



OFFENCE OF FEMALE FOETICIDE AND INFANTICIDE: A SOCIO- LEGAL
STUDY IN INDIAN CONTEXT

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*‘Oh, God, I beg of you, I touch your feet time and again,
Next births don’t give me a daughter, Give me Hell instead...’*

--An old Folk Song from Uttar

Pradesh.

ABSTRACT

Foeticide is a heinous crime in the all civilized societies and in the all times. Female foeticide or infanticide are the deliberating killing of girl or is an act which is committed before or after the birth of the foetus on the basis of gender. Female foeticide or infancitide are common social issues in India creating a serious gender imbalance in the country. Our thinking relating to the foeticide is developed and promoted by the society, which shows that fall down our moral values and thinking about the female child. Female foeticide or infanticide becomes a realistic problem against us and coming generations into the future. In India, feticide is a moderately new practice, rising concurrently with the advent of technological advancements in prenatal sex determination on a large scale.

It is vital to establish measures, regulations, and policies to remove these actions in order to contribute to individual well-being and advancement, as well as the growth and development of communities and the nation as a whole. Individuals from rural areas, as well as those from underprivileged, marginalised, and economically disadvantaged portions of society, must be effectively informed about these measures, policies, and regulations. This paper theoretically analyses the magnitude of the incidence of female foeticide and infanticide in India.

Keywords: Foeticide, Infanticide, Medical Termination of Pregnancy, sex selective abortion, Science & Technology Advancement, Gender discrimination & Crime.

Introduction

Women who constitute half a human population have been discriminated, harassed and exploited irrespective of the country to which they belong, unmindful of the religion which they profess and oblivious of the timeframe in which they live.¹ Female foeticide has become an intensive issue in Indian society from the last few decades. Female foeticide is one of the most heinous types of violence against women, in which a woman's most basic and fundamental

¹ Dr. K.C. Jena, “Heirship of Women under Indian Personal Laws. A comparative study”, Ph.D. Thesis (1998).



right, "the right to life," is denied. Such practice followed by the people all over the world from the ancient time due to the several reasons. 'Female foeticide or infanticide' is the termination of the life of a foetus in the womb or after the birth on the grounds that its sex is 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.² The intentional killing of girl-child because of the low value-religious and economic-associated with the daughter in comparison to a son may be defined as female foeticide or infanticide.

To deprive 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.³

As per the classical hindu mythology, a girl child is considered as an extra burden, a liability, and financial burden after her birth and attainment of son child is considered crucial, and temples are filled with prayers and expensive gifts in the hopes of having a male kid. The practice is usually done in India under familial pressure and near dear relatives of the woman. However, foeticide or infanticide is a far more heinous sin than the age old practice of killing an unwanted child, even before it's born.

"The discrimination does not end with the sex-selective abortion of female foetus, but it continues beyond the birth. Female infanticide 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 the parents or other family members."

Our country has always been a male predominant one; the females are always seen as a second class citizen. The abortion of a female foetus without any legal justification is considered as female foeticide.⁴ These two words have a scientific definition but it can be explained in a customary form. In India the females have to undergo various ceremonies when they reach a particular coming age like ceremony practiced in the south and the practice of dowry during the marriage are just a few to name, such practices requires heavy expenses.⁵

By the use of modern technology in ascertaining the sex of foetus to be aborted, is an uncommon criminality in contemporary urban and rural India. The modern female foeticide is a historically reliant custom evolved from the bizarre Hindu custom of female infanticide known since antiquity. The sex determination technologies arrived in India in 1975 and the main purpose of such technologies was that to check out the genetic abnormalities into the foetus but some persons are used for their unwanted sex determination and prevention of the birth of the female child into the society. The misuse of the technology simply reinforces the secondary status given to girl children in such a way that they are called out even before they

² <https://sites.google.com/site/agirlnationspride/home/main-reasons-for-female-feticide>.

³ Bahais View Point, PUCL Bulletin September 2001.

⁴ Dr. (Ms.) Balwinder Arora, Female Foeticide In Punjab: A Sociological Study 19 (2010).

⁵ Gita Aravamudan, Disappearing Daughters: The Tragedy of Female Foeticide 124 (2007).



are borne.⁶

What is Female Foeticide?

Female foeticide is a heinous crime in the all societies and in the all times. No civilized society permitted such act in any form in the society at all. In the medical terminology, the word 'foeticide' is used simply to means causing the death of the foetus usually prior to some form of abortion.⁷ Female foeticide, often known as infanticide, refers to sex selection during pregnancy or after delivery. It is a gender-based selection method in which a female foetus is terminated unlawfully merely because she is a girl. It means foeticide is an act which is committed before the birth of the foetus on the basis of gender.

