

THE MENACE OF FEMALE FOETICIDE IN INDIA : A SOCIO-LEGAL ANALYSIS

By

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'Man and Woman will attain equality only when the birth of a girl is celebrated with as much joy as in the case of a boy'
— Mahatma Gandhi

Introduction:

Female foeticide has been a blot on the Indian society, a society that value males and discriminate females. It has emerged as a burning social problem during the last few years in our society. While addressing the Nation on eve of 63rd Independence Day, our Prime Minister *Manmohan Singh* has remarked that female foeticide is a national shame, as it is still does exist in our country¹. Despite educational level has increased, technologies have been improved, and female emancipation is going on all around our country, but still we are unable to eradicate the menace of it. It is also highlighted how unethical medical practitioners are hand-in-glove with the families wanting to kill the female unborn baby shown in the episode 'Satyamev Jayate' by cine actor *Aamir Khan*². It is horrifying to note that in India, millions of girls are missing which has profound human and social implications. Apart from that, skewed female sex ratio will lead to imbalance of nature which may increase violence against women including rape, which we have been witnessing regularly in our society. In this paper an attempt has been made to analyze the causes of female foeticide and its implications on the society and highlights the protection measures at national and international level.

Concept of Female Foeticide:

In order to know evil practice of female foeticide, it is the basic need to know the status of the women since times immemorial. The position of women is not uniform in India³. It was different from pre-vedic period to present day society. It is also crucial to know the status of women in past, because most of the norms and values affecting women today, have their roots in the past. During the pre-vedic and vedic period, women had enjoyed certain privileges. Gradually with passage of time, in the post-vedic age, the status of women deteriorated and continue even to the present day society. Women who constitute half a human population have been discriminated, harassed and exploited irrespective of the country to which they belong. Everywhere women are confronted with many challenges. Female foeticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic fundamental right *i.e.*, right to life.

The female foeticide or sex selective abortion is the elimination of the female foetus in the womb itself. However, prior to the elimination, the sex of the foetus has to be determined by various methods like amniocentesis⁴, *chorion villus*

1. Press Trust of India, 15th August, 2009.

2. <http://ibnlive.in.com/news/satyamev-jayate-aamir-tv-show-is-a-movement/255255-44-124.html>

3. *Mutbulakshmi. R 'Female Infanticide, its Causes and Solutions'*, Discovery Publishing House, New Delhi, 1997, at p.1

4. Amniocentesis is a medical procedure used in

*biopsy*⁵ and the most popular technique, obstetric ultrasonography⁶. The phenomenon of female infanticide, the traditional method of getting rid of the unwanted girl child is existed as old as many cultures. In this evil practice 'female baby' was disposed by using hundred and one means. The female infants used to be killed by pressing nose and mouth, and there are some other practices like use of sap of caltropis plant or paddy grains or some poisonous substance. The concept of female infanticide has changed and taken a new form of female foeticide, with the advent of new technologies and scientific development.

In Indian society, female foeticide has emerged as a legal challenge during the last few years. It is difficult to say how this practice originated in India. In fact, female foeticide was an obvious outcome of the gradual degradation in women's position and also due to socio-economic and political factors. It is difficult to trace the origin of this evil practice, but it became firmly rooted by the sophisticated technology in 21st century. It means aborting the female baby in the mother's womb, it means killing the baby inside the womb, more popularly known as abortion.

Causes of Female Foeticide:

The social, cultural and religious fibre of India is predominantly patriarchal contributing extensively to the secondary status to women.

prenatal diagnosis of chromosomal abnormalities and foetal infections, and also used for sex determination in which a small amount of amniotic fluid, which contains foetal tissues, is sampled from the amnion or amniotic sac surrounding a developing foetus, and the foetal DNA is examined for genetic abnormalities.

5. Chorionic villus biopsy is a form of prenatal diagnosis to determine chromosomal or genetic disorders in the foetus.
6. Obstetric ultra-sonography is the procedure is a standard part of prenatal care, as it yields a variety of information regarding the health of the mother and of the foetus, the progress of the pregnancy, and further information on the baby.

