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# 'Death before Birth' Female Feticide: A Social Evil in India

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## ABSTRACT

*In a modern time, Female feticide-the selective abortion of female fetuses, females not only face discrimination in this culture, they are even denied the right to be born female feticide determined by many factors, but mostly by the vision of having to pay a dowry to the upcoming bridegroom of a daughter. While birth of the baby boy offer refuge of their families in old time and can execute the rites for the souls of late parents and ancestors, daughters are treated as a social and economic encumber. In India feticide is a moderately new practice, rising concurrently with the advent of technological advancements in prenatal sex determination on a large scale in the 1990s. Detection technologies have been distorted, allowing the selective abortions of female offspring to proliferate. Legally, however, female feticide is a penal offence although female infanticide has long been committed in India, According to the Census 2001 report the declining sex ratio which has been dropped to alarming levels, female feticide become common in the middle and higher socio-economic households, especially in north zone because of the low status of women such as dowry, looking up for son, as concern with family name are the main evil practice performing sex selection abortions in India. There is an urge to reinforce the law to stop these kinds of illegal practices, it impact overall societies especially on women. The paper will discuss the socio-legal challenges female feticide presents, as well as the consequence of having too few women in Indian society.*

**Keywords:** Sex Ratio, Feticide, Sex Selection Abortion, Technology.

## I. INTRODUCTION

Foeticide or feticide is an act that causes the death of a fetus. In a legal context, it refers to the deliberate or incidental killing of a fetus due to a criminal human act, such as a blow to the abdomen of a pregnant woman. As a medical term, feticide is destruction of a fetus, for example as the first phase of a legal induced abortion. The latter in some specific situations is inevitable and legal especially in the incipient phase of pregnancy, it is long debated. But the sex selective abortion is not at all supportable. 'Historically, in the absence

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of genetic testing, infanticide was the only inhumane option for discarding the female child. This heinous practice continues today in the southern parts of India where families cannot afford an illegal ultrasound test. People in Punjab, Haryana and other Western states can afford illegal test to determine the sex of the baby and discard it’.

In spite of over six decades of Independence, in spite of India making rapid progress in science, technology and other fields, the picture that we see of India as of now is not one that can be appreciated, especially in terms of its treatment to the fairer sex. Discrimination against girl children, parents’ neglect of the girl child, illegal abortions and female infanticide are clear instances of this. The practice of female foeticide, which is illegal, is still prevalent in our country. There is one section of the Indian society which is trying its level best to be liberal in their thoughts, although aping the Western culture. On the other hand, there is another section of the society, in fact a large chunk of it, which is still in the clutches of orthodox views and thoughts. Female foeticide is one such grave social problem arising out of the so-called “traditional thoughts” of the society. Illegal abortion of the female foetus is done due to family from in-laws, husband or the woman’s parents, and the reasons for this are preference of son, girls being considered as a burden, poverty, illiteracy, social discrimination against women etc. “Mahatma Gandhi” said, a woman is the companion of man, gifted with the equal mental capacities she has the right to participate in the minutest details of the activities of man, and she has the same right of freedom and liberty as he. She is entitled to a supreme place in her own sphere of activity as man is in his. Man and woman are equal in status, but are not identical. Female foeticide is one of the extreme manifestations of violence against women a social problem that is now spreading unchecked across the country. Female foetuses are selectively being aborted after pre-natal sex determination, thus denying a girl’s ‘RIGHT TO LIFE’. They are a peerless pair being complementary to one another; each helps the other, not that without the one, the existence of the other cannot be conceived; and, therefore, it follows as a necessary result from these facts that anything that will impair the status of either of them will involve the equal ruin of both. According to Manu, a woman has to be reborn as a man to attain moksha. A man cannot attain moksha unless he has a son to light his funeral pyre. Also, it says a woman who gives birth to only daughters may be left in the eleventh year of marriage. The neglect of and discriminatory behavior against girls leading to excess female mortality has been widely documented by several studies, but the recent increase in the juvenile sex ratio discussed above has very likely resulted from rapid spread of ultrasound and amniocentesis tests for sex determination in many parts of the country, following by sex-selective abortions. Because of simplicity of the tests and their easy availability on the other hand there is a strong son

preference on female-specific abortions appear to have become popular and widely used people generally thought that the cost of the test and related abortion is much lower than the cost of providing dowry and other life-long presentations to a daughter after marriage.

### **What is Female Foeticide?**

Female foeticide is the selective abortion/elimination of the girl child in the womb itself, done deliberately by the mother, after the detection of the child's gender through medical means. This is usually done under familial pressure from the husband or the in-laws or even the woman's parents. Unplanned pregnancy is generally the reason behind abortion. However, female foeticide is a far more heinous sin than the age old practice of killing an unwanted child, even before it's born. Like many societies around the world, India is too patriarchal in nature. A set hierarchical system prevails in all tiers of the social order. The fanatic obsession with the male sex, though, is one of a kind. Right from the ancient scriptures, one finds instances where men are glowingly praised as the key to continue the family lineage. A girl is forced to undergo multiple pregnancies and (or) abortions, until she fulfils her lifelong goal of being a breeding machine that produces male offspring as per the needs of the family.

