



HOW STEREOTYPES ABOUT INDIANS ARE USED TO PROMOTE ABORTION RESTRICTIONS IN THE UNITED STATES?

—Sital Kalantry*

Abstract Many state legislatures in the United States (‘U.S.’) have passed restrictions on abortion for purposes of selecting the sex of the child. Advocates for these bans are using the widespread crises of sex-selective abortion in India to push for the prohibitions in the U.S. They argue that immigrants from India abort female fetuses at the same rates as people who live in India. This narrative misunderstands that sex-selective abortions are, in part, related to structural factors in society. It also wrongly assumes that Indian immigrants act in the same ways as people living in India. This view gained support from inaccurate understandings and representations of an academic article that found that a small number of Asian Americans sex-select. This article demonstrates how this happened and suggests an alternative explanation for why a few Indians living in the U.S. might be sex-selecting – they want to have both a boy and a girl.

I. INTRODUCTION

Anti-sex-selective abortion laws punish medical professionals for performing abortions if they know that the patient’s motive for the abortion relates to the predicted biological sex of the fetus. Since 2009, nearly half of all state legislatures have considered bills to prohibit sex-selective abortion.¹ The majority of the U.S. House of Representatives voted in favour of a similar ban in 2012.² That same year, anti-sex-selective legislation was the second most proposed

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¹ Sital Kalantry, *Women’s Human Rights and Migration: Sex-Selective Abortion Laws in the United States and India* (2017) 74.

² Ed O’Keefe, ‘Bill Banning “Sex-Selective Abortions” Fails in the House’ *The Washington Post* (31 May 2012) <https://www.washingtonpost.com/blogs/2chambers/post/bill-banning-sex-selective-abortions-fails-in-the-house/2012/05/31/gJQAgCYn4U_blog.html?utm_term=.45f2f7c-1faf9> accessed 18 March 2020.

anti-abortion prohibition in the U.S.³ Today at least ten states have enacted the bans,⁴ though they are partially unenforceable in several states.⁵ One U.S. Appeals Court, the Court of Appeals for the Seventh Circuit, has declared the ban unconstitutional and the U.S. Supreme Court recently refused to hear a challenge to that decision. This means that the ban is unconstitutional in states that are under the jurisdiction of that Appeals Court.⁶

In this paper, I explain how stereotypes and misinformation about people in India as well as of Indians living in the U.S. have been used in support of the anti-sex-selective laws. Elected officials who are pro-choice have voted in favour of the bans. I argue that pro-choice legislators and other people have been misled to support sex-selective abortion bans by misinterpretations of demographic data in a way that aligns with stereotypes about Asians and Asian Americans. In Section II, I explain how legislation banning sex-selective abortion was driven by the findings of an academic article released in 2008 suggesting, wrongly, that sex-selective abortion was widespread among Asian Americans. Through an analysis of the voting records of legislative representatives in Oklahoma and in the U.S. House of Representatives, I demonstrate that many pro-choice legislators voted in favour of sex-selective abortion restrictions in Section III. Then, in Section IV, I analyze the findings of the 2008 article to demonstrate that their conclusions were misinterpreted to suggest that sex-selective abortion is widespread among Asian Americans when that is not the case. In Section V, I present an analysis of census data that is more recent than the data that was used in the 2008 article and that challenges the dominant assumptions about the motives behind the behaviour of Asian Americans.

II. THE GENESIS AND JUSTIFICATIONS FOR SEX-SELECTIVE ABORTION BANS

A two-page article published in 2008 by Douglas Almond and Lena Edlund, entitled “Son-biased Sex Ratios in the 2000 United States Census,” started a

³ Lydia O’ Connor, ‘San Francisco may be First City to Oppose Sex-Selective Abortion Bans’ (*Huffington Post*, 10 September 2014) <https://www.huffingtonpost.com/2014/09/10/san-francisco-sex-selective-abortion_n_5800840.html> accessed 18 March 2020.

⁴ Illinois, 720 Ill Comp Stat s 510/6-8 (2013); Pennsylvania, 18 Pa Cons Stat s 3204 (2013); Oklahoma, Okla Stat Tit 63, s 1-731.2 (2013); Arizona, Ariz Rev Stat s 13-3603.02 (2013); Kansas, Kan Stat s 65-6726 (2013); North Carolina, NC Gen Stat s 90-21.121 (2013); North Dakota, ND Cent Code s 14-02.1-04.1 (2013); South Dakota, HB 1162, 89th Leg, Reg Sess (SD 2014) (enacted); Indiana, Ind Code s 16-34-4-1 (2016), Arkansas, HB 1434, 91st Leg, Reg Sess (Act 733).

⁵ Illinois, 720 Ill Comp Stat s 510/6-8 (2013) enjoined by *Herbstv O’Malley*, No 84 C 5602, 1993 WL 59142 (ND III 2 March 1993); Indiana, Ind Code s 16-34-4-1 (2016), enjoined by *Planned Parenthood of Indiana and Kentucky Inc v Kristina Box* 2017 WL 4224750; Arkansas, HB 1434, 91st Leg, Reg Sess (Act 733) enjoined by *Hopkins v Jegley* 2017 WL 3220445, ED Ark (2017).

