they would see to it that their children turned out to be what they had imagined and more so, 'wanted' them to be, thereby putting the child under immense pressure to conform to their expectations. Thus, they would not allow their son or daughter to grow according to their potential and develop their own personalities. Instead they would keep matching them with the image they had and the intention that prompted them to use PGD.

In the case of the deaf child being deaf significantly limits the child's future options and is thus a harm to the child. Many deaf people and disability rights activists believe that deafness is a culture and therefore they have the right to protect it and bring a deaf child into the folds of that community and raise it in that culture. It can be argued that if deafness is a culture rather than a disability, it is an exceedingly narrow one. It is not very clear that children raised with Sign as their first language, will ever be comfortable with the written word since Sign itself has no written analogue and has a grammatical structure completely different from that of English. Some deaf children raised with Sign from birth do become skilled readers, but there is reason to question whether a deaf child has access to the wealth of literature, drama, and poetry that liberals consider the beauty of life and every child's birthright. If deafness is a disability that

substantially narrows a child's career, marriage, and cultural options, then deliberately creating a deaf child counts as a moral harm, because it so drastically curtails the child's right to an open future. If deafness is a culture, as deaf activists assert, then deliberately creating a deaf child who will have only limited options to move outside of that culture also counts as a moral harm. Society must defend the liberty not to be coerced into, or trapped within, ways of life. A decision made before a child is born that confines him or her forever to a narrow group of people and a limited choice of careers and lifeoptions violates the child's right to an open future. Parents ought not deliberately to substantively constrain the ability of children to make a wide variety of life choices when they become adults. Hence, the criticism is targeted at parents who have choices about the world they offer their children.

Tom Baldwin, defending the HFEA's ruling on restricting sex selection to medical reasons only, offers us an argument that Habermas presents in his *The Future of Human Nature*.¹⁴⁴ Habermas argues that an essential ingredient of our conception of ourselves is that we should be able to regard our embodied character (*Leibsein*) as a natural phenomenon, and not something which has been,

¹⁴⁴ Baldwin, T., (2005), 'Reproductive Liberty and Elitist Contempt: Reply to John Harris', *Journal of Medical Ethics* 31, pp.288-290

in some respect, deliberately imposed upon us by others, even by our parents. Of course, we must also recognise that in many ways we have been formed by the genes we have inherited from our parents; these genetic predispositions are, however, our bodily inheritance and there is no way in which a human being can be created without some such genetic inheritance. But where a fundamental characteristic such as one's sex has been deliberately selected for things are different: a central aspect of the character of such a child has been deliberately chosen by the child's parents—that the child be a girl or a boy. Unless its manner of conception is kept secret, which is itself ethically objectionable, the child will come to learn that it was deliberately created in a way which ensures that it is a certain kind of person - in a way which is so intimate and bodily that it cannot repudiate this mode of being, however much it might wish to do so. Thus there is an inescapable but alien intrusion into its subjective sense of itself.

As discussed earlier, Aristotle¹⁴⁵ is of the opinion that parents love their children as being a part of themselves, and children their parents as being something from which they originate. People have argued in the past that since individuals own their bodies, they have a right to decide what they wish to do with it. They extend

¹⁴⁵ Aristotle, (1954), *The Nicomachean Ethics of Aristotle*, Sir David Ross, trans. (London: Oxford University Press), Book 8, Chapter 12

this argument to however propose that procreation and having children being directly linked to the body, as the craftsman owns his work, so do parents have the right to make decisions regarding their products, that is, their children, and so deciding what kind of children to have comes under the purview of reproductive liberty. As I have argued earlier, surely, even if we think that people own their bodies, they do not own their children. They are their guardians and may bear responsibility for their upbringing, but an individual cannot be owned by anyone but himself, and so no man owns another. To say that a right to reproduce or reproductive freedom gives people the right to select gender is too easy an assumption to make, since a right to gender selection does not logically follow from the possession of a right to reproduction.

When parents commit themselves to bringing another life into existence, they also thereby undertake the responsibility and obligation to consider the interests of the child when making decisions regarding him, and especially if it is a feature like gender which has immense importance in one's life. Once they decide to become parents, they cannot act on motives that are of pure interest to them, ignoring what the child's good would lie in. Imagine a single woman in the first world who wanted to have a daughter just because she felt she wanted a like companion and

experience of bringing up a daughter. First of all, this child would be subjected to gender role-playing, and if this daughter turned out to be more 'boyish', preferring cars over dolls, not only would the aspirations of the mother be doomed, it would also have a detrimental effect on the treatment of the child and might cause a strain in the relationship which was 'meant' to be of a 'certain type'. Hence, parents' reproductive rights, whatsoever they may encompass, come in conflict with or encroach upon the child's right to be an individual and thus, cannot be given weight.

Even a fundamental constitutional right like freedom of speech is curtailed when it abuses another's rights or causes great harm. Holding that rights cannot always be absolute, Brenda Almond believes that rights are compatible with social responsibility in that the assertion of rights necessarily involves the recognition of the rights of others as well as one's own.¹⁴⁶ The thought underpinning the above arguments is that parents are committed to bring about the welfare of their child, and it is his interests which are crucial in deciding about his life, and individuals are better off in life with having more choices offered to them than less, to develop into autonomous human beings. Time and again, we have witnessed child

¹⁴⁶ Almond, B., (1991), ' Rights' in P. Singer (ed.) *A Companion to Ethics* (Oxford: Blackwell Publishers Ltd.), pp. 259-268

prodigies who often succumbing to parental pressure, earn fame, money, respect and admiration in society at an early age with the result that they fizzle out later in life and go into severe depression or turn suicidal because they have not been allowed to develop other aspects of their personality. They become failures as individuals since their life is centred around one aspect only and this deprives them of an opportunity to develop a wholesome perspective to either their personality or life.

Coming back to our cases, what happens when a couple go in for PGD and select the sex of their child only to avoid a sex-linked genetically inherited disease? In such cases, the decision to opt for sex selection is an outcome of the decision to avoid pain, disability, a miserable life, limited experiences and opportunities and early death to the child and this is the primary concern of the parents rather than the sex of their child. Such decisions are thus based on the interests of the future child and supported by a woman's right to procreative autonomy and bodily integrity. So the mother decides on behalf of a child who has not yet come into existence about the kind of life he would want to avoid, keeping in mind the real facts about the disease and the cripplement that it would cause. Therefore, sex selection, in my view, is not morally objectionable for avoiding very serious, life-

threatening diseases. It might thus be said that the prima facie right to choose the sex of one's child is linked here to whether it is used to benefit the child. In this context, it may be argued by a sexist in India that a female child would be better off not being born in a community where socio-religious reasons make a woman's life miserable and that sex selection would thus be, in this case, used to benefit this child, by not bringing her into a world which would devalue her. There is, however, a distinction that needs to be made between the disease and the sex selection case. While sex is no disease, in the latter, it is the society with its man-made barriers and so-called rules for valuing people and requirements for earning merit in life, that plays a major role in the decision. But these rules have no sound basis and can be removed, whereas, with the disease there are real, physical problems which cannot be removed. Preventing lower caste children from being born can hardly be justified by saying that the social conditions are not congenial for their progress. The day science advances to that stage when serious genetic diseases can be treated or removed and the pain and misery resulting from it are alleviated, sex selection on such grounds would become unnecessary.

Now let us examine the case of those couples who wanted to pre-select the sex of their child as a matter of personal preference, just like preferring pink over blue

they prefer boys over girls and justify it using the terminology 'right to make reproductive choices'. I will also include in this class those couples who want to use PGD for either family balancing reasons or who say that they want to have a particular child rearing experience linked to the gender of the child. Now, all these are reasons to want to exercise the right to gender selection and determine how it is exercised; they are not reasons why people should have the right. All the reasons given for exercising the right have far reaching effects not only on the individual who would be born as a result of sex selection techniques but also on society as a whole.

