Countries with laws or policies on sex selection
Marcy Darnovsky, Center for Genetics and Society, April 2009

This memo was prepared for the April 13 New York City sex selection meeting, and updated May 9 to correct two errors

Section 1: A chart showing those countries – 36 in all – that have adopted national laws, or policies having the force of law, on sex selection.

These data are extracted from BioPolicy Wiki, an on-line guide to laws and policies governing the use of human genetic and reproductive technologies compiled by the Center for Genetics and Society. As its name suggests, BioPolicy Wiki is presented in a Wikipedia-like format that allows users to edit and add information. See http://www.biopolicywiki.org/index.php?title=Main_Page

Of the 36 countries with laws or policies on sex selection:
- 0 explicitly permit it
- 5 prohibit sex selection for any reason
- 31 prohibit it for social or “non-medical” reasons (see * below)

Breakdown of 36 countries by region:
- Europe: 25
- Asia: 8
- Oceania: 2
- North America: 1

Other countries either are known not to have national laws or policies addressing sex selection, or the existence of such laws or policies is unknown.

* Sex selection for social or “non-medical” reasons means it is allowed in cases to avoid having a child with a sex-linked disease. Some refer to this distinction as “social” vs “medical” sex selection. Many disability rights advocates critique this language, explaining that drawing lines between medical and social stems from the devaluation of the lives of people with disabilities, and that we would not make this distinction if people with disabilities were fully valued members of society.

Section 2: Excerpts from sex selection laws and policies in 6 countries and from the European Convention on Human Rights and Biomedicine, along with some additional information. This section focuses on the purposes and principles of the laws and policies, where these are explicitly articulated, and on the exact language regulating sex selection practices. The six countries are:

1. Canada
2. China
3. India
4. Israel
5. New Zealand
6. UK

Note: Information drawn from sources other than official legislative or policy documents is shown in italics.
Known country-level sex selection policies, 2009  
Data from Center for Genetics and Society BioPolicy Wiki, [www.biopolicywiki.org](http://www.biopolicywiki.org)

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<th>Country</th>
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¹ “Social uses prohibited” means that sex selection is permitted for “medical reasons” – that is, for situations in which an embryo or fetus might be affected by a serious sex-linked disease.
1 - CANADA: Assisted Human Reproduction Act of 2004


Declaration of Principles:

- The health and well-being of children born through the application of assisted human reproductive technologies must be given priority in all decisions respecting their use;
- The benefits of assisted human reproductive technologies and related research for individuals, for families and for society in general can be most effectively secured by taking appropriate measures for the protection and promotion of human health, safety, dignity and rights in the use of these technologies and in related research;
- While all persons are affected by these technologies, women more than men are directly and significantly affected by their application and the health and well-being of women must be protected in the application of these technologies;
- The principle of free and informed consent must be promoted and applied as a fundamental condition of the use of human reproductive technologies;
- Persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status;
- Trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition; and
- Human individuality and diversity, and the integrity of the human genome, must be preserved and protected.

PROHIBITED ACTIVITIES

Prohibited procedures

5. (1) No person shall knowingly ...

(e) for the purpose of creating a human being, perform any procedure or provide, prescribe or administer any thing that would ensure or increase the probability that an embryo will be of a particular sex, or that would identify the sex of an in vitro embryo, except to prevent, diagnose or treat a sex-linked disorder or disease

2 - CHINA: Law on Maternal and Infant Health Care, 1994


General Provisions

Article 1. This Law is formulated in accordance with the Constitution with a view to ensuring the health of mothers and infants and improving the quality of the newborn population.

Article 32. ...Sex identification of the fetus by technical means shall be strictly forbidden, except that it is positively necessitated on medical grounds.
3 - INDIA: The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

http://www.medindia.net/Indian_Health_Act/the-pre-natal-diagnostic-techniques-act-rules-introduction.htm

Introduction
The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, was enacted and brought into operation from 1st January, 1996, in order to check female foeticide. Rules have also been framed under the Act. The Act prohibits determination and disclosure of the sex of foetus. It also prohibits any advertisements relating to pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment and fine.

Recently, PNDT Act and Rules have been amended keeping in view the emerging technologies for selection of sex before and after conception and problems faced in the working of implementation of the ACT….These amendments have come into operation with effect from 14th February, 2003.

Note: Sex selection for cultural reasons and for family balancing is banned in India. The Indian Council of Medical Research's National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India prohibits sex selection “at any stage of fertilization, except to avoid the risk of transmission of a genetic abnormality assessed through PGD.” Moreover, the guidelines prohibit ART clinics from providing couples with a child of a desired sex.

India strictly regulates PND [prenatal diagnosis]. The practice is admissible only in order to detect fetal abnormalities or genetic, metabolic or chromosomal disorders. By law, PND may be conducted only if the pregnant woman meets one of the following conditions: a) is more than thirty-five years of age, b) has two or more spontaneous abortions, c) has been exposed to potentially teratogenic agents, such as drugs, radiation, infection, or chemicals, d) she or her spouse has a family history of mental retardation or physical deformities, such as spasticity or other genetic disease, or, f) any other condition specified by the state supervisory board.


