



ANALYSIS OF LEGAL PROVISIONS RELATING TO FEMALE FETICIDE IN INDIA

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Abstract--The preference of having the male child still persists as it is evident from the current sex-ratio. It is improved but not perfect. The social factors and abuse of advanced medical technologies are responsible for it. This paper focuses on the factors responsible behind female feticide with the relevant suggestions. This paper aims at discussing and analysing the legal provisions relating to female foeticide.

Keywords: Female Foeticide, factors

Ours is the patriarchal society. Every married couple desires of having a male child so as to continue the family lineage. This is age old tradition and but this trend is more common in the northern states of India. Since ages we are hearing and seeing that in almost every religion and every tradition women-foeticides are famous so as to able couples to conceive the offspring of desired sex. But it is a total myth and the persons who got the child of desired sex by following those methods is just by chance and the success stories of such couples had created more effect in the minds of people that these nuskhas are true. Before the technological advancement the instead of foeticide, female infanticide was common. The girl child after birth was usually killed by the family members. On the contrary real and logical truth is the science behind begetting the child. But the actual problem is also created by the technology. Human has invented such machines which detects the sex of the child in the womb of the mother. This technology enhanced the greed of human being and slowly and gradually this technique created havoc in the society as people started using it the way they like. Couples started getting females child aborted resulting in the declining sex ratio in our country and one cannot deny this fact that the declining sex ratio has also increased other crimes in the society. In the states of Haryana, Punjab, Delhi, Himachal Pradesh and Gujarat, this ratio has declined to less than 900 girls per 1000 boys. Even in India's capital, the ratio stands at 865 in 2001 compared to 915 in 1991⁵. The lowest ratio was recorded in the South West district of Delhi in 2001; the ratio being 845¹. Now female foeticide is more rampant than ever before. In the present times Female foeticide has turned into a menace and is becoming impossible to eradicate this evil from the society as for that there is a need to change the set mind set of people. In the Population Census of 2011 it was revealed that the population ratio in India 2011 is 940 females per 1000 of males. The Sex Ratio 2011 shows an upward trend from the census 2001 data. Census 2001 revealed that there were 933 females to that of 1000 males. Since decades India has seen a decrease in the sex ratio 2011, but since the last two of the decades there has been in slight increase in the sex ratio. Since the last five decades the sex ratio has been moving around 930 of females to that of 1000 of males².

It is bitter truth of society that everyone wants good mother, sister, bua and wife but nobody wants daughter. A daughter is always treated as a burden over the family and the basic perception behind is that one has to spend hefty amount over the wedding of their daughter. But have we ever thought that if there will be no daughters, there will be no daughter in laws. Except this the safety of the girl child is also a cause on concern. A girl since cradle to grave is always treated as a doll in the male's hand. Till she is a child she has to obey her brother and father, after marriage has to fulfill obligations of her husband and after becoming mother has to remain under the control of her son. She does never live the life of her own. And the situation is that even after so many years of independence, countless efforts of women empowerment and women education the real position of a female in a basic Indian family has not been improved. See the plight of Indian lady as we all know that the male chromosomes are responsible and is deciding factor over the sex of the fetus. But still only a female is held

¹ Article on female foeticide by B.R. Sharma available at <http://medind.nic.in/jal/t08/i3/jalt08i3p157.pdf>

² Sex ratio in India available at <https://www.census2011.co.in/sexratio.php>



responsible for giving birth to a female child. Though, this condition has been improved gradually with the level of the education but has not been completely changed.

FACTORS RESPONSIBLE FOR FEMALE FETICIDE

Status Symbol: The deep rooted desire of couples and the pressure of the families and societies has created strong impact over the mind of people. It is considered that only a male child carries the name of family but we have seen number of such examples where parents name are known by the name of their daughters like Kalpana Chawla, Indira Gandhi and so on. The only need is to give the equal exposure to girls also.

Dowry System: the fashion and tradition of giving gifts to the girl and her in laws at the time of marriage is the biggest problem. People are afraid that how they will marry off their daughters and fulfill the desires of her next family. This is biggest fear in the low income strata families. Though Dowry Prohibition Act is there to control dowry system but nowadays it has become a unseen norm in the society and it is impossible to end this system.

Dependent Character of females: females are treated only as object at the hands of male. There is a need to make a girl child so strong so that she can protect herself and earn herself so that instead of being a dependent she will be independent and will able to raise her family well. For that proper education and awareness is required.

Religion: The religion makes and is basically responsible for framing the mindset of the individual. Our religion talks about giving more strong position to males. Except it the norms like after death a person acquires nirvana only if last rites are performed by the male child another norm is special celebrations at the time of the birth of male child and this discrimination increases the desire among couple more to have a male child.

