

Female Foeticide: Denying The Right To Live

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Introduction

“Chora mare nirbhag ka, chori mare bhaagwaan ki”

(Son of the doomed dies, daughter of the blessed dies)

The patriarchal Indian society has had an age old fascination with the male child. Where sons are considered an investment for the future, daughters are treated as liabilities. The pressure of giving dowry for marrying their daughters and the ability to demand dowry for their sons is one of the main reasons of treating daughters as economic burdens. In majority of the cases the legal system prohibiting dowry has no impact on the practice of dowry. ‘...No one demands dowry, but it is given’ is how the Sarpanch of Chhara village put it in a nutshell. India has come up with hundreds of reasons to justify this bias against daughters. While the farmers in Haryana argue that “Girls are not needed, as they are of no use!” the South Indian communities believe that ‘Bringing up a girl is like watering a neighbour’s plant’.³

Female foeticide has been practiced in India for centuries, with one of the earliest evidences being given by Sir Jonathan Duncan in 1789 of infanticide among the Rajkoomar tribe of Junapore areas of Banaras.⁴ However, with the advent of technology the bias suffered by women from ‘birth to grave’ has now been extended to ‘from womb to tomb’. On one hand where India has progressed at an enormous rate in the field of technology and medical science, on the other hand the same technological advancements are misused for archaic and barbaric practices such as female foeticide. Abortion was legalized in India in 1971 (Medical Termination of Pregnancy Act) on humanitarian grounds. However this is only legal on the grounds that the mother is unable to bear a healthy child or is a victim of sexual assault. Amniocentesis was introduced in 1975 but it soon started being misused for the purpose of sex determination of the foetus. Ultrasonography (USG) being a non-invasive technique soon gained popularity and replaced amniocentesis. Over 25,000

³ Victims of Dowry, available at www.un.org.rights

⁴ Pakrasi, KB. Female Infanticide in India. Calcutta; Editions Indian, 1970.

prenatal units have been registered in India⁵, where ultrasonography is used to determine the sex of the foetus. With sex determination facilities so easily available at any 'clinic-next-door' and people ready to dish out any sum of money demanded of them female foeticide has become a raging practice. The lack of strict enforcement of laws regulating pre-conception and pre-natal techniques such as ultrasonography is one of the main factors for decrease in sex ratio and increase in female foeticide.

In 1994, the Government of India passed the Pre -conception and Pre -natal Diagnostic Techniques (Prohibition of Sex Selection) Act which illegalised sex determination. However the implementation of this Act was poor. The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act replaced the previous act by way of amendment in 2002, in spite of the fact that it was never properly implemented in the first place.

Given the traditional preference of the male child, it is not surprising that from the very first census of 1871 India has consistently shown an abnormal sex ratio of 940 women for every

1000 men. The child sex ratio is calculated as number of girls per 1000 boys in the 0-6 years age group and has consistently declined from 976 girls per 1000 boys in 1961 to 945 in 1991, 927 in 2001 and 940 in the 2011 census⁶. According to the reports submitted by the United Nations Children's Fund, up to 50 million females have gone missing from India's population as a result of systematic gender discrimination in India.⁷ It is high time that the nation became aware of the menace of female foeticide. After all where have all the young girls gone?

⁵Genocide of India's daughters. Mail Online. c2006. Available from: <http://www.dailymail.co.uk/news/article-393896/Genocide-Indiasdaughters.html>. [Cited on 2008 Jun 19].

⁶ Pakrasi KB, Haldar A. Sex ratios and sex sequences of births in India. *J Biosoc Sci* 1971;3:327-37.

⁷ Female foeticide in India. C2007. Available from http://www.unicef.org/india/media_3285.htm. [Cited on 2008 Jun 26]

Factors Responsible For Female Foeticide

*“Prabhuji mein teri binti karoon, Paiyan Paroon bar bar,
Agle Janam Mohe Bitiya Na Dijen, Narak Dije Chahe Dar...”
(Oh, God, I beg of you, I touch your feet time and again,
Next birth don't give me a daughter, Give me Hell instead...)*

-An old folk song

Status of women

If we go down to the roots of the problem, the poor status of the women in India together with gender discrimination is the most important factor of decreasing sex ratio. During the Vedic age women were worshipped as Goddesses. However, with the descent of time especially after the Muslim period there was a sharp decline in the status of women. In the British period their status degraded to being considered ‘slaves of the slaves’. In a patriarchal society such as ours sons are called upon to provide for parents in their old age as well as to take the lineage of the family forward. According to Hinduism only the son can light the pyre of his father and not the daughter. Women are considered ‘*paraya dhan*’ and a liability who has to be married off to shift the burden. Everybody wants daughters-in-law to produce sons for the family but nobody wants daughters.