People enjoy the right to make reproductive decisions because we recognise its importance in their life and their interest in self-determination, in being valuing agents, able to guide their own lives in the way they choose. However, one of the determinants of the value of autonomy and individual choices in different situations is the nature of the decision, the subsequent action in question and its impact. Deciding what colour dress to buy and what to have for lunch is obviously less significant than deciding what career to pursue, whom to marry, whether or not to procreate and when and how many children to have. The more central the impact of a particular decision on an individual's life, the more substantial a

person's autonomy or interest in making it. This is why self-determination is so important in many of the choices that comprise reproductive freedom. But when people's reasons are as frivolous as a mere preference for a particular sex, the fulfilment of a desire to have a complete, balanced family when the notion of completeness is in itself vague in this context and does not in any respect comprise having children of both the sexes in the family, or a reason to think that bringing up a child of a particular sex would be a more enriching experience than the other; all these reasons do not stand up to scrutiny when we consider giving such a right to parents in the light of the child's well-being who would be born to do certain role-playing for his parents. A right to pre-select sex does not fit in rationally with the goals of society or with the good that people say it adds to their life.

While reproductive freedom does centrally affect women and their male reproductive partners, they also affect others - most importantly, the person created by their choice but other persons as well. Virtually nothing that people do has no effects on anyone, no matter how insignificant their actions or their effects, and autonomy would be empty of moral importance if it were limited to such cases. Instead, the impact of people's actions on others is understood as a

competing moral consideration that sometimes places limits on the exercise of individual liberty. This point is important for all aspects of reproductive freedom that involve creating and thereby affecting other beings. Shaping the genetics and the nature of one's children greatly affects a person's own life and so is properly encompassed by procreative autonomy. However, it is not primarily a matter of individual self-determination but as well and more importantly, the determination of another. In most societies, parents are accorded discretion and control in the raising of their children, including decisions about education, religious exposure and training, and more generally the values passed on to them. The fundamental interests of the child, as discussed earlier, place moral limits on this parental control and autonomy.

The more difficult issue is whether, and if so to what extent can society legitimately claim a role in such decisions. Consider the decision whether to let one's child watch television, how much and which shows. This is not a purely 'self-regarding' decision.¹⁴⁷ The collective effect of individual decisions by parents to pre-select the sex of their child, to prevent undesired traits or enhance desired traits may have a substantial impact on the nature of the overall society of

¹⁴⁷ Steinbock, B., (2002), 'Sex Selection: Not Obviously Wrong', *Hastings Center Report* 32(1), pp.23-27

which they are members. Moreover, the decisions do not solely, or even principally, affect the parents. Their primary impact is on the nature of the persons created through this prevention or selection of genetically determined traits or conditions, that is on those who will be the future members of the society. Moreover, although PGD to manipulate sex may be regarded by some as an expression of personal privacy and autonomy, it reflects sex based discrimination and comes in conflict with larger societal goals to eradicate injustice done to individuals on the basis of race, sex, colour, religion etc. and also in consideration are the harms and disadvantages suffered by the child in the future.

So in a broad sense, parents help shape the nature of society in the future. Thus, a couple's interest in procreative autonomy, understood as in part, the making of significant decisions about their life with respect to reproduction, cannot establish any absolute right to decide whether to opt for sex selection or not because these decisions help shape the nature of the society in which others will live and so there is a strong case for collective decision making.

There is another argument for being given the right to select sex, and that is for religious purposes. We take up the case of the situation in India where people give religious and socio-cultural reasons for preferring the male sex over female and regard it as their right to exercise this choice. Now, in general, people over the world, in most societies have the right to practise whichever religion they wish and worship in the manner they like. However, it is one thing to say that I have the right and freedom to follow my religion and, another to say that since my religion requires me to sacrifice girl children at birth, I have the right to do so as a part of my religious freedom.

Again, it is difficult to assign something the status of a right on the ground that a religion or cultural norm requires it because this does not say anything about the correctness or the moral requirement of such a practice. To burn a widow alive after her husband's death may be a practice in certain societies since centuries but this does not make it either right or seem a valid reason to give people the right to do so. Also, with religions and cultures, a difficulty arises in interpreting what the texts truly mean. Since most of them are written in the form of aphorisms and parables, the knowledge being imparted through it being of an esoteric nature it is difficult to decipher what the real meaning is supposed to be. Being open to

various interpretations, people make religion their pillar of support to propagate their own ill-founded beliefs. Some people often say that a woman bears a daughter as a result of her misdeeds in life. But surely one can see the absurdity of such claims which were considered to be true in India a few years ago when people were ignorant. Culture changes over time and what may have been relevant fifty years ago, though not justified or rational in any way may no longer be so because of the changes that have taken place in the society.

Fifty years ago in India, when women were married off, they were considered to be somebody else's property being totally cut off from their parents but that may have been because of the lack of transport and other means of communication and also the condition of women in that society which prevented them from maintaining contact with their families. But now when most women are educated, independent and have started working, it seems ridiculous to even harbour such a belief. With the abolition of practices like dowry, sati and widow remarriage, there no longer seems any reason why a woman should still not be considered a part of her parent's family, why the family name cannot be passed on through her, why she cannot inherit her parent's property. The women's movement gaining strong hold in patriarchal India and social reform having borne its fruit, those who

treat women as mere objects or the weaker sex, have no valid reason to claim sex selection as their right. We cannot be given rights to justify unjust practices of the past and to further claim it in the future.

Another interesting fact about reproductive freedom is that it involves making voluntary, uncoerced choices. Mary Anne Warren¹⁴⁸ points out that some feminists have argued that a woman's use of sex selection is virtually always socially coerced, in so far as she would probably not have made that choice in a society where sons and daughters are equally valued. So women cannot benefit from the right to make such a choice since to speak of a "right to choose" in this context is to obscure the reality of coercion. A woman in a poor or lower middle class Indian family hardly ever has a say in matters related to her own life, let alone household matters. So even though she may want a daughter as a companion and helper, she knows that others in the family will view a female child as a useless drain on their resources and may therefore neglect and abuse her. So though she may not be directly coerced into undergoing sex selection procedures, she may perceive no alternatives to submission. In this situation, her

¹⁴⁸ Warren, M.A., (1999), 'Sex Selection : Individual Choice or Cultural Coercion?' in H. Kuhse and P. Singer (ed.) *Bioethics: An Anthology* (Oxford: Blackwell Publishers Ltd.), p.140

'choice' is arguably no choice at all and her 'right' to make such a decision is a mockery of reproductive freedom.

Sex selection is not morally unobjectionable on grounds of reproductive liberty. It is not clear that such a right exists first of all and the reasons that people give for opting for sex selection are not good enough to give them the right to gender selection. Children are not the property of their parents and therefore as a part of their parental rights, they cannot decide the future of their children without taking into consideration their future interests, the benefit and harm of their choices on their offspring. Also, reproductive freedom is not an absolute right and there can be restrictions on individual choice, keeping in mind the effect sex selection would have on the child who would be born and also the impact of such collective choices on society in the long run. Moreover, it is pretty much evident that in cultures where gender bias is predominant women hardly ever make voluntary decisions with regard to reproduction. Hence, it cannot be justified on the grounds that it is the woman's right to choose what kind of offspring to have.

