

A STUDY ON LEGISLATIVE AND JUDICIAL TREND ON FEMALE FOETICIDE: AN EVIL PRACTICE IN INDIA

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ABSTRACT: *Female Foeticide is the abortion of female foetus. The frequency of aborting female foetus in India is increasing day by day. Female foeticide is relatively a new practice which is emerging in a concurrent phase with the advent of advancements in technology in the determination of the prenatal sex. And in legal sense it is considered to be a penal offence. The practice of female foeticide generally means the deliberate murder of the foetus when it got diagnosed. As comparatively sons are given so much of importance and are said to be economically desirable, as the continuation of the family's name is ensured by them. The current position of the females is something like worst within the woman upbringing and inculcation. Girls are only treated as a liability and are responsible for their marital life as well as for their child birth. In India families believe that they will get no profit from girl and they think that male child will one day grow and will earn income and support their family economically. Some parents think that girl child is a burden on their family and further they think about her dowry and for which they consider her as a curse in their family. There are many cases that if a girl child is born and her parents let her survive rather than killing her so it would be her bad luck that she is born alive because starting from her childhood her parents pressurize her to do household work and she is not even allowed to move out of the house to earn income or to receive education. As we all know that, girl child is considered as a Goddess, she is being worshipped in various forms during festivals. Still in some places we can see that the people are not aware about the importance of girls, or girl child. Aborting female foetuses is both practical and socially acceptable in India. Female foeticide is driven by many factors, but primarily by the prospect of having to pay a dowry to the future bridegroom of a daughter. Doing research on this evil practice, helped me finding out the true reality or the position of a girl child in a society.*

Key Words: *Female Foeticide, Male Child, God- Goddess, Indian Society, Dowry, Child Sex Ratio, Illegal Abortion, Women Empowerment, Female Embryo, Gender Discrimination, Prohibition.*

INTRODUCTION AND MEANING OF FEMALE FOETICIDE

Female Foeticide is a sex selective abortion of female fetus¹. In India, there are many parents who worship different God-Goddess and pray for a male child only because they considered male child as a blessing. Though females are also worshipped in various forms and considered as a Goddess but they still remain the sufferers of inequality and injustice. In India, there is always a hateful legacy of killing the female child. Women are murdered all over the world. But in India, female child is brutally killed in the mother's womb before they born. Earlier, scientific techniques were not so advanced and it was not possible to determine the sex of the child and so killing of the female child took the form of suffocating the infant under the mother after birth or by treating the daughters badly. New generation is somewhat aware about educating a girl child and many slogans were also raised like "Betibachaobeti padhao". But still in some places people are not aware about the importance of having a girl child especially, in underdeveloped or in different-different tribal areas. Gender discrimination is not a current trend in Indian society. This is different type of violence which reveals the rituals of devaluing of females in Indian society. Females not only face inequality in this culture but they are also even denied the right to be born. Aborting female foetus is both practically and socially acceptable in India. This practice of Female foeticide is driven by many factors but the main factor is to pay a dowry to the future bridegroom of a daughter. While sons are considered as a security to their families in their old age and can perform certain rites, rituals for the souls of the deceased parents and ancestors whereas, daughters are considered as a social and economic burden. Legally female foeticide is a penal offence. If we compare female foeticide with female infanticide so we can see that female infanticide has been long committed in India but female foeticide is considered to be a relatively new practice. The practice of female foeticide generally means the deliberate murder of the foetus when it got diagnosed. As comparatively sons have given so much of importance and are said to be economically desirable as the

¹ <https://soapboxie.com/social-issues/Female-Feticide-Causes-Effects-and-Solutions>

continuation of the family's name is ensured by them. The current position of the females is something like worst within the woman upbringing and inculcation. Girls are only treated as a liability and are responsible for their marital life as well as child bearing. Girl's position in India is deteriorating, they are considered as a burden and they have to face the cruel evil practice of female foeticide and infanticide. Due to the immature belief the female foeticide is practiced in societies that having sons are more economically and culturally advantageous than having a girl child. In contemporary times there is so much of biasness in sexuality which is divided by school, caste, race, religion, faith. People believe in contemporary society that if there is a girl child born in their family so she is a burden over their family. Foetus is being aborted because it is a female foetus. There are many women who themselves ignore a thought of giving a birth to a girl child due to the fear of the torture or the condition they have been going through, might their daughters will also face. All the matured members of the family, father in law, husband take part in selecting and detecting a sex of a child. But at last mother in law takes the final decision for the abortion of the female foetus. The adverse sex ratio by the elimination of daughter will leads to the emergence of huge social problems in future. And there is a big difference between population control and family planning. The eradication of women in our culture, society, community has been globally continued. There are many people who still believe that the daughters are cursed by God for punishing them for their sins and for the evil deeds which they did in their last birth. People with such mentality, are still following such traditional orthodox customs. There are several underlying causes or factors shown by the administrators for practice of female foeticide.

