**FEMALE FOETICIDE IN INDIA: EXISTING LAWS VS. NEED OF THE HOUR**

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**ABSTRACT**

In India, sons are preferred over daughters because they are believed to be physically and mentally stronger, are the ones to uphold and carry on the family name, family business and will keep up with the family legacy. However, a civilization without women is impossible. A woman is an important part of the basic unit of the society. She is responsible for bringing a life into her family and that life can be of any gender. This means that male existence is not possible without female existence. But still, in today’s households, husband has greater power and a greater status that the wife.

Female foeticide is the most common practice to eliminate a girl child from entering into the family. It is a process of finding out the sex of the foetus and then terminating it if it is a girl. Although, this practice is illegal but it is being carried on from time immemorial and has now become a culture in various families.

The aim of this article is to analyse the already existing provisions of law on female foeticide and find loopholes in it. Even after having stringent laws and severe punishments, skewed gender ration still remains to be a big problem and hundreds of female foetuses are being killed every day. Moreover, the article will conclude by suggesting other ideas on how the practice of female foeticide can be controlled and curbed.

**Key Words:** Foeticide, gender, eliminate, foetus.

**INTRODUCTION**

Since independence, India has progressed in various fields of science and technology. What remains the same is the discrimination against a girl child and people’s treatment in relation to the fairer sex. Discrimination of girl child, parents’ neglect towards her, illegal abortions and female infanticides are the most obvious instances of this.

Female foeticide is the most common practice to eliminate a girl child from entering into the family. It is a process of finding out the sex of the foetus and then terminating it if it is a girl. Although, this practice is illegal but it is being carried on from time immemorial and has now become a culture in various families.

In India, sons are preferred over daughters because they are the ones to uphold and carry on the family name, family business and will keep up with the family legacy. Sons are considered to be mentally, physically and emotionally stronger than daughters who are presumed to be fine and delicate. It is presumed that only sons are capable of looking after the family business and a woman’s only place is in the household. She is supposed to prepare food for the family, do all the household works and is expected to give birth to male children. There have been certain cases in India where if a woman gives birth to a female child, she is murdered by her husband and his family along with her child.

Therefore, the growing concern for our country right now is the increasing menace in the skewed sex ratio. There is a huge imbalance between males and females due to the illegal acts of female trafficking, female foeticide and infanticide, sexual assaults, etc. because of which India has no longer become a safe place for women to reside in.

Civilization without women is impossible. A woman is an important part of the basic unit of the society. She is responsible for bringing a life into her family and that life can be of any gender. This means that male existence is not possible without female existence. But still, in today’s households, husband has greater power and a greater status that the wife.

A woman’s life is akin to slavery, although she is worshipped as a deity in homes. United Nations reports reveal that women constitute half of the world’s population. About 2/3 of the world’s female population is manhandled by husbands. In India, most of the mothers-in-law are cruel towards their daughters-in-law and countless young wives are burnt to death if they do not fulfil the dowry demands put up to them.[[1]](#footnote-2)

**Status of Modern Indian Women:** One of the most significant development since the last 10 years is that now women have started raising their voice against inequality, patriarchy, gender biasness and discrimination. Today, every law favours women. The recent amendment to section 6 of Hindu Succession Act, 1956, which gives equal rights in coparcenary property to daughters, is a clear cut example. Moreover, article 14 ensures equality before law and article 15 allows the state to make special laws for women and children. Hindu Marriage Act, 1955, allowing her to take divorce under section 13 (1) works in her favour. The Hindu Minority and Guardianship Act, 1956’ the Hindu Adoption and Maintenance Act, 1956; the Dowry Prohibition Act; and section 498-A of Indian Penal Code, 19860, specifically relating to punishment for cruelty against wife by her husband and relatives, all favour women. [[2]](#footnote-3)

Women are also aware of these laws and rights. But unfortunately, she has lost the right to take birth in this society. Her right to life is being taken away from her. The growing inhuman act of Female Foeticide and Female Infanticide is a glaring example of violation of her right to life.

**Why curbing female foeticide fails?**

The Pre Conception and Pre Natal Diagnostic Technique Act, 1994 was passed 18 years ago due to an alarming increase in the brutal killing of female foetuses by latest means of scientific technologies. According to the 2011 Census the child sex ratio is 914:1000 and therefore it is evident from these figures that the impact and implementation of the Act is still in doubt as there has been a continuous fall in the child sex ratio. [[3]](#footnote-4)

The Pre Conception and Pre Natal Diagnostic Technique Act, 1994 has proved to be insufficient and inefficient to curb the brutal custom of female foeticide. Therefore the weak implementation of the laws has indirectly proved to be a catalyst for the increasing ratio of female foeticide as the Indian community is fearless of the rules laid down by the Act. Had the laws taken stringent action and executed accordingly, countless innocent lives of girls could have been saved. It is indeed shameful for our country that even after 68 years of independence and the provision of right to equality mentioned in Article 14 of the Constitution of India, foeticide still triumphs in our country. The Genocide taking place in India is a consequence of the lack of efforts made by the Government and Organizations to frame effective laws.[[4]](#footnote-5)

This has influenced additional crimes against women, which has lowered their dignity in India as well as abroad. It is challenging to detect cases of female foeticide and sex selection as they are performed behind closed doors, which ultimately leads to less registration of cases in the Courts.