6. Commodification, Discrimination and Sex Selection

In contemporary debates in bioethics, a common phrase that one often comes across, especially to oppose new reproductive technology is that 'human beings are treated as means and not as ends, which makes them into commodities'. However, most non-philosophers while using such dictums seldom understand the implications of what they are saying. They take it for granted that the sentiments behind the phrase will be understood by everyone, and that would be enough to justify their viewpoint. Similar commodification arguments have also been used to oppose sex selection and I shall in the first half of the chapter, without undertaking an exegesis of Kant's philosophy, try to clear up the confusion regarding the 'Means and Ends' Formula, and will rely on some of his arguments to support my position. In the second half of the chapter, I will undertake the task of arguing whether pre-selection of gender can be opposed on the grounds that it amounts to discrimination. I will attempt to resolve this issue step by step, exploring the meanings of words which are important here, 'selection' and 'discrimination' and then judge whether the reasons discussed in this thesis for sex selection involve discrimination, and whether this constitutes a good objection against sex pre-selection.

6.1 An understanding of Kantian ethics

Kant's philosophy and writing is extremely complex and difficult to understand and there have been various interpretations of it. However, to undertake a detailed study of all of them is beyond the scope of this thesis. I just propose to draw on some of his thoughts and examine whether sex selection can be opposed on the basis of Kantian ethics.

The second formula of Kant's Categorical Imperative states: "Act so that you treat humanity, whether in your own person or in the person of any other, always as an end and never as a means only".¹⁴⁹ Thus, the second formula enjoins that everyone has a fundamental dignity simply as a person, and no one has the moral right to interfere with the lawful freedom of others or to use them merely for his or her own purposes. For Kant, persons are "an end against which we should never act"¹⁵⁰ and this limits the ways in which we may satisfy our desires. So the

¹⁴⁹ Kant, I., (1959), *Foundations of the Metaphysic of Morals*, L.W.Beck, trans. (Indianapolis: Bobbs-Merril), 429, see 433

¹⁵⁰ Ibid. 437, see 430

second formula commands every person to “treat himself and all others, never merely as a means, but in every case as an end in himself”.¹⁵¹

It might be worth pointing out that for Kant, the formula applies as much to oneself as to others. Kant was no libertarian, allowing oneself to do whatever one willed with his body and life. Human personality, according to Kant, finds its essential basis in the ability to reason and will. It follows from this that any volitional act that undermines, erodes or destroys reasoned willing is somehow self-contradictory. In the *Foundations of the Metaphysic of Morals*¹⁵², Kant offers suicide as the epitome of this use of ourselves as a means only. Even when undertaken “in order to escape a painful situation”, he tells us, it implies the willingness to dispose of oneself as a thing that is no longer useful for one’s purposes.¹⁵³

The second formula makes us wonder what Kant meant when he used terms like ‘means’ and ‘ends’ in his moral theory. What does it mean to treat someone

¹⁵¹ Ibid. 433

¹⁵² Ibid. 429

¹⁵³ Green, R.M., (2001), ‘What Does it Mean to Use Someone as “A Means Only”’: Rereading Kant’, *Kennedy Institute of Ethics Journal* 11(3), pp. 247-261

merely as a means and not as an end in himself? First I shall look into the question of what Kant had in mind when he talked of 'ends'. By 'ends' he did not mean any individual desires or wants that people happen to have but only those that are given to us by rational nature and shared by all human beings in virtue of their rationality, autonomy and freedom. Hence, Kantian ends are those that can be universalised and carried out by all rational agents because they follow from our capacity for "reasoned willing".

When Kant explained his second formulation, he wrote movingly of the radical difference between persons and mere things. Things are regarded as only relatively good, as valuable only in so far as someone happens to desire them and regard them as valuable. Things therefore have a price, determined by what people will give and take in exchange for them; and when something can be replaced by something else of equivalent value, it clearly has no unique, absolute, and intrinsic worth. Persons, on the other hand, are self-existent, having intrinsic and objective worth simply by the fact that they exist, apart from any and all subjective prudential considerations. Things are only contingently desired and possibly valued by someone but persons necessarily always and universally should be regarded as having objective value, whether or not they also happen to

be desired because they contribute in some way to anyone's happiness. We should not regard or treat ourselves or any other person only or merely as a possible object of our desires.¹⁵⁴

Coming to 'means', an object is commonly a means by virtue of what is done with it. Some objects may also be means by virtue of what they do, as long as this issues from an action. So a telephone is a means of communication, in that it is used to communicate with people and also by way of 'what it does', meaning that it is a means because it transmits sound waves from one end to another. Now in what ways can a human being be treated as a means? A person is a means in both ways. If someone is a means by which a note is delivered, he is so both because he is given the note with a request to deliver it and because he gives the note to the party for whom it is intended. Hence a person is like some objects in being a means by way of what he does. But he is unlike any object in that what he does as a means is an action. Since agency is just what sets persons apart from objects, what the telephone "does" would not count as an action. As long as a man is used by way of his unencumbered actions, he has not been wronged. Actions which are voluntary and the person either knows or shares the purpose for which he is used

¹⁵⁴ Sullivan, R.J., (1989), *Immanuel Kant's Moral Theory* (Cambridge: Cambridge University Press), pp.193-211

or if he does not know, he would still act as a means if he did know, are unencumbered.¹⁵⁵ But surely for Kant, a notion like consent had no importance with regard to using someone as a means, for his ends were not personal desires based on will but that which could be universalised by rationality. So a man who wanted to sell himself would still be regarded as degrading himself on Kantian grounds even though he might want to do that, because it violated the principle of dignity of a human being.

As Sullivan¹⁵⁶ points out, Kant admits as well that persons can be and often are regarded as having conditional value too, in so far as they are regarded as useful, likeable, loveable or admirable. Since we are dependent beings, we do have both the need and the right, subject to moral limitations, to attend to our own needs and the needs of those we care about, and to do so we often must use others; likewise, other people frequently have to use us to achieve their purposes. So we can and necessarily often do treat others as means to our ends, as good in so far as they are useful to us. When we think of people in terms of their skills and abilities, as in business, we often regard them as more or less 'marketable' and their time as having a price. Kant does not hold that this is morally wrong. However, thinking

¹⁵⁵ Flemming, A., (1978), 'Using a Man as a Means', *Ethics* 88, pp.282-298

¹⁵⁶ Sullivan, R.J., (1989), *Immanuel Kant's Moral Theory* (Cambridge: Cambridge University Press), pp.193-211

of our ability to set our own ends only in terms of greater utilitarian advantages means regarding others and ourselves only as having extrinsic value, and that is wrong.

Here, it would be useful to clarify an often misunderstood feature of the Kantian formulation, that is the prohibition against using others not just as means but as “mere means only”. It has become commonplace to employ the second formulation to criticise any “use” of another person that aims at satisfying one’s own desires, or that does not place foremost the other person’s welfare. But this represents a misunderstanding of the Kantian formula. I use someone as a “means only” not when I employ their bodies or talents primarily as an instrument of my purpose, but only when I do so in ways that they could not also impartially accept. So what those who oppose having a child as a tissue donor must show is not that the child is being treated instrumentally. Rather, they must show that impartial rational persons would hold that no child should be brought into the world for such reasons.¹⁵⁷

¹⁵⁷ Green, R.M., (2001), ‘What Does it Mean to Use Someone as “A Means Only”’: Rereading Kant’, *Kennedy Institute of Ethics Journal* 11(3), pp. 247-261

What the second formula thus stipulates is that we may not treat others or allow ourselves to be treated only as instrumentally valuable, merely as a means to satisfy someone's desires, merely as a source of pleasure that is in other respects morally impermissible. If I marry a rich man just to enjoy the comforts that come accompanied with his wealth and leave him the day misfortune strikes him and his financial situation deteriorates, I would be using him as a mere means to my selfish ends. However, in all relationships, as in all interactions in society, there is to a certain extent some 'using' of others to fulfil our own needs. A husband who asks his wife to wash his dishes or who leans on her when he is emotionally distraught is not using her as a mere means to his end. There are certain emotions on which the relationship is based, of love and respect and this understanding of each other's needs makes it morally permissible to use other people in society to fulfil our needs, so long as we do not treat them as mere tools, stripped of respect and dignity, to serve our purposes. Even if we do keep a paid domestic servant at home, we have no right to abuse and degrade him. Positively, respect for others means recognising and appreciating their interests.¹⁵⁸ Every human being, Kant held, has two necessary ends or interests. As moral beings, we are obligated to

