



FEMALE FOETICIDE: THE ROLE OF LEGISLATION AND BEYOND

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Introduction:

Female foeticide in India is the act of killing a female foetus outside of the legal channels of abortion. It occurs in India for assumed cultural reasons that span centuries. Female infanticide has been a common practice in our country since centuries. Indian census has always shown a gendered imbalance. This marked gap between boys & girls. Sex selective abortion is a fairly recent phenomena but its root can be traced back to the age old practice of female infanticide. The devaluation of the Indian women & the girl child on account of inheritance / property rights, dowry etc. has resulted in their becoming victims of violence. Unfortunately gross misuse of technological advancement has aggravated this problem of female foeticide and ultrasound machines that were earlier used for other medical purposes are now being extensively used to determine the sex of the child.

Meaning of the term:

Foeticide is a practice that involves the detention of sex of unborn baby in the womb of the mother and the decision to abort it if the sex of the child is detected as a girl. This could be done at the behest of the mother or father or both or under family pressure.

- The word 'Female Foeticide' is the combination of 2 words i.e. foetus cide. The term 'foetus' means a human organism during the period of its development beginning on the 57th day following fertilization or creation and ending at the birth (According to pre conception & Pre Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

The word 'cide' means to kill & therefore, killing of foetus means foeticide. Therefore it means killing of female foetus.¹

Causes of Female Foeticide

The age old preference for sons is motivated by economic, religion, social & emotional desires and norms that favour male and make females less desirable. Parents accept sons but not daughters to provide financial and emotional care especially in their old age; sons add to the family wealth while daughters drain it through dowries, sons continue the family lineage while daughters are married away to another house hold. This stereo-type notion of women as "burden" is one of the main reason behind female foeticide and infanticide. The following main factors are responsible for female foeticide²:-

1. Patriarchal Ideology.
2. Discrimination against the girl child.
3. Introduction of Automation
4. Socio economic & physical insecurity of women.
5. Evil of dowry.
6. Modern technology.
7. Unethical medical practices.
8. Non-implementation of legislation relating to foeticide.
9. Two-child norm.

¹ Dr. Reeta Nigram, Female Foeticide: A Legal Approach, Delta Book World 2(March 2019).

² Avashesh, "Female Infanticide and Foeticide: A legal Perspective, NLSUI, Series 1, No. 1, p. 6

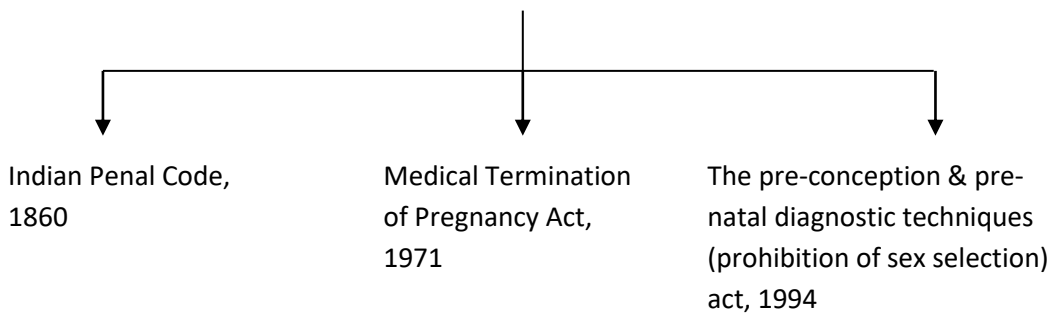


10. Content and context of literacy/education.

11. Socio-economic development & modernization.

When father sees the face of the living son on his birth, the debt is transferred to that son & there is innumerable heaven for a man who has a son but there is no place for a son less man. A son is very desirable for 2 reasons i.e. for the offering of “pinda” to the ancestors & for the continuity of the male or live of a person.³

Legislative Mechanisms against female foeticide: At present there are 3 laws preventing the evil practice of female foeticide.



The ancient Hindu law also contains certain provisions relating to abortion, but there is no mentioning of killing of female foetus specifically. Destruction of foetus is considered as an aparadha. Some of these laws were codified & some were the customary laws. These laws showed the way to the authors of the IPC. When IPC was enacted the provisions for miscarriage was provided v/s 312 to 316. These sections do not deal with natural abortion; it only penalizes violent or forced abortions.

- Indian Penal Code, 1860 provides severe punishments for abortion & this stringency of law led to many illegal abortions which very severely affected the health of the pregnant women & in many cases led to their death.

S.312 : Causing miscarriage (7 years)

S.313 : Causing miscarriage without woman’s consent (imp for life or to yes)

S.314 : Death caused by act done with intent to cause miscarriage.

(Imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, If act done without consent)

S.315 : Act done with intent to prevent child being born alive or to cause it to die after birth. (Imprisonment of ten years or fine or with both)

S.316 : Causing death of quick unborn child by act amounting to culpable homicide. (Imprisonment of either description for a term which may extend to ten years and shall also be liable to fine).⁴

- These illegal abortions were performed mostly by unqualified people under unhygienic conditions.

