

Failure of Law to Curb Female Foeticide: A Glimpse

Anand K. Deshmukh

Assistant Professor,
 Dept. of P.G.Studies in Law
 Dr. B. A. M. University, Aurangabad.
Email: deshmukhanand76@gmail.com

The women are one of the most important sections of the society, which is neglected from the womb to tomb. The position of women is always inferior in the socio-economic-religious set up. The problem of female foeticide is directly linked with the subordinate status of women in India. The practice of female child being killed during infancy was a product of adverse historical and economic conditions. Indian society is known for gender discrimination and gender imbalance. Sex selection abortion is fairly recent phenomenon, but its root can be traced to the age-old practice of female infanticide. This inhuman practice continues even today. Unfortunately gross misuse of technological advancement has aggravated this problem of female foeticide. United Nations Population fund (UNFPA) said there has been a rapid decline in the male-female child ratio in India during the last two decades due to increasing practice of sex selection & female foeticide. The Census 2011 reveals that the overall sex ratio is 940 females for every 1000 males. In Haryana, Punjab, Chandigarh and Delhi, it is below 900 this shows that the menace has reached alarming proportions even in urban areas.

[Key Words: Female foeticide, Female infanticide, Sex, Gender, PC & PNDT Act]

Introduction

In India the status of girl child reflects serious gender based differences, inequalities and discriminations. Preference for the son and discrimination of daughter are interlinked. There is a pronounced gender neglect and gender marginalisation in all the layers of the society. Girls are treated as burden on family and other social discrimination lead to female foeticide in India. Once women was considered as divine and worshiped as the embodiment of all virtues. But with the passing of time, patriarchal society, she has been discriminated and victimised by the norms created by the male dominated society. In patriarchal society there are several customary practices prevailing in society like female foeticide, infanticide, slavery, honour killing etc. Moreover people keep strong beliefs over the customary practices and ultimately that leads to increase such evil practices in society. The practice of female foeticide is the worst form of violence against women (girl child), where she is derived from her basic inherent, fundamental and human rights which are enshrined under the national and international instruments.

Meaning of Female Foeticide

Female foeticide means killing female unborn child in the womb itself called as female foeticide and killing a girl child within a period of one year from her date of birth known as female infanticide. More precisely female foeticide means, "Killing the female foetus after sex determination test or pre-diagnostic test which includes foetoscopy, ultrasonography, placental tissue sampling or amino synthesis known as female foeticide." In olden days it was highly impossible to detect the sex of child before birth but latest advancement in science and technology invented ultrasonography machines for detection of chromosomal and abnormalities in the foetus enhance the menace of female foeticide. After twelve weeks of pregnancy this ultrasound machines can detect the sex of foetus and generally parents abort the foetus due to the want of male child.

The concept of female foeticide and female infanticide is not as recent phenomenon, rather it is as old as many cultures and has likely accountable for millions of gender selective deaths throughout our past. The evil of female foeticide and infanticide transcends all castes, class and communities throughout the world. Compared to infanticide, foeticide is probably a more acceptable means of disposing off the unwanted girl children. Infanticide can be an overtly barbaric and inhuman practice while foeticide that is carried out by skilled professionals is a medical practice that uses scientific techniques and skills and reduce the guilt factor associated with the entire exercise.

Factors Responsible for Female Foeticide

The low status of Indian women coupled with the traditional gender bias has an adverse bearing on the child sex ratio. According to a recent report of United Nations Population Fund upto 50 million girls and women were missing from Indian population as a result of systematic gender discrimination in India. The following factor reveals unbelievable facts related to female foeticide in India.

A. Patriarchal society is the root cause for gender inequality: Male dominated family institutions from ancient time to till today and societal attitude shows disfavour and discrimination towards female. The women always depends on male and the decisions of the family like selection of sex, abortion, education of girl child, marriage etc are taken by the head of the family. Women are not permitted to take economic and social decisions related to family issues.

B. Religious beliefs and the sex selection: Religion occupies the pivotal part in the life of human beings. It decided the way of life and attitudes of the people. The religious ideology encourages for the selection of sex to discharge the pious obligations and hence the preference for male child is likewise deeply enshrined in belief and practice. The following religious verses disclose the preference of son over daughter; *Punnamno narakad-yasmat-trayate pitaram sutah! Tasmat-purtra iti proktah svayameva svayambhuva!! (Manu smrti 9-136-8)*

"Putra is one who protects his father and forefathers from falling to hell." *Apurtrasya gaith nasty* "There is no salvation for someone who doesn't

have a son.” *Jivato vakyakaranat ksayahe bhuribhojanat! Gayayam pindadanacca tribhiih putraasya putrata!! (Devibhagavatam 6-4-15)*

1. While one's parents are alive, one must obey and respect their commands,
2. After their demise, on their shraddha offer sufficient bhोजना to Brahamana's
3. Performing pinda-dana in the name of forefathers in Gaya.