¹⁵⁸ Kant, I., (1959), *Foundations of the Metaphysic of Morals*, L.W.Beck, trans. (Indianapolis: Bobbs-Merril), 430

strive for our own moral well-being, that is, virtue; and as moral beings with a physical nature, we all inevitably want natural well-being, that is, happiness.¹⁵⁹

6.2 Kantian ethics and sex selection

The mention of respecting other's interests brings us to a point that is relevant for our topic of sex selection. When Kant wrote his moral philosophy, he could not have imagined that different kinds of reproductive technologies would come up which would not even require sexual intercourse. He wouldn't have thought that his dictums would be applied to examine and judge complex issues like the moral status of the embryo and whether research on foetuses is ethical. So when Kant talks about preserving the dignity of the person and treating them as ends in themselves, it is unclear what this would mean for people who hadn't yet been born or gained consciousness, that is whether we could speculate about bringing a human being into the world for our own needs and if yes, whether this could violate the principle of dignity of persons. He however did regard children as

¹⁵⁹ Sullivan, R.J., (1994), *An Introduction to Kantian Ethics* (Cambridge: Cambridge University Press), pp. 65-83

moral beings, though without attributing the full rights of citizenship to them.¹⁶⁰

There is an implication though that life begins from the moment of conception and that anything which is characterised by rationality deserves respect. So even though a child or a foetus cannot will and make one's life plans, it does come under the class of persons or moral agents since it is reason per se, which characterises them as a class and makes them different from all other creatures.

People have children for all sorts of reasons, to save a failing marriage, to fulfil one's desires to continue oneself, one's line and species, to give significance to one's relationship with another human being, to have an experience which most people regard as rewarding, challenging and enriching, as a source of personal renewal, a way of expressing appreciation for one's own life, to participate in something beyond oneself, that is, the activity of creation or just because it is a cultural norm. Some also view children as a vehicle of status, as compensatory substitutes, as a justification for self-abnegation, as a source of consumable entertainment, as objects of love who cannot refuse that love, as an excuse for greater accumulation of and absorption in possessions and power, providing a

¹⁶⁰ Kant, I., (1965), *The Metaphysical Elements of Justice: Part I of The Metaphysics of Morals*, J. Ladd, trans. (Indianapolis: Bobbs-Merrill), 314-315

false and illusory sense of immortality and sometimes just to fit in.¹⁶¹ Now there might be nothing wrong with having children for some of these reasons even though they might seem purely selfish.

What is disturbing about sex selection is that decisions about procreation, about whether to have children start becoming masked by what kind of children to have, by the specifications of the child to be born, who is merely an instrument to fulfil his parents' desires. If a child who is brought into the world to patch up a failing relationship fails to do so, the child would not be rejected on such grounds but imagine a couple who went through the physical, psychological and financial troubles to have a boy and that boy failed to fit into the role for which he was designed. The child would lose out consequently on the love which sustains familial ties. Those who oppose such reasoning and say that even normal children fail to live up to their parents' expectations but that does not mean that their parents stop loving them, forget that these are babies of parents to whom the gender of their offspring and the related fulfilment of associated desires meant so much that they went for painful, expensive and risky sex selection techniques.

¹⁶¹ Alpern, K.D., (1992), 'Genetic puzzles and Stork Stories' in K.D.Alpern (ed.) *The Ethics of Reproductive Technology* (New York; Oxford: Oxford University Press), pp. 151,157

There is a difference between the two cases, and in the case of the couple who think that having a child will save their marriage from breaking, there is still room to treat the child not 'merely' as a means but also as an end, which is not the case with sex selection. This is so because when a couple decide to gamble on a rocky marriage by having a child, it is not so much of an expectation that they have from the child to do certain things. Rather, it is they themselves who expect that with the coming of a person who they share, there would be improvements in their inter-personal relationships and a greater scope to bond again with each other. Hence, the child is not expected to carry out its 'designated task' whereas in sex selection for personal reasons, like family balancing, to have a particular child rearing experience, to have a soccer companion or to attain salvation, the child has to do something, his life is 'meant' to arouse certain experiences which have to be, in effect different and it 'has' to fill certain gaps. With sex selection, love, respect, dignity become tied to the gender which bestows utility to people's lives, and if that particular feature of the product is not satisfied, its value is lost. With choosing a child for other reasons, respect at least remains bound to the whole persona of the individual.

Suppose that you come to London from India to shop for a machine which is important for your work and when you have taken it back home, it doesn't function well or has certain defects, then you immediately contact the company for a replacement. Now if we consider that the refund or warranty period is over, then the value of the machine in terms of its utility for your purposes is zero and if you can't make use of it, you just discard it or shove it away in some forgotten corner of the house. In the case of parents who get their children, so to say 'ordered by choice', any kind of defect in the functioning of the person would immediately lead to intolerance and disappointment, coupled with perhaps a neglect of the child. Such children are used as mere means to fulfil their parents' expectations and desires and the child is not treated as an end in himself because had it been a child of the opposite sex, she would have been devalued and disrespected. It is the gender of the child which makes it valuable and not the child in itself. A 'male' child in India is valued only because of his Y chromosome which is mistakenly supposed to give him more dignity as a human being than a bearer of two X chromosomes. So the male child is only loved because of his gender and the female abhorred because of hers. He is used as a means to perform those functions which only he because of his gender can rightfully do. However, if he happens to, for some reason, either because of a

handicap or other such reason not be able to shoulder the responsibilities, he loses out on his social worth. What kind of a calculation of value is this?

6.3 Commodification and sex selection

This brings me to my next consideration, that of commodification. A commodifying attitude comprises a denial of subjectivity, instrumentality and fungibility.¹⁶² The basic idea is that some actions treat persons as a mere means, as a commodity because they separate out some physical aspect of the person for use or gratification. They are wrong not because they eclipse reasoned willing, but because they ignore the individual's physical-spiritual integrity and diminish the person's dignity by locating his or her value in an inferior body part or activity.¹⁶³ With regard to sex selection, people attach value to a particular aspect of the child's personality and disregard the opposite of it on no rational grounds. They alienate the gender of the person from his whole and only consider that worthy.

¹⁶² Wilkinson, S., (2000), 'Commodification Arguments for the Legal Prohibition of Organ Sale', *Health Care Analysis* 8, pp. 189-201

¹⁶³ Green, R. M., (2001), 'What Does it Mean to Use Someone as "A Means Only": Rereading Kant', *Kennedy Institute of Ethics Journal* 11(3), pp. 247-261

This is also the case with commodities, they are valued only because of their particular functional capacity; a washing machine because it does laundry without effort, a driller because it makes drilling perfect and the desired sized holes into the wall easier, a T.V because it provides entertainment, a coffee machine because it makes the perfect coffee and now a perfect child with perfect combination of characteristics to make life complete, balanced and happy, with a son to carry on my family name, to fulfil my religious duties, to take care of my property, to fulfil all those requirements for which a human being is essential and a machine can't take over.

