

## **GROWING MENACE OF FEMALE FETICIDE IN MODERN SOCIETY AND JUDICIAL RESPONSE**

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### **Introduction**

Women in ancient India were held in high esteem. The position of a woman in the *Vedas* and the *Upanishads* was that of a mother (*maata*) or goddess (*devi*). In *Manusmriti*, a woman was considered as a precious being to be protected first by her father, then by her brother and husband, and finally by her son. With the passage of time, the status of woman was lowered. Muscle power and money power dominated the societies. Since men fought the wars and ran the enterprises of industrial production, they considered themselves superior to women.

In the early Vedic age, girls were looked after with care. They were given the facilities of education. Remarriage of widows was permitted. But in the later Vedic period, daughters were regarded as a source of misery. The practice of polygamy deteriorated the status of women. Women in the later civilizations were not allowed to go to schools. In the Gupta period, they were allowed to listen to the scriptures. In the medieval period, the practices of *purdha* system, dowry and *sati* came into being. *Sati* and polygamy were glorified. It was thought that the right place for woman was in the home. Her main duty was to cook and attend to all other menial jobs. They were considered fit for producing and bringing up children. Thus, women had been deprived of their rightful place in society. This was and has been going on for centuries.

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The inhuman practice of *sati* where the wife burns herself alive in the funeral pyre of husband existed through the centuries. Raja Ram Mohan Roy fought against this evil practice and it was finally abolished by Lord William Bentinck in 1829. After the development of science and technology, female foeticide is being practiced on a large scale.

Female foeticide is violation of a basic human right and guarantee under the Constitution. In case of female foeticide, the female children in the wombs of expecting mothers, are not only denied the right to live but are robbed to their right to be born. The selection of male child over female is enough proof for denial of right to birth of a girl child. Social, cultural, financial and psychological reasons are responsible for the prevalence of this evil female foeticide in our society.

Female foeticide is the termination of the life of a fetus within the womb on the grounds that its sex is female. Female foeticide is thus the conjunction of two ethical evils: abortion and gender bias. A fetus' right to life outweighs the parents' rights to wealth, pride, or convenience, whether the fetus is male or female. The term 'sex selective abortion' is preferable to the term 'foeticide' since it points to both of the ethical evils inherent in this practice.

Female foeticide has replaced female infanticide as a means to reduce or eliminate female offspring. In certain societies where women's status is very low, many female fetuses are aborted. Thus, at least 100 million of the total numbers of aborted female fetuses have been victims of female foeticide. This number is based on a predicted ratio of boy-to-girl births and does not take into account the male and female fetuses that are aborted for non-gender-based reasons.

Many societies, both eastern and western, have a history of infanticide. For thousands of years, parents have exterminated baby girls by poisoning, strangling, or burying them alive. This practice decreased in the Greco-Roman world as Christianity flourished, and is nearly non-existent in the West today.

In countries such as China and India, the practice of infanticide continued into the 20<sup>th</sup> century. However, the 1970s saw a dramatic drop in the girl-to-boy ratio in India, when abortion was legalized and ultrasound technology enabled families to determine the sex of their child in the fourth month of pregnancy. By 2005 the ratio slipped to 814 girls for every 1,000 boys, as opposed to the natural rate of 952 girls for every 1,000 boys.

According to the British Medical Journal *Lancet*, approximately 50 million girl fetuses have been victims of feticide in China. In India the number is estimated at 43 million. Approximately 7 million more are credited to Afghanistan, Pakistan, Nepal, and South Korea. Because China and India account for 40% of the world's population, an imbalance in these two countries alone has a profound impact on global population statistics. According to the December, 2007 UNICEF *Report*, India is 'missing' 7,000 girls per day or 2.5 million each year.

Girls in parts of Southeast Asia (primarily India and China) are being killed even before they have a chance to be born. The numbers of females are dwindling. Sex ratio (female to male) is getting worse every year as these areas are becoming more affluent and have easy access to modern-day technology to get abortions done without any serious medical consequences. Current sex ratio in the worst affected regions stands at 50 girls: 100 boys in the age group of 0-6 years. There are also cases where girls are not aborted, but they usually die within the first year or two from lack of care by parents, or they are murdered. Studies have shown that the number of girls reported for vaccinations is less than the number at the time of birth. Further yet, this number drops drastically for school admissions. In short, girls continue to be treated as a liability, a burden that is best removed right when it is born.

