

## **FEMALE FOETICIDE: THE UNNATURAL DEATH**

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### ***Abstract***

*This paper focuses on one of the dimensions to unnatural death, i.e. Female Foeticide. It is very sad to know that females suffer from discrimination right from their conception in their mother's womb. The paper attempts to understand the roots of this evil practice as without understanding the basis of an issue, no problem can be solved. The authors further attempt to analyse the right to equality of the foetus to have a dignified life. Further research is made to analyse the after-effects of this sex selective abortion. The paper also analyses on the efficacy of the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 to curb this social evil. The paper is concluded by suggesting some measures to bring awareness in the society about the importance of girl child and also to stop this gender discrimination.*

***Keywords:*** *Female foeticide, Social evil, Right to life and equality, PCPNDT Act, discrimination*

### ***Introduction***

Female foeticide is one of the gravest social evils which discriminates girl child even before she comes out of the mother's womb. It becomes graver when the murderer is none other than the family or mother itself. Female foeticide is prevalent in countries like India, China, and South Korea etc. Even after 70 years of independence women aren't treated equal to men. They have definitely excelled while stepping into all the fields but couldn't leave their prints in the minds of the society as equals. They still face discrimination only on the basis of gender. In this patriarchal society, it has become difficult to change the mind sets of people. The main reason of female foeticide is the "son obsession syndrome". This is more concerned

with the social evil rather than legal problem. It is not a choice only among the rural India, but also among the rich class in order to maintain their lifestyle or status. It has severe consequences like skewed sex ratios, trafficking, and matrimonial problems etc. which have been discussed further. Still efforts must be made to in still a sense of respect and equality towards female, and also encourage having a female child.

### ***Factors Responsible For Gender Discrimination***

To get to the root of female foeticide, it is crucial to identify the causes behind it. Men are always given preference in every activity. Even though the person giving birth to the male child is a female there is discrimination against girl child by the female only. They are subjected to gender discrimination due to various reasons. One of them is the dowry system prevailing in the community. The family of the girl has to gift money, goods or property to the groom. The amount of dowry generally claimed is more than what the family actually has. It is always difficult for a poor or middle class family to spend for the arrangements of the marriage as well as give huge amount of dowry to the groom's family. They accept such demand in assumption that if they do not pay the dowry it would be a matter of disrespect in the society. The baseless reason which supporters of dowry system give is that it is a security for the women and her children. They also argue that it is a fund for the husband to start a new family with the girl. Though dowry is illegal in the country, it is still in practice across the country especially in South India. The society thinks that more amount of dowry given, the more amount of respect gained. Women are also considered as burden because the family has to spend a lot on her wedding. It is a matter of pride and respect for them to celebrate the wedding in a huge manner. Therefore people who cannot afford to have such responsibilities abort their child at an early stage, or even abandon it after birth.

According to Vedas, a son is preferred as he passes over the values of his ancestors. A father before his death passes his qualities and values to the eldest son. From then the son runs the family on the ideas and teachings of his father and ancestors. It is considered that if a person does not have a male child then his family is cursed. Many perform several rituals for having a male child. Female child is always considered as a financial burden for them. The male child is considered to perform the last rites so that the father attains heaven. Female children are even prohibited from attending the funeral ceremonies. Not having a male child is considered disgrace to the couple and they are said to go to hell instead of heaven. Hence even now son is believed to be crucial for the lineage to continue. Hence, the birth of a son

in the family is crucial for the lineage to continue. The Vedic people performed different rituals to obtain different types of sons.<sup>1</sup>

Another reason for sex selective abortion is the responsibility of the safety of the child. Sexual abuse, domestic violence, trafficking, rape etc, are feared by the parents and they don't want to take the risk of raising a girl child in such unsafe society. Also men are considered as bread winners of the family. After centuries and such empowerment by women also many people feel that men are superior to women in all ways. They are believed to be assets and girls as liabilities. Protecting the virgin status of the girl before marriage and to teach her good values, to behave well with her in-laws are the other reasons for ignoring a girl child. In the 1980s, many Asian countries like China, Korea and many parts of India had the inventing of ultrasound technology in medical field for diagnosis which was soon exploited for sex determination purpose.<sup>2</sup>

It is hard to imagine this state of affairs in the 21st Century when women have proved to be strong leaders in every field possible. From wrestling to business, the world has been revolutionised by exceptional women leaders in fields that were until recently completely dominated by men.<sup>3</sup> After understanding the root of this evil in the society it is very much necessary to take steps to eliminate such reasons contributing to female foeticide. It is wrong on our part if we keep on trying to prohibit female foeticide without dealing with these issues like practice of dowry and wrong mindsets of the patriarchal society in detail. If female foeticide is a problem then all these roots are to be severed off first otherwise there can't be any progress in the country for women.

