

# Female Foeticide and Gender Crises: A Growing Menace in India

\*Yogendra Singh<sup>1</sup>

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*. . . eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices regarding female infanticide and prenatal sex selection.*

**United Nations (1994); paragraph 4.16**

<p><b>Keywords:</b> Sex Ratio, Son Preference, Foeticide; Infanticide; Ultra-sonography; Sex Selective Abortion; Crimes against Girl Children</p>
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## Introduction

In Indian society, female foeticide has emerged as a burning socio-legal issue during the ancient periods. The girl child in India is treated right from her birth as an additional burden an extra mouth to feed, a liability and another man's property. The female have faced many problems in the society time to time. To deprive a women arbitrarily of their rights and privileges, or to deprive them to even being born or killing them in infancy is both immoral and unjust, a violation of God's law. It has a detrimental effect on the society and the individuals who are involved in this practice are responsible for such acts.<sup>2</sup> According to Bahai's as expressions of the Divine Will that "Women have equal rights with men upon earth; in religion and society they are a very important element. Divine Justice demands that the rights of both sexes should be equally respected since neither is superior to the other in the eyes of Heaven."

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<sup>1</sup> \*Asst. Professor, School of Law, IFTM University, Moradabad, Email. [yogendrasingh694@gmail.com](mailto:yogendrasingh694@gmail.com), Mob. 09451713840.

<sup>2</sup> Bahais View Point, PUCL Bulletin September 2001.

Indian economist, Amartya Sen supposed that about 100 million girl children have been aborted before birth, killed after birth or neglected to death.<sup>3</sup>In 1990, Amartya Sen suggested that worldwide, particularly in Asia, millions of women were missing from the population totals of many countries. He also noted the alarming fact that the sex ratio for female children in China, India and South Korea is actually deteriorating while the overall sex ratio for females in those countries has marginally improved. Sen argued that the number of women missing in any population could be estimated by calculating the numbers of extra women who would have survived in that society.<sup>4</sup>

Sex selection has become a significant social phenomenon in several parts of India. It transcends all castes, class and communities and even the North South dichotomy. However, recent medical developments have made a variety of less invasive sex-selection techniques available to would-be parents. As noted in the journal *GeneWatch*:

“ .....in the United States, some fertility clinics are beginning to openly advertise sex selection. For example, several times in 2004, the Sunday Styles section of *The New York Times* carried an ad from the Virginia-based Genetics & IVF Institute, touting its patented sperm-sorting method. Beside a smiling baby, its boldface headline asked, “Do You Want To Choose the Gender of Your Next Baby?”

It is the practice of using medical techniques to choose the sex of one’s offspring. These techniques include sperm sorting, Pre-implantation Genetic Diagnosis

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<sup>3</sup> Amartya Sen, “More Than a 100 Million Women Are Missing” *The New York Review of Books* Volume 37, Number 20, December 20, 1990, <http://www.ucatlas.ucsc.edu/gender/Sen100M.html> (last visited December 12, 2006)

<sup>4</sup> T.V.Sekher and Neelambar Hatti, “Discrimination of Female Children in Modern India: from Conception through Childhood”

(PGD), and selective abortion.<sup>5</sup> Selective abortion in particular has led to national crises in India. In India, the desire for male heirs has created an explosion in the number of clinics that use ultrasound to determine the sex of a fetus and in physicians who perform sex-selective abortions.<sup>6</sup> Since ultrasound machines were first introduced into India in 1979, an estimated ten million female fetuses have been aborted.<sup>7</sup>

Another form of eliminating the girl child has been the practice of female infanticide. It is a deliberate and intentional act of killing a female child within one year of its birth either directly by using poisonous organic and inorganic chemicals or indirectly by deliberate neglect to feed the infant by either one of the parents or other family members or neighbours or by the midwife. Kolloor (1990) defines infanticide as, “Killing of an entirely dependent child under “one year of age” who is killed by mother, parents or others in whose care the child is entrusted”. It is unfortunate that the parents also view her as a liability. This attitude is rooted in a complex set of social, cultural, and economic factors. It is the dowry system, lack of economic independence, social customs and traditions that have relegated the female to a secondary status. The degree may vary but the neglect of the girl child and discrimination goes hand-in- hand. Whoever older laws have been reformed and few changes have taken place in the Indian legal system regarding children victims of crime.<sup>8</sup>

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<sup>5</sup> Marcy Darnovsky, *Revisiting Sex Selection: The Growing Popularity of New Sex Selection Methods Revives an Old Debate*, 17 GENEWATCH 3, 3 (2004) (alteration added).

<sup>6</sup> Neil Samson Katz, *Abortion in India: Selecting by Gender*, WASH. POST, May 20, 2006, at B09. For a discussion of the motivations underlying sex selection in China and India, see Part II.A, *infra*.

<sup>7</sup> *Id.*

<sup>8</sup> The Juvenile Justice (Care and Protection of Children) Act (2000), first enacted in 1986, is progressive in many aspects but is limited in scope, as only children in need of care and protection and children in conflict with the law come under its purview. Goa, a small state on the west coast of India, has a special comprehensive law, the Goa Children’s Act (2003), but it is unique to Goa and restricted to the state. Attempts to pass central legislation addressing offences against children are ongoing.

There are several institutions (Government and nongovernment) that are attempting to bring in changes in the practices related with the discrimination against the Girl Child in India. Discrimination against the Girl Child is a very serious social problem prevailing in India. One Oath Taking Ceremony<sup>9</sup> to save the Girl Child campaign was launched at President House on 8th March 2009 in Delhi by the then President of India Mrs. Pratibha Patil to combating the such problem.<sup>10</sup> The social-economic-cultural thinking in India promotes preference for male child. Breaking law and indulging in illegal activities is also an acceptable practice for fulfilling that desire for male child amongst the Indian families. Census of India, 2011,<sup>11</sup> has revealed the worst child sex ratio (0-6 years) since independence. The sex ratio is defined as the ratio of males to females in a population, and is generally expressed per 100 females. In India sex ratio is expressed as number of female per 1000 male. Biologically normal child sex ratio ranges from 102 to 106 male per 100 female, converting the same in Indian terms it is 943-980 females per 1000 males (World Health Organisation, 2011). The current sex-ratio as per the census figures as shown in Table 1.

**Table - 1**

<b>Sex Ratio and Child Sex Ratio</b>		
<b>Year</b>	<b>Sex Ratio</b>	<b>Child Sex Ratio</b>
<b>1991</b>	<b>927</b>	<b>945</b>
<b>2001</b>	<b>933</b>	<b>927</b>
<b>2011</b>	<b>940</b>	<b>914</b>

Source: Census of India (2011)

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<sup>9</sup> 8th March 2009:

<sup>10</sup> During the ceremony President Patil urged opinion leaders, people in responsible position to join the crusade and spread the message of saving the girl child. The ceremony involved 50 opinion leaders taking oath. Media Activist Manoj Rastogi mentioned in his speech that all the members of the society must join to curb the menace of female foeticide. The event was organised by Telemission Media Private limited (President to Launch Save Girl Child, 2009).