### **Main Causes**

1. Dowry system where parents of the bride have to pay the groom's family to marry off their daughter. Higher the dowry, better the chances of a girl getting married. Of course, an unmarried girl is a blot on a family's honor. Since we are a still developing country

and poverty been the top reason which is followed by illiteracy, people think that a girl's birth brings a lot of misfortune.

2. The social, cultural and religious fiber of India is predominantly patriarchal contributing extensively to the secondary status of women. The patrilineal social structure based on the foundation that the family runs through a male, and makes male a precious commodity that needs to be protected and given special status.
3. Girls don't propagate family name, and neither does the family property stay in the same family.

### **Consequences**

1. **Women's Health:** There are women who have to undergo numerous abortions in hopes of getting a son at the risk of not being able to conceive again. They have even higher chances of being abused and abandoned by their husbands and families once they cannot conceive and haven't even produced a son. Some women don't have the financial means to consult qualified physicians, so they settle for quacks that are available in plenty, and thus endanger their health immensely. There are reports of these quacks prescribing testosterone to women who want a male child resulting in increase in cases of cancer among women and the birth of eunuchs. In addition to that, emotional and mental strain that a woman goes through is not considered important at all. She is left alone to suffer.
2. **Women Being Trafficked:** Stories of women being bought from the poor regions of the country for men who can't find themselves brides in the affluent parts affected by adverse sex-ratio are already making news. There is also news of women being bought and abandoned or sent to other men once they have produced a son. Long distance brides are being bought from a completely different culture and are forced to adjust to their new homes with new culture, new language, and far away from their original families.

**3. Women Being Abused and Sexually Exploited:**

Although it is invariably happening already, incidences of young girls (children) as well as older women being raped and forced into polygamy are to see a leap in numbers if the current trend of mass extinction of the female gender continues at the same pace.

**4. Suicide Rates:** Suicide rates in women are in increase. Their psychological health and physical health is suffering. In short, the female gender is doomed if we don't do anything about fixing the problem we have at hand.

**5. Violence amongst Men:** With a lack of proper family institution at home, men are bound to resort to aggressive means to expend their energy when they are not busy making money or beating women they bought because they couldn't give them sons in the first go.

Female feticide has adversely affected Indian society. 36% of men between the ages of 15 and 45 in the wealthy State of Haryana are unmarried. This prevalence of unmarried men has a destabilizing effect that counteracts stabilizing and enriching effects of families in a society. The poorer of these unmarried men seek brides from India's economically challenged eastern States, and wives obtained in this way tend to be exploited and in some cases passed on from one husband to the next.

**Who is Responsible?**

This ethical problem goes along with economic growth in many cases. It is the wealthy families that can afford ultrasounds and abortions. If unchecked, the problem will grow in proportion to the Indian economy.

The parties responsible in this genocide include parents, Indian society, Indian Government and religious leaders, worldwide consumers, trade partners and allies of India, and corporations such as GE who supply many ultrasound machines that are used primarily for purposes of feticide.

### **Global Effects of Female Feticide**

All countries where female feticide is practiced are at risk for being caught in a vicious circle. Female feticide leads to low female-to-male ratios, which in turn perpetuates low status of women. Conversely, low status of women leads to more female feticide.

Rodney Stark, in *The Rise of Christianity*, points out that one of the ways Christianity revolutionized the status of women in Greco-Roman society was by opposing all infanticide. Stark cites the social scientific work of Guttentag and Secord: "Linking cross-cultural variations in the status of women to cross-cultural variations in sex ratios. ... To the extent that males outnumber females, women will be enclosed in repressive sex roles as men treat them as 'scarce goods'. Conversely, to the extent that females outnumber males ... women will enjoy relatively greater power and freedom." As the ratio of women to men is on increase, women have come to enjoy higher status in the society as a whole, not only amongst the growing proportion of Greco-Romans who are Christians.

If an increase in ratio of women to men brings higher status to women, a decrease in this ratio risks the opposite effect. Thus, the decrease in the boy-to-girl birth ratio, itself the result of the low status of women in Indian society, risks a sharp further decrease in the status of women from bad to worse. The danger is a vicious circle bringing continually greater female feticide and lowering of the status of women in Indian society.

All countries where female feticide is practiced are at risk for falling into this vicious circle. Therefore, it is especially urgent for Orthodox Christians to respond to female feticide.