No doubt there is a constant increase in the registration of the cases on female foeticide but the judiciary is comparatively slow in implementing the laws on female foeticide. Collection of evidence turns to be problematic as the crime leaves no proof and is usually done in code words. The Ultra Sound Clinic staff and doctors prefer to deny all such allegations as the family of the pregnant women who wish to go ahead with abortion if the foetus is detected to be a female foetus pays them a heavy amount.[[5]](#footnote-6)

Law tackling female foeticide needs to be more strict and rigid in order to save the lives of many innocent and unborn girls. Since the issue of female foeticide is so critical, it is essential to adopt international policies and frame stringent laws which will prove to be effective enough to stop this genocide and save the existence and dignity of women by providing them an equal opportunity to take birth and enjoy liberty just as any other species.[[6]](#footnote-7)

**PRESENT LEGAL FRAMEWORK**

Due to all the causes and consequences of female foeticide in India, many laws have been passes over the years to control this menace. The parental preference for son is nothing new. No doubt preference for a male child over a female child is universal but in Indian society, a girl has always been blamed for all the misery and misfortune. Value attached to sons is well explained in the blessings and good wishes contained in a number of verses used in marriage rituals.[[7]](#footnote-8)

The prejudice against females is widespread and common amongst the educated and the enlightened people. Women have been subjected to many forms of discrimination and various social forces act and compel parents to commit such an act. It is usually thought that options of males and females may differ leading the thought in the direction that females may be more sensitive and opposing to the cruelty towards the unborn female child.[[8]](#footnote-9)

1. **Pre-Natal Diagnostic Techniques (Regulation And Prevention Of Misuse) Act, 1994**

Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act, 1994, Amendment Act 2002, came into force with effect from February 14, 2003. The Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Act, 1994 now stand renamed as The-Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

Keeping the fundamental rights mentioned in the constitution, the parliament started considering female foeticide as a serious issue. The Parliament realised the implications arising out of the misuse of ‘sex-determination tests’ and intended to regulate the same for certain medical purposes. Thus, this Act was enacted and was also amended in 2001 along with Pre-Natal Diagnostic Techniques (Regulations and Prevention of Misuse) Rules, 1996.

Centres using pre-natal diagnostic techniques for determining sex of the foetus started becoming popular. These centres became the den for female foeticide. Such techniques were against the rights of the female foetus and affected the dignity of the women. Thus, there was a need to bring a law to regulate the use and to provide deterrent punishment to stop the misuse of such techniques. Therefore, the Pre-Natal Diagnostic Techniques Bill 1991. This bill was considered by both the houses of parliament.

This Act was extensively amended during 2003 whi the following objectives:

1. Prohibition of misuse of pre-natal diagnostic techniques for detection of the sex of the foetus leading to female foeticide.
2. Prohibition of advertisements of pre-natal diagnostic techniques for the purpose of detection of specific genetic abnormalities of disorder.
3. Permitting the use of such techniques only under certain conditions by registered institutions.
4. Punishment for violation of the provisions of the laws.

there is still utmost controversy as to whom will serve as the watch dog to control the misuse of the practice of female foeticide and its implementation is difficult and considering it can only be the doctor who carries out the abortion or mother of the foetus who can be punished. This is very ambiguous as many women are indeed forced by family members to go ahead with an abortion of a female foetus. Thus once again putting the life of thousands of women in danger. Other reasons for limited effectiveness of the law include lack of political will to ensure enforcement. Experience has shown that in general the role of legislation is subverting a social practice is limited.[[9]](#footnote-10)

The recent study has reported that India has lost 10 million girls over the last two decades. After the enactment of the act in 1994, in the year 2006 there was first conviction. Where a doctor and a lab technician were sentenced to two year of imprisonment under the act. Public interest litigation was also file in Supreme Court by concerned health activists. Centre for enquiry into Health and allied themes **[CEHAT] v. Union of India[[10]](#footnote-11)**. In response to the petition, the court issued in notices to the central and state governments to file replies to central government. The central Supervisory board, State Governments under the administrations. And to appoint appropriate authorities at district and sub-district level. Directions stated that the list of the members appointed should be published in the print and electronic media. Appropriate authorities were further directed to send a quarterly report to the central supervisory board. public awareness against the practice of pre-natal sex determination.