The quest for perfection, for getting everything that I want, with all details of phenotype adhered to, makes a child into an asset rather than a human being who has interests of his own and who has the right to formulate his own life plans. And so this whole business of gender designing, of catering to people's wishes for the kind of child they want, takes on a consumerist turn, and life and family becomes a market where the forces of demand and supply operate, babies are designed by choice, they are manufactured like goods and sold with a price. The child no longer remains a surprise gift, like one you ask Father Christmas for, something which you can ask for but there is no control over whether you get what you ask

for. It becomes more like a Harrods List. It is common nowadays for people getting married to provide a list of those things that they would like to receive as wedding gifts. This list is then given to the store and those giving the gift can tell the store which they will give. There is a sense then in which the recipients have chosen their own gifts. There is an idea that gifts not on the list will not be accepted, so that the gift is then compelled. So the gift list then just becomes a shopping list in disguise, the only difference being that the receiver is then not the one paying for it.¹⁶⁴ So people in this age of rapid consumerism, go ‘baby-shopping’ and reduce their own offspring to the status of mere products that make life easier and enjoyable.

It’s interesting to go a little deeper into this area and see why we have apprehensions about such changes that technology is bringing into our family life and relationships. As with Kant¹⁶⁵, the act of procreation is one by which we bring a person into the world without his consent and on our own initiative, and for this deed parents incur an obligation to make the child content with his condition so far as they can. They cannot destroy their child as if it were something that they

¹⁶⁴ Marshall, S. E., (1995), ‘Choosing the Family’ in C. Ulanowsky (ed.) *Family in the Age of Biotechnology* (Avebury: Aldershot), pp. 105-117

¹⁶⁵ Kant, I., (1996), *The Metaphysic of Morals*, M. Gregor, trans. (Cambridge: Cambridge University Press), 6:282.283

had made or as if he were their property, nor can they just abandon him to chance, since they have brought not only a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to concepts of rights. From this duty also arises the right of parents to manage and develop their child, so long as he has not yet mastered the use of his members or of his understanding: the right not only to feed and care for him but also to educate him, to develop him both pragmatically, so that in the future he can look after himself and make his way into life, and morally, since otherwise the fault for having neglected him would fall on the parents.

But a man only has a duty of perfection towards himself and not others, so the parents only have a duty to help develop their children into moral persons who are capable of leading life, who have the ability to face situations in life and deal with them, but this in no way entails that parents have to engineer their children according to what they think as individuals would be best, what they want their children to do for them. Parents' rights over their children cease at the time of the child's emancipation. They must bear in mind that their children are not objects at their disposal, whom they can make use of as and when they want. They are human beings who have interests of their own and sex selection particularly

ignores this aspect of parental choice. It places so much more stress on the fulfilment of parental desires that it completely overlooks the state of the child, who is then made a scapegoat of his parents' expectations and desires.

One last case that I take up in this regard is choosing the gender to avoid genetically inherited sex-linked disease. Kant, we know, from his suicide example, would never allow killing oneself or another even in a state of utter grief and pain. Here, I would like to disagree with Kant and state that it would be an affront to the dignity of a human being, to be brought into the world to live a life marred by such pain, disability and helplessness, a life that is doomed to end soon and whatever time one has, is filled with excruciating pain and agony, in some cases even a state of lack of consciousness about one's own identity. In such a case, if the disease cannot be avoided in any other way but by sex selection, then in my view there is no valid objection that can be raised against the procedure.

I have thus argued that sex selection, except in the case of serious, genetic disorders treats children as products, which can be designed by choice, and this ignores the interests of the child to be born, stressing only on the aspect of parental desires, thus making children into vehicles for the fulfilment of parental

hopes and aspirations, which have no overriding reasons for justification. In the next section, I examine discrimination, which I argue is an effect of sex selection and thus, not only harms individuals but also society in general.

6.4 The meanings of words : ‘selection’ and ‘discrimination’

To examine the connection between sex selection and discrimination, I would like to go deeper into the meanings of certain words. First of all, what does ‘selection’ mean? What do we do when we choose between options presented to us? What does this choice mean to us? Let me attempt to answer these questions in a way that is suitable for our purpose.

All meanings of ‘choose’ or ‘select’ mention ‘picking out the most suitable, most fit, for excellence’.¹⁶⁶ So this implies that when we select something, it is necessarily an expression of our preference for something that we think is more suitable or fit. It is difficult to imagine that anyone, in making a decision

¹⁶⁶ The Pocket Oxford Dictionary (1978), 6th ed., J.B.Sykes (ed) (Oxford: Oxford University Press)

intentionally, chooses the least advantageous route. Our preference maybe with relevance to our thoughts, desires, attitudes, particular life situations or societal circumstances, but whatever it may be it certainly is something that is of importance to us. And the fact that we prefer something to another implies that the preferred choice or its outcome is of more value to us.

So, to choose deliberately brown eyes, must imply a preference for brown eyes to other possible colours. As Soren Holm¹⁶⁷ says, the assumption that to prefer something is to value it more highly than the other possible options plays a major role in rational choice theory when the implicit value structure of an individual is determined from his explicit choices and preferences. This entails that by choosing a specific characteristic I signal that it is more valuable to me than the other possible options.

The next question to ask would be, what is wrong with our highly valuing something that we prefer. This question is relevant to us because it helps us to answer our main query regarding sex selection involving discrimination.

¹⁶⁷ Holm,S.,(1998), 'Ethical Issues in Pre-implantation Diagnosis' in J.Harris and S.Holm(ed.)*The Future of Human Reproduction*(Oxford: Clarendon Press), pp.176-190

The word 'discriminate' means 'to make a clear distinction, distinguish, differentiate'.¹⁶⁸ But do all acts in which we differentiate culminate into a moral wrong? Obviously not. When certain features that are not morally relevant for our purposes or judgements are taken into account to justify our preference, it amounts to discrimination. Suppose that I as the Manager of a software company decide that I would hire someone for the post of a program developer who has the best qualifications in computer engineering and relevant work experience in reputed firms, then I would not be discriminating against those who do not get the job, either because their qualifications were not good enough or their experience was not sufficient. This is so because I am taking only those features into account which are important for a computer program developer. However, if I decide that I am going to hire someone who comes in a 'sari' or 'kurta' for the interview, the Indian national dress because my mother is an Indian and sari/kurta is my favourite dress, then I am making a judgement, a preference on the basis of characteristics that do not count towards saying anything about the ability or intelligence of the candidate. My criterion for judgement is irrelevant and I would certainly be discriminating against those candidates who haven't dressed in a sari.

¹⁶⁸ The Pocket Oxford Dictionary (1978), 6th ed., J.B.Sykes (ed) (Oxford: Oxford University Press)

With regard to discrimination, it might be worth analysing whether it is always wrong to take some characteristics like sex, skin colour, race into account. Surely, when considering a case of sexual violence, the defendant's gender would play an important role in the handling of the case. So there are certain institutions in which decisions have to be based on such characteristics, and this we would agree is acceptable. But if we do make decisions on which characteristics matter in our judgements, is it always acceptable to base our judgements on the criteria set by an institution or practice? Certain institutions could themselves be sexist like the army, till a few years ago the police force and the fire fighting squad. Certainly these are fields requiring people who are physically strong and who can take up strenuous tasks. Even though it maybe statistically proven that females on average are weaker in physical prowess than men, to categorically deny women such jobs would be discriminatory. There might be women who through training and exercise have built up their strength to the required level and there might be men who cannot match up to them or are weaker than these women but just because they fall into the 'right sex', they are given the opportunity to be considered for the job. Let us now take up a situation where it would be acceptable to base a decision on someone's sex. If I run a strip club, catering to the entertainment of my heterosexual male customers, my purpose would be defeated were I to employ

a male stripper. So in the context of the present situation, it would not be discriminatory to reject a male candidate when employing a female stripper.