C. Social structure and gender discrimination: Sons consider the asset of the family and '*Betiah paraya dhan hote hai*' (daughters are asset of other). The daughters are treated as financial burden. The bias against females in India is related to the fact that "Sons are called upon to provide the income; they are the ones who do most of the work in the fields." In this way sons are looked to as a type of insurance. Thus, it becomes clearer that the high value given to males decreases the value given to females.

D. Practice of Dowry: The practice of dowry is widely prevalent even in communities and castes in which it had never been known before. As a result, daughters are considered to be an economic liability. Over the past few decades, the problem of dowry has acquired alarming proportions giving rise to innumerable socio-economic problems of far reaching consequences such as bride burning, physical harassment, cruelty and torture. In India one woman dies every hour due to dowry related reasons on an average in the country. As per the National Crime Record Bureau data, the country has recorded 3.48 lakh cases of cruelty by husband or relative in the past three years, (2012, 2013, and 2014).

E. Technological Advancements enhancing the menace: The determination of the sex of the foetus through advanced technique such as ultrasound scanning, amniocentesis test, invitro fertilisation etc. leads the female foeticide in India. No moral or ethical principle supports such a procedure for gender identification. The sex of the foetus can be determined within 13 to 14 weeks of pregnancy by transvaginal sonography and by 14 to 16 weeks through abdominal ultrasound. These methods have rendered sex determination cheap and easy. Pre-conception technique such as the Ericsson method which separates the X and Y chromosomes from the sperm and then injects back only the Y chromosome into the womb to ensure a boy. Yet another technique known as the pre-implantation Genetic Diagnosis (PGD) helps to determine the sex even an unrecognised foetus, one or two cells are removed from celled embryo as early as three days after fertilisation and is then re-implanted into the uterus. Hence the unfair practices and non-following of ethical and moral principles by medical professional and lab technicians raise the illegal abortions of female foetuses. The law expressly prohibits the sex selection / determination even though every day 7000 female foetuses are expelling from the mother's womb in India. The advancement of medical technology changed the fate of unborn child and posed threat to its life, in particular life of female child in the form of foetus.

Recently the introduction of a United States patented sex determination kit called 'Baby Gender Mentor Home DNA Gender Testing Kit' has raised fear

about back-door foetus determination test. The kit, priced \$ 275 is popularly known as 'Jantar Mantar' in rural Punjab. It had a built-in-equipment for collecting and sending a finger-prick blood sample to a Massachusetts laboratory from where confidential results were sent via e-mail within 48 hours. The misuse of technology simply reinforces the secondary status given to girl children in such a way that they are culled out even before they are born.

Adverse child sex ratio in India

The sex ratio is a composite indicator of women's status. It reveals the number of females per thousand males. The natural sex ratio is favourable to the female but in the developing countries it is adversely represented. In 1901 there were 3.2 million fewer than men in India, a century later the deficit increased over 12 times to 40 million at the time of census 2011. The most disturbing decline is seen in the age group of 0-6 years. The sex ratio (number of girls for every 1000 boys) within this age group plunged from 1010 in 1941 to 914 in 2011. The Indo-Canadian team found that in cases where the preceding child was a girl, the sex ratio for the subsequent birth was 759 girls per 1000 boys and when the two previous children were girls, the ratio fell even further to 719 girls.

According to United Nations, India has 106.98 males per 100 females in 2015. It means that India has 935 females per 1000 males. World has 101.7 males per 100 females. India is at 192th position out of 201 countries. Among Asian countries, India is at 42 positions out of 50. Among states, Kerala has highest sex ratio of 1084 females to 1000 males and Haryana has the lowest sex ratio of 879 females per 1000 males. Among union territories, Pondicherry has highest sex ratio of 1037 and Daman & Diu has lowest sex ratio of 618. In the recently published Human Development Survey Report 2015, it was unveiled that India has been placed 130th position in the 2015 Human Development Report (HDI) among 188 countries. It is fact that our country is much behind compared to other countries in respect of education, health and gender discrimination.