⁶ *Kristina Box v Planned Parenthood of Indiana and Kentucky Inc* 2019 SCC OnLine US SC 97 : 204 L Ed 2d 78 : 139 S Ct 1780 : 587 US (2019).

legislative firestorm to ban sex-selective abortion.⁷ The article was published in the *Proceedings of the National Academy of Sciences*, an influential multi-disciplinary science journal. By examining the ratio of boys to girls born to Asian Americans, they suggested that Asian Americans abort female fetuses at the same rates as people living in Asia. Specifically, the authors stated that “the magnitude of the deviations ... for second and third children of Chinese, Indian, and Korean Americans is comparable to that documented for India, China and South Korea.”⁸ In Section V below, I explain why this statement is inaccurate.

Bills began to be introduced in state legislatures almost immediately after the study was released, and they continue to be proposed even today. In 2009, five state legislatures considered (and rejected) sex-selective abortion bans; in 2010, eight state legislatures considered the bans (one of them passed it); in 2011, five state legislatures considered the ban (one of them adopted it); in 2012, nine states considered the bill; and in 2013, sixteen states considered the bill (three states passed it). In 2014, ten states considered the ban (one state enacted it). States continue to introduce the bans.⁹

Illinois and Pennsylvania are the only states that enacted sex-selective abortion bans prior to the publication of Almond and Edlund’s article. In examining the transcripts of discussions of the bills in those state legislatures, I found that there was never any mention of the purported behaviour of Asian Americans as a justification for the bills in those two states. The focus of the legislative discussion in those states was broadly on the sex-selective behaviour of all Americans.¹⁰ The only time Asia was referred to in the legislative debates is when a pro-choice Pennsylvania senator pointed out that sex-selection occurs in parts of Asia, but not in the U.S.¹¹

⁷ Douglas Almond & Lena Edlund, ‘Son-biased Sex Ratios in the 2000 United States Census’ (2008) 105 *Proc Nat’l Acad Sci* 5681, 5681-82 <<http://www.pnas.org/content/105/15/5681.full.pdf>> accessed 18 March 2020.

⁸ *ibid.*

⁹ See Sital Kalantry, ‘Sex-Selective Abortion Bans: Anti- Immigration or Anti-Abortion?’ (2015) 16 *Geo J Int’l Aff* 140.

¹⁰ See Sital Kalantry, ‘Sex Selection in the United States and India: A Contextualist Feminist Approach’ (2013) 18 *UCLA Journal of International Law and Foreign Affairs*; State of III Gen Assemb., S Transcripts Discussing HB 1399, 83rd Gen Assemb, at 36–38 (25 June 1983); State of III Gen Assemb, S Transcripts Discussing HB 1399, 83rd Gen Assemb, at 222–23 (29 June 1983); State of III Gen Assemb, S Transcripts Discussing HB 1399, 83rd Gen Assemb, at 17–33 (30 April 1984); State of III Gen Assemb, S Transcripts Discussing HB 1399, 83rd Gen Assemb, at 142–51 (30 June 1984); State of III Gen Assemb, H Transcripts Discussing HB 1399, 83rd Gen Assemb, at 175–79 (27 May 1983); State of III Gen Assemb, H Transcripts Discussing HB 1399, 83rd Gen Assemb, at 81–86 (26 April 1984); State of III Gen Assemb, H Transcripts Discussing HB 1399, 83rd Gen Assemb, at 50–64 (29 June 1984); HR 173-65, 1989 Sess, at 1743–44 (Pa 1989), <<http://www.legis.state.pa.us/WU01/LI/HJ/1989/0/19891024.pdf>> accessed 7 June 2015.

¹¹ HR 173-65, 1989 Sess, at 1749 (Pa 1989), accessed 30 October 2017.

But since 2009, the bills that have been introduced specifically cite Almond and Edlund's article and claim that bans are necessary to prevent widespread discriminatory abortions of female fetuses. For example, the preamble of the bill proposed in the U.S. Congress in 2017, the Prenatal Non discrimination Act ('PRENDA') of 2017, states:

"In a March 2008 report published in the Proceedings of the National Academy of Sciences, Columbia University economists Douglas Almond and Lena Edlund examined the sex ratio of United States-born children and found "evidence of sex selection, most likely at the prenatal stage."¹²

PRENDA further suggests that the data in Almond and Edlund's article "reveal[s] obvious 'son preference' . . . within . . . segments of the United States population . . . tracing their origins to countries where sex-selection abortion is prevalent."¹³

The preambles of bills introduced in state legislatures also contain the same language quoted above.¹⁴ The political rhetoric of politicians who support the bills further refers to Asian immigration as a justification for the bans.¹⁵ For example, Don Hagger, a Republican state representative in South Dakota, stated:

"Let me tell you, our population in South Dakota is a lot more diverse than it ever was. There are cultures that look at a sex-selection abortion as being culturally okay. And I will suggest to you that we are embracing individuals from some of those cultures in this country, or in this state. And I think that's a good thing that we invite them to come, but I think it's also important that we send a message that this is a state that values life, regardless of its sex."¹⁶

The narrative used to justify the laws can be summarized as follows: (1) people in Asia prefer sons and that is why they abort female fetuses, (2) Asians have emigrated to the U.S. and many of them obtain sex-selective abortions, (3) Asian Americans obtain these abortions because, like Asians, they have a sexist preference for sons and an aversion to daughters, and (4) sex selection in

¹² Prenatal Nondiscrimination Act ('PRENDA') 2017, HR 147, 115th Cong s 2(a)(1)(F).

¹³ *ibid.*

¹⁴ HB 845, 2013 Leg, Reg Sess (Fla 2013).

¹⁵ Clifford Geertz, *The Interpretation of Cultures* (1973) 44.