The patrilineal social structure based on the foundation that the family line runs through male makes men a precious commodity that needs to be protected and given a special status. The causes of female foeticide can be broadly divided into two classes those are social and economical causes, though there are certain other motivating factors they can be included in any one of these two categories.

The female child is killed not only because they cannot bring the baby-up but also they are afraid that they have to meet heavy expenses for ceremonies connected with the girl child, such as the ear-bring ceremony, puberty ceremony and utmost important one marriage ceremony. Subsequent to the marriage also, the ceremonies of the daughter has to be performed by the parental home of the bride in generally. The expenditure involved during the life of a girl, apart from the day-to-day expenditure on her maintenance, education *etc.*, many people borrow money to fulfil these social commitments. The spending pattern of this community is also so extravagant that there is no relationship between income and expenditure.

Religion Concepts like Moksha for continuity of family lineage and for the inheritance of property, for lights to funeral pyre of his parents, for dowry and in agricultural households, due to rivalries and animosity resulting from land disputes, male offsprings are considered as a source of power *etc.* While the birth of a son is beneficial to a family for many reasons, the birth of a daughter is not. In one way or other, the Government policies also contributed their role. Commenting on the serious decline in the 0-6 sex ratio in India, leading demographer *Ashish Bose* says that the Government's policies are all wrong. The 'two-child policy' and 'one or none policy' has got mixed up with female foeticide. Government slogans like '*Beti ya beta, dono*

ek hain' (Girl or boy, both are equal) make little sense, and financial sops for couples having a girl-child make no dent in the traditional preference for sons in India. Many people want that '*one*' or '*at least one*' should be a male which directly had its impact on female foeticide.

Sex Ratio of Girl Child:

Girl child's status is dramatically profiled in female to male sex ratios of younger age groups in the population. The 1991 Census of India highlighted a serious and worsening decline in the sex ratio in the 0-6 age group, reflecting the rising prevention of female births, and the incidence of female infanticide and deliberate neglect of girl children's health, nutrition and safety. The 2001 Census revealed a further decline in the 0-6 age group and an even lower female-male ratio in the 15 to 19 age group⁷. It is to be noted that not only in India, but also in Jammu and Kashmir there is a drastic decrease of girl child. As per 2001 census in each unit of 2000 children, there were 941 females and 1059 males. The ratio has been found to have fallen to 862 females and 1138 males in 2011⁸.

Female foeticide is an extreme manifestation of violence against women. It is a matter of great worry that ratio of female is declining as compared to male. Easy access to ultrasound since early 1980's, has contributed to increased sex selection and rapid decline in child sex ratio. Female foetuses are selectively aborted after pre-natal sex determination, as a result of which millions of girls are missing from the Indian population. In some parts of the country, sex ratio of girls to boys has dropped to less than 800:1000. As per 2011 census, there has been tremendous improvement in the last ten years, the table below shows that, the State of Kerala with 1084 females for every 1000 males and the State of Haryana has lowest sex ratio is 877. It is to be noted that the adverse impact of sex-ratio shows on the delicate equilibrium of nature and damage to social fabric, which could lead to increase of violence against women such as polyandry, abduction, *etc.*, There is a substantial reason to believe that the decline in sex ratio is directly related to increase in sonography clinics in the regions.

	Sex Ratio (females per thousand males) ⁹
State with highest female Sex Ratio	Kerala (1058)
State with lowest female Sex Ratio	Haryana (861)
UT with highest female Sex Ratio	Pondicherry (1001)
UT with Lowest female Sex Ratio	Damn & Diu (710)
District with Highest female Sex Ratio	Mahe (Pondicherry) (1,147)
District with Lowest female Sex Ratio	Daman (Daman Diu) (591)

Protection at International Level:

Many International Conventions and Declarations had opposed the violence against women in all forms and at all stages *i.e.*, from the womb to the tomb. But, there

is no particular Convention on relating to the unborn¹⁰ female rights because it is still today, the whole crux revolves round, as to

7. Working Group on Development of Children for the Eleventh Five Year Plan (2007-2012)- A Report prepared by Ministry of Women and Child Development, New Delhi.