### ***Effectiveness Of The Pre-Conception And Pre-Natal Diagnostic Techniques Act***

For the protection of female infants, a law called, The Female Infanticide Prevention Act, 1870, was passed by the British India. It was the first statute devoted for the protection of female in the country. Though Indian laws are very intricate they mostly lack proper execution. One of such law is the Dowry Prohibition Act, 1961. Even after repeated

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<sup>1</sup> Jayaram V, Children in Hinduism.

<sup>2</sup> [Therese Hesketh, Zhu Wei Xing](#), The consequences of son preference and sex-selective abortion in China and other Asian countries.

<sup>3</sup> Gender Inequality, CRY Foundation.

amendments it couldn't make the girl child feel as a lesser burden<sup>4</sup>. After the invention of new technology for detecting the abnormalities in the foetus, there came MTP Act, 1971 which was liberal enough that the medical practitioners started using this ultrasonography equipment for determining the sex of the child. The practice soon became famous and the practitioners started making good business out of it by advertising sex- detection. Then Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994, was enacted to curb this violence against the female foetus which stated that the pre- natal diagnostics was only for detecting any foetal abnormalities and not determining the sex of the foetus. The practitioners advertising sex selective abortion were to be penalised and punished according to the Act<sup>5</sup>.

After a public interest petition filed by CEHAT<sup>6</sup> the Supreme Court took a serious note of the continuing misuse of the pre-natal diagnosis techniques for illegal purposes. The court ordered the committee to look upon the issue and make necessary amendments. Therefore the act was amended from PNDT to PCPNDT Act in 2003 to include the technique of pre conception sex selection within the ambit of the act. It bought ultra sound within its ambit and also provided for more stringent punishments.

But this amended Act has also proven to be ineffective in ensuring prevention of sex determination, as the advertising is now by *word-of-mouth*. The Supreme Court passed a multitude of orders regarding the implementation of the Act and the necessity of the Central and State Advisory Boards to earnestly spread awareness about the ills of female foeticide to ensure that the Act became more than mere ink on paper.<sup>7</sup> Though the Act prohibited communication of sex by words or signs, it still remained prevalent by the display of numbers like "6 for boy and 9 for girl foetus" thus leading to abortions. The Act was revised for achieving its objectives in the best way, but the implementation is still being lacked. For every case filed the Supreme Court and High court are taking cognizance and issuing positive judgements for the stricter implementation of the act. The MTP Act liberalises abortion because it is mandatory to legalise abortion in order to save the life of mother as well as reduce unsafe abortions. But it is nowhere written in the Act that sex- selective abortions must be permitted. Selecting of sex of the child is discrimination against women and it is of

<sup>4</sup> 'Implement Dowry Prohibition Act' (*The Hindu*, 4<sup>th</sup> May 2005)

<<http://www.hindu.com/2005/05/04/stories/2005050404321500.htm>> accessed 24<sup>th</sup> May 2013

<sup>5</sup> <<http://indiatoday.intoday.in/story/law-to-curb-female-foeticide-turns-into-farce-pndt-act/1/455255.html>>

<sup>6</sup> (2003) 8 SCC 412

<sup>7</sup> Shalini P Joshi, 'Compilation and Analysis of Case Laws on Pre-Conception and Pre-Natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994.

great disgrace to the society. If the act is not implemented sincerely, the objectives of the enactment would never be met and India would still lack dignity to womanhood.

The Ministry of Health has also come out with certain proposed amendments to the PCPNDT Act for better implementation. Few of those suggestions include:

- 1) Inclusion of the word Transfer for the ultrasound machines which now only has Sale of them.
- 2) The fines for assisting/aiding in determination of sex are proposed to be increased up to 50,000 and imprisonment for more than 3 years.
- 3) To increase the prescribed qualifications for Medical Geneticist.
- 4) To keep in check the manufacturing of sonography machines, it is proposed to include offences by companies as a separate provision under the act and punish them accordingly if they fail to provide the sale details of USG machines and other equipment to the appropriate authority.