¹⁶ Molly Redden, 'GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants' (*Mother Jones*, 25 February 2014) <<http://www.motherjones.com /politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants>> accessed 29 May 2015.

both the U.S. and Asia is discriminatory. I explain below why these assumptions are inaccurate.

III. SOME PRO-CHOICE LEGISLATORS SUPPORT THE HARMFUL ABORTION RESTRICTIONS

Despite the fact that sex-selective abortion legislation will restrict even non-sex-selective abortion and the gross exaggeration of the scale and reality of gender-biased sex selection among Asian Americans (as discussed in Section IV below), several pro-choice national and state legislative representatives have supported harmful legislations. In 2012, when the majority of the U.S. House of Representatives voted in favour of a federal law prohibiting sex-selective abortion, twenty Democrats voted with the majority.¹⁷ Eight of the Democrats who voted in favour of sex-selective abortion bans had mixed voting records—they sometimes voted against anti-abortion legislation and sometimes voted in favour of it.¹⁸ Two of those Democrats were avowedly pro-choice.¹⁹ One of the Democrats, Representative Garamendi, had stated, “I am a strong pro-choice feminist and a proud father of 5 daughters and 3 granddaughters! My daughters and wife are my closest advisors and confidants and all of my decisions are heavily weighed by their influence.”²⁰ Thus, it appears that Democrats, who never voted in favour of abortion restrictions but did vote in favour of restricting sex-selective abortion, have accepted the narrative about Asian Americans put forward by pro-life advocates.

Even in state legislatures that enacted bans on sex-selective abortion, we observe pro-choice Democrats voting in favour of them. We see the largest number of pro-choice Democrats voting for the bans in Oklahoma, the first

¹⁷ Kate Sheppard, ‘House GOP’s ‘Prenatal Nondiscrimination’ Bill Fails’ (*Mother Jones*, 31 May 2012) <www.motherjones.com/politics/2012/05/house-gop-abortion-sex-selection/> accessed 18 March 2020.

¹⁸ John Barrow on Abortion, OnTheIssues <www.ontheissues.org/GA/John_Barrow.htm> accessed 30 October 2017; Dan Boren on Abortion, OnTheIssues<http://www.ontheissues.org/House/Dan_Boren.htm> accessed 30 October 2017; Henry Cuellar on Abortion, OnTheIssues<http://www.ontheissues.org/TX/Henry_Cuellar.htm> accessed 30 October 2017; Mike Ross on Abortion, OnTheIssues <www.ontheissues.org/House/Mike_Ross.htm> accessed 30 October 2017; Roy Cooper on Abortion, OnTheIssues <http://www.ontheissues.org/Roy_Cooper.htm> accessed 30 October 2017; Steve Lynch on Abortion, OnTheIssues <http://www.ontheissues.org/MA/Steve_Lynch.htm> accessed 30 October 2017; Jim Matheson on Abortion, OnTheIssues <http://www.ontheissues.org/House/Jim_Matheson.htm> accessed 30 October 2017; Silvestre Reyes on Abortion, OnTheIssues <http://www.ontheissues.org/TX/Silvestre_Reyes.htm> accessed 30 October 2017.

¹⁹ Representative Kissel from North Carolina and Representative Garamendi from California: Franco Ordonez, ‘In Congress, Democrat Kissel is Stuck in the Middle’ *Miami Herald* (2 November 2012) <www.miamiherald.com/latest-news/article1944175.html> accessed 18 March 2020; John Garamendi on Abortion, OnTheIssues <www.ontheissues.org/CA/John_Garamendi.htm> accessed 30 October 2017.

²⁰ John Garamendi on Abortion, OnTheIssues <www.ontheissues.org/CA/John_Garamendi_Abortion.htm> accessed 30 October 2017.

state to adopt the restriction after Almond and Edlund's article was published. In Oklahoma, nearly 90% of Democrats in both the House and Senate voted for the ban, which is a total of sixty-one Democrats. Of these Democrats voting to ban sex-selective abortion, twenty-eight consistently vote to limit abortion access. However, seventeen consistently vote against bills that limit abortion access and eight have a mixed voting record. Thus, twenty-five pro-choice Democrats and on-the-fence Democrats voted in favour of adopting restriction on sex-selective abortion in Oklahoma.²¹

IV. MISINTERPRETATIONS OF DEMOGRAPHIC DATA ABOUT ASIAN AMERICANS

Many people in the U.S. who otherwise support access to abortion may be conflicted about how to react to sex-selective abortion bans because women's equality is implicated by both its practice and its prohibition. Sex-selective abortion appears to be discriminatory (at least in some situations) and prohibition of such abortion restricts reproductive rights.²² One person commenting on a story in the *Atlantic* on sex-selective abortion stated, "I lean pro-choice, but I doff my hat to the pro-life camp for this deft maneuver. They have demonstrated that it is logically impossible to be both 'pro-choice' and 'anti-discrimination.'"²³ I argue that pro-choice legislators and others have been misled into supporting sex-selective abortion bans through misinterpretations of demographic data to align with stereotypes about Asians and Asian Americans.

As described above, Almond and Edlund's article sparked the enactment of laws across the American states to ban sex-selective abortion. The authors analyzed the genders of children born in the U.S. to parents who were born in China, Korea, and India. They obtained this data from the publicly-released sample of the 2000 U.S. Census, which is only 5% of the overall census data. They came up with a ratio of boys to girls of the first child of Chinese, Koreans, and Indians in the U.S., then the ratio for the second child and for the third child for these groups. They found that the first child born to Chinese, Indian, and Korean parents was just as likely to be a male as the first child born to Caucasian families: the sex ratio of both groups was 1.05, which was considered to be the biologically normal sex ratio.²⁴

²¹ Kalantry (n 1) 85-87.