### **Legal Aspects Related to Feticide**

#### **The Indian Penal Code, 1860**

Sections 312-316 of the Indian Penal Code, 1860 (IPC) deals with miscarriage and death of an unborn child and depending on the severity and intention with which the

crime is committed, the penalties range from seven years to life imprisonment for fourteen years, and fine.

- **Section 312: Causing miscarriage**

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Explanation:** A woman who causes herself to miscarry, is within the meaning of this section.

- **Section 313: Causing miscarriage without woman's consent**

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- **Section 314: Death caused by act done with intent to cause miscarriage**

Whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**If act done without woman's consent**

If the act is done without the consent of the woman, the person shall be punished either with [imprisonment for life] or with the punishment above mentioned.

**Explanation:** It is not essential to this offence that the offender should know that the act is likely to cause death.

- **Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth**

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

- **Section 316: Causing death of quick unborn child by act amounting to culpable homicide**

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act because the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Illustration:** A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die, but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Until 1970 the provisions contained in IPC governed the law on abortion. IPC permitted 'legal abortions' did without criminal intent and in good faith for the express purpose of saving the life of the mother. Liberalization of abortion laws was also advocated as one of the measures of population control.



### **The Medical Termination of Pregnancy Act, 1971**

The Medical Termination of Pregnancy Act was passed in July 1971, which came into force in April 1972. This law was conceived as a tool to let the pregnant women decide on the number and frequency of children. It further gave them the right to decide on having or not having the child. However, this good intentioned step was being used to force women to abort the female child.

Thus both these laws were meant to protect the childbearing function of the woman and legitimize the purpose for which pre-natal tests and abortions could be carried out. However, in practice we find that these provisions have been misused and are proving against the interest of the females.

### **The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

In order to do away with lacunae inherent in previous legislation, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act had to be passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the fetus and stated punishment for the violation of the provisions. It also provided for mandatory registration of genetic counseling centers, clinics, hospitals, nursing homes, *etc.* The main aim to enact this Act was to combat the practice of female feticide in the country through misuse of technology, done surreptitiously with the active connivance of the service providers and the persons seeking such service.

The Act was amended in 2003 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio as revealed by the Census 2001 and with effect from 14.02.2003, due to the amendments, the Act is known as the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

The main purpose of enacting the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 has been to:

1. Ban the use of sex selection techniques before or after conception;
2. Prevent the misuse of pre-natal diagnostic techniques for sex selective abortions;
3. Regulate such techniques stringent punishments have been prescribed under the Act for using pre-conception and pre-natal diagnostic techniques to illegally determine the sex of the fetus.

The authorities empowered and pertinent as well as important provisions of the Act are as follows:

1. The appropriate Authorities at the District and State levels are empowered to search, seize and seal the machines, equipments and records of the violators.
2. The sale of certain diagnostic equipment is restricted only to the Bodies registered under the Act.
3. The Government has also taken various steps to support implementation of the legislation, including through constitution of a National Inspection & Monitoring Committee (NIMC), Central and State Supervisory Boards, capacity building of implementing agencies, including the judiciary and public prosecutors and community awareness generation through PRIs and community health workers such as Auxiliary Nursing Midwives (ANMs) and Accredited Social Health Activists (ASHAs).
4. The Act has a Central and State levels Supervisory Board, an Appropriate Authority, and supporting Advisory Committee. The function of the Supervisory Board is to oversee, monitor, and make amendments to the provisions of the Act. Appropriate Authority provides registration, and conducts the administrative work involved in inspection, investigation, and the penalizing of defaulters. The

Advisory Committee provides expert and technical support to the Appropriate Authority.

5. Sec. 6 of the said Act clearly says that determination of sex is prohibited.
6. Sec. 22 prohibits advertisements relating to pre-natal determination of sex and punishment for contravention.
7. Sec. 23(3) of the said Act, lays down that any person who seeks the aid of a genetic counseling centre, a genetic laboratory or a genetic clinic, or of a medical geneticist, gynecologist or registered medical practitioner, for applying pre-natal diagnostic techniques on any pregnant women (unless there is evidence she was compelled to undergo such diagnostic techniques) for purposes other than those specified, shall be punishable with imprisonment for a term that may extend to 3 years and with a fine which may extend to Rs. 10,000 and any subsequent conviction may involve imprisonment which may extend to 5 years and a fine of up to Rs. 50,000.
8. Before conducting any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands.
9. Prenatal tests may be performed in various specified circumstances, including risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple.