So what we have arrived at is that it would be discriminatory to deny people fair equality of opportunity and to make judgements about them in isolation, treating them on the basis of morally insignificant dispositional traits like skin or hair colour, or purely on the grounds of their membership of a group, pertaining to either a race or sex, which is seen by the dominant part of society as inferior in some way. The principle of equality admits that humans differ as individuals but there is no compelling reason for assuming that a difference in race, sex, colour or height etc. between two people justifies any difference in value we bestow on them or, in the amount of consideration we give to their interests.¹⁶⁹

6.5 Discrimination and sex selection

In the light of the above discussion, let me take up my main question. Does pre-selection of sex lead to discrimination? The most eloquent argument against

¹⁶⁹ Singer, P., (1993), *Practical Ethics*(New York: Cambridge University Press), pp. 16-54

gender selection comes from the Catholic Church, which states that gender selection is contrary to the personal dignity of the human being and his or her integrity and identity.¹⁷⁰

The fundamental premise of gender selection is that one sex must be preferred over another. Before birth, before parents can possibly know anything about their progeny, gender figures in the calculation of a child's worth. It is this, which is bothersome about sex selection, that it forces parents to value gender, something that we in our professional and daily lives are encouraged and legally required to ignore.

As J.M.Berkowitz¹⁷¹ points out, preconceptive sexual manipulation constitutes sexism, which is the belief in the superiority or supremacy of one sex over another, prejudice or discrimination against members of one sex and the fostering of stereotyping of social roles for members of a given sex. What is wrong with sexual discrimination is that it violates the moral right of people to equal respect.

¹⁷⁰ Congregation for the Doctrine of the Faith, (1987), '*The Church's Instruction on Respect for Human life in its origin and on the Dignity of Procreation*', 22 Feb.1987

¹⁷¹ Berkowitz,J.M., (1998), 'Two Boys and a Girl Please and Hold the Mustard', *Public Health* 114(1) , pp.25-44

A person has the right to be judged on character and abilities rather than stereotypes which is a mere set of attributes ascribed to a group and believed to characterise its individual members simply because they belong to that group.¹⁷² So, sexism is a consequence of assumed sex appropriate social roles, which are of human invention and not genetically determined, often inaccurate over generalisations.

The fundamental problem with sex selection is that the term 'selection', by definition, suggests that nothing more momentous is taking place than a choice by parents between, say, pink and blue. But that is emphatically not the case with sex selection, where the very purpose (unconscious or not) of the selection is to exercise a large degree of control and authority over the nature and identity of one's offspring or of the next generation. After all, if the choice were completely indifferent, completely free of consequences, biological ramifications, or implicit social meanings, there would scarcely be a reason for making it in the first place. Quite the contrary: The parents expect certain things to follow from their 'selection' – from their control of the sex of the child. They are not merely selecting but determining – in the sense of foreordaining – something in their

¹⁷² Himma, K. .M., (2001), 'Discrimination and Disidentification : The Fair-Start Defense of Affirmative Action', *Journal of Business Ethics* 30(3), pp.277-289

offspring, and something, moreover, that is not trivial but central to the child's lifelong identity. To capture these defining aspects of what takes place in aborting a foetus because it is male or female, or preselecting an embryo for implantation because of its sex, or choosing to impregnate a woman with X- or Y-bearing sperm only, it would not be wrong to say that it is not just 'sex selection' that these parents are wanting but rather 'sex control'.

Let us now look more closely at the reasons given for sex selection to see whether they amount to discrimination. Very often, people go in for such techniques to avoid a genetically inherited sex-linked disease. It would not be discriminatory, for example, if a couple went in for PGD to avoid having a male offspring who would be afflicted with haemophilia. This use of sex selection is permissible because it does not devalue a person of a particular sex. The parents' purpose in using the technique is to avoid the disease rather than the 'wrong sex'. Hence, it is not the gender that is at issue here, but only the disease and in the absence of the possibility of inheriting the dreaded disease the couple would not have opted for sex selection. Since their choice does not attribute lesser value to anyone on the basis of a morally insignificant characteristic like sex, it does not amount to discrimination.

However, if we were to look at countries where sex selection is already practised, for the sake of social, traditional, religious reasons, though mostly illegally in the form of abortion or infanticide, it is a completely different story. In countries like India or China where there is widespread gender discrimination and a clear evidence of general preference for males, would allowing sex selection promote the already prevalent sexual inequalities? I believe that it would. If social coercion or cultural norms make having a male offspring preferable to a female offspring, there certainly is some kind of discrimination going on which is a cause for concern. If your social customs value a boy more than a girl, then it requires some thinking as to how and why in such circumstances should sex selection be allowed. The bearer of the family name, the one who lights the pyre of his parents, who inherits his family's wealth, all require a male offspring. But just because social customs validate our preferences, does it mean that they are good reasons for allowing for sex selection and should we allow such practices, which have no sound basis and are inherently discriminatory, to prevail? Such choices irrationally place lesser value on the female sex, thus depriving them of respect and dignity, which they as a part of the human race command and deserve. Hence, it disadvantages women and denies them equal rights, on the basis of sex, which arbitrarily assumes importance in some societies.

Mary Anne Warren¹⁷³ however, is of the view that if a woman in India chooses a son over a daughter, citing the reason that it would be better for her not to be born into a world in which she will be abused and devalued, then this is not a sign of sexism on her part because her motivations are rational, partly altruistic and must be seen as a symptom of sexist institutions and ideology, something for which she is personally blameless. But I would like to argue that even if she makes a decision keeping in mind the best interests of the girl child in not being born, and she adheres to the norms of the society, she cannot be said to be acting out of good will. By being party to an existent moral wrong, she is furthering discriminatory interests. Her choice made under social coercion directly challenges women's confidence in their own sex and the value they give to females which enables men to ask them to collude with the reproduction of inequality in the next generation.

In India, it is estimated that 10 million girls have gone missing over the last two decades due to parents choosing to abort female foetuses in such large numbers.¹⁷⁴

Although gender based abortion and prenatal sex determination tests are banned, in the last twelve years only one doctor has been convicted of such a crime. The

¹⁷³ Warren, M. A., (1992), 'The Ethics of Sex Preselection' in K.D.Alpern(ed.) *The Ethics of Reproductive Technology*(New York: Oxford University Press). pp.232-246

¹⁷⁴ Prasad, R. and Ramesh, R., (2007), 'India's Missing Girls', *The Guardian* . 28 February

latest estimate of India's sex ratio at birth (SRB) can be gleaned from a sample registration system that covers 1.3m households. For the two years up to 2004, India had just 882 girls per 1,000 boys. Only China is worse. Beijing's harsh, yet effective, family-planning policy limited urban couples to a single child -which was usually a boy. China's sex ratio stands at just 832:1,000.¹⁷⁵

This hidden tragedy surfaces not only in the statistics of skewed sex ratios, but also in the back yards of clinics that hoped to bury the evidence. Earlier this month, the police arrested two people after the discovery of 400 pieces of bones believed to be of female fetuses in the town of Ratlam, Madhya Pradesh. Last September, the remains of dozens of babies were exhumed from a pit outside an abortion clinic in Punjab. According to investigators, that clinic was run by an untrained, unqualified retired soldier and his wife. To dispose of the evidence, acid was used to melt the flesh and then the bones were hammered to smithereens.

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¹⁷⁵ Ibid.

¹⁷⁶ Sharma, S., (2006), 'Here Baby Girls are Dumped in Fields', *The Hindustan Times*, 30 November

Last year, in a series of reports entitled 'Kokh Me Katl', or 'Murder in the Womb', two journalists working for India's Sahara Samay television channel found 100 doctors, in both private and government hospitals, who were prepared to perform illegal terminations of girl foetuses. In the grainy TV pictures, doctors from four states and 36 cities talked with chilling casualness about how to dump the remains. Many weren't bothered about the foetus's age, just that it was a girl that could be got rid off. The average cost of the procedure was a few thousand rupees (around £30).