²² See eg, Noah Berlatsky, 'Neither Pro-Life nor Pro-Choice can Solve the Selective Abortion Crisis' (*The Atlantic*, 6 March 2013) <<https://www.theatlantic.com/sexes/archive/2013/03/neither-pro-life-nor-pro-choice-can-solve-the-selective-abortion-crisis/273704/>> accessed 18 March 2020.

²³ Chris Bodenner, 'The Gendercide Crisis in Asia' (*The Atlantic*, 23 May 2016) <<http://www.theatlantic.com/notes/2016/05/abortion/483866/>> accessed 18 March 2020.

²⁴ The sex ratio is the ratio of males to females in any given population (males per hundred females).

However, the authors found that the sex ratio of second children of Asian American families that had one prior girl child was more male-biased (1.17) than the sex ratio of second children of Caucasian Americans who had one prior girl child (1.05).²⁵ For the third child, the ratio of boys to girls was even more male-biased in those Asian American families that had two prior girl children. The sex ratio of the third child for these parents who had two prior girl children was 1.51.²⁶ The sex ratio at the second and third births was considered abnormal because it deviated from the sex ratio of Caucasian American families at this level, which was again 1.05.²⁷

The same day Almond and Edlund's findings were published, National Public Radio ('NPR') aired an interview with Professor Almond. When asked to provide an explanation of their findings, Professor Almond stated:

“To us, given the context that in certain Asian countries there's a traditional preference for sons, that desire of sons is being exercised not only in Asia but in the United States, and that the technologies for prenatal sex determination, there's now evidence that those are being used to generate male birth.”²⁸

Numerous media stories also claimed that the findings of the article suggested that Asian Americans prefer to have sons. For example, the headline in a story in the *International Herald Tribune* states, “Asians Show Bias for Boys; Census Data on Births Also Reflects Embrace of Sex Selection.”²⁹ Even authors that provided a more careful analysis than the sensationalism of daily newspapers accepted the view that sex selection was occurring among the Asian American community at crisis proportions.³⁰

But simply by looking at the sex ratios that Almond and Edlund reported, it is not obvious how many cases of sex selection that the authors are claiming actually occur. The authors never revealed that number. Instead, they noted that that “the magnitude of the deviations ... for second and third children of Chinese, Indian, and Korean Americans is comparable to that documented for

²⁵ Almond & Edlund (n 7).

²⁶ *ibid.*

²⁷ Almond & Edlund (n 7).

²⁸ ‘Male Birth Rate Among Asian Americans Studied’ (*NPR*, 1 April 2008) <<http://www.npr.org/templates/story/story.php?storyId=89284549>> accessed 18 March 2020.

²⁹ See Sam Roberts, ‘U.S. Asians Show Bias for Boys; Census Data on Births Also Reflects Embrace of Sex Selection, Experts Say’ *International Herald Tribune* (16 June 2009) 2; See also Sam Roberts, ‘U.S. Births Hint at Bias for Boys in Some Asians’ *The New York Times* (14 June 2009) <www.nytimes.com/2009/06/15/nyregion/15babies.html> accessed 18 March 2020.

³⁰ See William Saletan, ‘Fetal Subtraction’ (*Slate*, 3 April 2008) <http://www.slate.com/articles/health_and_science/human_nature/2008/04/fetal_subtraction.html> accessed 18 March 2020.

India, China and South Korea.”³¹ This statement is part of the reason reporters concluded that there was a sex selection crisis in the U.S. similar to the one occurring in Asia. For example, a story in *Slate* entitled “Fetal Subtraction: Sex Selection in the United States” suggested that technological advancements could contribute to long-lasting cultural traditions of sex selection such as those in the Almond and Edlund study.³² But this prevailing understanding of a sex selection crisis in the U.S. is not accurate.

Recall that Almond and Edlund’s analysis found that the sex ratio of the third child of Chinese, Indian, and Korean Americans is 1.51 (i.e. the number of male children born for every female child).³³ They then argue that this figure is similar to the sex ratio in India. They point out that “[a]s a comparison, for India, the corresponding figure was found to be 1.39:1.”³⁴ Though they are correct that the third births of Asian Americans and Indians seem to have a very similar sex ratio, the comparison of only the third births of the children of Asian Americans and people living in India is misleading as it only shows half the picture.

The full picture comes from comparing the second births of Asian Americans with the second births of people living in India. The sex ratio for second births of Asian Americans is 1.17 when the parents have previously had a girl.³⁵ On the other hand, the sex ratio for the second birth of Indians is 1.32 when the parents have previously had a girl.³⁶ Thus, the sex ratio of Indians at the second birth is far more male-skewed than that of Asian Americans. In India, a significant amount of sex selection occurs at the second birth when there is one prior girl child. However, sex selection in the U.S. is rarer at the second birth in the three Asian American communities (foreign-born Chinese, Indian and Koreans Americans).

The conclusion that Almond and Edlund draw from the comparison of the Asian American sex ratios to the sex ratio in China is also inaccurate. They point out that the overall sex ratio in China is 2.25:1.³⁷ But this sex ratio is significantly more male-skewed than the sex ratio for Asian Americans that they articulated (which was 1.51).