8. The Hindu, 12th June, 2013

9. http://www.medindia.net/health_statistics/general/sex-ratio-in-india-2011.asp

10. In regard to historical context of Universal Declaration of Human Rights, as far as the unborn is concerned, there is both implicit and explicit recognition of the Child before as well as after birth. In the year 1924, particularly after Nuremburg Trials, the term 'human being' applies to all who are human, before and after birth.

when the 'life' begins in the foetus and where, it is a person or not, which is the most controversial part and answers are many. Religion and science do not go hand in hand and it differs from country to country in the world.

The international community acknowledged the special rights of children in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights, 1966 (ICCPR), Convention on the rights of the Child, 1989 (CRC), the Geneva Convention (Protection of Civilian Persons in Time of War), 1949, the 1978 American Convention on Human Rights states, in Article 4.1. In 1983, the Eighth Amendment of the Constitution of Ireland, In 1993, the Federal Constitutional Court of Germany, *etc.*, by providing some protection under some Articles, in addition, the World Medical Association gives a declaration on the rights of the unborn child in the year 1996¹¹.

Protection at National Level:

The Constitution of India provided safeguards to the women and men, but there are no specific provisions for protecting the rights of unborn person. The Constitutional validity of the sex-determination followed by abortion is very much in doubt. The unborn person is a person and because of the sex of the foetus is female, she should not subject to eliminate from the womb. As a person she possess equal rights and special protection as women under Articles 14, 15, 16, 21, 39, 42, 46 *etc.*, under fundamental rights, directive principles, fundamental duties and more importantly under basic human rights. In fact, the right to be born should not be denied without due process of law, so that the abortions are being selectively resorted to, in the case of female children only would make them violative of this

fundamental and basic rights of 'right to life and equality'. The issue of sex determination and sex selective abortion in India serves to highlight the urgent need to find a new moral consensus with regard to the availability and use of reproductive technologies.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994:

Social activists and Non-Governmental Organizations raised a hue and cry over the menace of female foeticide, and there is a use of potential technologies to eliminate the birth of female children. As a result, in the year 1994, with the aim of preventing female foeticide, the Government of India passed Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994¹², but came into operation only from the Month of January, 1996. However, during implementation, some inadequacies and practical difficulties in the administration of the Act, and at the same time, techniques have been developed to select the sex of the child before conception and these have also contributed to the decline in the child sex ratio. Taking into consideration of these developments, the Act has been amended and now called as Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, hereinafter referred to as PC-PNDT Act¹³, which came into force from the year 2003. The Act has a Central and State level Supervisory Board, which is to oversee, monitor, and an Appropriate Authority, which provides registration and

11. Approved by the executive Board of the Finnish Medical Association 11 June 1996 (<http://www.laakariliitto.fi/ethics/unborn.html>)

12. The objective of the Act is to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide.

13. The Act, 1994 amended and replaced by Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 2002.

conducts the administrative work involved in inspection, investigation and penalizing of defaulters. There is also an Advisory Committee which provides expert and technical support to the Appropriate Authority. An important provision of the Act is to prohibit advertisements that publicize technologies for sex determination or advertise clinics where the tests are available by making any violation of the prohibition a punishable offence. This is important for a number of reasons not the least of which has been an effective clamp down on use of the media and public spaces like billboards to promote sex determination technologies. It is to be noted that doctors and radiologists conducting or soliciting parents for sex determination tests can be imprisoned upto five years and fined upto Rs.50,000/-. Despite the PC-PNDT Act, the conviction rate is low and the selection of male child before conception and female foeticide continue to take place.