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

Section 312 of IPC read with the Medical Termination of Pregnancy Act, 1971 where all the restrictions imposed therein, including the time limit of 20 weeks, other than the ones to ensure good medical conditions, infringe the right to abortion and the right to health, which emanate from right to life as guaranteed by Article 21 of the Constitution. Freedom from interference in one's privacy and family life is protected by Article 12 of the Universal

Declaration of Human Rights, Article 17 of the Civil and Political Rights Covenant, Article 11 of the American Convention, and Article 8(1) of the European Convention. Right to abortion is a species of right to privacy, which is again proclaimed a continuance of the right to life under Article 21 of the Constitution of India.

### **Judicial Activism and Response**

Our honorable judiciary in India had observed 2007 as the Awareness Year of Female Feticide and dealt in a strict manner with those responsible for this crime. The former Chief Justice Y.K. Sabharwal had declared while delivering his presidential address at a State-level seminar on 'Eradication of Female Feticide', jointly organized by the Punjab Department of Health and Family Welfare, and Punjab Legal Services Authority that law can play an important role in checking this menace of female feticide.

1. ***Cehat v. Union of India***<sup>1</sup>: In the landmark case of *Cehat, Masum and Dr Saba George v. Union of India and Others* - in light of the alarming decline in sex ratios in the country to the disadvantage of women, this petition was filed seeking directions from the Supreme Court for the implementation of the Pre-Natal Diagnostic Techniques Act which regulates the provision of prenatal diagnostic technology. In this case the Court took on the unique role of actually monitoring the implementation of the law and issuing several beneficial directives over the course of 3 years during which the case was proceeding in the Court. This petition put the issue of sex selection and sex selective abortion on the national agenda and as a consequence there have been heightened activities on this issue by government and non-governmental agencies alike.

In the words of the Supreme Court of India, it is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has

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<sup>1</sup> (2003) 8 SCC 412.

soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents compelled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide where by female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques.

Unfortunately, developed medical science is misused to get rid of a girl child before birth. Knowing full well that it is immoral and unethical as well as it may amount to an offence; fetus of a girl child is aborted by qualified and unqualified doctors or compounders. This has affected overall sex ratio in various States. The Supreme Court of India also directed all the State Governments/Union Territory administrations to create public awareness against the practice of pre-natal determination of sex and female feticide through advertisements in the print and electronic media by hoardings and other appropriate means. The Governments are supposed to furnish quarterly returns to the Central Supervisory Board giving a report on the implementation of the Prenatal Diagnostic Techniques Act, 1994.

**2. *Kharak Singh v. State of U.P. and Others***<sup>2</sup>: Inhere the Supreme Court has certainly recognized that a person has complete rights of control over his body organs and his 'person' under Article 21. It also said to be including the complete right of a woman over her reproductive organs. In the United States of America, the Supreme Court upheld the right to privacy and ended the ban on birth control back in 1965 in the case of *Griswold v. Connecticut*. Eight years later, the Supreme Court ruled the right to privacy included abortions in the landmark case of *Roe v. Wade*. In 1976, *Planned Parenthood of Central Missouri v. Dan Forth*, ruled that requiring consent by the husband and the consent from a parent if a

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<sup>2</sup> 1963 AIR 1295.

person was fewer than 18 was unconstitutional. This case supported a woman's control over her own body and reproductive system. William Brennan, J stated: "If the right to privacy means anything, it is the right of the individual, married or single, to be free from unwanted governmental intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child."

