

LEGAL PROVISIONS TO PREVENT FEMALE FOETICIDE IN INDIA

By

—Dr. G. PADMA, Associate Professor,
PMR Law College, L.B. Nagar,
Hyderabad, A.P.

In India ½ of the population are women. Woman hood is treated as divine and a woman is worshipped but at the same time Indians are still trapped in age old traditional beliefs at every stage of life.

Women are being exploited in spite of the rights given to women at National and International levels, the most threatening feature is elimination of girl child from the society by the acts like female Foeticide and infanticide. Religion operates alongside with other cultural and economic factors in lowering the status of women. The practice of dowry has spread national wide. The need for a dowry for girl children, and the ability to demand a dowry for boys exerts considerable economic pressure on families to use any means to avoid having girls, who are seen as a liability¹.

According to 2011 Census, the number of girls stands at 940 which is marginal increase from 933 in 2001. Haryana has a lowest sex ratio among the states while Kerala remains at the top with the highest Sex ratio. In Delhi, the Statistics stand at 821 girls against 1000 boys in 2001 compared to 866 in 2011. Nearly 10 million female fetuses have been aborted in the country over past 2 decades, out of 12 million girls born in India, 1 million are being killed.

Recent incidents of female Foeticides were reported from Beed district of Maharashtra. Where a woman goes to the doctor's clinic to get there female child aborted for Rs.2000. And more heart

wrenching fact is that aborted fetuses were often fed to dogs. In yet another shocking incident reveals that one girl child is sold every month by a private medical practitioner in Mahaboobnagar District of Andhra Pradesh.

Women and development in reproductive technology abortion was legalized in India in 1971 (Medical termination of pregnancy Act) to strength humanitarian values². Amniocentesis was introduced in 1975 to detect foetal abnormalities but it soon began to be used for determining the sex of the baby. Ultrasound scanning, being a non invasive technique, quickly gained popularity and is now available in almost all rural areas including remote places. Both techniques are now being used for sex determination with an intention of abortion if the foetus turns out to be a female.

There are some methods which involve manipulation of genetic material to select the sex of the Baby like PGS³, flow Cytometry, pre implantation, gender determination of embryo, and vitro in fertilization to ensure the birth of a baby of a desired sex without undergoing abortion.

Legal Provisions:

In 1994 the Government of India pass the pre-conception and pre-natal diagnostics

1. *Sonalda Desai* social worker has reported that there are posters in Bombay advertising sex determination test as "It is better to pay Rs.500/- now than Rs.50000/- later (Dowry)".

2. Pregnancy can be aborted if it is a result of sexual assault, contraceptive failure, if the Baby would be severely handicapped, or if the mother is incapable of bearing a healthy child.
3. In Pre conception gender selection (P G S) x and y sperms or separated and the enriched sperm is used to fertilize the ovum. This method was intended to reduce the risk of diseases related to x chromosomes more likely occur in boys.

techniques (Prohibition of sex selection) Act with a aim of preventing female Foeticide. The implementation of this Act was slow. It was later amended and replaced by pre-natal diagnostic techniques (regulation and Prevention of misuse) Act 2002 without having been properly implemented. The Act has a central and state level supervisory body, and appropriate authority and supporting advisory committee. The function of the supervisory board is to monitor and make amendments to the provisions of the Act. Appropriate authority provides registrations and conducts the administrative works involving inspection investigation and penalization of defaulters. Advisory committee provides expert and technical support to the appropriate authority. Contravening the provisions of the Act can lead to fine of Rs.10000/- and upto 3 years imprisonment for a first offence with the greater fines and longer term of imprisonment for the repeated offenses. The appropriate authority informs the central or state medical council to take action against medical professionals, leading to suspension or a striking of practitioners found guilty.

