

# ROLE OF LEGAL DIRECTIVES FOR PREVENTING FEMALE FOETICIDE

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## ABSTRACT

Female foeticide has been one of the most debated issues which called attention from the various sections of the society. The paper debate at analyzing that female foeticide is the act amounting to heinous crime. It is agonizing that the gender bias and deep-rooted prejudice and discrimination against girl child, which have been there down the centuries, are now found to begin in the womb itself. The girl child in the womb faces the peril of pre birth elimination i.e. female foeticide. The latest advances in modern medical sciences - the tests like amniocentesis and ultra sound are being abused. The tests which were originally designed for the detection of gender related congenital abnormality of the foetus are now being abused particularly in India and Asian countries primarily to detect the sex of the foetus with the intention of getting it aborted if it happens to be that of a female. Such foetus is considered to be “suffering from the very disease of being a female foetus”. The paper conclude that the gap between law and practice has been widely increased and recommend that mass awakening with proper practice of legislation will eliminate barbaric crime. Moreover Acts and Rules are to be appreciated.

*Keywords: female foeticide, crime, modern medical sciences, Acts, law*

## The Real Truth

Indian women are always under threat from womb to tomb. Moreover they are treated as second gender in the whole world today. They are not safe at their own home to in-laws house and from workplace to custody of any official. It is agonizing that the gender bias and deep-rooted prejudice and discrimination against girl child, which have been there down the centuries, are now found to begin in the womb itself. The girl child in the womb faces the peril of pre birth elimination i.e. female foeticide. But most pathetically, as per new trend, they are not safe even in their mother's womb also. The fact is that legislature, judiciary and executive are not at all sufficient to combat this social menace. Scarcity of girls may generate gruesome social problems also in future like late marriages among males, polyandry, unnatural sexual offences or more sexual attacks to women. Research have shown that due to female foeticide, there is an increase in young, unmarried and poor men having high testosterone level who are causing violence against women. Thus a vicious cycle of crime against women will generate another crime against them.

## Theoretical background

The status of women in India has a complicated history. During the Vedic period, 1500-1000B.C., women were highly educated and enjoyed a liberal social status. They were praised as 'Sakthi' which means power and strength. Later during the medieval period, as invasions happened, 1026-1756, the social status of women deteriorated. Man could divorce his wife without alimony, women were denied education. Polygamy, sati, child marriage, ill treatments of women were widely prevalent. "What should a woman pray for? A husband, if she is not married; or, if she is, then for a better husband after next rebirth". "Women pray first as to husbands; then to bear sons. Men must have sons to serve their souls" (Mayo 1927:90). The British era, 1800-1947, was characterized by social reforms like Sati Prohibition Act, Child Marriage Restraint Act, etc. After independence, some legislative measures have been taken to protect women at society as well as in family also. There are laws to protect women from domestic violence, rape or immoral trafficking throughout her life, at the time of marriage dowry prohibition law, after marriage there are laws relating to adultery or cruelty, during widowhood laws to protect from sati system or succession and at workplace from sexual harassment. But till today most fragile and fishy laws are here relating to protect their natural birth.

The latest advances in modern medical sciences - the tests like amniocentesis and ultra sound are being abused. The tests which were originally designed for the detection of gender related congenital abnormality of the foetus are now being abused particularly in India and Asian countries primarily to detect the sex of the foetus with the intention of getting it aborted if it happens to be that of a female. Such foetus is considered to be "suffering from the very disease of being a female foetus". If the female foetus is lucky enough to survive till her birth then she faced the peril of elimination in infancy by female infanticide. (Kollor, 1990:3) defined it as, "Killing of an entirely dependent girl child less than one year of age by mother, parents or others in whose care she is entrusted". Yet this abuse of girl child which is violation of her human right to life continues to prevail not only in parts of Haryana, Rajasthan and Gujarat but recently has been found in some districts of Tamil Nadu and Maharashtra as well (Kumari,1995). Selfish and narrow-minded male chauvinists have found yet another way of nipping the life of a woman in the bud. Even today in a large number of Hindu households, the birth of son is an occasion for rejoicing; the birth of a daughter is a cause of anxiety (Vashista, 1976:6-17). Based on anthropological evidence (Dube, 1983) it has been observed that societies with adverse female sex ratio have indicated the presence of customs like polyandry and abduction and purchase of women. It is strongly felt, that contrary to raising the status of women, adverse sex ratio would increase the incidence of rape, prostitution and violence against women.