Medical Termination of Pregnancy Act, 1971

- This act contains the grounds on which abortion can be justified like if risk to the life of the women, if risk that the child if born would suffer from deformities or pregnancy has been caused by rape or due to the failure of contraceptive device.
- This act was enacted with the objective wider than the IPC which only protects the physical health of the women.⁵

³ *Supra* note 2 at 3.

⁴ Indian Penal Code, 1860.



- This act not only protects physical health of the woman but it protects mental health by providing humanitarian grounds of terminating the pregnancy.
- Even this act has not specifically made the female foeticide as an offence & it also does not talk about sex determination, that may be because at that time the sex determination techniques were not that much common or known to the people.⁶

Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994

This act prohibits sex determination and female foeticide with the advancement of science and technology certain techniques have been developed by which even before conception, the sex of the child is selected. These techniques help people to avoid the penalties by the act of 1994. This act has been enacted with the purpose to regulate the use of pre-natal diagnostic technique & to prevent their misuse for sex determination & for sex selection.⁷

Therefore certain amendments have to be made in the act and now it is called the preconception and pre-natal diagnostic techniques (prohibition of sex selection) act, 1994.⁸

The pre-natal diagnostic technique can be used for the purpose of detecting generic or metabolic disorders or chromosomal abnormalities or congenital malformation or sex linked disorders.⁹

In order to implement the provision of PNDT Act against female foeticide effectively and to aid and advice the Central Govt. & the State Govt. for framing appropriate laws and rules & to create awareness amongst the masses against the practice of sex selection and ex determination.¹⁰

The PNDT Act has made provisions for the constitution of Central Supervisory Board & State Supervisory Board. The PC & PNDT Act is one of the most comprehensive & well thought out laws in the country to curb the misuse of the technology to determine the sex of the foetus or to assist in pre-birth selection.¹¹

As per this act,

1. No genetic counseling centre, genetic laboratory or genetic clinic unless registered under this act, shall conduct or associate with or help in conducting activities relating to pre natal diagnostic techniques.
2. No genetic counselling centre, genetic laboratory or genetic clinic shall employ any person who does not possess the prescribed qualifications.
3. No medical geneticist, gynecologist, pediatrician, registered medical practitioner or any other person shall conduct any pre-natal diagnostic techniques at a place other than a place registered under this act.

(The person who contravenes the provisions of this act is punishable with imprisonment and fine)

In **Cehat v Union of India**¹², the SC directed state Government to take further steps to enforce the law. In this the court directed that the ultrasound machines/scanners be sealed and seized if they were being used without registration.

- The problem of female foeticide and the sex selection are not only offences against the women but against all the human beings and nature. The legislative body has done its job but still a lot

⁵ Medical Termination of Pregnancy Act, 191.

⁶ Suruchi Kohli, "Female Foeticide: A Socio Legal Analysis", RGNUL Law Review, Vol III, No. I, Jan- June 2013, p. 8.

⁷ C D Vaikos, "Evaluation of pumsavana vidhi in the context of preconception and pre natal diagnostic technique act (1994)" *Global Journal of Research on Medicinal Plants & Indigenous Medicine*, Vol. 3, Issue. 8, 323- 330 (Aug 2014).

⁸ *Ibid.*

⁹ Pre-Natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act, 1994

¹⁰ Dr. Aman Khera, "Efficacy of Medical Termination of Pregnancy (MTP) Act, 1971 and Pre-Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 in India: A Critique", *International Journal of Research in Social Sciences*, Vol. 9, Issue 2, 467- 476 (2019).

¹¹ *The Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.*

¹² AIR 2001 SC 2007.



more is required to be done by it because the laws preventing female foeticide and sex selection are lacking in its objective.

In State of Haryana v Santra¹³, a woman sterilized under a government program & conceived even after the operation and underwent delivery since abortion posed a risk to her life. She gave a birth to a daughter who was also her eighth child. The SC awarded the mother damages that covered the child's expenses until the age of puberty.

- In the presence of these laws the doctors adopted other things for telling couples that they have a baby boy, in Delhi would use 'congratulation', 'touch the right ear', give a 'thumb up sign' and even tell the parents 'not to worry'. These gestures effectively convey and let the couple know of the sex of the baby.

Suggestions

- Female foeticide and ex-selection should be made an offence under the IPC.
- An independent investigating agency must be created under the PCPNDT Act 1994 because the appropriate authority is overburdened with other duties also.
- There is need to improve the economic, social, cultural and political status of women by reviewing all our laws and bias against women.
- Panchayats must take step to social boycott of such person who involve in this practice.

Conclusion

Although the PNDT Act of 1994 was put in place to stop the misuse of sex-determination tests, a change in societal attitudes is still needed to end the abhorrent practice of female foeticide. Fortunately, society is starting to see the value of raising girls, and as a result, women today have equal access to opportunities in nutrition, health, education, and employment. The traditional patriarchal mentality, in which gifts are given to families after a baby boy is born but mysterious melancholy descends upon them at the birth of a girl, is the fundamental reason of the continued prevalence of female foeticide in the twenty-first century. In order for Indian families to learn to practise gender equality, we need to empower girls in every meaning of the word — educational, social, economic, and political.

¹³ (2000) 5 Sec 182.