CAUSES LEADING TO FEMALE FOETICIDE

Religious Cause

Religious cause is the major cause for female foeticide, where religion plays an important role. In Indian Society, son is being given so much of preference and practice of foeticide and infanticide is being carried. There are many different-different religious groups who preach this practice of female foeticide and infanticide and they consider daughter's birth as a curse by God for punishing them for their sins in their last birth. When a woman is married, her elders blessed her by saying "Sau Putra Bhava", "Dhoodho Nahao Pootho Phalo" etc., because they consider birth of a son as a blessing.

In India, the ritual of cremation is the most important ritual which is followed by most of the religion. The ritual of cremation is performed by the son and it is believed that the guardians are honored and there soul is peacefully blessed to paradise by performing this ritual. People believe in these traditional rituals and practices and they think that if they don't get a son so their birth is incomplete and heaven is not meant for them. "There is life after death", this phenomena has been followed in Indian society so that is why people have a fear that God will punish them for their sins. In Indian societies, the traditions and rituals are performed by the son or by the other male member of a family. Son is considered as a support for his family. He follows various ceremonies, rituals and traditions of his family and also support his family economically by earning income whereas if a female is doing household work so it is acceptable by her family but if she wants to go out and earn income so that is not acceptable by her family because they are being forced to work at home instead of going outside and so this is the reason that every year so many female foetus are brutally killed. Killing of female foetus or abortions are generally accepted by the people who belongs to such orthodox traditional society and those who believe in following this practice of female foetus. Women had to go for abortions and through which they suffer from various pain like mental, emotional as well as physical pain and the pain of killing of female foetus.

In Indian society, people have so much of faith in God. They worship different Gods and Goddess and there are many parents who pray for a male child only because they think that birth of a son in their family is a blessing from God. Though females are also worshipped in various forms and are considered as Goddess but somewhere they are being suffering from inequality.

Family traditions and customs are mainly performed by a son. After death of the father, his son is a sole person who is responsible for his family and he who becomes the head of family but daughters have to follow the traditions and customs of the family in which she is married and females are not even allowed to attend the cremation ceremony in cremation ground and are also prohibit to attend the shraddha ceremony which is followed by a son every year by performing certain rights, rituals. These all the reasons that why so much of preference is given to a male children and so people believe in the practice of female foeticide.

Social causes

In India, there are many places where male children are given so much preference and girls are ignored in that way. There are various social causes which lead to female foeticide. Some Indian families believe that they will get no profit from girl and they think that male child will one day grow and will earn income and

support their family economically. Some parents think that girl child is a burden on their family and further they think about her dowry and for which they consider her as a curse in their family. There are many cases that if a girl child is born and her parents let her survive rather than killing her so it would be her bad luck that she is born alive because starting from her childhood her parents pressurize her to do household work and she is not even allowed to move out of the house to earn income or to receive education. It is a universal truth that females are devalued in Indian culture. Indian society is not aware about a social change. There are several social reasons for female foeticide which are deep rooted in Indian society.

1. Family name
2. Dowry
3. Poverty stricken families
4. Girl's protection in society

1. Family Name

There are many families who give preference to son and also pressurize the pregnant women to abort the female foetus. They do not even care about the mother's consent about aborting a female foetus. There is no concern or care for the mothers who are carrying child in their womb and are suffering from pain of aborting a child. Women are also not asked for their opinion they are so overburdened by their families to abort a female foetus. People have such orthodox thinking that the family name can only be continued if there is a son in their family. This thinking of continuing a family name by a son is devaluing girl's image and her status in a society and it is believed that a woman is married only to procreate and that too only sons. Women are not valued and are ignored by the society. There is no humanity exist because of the existence of such cruelty against women.