<sup>11</sup> Census of India, 2011, Provisional Data.

Clearly the gap is quite large between the desired biological child sex ratio and the prevalent sex ratio. Though the government may feel triumphant over the overall sex ratio, which has increased by many points, the constant drop in child sex ratio is a disturbing figure. Table-2 reveals the top five and bottom five states according to child sex ratio:

**Table – 2**  
**Top 5 States/UT**

<b>S. No.</b>	<b>State / UT Child</b>	<b>Sex Ratio</b>
1.	Mizoram	971
2.	Meghalaya	970
3.	Andaman & Nicobar Islands	966
4.	Puducherry	965
5.	Chhattisgarh	964

**Bottom 5 States/UT**

<b>S. No.</b>	<b>State / UT Child</b>	<b>Sex Ratio</b>
1.	Haryana	830
2.	Punjab	846
3.	Jammu & Kashmir	859
4.	NCT of Delhi	866
5.	Chandigarh	867

Source: Census of India 2011

Punjab and Haryana, being some of the most problematic states (as per census 2001), have seen an increasing trend in sex-ratio in census; though still remain amongst the lowest. Haryana's Jhajjar and Mahendragarh districts, having child sex ration of 774 and 778 respectively, are the lowest. Other states that have seen an increasing trend are Himachal Pradesh, Gujarat, Tamil Nadu, Mizoram and Andaman and Nicobar Islands. Lahul and Spiti district of Himachal Pradesh are having the highest child sex ratio of 1,013. Rest of all the states across the nation have seen drop in child sex-ratio as per the Census report 2001. These figures are

not only alarming but also a matter of grave concern, as mentioned by the Census Commissioner of India Shri C. Chandramauli (Census of India, 2011).

Discrimination against a girl child begins in the mother's womb, when she deprived of her right to live. Census data suggests that the necessity for a male child, a deeprooted cultural need, has not only lived through the years but has also increased by many points. Clearly a case of erroneous diffusion of innovations, simple techniques allow easy determination of sex of the foetus. The practice of female foeticide is widespread despite it being an illegal activity. Modernisation, growth and education were expected to create a safe and healthy environment for the girl child, but the country is witnessing the opposite. Actions have been taken in the form of laws, schemes and awareness campaigns by both the government and the independent bodies. However one needs to look into the effectiveness of all such initiatives and parameters that could be used to measure the same.

## **Historical Prospective**

### **Ancient India**

According to scholars, women in ancient India enjoyed equal status with men in all aspect of life.<sup>12</sup> Works by ancient India grammarians such as Patanjali and Katyayana suggest that women were educated in the early Vedic period.<sup>13,14</sup> Rig vedic verses suggest that women married at a mature age and were probably free to select their own husband.<sup>15</sup> Scripture such as the Rig Veda and Upanishads mention several women sages and seers, notably Gargi and Maitreyi. There are very few texts specifically dealing with the role of women<sup>16</sup> an important exception is

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<sup>12</sup> Mishra, R. C. (2006). *Towards Gender Equality*. Authorspress. ISBN 81-7273-306-2.

<sup>13</sup> *Varttika* by Katyayana, 125, 2477

<sup>14</sup> Comments to Ashtadhyayi 3.3.21 and 4.1.14 by Patanjali.

<sup>15</sup> R. C. Majumdar and A. D. Pusalker (editors): The history and culture of the Indian people. Volume I, The Vedic age. Bombay: Bharatiya Vidya Bhavan 1951, p.394

<sup>16</sup> Shweta Singh (2009). Examining the Dharma Driven Identity of Women: Mahabharata's Kunti - In The Woman Question in the Contemporary Indian English Women Writings, Ed. Indu Swami, Sarup: Delhi.

the Stri Dharma Paddhati of Tryambakayajvan, an official at Thanjavur, 1730. The text compiles strictures on women's behaviour dating back to the Apastambasutra (c. 4th century BCE).<sup>17</sup> The opening verse goes:

*mukhyo dharmah smr^tiShu vihito bhart^r^shushruShANam hi :*

women are enjoined to be of service to their husbands.

Some kingdoms in ancient India had traditions such as nagarvadhu ("bride of the city"). Women competed to win the coveted title of nagarvadhu. Amrapali is the most famous example of a nagarvadhu.

According to studies, women enjoyed equal status and rights during the early Vedic period. However in approximately 500 B.C., the status of women began to decline, and with the Islamic invasion of Babur and the Mughal empire and Christianity later worsened women's freedom and rights. In most ancient societies women have been considered men's inferiors physically and intellectually. According to Hindu laws of Manu as put forth in the Manusmriti, women were subservient to male relatives, widow remarriage was not allowed and the law sanctioned the practice of Sati, a truly atrocious practice. Wearing bangles is also understood to be a form of fetters/shackles. But some ancient Indian Vedic texts gave importance to the worship of goddesses. Manu, the law giver said, the gods are satisfied wherever women are honored, but where they are not respected, rites and prayers are ineffectual, (Manusmriti 3.62).<sup>18</sup> In India, female infanticide has been practiced for centuries with the earliest evidence being provided by Sir Jonathan Duncan in 1789.<sup>19</sup> With the availability of new technology, the bias suffered by females from birth to the grave is being extended to womb to tomb.

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<sup>17</sup> The perfect wife: strIdharmapaddhati (guide to the duties of women) by Tryambakayajvan (trans. Julia Leslie ), Penguin 1995 ISBN 0-14-043598-0.

<sup>18</sup> Swami Harshananda. An Introduction to Hindu Culture. 1st Edition. Bangalore (India): Ramakrishna Math; 2008.

<sup>19</sup> Pakrasi KB, Haldar A. Sex ratios and sex sequences of births in India. J Biosoc Sci 1971;3:327-37.

The present article aims to reflect upon the issue of female feticide and its determining factors and the concern regarding adverse child sex ratio and its consequences.

Although reform movements such as Jainism allowed women to be admitted to religious orders, by and large women in India faced confinement and restrictions. The practice of child marriages is believed to have started around the sixth century.<sup>20</sup>

### **Medieval Period**

Indian women's position in society further deteriorated during the medieval period,<sup>21</sup> when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought purdah to Indian society. Among the Rajputs of Rajasthan, the Jauhar was practised. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practised among Hindu Kshatriya rulers for some political reason.<sup>22</sup>In many Muslim families, women were restricted to Zenana areas of the house.

In spite of these conditions, women often became prominent in the fields of politics, literature, education and religion. Razia Sultana became the only woman monarch to have ever ruled Delhi. The Gond queen Durgavati ruled for fifteen years before losing her life in a battle with Mughal emperor Akbar's general Asaf Khan in 1564.