The comparison between Asian American sex ratios and the sex ratio in South Korea is inaccurate for another reason—the sex ratio was actually balanced in South Korea at the time of their article (and continues to be so

³¹ Almond & Edlund (n 7).

³² Saletan (n 30) (“Sex selection of this magnitude has previously been documented in China, South Korea, and India, but not in the United States.”).

³³ Almond & Edlund (n 7).

³⁴ *ibid.*

³⁵ Almond & Edlund (n 7).

³⁶ Almond & Edlund (n 7).

³⁷ Almond & Edlund (n 7).

today).³⁸ South Korea is often cited as a sex ratio success story in Asia for eradicating sex selection.³⁹ Yet, while ratios were balanced in South Korea, the ratios among Korean Americans (when combined with Indian and Chinese Americans) were male-skewed. Consequently, unlike what Almond and Edlund stated, the magnitude of sex selection was hardly the same among Asian Americans as that of people living in China, India, and South Korea at the time they published their article. It was far more male-skewed in India and China, and far less in South Korea, when compared with Asian Americans.

Although the economists never reported the number in their article, from simple calculation we can determine that they found that there were about twenty-five hundred “missing” Asian American girls. Similarly, Jason Abrevaya, a professor in the economics department at the University of Texas, reports that he thinks there were “2,000 “missing” girls in the U.S. between 1991 and 2004.”⁴⁰ In 2011, James Egan, with his co-authors, estimated that there were one thousand “missing girls” per year across the entire U.S. from 1983 to 2002.⁴¹ This is a small fraction of the total Asian American population in the U.S., which, according to the latest U.S. Census, is more than seventeen million.⁴² By way of comparison, there are over sixty million girls “missing” just in India.⁴³ Moreover, based on their research, Almond and Edlund can only find deviations in sex ratios but cannot explain how they are occurring. People in the U.S. can sex-select using pre-implantation means such as sperm-sorting and in vitro fertilization combined with Pre-implantation Genetic Diagnosis (PGD).⁴⁴ Thus, using Almond and Edlund’s methodology, all we can observe is male-biased sex-ratios and not whether it is occurring because of abortion or pre-implantation means.

There is a general perception that data is neutral. However, the methodology that researchers use, the questions they ask, and the conclusions they reach

³⁸ Jae Woo Lim, ‘The Changing Trends in Live Birth Statistics in Korea, 1970 to 2010’ (2011) 54 *Korean J Pediatric* 429 <<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3254888/>> accessed 18 March 2020.

³⁹ See Woojin Chung & Monica Das Gupta, ‘Why is Son Preference Declining in South Korea? The Role of Development and Public Policy, and the Implications for China and India’ (2007) World Bank Working Paper No 4373 <<https://openknowledge.worldbank.org/bitstream/handle/10986/7367/wps4373.pdf?sequence=1>> accessed 18 March 2020.

⁴⁰ See Jason Abrevaya, ‘Are There Missing Girls in the United States? Evidence from Birth Data’ (2009) 1 *Am Econ J Applied Econ* 1, 23.

⁴¹ James F.X. Egan and others, ‘Distortions of Sex Ratios at Birth in the United States: Evidence for Prenatal Gender Selection’ (2011) 31 *Prenatal Diagnosis* 560, 565.

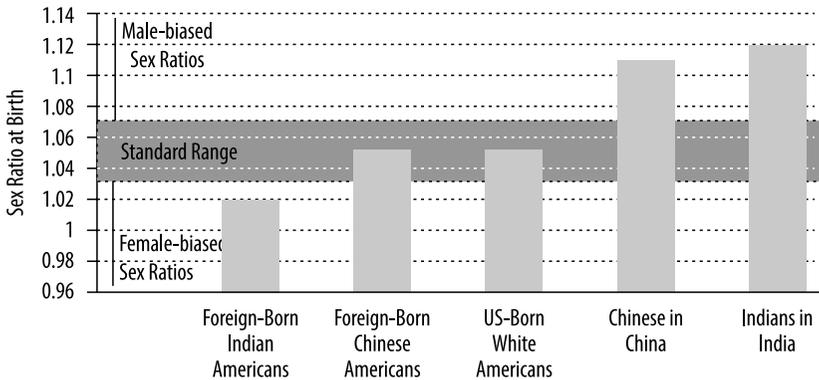
⁴² Elizabeth M Hoeffel and others, ‘The Asian Population: 2010, in 2012 Census Briefs’ (2012) US Census Bureau 1, 14 <<http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>> accessed 18 March 2020.

⁴³ Sunny Hundal, ‘India’s 60 Million Women that Never were’ (*Al Jazeera*, 8 August 2013) <www.aljazeera.com/indepth/opinion/2013/07/201372814110570679.html> accessed 18 March 2020.

⁴⁴ See Molina B Dayaland others, ‘Preimplantation Genetic Diagnosis’ (*Medscape*, 30 December 2015) <<https://emedicine.medscape.com/article/273415-overview>> accessed 30 October 2017.

from the data are influenced by their own and society's biases.⁴⁵ My co-authors and I decided to analyze the data from a perspective that had not been previously examined by researchers. Instead of analyzing the gender of the children of Asian-Americans by birth parity, we looked at the ratio of boys to girls of all children of foreign-born Chinese and Indians in the United States. Figure 1 below compares the number of boys to girls born to Indian Americans and Chinese Americans and compares them to the ratio of boys to girls born to Chinese in China and Indians in India. Figure 1 reveals that Chinese Americans do not overall have more boys than girls beyond the normal range. On the other hand, people living in China and India have many more boys than girls (as would be expected). It is even more interesting that in the case of Indian Americans, they have more girl-children than boy-children.