Although ministers in India have woken up to "a national crisis", the response has been to condone the abandonment of female babies. "If you don't want a girl, leave her to us," Renuka Chowdhury, India's minister of state for women and child development, said recently. The government "will bring up your children. Don't kill them". The announcement was a desperate response to stem India's dramatic deficit of women. There are advertisements in local newspapers and on TV and billboards everywhere informing people about the current law regarding sex selection in India and how Indians should view the girl child not as a burden but as a gift.

Amartya Sen, delivering the first foundation lecture of the Institute for Human Development in India, said that there is systematic discrimination in society and one of the examples of it is female foeticide. He pointed out that even though India had managed to bring down infant mortality, natality discrimination still continues and needs to be tackled.¹⁷⁷

One might be curious to know what effect this discrimination and sexism has on the level of society, that which goes beyond the individual. In China, it is estimated that by 2020, a massive 25 million men will have no wives owing to the huge gender imbalance in the country.¹⁷⁸ Currently, there are 119 boys born for every 100 girls in China. The question for India is what sort of future it faces without enough women. One dystopian answer, given by academics Valerie M Hudson and Andrea den Boer, is that a generation of men unable to find wives has already emerged. In their book, *Bare Branches*, they write of men who will never marry and have children. It is these men, they say, who are already largely responsible for social unrest in those areas where women are in short supply.¹⁷⁹

¹⁷⁷ Sen, A., (2006), 'Boy-girl Ration: Cause for Concern', *The Hindu*, 20 December

¹⁷⁸ Dasgupta, S., (2006), '25m Chinese May Be Without Wives in 2020', *The Times of India*, 15 August

¹⁷⁹ Prasad, R. and Ramesh, R., (2007), 'India's Missing Girls', *The Guardian*, 28 February

Indian scholars, they say, have noted a growing relationship between sex ratios and violent crime in Indian states. When potential wives are scarce, it is the least-skilled and educated men who are left on the shelf. Hudson and Den Boer put forward a scenario where large areas of India could be overrun by this under-class, with marauding groups of under-educated testosterone-high youths wreaking havoc. "It will mean a stronger masculine and macho culture," says Den Boer, co-author and lecturer in International Politics at the University of Kent. "Men do change their behaviour when they settle down. Those growing pools of men that don't are more likely to congregate to take part in stealing, gangs, bootlegging and terrorism."¹⁸⁰

In villages across the flat plains of north India, two decades of widespread female foeticide is already felt by thousands of families who cannot find brides for their sons. One local leader in the state of Haryana likened the lack of marriageable women to the shortage of grain in a famine. It is an apt simile, given that the response to the catastrophe has seen women from poorer states being traded like a commodity by bride traffickers. As little as 10,000 rupees (£125) is paid to impoverished families in Bihar, West Bengal and Madhya Pradesh for a daughter

¹⁸⁰ Ibid.

who will supposedly be found a job in a more prosperous part of India. The reality is that she will be sold into a forced marriage to a family in a richer state.¹⁸¹

India's paradox is that prosperity has not meant progress. Development has not erased traditional values: in fact, selective abortion has been accelerated in a globalising India. On the one hand there has been new money and an awareness of family planning - so family sizes get smaller. But wealthier and better educated Indians still want sons. A recent survey revealed that female foeticide was highest among women with university degrees. The demographic consequences of mass female foeticide are most pronounced in the most developed parts of India. In Delhi, one of the richest cities in India, there are just 827 girls per 1,000 boys being born. Not far away, in the wealthy farming belt of Kurukshetra, there are only 770.

At the heart of the matter lies the most sacred institution in Indian life: marriage. New money has raised the price of wedlock, a ritual still governed by the past. Not only do most Indians believe in arranged marriage, in which dowry payments

¹⁸¹ Ibid.

are made; there is also a widespread acceptance of the inequality between bride-givers and bride-takers.

Robyn Rowland had once said, “Women are the most exploited, manipulated, oppressed and brutalised group in the world, yet we have the numbers. What would our status be as a vastly outnumbered group?”¹⁸² In Asia, the numbers have dwindled and the condition of women has only got worse. It is high time that women took the matter in their own hands, broke out of their shells and fought gender bias at its very root, by refusing to be a part of unjust practices, which are based on illogical explanations given for gender preference.

In the last decade or so, India has seen a great change of attitude towards women and if sex selection were to be allowed, all efforts to bridge sexual inequalities would be futile. A movement, which has begun to usher in change, will be stalled. In the past too it was only because some revolutionaries voiced their dissent over practices like sati, of widows burning themselves in the funeral pyre of their

¹⁸² Rowland, R., (1987), ‘Motherhood, Alienation and the Issue of ‘Choice’ in Sex Prselection’ in G. Corea et al (ed.) *Man-Made Women: How New Reproductive Technologies Affect Women* (Bloomington: Indiana University Press), p.83

husband, that laws were formulated to abolish it. Participation on grounds of socio-economic, religious or cultural reasons would have hardly provided a valid justification for it. An Indian man might turn around and accuse me of having fallen victim to Western ideology, of harbouring liberal values and imposing a Western culture on another which I do not understand. Yes, it is true that traditions, cultures, religions, vary from place to place and people from different backgrounds might consider some of the rituals and practices extremely bizarre and stupid. However, I agree with Nussbaum¹⁸³ when she says that certain values like dignity, respect, equality and love are universal, notions which apply to all human beings. One does not have to belong to any religion to deserve it. She also talks of the universal importance of protecting spheres of choice and freedom, within which people with diverse views of what matters in life can pursue flourishing according to their own lights.

Let us now turn to the group of parents who wish to pre-select their child's gender because they already have three sons and want one daughter now, or because they want to balance their family by having children of both the sexes. It is not immediately clear what makes a family balanced. And this prompts us to ask where the notion of a complete family comes from. With this concept being vague,

¹⁸³ Nussbaum, M., (2000), *Sex and Social Justice* (Oxford: Oxford University Press), pp.3-25

we do not know how having children of both the sexes completes or balances the family. If there are three sons, one is left clueless about how having a daughter completes the family. It seems that such couples are aiming to have 'perfect' families but we hardly have an idea of what this perfection consists of. Going by their logic, had there been three sexes, a balanced family would be one with offspring of all three. This concept of 'family balancing' surely is obscure with hardly any rationale behind it. What lies at the root of such desires is an unspoken belief that the two sexes are different in at least some way that our family remains incomplete without having both, and a vague expectation that what three sons could not provide, one daughter would. Wertz and Fletcher¹⁸⁴ also endorse this point by saying that the desire for a balanced family assumes sex role stereotyping. Why desire to balance a family unless you already hold stereotypes about sex? Exactly, if both the sexes have equal value in your life then why desire to have a daughter after three sons?

Even more troublesome, the desire to have a child of a particular sex often reflects parental expectations of dominant gender based behaviour. So, the woman who desires to have a girl as a cooking companion or a man desiring a son to play

¹⁸⁴ Wertz, D.C. and Fletcher, J.C., (1992), 'Sex Selection Through Prenatal Diagnostic Techniques: A Feminist Critique' in H.B.Holmes and L.M.Purdy(ed.)*Feminist Perspectives in Medical Ethics*(Bloomington : Indiana University Press), pp.240-249

cricket with on Sundays may seem prima facie harmless but such desires are manifestations of attitudes which give preference to sex. To express such desires, it must be assumed that by virtue of being a girl she would be expected to be inherently a preferable shopping or cooking companion. According to Hoskins and Holmes¹⁸⁵, treating people according to the sex role we envision instead of according to their individuality is unethical and an act of sexism, for what is more sexist than to 'create' a person to fit a sex role ideology.