Chand Bibi defended Ahmednagar against the powerful Mughal forces of Akbar in the 1590s. Jehangir's wife Nur Jehan effectively wielded imperial power, and was

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<sup>20</sup> yotsana Kamat (2006-1). "Status of Women in Medieval Karnataka". Retrieved 24 December 2006.

<sup>21</sup> Mishra, R. C. (2006). *Towards Gender Equality*. Authorspress.ISBN 81-7273-306-2.

<sup>22</sup> yotsana Kamat (2006-1). "Status of Women in Medieval Karnataka". Retrieved 24 December 2006.



recognized as the real power behind the Mughal throne. The Mughal princesses Jahanara and Zebunnissa were well-known poets, and also influenced the ruling powers. Shivaji's mother, Jijabai, was queen regent because of her ability as a warrior and an administrator. In South India, many women administered villages, towns, and divisions, and ushered in new social and religious institutions.

The Bhakti movements tried to restore women's status and questioned certain forms of oppression. Mirabai, a female saint-poet, was one of the most important Bhakti movement figures. Other female saint-poets from this period included Akka Mahadevi, Rami Janabai and Lal Ded. Bhakti sects within Hinduism such as the Mahanubhav, Varkari and many others were principle movements within the Hindu fold openly advocating social justice and equality between men and women.

Immediately following the Bhakti movements, Guru Nanak, the first Guru of Sikhs, preached equality between men and women. He advocated that women be allowed to lead religious assemblies; to lead congregational hymn singing called Kirtan or Bhajan; to become members of religious management committees; to lead armies on the battlefield; to have equality in marriage, and to have equality in Amrit (Baptism). Other Sikh Gurus also preached the same, but their practices were often regarded to be a breach of women rights.

### **Historical Traditions in medieval period**

Traditions such as Sati, Jauhar, and Devadasi among some communities have been banned and are largely defunct in modern India. However, some instances of these practices are still found in remote parts of India. The purdah is still practiced by Indian women in some communities. Child marriage remains common in rural areas, although it is illegal under current Indian law.

## **Sati**

Sati is an old, almost completely defunct custom among some communities, in which the widow was immolated alive on her husband's funeral pyre. Although the act was supposed to be voluntary on the widow's part, its practice is forbidden by the Hindu scriptures in Kali yuga, the current age. After the foreign invasions of Indian subcontinent, this practice started to mark its presence, as women were often raped or kidnapped by the foreign forces.<sup>23</sup> It was abolished by the British in 1829. There have been around forty reported cases of sati since independence.<sup>24</sup> In 1987, the Roop Kanwar case in Rajasthan led to The Commission of Sati (Prevention) Act.<sup>25</sup>

## **Jauhar**

Jauhar refers to the practice of voluntary immolation by wives and daughters of defeated warriors, in order to avoid capture and consequent molestation by the enemy. The practice was followed by the wives of defeated Rajput rulers, who are known to place a high premium on honour. Evidently such practice took place during the Islamic invasions of India.<sup>26</sup>

## **Purdah**

Purdah is the practice among some communities requiring women to cover themselves so as to conceal their skin and form from males. It imposes restrictions on the mobility of women, curtails their right to interact freely, and is a symbol of the subordination of women. It is noted that Indian women had to purdah in the Islamic Kingdoms in Indian Subcontinent, as result of fear, that they would be kidnapped by the Muslim invaders.

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<sup>23</sup> "The Danger of Gender: Caste, Class and Gender in Contemporary Indian Women's Writing" by Clara Nubile, p.9

<sup>24</sup> Vimla Dang (19 June 1998). "Feudal mindset still dogs women's struggle". The Tribune. Retrieved 24 December 2006.

<sup>25</sup> The Commission of Sati (Prevention) Act, 1987.

<sup>26</sup> "Honour, status & polity" by Pratibha Jain, Saṅgītā Śarmā.

## **Devadasis**

Devadasi is often misunderstood as religious practice. It was practised in southern India, in which women were "married" to a deity or temple. The ritual was well-established by the 10th century A.D.<sup>27</sup> By 1988, the practice was outlawed in the country.<sup>28</sup>

## **British rule**

European scholars observed in the 19th century that Hindu women are "naturally chaste" and "more virtuous" than other women.<sup>29</sup> During the British Raj, many reformers such as Ram Mohan Roy, Ishwar Chandra Vidyasagar and Jyotirao Phule fought for the betterment of women. Peary Charan Sarkar, a former student of Hindu College, Calcutta and a member of "Young Bengal", set up the first free school for girls in India in 1847 in Barasat, a suburb of Calcutta (later the school was named Kalikrishna Girls' High School).

While this might suggest that there was no positive British contribution during the Raj era, that is not entirely the case. Missionaries' wives such as Martha Mault née Mead and her daughter Eliza Caldwell née Mault are rightly remembered for pioneering the education and training of girls in south India. This practice was initially met with local resistance, as it flew in the face of tradition. Raja Rammohan Roy's efforts led to the abolition of Sati under Governor-General William Cavendish-Bentinck in 1829. Ishwar Chandra Vidyasagar's crusade for improvement in the situation of widows led to the Widow Remarriage Act of 1856. Many women reformers such as Pandita Ramabai also helped the cause of women.

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<sup>27</sup> K. L. Kamat (19 December 2006). "The Yellamma Cult". Retrieved 25 December 2006.

<sup>28</sup> Devadasi. (2007). In Encyclopædia Britannica. Retrieved 4 July 2007, from Encyclopædia Britannica

<sup>29</sup> Dubois, Jean Antoine and Beauchamp, Henry King, Hindu manners, customs, and ceremonies, Clarendon press, 1897

Kittur Chennamma, queen of the princely state Kittur in Karnataka, led an armed rebellion against the British in response to the Doctrine of lapse. Abbakka Rani, queen of coastal Karnataka, led the defence against invading European armies, notably the Portuguese in the 16th century. Rani Lakshmi Bai, the Queen of Jhansi, led the Indian Rebellion of 1857 against the British. She is now widely considered as a national hero. Begum Hazrat Mahal, the co-ruler of Awadh, was another ruler who led the revolt of 1857. She refused deals with the British and later retreated to Nepal. The Begums of Bhopal were also considered notable female rulers during this period. They did not observe purdah and were trained in martial arts. Chandramukhi Basu, Kadambini Ganguly and Anandi Gopal Joshi were some of the earliest Indian women to obtain a degree.

In 1917, the first women's delegation met the Secretary of State to demand women's political rights, supported by the Indian National Congress. The All India Women's Education Conference was held in Pune in 1927, it became a major organisation in the movement for social change.<sup>30</sup> In 1929, the Child Marriage Restraint Act was passed, stipulating fourteen as the minimum age of marriage for a girl.<sup>31</sup> Though Mahatma Gandhi himself married at the age of thirteen, he later urged people to boycott child marriages and called upon young men to marry child widows.