### **Objectives**

- To find out the responsible factors for female foeticide.
- To find out the consequences of female foeticide.

## **II. RESPONSIBLE FACTORS FOR FEMALE FOETICIDE**

Every unethical act, like this one, has some age-old lame reasoning behind it, which is used as genuine justification by its staunch supporters. The root cause for female foeticide lies within the cultural norms as well as the socio-economic policies of the country where this practice prevails. Main responsible factors for female foeticide are discuss below:-

**Preference for the Male Child:** Elimination or removal of girls from the family tree even before they are born clearly indicates the vehement desire for a boy child. In the countries where female foeticide has become unbridled, the core factor is the need to continue the family line through the male born into it. Sons are seen as the main source of income. Even though women today can easily rub shoulders with men, almost in every field they set their mind to, the common misconception still remains that it is the male who will help run the house, and look after his parents. Once married, women are like cargo, ready to be shipped off to another household, while parents breathe a sigh of relief for a job well done in getting their 'daughter' settled. Dowry System: In India, the age old custom of 'dowry system' puts a damper on the

parents' spirits who are 'blessed' with a girl child. Right then and there, begin the calculations associated with marriage expenses, which may happen after a couple of decades, following the child's first breath. A lump sum paid to the daughter in twenty years when the currency value may depreciate and inflation may sky rocket is seen as a tragedy waiting to happen. It would be so much better to get rid of them with just a fraction of the amount.

**Deteriorated Status of Women:** Males are the stronger sex when it comes to the pecking order in a country, but that does not entail a curbing of rights for women. Rather than whining about the denied opportunities, women should stand up and try to grasp the chances they want for themselves. However, this Utopian scenario is not quite easily achieved in practice. Centuries of repression has made inferiority second nature to most women. They willingly embrace the role of the meek, submissive, docile wife who works relentlessly to cater to the whims of her husband. The worst enemy of a woman is the woman herself. Female foeticide happens with the explicit consent of the mother. While most mothers to be agree to this misdeed out of a sense of duty to the family, there are many who take the initiative themselves.

**Foul Medical Ethics:** With the legalization of abortion in India, illegal sex determination of pregnancies has become an everyday reality. The professionals in the medical field are only too glad to help parents realize their dream of a healthy baby boy. Female foeticide is openly discussed amongst many in the healing fraternity and even pin boards outside certain clinics read, 'Pay Rs.500/- today to save the expense of Rs.500000/- in the future'. The initial meagre sum is the cost of a pregnancy termination, while the bigger amount specified in comparison, is the expense that the family will be burdened with in the form of dowry for the girl.

**Industrial Growth:** Industrialization of the health sector has further strengthened the selective sex abortion quarter. With the advent of CVS amniocentesis and Ultrasound, sex determination of the foetus has become much easier than it was earlier. This goes on to show how the manufacturers of high-tech equipments and gadgets, used to run these tests, benefit from the woes of future parents and their unborn child.

### III. CONSEQUENCES OF FEMALE FOETICIDE

As Newton's Third Law of Motion states, 'for every action, there is an equal and opposite reaction', the after effects of this genocide are fatal and far-reaching. Blinded by the need for an assertive gender to rule the house after the parents' demise, the majority are often ignorant of the disaster they unwittingly invite by indulging in female foeticide.

**Skewed Sex Ratio:** In India, the number of girls per 1000 boys is declining with each passing decade. From 962 and 945 girls for every 1000 boys in the years 1981 and 1991 respectively,

the sex ratio had plummeted to an all-time low of 927 girls for 1000 boys in 2001. If that statistic is a matter of concern, the current figures are toeing the danger line with only 914 girls for 1000 boys in 2011.

**Female/Women Trafficking:** The steep decline in the number of girls makes them scarce for the teaming number of males eligible for marriage. As a solution to this issue, illegal trafficking of women has become commonplace in many regions. This is a graver matter than the ideology of mail order brides. Women, often young girls who've just crossed the threshold of puberty, are compelled to marry for a price fixed by the groom to be. They are usually bought in from neighboring areas, where the number of girls might not be as miniscule as the host region. Child marriages become a rage and child pregnancies, a devastating consequence. The moment when a land participates in the trade off of its women population, it is a sure path laid ahead with pitfalls.

**Increase in Rape and Assault:** Once women become an endangered species, it is only a matter of time before the instances of rape, assault and violence become widespread. In the backdrop of fewer available females, the surviving ones faced with the reality of handling a society driven by a testosterone high. The legal system may offer protection, but as is the situation today, many cases might not even surface for fear of isolation and humiliation on the girl's part.

**Population Decline:** With no mothers or wombs to bear any child (male or female), there would be fewer births, leading to a decline in the country's population. Though a control in the demographic statistics is currently the goal of many nations like China and India, a total wipe-out of one sex is not the way to achieve this target. Science would then have to look up solutions to do away with the swarming number of men, should such a worst case scenario happen.