Figure 1: Sex ratios of Asian American and Asians



Source: Sital Kalantry & Miriam Yeung, *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States*, University of Chicago Law School International Human Rights Clinic, National Asian Pacific Women's Forum, Advancing New Standards for Reproductive Justice (2014), available at <https://ihrcclinic.uchicago.edu/page/replacing-myth-facts-sex-selective-abortion-laws-united-states>.

By failing to look at the overall number of boys and girls born to foreign-born Asian-American communities, prior researchers on this topic missed the larger picture—sex-ratios in Asian American communities are not male-biased.

⁴⁵ See Tukufu Zuberi & Eduardo Bonilla-Silva, 'Towards a Definition of White Logic and White Methods' in Tukufu Zuberi and Eduardo Bonilla-Silva (eds), *White Logic, White Methods: Racism and Methodology* (2008) 3.

V. STEREOTYPES ABOUT ASIANS AND ASIAN AMERICANS

A number of misperceptions about Asians and Asian Americans, and the motives for sex selection in Asia have led to a widespread misunderstanding of narrow demographic data to conclude that there is a sex ratio crisis in the U.S. among Asian Americans. First, some people may have assumed that just because people who come from Asia and live in the U.S. look the same as people who live in their countries of origin, they share the same behavioural traits. The argument goes that if people widely abort female fetuses in Asia, they must also be doing so in the U.S. once they move there. Of course, while some behaviours of immigrants may be similar to people in their countries of origin, it is a form of stereotyping to assume that Asian Americans act in the same way as Asians. Moreover, the longer the immigrants remain in the U.S., the more their traits and behaviours may deviate from people in their country of origin.⁴⁶

Second, some people may have readily accepted the view that sex selection both in parts of Asia and the U.S. is caused by sexism. There is a general perception that foreign cultures are inherently sexist and this view finds some support in feminist thought.⁴⁷ When certain practices occur in immigrant groups, they are seen to be motivated by a misogynist culture. But when the same practices appear among the majority groups, they do not lead people to make broad conclusions about that culture. Rather, they are seen as exceptions.⁴⁸

A closer examination of the trends in India,⁴⁹ however, paints a more nuanced picture of the reasons for sex selection and women's motives. In India, sex selection started on a significant scale only when American ultrasound machines were shipped to India in the 1980s.⁵⁰ Contrary to common presumptions, sex ratio data as well as survey data suggest that there is no widespread "daughter-aversion" and that what many Indian families want is at least one

⁴⁶ See Brian Gratton, 'Immigrants, their Children, and Theories of Assimilation: Family Structure in the United States, 1880–1970' (2007) 12 *Hist Fam* 203.

⁴⁷ See Susan Moller Okin, 'Is Multiculturalism Bad for Women?' in Joshua Cohen and others (eds), *Is Multiculturalism Bad for Women?* (Princeton University Press 1999) 3, in which Okin lists many practices and ways in which minority and immigrant cultures are repressive to women.

⁴⁸ See Leti Volpp, 'Blaming Culture for Bad Behavior' (2000) 12 *Yale JL & Human* 89.

⁴⁹ While gender-biased sex selection also occurs in China, given my knowledge, I include only a detailed examination of the factors that lead to sex selection in India.

⁵⁰ See Mara Hvistendahl, *Unnatural Selection: Choosing Boys over Girls, and the Consequences of a World full of Men* (2011) 80; Christophe Z. Guilmoto, UNFPA Report, 'Characteristics of Sex-Ratio Imbalance in India, and Future Scenarios' (4th Asia Pacific Conference on Reproductive and Sexual Health and Rights, October 2007), 4-8 <<http://www.unfpa.org/gender/docs/studies/india.pdf>> accessed 18 March 2020.

boy.⁵¹ Some people want to have at least one son for economic support during old-age, to carry on the family name, and to perform certain death rituals for their parents.

For people living in poverty, a daughter can be 'expensive' as she must be clothed and fed, is less likely to contribute to the financial welfare of the family, and may require significant expense in the form of a dowry or payment to the family of the man she marries. Technology, combined with the desire to have fewer children, and the cultural preference to have at least one son, causes many women to, each year, illegally learn the sex of their fetuses and decide to abort female fetuses if they already have one or two prior girl children.

Third, there is a failure to recognize that just because a practice is discriminatory in one context, it may not be discriminatory in another. In addition, it is often assumed that the behaviour of immigrants, unlike the majority community, is driven by deep-seated cultural beliefs rather than being the product of the social and economic context in which they live.

To illustrate my point, I compare two scenarios. Take the case of an Indian woman living in India who takes steps to have a boy child after she has had a girl child and the case of a woman of Indian descent living in the U.S. who takes steps to have a boy after she has a girl. The first case raises different concerns than the second one. Social institutions such as dowry, patrilocal forms of marriage, and fewer economic opportunities for girls are some reasons why families may want to have at least one boy child in India. When families play into this tradition, they further perpetuate and reinforce those customs. What is more troubling is that emerging empirical studies have found that the male surplus is harming women in other ways. Some emerging studies suggest that there are higher levels of sexual harassment, rape, and early child marriage in districts where there is greater sex selection.⁵²

In the case of an immigrant woman living in the U.S., the context in which her act occurs is different. She will not likely be required to pay money to a groom to marry her daughter. She can rely on social security and other state

⁵¹ Prabhat Jha and others, 'Low Male-to-Female Sex Ratio of Children Born in India: National Survey of 1.1 Million Households' (2006) 367 *Lancet* 211, 214.