Women played an important part in India's independence struggle. Some famous freedom fighters include Bhikaji Cama, Dr. Annie Besant, Pritilata Waddedar, Vijayalakshmi Pandit, Rajkumari Amrit Kaur, Aruna Asaf Ali, Sucheta Kriplani and Kasturba Gandhi. Other notable names include Muthulakshmi Reddy and Durgabai Deshmukh. The Rani of Jhansi Regiment of Subhas Chandra Bose's Indian National Army consisted entirely of women, including

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<sup>30</sup> "Status of Women in India" by Shobana Nelasco, p.11

<sup>31</sup> Ambassador of Hindu Muslim Unity, Ian Bryant Wells

Captain Lakshmi Sahgal. Sarojini Naidu, a poet and freedom fighter, was the first Indian woman to become President of the Indian National Congress and the first woman to become the governor of a state in India.

### **Independent India**

Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology, etc. Indira Gandhi, who served as Prime Minister of India for an aggregate period of fifteen years, is the world's longest serving woman Prime Minister.

Feminist activism in India gained momentum in the late 1970s. One of the first national-level issues that brought women's groups together was the Mathura rape case. The acquittal of policemen accused of raping a young girl Mathura in a police station led to country-wide protests in 1979-1980. The protests, widely covered by the national media, forced the Government to amend the Evidence Act, the Criminal Procedure Code, and the Indian Penal Code; and created a new offence, custodial rape. Female activists also united over issues such as female infanticide, gender bias, women's health, women's safety, and women's literacy.

In 1990s, grants from foreign donor agencies enabled the formation of new women-oriented NGOs. Self-help groups and NGOs such as Self Employed Women's Association (SEWA) have played a major role in the advancement of women's rights in India. Many women have emerged as leaders of local movements; for example, Medha Patkar of the Narmada Bachao Andolan.

The Government of India declared 2001 as the Year of Women's Empowerment (*Swashakti*). The National Policy for the Empowerment of Women came was passed in 2001.

In 2006, the case of Imrana, a Muslim rape victim, was highlighted by the media. Imrana was raped by her father-in-law. The pronouncement of some Muslim clerics that Imrana should marry her father-in-law led to widespread protests, and finally Imrana's father-in-law was sentenced to 10 years in prison. The verdict was welcomed by many women's groups and the All India Muslim Personal Law Board.

According to a report by Thomson Reuters, India is the "fourth most dangerous country" in the world for women,<sup>32</sup> India was also noted as the worst country for women among the G20 countries,<sup>33</sup> and however, this report has faced criticism for its inaccuracy. In 9 March 2010, one day after International Women's day, Rajya Sabha passed the Women's Reservation Bill requiring that 33% of seats in India's Parliament and state legislative bodies be reserved for women.

## **Factors Responsible for Female Feticide**

### **Obsession of Son:**

There is an urgent need to highlight the mirror image of son preference, namely, daughter-discrimination and emphasize how a strong preference for sons entails discrimination against daughters. In one of the few existing country-specific studies on this theme, Miller (1981) argued; "The problem is that son preference is so strong in some areas of India and amongst some classes that daughters must logically suffer in order that families' perceived and culturally mandated needs are fulfilled". Logically, this would imply that preference for sons coexists with discrimination against daughters; the stronger the son preference, the more intense the daughter discrimination would be.

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<sup>32</sup> Owen Bowcott (15 June 2011). "Afghanistan worst place in the world for women, but India in top five | World news". London: The Guardian. Retrieved 2014-03-13.

<sup>33</sup> Baldwin, Katherine (13 Jun 2012). "Canada best G20 country to be a woman, India worst - TrustLaw poll". trust.org. Retrieved 29 Dec 2012.

Although the preference for bearing sons has been prevalent in Indian households from time immemorial. As according to the Hindu mythology, a father can take salvation from the world, if his son performs their last rituals cremation ceremonies.

### **Girls are considered as financial obligation:**

It has long been argued that improvement in literacy rates and socio-economic development amongst women could change the adverse sex ratio for the better. However, it has been observed that educated mothers in Punjab are more prone to discriminate against their daughters than the uneducated ones.<sup>34</sup> Also, the prevalence of prenatal sex determination is more widespread among the economically well-off because availing of such services is determined by one's ability to pay. Thus, the rich agriculturalists living in the rural areas of Punjab, Haryana and Gujarat and the urban elite living in the metropolis of Delhi tend to avail of sex-selective abortion.<sup>35</sup> Similarly, transition from a rural agrarian economy to urban economy has not prevented Jat couples from using prenatal sex determination and sex-selective abortion to achieve smaller family size through reduction in the number of daughters in the family.<sup>36</sup> On the other hand, in matriarchal societies in the northeastern states of India, women control land holding and have a better say in matters related to family, economy and society.<sup>37</sup> This has resulted in a slight preference for daughters in states like Meghalaya.<sup>38</sup>

### **Advancement of Technology:**

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<sup>34</sup> Das Gupta M. Selective Discrimination against Female Children in Rural Punjab, India, *Popul Dev Rev* 1987;13:77-100.

<sup>35</sup> Visaria L. The declining sex ratio in India. *Natl Med J India* 2004;17:181-3.

<sup>36</sup> Khanna SK. Traditions and reproductive technology in an urbanizing north Indian village. *Soc Sci Med* 1997;44:171-80.

<sup>37</sup> Fernandes W. The Indigenous issue and women's status in North East India. Paper submitted at Indigenous rights in the commonwealth project, South and South-East Asia Regional Expert meeting. India International Centre, New Delhi: 11th-13th March, 2002.

<sup>38</sup> International Institute for Population Sciences (IIPS) and Macro International. National Family Health Survey (NFHS-3), 2005-06, India: Key Findings. Mumbai: IIPS; 2007.

Increased availability of advanced technologies, especially ultra-sonography (USG), has been the single most important factor responsible for decrease in sex ratios and increase in female feticides. In India over 25000 prenatal units have been registered.<sup>39</sup> According to a study by *The Lancet*, a premier British medical journal, sex selection claims up to 500,000 female fetuses in India every year.<sup>40</sup> Facilities of sex determination through “clinic next door” are now conveniently available with the families willing to dish out any amount that is demanded of them. The easy availability of mobile scanning machines has translated into brisk business for doctors. The misuse of technology simply reinforces the secondary status given to girl children in such a way that they are culled out even before they are born.<sup>41</sup> Sex selection techniques became popular in the western and northwestern states in the late 70s and early 80s whilst they are becoming popular in the South now.<sup>42</sup> The sex of a fetus can be determined at 13-14 weeks of pregnancy by trans-vaginal sonography and by 14-16 weeks through abdominal ultrasound. These methods have rendered early sex determination inexpensive, feasible and easily accessible. Although various preconception techniques that help in choosing the fetal sex have been described, their use is not widespread due to higher costs.<sup>43</sup>

### **Status of women:**

The most important factor responsible for decreasing child sex ratio is the low status of Indian women coupled with traditional gender bias. The needs with regards to health, nutrition and education of a girl child have been neglected. As

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<sup>39</sup> Genocide of India's daughters. Mail Online. 2006. Available from: <http://www.dailymail.co.uk/news/article-393896/Genocide-Indiasdaughters.html>. [cited on 2013 Jun 19].