Despite the already imposed fines and the proposed increase in the penalty, both medical practitioners and the parents continue to practice this evil in the backstage and the concerned authority is unable to catch them without the documentation. Ngo's, schools and colleges must make sure to create awareness on this aspect and try to in still a sense of humanity towards the girl child. Only if the ideology of the public is changed, there can be any reduction in these unnatural deaths.

### ***Judicial Interpretation***

With the implementation of the act on one hand, the judiciary has also taken relevant measures to eradicate the female foeticide evil. There are various judgements which will prove that the judiciary has taken serious attempts to wash away this crime from the country.

On a general note, the Article 14 guaranteeing the right to equality is also being violated, as because the females are killed inside the womb of the mother. The families are having sex determination tests in order to able to abort the offspring. This is absolutely discriminating on the basis of sex, which is strictly prohibited under the Article. The girl child is not allowed to even come out in this world. On the other hand, the male foetus is allowed and in that case

there is no abortion happening because of the difference of the gender. It is sheer violation the equal rights to the female offspring.

Before discussing the judicial interpretation, we should first discuss the laws which are violated in the course of female foeticide. Starting with the Article 21 which talks about the right to life and personal liberty but with the practise of female foeticide this right is being violated. Everyone has the right to life and a life of dignity, not just animal existence. When the female foetus' are killed inside the womb, not even given chance to live, this Article is being violated. A citizen's right to life starts from the moment he/she is inside the womb of a mother.

In the case of *Vinod Soni and Anr. Vs. Union of India*<sup>8</sup>, it was observed that the right to life is guaranteed is for all, and by stating personal liberty as choosing the sex of the offspring, the High court contended that "right to personal liberty cannot be expanded by any stretch of imagination to liberty to prohibit to coming into existence of a female or male foetus which shall be for the nature to decide"<sup>9</sup>. Referring to the judgement of Supreme Court, the High Court stated that even if the Article 21 includes the right to food, clothing, decent environment and even protection of cultural heritage, these rights even if we expand it to the extremes of the possibilities, cannot be stretched up to a right to choose the sex of the offspring<sup>10</sup>. It also stated that this act was enacted for the development of the child after birth. It states that a child after birth has all right above mentioned irrespective of the sex of the offspring.

Further the case also stated that the act does not intend to entirely prohibit use of such test to determine the sex at preconception or post conception stage. In no circumstances, the right of personal liberty can be expanded to determine the sex of the child. "Personal liberty" cannot mean to choose the sex of the offspring, and discriminate the male and female foetus.

In yet another case of *Dr. Mrs. Suhashini Umesh Karanjakar Vs. Kolhapur Municipal Corp*<sup>11</sup> where the court ordered and empowered the Appropriate Authority to seize and seal the ultra sound machine and any such material object which can determine the sex of the offspring.

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<sup>8</sup> 2005 Cri.LJ 3408

<sup>9</sup> Felony of female Foeticide – Role of judiciary in implementation of PCPNDT act in India; Emandi Rangarao

<sup>10</sup> Felony of female Foeticide – Role of judiciary in implementation of PCPNDT act in India; Emandi Rangarao

<sup>11</sup> 2011 (4) AIR Bom R 326 (F.B.)

If any medical practitioner is held to be involved in the sex determination works and is convicted shall be punished and his/her name will be removed from the register of medical council for a period of 5 years. This view was held in the case of ***Dr. Pradeep Ohri Vs. State of Punjab***<sup>12</sup>.