Female foeticide is the product of a gender-biased societal construct that devalues women and feels they are less valued than males. Female foeticide is the prevalent from of sex selection in the society and it is the systematic and deliberative act before or after the birth of the child. In true sense, female foeticide is a development of the medical science and invention of the new technologies and it refers to the termination of a female foetus without using legal means.

Factors Responsible for Female Feticide or Infanticide

Female infanticide is a crime, which deprives the girl children of the basic right, which is the right to live. In simple terms, it is the deliberate attempt to kill the new-born female children within the time period of one year from their birth. The major causes, which have led to an increase in this practice, are the conditions of poverty, illiteracy, child marriage, dowry system, births to unmarried women, female genital mutilation, deprivation, maternal illness, sex-selective abortion and so forth.⁸

Due to lack of legal policies it is being done illegally with the help of many doctors and clinics. But this practice is also committed by hidden way in all the states, and in the same way our society is becoming a matter of concern. The main reason for female feticide is that girls are considered to be the burden of society or home.

Vijay Rai, Project Coordinator at Plan International (India), quoted a Lancet journal (January 2006 issue) figure of 10 million female fetuses aborted over the last two decades in India alone. Mr. Rai named the following four key factors influencing female foeticide:

1. Obsession to have a son due to religious, cultural and traditional values.
2. Position of girls and women in society and the practice of dowry.
3. Misuse of modern technology of sex selection.

⁶ Meenu Anand, "Indian Legal Framework to Arrest Female Foeticide" Legal News & Views, September 2005.

⁷ http://en.wikipedia.org/wiki/Abortion_in_India.

⁸ The Acts of Female Foeticide and Female Infanticide in India. Available from: https://www.researchgate.net/publication/343601343_The_Acts_of_Female_Foeticide_and_Female_Infanticide_in_India [accessed Jan 15 2022].



4. Two-child norm policy of certain state governments.

In our society, girls get less importance than boys in many families. From their upbringing to education, and at every turn of life, some restrictions are imposed. Girls do not get permission to present their minds openly. There are some main reasons for female feticide or Infanticide:

1. **Dowry System-**

The evil practice of dowry is widely prevalent in India. It is believed that girls are always consumer and boys are productive. Visitors understand that the boy will earn a lifetime for himself and pay attention to him, while the girl will get married and she will run. The dowry system is more rigid in the northern states of India which is likely to contribute to the lesser child sex ratio. The middle and lower class of the society are unable to fulfill the demand of the dowry. Dowry being a socio- legal problem cannot be tackled by law alone unless the member of the society does not take positive action such heinous and anti- social problem. In the Muslim community, paying of high dowry is not a prevalent practice.⁹

2. **Preference of Son child:**

The ancient hindu society was based on the concept of paternal system in which the male person is so superior in the society. According to the Manu, a woman cannot attain 'Moksha' and has to be reborn as a man for redemption and only son offspring can provide the 'Moksha'. He also further stated that "A man can gain both worlds through a son and gains eternity through a grandson". On the same footing he argued that if any a woman gives birth to daughters may be left in the eleventh years of the marriage.

Dr. Radhakrishna, late president of India, wrote that Hinduism was a way of life rather than a form of thought, for it is primarily concerned with the codes of practices than with beliefs. 'Dharma' a right right action, regulates the most intimate details of the daily life and 'moksha' is the ultimate satisfaction. The four fold systems of the "Purusharthas" which outline an ideal life cycle are directed towards the goal attaining 'Moksha'.

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 son's preference co-exists with discrimination against the daughters. The son preference is more intense upon the daughter discrimination in the society. Such desire was one factor which increasingly helped to bring about unfortunate child marriages, with all the accompanying misery.

Since now, men desire a son,

⁹ R Nassir, AK. Kalla, Kinship system, fertility and son preference among Muslims: A review. Anthropologist 2006;8:275-81.



Both those that have and those that have not knowledge,
What doth a man gain by a son?
Tell me that, O Narada.
A debt be payeth in him
And immortality he attaineth,
That father so seeth the face
Of a son born living.
The delights in the earth,
The delights in the fire,
The delights in the water of living beings
Greater than these is that of a father in a son.
By means of a son have fathers ever
Passed over the deep darkness;
The self is born from the self
The (son) is (a ship), well—found, to ferry over .
Seek a son, O Brahman,
This is the world's advice.
Food is breath, clothing a protection,
Gold, an ornament, Cattle lead to marriage.
A wife is a comrade, a daughter, a misery (Kripanam)
And a son, a light in the highest heaven
A sonless one can not attain heaven".
(Aitareya Brahmana 7.13)¹⁰