Gender discrimination

Gender discrimination manifests itself in the form of lack of medical care and spending less money on the nutrition, health care and education of daughters. What is most shocking is that some women approve the practice of female foeticide and discriminate between their sons and daughters. A survey was made by Rajindra Hospital, Patiala which showed that 56% women do not want to give birth to a girl child at all because of the costs involved and also because they feel it will bring shame to them while giving birth to a baby boy will increase their respect in their husband’s family. Another case study on the attitudes of Punjabi women towards

female foeticide revealed that three fourth of them knew about the different methods of sex determination and 23% of this three fourth approve the practice of female foeticide.⁸ It has always been argued that improvement in the literacy rates and socio-economic development could bring about a change in the situation but it has been observed that educated people are more prone to discriminate between both sexes. Also, female foeticide is no longer common among poor families only and it has become a lifestyle choice among the rich as well⁹.

Advancement of technology

Due to the advancement in technology various techniques of sex determination have come up. The sex of a foetus can be determined within 13-14 weeks through transvaginal ultrasonography and within 14-16 weeks through abdominal ultrasonography. This has rendered sex determination of the foetus cheap and easy. Pre conception techniques such as the Ericsson method which separates the X and Y chromosomes and inserts back only the Y chromosomes into the womb to ensure a boy and the Pre-implementation Genetic Diagnosis which also changes the cells and reinserts them are comparatively expensive and hence, not so popular. As mentioned above, approximately 25, 770 pre-natal clinics have been officially registered in India.¹⁰ There's no account of the unregistered and unqualified set ups because they cater to the interests of the people engaging in the practice of female foeticide. Even the qualified doctors find ways to violate the law in order to earn money. No documentation is done to account as evidence and for those involved in this racket it is a lucrative source of income.

⁸ Sureender S, Rao Rand Niranjana S. Attitude towards Female Feticide: Does it Influence the Survival Status of Female Children? *IASSI Quarterly* 1997; 16:106-114.

⁹ Sharma BR and Relhan N. The vanishing girl child. *J Soc Welfare*. 2007; 53 (7): 26 - 29.

¹⁰ Female feticide continues unabated in India. Available at www.dailymail.co.uk. 4th July 2006.

Dowry

The evil practice of dowry has spread nationwide, even to those communities where it was never the custom. Dowry has led to a lot of violence against women ranging from female foeticide to bride burning. The fear of having to pay for the dowry of their daughter has forced people to use any means to avoid giving birth to daughters at all costs. Sonalde Desai has reported that there are advertisements of sex determination clinics saying “It is better to pay 500 Rs. now than 50,000 Rs. (in dowry) later”.

The Legal Aspect

Article 21 of the Constitution of India states that a child conceived is entitled to full development, irrespective of its sex. The determination of the sex of the child at a pre natal stage or otherwise is the denial of the right to develop as per the Article.¹¹ The first ban on sex determination was imposed in 1978 following the alarming findings of All India Institute of Medical Sciences 1974 Survey on the number of demands for sex selective abortions.

The Pre-Natal Diagnostic Techniques Act (PNDT) was passed in 1994 and came into force from 1st January, 1996. It was further amended in 2002 when it became the Pre-Conception and Pre-Natal Diagnostic Techniques Act (PC-PNDT). It has also been amended in 2011. The Act of 1994 failed to take into account technological advancements making sex selection possible both before and after conception. The 2002 Amendment aims ‘to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic technique for the purpose of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or serious congenital malformations or sex linked disorders and for prevention of their misuse for sex determination leading to female foeticide and for

¹¹ Vinod Soni And Anr. v. Union of India, 2005 CriLJ 3408

matters connected therewith or incidental thereto¹². The PNDT Act aimed to regulate and prevent the misuse of diagnostic techniques to determine the sex of the foetus for the purpose of sex selective abortion. The PNDT Act, 1994 was enacted to be a weapon to combat the decline in the child sex ratio by preventing the misuse of technology. This Act restricts medical practitioners from determining the sex of the foetus and empowers the Government to take appropriate action in case of violation of the PNDT Act. Initially the Act failed to implement properly and was subsequently amended in 2002. With the passage of time various gaps have been identified in the Act, both at the level of interpretation as well as implementation.