<sup>40</sup> Scott Baldauf, *India's "Girl Deficit" Deepest Among Educated*, CHRISTIAN SCI.MONITOR, Jan. 13, 2006, World, at 1, available at <http://www.csmonitor.com/2006/0113/p01s04-wosc.html>.

<sup>41</sup> Meenu Anand, “Indian Legal Framework to Arrest Female Foeticide” Legal News & Views, September 2005.

<sup>42</sup> George SM. Sex selection/determination in India: Contemporary developments. *Reprod Health Matters* 2002;10:184-97.

<sup>43</sup> Gurung, M. Female Foeticide. c1999. [cited on 2008 May 26] Available from: <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/foeticide/articles/foeticide.html>.



mentioned above, in the Vedic Age (1500-1000 BC), they were worshipped as goddesses. However, with the passage of time, their status underwent significant and sharp decline and they were looked down upon as .slaves of slaves.<sup>44</sup> Studies report that women in southern India enjoy a better status irrespective of their literacy in comparison to their north Indian counterparts.<sup>45</sup>

### **Gender discrimination:**

The bias against females in India is grounded in cultural, economic and religious roots. Sons are expected to work in the fields, provide greater income and look after parents in old age. In this way, sons are looked upon as a type of insurance. In addition, in a patriarchal society, sons are responsible for preservation of the family name. Also, as per Hindu belief, lighting the funeral pyre by a son is considered necessary for salvation of the spirit.<sup>46</sup> This strong preference for sons which results in a life-endangering deprivation of daughters is not considered abhorrent culturally and socially.<sup>47</sup> In north India, girls currently constitute about 60% of the unwanted births and the elimination of unwanted fertility in this manner has the potential to raise the sex ratio at birth to 130 boys per 100 girls.<sup>48</sup>

Gender discrimination manifests itself in the form of delay in seeking medical care, seeking care from less qualified doctors and spending lesser money on medicines when a daughter is sick.<sup>49</sup> The extreme disappointment of a mother as a result of

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<sup>44</sup> Sachdeva DD. Social Welfare Administration in India. Allahabad; Kitab Mahal; 1998.

<sup>45</sup> Bose S, Trent K. Socio-demographic determinants of abortion in India: A north-South comparison. *J Biosoc Sci* 2006;38:261-82.

<sup>46</sup> Bandyopadhyay S, Singh A. History of son preference and sex selection in India and in the west. *Bull Indian Inst Hist Med Hyderabad* 2003;33:149-67.

<sup>47</sup> Miller B. The endangered sex: Neglect of female children in rural North India. Ithaca, New York and London: Cornell Univ. Press; 1981.

<sup>48</sup> International Institute for Population Sciences (IIPS) and Macro International. National Family Health Survey (NFHS-2), 1998-99, India: Key Findings. Mumbai: IIPS; 2000.

<sup>49</sup> Chatterjee M. A report on Indian women from birth to twenty. New Delhi: National Institute of Public Cooperation and Child Development; 1990.

a daughter's birth can adversely affect her ability to breastfeed the girl child, which leads to poor nutritional status.<sup>50</sup> It is no wonder that the prevalence of malnutrition and stunting is higher in girls than boys.<sup>51</sup>

### **Dowry:**

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.<sup>52</sup> 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.<sup>53</sup> In the Muslim community, paying of high dowry is not a prevalent practice.<sup>54</sup> Also consanguineous marriages are highly prevalent and women are entitled to a portion of parental inheritance.

### **National Legal Framework and Institutional Mechanism for eradicating the problem**

Empowerment of women in India has been a dream of our first Prime Minister, Pandit Jawaharlal Nehru. Under his guidance some critical steps were initiated. Some of the laws listed below endeavors to provide due respect, position and

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<sup>50</sup> Miller B. The endangered sex: Neglect of female children in rural North India. Ithaca, New York and London: Cornell Univ. Press; 1981.

<sup>51</sup> Jatrana S. Explaining Gender Disparity in Child Health in Haryana State of India. Asian Metacentre Research Paper Series No. 16. Asian Meta center for Population and Sustainable Development Analysis. Singapore; 2003.

<sup>52</sup> Dyson T, Moore M. On Kinship structure, female autonomy, and demographic Behavior in India,. Popul Dev Rev 1983;9:35.60.

<sup>53</sup> Guilamoto CZ. Characteristics of sex ratio imbalance in India, and future scenarios. Paper for the 4th Asia Pacific Conference on Reproductive and Sexual Health and Rights. Hyderabad, India: October 29-31, 2007.

<sup>54</sup> Nassir R, Kalla AK. Kinship system, fertility and son preference among Muslims: A review. Anthropologist 2006;8:275-81.

power to women members at par with their male counterparts. The Indian government was with the object waked up to the need of saving the girl child. Over the past few decades the Government has established laws for prevention of female foeticide, it has incorporated special schemes that encourage families to have girl child and it has also sporadically undertaken campaign called Save the Girl Child.

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

Under Sections 312-316 of the Indian Penal Code, 1860 deals with miscarriage and death of an unborn child. Miscarriage is declared offences under IPC for saving the life of women and girl child as a estates for future in India. Causing miscarriage means “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.<sup>55</sup> If the offender causing miscarriage with or without woman's consent whether the woman is quick with child or not, shall also be liable for that offence.<sup>56</sup>

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide. Until 1970 the provisions contained in the Indian Penal Code (IPC) governed the law on abortion. The Indian Penal Code 1860 permitted ‘legal abortions’ under certain conditions but it should be without criminal intent and in good faith for the express purpose of saving the life of the mother. Liberalisation of abortion laws with the slogan “Hum Do Hamare Do” was also advocated as one of the measures of population control.

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

The Indian Government to regulate the termination of the pregnancy in certain cases has introduced a new legislation i.e. The Medical Termination of Pregnancy

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<sup>55</sup> Section 312 of IPC.

<sup>56</sup> Section 313 of IPC.