In the case of ***Ajith savant Majagvai Vs. State of Karnataka***<sup>13</sup> The court held that “it is unfortunate that in an age where people are described as civilized, crime against female is 7 2011 (4) AIR Bom R 326 (F.B.) 8 AIR 2008 P & H 108 9 1997, 7 SCC 110. International Journal of Law 33 committed even when the child in the womb as the female foetus is often destroyed to prevent the birth of a female child. If that child comes into existence, she starts her life as daughter, then becomes a wife and in due course, a mother. She rocks the cradle to rear up her infant, bestows all her love on the child and as the child grows in age, she gives to the child all that she has in her own personality. She shapes the destiny and character of the child. To be cruel to such a creature is unthinkable. To torment a wife can only be described as the most hated and derisive act of a human being.<sup>14</sup>”

In ***Mr. Vijay Sharma and Mrs. Kirti Vs. Union of India***<sup>15</sup>, stated that the Section 4(2) of the act shall not be conducted except for the reasons of detection of the following-

- chromosomal abnormalities
- genetic metabolic diseases
- hemoglobinopathies
- sex linked genetic diseases
- congenital anomalies or any other abnormalities or diseases

So, the tests can only be used to know about certain abnormalities and risk in the course of pregnancy, and not for sex determination. The CJI suggested that all sections of society must work together to ensure that each and every baby girl was given her due in society<sup>16</sup>. In one of the speech, Justice Sabharwal said that female foeticide, is an unhealthy trend which if continued would disturb the demographic composition of the society, resulting in giving rise to many matrimonial issues. This son obsession syndrome should be removed. This is more of social evil than legal issue, so the society needs to be aware and commit and devote them

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<sup>12</sup> AIR 2008 P & H 108

<sup>13</sup> 1997, 7 SCC 110

<sup>14</sup> International Journal of Law; Emandi Rangarao; September 2016

<sup>15</sup> AIR 2008 Bom. 29.

<sup>16</sup> International Journal of Law, Emandi Rangarao; September 2016

for the removal of this social disease. Female foeticide is an ancient trend, not a new fashion so it is in the roots of the Indian society. So it needs large population standing against it, then only it can be eradicated.

Lastly, in *M.C. Mehta Vs. State of Tamil Nadu*<sup>17</sup>, the three judge bench stated that when the female foeticide takes place, every woman should know that she is killing her own child, despite being a mother. Aborting female child in its conceptual eventually means killing of women because a female foetus grows into a girl, from girl to a woman.

### *Aftermath Of Female Foeticide*

In India, a brutal female killing happens regularly even before they are born. Sex selective abortion is killing one million females in India annually with tragic consequences. Due to this the female to male ratio has dropped at a rapid rate that is less than 800:1000. Females suffer such inequality that they are not even allowed to take birth. Female foeticide happens because the medical clinics or even the citizens are making wrong use of the Parental sex detection technologies. Legally it is an offence. In India abortion is a crime, but when a person aborts a foetus who is a female commits more severe crime. Female foeticide has a severe and serious impact on the society including the overall growth and development of the country. The repercussions of female foeticide are long-term and devastating in nature.

There are certain consequences which need to be looked after before the ratios and situation get even worse.

#### **1. Skewed sex ratio**

The ratio between girls to boys is reducing which is matter of concern. The census of 2011 the child sex ratio was 900 females to 1000 males. It declined from the previous census which was 950 females to 1000 males. Haryana is considered as the richest most state but it is state which has most crooked sex ratio. Other states are Delhi, Himachal Pradesh, and Maharashtra etc. except the north east parts of India. Almost all parts of India are known for reducing the sex ratio in the recent years. If this continues, there will be more reduction in the next census which will be held in 2022.

It will be unfortunate and astonishing that India has developed Rs. 1000 Crore industry for sex selective abortion and sex determination illegally. With killing the girl child, it will give rise to other social evil and brutal consequences.

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<sup>17</sup> AIR 1997 SC 699

## **2. Shortage of girls for marriage**

With the killing of girl child, a new problem which the citizens are facing is that the boys are not getting girls to marry. For example, there was a truck driver in Haryana who found difficulty in finding a girl for his marriage at the age of 30. At last he had to marry a girl half his age and from a Muslim community in Assam. As per the report of Red Cross Society, there are many men who have crossed their marriageable age just because the shortage of girls. They have to get a girl from far places like Kerala, Goa etc. to change their relationship status and to succeed their generation. The situation is such that the men are even ready to pay huge amount to marry a girl from Bihar, Jharkhand or Madhya Pradesh.

In all this the girls are compromising and sacrificing their own culture, habits and traditions etc. while on the other hand the girl's family is gaining huge amount of money.

## **3. Trafficking and prostitution**

Due to sharp decline in the ratio of females, makes a large number of males eligible for marriage. Due to this, the girls involved themselves or are forced to enter into prostitution which is illegal in India.