The Census of 2001 revealed a decline in the country's sex ratio, a Public Interest Litigation (PIL) was filed by the Centre for Enquiry into Health and Allied Themes (CEHAT), an NGO and others versus the Union of India (*CEHAT v. Union of India*)¹³ in an appeal to strengthen the enforcement of the Act. The Supreme Court directed all state governments to create public awareness against the practice of pre-natal sex determination and female foeticide through advertisements and electronic media. Also, the need for an amendment was directed to be looked into. Also, Appropriate Authorities (AA) and Advisory Committees (AC) were to be constituted at every district and sub-district level to ensure the implementation of the Act.

The Medical Termination of Pregnancy (MTP) Act 1971 was passed before the PNDT Act and it legalizes abortion¹⁴ but sex selective abortions are not a criteria where a

¹² Long title of the Act. Accessed from [http://www.mohfw.nic.in/pndt%20-%20%20\(act%202002\).htm](http://www.mohfw.nic.in/pndt%20-%20%20(act%202002).htm)

¹³ AIR 2001 SC 2007

¹⁴ Section 3(2) of the MTP Act provides circumstances under which MTP is permitted which include situations where mother's life is at risk, substantial risk of child being born abnormal/unhealthy.

legal abortion can be obtained. This is because sex selective abortion is punishable under Sections 312 and 315 of the Indian Penal Code, 1860.¹⁵

As on June 2009, there were 606 cases pending under the Act. It has also been recorded that as many as 22 out of 35 states had not reported a single case of the violation of the PNDT Act.

With the most recent landmark judgment dated 17th February, 2016, Delhi High Court disposed of three different writ petitions: *Indian Radiological and Imaging Association v. Union of India*¹⁶, *Indian Medical Association v. Union of India*¹⁷ and *Sonological Society of India v. Union of India*¹⁸ and clarified a number of questions related to the PC-PNDT Act. The High Court held that Rule 3(3)(1)(b) of the PNDT Rules (as it stands after the amendment w.e.f. 9th January, 2014) as ultra vires to the extent it requires a person desirous of setting up a Genetic Clinic/Ultrasound Clinic/Imaging Centre to undergo six months training imparted in the manner prescribed in Six Months Training Rules.

Suggestions To Curb Female Foeticide

*“Humne tujhpe hazaron sitam hain kiye, humne tujhpe jahan bharke zulm kiye,
Humne socha nahi tu jo ud jayegi, ye zameen tere bin sooni reh jayegi...”*

*(We have done injustice against you a thousand times, we have given you tortures
of the world, we did not think if you flew away, this land will remain deserted
without you...)*

¹⁵ Jaising, Sathyamala & Basu. 'From the Abnormal to the Normal-Preventing Sex Selective Abortion through the Law', Lawyers Collective, India, 2007.

¹⁶ W.P.(C) 6968/2011

¹⁷ W.P.(C) 2721/2014

¹⁸ W.P.(C) 3184/2014

Female foeticide is an underlying malady with no instant fix for it. It is becoming more and more rampant due to the fact that the society has a primitive mindset and believes the birth of a girl child to be of no economic or social advantage. Coupled with that is the generations of bias that favours bearing a male child. Therefore, efforts directed solely towards curbing the practice of prenatal sex determination which leads to female foeticide are unlikely to provide rich dividends. However, measures can be taken to improve the status of the women in the society, though this is likely to show beneficial effects only after several years. The situation calls for a two-fold strategy: one to take steps to improve the status of women in the society and the other to ensure effective implementation of the Pre-Conception and Prenatal Diagnostic Techniques (PC-PNDT) Act so that the practice of sex determination and selective abortion becomes difficult.

Women Empowerment

The Indian government has taken several steps for the improvement of the status of the women in the society. These steps mainly comprise of providing greater opportunities for education, employment, enforcement of rights and say in the matters of governance. Education of women is a powerful tool to spread awareness among them and thereby increase nutrition levels, raising the age of marriage, awareness about family planning etc. They have amended the Succession and Inheritance Acts to correct the discrimination in terms of women's right to property. NGOs can promote formation of self help groups, organise informal education for adult females and school dropouts, as well as provide counselling and support services to married and pregnant women to discourage them for undergoing sex-selective abortion.