3. **Vijay Sharma and Other v. Union of India**<sup>3</sup>: The couple, Vijay and Kati Sharma, based in the commercial metropolis Mumbai, challenged the validity of the Pre-conception and Pre-natal Diagnostic Tests Act (PCPNDT) Act, a 2001 Indian legislation which bans sex determination. But the judges said in a verdict that sex selection would be as good as female feticide.
4. **Qualified Private Medical Practitioners and Hospitals Association v. State of Kerala**<sup>4</sup>: It was declared that laboratories and clinics which do not conduct pre-natal diagnostic, test using ultrasonography will not come within the purview of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and a direction to the respondents not to insist for registration of all ultrasound scanning centers irrespective of the fact as to whether they are conducting ultrasonography, under the Act. A similar view was taken in the case of *Malpani Infertility Clinic Pvt. Ltd. and Others v. Appropriate Authority, PNDT Act and Others*.
5. **Dr. Varsha Gautam w/o Dr. Rajesh Gautam v. State of U.P.**<sup>5</sup>: A pregnant woman wanted to get her abortion done because there was a girl child in her womb. She approached the petitioner Dr. Varsha Gautam at her hospital, who agreed to perform the abortion although it was an offence to perform such an operation and even determination of the sex by doctors using ultrasound technique was illegal. The petitioner was said to have engaged in getting abortions done in her hospital in collusion with

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<sup>3</sup> AIR 2008 BOM 29.

<sup>4</sup> 2006 (4) Kar L J 81.

<sup>5</sup> AIR 2005 BOM 26.

doctors, who determined the sex of the fetus by conducting ultrasound tests. Her clinic was not even registered under the Act and she was not entitled to conduct pre-natal diagnostic procedures therein.

**6. *Vinod Soni and Another v. Union of India***<sup>6</sup>: By this petition, the petitioners who are married couple seek to challenge the constitutional validity of the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (referred to the Sex Selection Act of 1994). The petition contains basically two challenges to the enactment. First, it violates Article 14 of the Constitution and second, that it violates Article 21 of the Constitution of India. It was held that right to bring into existence a life in future with a choice to determine the sex of that life cannot in itself to be a right. Reliance is placed on a Supreme Court judgment and two earlier decisions whereby the Supreme Court has explained Article 21 and the rights bestowed thereby include right to food, clothing, decent environment, and even protection of cultural heritage. These rights even if further expanded to the extremes of the possible elasticity of the provisions of Article 21 cannot include right to selection of sex whether preconception or post conception thus, not unconstitutional.

In order to strengthen the monitoring of female feticide and girl child survival, the Registrar General of India, has made it mandatory for all the Chief Registrars of Births and Deaths to closely monitor the sex ratio at birth every month.

### **Conclusion**

In India, the available legislation for prevention of sex determination needs strict implementation, alongside the launching of programmes aimed at altering attitudes, including those prevalent in the medical profession. More generally, demographers warn that in the next twenty years there will be a shortage of brides in the marriage market mainly because of the adverse juvenile sex ratio, combined with an overall decline in fertility. While fertility

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<sup>6</sup> 2005 Cri L J 3408.

is declining more rapidly in urban and educated families, nevertheless the preference for male children remains strong. For these families, modern medical technologies are within easy reach. Thus selective abortion and sex selection are becoming more common.

The National Plan of Action for the South Asian Association for Regional Cooperation (SAARC) and Decade of the Girl Child (1991-2000) seek to ensure the equality of status for the girl child by laying down specific goals for her dignified survival and development without discrimination. The codified law worldwide considers human life as sacred, and specific legal provisions have been devised to protect the life of the born and the unborn.

However, the objective of the law gets defeated due to lacunae in the law and lack of proper implementation. Even though the law is a powerful instrument of change yet law alone cannot root out this social problem. The girls are devalued not only because of the economic considerations but also because of socio-cultural factors, such as, the belief that son extends the lineage, enlarges the family tree, provides protection safety and security to the family and is necessary for salvation as he alone can light the funeral pyre and perform other death related rites and rituals. Evidence indicates that the problem of female feticide is more prevalent in orthodox families. It is, therefore, essential that these socio-cultural factors be tackled by changing the thought process through awareness generation, mass appeal and social action. In addition to this all concerned *i.e.*, the religious and social leaders, voluntary organizations, women's groups, socially responsible media, the doctors, the Medical Council/Association (by enforcing medical ethics and penalties on deviant doctors), and the law enforcement personnel should work in a coordinated way.

To conclude one would like to say that awareness amongst people from all walks of life and enlightening them with education are two foolproof tools of combating this ever pervading menace which has plagued our country and rendered the sex ratio to fall drastically. 'Female feticide' is also depicted in a serial named *Na Aana Is Desh Meri Lado* aired on Colors Channel over the



week days to which a notice has been issued by the National Commission of Women of being vocative of the Indecent Representation of Women (Prohibition) Act, 1986 as well as Cable T.V. Networks (Regulation) Act, 1995.

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