2. Dowry

The concept of dowry is practiced in India. Earlier the higher castes people believe in giving dowry and also they do not hesitate to give dowry. They think it as a pride to give dowry. And later this practice of giving dowry has also been started in lower castes. Dowry is the main cause for female foeticide and female infanticide and the only way to stop this practice is by eradicating the system of dowry from our society. The evil practice of dowry is widely prevalent in India. As a result, daughters are considered to be an economic liability. The dowry system is more rigid in the northern states of India which is likely to contribute to the lesser child sex ratio. Women have little control over economic resources and the best way for a young north Indian bride to gain domestic power mainly comes from her ability to produce children, in particular, sons. Most often in south Indian communities, marriages are not exogamous but often consanguineous, and married daughters usually stay close socially and geographically to their original family. Until recently, dowries were unheard of and benefits of inheritance for the daughters were not ruled out.² In the Muslim community, paying of high dowry is not a prevalent practice³. Also consanguineous marriages are highly prevalent and women are entitled to a portion of parental inheritance.

3. Poverty stricken families

Poverty is also one of the major factor which leads to female foeticide. It has been researched that the child sex ratio is seen at higher rate in higher class people as compared to the lower class people and even the poor society people still thinks that the birth of a girl child is economic burden on them because they think that if a girl child is born in their family so they have to spend a huge amount of money on her, starting from her upbringing till her marriage by giving a dowry. The high class rich people have adopted a concept of sex selection where as poor people can only afford to abort female foetus through detecting it by the method of ultrasound. According to the Law, the sex selection and sex detection are hideous crimes. Because of poverty, parents cannot take care of a girl child for her education, marriage and mostly in dowry cases.

4. Girl's protection in society

There has been a constant increase in violence against women and some families believe that giving birth to a girl child will increase crime rates. Crime rates against women are increasing like domestic violence, rape, harassment. Crimes like this leads to female foeticide. Parents fear to leave their daughters alone at home.

² <http://www.jpgmonline.com/article.asp?issn=0022-3859;year=2008;volume=54;issue=4;spage=276;epage=279;aulast=Garg#ft32>

³ Nassir R, KallaAK. Kinship system, fertility and son preference among Muslims: A review. *Anthropologist* 2006;8:275-81

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The daughters of slums and villages are mostly get attacked by such crimes. Protecting a girlchild by killing her is not a solution to solve problem of emerging crimes like rape harassment, domestic violence, dowry deaths etc. Same like these crimes honor killing is also a crime which is becoming so trendy nowadays. And that is why many families consider female foeticide as a solution to their fear and so then they do not feel embarrassing in the society.

5. Status symbol of society

The status symbol is also a main cause for female foeticide in our Indian Society. Government of India has discontinued the caste system, which previously supported the practice of female infanticide. But in today's modern world it is difficult to state that the caste system alone is the cause of female foeticide. Since ages the status symbol in the Indian Society has always been much regarded by various people. According to many families in our country bearing a son enhances their social status amongst others as they can flaunt their next generation who will continue their tradition and family name. Every time a son is born in the family he is welcomed and given great importance and considered as a blessing from God but on the other hand, birth of daughter is considered as an obligation and deemed to be labeled as a low status symbol. This is the only reason why female foeticide has still continued till date.

LEGISLATIVE AND JUDICIAL TREND ON FEMALE FOETICIDE

Female foeticide is a bitter truth of our society. Its causes are deep rooted in our Indian society. So to stop the practice of female foeticide, legislative measures are required. Legislative measures mean laws, which are available against induced abortions or in particular against female foeticide by providing penal provisions. The people of our society are soulless child, they can't hear the cries of an unborn baby, for them woman is just a child bearer and house keeper. It is really pathetic that it is the daughter only who is emotionally attached to her parents more than a son. She is more caring and helpful, but in spite of this she is killed by her own parents. In the eyes of the soulless society, killing an unborn child is not murder and so they are doing their dirty job without even feeling guilty.

Female foeticide is increasing day by day with such a rapid speed that some effective measures are required to prevent this practice. The first step in the direction of this evil practice is sex determination of the foetus. Sex determination of the foetus in the womb of the mother is done by misusing the pre-natal diagnostic techniques. So first of all the practice of sex determination must be stopped then only we can curb the menace of female foeticide. For all this there is need for legislative measures, which can effectively prevent this evil practice.