3. Girls are considered as financial obligation:

Poverty plays a crucial role in the foeticide or infanticide because in Indian, most of the families are below the line of poverty and expenses of maintenance, education and marriage are so high now days. Women's health is given consideration only in terms of maternity, leaving women beyond the reproductive age, young unmarried girls and widows outside health and nutrition schemes. The government's family planning programmes have a heavy gender bias.¹¹ "

Manu clamped down women's freedom in certain spheres in order to safeguard their position and to preserve the family structure. Manu's famous dictums "a woman must be her father's shadow in childhood, her husband's in her youth, her son's in old age" is too well known.¹² The tenets of Manu have fostered a deep rooted belief in the intellectual and otherwise inferiority of women. He says that women should never be given independence. He equated women with slave and his laws epitomize complete submission of women to men and there are

¹⁰ With reference from Pinkham, M.W., Women in the Sacred Scriptures of Hinduism, (1941), p. 55.

¹¹ S.K. Ghosh, *Indian Women Through Ages*, Ashish publishing House New, Delhi.

¹² Verghese Khanna, *Indian Women Today*, (1978), Chap. I.



still the sanctioned codes of conduct ascribed for and by and large accepted by women.¹³

But Manu was not a woman hater, for it was Manu who said in Manu Smriti that

—;= uk;~; ZLr q i wt;Ur s jeUr s r= n sorkA
;=Srklr q u i wt;Ur s lokZLr=kQyk% fØ;kAA

The home where there is respect for women is like the abode of gods but where that is not so, all other forms of worship are fruitless.

lUr q";s Hkk;Z;k HkrkZ Hk=kZ Hkk;kZ rFk So pA
;fLeUu so d qrks fuR;a dY;k.ka r= o S /kqzoe ~AA

Blessed are the houses where women are happy with their men and men are happy with their women and they will surely prosper.

fL=;ka r q jkspekuk;k a loZ rnspr s dqye~A
rL;k a Rojk spekuk;ka lo Ze so u jkspr sAA

If the lady of the house is happy, the whole household will be happy, but if she is not anything else would give delight.¹⁴

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.¹⁵

4. Socio-ritual factors

Females are vulnerable to brutalities of the male in the forms of physical, mental and sexual assaults and traumas in the patriarchal societal structure of India. Females are subjugated, condemned, and deprived in sphere of life. Again for the funeral ceremonies of the parents, presence of a son is a must. According to Manu, A man cannot attain moksha (redemption) unless he has a son to light his funeral pyre. In old age the sons will care for them believably. These socio-rituals factors including illiteracy and orthodox society norms lead to crave for a male baby, discarding the females one after another.

5. Advancement of Technology:

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.¹⁶ According to a study by *The Lancet*, a premier British medical journal, sex selection claims up to 500,000 female

¹³ Sushma Sood, Violence Against Women, (1990), p. 37.

¹⁴ These quotations have been taken from the book of Atray, J.P., Crimes against Women (1988).

¹⁵ M. Das Gupta, Selective Discrimination against Female Children in Rural Punjab, India, Popul Dev Rev 1987;13:77.100.

¹⁶ 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].



fetuses in India every year.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰

Consequences of Female Foeticide

1. **Imbalance of sex-ratio** – The census of 2011 the child sex ratio was 900 females to 1000 males. Some states like Punjab and Haryana have been faced such problematic issue from the past time, but this trend changed from the last decade with increasing sex-ratio, but it still remain the lowest with comparisons to the other Indian states.
2. **Increase in sexual offences against Female** – As the number of females declines, those who remain are subjected to the worst outcomes, including rape and abuse by a male-dominated society. Despite the fact that the legal system provides protection, the fear of desolation and disgrace on the part of the girls has prevented them from taking advantage of the laws.
3. **Increase in polyandry cases-** As the number of females declines, the females are under obligation for intercourse with more than male at a time and have their offspring. One lady lives with numerous unmarried brothers in rural communities until now.
4. **Women are being trafficked** – Due to poverty and other financial situations, the female become subject matter of human trafficking and other such heinous activities. Due to this, the girls involved themselves or are forced to enter into prostitution which is illegal in India.

¹⁷ 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>.

¹⁸ Supra note 25, pp 17.

¹⁹ S.M. George, Sex selection/determination in India: Contemporary developments. *Reprod Health Matters* 2002;10:184-97.

²⁰ M. Gurung, Female Foeticide. c1999. [cited on 2008 May 26] Available from: <http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/foeticide/articles/foeticide.html>.