Sex Ratio (females per 1000 males), India 1901-2011

Year	Over all Sex Ratio	Sex Ratio in the age group (0-6 year)
1901	972	-
1911	964	-
1921	955	-
1931	950	-
1941	945	-
1951	946	-
1961	941	975
1971	930	964
1981	934	962
1991	929	945
2001	933	927
2011	940	914

Source: Register General of India

If we observe above sex ratio, we found that from 1981 onwards the sex ratio in the age group 0-6 is going to be decreased which create the alarming situation in our society. Only the fortunate thing is that the overall sex ratio is going to be increased. No doubt, if this practice continues it will disturb the social balance and it may lead to serious problems like increase in sexual offences, sharing of women within and outside wedlock and greater insecurity to women

Legislative Measures at the National and International Level

As far as the Right and its jurisprudence under the Constitution of India are concerned, the 'right to life' has been grossly violated by the practice of female foeticide. That's the reason Constitution of India has been coupled with myriad provisions to uplift the position of women. It has also been empowered the State to adopt measures of positive discrimination in favour of women for neutralising the cumulative socio-economic, cultural, educational and political disadvantages faced by them. Most prominently under *Chapter III, IV and IV-A* of Indian Constitution, plenty of provisions have been deployed to protect the rights of women, such as ensuring the equality before the law and equal protection before the law; prohibition of discrimination against any citizen including women on the grounds of religion, race, caste, sex, decent or place of birth and guarantee of equality of opportunity to all citizens in matters relating to employment. Article 14, 15, 15(3), 16, 21, 23, 24, 39(a), 39(b), 39(c), 42, 44 and 51(A) (e) of the Constitution are of specific importance to protect the rights of women.

Apart from this, in order to broaden the purview of criminal laws, pertaining to offences of women and pregnancy, the Indian Penal Code, 1860, Sections 312-316 deals with the offences relating to miscarriage or injuries to unborn child of exposure to the infants and concealment of birth. The Indian Penal Code permitted 'legal abortions' did without criminal intent and in good faith for the express purpose of saving the life of the mother.

The most relevant and primary enactment dealing with the aspect of female foeticide in India is the *Medical Termination of Pregnancy Act, 1971*. Basically, the very purpose of law is to identify the need and purpose of abortion in certain cases, as in case of medical emergency and to save the life of pregnant women. The Act provides for the termination of certain pregnancies by registered medical practitioner under certain circumstances mentioned under section 3 of the Act. Thus abortion is legalised within the provisions of *MTP Act 1971* (rules 1975) but sex-selective abortion is not covered under the Act.

In order to do away with lacunae inherent in *MTP Act 1971*, the *Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994* had to be passed in 1994 which came into enforcement in January 1996. The Act prohibited determination of sex of foetus and stated punishment for the violation of the provisions. It also provided for mandatory registration of genetic counselling centres, clinics, hospitals, nursing homes etc. The Act was amended in 2003 to improve regulation of technology capable of sex selection

and to prevent the decline in the child sex ratio as revealed by the Census 2001, due to amendment, the Act is known as the *Pre-conceptions and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994*. The main objects of the Act are,

1. To ban the use of sex selection techniques before or after conception.
2. To prevent the misuse of pre-natal diagnostic techniques for sex selective abortions.
3. To regulate such techniques stringent punishments have been prescribed under the act for using pre-conception and pre-natal diagnostic techniques to illegally determine the sex of the foetus.

Doctors and radiologists conducting or soliciting parents for sex determination test can be imprisoned up to five years and fined up to 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. There are number of international instruments which have recognised State responsibility for the protection of the girl child. The girl child's right to survive and protection are reflected, inter alia, in Article 3 of the *Universal Declaration of Human Rights 1948*, Article 6 of the *International Convention on Civil and Political Rights* and most importantly under the *Convention on the Rights of the Child*. The Preamble to the *Convention on the Rights of Child* reaffirms the goals enshrined under the Declaration on the Rights of the Child and further states that, the child by any reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth. The Convention also advocates that, every child has the inherent right to life and State parties shall ensure to the maximum extent possible the survival and development of the child.

Judicial Response to curb Female Foeticide

Judiciary is playing an active role in the prevention of female foeticide as Indian judiciary had declared the year 2007 as the 'Awareness year of female foeticide'. The Supreme Court in *Chetna, Legal Advisory W.C.D. Society v. Union of India and others*, [(1998) 2 SCC 158], wiped out the procedural hurdles in registering the complaints of female foeticide and took the note of the National Programme of Action for Eradication of Female Foeticide and Infanticide of 1995 by the Department of Women Child Development, the Apex Court ruled that, any appropriate party may move the Court in this behalf and may also approach the *NHRC* for proper implementation of this national programme and its improvement.