Act was passed in July 1971, under valid terms and condition for legal termination as per direction of the Act. 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. The Pre-natal 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 foetus 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 Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuses) Act, 1994**

India is pioneered in legalisation of abortion through the Medical Termination of Pregnancy Act of 1971. Abortions were permitted by law and women could terminate their pregnancies on health and legal grounds. To prevent the menace of female foeticide in the country through misuse of new technology, in 1970s All India Institute of Medical Sciences, one of the most prestigious hospitals in the country claimed that Indians no longer need to go through many pregnancies to fulfill their desire for a male child. They introduced pre-natal sex determination technology and claimed it to be advantageous for the over populated country. Ultrasounds for sex determination followed by abortions were rampant by 1980s. To curb this government announced Pre-Conception and Pre-Natal Diagnostics Act (PC &PNDT Act) in 1994 which was later amended in 2003 with purpose of:

- a. Ban the use of sex selection techniques before or after conception
- b. Prevent the misuse of pre-natal diagnostic techniques for sex selective abortions

- c. 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 foetus.

**The Dowry Prohibition Act (1961):** This act tries to address the problem at the root itself. It prevents giving and taking of any kind of dowry. On doing so it will be considered as a punishable offence leading to imprisonment.

**Hindu Marriage Act (1955):** It regulates married lives among Hindus and defines its conditions for validity, conditions for in-validity, and applicability. It acts to prevent the interest of valid marriages for both men and women.

**Protection of Women from Domestic Violence Act (2005):** This act has been passed to protect women lives in marriages or in relationships.

**Equal Remuneration Act (1976):** The act stands to provide equal remuneration to both men and women and prevent all instances of gender discrimination at work places

**Hindu Undivided family Act:** The concept of karta, manager, in joint Hindu business has traditionally been bestowed on only male members. Over the past few years courts have allowed senior most female members of the joint family to become the karta in the absence of a senior male member.

**Hindu Succession Act (1956):** This act was amended in 2005 and it gives equal rights to daughters to inherit property as much as sons.

## **Policy Framework**

National Plan of Action exclusively for the girl child (1991-2000) was formulated in 1992 for the "Survival, Protection and Development of the Girl Children". The Plan recognized the rights of the girl child to equal opportunity, to be free from hunger, illiteracy, ignorance and exploitation. Towards ensuring survival of the girl child, the objectives are to:

1. Prevent cases of female foeticide and infanticide and ban the practice of amniocentesis for sex determination;
2. End gender disparity in infant mortality rate; eliminate gender disparities in feeding practices, expand nutritional interventions to reduce severe malnourishment by half and provide supplementary nutrition to adolescent girls in need;
3. Reduce deaths due to diarrhoea by 50% among girl children under 5 years and ensure immunization against all forms of serious illnesses; and
4. Provide safe drinking water and ensure access to fodder and drinking water nearer home.

The launching of the **Balika Samriddhi Yojana** in 1997 is a major initiative of Government to raise the overall status of the girl child. It intends to change family and community attitudes towards her and her mother. Under this scheme about 25 lakh girl children born every year in families below the poverty line are to be benefited.

Besides having specific legislation and policy proclamations to deal with this menace, the precipitating factors such as dowry, poverty, and woman's economic dependence etc., leading to the problem of foeticide and infanticide have been addressed by enacting various legislations as:

### **Legislations-**

1. The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuses) Act, 1994.
2. The Dowry Prohibition Act, 1961.
3. Hindu Marriage Act, 1955.
4. Protection of Women from Domestic Violence Act, 2005.
5. Equal Remuneration Act, 1976.
6. Hindu Undivided family Act.
7. Hindu Undivided family Act, and

8. Hindu Succession Act, 1956.

### **Central/ State Governmental Schemes-**

1. Balika Samridhi Yojana, 1997 (Central Government).
2. Dhan Laxmi Scheme, 2008.
3. Kanya Jagriti Jyoti Scheme, 1996 (Panjab State Government).
4. Bhagya Lakshmi Scheme, 2007 (State Govt. of Karnataka).
5. Mukhyamantri Kanya Suraksha Yojana and Mukhyamantri Kanya Vivah Yojna, 2008 (State Govt. of Bihar).
6. Ladli Laxami Yojna, 2006 (State govt. of MP & Jharkhand).

### **Awareness Campaign- Beti Bachao-**

1. Beti Bachao Abhiyan- State Govt. of MP (6<sup>th</sup> Oct 2011).
2. Oath Taking Ceremony (8<sup>th</sup> March 2009).
3. Beti Bachao Abhiyan- State Govt. of Gujrat (2005).
4. Ladli- Population First.
5. Indian Medical Association Initiatives.
6. State family Welfare Bureau, Maharashtra.
7. Save a Girl Child Campaign, Sun Foundation

### **International Approaches**

States also have an obligation under international human rights law to respect, protect and fulfill the human rights of women, as elaborated for example in the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Convention on the Rights of the Child (CRC). States therefore have an obligation to take active steps to counter discrimination and to uphold the rights of women. For example, CEDAW Article 5(a) requires states to modify social and cultural patterns of conduct:

*“...with a view to achieving the elimination of prejudices and customary . . . practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”*

CEDAW (1979)

In 1994, more than 180 States adopted the ICPD definition of reproductive rights, recognizing that:

*...reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.*

United Nations (1994); paragraph 7.3

The right to the highest available standard of health enshrined in the ICESCR has been further interpreted to include the provision of interventions and services:

*...aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services.*

CESCR (2000), General Comment 14, paragraph 21

With specific regard to abortion, the ICPD Programme of Action five-year review recommended that all parties should:

*...deal with the health impact of unsafe abortion as a major public-health concern and . . . reduce the recourse to abortion through expanded and improved family planning services.*

UNFPA (1999); paragraph 63i



## **Judicial Approaches**

The Constitution of India is the basic law of the country, which includes the fundamental rights<sup>57</sup> and directive principles<sup>58</sup> for every citizen. The Constitution encompasses most rights included in the CRC as fundamental rights and directive principles of state policy. It is significant to note that the Constitution mandates special protection of children through adoption of positive discrimination by making special provisions for them<sup>59</sup>. The fundamental rights in the Constitution of India impose on the State the primary responsibility of ensuring that all the needs of the children are met and that their basic human rights are fully protected<sup>60</sup>. In addition, the rights to equality, protection of life and personal liberty, and the right against exploitation enshrined in Articles 14<sup>61</sup>, 15<sup>62</sup>, 16<sup>63</sup>, 17<sup>64</sup>, and 21<sup>65</sup> of the Constitution of India are fundamental rights applicable to all Indian citizens including children. Constitutional Remedies to the Supreme Court and the High Courts can be resorted to in case of any violations of fundamental rights.<sup>66</sup> Judicial activism has been displayed in several court decisions, in public interest litigations by civil society groups relating to children in institutions, adoption, child labour, child marriage, child prostitution, and the educational and health rights of

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<sup>57</sup> The violation of Fundamental Rights can be brought before the Courts. A writ petition can be filed in the Supreme Court and High Courts.