## **4. Increasing number of child marriages**

As soon as they enter their puberty they are either sold or are forced to marry a man who is double their age. They are forced to go to a new place where everyone is a stranger and she has no other option than to adjust and accept her bad fate. They become pregnant and have dangerous and shocking consequences. In the poor families, the women get marry when they reach 18 years to support family needs and reduce the burden. Sometimes they are forced to marry an old man who would be an age of her grandfather!

## **5. Increase in Rape and Assault**

With the decline in the number of females, the remaining ones have to face the worse results and face rape and assault with a society of males. Even though the legal system are providing with the protection but the fear of desolation and embarrassment on the girl's side has not allowed the girls to take the privilege of the benefits of the provisions.

## **6. Population Decline**

If the girls are not allowed to take birth and every girl is killed inside the womb itself, the population of the state will automatically get down with a huge speed. Country like China and India are planning the population control schemes and goals but total wipe out of female sex is not a goal to be achieved.

## **7. Increasing maternal deaths and ill-health of women**

As the women are given power to give birth to a human, but forcibly if you kill the foetus and abort regularly, it weakens the wealth of the woman and has adverse effects. In some orthodox families the baby is aborted every time until there is a male child in the womb. This practise makes the woman weaker physically and mentally also and results in the maternal death. They are also prone to infections and continuous sickness.

## **8. Increase in polyandry**

Due to less number of females, the girls are forced to have sex with brother in laws and bear children from the. One of the instance is about a girl who at a very young age was forced to have sex with her brother in laws and as well as her husband. Today she is the mother of three children at very young age. In backward villages even today, one wife lives with many unmarried brothers.

### ***Suggestions***

As this practise is brutal and has disastrous consequences, suggestive measures should be taken by the citizens of the country. Until and unless everyone does not decide to stop, it will not serve the purpose. Some of the eradicable measures which can be taken are –

There can be free education for women at least up to college in the government based institution so that they do not have to spend more in education. This will help them to have better mind set and justice for own self. There must be proper implementation of Dowry Prohibition Act in order to show that daughters are not a burden to the family.

The male or the boys should be taught to stand against the female foeticide practise, and they should first start with their own houses when his parents speak against the female child.

There should be increment in the feeling of sisterhood so that if there is any injustice happening in the society, the other women can stand up to the practise and fight for their justice.

We can encourage the men to marry an educated girl so that she can help in spreading awareness in the family too.

Lastly, there can be stricter legal provisions which will have threat and fear in the minds of people and there should be campaigns for the legal awareness of violating legal provisions.

### ***Conclusion***

To conclude with, in Hindu or any religion the girls are regarded as the goddess, and then believing this, they practise female foeticide on the other hand. That is a kind of double standard society!<sup>18</sup>

Even though there are so many awareness programs and campaigns to spread the knowledge still the ratio is not improving. Campaigns like Beti Bachao, rallies, posters are not serving the purpose. According to census it showed 110 boys: 100 girls which prove we prefer boys over girls. The thing which needs to be understood is that unless the backward society, the orthodox community and the common man do not understand the gravity of this cruel practise, things will not be reducing. The citizen needs to understand they if on one hand they are killing the female foetus, on the other hand there are consequences which are worse. The girls also constitutes one half of the population so should be given same preferences as males.

There are various laws and legal provisions coming forward for the development of the females and increasing the number of females. The PCPNDNT act needs to be practical and implementation is required. The legislations should have multi prong and multi sectoral approach, and then it would be easy to curb the problem. With the determination to remove such crimes the women needs to be educated and also the men should be made aware so that they stand against such practise and promote the birth of girls.

The government has also launched various schemes like Dhan Lakshmi etc. to help the girl's family in her education so that the perception of considering women as liability and burden is

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<sup>18</sup> <http://www.allresearchjournal.com/archives/2015/vol1issue6/PartC/1-6-20.1.pdf>

totally washed off! Not just for name sake, the respect and equalisation for both genders should be seen in real.

There should be coordinated plan in all categories like financial, social and legal which would be the best way to make India safe for girls. At last, the rights are for both men and women, right to education, health & empowerment. This female foeticide has to be removed right away by making harsh laws and changing the mind sets of the people.

*“Save the female child today, See a better tomorrow!”*