5. **Women's health suffer** – Abortions have a negative impact on women's health. Forcibly aborting a foetus and doing so on a frequent basis depletes a woman's wealth and has negative consequences. This practise renders the lady physically and psychologically weak, and it leads to the death of the mother. They are extremely susceptible to illnesses and are always ill.
6. **Shortage of girls for Marriage:** As a result of this dilemma, a new problem that the residents are experiencing is that the guys are having difficulty finding ladies to marry. According to a survey by the Red Cross Society, many males have beyond their marriageable age due to a lack of girls. The situation has deteriorated to the point that males are willing to pay a large sum of money to marry a lady from Bihar, Jharkhand, or Madhya Pradesh.

Judicial Approaches

The Constitution of India is the basic law of the country, which includes the fundamental rights²¹ and directive principles²² for every citizen. The Indian Constitution guaranteed the right to life and personal liberty. Indian Constitution²³ is guaranteed equal rights upon women in every sphere of life and treated equally without any discrimination.

In **Bandhua Mukti Morcha vs. Union of India**²⁴ 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.²⁵

In the case of **Kharak Singh vs. State of U.P. and others**²⁶, the Supreme Court has rightly

²¹ The violation of Fundamental Rights can be brought before the Courts. A writ petition can be filed in the Supreme Court and High Courts.

²² 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.

²³ Article 15 (1) provides, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them."

²⁴ AIR 1984 SC 802.

²⁵ Justice Y.K. Sabharwal, Chief Justice of India, Eradication of Female Foeticide, Delivered at Patiala on December 17, 2006.

²⁶ AIR 1963 SC 1295, pg. 345.



observed that a person has complete rights of control over his body organs and his body is protected under Article 21 of the Indian Constitution. It also further observed by the Supreme Court that right to body also including the complete right of a woman over her reproductive organs.

A PIL petition was filed in the Supreme Court by **Centre for the Enquiry into Health and Allied Theme (CEHAT) v Union of India**²⁷, **Mahila Savangeena Utkarsh Mandal (MASUM)** and **Dr. Sabu M. George** to indicate alarming position about decline in sex ratios in the country to the disadvantage of women and seeking directions from the Supreme Court for the urging effective implementation of the Pre-Natal Diagnostic Techniques Act which regulates the provision of pre-natal diagnostic technology. The Supreme Court passed an order to ensuring the implementation of the law and monitoring the several beneficial directives during which the case was proceeding in court. The Supreme Court by such petition indicates the issue of sex selection and sex selective abortion as a national and 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.

Corresponding in *Roe v Wade and Universal Declaration of Human Rights*²⁸ is a landmark decision on the issue of abortion by the United States Supreme Court (UNSC). It is decided simultaneously with a leading case, *Doe v. Bolton*²⁹, the Court ruled 7–2 that-

.....The right to privacy under the due process clause of the 14th Amendment extended to a woman's decision to have an abortion, but that this right must be balanced against the state's two legitimate interests in regulating abortions: protecting prenatal life and protecting women's health. Arguing that these state interests became stronger over the course of a pregnancy, the Court resolved this balancing test by tying state regulation of abortion to the third trimester of pregnancy.

The Court later rejected *Roe*'s trimester framework, while affirming *Roe*'s central holding that a person has a right to abortion until viability. The *Roe* decision defined "viable" as being "potentially able to live outside the mother's womb, albeit with artificial aid", adding that viability "is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks."

The decision was based on the principle that the right to get aborted is fundamental right and all the laws curtailing the right must strictly be scrutinized.

²⁷ AIR 2002 SC 3689.

²⁸ 410 U.S.113 (1973).

²⁹ 410 U.S. 197(1973).



CONCLUSION

Female foeticide is an act of destruction of the foetus before the birth and such causes death of a fetus. The female foeticide is an anti social behavior from the ancient times and under the law it is not a natural act but a deliberate and committed with malice intention by the family members and by women herself. It creates several critical problems like population imbalance in sex ration and demographers warn that in the next twenty years there will be crises of bride into the society.

In India, sex-selective technologies used at large scale and determine the sex of an unborn child and the foetus is aborted if the sex of the foetus is in negative sense means to be a female child. Now, there are some problems of the society back to such practices. It is a social problem which endanger to the human life. Such practice can't be stopped only legislate some rule or by the lectures of some politician or social leaders. If we want implement the 'Save Girl Child' policy than we should abolish the female foeticide or infanticide from the society at all. We should fight with the bad evils of the society and implement the moral values and ethics against such practices. Now we are going to discuss some issues which are prevalent into the modern society.

The Government of India also should provides some more stringent laws to protect the rights of women and prevent as a victims of violence in the form of female foeticide in the family and help to eradicate the crime against the women. Preventive measures can be applied as:

1. access to basic requirements and information;
2. access to health care services and nutrition;
3. access to right to education;
4. Personal security and preventive legal policies;
5. Equal opportunity in the society; and
6. Maintain dignity and decency.