Medical Ethics: Technology has both positive and negative side but see machines don't know what is good and what is bad. It is upon the human beings operating them. So the doctors and the persons conducting sex determination tests should be punished or restricted. Another thing is to revive the medical ethics in them so that they will not do such things only to earn handful of money.

Gender Discrimination: The difference between males and females on the basis of their capabilities, earning and strength is not justified. The natural difference between male and female is there but except that there is no such work which only a male can do. legislation is working hard to reduce the gender discrimination with the help of provisions like equal pay for equal work, giving more chances to females to represent themselves in job spheres etc. but along with the legislation there is need to have changed mindset of people.

Safety of Girl Child: Incidents against women such as rape cases, abduction, harassment cases, domestic violence, trafficking, etc is increasing day by day. This is the issue of worry for parents while with a male child, this isn't an issue, which is also a reason for preference of male child over a girl child³.

Illiteracy: Though illiteracy rate has been improved to a great extent but there is need to work more in this regard so that females become strong and not become victims at the hand of others. It is necessary so that they cannot be forced to go for abortions.

Analysis of Legal Provisions to control Female Feticide:

- Pre-Conception & Pre-Natal Diagnostic Techniques Act, 2002. Originally, there was a Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, but due to the prevalence of pre-conception diagnosis. The PC & PNDT Act states that no place or doctor is authorized to conduct pre-natal diagnostic techniques except for any type of abnormalities. It also states that "no person including the person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner" and "no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception". Under the Act, the following people can be charged: everyone running the diagnostic unit for sex selection, those who perform the sex selection test itself, anyone who advertises sex selection, mediators who refer pregnant women to the test, and relatives of the pregnant woman. The pregnant woman is considered innocent, "unless proved guilty" It has

³ Reasons of female feticide available at <http://writm.com/pratishtha/10-reasons-of-female-feticide/>



been claimed that the PC&PNDT Act focusses solely on ultrasonography as a technique for sex-selection, and newer technologies like amniocentesis and biopsy, and other techniques that could come up in the near future (for example, a technique involving taking a blood test isolating foetal cells from maternal blood hence enabling foetal sex detection is under investigation), which would be neglected under this Act.⁴

- Medical Termination of Pregnancy Act, The Medical Termination of Pregnancy (MTP) Act, 1971, legalizes abortion – however, under certain conditions. It states that pregnancy can be terminated by at least one registered medical practitioner (if the length of the pregnancy does not exceed 12 weeks) and by at least two registered medical practitioners (if the length of the pregnancy is between 12 and 20 weeks) who are of the opinion, formed in good faith, that

- the continuation of the pregnancy shall expose the woman to risk to her life or of grave physical or mental health (this includes women subjected to rape, and pregnancy induced by the failure of any contraceptive device or technique used by a married couple)

- There is substantial risk that if the child is born s/he shall suffer from severe physical or mental abnormalities.

The Medical Termination of Pregnancy Act has been said to ‘legalize’ abortion, but not present it as a ‘right’ for women. The twenty week limit (for abortion) has been criticized, stating that the sex of the foetus can be determined easily from the 12th week onwards. However, others claim that the limit must be extended, citing other medical reasons (for example, the Nikita Mehta case in 2008). Moreover, since there is no absolute definition to the phrase, ‘severe physical and mental health risks’, and that the opinion lies with the physician, illegal abortions aren’t very difficult to carry out (not at least, at this day and age – where everyone is more than ready to fish out a bundle of notes from their pockets to achieve what they want)⁵.

- **Female Foeticide and Indian Penal Code, 1860:**

Section 315 in The Indian Penal Code Act says that any act done with intent to prevent child being born alive or to cause it to die after birth.—Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both⁶.

Though this section talks about a child whether it is male or female but actually has teeth. But it is also not much useful as it is very difficult to prove that woman’s consent for the same was not there.

SUGGESTIONS

- Proper implementation of legal provisions.
- There is need to have speedy disposal of such cases and improve the conviction rate.
- More awareness among the masses should be there.
- More exposure is given to females.
- Women empowerment and better education.
- More medical ethics should be practiced.

CONCLUSION

There is still need to go a long way to deal with this social evil of female foeticide. What is required is the stricter application of laws and the joint efforts of state and the people. It is true that nothing is impossible as the word itself says I’m possible. Moreover it is everyone’s responsibility to make our social environment conducive to the safety of the females as it will resolve the problem to the great extent.

⁴ Female Foeticide in India available at <https://femalefoeticideinindia.wordpress.com/2013/03/06/laws-regarding-female-foeticide/>

⁵ IBID

⁶ <https://indiankanon.org/doc/1637773/>