Reforms to the PC-PNDT Act, 2002 along with MTP Act, 1971

The PC-PNDT Act is laws made with good intentions. The Act bans sex selection either before or after conception and also regulates the different kinds of prenatal diagnostic techniques to ensure that the use of prenatal diagnostic techniques are

restricted to registered institutions and operators, which have to maintain detailed records. Violation of the PC-PNDT Act carries an imprisonment term of three years or fine upto ₹10,000 or both and on subsequent conviction this may extend to an imprisonment term of five years or fine upto ₹50,000 or both. The reason why the law has proved ineffective is because it is difficult to regulate all clinics that use ultrasound for sex determination as well as for a host of other purposes including detection of genetic abnormalities in the foetus.¹⁹ The implementation of the Act however is slow and needs to be improved. There is a need to plug the loopholes in the Act. Registration procedures for the pre natal and pre diagnostic clinics should be made tougher and clinics run by unqualified doctors and personnel should be registered and better regulated. Ingenious ways designed to violate the law and conduct illegal sex determination and selective abortion can be curbed by conducting surprise checks and sending dummy patients. Under section 7 and section 16 A of the PC-PNDT Act it is provided that the Central Supervisory Board, the State's Supervisory Board and the Union Territories' Supervisory Board would meet at least once in six months, so as to supervise and oversee how effective is the implementation of the PC-PNDT Act. On many counts, the PC-PNDT Act is rendered ineffective because of the liberal Medical Termination of Pregnancy Act, 1971 which allows abortion on several grounds including medical trauma and failure of contraceptives. This is a major loophole because many people may fake these situations and find ways to violate the law. While the feminist discourse on abortion advocates that women have the right to do anything with their own body, sex selective abortion in itself is a form of female violence. In order to plug this particular loophole, the Medical Termination of Pregnancy providers need to be more vigilant while performing abortions so as to distinguish between sex selective abortions and genuine cases of abortion.

¹⁹ George SM. Millions of missing girls: From fetal sexing to high technology sex selection in India. *Prenat Diagn* 2006;26:604-9.

Intensive Information, Education and Communication (IEC) campaigns for raising awareness

The Government of India has launched several campaigns to spread awareness, one of them being “Save the Girl Child Campaign”. Its main objective is to highlight the achievements of young girls to show they are no less than boys and to thereby lessen the bias towards the male child. Boys need to be educated from an early stage to treat girls with equal regard. The mass media should make efforts to portray a positive image of women and to stop their objectification. From a young age itself, children should be made aware of the dangers of a skewed sex ratio and the evils of female foeticide. The long term vision is to create an environment where sons and daughters are equally valued and the whole nation should join hands to achieve the same.

Decreasing economic expenses of families

One of the main reasons families do not want to bear daughters is because of the economic strain created on them to bring up daughters and to marry them off. Provisions can be made to provide free and compulsory education to girl children up to higher secondary level. This would decrease the so-called “unnecessary investment” on daughters made by the parents as well as empowering the girls with education. Certain schemes should be started to provide economic provisions for the girl children such as creating employment opportunities by providing reservation to women in certain occupations such as teaching, nursing etc. Not just for the girls, provisions can be made to provide social security such as pension to parents of the girl child who are above 65 years of age and have no sons.

Steps to be taken by medical colleges and professional bodies

Medical colleges and professional bodies such as Indian Medical Association, the Federation of Obstetric and Gynaecological Societies of India and Association of Radiologists need to take a stand in countering this heinous practice. Their role may include sensitizing medical students who are the doctors of tomorrow towards the

dangers of the skewed sex ratio as well as the ethical and moral wrong of female foeticide. Workshops and awareness campaigns may be organised by them to make the whole fraternity aware about the problem and the punishment of violating the laws against sex determination and selective abortion.

Conclusion

India has a long way to go in her fight against the primitive practice of female foeticide. Time is quickly ticking away. People do not realise that a shortage of girls would lead to a shortage of eligible brides to bear their sons as well. However, the unequal status prevalent between men and women cannot be bridged by just enacting and enforcing legislations unless there is public support. A century old practice, existing in the society like a malady cannot be eliminated in a few days. It is going to take a lot of time to make people aware of their rights and the fact that both sexes are equal. This is exactly why the proper administration of criminal laws is needed. There exist a multitude of laws which govern the pre-conception and pre-natal techniques but it is unbelievable how nobody notices the lack of implementation of the said laws. This kind of change can only be brought about by rethinking the existing criminal laws to change them and ensure their effective implementation. Then only justice can be ensured. The legislations enacted are not supported by the will of the people. The public is not aware and has to be made aware of the steps taken for the upliftment of women in the society. Due to this unawareness the plans face great resistance and opposition from the conservative society. Since the conservative social thinking is deeply rooted in our patriarchal society, hence the legislations should be enacted with the support of the public with their willingness. A concerted effort by the law makers, medical fraternity, political leaders, NGOs, media and the community itself is the need of the hour.