Into the above class would also fall those couples who recognise and prefer one type of childrearing experience over the other. The very desire for a 'specific' bearing and companionship experience places insufficient value on the child of the other sex since it gives the message that the other sex would not provide 'as good' companionship or 'less rewarding' childbearing experience. Often we hear single women wanting to have a girl child because they harbour a feeling that boys are more violent, boisterous and difficult to manage than girls who are considered more obedient, gentle and warm. Such concerns speak of prejudices, which are very common, and they show explicitly how people value the two sexes unequally. Such preferences are based on unfounded generalisations of

¹⁸⁵ Hoskins, B. and Holmes H.B., (1984), 'Technology and Prenatal Femicide' in in R.Arditti, R.D.Klein and S.Minden (eds.)*Test-Tube Women: What Future for Motherhood* (London ;Boston: Pandora Press), p.284

characteristics supposed to be belonging to every member of the class. Even if we do accept that such generalisations were correct and boys tend to be more violent, to judge that an individual boy will be more violent would be discriminatory since we would then be extrapolating from group characteristics, without judging the individual on his own sake.

Bayles¹⁸⁶ thoughtfully points out that feminist movements are trying to break down gender stereotypes and that widespread adoption of sex selection would turn back the clock on such gains. It is true that unlike the inability of men to become pregnant, there are no genetic barriers to girls fishing or boys shopping. Any normal pleasure that can be enjoyed with a child of one sex can be experienced with the other too. Also, even if it were acceptable to choose a foetus because of a well-founded expectation that she would be interested in dolls, it would not mean that if the resulting little girl was not interested in dolls, the parents would be justified in not fulfilling their obligations towards this child. Even if they did harbour some expectations that remained unfulfilled, by bringing another human being into the world, they have undertaken some commitments towards her life.

¹⁸⁶ Bayles, M., (1984), *Reproductive Ethics*(Englewood Cliffs, New Jersey: Prentice-Hall), p.35

Lastly, we discuss those parents who wish to use PGD to have a child of a sex, which they just happen to like. Just as somebody prefers the colour red to blue, so do they think that they happen to like girls more than boys, as a matter of mere personal liking, without harbouring any sexist feelings. But it must be noted that here we are not talking about cars which we can buy of our favourite colour, red. Our choice here concerns a child who will come into existence, it is about someone whose life will be influenced by this decision, and we certainly cannot make such decisions on the basis of flippant reasons. If I like girls and I am on a committee which awards scholarships on the basis of ability and research potential of candidates, I cannot decide to give funding only to girls because there is a certain framework of the scholarship awarding body within which I have to work and so is the case with society and life. When we are talking of human beings whose life has a value, nothing gives us the reason to choose its gender on the basis of a mere preference which has no sound basis. In earlier chapters, I have dealt with the question of extent of parental control over children and their right to choose for them and related to some of the ideas discussed above, about the possible treatment of children as things.

Questioning the motives of this last group, Berkowitz¹⁸⁷ feels that individuals vary in their ability to articulate motivation and it is difficult to imagine that any decision, especially one involving the time, risk and expense of pre-conceptive sex selection, would be made without anticipating gain. And to anticipate gain, one must predict the consequences of a decision. In gender selection, predicting gain necessitates assumptions to be made which are dependent upon the sex of the child. So to choose a boy or a girl, parents must have preconceived notions, however vague, about the ramifications of having a certain sexed child, notions that are fundamentally sexist since they are predicated upon anticipated gender based behaviour.

Thus, pre-selection of sex is disturbing because it can be used as a vehicle for parents to express spoken or unspoken sexual prejudices which may prove detrimental to the child. Bonnie Steinbock¹⁸⁸, though disagreeing with the fact that sex selection would lead to gender discrimination, voices concern about what such choices can imply and calls for reflection on what it means to be a parent,

¹⁸⁷ Berkowitz, J. M., (1998), 'Racism and Sexism in Medically Assisted Conception', *Bioethics* 12(1), pp.25-44

¹⁸⁸ Steinbock, B., (2002), 'Sex Selection: Not Obviously Wrong', *Hastings Center Report* 32(1), pp.23-27

what kind of parents we should strive to be and what role, if any, does gender play in the parent-child relationship.

I thus conclude that apart from reasons for avoiding genetically inherited disease, pre-selection of sex undermines the value of human beings and places insufficient moral worth on gender and thus could be used as a tool to propagate inappropriate discrimination.

7. Conclusion

In this thesis, I have tried to examine the ethical issues raised by sex selection from three different perspectives: that of the individual, that of the family and that of society. This thesis has been in essence about parents and children and the guiding factor in the relationship between them. But this thesis has also been about society, that whole in which the individuals, the parents and children live. It is natural that the individuals will be affected by the climate in which they live and it is also natural that society in itself will be influenced by the collective actions of the individuals who make it a whole.

As pointed out earlier, there were two questions that needed to be answered in this thesis regarding the morality of sex selection: (1) the question regarding the techniques being used to achieve the end, that of sex selection and whether the available technology raises any ethical problems, and (2) the second and more important of the questions, was that regarding the morality of sex selection, in and of itself, irrespective of the technology being used to achieve it. Having reached

the end of this thesis, I would like to say that I have found the answers to my questions, No to (1) and Yes to (2).

The main claim of my thesis has been : It is immoral for parents to select the sex of their offspring for non-medical reasons and my main argument in support of it is that parents ought not to place value on gender when it comes to their children since gender is a morally irrelevant factor in the parent-child relationship and parental love should not be conditioned by characteristics like gender. Hence, their preference regarding the choice of sex cannot be justified.

This thesis started with an examination of the morality of the technology being used to achieve sex selection. There are two main techniques used to select for sex: sperm sorting which is pre-conception and preimplantation genetic diagnosis (PGD) which is a post-conception technique. Sperm sorting does not involve any considerable risk and is an effective method to select for sex. PGD on the other hand involves the creation, screening, implantation and discarding of embryos. It is this aspect of PGD that has continued to raise ethical worries. In the thesis I have discussed and evaluated different positions on the moral status of the embryo

and argued for a gradualist position concluding that the early embryo used in embryo selection or PGD does not have a moral status. Hence, discarding it or not implanting it would not be unethical.

Undertaking a theoretical analysis and account of parenthood, I argued that parenthood is a role from which rights and duties stem. I looked at different theories for parental rights and duties, and critiqued the 'Children as Property' claim. I also argued that parenthood is a relationship of love, and that parents ought not to place value on gender when it comes to their children, and that parental love should not be conditioned by characteristics like gender.

Discussing the right to reproduction, I applied it to sex selection and arrived at harm as posing a limit on procreative liberty. I argued that a right to reproduction, reproductive freedom or reproductive autonomy does not entail a right to sex selection. I also discussed how sex selection could impact on children, children's rights to an open future, and sufficiently harm them.

Applying Kantian ethics, in particular the 'Means and Ends' formula to sex selection, I discussed how this could lead to commodification. I argued that the choice of a particular trait, like gender by a parent undermines the principle of respect for individuals and thus instrumentalises the value of children for their parents. Moving away from individuals, I focused on sex selection as a means of discrimination and the impact of sex selection on women and society. An analysis of the current situation in India and China where sex selection has led to a huge gender imbalance revealed that gender stereotyping and discrimination could prove detrimental to society as a whole and the framework that holds it together.

I have argued in this thesis that it is time for us as a society to move forward, to look beyond the stereotypes that are commonly prevalent around us, to change the way society thinks by changing how we think and act, to put an end to a system that is biased for all the wrong reasons and does not value an individual for what he or she is and rather finds his or her moral worth in traits like gender, race, ethnicity, religion that are morally irrelevant. Sex selection, in essence, destroys the delicate fabric of the family, the parent – child relationship and contributes to existing ills within society. The age we live in today, we need technology to better

human life and the settings we live in, not to make society an even more prejudiced and divided one!

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