In *CEHAT, MASUM and Dr. Sabu George v. Union of India*, [(2003)8 SCC 412], the Apex Court, on the issues of sex selection and sex selective abortion, gives the direction to all the State Governments and Union Territories to create public awareness against the practice of pre-natal determination of sex and female foeticide through advertisement in the print and electronic media and by other appropriate means and also directed for proper implementation and monitoring of the Act. In *Vinod Soni and Another v. Union of India* and

Mr. Vijay Sharma and Another v. Union of India, (AIR 2008, Bom. 29), the constitutional validity of *PC & PNDT Act* challenged but the Apex Court upheld the validity and held that, 'the right to life or personal liberty cannot be expanded to mean that the right to personal liberty includes the personal liberty to determine the sex of the child which may come into existence. Right to bring into existence a life in future with a choice to determine the sex of that child cannot in itself to be a right.' The Apex Court clearly stated that the Article 21 of Indian Constitution cannot include right to selection of sex whether preconception or post conception. In another petition filed in 2006, *Voluntary Health Association of Punjab v. Union of Indian and Another*, [(2013) 4 SCC 1], the Apex Court issued directions for effective implementation of the Pre-conception and Pre-natal Techniques (Prohibition of Sex Selection) Act, 1994 and also directed all the State Governments to file compliance reports within three months.

The judiciary plays an important role to prevent the menace of female foeticide from the society and it's the time for the executive to implement the guidelines and interpretations laid down by the judiciary and to bring out necessary changes in the crucial menace of female foeticide.

Government Action Plan and Policy Framework

The World Summit on Children held in 1990 stressed on Survival, Protection and Development of children including the girl child. The Government of India has raised the awareness of society through their intensive studies on the girl child and her status in the family. The process started from the Seventh Five Year Plan to treat the girl child as a special concern. A report of the National Study on the Girl Child in the Family (both National and State profiles) was prepared. The declining sex ratio and the problem of infanticide in ten selected States got highlighted. Based on this report, a National Plan of Action exclusively for the girl child (1991-2000) was formulated in 1992 for the "Survival, Protection and Development of the Girl Children". The Plan recognised the rights of the girl child to equal opportunity, to be free from hunger, illiteracy, ignorance and exploitation. The objectives of this plan are as follows:

1. To prevent cases of female foeticide and infanticide and ban the practice of amniocentesis for sex determination;
2. To end gender disparity in infant mortality rate; eliminate gender disparities in feeding practices, expand nutritional interventions to reduce severe malnourishment by half and provide supplementary nutrition to adolescent girls in need;
3. To reduce deaths due to diarrhoea by 50% among girl children under 5 years and ensure immunization against all forms of serious illnesses; and
4. To provide safe drinking water and ensure access to fodder and drinking water nearer home.

The launching of the '*Balika Samridhhi Yojana*' in 1997 is a major initiative of Government to raise the overall status of the girl child. It intends to

change family and community attitudes towards her and her mother. Under this scheme about 25 lakh girl children born every year in families below the poverty line are to be benefited. The first component of the scheme which has already been launched is to provide Rs.500/- as a post-delivery grant to the mother of the girl child as a symbolic gift from Government. The other components proposed under the scheme are provision of annual scholarships to the beneficiaries when they go to school and assistance for taking upon income generating activity when they attain the age of maturity.

Recently '*Beti Bachao Beti Padhao*' (BBBP) scheme was launched by the Prime Minister Shri.Narendra Modi on 22nd January, 2015 at Panipat, Haryana. BBBP addresses the declining Child Sex Ratio (CSR) and related issues of women empowerment over a life-cycle continuum. It is a tri-ministerial effort of Ministries of Women and Child Development, Health & Family Welfare and Human Resource Development. The key elements of the scheme include Enforcement of *PC & PNMT Act*, nation-wide awareness and advocacy campaign and multi-sectoral action in select 100 districts (low on CSR) in the first phase. There is a strong emphasis on mindset change through training, sensitization, awareness raising and community mobilization on ground.

The '*Sukanya Samridhi Yojana*' is as girl child prosperity scheme under Beti Bachao Beti Padhao program of Prime Minister Narendra Modi. SSY account is to ensure a bright future for girl children in India. This yojana is to facilitate them proper education and carefree marriage expenses. Under this scheme, the '*Sukanya Samridhi Account*' can be opened at any time from the birth of a girl child till she attains the age of 10 years, with a minimum deposit of 1000 rupees. A maximum of Rs. 1.5 Lakh can be deposited during the financial year. One of the key benefits of the scheme is that it is quite affordable and offers one of the highest rates of interest.

Government of Maharashtra also takes an initiative to implement various schemes to enhance the number of girl child. The Government of Maharashtra frames various schemes to encourage the people to avoid female foeticide. The various schemes are as follows.