1. **Medical Termination Of Pregnancy Act, 1971**

The Medical Termination of Pregnancy Act, 1971 was conceived as a tool to let the pregnant women decide on the number and frequency of children. It further gave them the right to decide on having or not having the child. However, this good intentioned step was being misused to force women to abort the female child. In order to do away with the lacunae inherent in previous legislation, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the foetus and stipulated punishment for the violation of provisions thereof. It also provided for mandatory registration of genetic counselling centres, clinics, hospitals, nursing homes, etc.[[11]](#footnote-12)

The act permits medical termination of pregnancy on the following grounds:

1. Where continuation of pregnancy involves risk to the life or to the physical and mental health of the mother.
2. Where there is substantial risk that if the child is allowed to be born, it would suffer from physical and mental abnormalities and to be seriously handicapped.

A medical practitioner, who is registered, may operate for the termination if the pregnancy does not exceed 12 weeks.

Doctors are protected from any liability if the perform the abortion in good faith.

This Act is meant to legalise abortion only when there is some kind of risk to the female, but not to legalise the illegal abortion with the intention to commit the act of female foeticide through pre-natal-sex determination. People used to take the other side of law or interpret the law in their own way and misuse it for their benefit. Hence, punishment is mandatory.

1. **Statutory Provisions**
   1. **Indian Penal Code:**
2. Causing Miscarriage, section 312-314[[12]](#footnote-13):

* Voluntarily causing a woman with a child to miscarry, otherwise than in good faith for the purpose of saving the life of the woman with her consent (s. 312) and without her consent (s. 313).
* Causing the death of a woman by an act with intent to cause miscarriage. (s. 314)

Section 312 says that the offence is cognizable or non-bailable so far as three years’ imprisonment is concerned. However, if a woman is quick with one child, imprisonment extends to seven years while the offence remains cognizable and non-bailable. Causing miscarriage without a woman’s consent, (s.313) has serious implications resulting in life imprisonment or ten years’ imprisonment and fine. If the act is done without the consent of the woman, the punishment is either 10 years’ imprisonment or life terms.

1. Injuries to unborn child: Sections 315-316[[13]](#footnote-14): Injuries to the unborn are mainly:

* Doing an act without good faith with intent to prevent a child being born alive or to cause it to die after birth. (s.315)
* Causing the death if a quick unborn child by an act amounting to culpable homicide (s.316). Punishment under section 315 is 10 years’ imprisonment and fine.

1. Exposure and abandonment of infants, s. 317: under the age of 12 years, by the parents or by persons having care of the child with the intention of wholly abandoning him is an offence, punishable with imprisonment of seven years or fine or both.
2. Concealment of birth, s. 318[[14]](#footnote-15): Intentional concealment of the birth of a child by secretly burying or otherwise disposing of the body of the child, whether such child dies before or after or during birth is an offence under section 312. The punishment is imprisonment for 2 years or fine or both.
   1. **Constitutional Provisions:**
3. Fundamental Rights:

Article 14[[15]](#footnote-16): It guarantees equality before the law.

Article 15[[16]](#footnote-17): It guarantees equality before law and prohibits discrimination on the basis of sex.

The Preamble of the Constitution speaks about securing to all citizens equality of status and opportunity as well as justice- social, economic and political. For the purpose the Constitution provides Fundamental Rights and Directive Principles of State Policy to citizens of India.

Article 15 (1) states: “that the state shall not discriminate against any citizen on grounds only of race, religion, caste, sex and place of birth.”

The words ‘discriminate against’ mean to make any adverse distinction or to distinguish unfavourably from others. It includes an element of unfavourable bias.

Article 15(3)[[17]](#footnote-18) states that nothing in this article shall prevent the state from making any special provisions for women and children. This provides a special status to them.

Article 21 says that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to life does not only mean the continuance of a person’s animal like existence. It means fullest opportunity to develop one’s personality and potential to the highest standard of comfort and decency. Right to life includes right to social security, protection of family and even duty of to preserve life.

1. Directive Principles:

Article 39[[18]](#footnote-19): The state shall, in particular, direct its policy towards securing:

1. To all citizens, men and women, equal right to an adequate means of livelihood..
2. Equal pay for equal work for both men and women.
3. That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
4. That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 42[[19]](#footnote-20): This requires that the state shall make provisions for securing just and humane conditions of work and for maternity relief.

These are the constitutional safeguards provided by our Constitution to secure the life of a woman in all spheres of her life.

* 1. **Other Provisions**

1. Suppression of Immoral Traffic in Women and Girls Act, 1956.
2. The maternity Benefit Act, 1961.
3. Special Marriage Act, 1954. The wife may sue the husband for divorce on the ground that he has committed rape, sodomy or bestiality.
4. The Hindu Succession Act, 1956, gives a woman ownership in the property inherited or acquired by her. Now by an amendment in Section 6 of Hindu Succession Act, 1956, a daughter will be a coparcener and has the right to partition in her father’s property equal to her brothers.
5. The Hindu Adoption and Maintenance Act, 1956.