4 - ISRAEL: (Health Ministry directive passed on 19 May 2005)

Israeli parents who have at least four children of the same sex and want one of the other sex can now (2005) apply to a health ministry committee for approval of preimplantation genetic diagnosis at their own expense. Professor Avi Yisraeli, director general of the health ministry, who issued the directive on the recommendation of experts on bioethics, said the new seven member body would approve sex selection of embryos for social reasons only in very unusual cases.

http://www.bmj.com/cgi/content/extract/330/7502/1228-a
The guidelines require that all the following requirements be met to qualify for authorisation for sex selection for social purposes: (1) there is a real and major risk of essential and significant harm to the mental health of one or both of the parents, or of the future child, if sex selection via PGD is not carried out; (2) the applicants have at least four children (of both parties) of the same gender and none of the other gender (except in unusual and rare cases); (3) the potential parents were provided genetic counselling clarifying the PGD procedure, its chances and risks and the ethical considerations in sex selection, including the status and future of the embryos of the gender that was not chosen, and that both of the parents gave their written informed consent regarding both IVF and PGD; (4) the parents were told that if all the resulting normal embryos are not of the preferred gender, no authorisation for another cycle of IVF and PGD for sex selection will be given before the use of all of the embryos for reproduction; (5) based on professional and ethical deliberation, the committee was convinced that sex selection was justified in this particular case.

The guidelines require the committee to attend to the following: (1) whether the potential parents are in need of IVF regardless of PGD; (2) the risks and the burden for the woman if the woman has to undergo IVF not for fertility reasons but only for sex selection purposes; (3) whether PGD in the embryos is to be carried out for medical reasons regardless of the issue of sex selection; (4) the family and social status of the applicants, including their age.

R Landau, Sex selection for social purposes in Israel: quest for the "perfect child" of a particular gender or centuries old prejudice against women?, Journal of Medical Ethics, 2008;34;e10 [http://jme.bmj.com/cgi/content/abstract/34/9/e10]

5 - NEW ZEALAND: Human Assisted Reproductive Technology Act 2004


Purposes

- This Act has the following purposes:
  - (a) to secure the benefits of assisted reproductive procedures, established procedures, and human reproductive research for individuals and for society in general by taking appropriate measures for the protection and promotion of the health, safety, dignity, and rights of all individuals, but particularly those of women and children, in the use of these procedures and research:
  - (b) to prohibit unacceptable assisted reproductive procedures and unacceptable human reproductive research:
  - (c) to prohibit certain commercial transactions relating to human reproduction:
  - (d) to provide a robust and flexible framework for regulating and guiding the performance of assisted reproductive procedures and the conduct of human reproductive research:
  - (e) to prohibit the performance of assisted reproductive procedures (other than established procedures) or the conduct of human reproductive research without the continuing approval of the ethics committee:
(f) to establish a comprehensive information-keeping regime to ensure that people born from donated embryos or donated cells can find out about their genetic origins.

**Principles**

- All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:
  - (a) the health and well-being of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure:
  - (b) the human health, safety, and dignity of present and future generations should be preserved and promoted:
  - (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and well-being of women must be protected in the use of these procedures:
  - (d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent:
  - (e) donor offspring should be made aware of their genetic origins and be able to access information about those origins:
  - (f) the needs, values, and beliefs of Maori should be considered and treated with respect:
  - (g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

**Restrictions on sex selection of human embryos**

No person may, for reproductive purposes,

- (a) select an in vitro human embryo for implantation into a human being on the basis of the sex of the embryo; or
- (b) perform any procedure, or provide, prescribe, or administer any thing in order to ensure, or in order to increase the probability, that a human embryo will be of a particular sex.

6 - UNITED KINGDOM: Human Fertilisation and Embryology Act, 1990


8.9 Treatment centres are expected not to: (i) Select the sex of embryos for social reasons

14.10 Centres may not use any information derived from tests on an embryo, or any material removed from it or from the gametes that produced it, to select embryos of a particular sex for social reasons.
Note: According to the Consultation Document on PGD (2000) of the HFEA and the Advisory Committee on Genetic Testing (ACGT), PGD is not acceptable for testing “social or psychological characteristics, normal physical variations, or any other conditions which are not associated with disability or a serious medical condition.”

Sex selection: Options for Regulation. A report on the HFEA’s 2002-2003 review of sex selection including a discussion of regulatory and legislative options (44 pages; mainly focused on sperm sorting: termed flow cytometry below)
http://www.hfea.gov.uk/cps/rde/xbcr/SID-3F57D79B-1FBD1F5D/hfea/Final_sex_selection_main_report.pdf

Summary of conclusions: …Subject to a licence being granted, centres should be permitted to offer treatment with sperm that has been subjected to flow cytometry (whether alone or in combination with PGD) only to patients with clear and overriding medical indications.

7 - EUROPEAN CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE, 1997

http://conventions.coe.int/Treaty/EN/Treaties/Html/164.htm

Chapter I – General provisions
Article 1 – Purpose and object
Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.
Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.

Article 2 – Primacy of the human being
The interests and welfare of the human being shall prevail over the sole interest of society or science.

Article 3 – Equitable access to health care
Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality.

Article 4 – Professional standards
Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.

Chapter IV – Human genome

…

Article 14 – Non-selection of sex
The use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child’s sex, except where serious hereditary sex-related disease is to be avoided.