Judicial Response:

The public interest litigation has played an important role in creating widespread of the criminality of sex determination and sex selective abortion in India. The role of law and in particular, the response of the Supreme Court is very much impressive. Dr. *Sabu George*, Centre for Enquiry into Health and Allied Themes (CEHAT) and the Mahila Sarvageen Utkarsh Mandal filed the Public Interest Litigation on sex determination in the Apex Court in the year 2000, that the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, had failed to achieve its goals. It has also urged the Court to allow for an amendment to the Act that would allow for the inclusion of new techniques such as Pre-implantation Genetic Diagnosis (PGD)¹⁴ and other pre-conception techniques for sex. In response to the writ petition, the Apex Court issued to notices to the State and Central

Governments to file their affidavits, which in turn, they took almost a year to file their affidavits. The Court expressed strong concern about the non-implementation of the PNDT Act, and by way of interim orders directed to the Central and State Governments immediately to activate the supervisory board at National level, Central Supervisory Board as well as State level authorities¹⁵. The directions were to create public awareness against the practice of pre-natal determination of sex and female foeticide, and also to implement with all vigour and zeal the PNDT Act and the Rules framed in 1996. Rule 15 provides that the intervening period between two meetings of the Advisory Committees constituted under sub-section (17) of the said Act, to advise the appropriate authority shall not exceed 60 days, and it would be seen that this Rule is strictly adhered.

Conclusions:

Despite the efforts of Government and strict provisions of legislations, the menace of female foeticide is still on rise. Even as per 2011 census, there is an alarming level of female foeticide not only in India but also in Jammu and Kashmir, which shown a drastic decrease of girl child. During the last decade, our country has witnesses a mushroom growth of illegally operated imaging centres, ultra-sonography laboratories and abortion clinics, often owned or run by quacks. There is an urgent need to alter the demographic composition of India's population and also to tackle the brutal form of violence against women. People should be made aware of the ill consequences of female foeticide and sex selection. Although several cases of violations of PNDT Act are routinely reported, implementation is so poor and prosecutions are very rare. An effective monitoring mechanism should be

14. It is also referred to as Embryo-Screening

15. *Shanmugavelayutham. K.*, 'Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2002 - A Bold step', Legal News and views, Vol. 17, No.5, May, 2003.

developed for the implementation of PC & PNDT Act. It is important that the manufacturing and importing of potable ultrasound scanning machines must be prohibited and the violators must be severely punished. It is to be noted that Medical Practitioners should respect the sanctity of the code of medical ethics. They should know that it is unethical to promote female foeticide by communicating the sex of the foetus. More importance should be given

to women empowerment. We all put efforts to put gender equality at the top of development agenda and contribute to give opportunities to girl children. It is to be noted that, if we do not let the girl child be born, we will not be able to find brides for our sons, and further, girls are responsible for preserving relationships in the family and society. Therefore, it is the duty of the society to let the girl child be born and nurtured.

**A CRITICAL STUDY
NECESSARY AND PROPER PARTIES – SUITS FOR SPECIFIC
PERFORMANCE ORDER 1 RULE 10 CPC VIS-A-VIS THE PROVISIONS
OF THE POWER OF ATTORNEY ACT**

When the vendor is represented by the Power of Attorney Holder, whether a suit for specific performance can be filed only against the power of attorney holder without impleading the vendor as provided under Order 3 CPC as necessary and proper party? In other words can a Power of Attorney Holder can act or sue and be acted or sued (Yes)

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There appears to be some considerable controversy with respect to impleadment of vendor as necessary and proper parties in Suits for Specific Performance when the suit is filed against the Power of Attorney alone represent the vendor. Is it *sine quo non* to implead the vendor also as a necessary and proper party and to the extent of the diligent search made by the writer, there appears to be no direct authority on the subject and in order to set at rest this controversy an honest endeavour is made to propagate the necessary views in a characteristic, forth right fearless strain on this branch of law of day-to-day occurrence dedicated entirely to the service of law and to the legal institutions even under the umbrella of Legal Services Authorities Act.

As a prefatory caveat to appreciate the controversy let us survey the law on the connotation of the expression “Necessary and proper parties” as it appears in Order 1, Rule 10 CPC.

What tests and guidelines are necessary for determination of this moot point fell for consideration in a catena of decisions out of which AIR 1995 SC 724 at 733 is the bedrock of law on the subject, the principals of which are subsequently followed reaffirmed and reiterated in several subsequent decisions.

*AIR 1995 SC 724 at 733 in which AIR 1963
SC 986 is followed*

The law is well settled that a necessary and proper party is one in whose absence