In India the legislation that prohibits sex determination, sex-selection and female foeticide is Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994. But before the Act of 1994, there were two other legislations, which provided penalties for abortion which is not justified under Law; these were the Indian Penal Code 1860 and the Medical Termination of Pregnancy Act 1971. The Indian Penal Code is the first law and it contains provisions for prohibiting miscarriage and it is in force since 1860. Indian Penal Code contains very restrictive abortion laws and provides severe penalties for abortions performed without the woman's consent. Then there was a movement to liberalize the law contained in Indian Penal Code, which resulted in the passing of the Act of 1971.

THE PRECONCEPTION AND PRENATAL DIAGNOSTIC TECHNIQUES ACT, 1994

The Act 1994 (Preconception and Prenatal Diagnostic Techniques Act) was modified in 2003 to target the medical profession - the 'supply side' of the practice of sex selection. However non implementation of the Act has been the biggest failing of the campaign against sex selection.

With the progress of science and technology, a need was felt by the legislature to prevent the misuse of pre-natal diagnostic techniques and in this way the Act of 1994 was enacted.⁴ This Act requires that all diagnostic centres must be registered with the authorities. They are required to maintain detailed records of all pregnant women undergoing scans there. These records must include the referring doctor, medical and other details of the woman, reason for doing the scan, and signatures of the doctors. These records must be submitted to the authorities periodically. For implementing the Act, "appropriate authorities" are appointed at the state level and work with the director of health services, a member of a women's organization and an officer of the law. At the district level, the appropriate authority is the medical officer or civil surgeon. Advisory committees consisting of doctors, social workers and people with legal training assist appropriate

⁴ <http://unicef.in/PressReleases/227/Female-foeticide-in-India>

authorities. Supervisory boards at the state and central levels look at the implementation of the Act. The appropriate authority may cancel the diagnostic centre's registration, make independent investigations, take complaints to court, and take appropriate legal action. It may demand documentation, search premises, and seal and seize material. Courts may respond only to complaints from the appropriate authority. Under the Act the following people can be charged-everyone running the diagnostic unit for sex selection, mediators who refer pregnant women to the test, and relatives of the pregnant woman. The pregnant woman is considered innocent under the Act, "unless proved guilty"⁵.

INDIAN PENAL CODE, 1860

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THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971

A careful examination of legal provisions would reveal that the law of abortion in India till passing of MTP Act, 1971 was very strict. It was estimated that before its enactment as many as 5 million induced abortions were carried out in India every year, of which more than 3 million were illegal, but perhaps not even one percent prosecutions and successful convictions have been taken so far." The stringency of law led to many illegal abortions which very severely affected the health of the pregnant women and in many cases led to their death. With the stringent law on abortion, the maternal mortality, resulting from illegal abortions, is high as abortions are performed mostly by unqualified people under unhygienic conditions. The Indian Penal Code could not prevent women from getting illegal pregnancies terminated.

The Act of 1971 has been envisaged with the following objectives:

- Health measures, when there is danger to the life or risk to physical or mental health of the woman.
- Humanitarian grounds, such as when pregnancy is caused as a result of a sex crime or intercourse with a lunatic woman etc.
- Eugenic grounds, when there is a substantial risk that the child, if born, would suffer from deformities and disease.

JURISPRUDENTIAL PERSPECTIVE:

The Indian Judiciary has from time to time come up with ingenious ways to provide protection to the fairer sex and this essentially includes the group of unborn girls too. The Supreme Court in the case of "Centre for Enquiry into Health and Allied Themes (CEHAT) and others v. Union of India" which was filed under section 32 of the Constitution of India under PIL issued directions to Central Supervisory Board, all State Governments and Union Territories for proper and effective implementation of the PCPNDT Act – which mandates that sex selection by any person, by any means, before or after conception, is prohibited. Since 2001, the judiciary has been closely monitoring the implementation of its various orders passed regarding the ban on the use of ultrasound scanners for conducting such tests. Subsequently, it had sought status reports from all states and Union Territories.⁶

CONSTITUTIONAL PERSPECTIVE:

The system of female foeticide is a very old common phenomenon, and in Ancient history, it has recorded millions of sex selection deaths in our society. It is always criticized and committed in two most popular countries in all over the universe i.e. India and China. Female Infanticide and foeticide reflects the low status of woman in a particular country. It is most cruel and harsh demonstration against female by male dominating society. It is specifically connected with abortion on the basis of sex selection, with aim to remove female foetus and curb the population of girl child. Infanticide means killing of girl child after birth

⁵ <https://www.ukessays.com/essays/management/female-foeticide-in-india-management-essay.php>

⁶ <https://www.ukessays.com/essays/management/female-foeticide-in-india-management-essay.php>

due to preference of a male child in the family. In this way 'Female Foeticide' and Infanticide is one kind of genocide. As we all are aware about the thing that, Fundamental Rights of many women are violated or subject to attack not because they are not having those rights or they are made to suffer violence, but because, they are the women. Therefore, the International The protection of rights of both men and woman is now a reality, since part III of the Constitution assigns paramount importance to the Fundamental Right and freedoms. This was not something unusual to expect from the drafters of the Constitution, who were natives and shared the same blood. It violates Article 39 (e) of the Constitution⁷ which states the principle of state policy that the health and strength of women is not to be abused. It ignores Article 51A (e) of the Constitution⁸ which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. The architects of the MTPA, 1971, have not taken into consideration the fundamental rights of the foetus to be born. It is submitted that 'life' exists in the foetus while in the womb of the mother and in this context Article 21 of the constitution of India is applicable to unborn person as well." It appears that, Indian woman primarily justified accepting the Constitution and the mechanism drawn by the drafters of the Constitution with regard to Empowerment of woman⁹. It is believed that the maker of the Constitution was well versed with the culture and scriptural philosophy of the country were in, inequality bore the social-cultural undertones and sex determinatory component, which has to be weeded out for the good and the formulation of the Constitution was the first opportunity to achieve the same without experiencing much resistance. Needless to mention that the Vedic philosophy stands for the recognition of human dignity as well as fairness in the partnership of men and woman, be it familiar or other matters. The societal hiatus against woman and thus, break the barriers on its way to achieve equality irrespective of the sex. This would ensure that woman too would enjoy equal access to law, education and employment, which have historically been the burning issues and continue to remain so at the contemporary times.

CONCLUSION

It is clearly observed that the above discussed reasons alone do not add to the act of girl end in our Indian culture. All the causes are interlinked and they together lead to female foeticide. All the reasons have continuously provoked the society to practice such malice wrongdoing of female foeticide. All the reasons mentioned in this article have a common factor that is gender discrimination, which has ultimately resulted in many cases of female foeticide. The reason mentioned in this article when combined with the misuse of science and technologies leads to the brutal activity of killing female foetuses before they are born.

All these elements have jointly contributed and created an atmosphere where daughter elimination is taking place fearlessly. Routine of female foeticide has unmistakably demonstrated the developing child inclination for different reasons and this has just crumbled the status of a lady in the Indian culture. As mentioned in all the causes, the priority of the families was basically on having a son and no one really wished to have daughters or encourage their birth. This again proves that the estimation of a child is over the quality and significance of a human and its presence. Whatever be the reason, the life that is affected is that of the pregnant woman and her unborn child. The inhuman Behavior affects the woman adversely. The practice of female foeticide can be solved, only when the daughters and sons are given equal preference. The roots of son preference and daughter elimination lie in the very causes mentioned above. The causes mentioned have encouraged daughter elimination through the practice of infanticide and female foeticide all over the years. Every cause of female foeticide shows the curiosity of the parents to detect the sex of the baby so it can be prematurely ended on the off chance that it is a female embryo. This practice is carried out usually because of the orthodox elders of the family and also due to the typical mindset of the people in the Indian society. According to many families in our country bearing a son enhances their social status amongst others as they can flaunt their next generation who will continue their tradition and family name. Every time a son is born in the family he is welcomed and given great importance and considered as a blessing from God but on the other hand, birth of daughter is considered as an obligation and deemed to be labeled as a low status symbol. This is the only reason why female foeticide has still continued till now.

⁷ Article 39 (e) of the Constitution

⁸ Article 51 A (e) of the Constitution of India; fundamental duty

⁹ Article 21 of the constitution of India; Protection of life and personal liberty