<sup>58</sup> The Directive Principles lay down the guidelines that the Governments have to follow. Although the violation of these Principles cannot be taken before the Courts, yet because of judicial interpretation, many of the Directive Principles relating to children have now become enforceable through legal actions brought before the Courts. Articles 39(e) and 39(f) direct that the State policies be directed towards securing children because of their tender age.

<sup>59</sup> Constitution of India, Article 15(3).

<sup>60</sup> Article 23 prohibits trafficking of human beings including children and Article 24 mandates that no child below the age of 14 years can work in any hazardous occupation or industry.

<sup>61</sup> Right to equality.

<sup>62</sup> Prohibition of discrimination on grounds of only religion, caste, sex, place of birth, or any of them.

<sup>63</sup> Promoting equality of opportunity for all citizens in matters of public employment.

<sup>64</sup> Untouchability has been abolished and its practice in any form is forbidden.

<sup>65</sup> Right to life and due process of law.

<sup>66</sup> Articles 32 and 226 of the Constitution of India.

children.<sup>67</sup> It was after a long campaign and struggle that the 86<sup>th</sup> Constitutional Amendment to make the right to education a fundamental right was made in 2002 was made. Article 21A provides for free and compulsory education to all children in the age group of 6-14 years. The manner of education has to be determined by enacting a law. In **Bandhua Mukti Morcha vrs Union of India**<sup>68</sup> the Hon'ble Supreme Court held that "it is a fundamental right of everyone in this country assured under the interpretation of Article 21 to live with human dignity... it must include the tender age of children to develop in a healthy manner and in conditions of freedom and dignity.

Apex judiciary in India had observed 2007 as the Awareness Year of Female Foeticide 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 Foeticide', jointly organised 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 foeticide.<sup>69</sup>

### **CEHAT v Union of India**<sup>70</sup>

In the landmark case of **CEHAT, MASUM and Dr Sabu George v Union of India and others** - in light of the alarming decline in sex ratios in the country to

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<sup>67</sup> Some instances of judicial activism relating to children are: Bhagwan Singh and Ors v. State of M.P. AIR 2003 SC 1088, M.C. Mehta v. State of Tamil Nadu and Ors AIR 1997 SC 699, Sanjay Suri v. Delhi Administration AIR 1986 SC 414, Lakshmikant Pandey v. Union of India AIR 1984 SC 469; AIR 1986 SC 272; AIR 1992 SC 118, Gaurav Jain v. Union of India AIR 1990 SC 292, People's Union for Democratic Rights (PUDR) v. Union of India AIR 1982 SC 1473, Vishal Jeet v. Union of India AIR 1990 SC 1412, Dukhtar Jahan v. Mohammed Farroq AIR 1987 SC 1049, Sheela Barse v. the Secretary, Children's Aid Society and Ors AIR 1987 SC 656, Delhi Domestic Working Women's Forum v. Union of India and Ors (1995)1 SCC 14, Sarita Sharma v. Sunita Sharma (2000)3 SCC 14, Shantisar Builders v. Narayan Khimlal Totane AIR 1990 SC 630, Kishen Pattnayak v. State of Orissa AIR 1989 SC 677, Unnikrishnan J.P. and Ors v. State of Andhra Pradesh AIR 1993 SC 2178.

<sup>68</sup> AIR 1984 SC 802.

<sup>69</sup> Justice Y.K. Sabharwal, Chief Justice of India, Eradication of Female Foeticide, Delivered at Patiala on December 17, 2006.

<sup>70</sup> AIR 2001 SC 2007.

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 pre-natal 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 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 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 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. 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 foeticide through advertisements in the print and electronic media by hoardings and other appropriate means.

In the case of **Kharak Singh vs. State of U.P. and others**<sup>71</sup>, 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 can 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

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<sup>71</sup> AIR 1963 SC 1295, pg. 345.

control back in 1965, in the case of **Griswold v. Connecticut**. 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."*

**In Vijay Sharma and another Vs Union of India** 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 pronounced that sex selection would be as good as female foeticide. And in **Qualified Private Medical Practitioners and Hospitals Association Vs State of Kerala** It was declared that laboratories and clinics which do not conduct pre-natal diagnostic, test using ultra sonography 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, 1994 and similar view was taken in the case of **Malpani Infertility Clinic Pvt. Ltd. and Others Vs Appropriate Authority, PNDT Act and Others**.

After that in the case of **Vinod Soni and another Vs Union of India** by this petition, the petitioners who are married couple seek to challenge the constitutional validity of Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 (hereinafter referred to 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 foeticide 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 & Suggestions**

Female foeticide is an act of destruction that causes death of a fetus. This is not a natural act but a deliberate and intentional one. This is called as sex-selective abortion, as the sex of an unborn baby is determined through medical techniques and the same is aborted if the sex turns out to be a female one. Female infanticide has been against the law even before the country acquired its independence. But the law has not been enforced well even after the Indian Penal Code (1860) added provisions against forced miscarriage. The practice of female foeticide and infanticide spans centuries in the rural India. However the practice over the decades has spread to the educated urban India as well. Despite of rising income, education and standard of living, preference for male child exists. The root causes of gender discrimination and inequalities require taking supportive measures for girls and women. Such measures must focus on securing the foundations for the self determination of girls and women by improving:

1. access to information, health care services and nutrition;
2. access to education; and
3. Personal security – including protection from coercion.

Additional measures may also need to be taken in the form of policies that are implemented and monitored to ensure that high birth order girls (i.e. those born second, third or fourth in a family) have equal access to education and health services. For example, short-term measures such as providing incentives for families with daughters only may help to increase the perceived value of girls, while longer-term efforts to change deep-rooted thinking and attitudes take effect.

### **Legislation and Policy**

Laws and policies can be important tools for providing State support for women's rights and the achievement of gender equality. Addressing the phenomenon of imbalanced sex ratios at birth is a key opportunity for States to examine their current legislative framework and the extent to which laws and policies are in line with their human rights commitments. Broadly speaking, States should develop and promote legal frameworks and socioeconomic policies that will sustain gender equity and equality, and in particular encourage active participation from civil society. Specific actions in this area include:

1. elaborate and implement policies to address the root causes of son preference – including policies on inheritance, dowry, financing old age and other personal security issues, education and the determination of surname;
2. analyse the impact of laws and policies on gender equality – and modify these to ensure that they are consistent with human rights commitments; and
3. strengthen policies to provide safe abortion services to the full extent of the law – including policies to ensure supplies, training and equipment in accordance with ICPD paragraph 63 (UNFPA, 1999), and to ensure that both health-care providers and the general public know the legal status of abortion in the country and how women can access safe and legal services.