The Indian Penal Code 1860, Sections 312, 313, 314, 315 and 316 refer to offences of criminal miscarriage and punishments awarded for these offences. To constitute the offence under Section 312, it is necessary that women should be pregnant and that miscarriage should be caused with her consent, in such a matter as the person procuring the miscarriage and the woman causes herself to miscarriage are both liable to punishment, unless such miscarriage was caused in good faith for the purpose of saving the life of the women. It is also necessary to prove whether the woman was with child or quick with child for, in the latter case, the offence is liable to enhance punishment. If the means used, however, do not succeed, the offence is nearly attempt punishable under Section 511, IPC. Higher punishment is awarded under Section 313, if miscarriage is

caused without the women's consent, whether she was quick with child or not. Under this section, the person who causes miscarriage is alone punished, as a woman is not an accessory to the guilt. If the pregnant woman dies from an act intended to cause miscarriage, the offender is prosecuted under Section 314, although he did not know or intend that his act was likely to cause her death. The punishment to be awarded in such a case varies according to whether the act was done with or without women consent.

A person commits an offence under Section 315 of IPC, if he causes a death of a child before or after its birth by any act intended to prevent the child from being born alive or to cause it to die after its birth, unless the act is done in good faith for the purpose of saving the life of the mother. Section 316 deals with offences against child in utero, where the pregnancy has advanced beyond the stage of quickening and whether death is caused after the quickening and before the birth of the child. A person would be guilty of culpable homicide, if he caused the death of a pregnant woman by an act, which he knew would be likely to cause her death. If his act injured the woman and did not cause her death, but caused a death of her unborn child, he would be guilty of the offence defined under this section. An attempt at abortion of a non pregnant woman believed to be pregnant is legally liable for the same consequences as an attempt with the intention of causing a real abortion.

Law recognizes the foetus as a special aggregation of cells with a potential of independent life and protects the rights of an unborn child. It has legal rights to inherit⁴, the right to sue, the right not to be harmed by the drugs and a right to bring tort action. Hence abortion is interpreted as killing a potential heir. Abortion is a form

4. *R v. Tait, R v. Sullivan.*

of murder therefore abortionist and one who abets may be prosecuted.

Conclusion :

This is a deep rooted problem the removal of this practice in Indian society is

a serious challenge. With political will, self regulation of medical practitioners, educating the police officers at S.I cadre, education campaigns, effective legal implementations and the attention of media we can remove the prejudices against the girl child.

THE PLIGHT OF HIV/AIDS PATIENTS AND REMEDIAL MEASURES

By

—Dr. A. GURAVIAH, B.Sc., L.L.M., Ph.D,
Lecturer in Law, A.C. College of Law,
Guntur, A.P.

All over the world and throughout India, HIV/AIDS have shown themselves capable of bringing out the best and the worst in people. They trigger the best when in solidarity individuals group together to combat denial and to offer support and care to individuals infected and affected by the epidemic¹.

They bring out the worst when people are stigmatized, ostracized and treated badly by their loved ones, their families and their communities. Such actions infrequently result in discrimination and the abuse of Human Rights. Recently Peter Pit, Executive Director of UNAIDS, has drawn attention to the ways in which HIV/AIDS related stigmatization and discrimination make prevention difficult by forcing the epidemic out of sight and underground. In a statement to the plenary of the world conference against racism held in Durban he observed, "HIV stigma comes from the powerful combination of shame and fear. Shame because the sex or drug injecting that transmit HIV are surrounded by taboo and moral judgment and fear because AIDS is relatively new and deadly disease responding to AIDS with blame or abuse for the people living

with AIDS simply focuses the epidemic underground, creating the ideal conditions for HIV to spread. The only way of making progress against the epidemic is to replace shame with solidarity and fear with hope."

Sources of stigmatization and discrimination

To understand the way in which HIV/AIDS related stigma and discrimination appear and the contents in which they occur, we first need to understand how they interact with the pre-existing stigma and discrimination associated with sexuality, gender, race and poverty. HIV/AIDS related stigma and discrimination also interact with pre-existing fears about contagion and disease. Early AIDS metaphors as death, as horror, as punishment, as guilt, as shame, as otherness have exacerbated these fears, reinforcing and legitimizing stigmatization and discrimination².

HIV/AIDS related stigma and discrimination are not closely related to sexual stigma. It is also linked to gender related stigma. The impact of HIV/AIDS related stigma and discrimination on women reinforces pre-existing economic, Educational,

1. *Peter Aggleton, Richard Parkar, Mirima Malawe* (2001) stigma and discrimination and HIV/AIDS in the Latin America.

2. *Richard Parkar and Peter Aggleton* (2002) HIV/AIDS related stigma and discrimination conceptual framework an agenda for action.