⁵² See Ravinder Kaur 'Mapping the Adverse Consequences of Sex Selection and Gender Imbalance in India and China', (2013) 48(35) *Economic & Political Weekly* 37; Ravinder Kaur, *Too Many Men, Too Few Women: Social Consequences of Gender Imbalance in India and China* (2016); Scott J South, Katherine Trent and Sunita Bose, 'Skewed Sex Ratios and Criminal Victimization in India' (2014) 51 *Demography* 1019; Sofia Amaral and Sonia Bhalotra, 'Population Sex Ratios and Violence against Women: The Long-Run Effects of Sex Selection in India' (2017) Institute for Social & Economic Research Working Paper <<https://www.iser.essex.ac.uk/research/publications/working-papers/iser/2017-12.pdf>> accessed 18 March 2020.

support rather than relying solely on her son for economic support in old age, and there is no prevailing custom against daughters providing economic support. Born in the U.S., her daughter may have more economic opportunities for self-sufficiency than a girl born in India. Large numbers of people in the U.S. are not systematically selecting in favour of boys. Given that there is no male-surplus in the U.S., consequences relating to imbalanced sex ratios, such as increased sexual harassment and rape, do not occur. Moreover, as I discuss below, the few Asian American people who might be intervening to obtain their desired family composition are not necessarily doing so for the same motives as people living in Asia.

In this section, I have outlined some of the views about Asians and Asian Americans, and the culture and context that may have primed some Americans to more readily accept misrepresentations of academic studies to fit comfortably into certain stereotypes. I elaborate this point elsewhere.⁵³ In the next section, using newer demographic data as well as survey data, I argue that the reasons for the behaviour of some Asian Americans may be very different from the reasons behind the actions of some Asians.

VI. BEYOND “SON PREFERENCE”

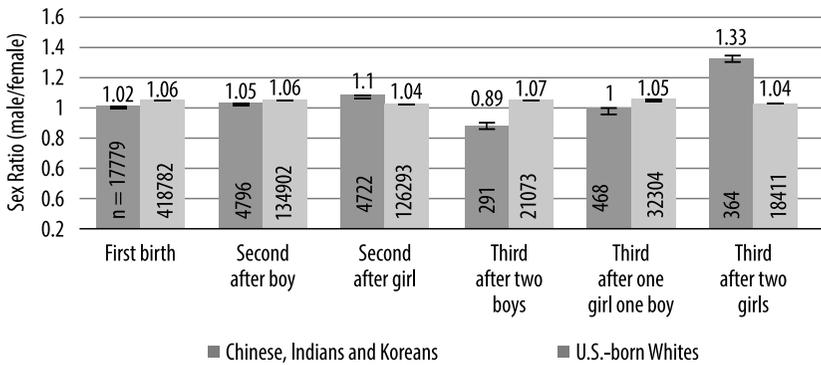
The data used in Almond and Edlund’s study is from the U.S. Census of 2000. In 2014, I worked with an interdisciplinary team to conduct an empirical analysis on sex ratios based on U.S. Census data from 2008 to 2012 and found something that had not been previously observed.⁵⁴

Like Almond and Edlund, we found that when foreign-born Chinese, Korean, and Indian parents have two girls, the sex ratio of the third child shows a male-bias (1.33). However, unlike Almond and Edlund’s study, we found that, as per more recent data, the sex ratio of the third child of Chinese, Korean, and Indian parents in the U.S. is female-biased after they have had two boys (0.89) (see Figure 2). This suggests that a very small number of Chinese, Korean, and Indian American families are taking measures to ensure that they have both boy children and girl children in their families.

⁵³ Kalantry (n 1) 12-46, 152-175.

⁵⁴ The data grows out of work I have done with Miriam Yeung, Executive Director of the National Asian Pacific Women’s Forum, Shivana Jorawar, Reproductive Justice Program Director, National Asian Pacific Women’s Forum, Sujatha Jesudason, Director of Core Align at the University of California, San Francisco, and Brian Citro, Clinical Lecturer in Law, University of Chicago Law School.

Figure 2: Comparison of Sex Ratios of Chinese, Indian, and Korean Children, and U.S.-Born Caucasian Children



Source: Analysis of pooled American Community Survey data from 2008 to 2012.

However, it should be noted that sex ratio research has certain limitations. As noted above, even where researchers find imbalanced sex ratios, those ratios do not tell us what methods are being used for sex-selection—pre-implantation methods (such as IVF and sperm-sorting) or abortion. For example, we can only know from research whether people have more boys than girls but cannot know how they achieved more boys. In addition, from demographic data, we cannot determine the motivations for people’s behaviour. To ascertain what motivates the behaviour of Asian Americans, I included two questions in an annual national survey conducted by the Cornell Survey Research Institute (‘Cornell SRI’). In total, one thousand households were surveyed. By way of comparison, the most recent Gallup Poll survey on gender preferences surveyed 1020 people nationally using a similar methodology.⁵⁵ In these two questions, I asked respondents their gender preference if they could have only one child, and if they could have only two children.