In the case of **Kharak Singh Vs. State of U.P. and others**.[[20]](#footnote-21)

The Supreme Court has certainly recognized that a person has complete rights of control over his body organs and his ‘person’ under Article 21. It can also said to be including the complete right of a woman over her reproductive organs.

In the case of **Vijay Sharma and Another Vs. Union of India[[21]](#footnote-22)**

The couple, Vijay and Kirti Sharma, based in the commercial metropolis Mumbai, challenged the validity of the Pre Conception and Pre Natal Diagnostic Tests Act (PCPNDT) Act, a 2001 Indian legislation which bans sex determination. But the judges said in a verdict pronounced on Friday that sex selection would be as good as female foeticide.

In the case of **Qualified Private Medical Practitioners and Hospitals Association Vs. State of Kerala[[22]](#footnote-23)**

It was declared that laboratories and clinics which do not conduct pre-natal diagnostic, test using ultrasonography will not come within the purview of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and a direction to the respondents not to insist for registration of all ultrasound scanning centres irrespective of the fact as to whether they are conducting ultrasonography, under the Act, 1994. a similar view was taken in the case of Malpani Infertility Clinic Pvt. Ltd. and Others Vs Appropriate Authority, PNDT Act and Others.

**CONCLUSION AND SUGGESTIVE REMARKS**

As we know, the origin of the problem lies in societal moral sensibilities. The Indian middle class is known to succumb to prevalent social norms. Even politics in this country is governed by public sentiments. In such a social scenario, it is of paramount importance that a crusade is launched against the prevailing social norms to achieve balanced sex ratio. This can be done only by generating awareness amongst the masses about the consequences of extreme forms of gender discrimination like female foeticide.

1. **Empowerment of women**: In patriarchal society, the subordinate status of women reflects lack of empowerment in the same sense that they are unable to take part in the decision-making processes on an equal footing with men.

Our constitution provides for fundamental rights which includes right to equality to citizens of India. It means both men and women are equal in all spheres of life. That lack of empowerment is manifested in the relative weakness of their bargaining power in situations, which involve interests of both men and women. In the case of a conflict, a woman’s position is weak because of her gender. This is especially true in specific problems like the demand for dowry, pregnant, child care etc.[[23]](#footnote-24)

Education of women is a powerful tool for improving nutrition levels, raising the age at marriage, acceptance of family planning, improvement in self-image, and their empowerment.[[24]](#footnote-25) NGOs may be encouraged to promote formation of self-help groups, organize non-formal education for adult females and school drop outs, create employment opportunities for women as well as provide counselling and support services to newly married and pregnant women to discourage them from undergoing MTP.[[25]](#footnote-26)

Socio-economic empowerment of women is the need of the hour. This will immediately help them to be more democratic, assertive, creative and productive.

So when a girl is educated and employed, she will not be taken as a burden on the parents. May be this position of women could help in protecting the right to birth.

1. **Campaign against Female Foeticide/Infanticide:**

The campaign against female foeticide and female infanticide can be spearheaded through various ways. These ways:

* Through use of technology to rescue the girl child
* By writing, advertisement, counselling and organising plays.
* Holding marches, seminars, seminars, and workshops to highlight the problem.
* Through effective use of the media, including TV, newspapers, films and documentaries.
* By highlighting importance of girls at different stages of life.

The Government has recently started a ‘Save the Girl Child Campaign’ whose main objective is to lessen the preferences of a son by showing achievement of a girl child. The media should be involved in promoting a positive image of women. School and College girls should be the targeted audience. However, this should be combined with highlighting the issue and dangers of female foeticide and skewed gender ratio. It must be emphasized that involvement of community leaders as well as influential persons would go a long way in assuring success in such campaigns. However, the root causes of gender bias need to be tackled first and steps towards woman empowerment must be strengthened".[[26]](#footnote-27)

1. **Strengthening the existing laws**: Though most laws are made in India are made for the purpose of deterrence and their execution is the main issue. Violations of the PNDT Act carry a five year imprisonment and a fine as well.

The reason why the law has proved ineffective is because it is difficult to regulate all clinics that use ultrasound for sex determination also, it is a host for all purposes for detection of genetic abnormalities in the fetus.While the law seeks to punish sex determination, it is rendered ineffective because of the MTP Act which allows abortion on the ground of mental trauma. Even though the blatant hoardings and advertisements of sex determination seem to have disappeared, spread of information about clinic services is now done by "word of mouth". Restricting the right to abortion to the first 12 weeks of pregnancy would automatically curtail sex-selective abortion, since sex detection by ultrasound is only possible around the 15th week of pregnancy.[[27]](#footnote-28)

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