#### **IV. PREVENTION AND CURE**

The issues of female infanticide, female foeticide and selective sex abortion have gained global attention. Many international and national law making bodies have come forward to stop this cruel practice. Of the numerous steps taken to curb the matter, the prominent ones are:-

- Cancellation/permanent termination of the doctor's license who partakes in fulfilling a client's demand to do away with her girl child.
- Heavy penalty imposed on companies like GE that specialize in marketing medical equipment's used for illegal sex determination and abortion in unlicensed clinics and hospitals.

- High fines and judicial action against ‘parents’ who knowingly try to kill their unborn baby.
- Widespread campaigns and seminars for young adults and potential parents to enlighten them about the ill effects of female foeticide.

## **V. ANALYSIS OF THE LEGAL FRAMEWORK DEALING WITH FEMALE FOETICIDE IN INDIA**

### **1. *The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994:***

It was enacted in response to the severity of female foeticide and it enumerates sex determination as a non-compoundable, non-bailable and cognizable offence. Under the Act, “pre-natal diagnostic procedures” deals with gynecological or obstetrical medical procedures like ultrasonography, foetoscopy, taking samples of body fluids or tissues, before or after conception, for conducting any type of analysis or pre-natal diagnostic tests for selection of sex.

This Act prohibits the sex selection of the foetus before as well as after conception, and lays down the reasons for which the pre-natal diagnosis can be conducted. It should be conducted with the sole purpose of diagnosing any anomalies or diseases in the foetus.<sup>12</sup>

There exists a Central Supervisory Board and State Supervisory Board which looks after the implementation of the provisions set out in the Act. In addition to this, it also spreads awareness amongst the masses on the social and legal implications of female foeticide and advises the government on policy matters pertaining to this Act.

The Act is stringent in the penalties laid down as it punishes the subsequent offences with imprisonment that can extend to five years and a fine up to fifty thousand rupees. In cases where a medical practitioner violates the provisions of the law then their license can be seized for five years for the first offence and can be terminated for a subsequent offence. The husband, relatives or any other person who obtains the aid of a medical practitioner to determine the sex of the foetus is to be punished with imprisonment and fine. Any person, organization, medical geneticist, medical practitioner conducting ultrasound practices or any person who owns or is employed in a genetic counselling centre, laboratory or clinic advertises about pre-conception and pre-natal determination of sex or contravenes any other provisions of this Act is to be punished with imprisonment up to three years and a fine that can go up to ten thousand rupees.

### ***Indian Penal Code, 1860:***

Legal initiatives to curb gender discrimination and its manifestation in the form of infanticide and foeticide have been in force since the inception of the practise.

Section 315 and Section 316 discuss the offence of foeticide and infanticide.<sup>18</sup> If a person commits an act with the intention of preventing the child from being born alive or an act that results in the death of the child after birth, that person is committing foeticide/infanticide as long as they do not do it in the interest of the mother's health or life. If a person does an act that amounts to culpable death which results in the quick death of an unborn child, he will be charged with culpable homicide. These sections of the Indian Penal Code explain that while the child remains in the mother's womb it is a part of the mother's life and not a distinct person. But as soon as any part of the child has been brought forth from the womb it becomes a separate living person. Hence there is a fine line in the Indian Penal Code between foeticide and infanticide. Therefore female foeticide or injuries to unborn girl child would not amount to culpable homicide but will be considered as an offence against the pregnant woman.

Section 312 - 318 of the Indian penal code relate to miscarriage, injuries to unborn child, exposure of infants and concealments of births.<sup>19</sup> Though the term 'sex selective abortion' is not explicitly mentioned in the Indian Penal Code, the intention behind the terms of 'miscarriage' and 'injuries to unborn child' is to punish female foeticide.

### ***The Constitution of India, 1950:***

The Constitution of India is the fundamental law of the country which provides a protective umbrella for the rights of women and children, provided under Article 15(3)<sup>23</sup>. Article 21<sup>24</sup> states that no citizen can be denied his life and liberty and Article 14<sup>25</sup> guarantees equal protection under the law. The underlying inequalities between men and women borne of culture, religious and social influences and the undying desire for a male provide for the basic reasons to enforce these rights. Unfortunately Article 21 of the constitution which gives a right to life to all citizens of India cannot be extended to female children who are killed before they are born because an unborn child is regarded as a legal fiction which cannot be granted rights laid down in the Constitution.

## **VI. CONCLUSION**

Ironically, female foeticide takes place in a country where people worship various forms of Goddesses, and where females are considered as Maa Laxmi's incarnation and where young girls are worshipped and people touch their feet for blessings. But even then, the intentional killing of the girl child continues. Such is the double standards of our society. Right to education, health and empowerment are the fundamental rights of every Indian woman. The

horrible illegal practice of female foeticide has to be stopped by harsh laws and change in the mind-set of the people.

***Save the girl child for a better tomorrow!!!***

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