## References-

1. BalikaSamridhiYojana. (n,d). In *Department of Women and Child Development*. [http://wcdhry.gov.in/balika\\_samridhi\\_yojana.htm](http://wcdhry.gov.in/balika_samridhi_yojana.htm).
2. Bhagya Lakshmi Scheme.( 2007). In *Department of Women & Child Development GovernmentofKarnataka*.[http://dwcdkar.gov.in/index.php?option=com\\_content&view=article&id=63&Itemid=114&lang=en](http://dwcdkar.gov.in/index.php?option=com_content&view=article&id=63&Itemid=114&lang=en).
3. Census of India 2011: Child sex ratio drops to lowest since independence. ( 2011, March 31). *The Economic Times*. [http:// articles.economictimes.indiatimes.com/2011-03-31/news/29365989\\_1\\_ratio-males-girl-child](http://articles.economictimes.indiatimes.com/2011-03-31/news/29365989_1_ratio-males-girl-child).
4. Central Launches Dhanlaxmi Scheme for Girl Child. (2008, March 4). *India Edunews*.[http://www.indiaedunews.net/Today/Centre\\_launches\\_'Dhan\\_Laxmi'\\_scheme\\_for\\_girl\\_child\\_3638](http://www.indiaedunews.net/Today/Centre_launches_'Dhan_Laxmi'_scheme_for_girl_child_3638).
5. 'Steven Ertelt', LifeNews.com ,Editor, December 20, 2007.
6. The Medical Termination of Pregnancy Act, 1971.
7. Source: Crime in India 2000, p. 216.
8. CEDAW (1979). Convention on the Elimination of All Forms of Discrimination against Women. Adopted by the United Nations General Assembly on 18 December 1979; entry into force 03 September 1981. Available at: [www2.ohchr.org/english/law/cedaw.htm](http://www2.ohchr.org/english/law/cedaw.htm).
9. Justice Y.K. Sabharwal, Chief Justice of India, Eradication of Female Foeticide, Delivered at Patiala on December 17, 2006.
10. Bandyopadhyay S, Singh A. History of son preference and sex selection in India and in the west. *Bull Indian Inst Hist Med Hyderabad* 2003;33:149-67.
11. Miller B. The endangered sex: Neglect of female children in rural North India. Ithaca, New York and London: Cornell Univ. Press; 1981.
12. International Institute for Population Sciences (IIPS) and Macro International. National Family Health Survey (NFHS-2), 1998-99, India: Key Findings. Mumbai: IIPS; 2000.
13. Chatterjee M. A report on Indian women from birth to twenty. New Delhi: National Institute of Public Cooperation and Child Development; 1990.
14. Miller B. The endangered sex: Neglect of female children in rural North India. Ithaca, New York and London: Cornell Univ. Press; 1981.
15. Jatrana S. Explaining Gender Disparity in Child Health in Haryana State of India. Asian Metacentre Research Paper Series No. 16. Asian Meta center for Population and Sustainable Development Analysis. Singapore; 2003.
16. Amartya Sen, "More Than a 100 Million Women Are Missing" *The New York Review of Books* Volume 37, Number 20, December 20, 1990, <http://www.ucatlas.ucsc.edu/gender/Sen100M.html> (last visited December 12, 2006)
17. T.V.Sekher and Neelambar Hatti, "Discrimination of Female Children in Modern India: from Conception through Childhood"
18. Marcy Darnovsky, *Revisiting Sex Selection: The Growing Popularity of New Sex Selection Methods Revives an Old Debate*, 17 *GENEWATCH* 3, 3 (2004) (alteration added).
- 19.<sup>1</sup> Neil Samson Katz, *Abortion in India: Selecting by Gender*, WASH. POST, May 20, 2006, at B09. For a discussion of the motivations underlying sex selection in China and India, see Part II.A, *infra*.

20. Scott Baldauf, *India's "Girl Deficit" Deepest Among Educated*, CHRISTIAN SCI.MONITOR, Jan. 13, 2006, World, at 1, available at <http://www.csmonitor.com/2006/0113/p01s04-wosc.html>.
21. Sachdeva DD. *Social Welfare Administration in India*. Allahabad; Kitab Mahal; 1998.
22. Bose S, Trent K. Socio-demographic determinants of abortion in India: A north-South comparison. *J Biosoc Sci* 2006;38:261-82.
23. Das Gupta M. Selective Discrimination against Female Children in Rural Punjab, India, *Popul Dev Rev* 1987;13:77-100.
24. Visaria L. The declining sex ratio in India. *Natl Med J India* 2004;17:181-3.
25. Khanna SK. Traditions and reproductive technology in an urbanizing north Indian village. *Soc Sci Med* 1997;44:171-80.
26. Fernandes W. The Indigenous issue and women's status in North East India. Paper submitted at Indigenous rights in the commonwealth project, South and South-East Asia Regional Expert meeting. India International Centre, New Delhi: 11th-13th March, 2002.
27. International Institute for Population Sciences (IIPS) and Macro International. *National Family Health Survey (NFHS-3), 2005-06, India: Key Findings*. Mumbai: IIPS; 2007.
28. Manjeet Rathe, Eradicate Scourge of Female Foeticide, *People's Democracy*, Vol XXV, No 39,
29. Manmeet Kaur, Female Foeticide: A Sociological Perspective, *The Journal of Family Welfare*, Vol 39(1), March 1993.
30. Sangeeta Cheetu, Growing Menace of Female Foeticide in India, *Indian Socio-Legal Journal*, Vol XVII (1 and 2), 1991.
31. Pre-natal Diagnostics Techniques (Regulation and Prevention of Misuse) Act 1994 The Pre-birth Elimination of Females in India, *Ending the Practice: Changing the Mindset*, A National Advocacy Strategy.
32. Draft, June 17, 2002 Gautam Chikermane, To Save the Girl Child Invest Indian Express, March 30, 2006 Pamela hilipose, Women versus Girls, Indian Express, April 5, 2006
33. Nishtha Desai, "Child Protection Strategies in the United Kingdom and India".
34. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (Amendment) Act, 2003, No. 14, Acts of Parliament, 2003, available at [http://www.medindia.net/Indian\\_Health\\_Act/PNDT/PNDT2002.asp](http://www.medindia.net/Indian_Health_Act/PNDT/PNDT2002.asp).
35. Aditi (1994). *Female Infanticide in Bihar*. Study sponsored by the department of women and child and child development, Ministry of Human Resource Development, Government of India, New Delhi.
36. Chakrabaerti, P.G. Dhar. (2001). *Gender Inequality & Social Policy in India*. International Sociological Association, Annual Conference on 'Old & New Social Inequalities : What Challenges for Welfare State'. 6-9th Sept., 2001
37. Kaushik, S. (1993). *Family and Rights of Girls*. New Delhi : Har-Anand Publications.
38. Kollor, T.M. (1990). *Female Infanticide : A psychological Analysis*. Grass Roots Action, Special issue on Girl Child, 3 April, 1990.
39. Kumari, R. (2006). *Female Infanticide & Foeticide : The Dealining Sex Ratio*. Centre for Social Research, New Delhi.