Consistently across each racial and ethnic group, more respondents said they would prefer to have a son than a daughter if they could have only one child, as can be observed in Table 1. In the Cornell SRI poll, only 18.8% of the surveyed Asian Americans said they would want a boy if they could only have one child. Similarly, 16.8% of Caucasian Americans said they would want a boy if they could have only one child. On the other hand, a significantly greater percentage of Native Americans (28.6%) and African Americans (32.7%) indicated that they would want a boy if they could have only one child. Across all groups, fewer numbers wanted to have a girl if they could have only

⁵⁵ See Frank Newport, ‘Americans Prefer Boys to Girls, Just as They Did in 1941’ (*Gallup*, 23 June 2011) <<http://www.gallup.com/poll/148187/americans-prefer-boys-girls-1941.aspx>> accessed 18 March 2020.

one child. Thus, when asked about their attitudes, Asian Americans do not manifest a greater preference for sons than any other racial group in the U.S.

When the respondents were asked their preference if they could have only two children, 5% of Caucasian Americans wanted two boys and 2.7% wanted two girls. If this disparity were observed among Asian Americans, some might see this as proof of “son preference,” but few would interpret this to mean “son preference” among Caucasian Americans. Contrary to the dominant narrative of “son preference” among Asian Americans, 6.3% of Asian Americans wanted only boys and an equal percentage wanted only girls when they were told they could have only two children.

The most important finding is that 60.4% of Asian Americans want to have one boy and one girl if they could have only two children. The desire for gender balance is greater among Asian Americans than any other group. Approximately 58% of African Americans desire a gender-balanced family, whereas only 49.4% of Caucasian Americans desire a gender-balanced family. Still, a quarter of the Asian Americans surveyed stated that they have no preference for the gender composition of their children. These results are consistent with another poll conducted by the Cornell SRI in 2015 only among the residents of New York State, the state with the second largest Asian American population.⁵⁶

An analysis of new demographic data combined with survey data tells a different story about Asian American reproductive patterns. One plausible interpretation of the sex ratio and survey data is that Asian Americans desire both boy and girl children. A few Asian families who have three children may have intervened to achieve balanced families. While there may be a small number of Asian Americans who, due to their “cultural” preference, still desire to have at least one son, this is a small group of people. It is not necessary to pass a legislation that has a negative impact on all women just to attempt to prevent the behaviour of a small minority of people who may not even be acting because of “sexist” motives.

⁵⁶ Hoefffel (n 42) 7.

Table 1: Results of a Poll of U.S. Residents on Gender Preferences

	<i>Caucasian Americans</i>	<i>Asian Americans</i>	<i>African Americans</i>	<i>Native Americans</i>	<i>Other</i>
If you could have only one child:					
Boy Only	16.8%	18.8%	32.7%	28.6%	19.0%
Girl Only	11.2%	10.4%	15.0%	8.2%	4.8%
Don't Care	66.1%	66.7%	47.8%	59.2%	66.7%
Don't Want Children	5.9%	4.2%	4.4%	4.1%	9.5%
If you could have only two children:					
Only Boys	5.0%	6.3%	8.0%	18.4%	0.0%
Only Girls	2.7%	6.3%	6.2%	2.0%	0.0%
One Boy/ One Girl	49.4%	60.4%	58.4%	44.9%	52.4%
Don't Care	38.2%	25.0%	24.8%	34.7%	42.9%
Don't Want Children	4.7%	2.1%	2.7%	0.0%	4.8%
Total Respondents	768	48	113	49	21

Source: Poll conducted by the Cornell Survey Research Institute Poll 2015.

Some pro-choice people may find sex selection for both girls and boys problematic. First, people informed by postmodern and queer theories may oppose sex selection because it supports the idea of gender as a binary category—male or female.⁵⁷ Another possible argument against sex selection is that people who sex-select are more likely to force their children to conform to traditional gender expectations and roles.⁵⁸ Yet another possible argument against sex selection posits that by sex-selecting, parents make a statement that one sex is superior to another. Although people who are uneasy with sex-selective abortion may not necessarily support sex-selective abortion bans, their ambivalence about the practice of sex selection may weaken their opposition to such bans.

In the prior section, I have argued that the scale of sex-selective abortion among Asian Americans was widely exaggerated in popular discourse. It was assumed that this behaviour was driven by misogyny and daughter-aversion. The data presented in this section adds another layer to the dominant narrative.

⁵⁷ See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (2006).

⁵⁸ See Jonathan M Berkowitz & Jack W Snyder, 'Racism and Sexism in Medically Assisted Conception' (1998) 12 *Bioethics* 25. Others have argued that the concept of family balancing creates this idea that an appropriate family has at least one boy and one girl; Soren Holm, 'Like a Frog in Boiling Water: The Public, the HFEA, and Sex Selection' (2004) 12 *Health Care Analysis* 27.

If Asian Americans are sex-selecting (which we cannot know for certain and we also cannot know what methods are being used), their motives may relate to balancing their families with both genders.

VII. CONCLUSION

In recent years there has been a spate of anti-abortion legislation targeting sex-selective abortions. The strategic framing by pro-life advocates of such legislation in women's equality terms has created a situation where some pro-choice supporters of a woman's right to choose find themselves supporting (or at least, not strongly opposing) these bans. The dominant public narrative has centered on exploiting false assumptions about Asian Americans and exaggerating empirical data to fit those stereotypes. The dominant narrative is wrong. The practice of sex-selective abortion is not widespread in the U.S. among Asian Americans. Moreover, even if women do abort to sex-select (which we do not have conclusive evidence for), we cannot attribute the same motives to Asian women in the U.S. as we might attribute to women living in Asia. The story of sex-selective abortion laws is a reminder about the importance of carefully interrogating empirical data and challenging our own assumptions about minority and foreign peoples.