1. Savitribai Phule Kanya Kalyan Yojana: The couple who are below poverty line and if such couple perform family operation after one or two daughters are entitled to get benefit under this scheme. The Government will pay Rs. 2000 in cash and Rs. 8000 National Saving Certificate in the name of girl child.

2. Sukanya Maji Bhagyachi: The Government will invest Rs. 21,200 in Life Insurance Policy in the name of girl child who took birth in the family of below poverty line and the girl child will get Rs. 1, 00,000 on maturity of policy after eighteen years. The another benefit of this scheme is that, the nominal amount of rupees 100 should be deducted every year from the same amount which invested in life insurance policy in the name of girl child to ensure the life of her parent.

3. Khabari Yojana: The main object of this scheme is to find out and punish the person who violates the *PC & PNDT Act*. The person who gives the information about sex determination test will be rewarded by cash prize of rupees 25,000 and his/her name will kept secret. The government already awarded seven persons in the year 2013-14 who gave information about sonography centers where such sex determination test conducted.

In spite of legislative measures and government programs to prevent the menace of female foeticide, it will continue in the society. According to the report of *UNICEF*, five crore girls and women disappear from the population of India due to the sex determination test. Surprisingly the celebrities of the world are also passionate about boy child and with the help of advanced technology they too indulged into sex determination test.

Conclusion

In our country a girl is worshiped as a Devi (Godesses) on one hand and denied her existence on the other as if she has no right to live. At the same time the much talked issue on the earth by the human beings is all about values, norms, morals and ideals relating to human beings and humanity. But, interestingly, the practical application of these has become as impersonal as these values are seen in words but not in deeds and actions. There have been issue based judicial, executive and administrative measures to curb the menace of female foeticide as remedial measures. To supporting these measures, there must be mind-set revolution in the society. Though we have women-specific and women-related laws to ameliorate and improve the status of women, female foeticide is so rampant that we are losing an invaluable part of human race. The deep rooted prejudices such as hate girl child and love for boy child to attain salvation have to be eliminated for the efficacy of all women related laws. The Hon'ble High Court of Rajasthan in *Sukrit Verma and another v. State of Rajasthan*, observed that, "women have been subjected to violence, domestic or otherwise, throughout the pages of history." The attitude of people towards girl child must be changed and the people responsible for female foeticide should understand that 'there is court, higher than the court of justice, it is the court of conscience and supersedes all.'

References

- Amartya Sen, (2009). 'More than a 100 Million Women are Missing', The New York Review of Books, Vol. 37, No. 20, December. [http:// www.ucatlus.ucsc.edu/gender/Sen100M.html](http://www.ucatlus.ucsc.edu/gender/Sen100M.html).
- Alka Srivastava, (2002). 'Declining Sex ratio: The Marginalised Girl Child', Women's Lint Vol. 8, No.1.
- Bhullar, D.S. (2007). Unreported Killers of Unborn – A Case Report, JPAFMAT, Vol. 7, pp. 70-75. Available at medind.nic.in/jbc/t07/i2/jbct07i2p70.pdf.
- Durga Das Basu, (2009). 'Shorter Constitution of India', Vol.1, Lexis Nexis.
- Jain M. P. (2014), Indian Constitutional Law, 7th Ed., Lexis Nexis. pp. 737-750.
- Meenu Anand, (2005). 'Indian Legal framework to Arrest Female Foeticide', Legal News and Views, New Delhi.
- Prasanth S.J., (2005). 'Right to Life of Foetus', All India Reporter, Vol.92 Part 1098.
- Save the Girl Child, the Campaign of Government of India Available at http://www.savegirlchild.org/legal_juisdiction.html Accessed on 1 August 2016.

- Shobha Saxena, (2007). 'Crimes against Women and Protective Laws', Deep & Deep Publications, pp. 299-306.
- Sneha Tandon and Renu Sharma, (2006). 'Female Foeticide and Infanticide in India: An Analysis of Crimes against Girl Children, International Journal of Criminal Justice Sciences, Vol.1 No.1 January, available at www.sascv.org/ijcjs/snehlata.pdf Accessed on 3 August, 2016.
- South Asia Human Rights Documentation Centre, (2008). 'Human Rights and Humanitarian Law', Oxford University Press, pp. 343-351.
- Surinder Mediratta, (2014). "Crime Against Women", Law House Pub. Delhi, 2nd Edition.
- Sangita Cheetu, (1991). 'Growing Menace of Female Foeticide in India', Indian Socio-Legal Journal, Vol. XVII (1 & 2), pp.26-32.

[The final revised version of this paper was received on 14 November 2016]