The sex ratio in the age group 0-6 years declined from 962 in 1981 to 945 in 1991 and then 927 in 2001. This has largely been attributed to female foeticide in some parts of the country. The Government of India has set a goal of improving the child sex ratio to 935 by 2011-2012 and 950 by 2015-17. In the country 328 districts have sex ratios below 950. The challenge is to monitor the sex ratio at birth at regular intervals, which is possible through a complete birth registration system (Government of India, 2010:37-38).

### Sex Ratio in India 1901 to 2011

Year	Number of women/1000 men	Decadal variation
1901	972	—
1911	964	-8
1921	955	-11

1931	950	-5
1941	945	-5
1951	946	+1
1961	941	-5
1971	930	-11
1981	934	-4
1991	927	-7
2001	933	+6
2011	940	+7

(Census of India, 2011)

A report in The Times, London (27 Nov, 2002), headlined “Delhi Rich Adopt Gender Selection of the Poor” revealing how the media’s desire to locate son preference and ‘know’ it continues alongside government and other agencies in India attempting to do the same. The article started with a historical backdrop to female infanticide in rural areas where ‘girl babies were smothered, drowned or simply abandoned by poor families, desperate to have a boy’. The article continues by saying that ‘an alarming trend: the spread of the gender imbalance up the social assisted by new technology available to the increasing number of Indians with money to burn’. Hence in a single sweeping article, a barbaric practice which has said to have come out of rural poverty has now spread to urban wealthy classes in an advanced technological form, a fawnd argument from its inception. Son preference and female foeticide have diffused well beyond any identifiable boundaries that it almost (Purewal, 2010:67).The purpose of changing ubiquitous state practice may appear ambitious for the needs of our times. Egregious and pervasive violations of women’s right often go unrecognized, they go unpunished and are all too often defended as a necessary part of a culture or religion or as a quality of human nature. While violations of women’s rights vary in different cultures, victims all share a common risk factor: that of being female (Cook, 1994:228).

### **Prenatal sex detection laws in India**

The three major techniques are prevail relating to sex detection before birth like Amniocentesis, Chronic Villus Sampling and most popular method Ultra sonography. The Amniocentesis is a medical procedure used in prenatal diagnosis of chromosomal

abnormalities and fetal infections where a small amount of amniotic fluid is extracted from amniotic sac surrounding a developing fetus. Medically, the only category of cases where sex determination is necessary is where there are sex linked genetic diseases, but amniocentesis has become synonymous with the sex determination test (Grover, 1986:31). Ultrasound machines are needed to watch natural growth and development of foetus and also health of the mother. Science and technology are for betterment of mankind but those sophisticated techniques are misused by human beings themselves for destruction of humanity. The special laws have been formulated to fight on that traditional discrimination against women and important issues are marriage, children, abortion, crimes against women and inheritance (Vyas, 2011:14). The Preconception and Prenatal diagnostic Techniques (Prohibition of Sex Selection) Act 1994 is one of the social legislation for protection of women. In the Economic survey 2011, it is stated that the worrying problem is missing women from the country. However, this improvement is not real as far as girl child is concerned. Ironically, ultra sonography, one of the most beneficial diagnostic tools used to monitor fetal health, is widely misused in sex determination, leading to abortion (Bardia et al 2004). Not coincidentally, the population of Haryana, the province, has one of the most lopsided gender ratios: 861 females for every 1,000 males (Census of India, 2011). In 1994 the Indian government outlawed sonograms for sex determination. In few selected areas implementation of law has shown improvement in sex ratio. However, in a country where abortion is legal and widespread, this law is difficult to implement. A contribution of this law has been a raise in the price of sex determination tests. A worrying trend is that sex determination is far more common in urban areas than in rural areas and among literate than illiterate women. The absolute differences in sex ratio were high in rich states as compared to poor states. This explodes the myth that with increasing levels of affluence and education, gender bias gets eroded gradually. However, for last births, at the all-India level, the male to female sex ratio was 1.434 (697 girls for every 1000 boys). Similar adverse sex ratio was observed in Northern India that indicates the strong effect of gender preference on reproductive behavior (Visaria, 2004, Arnold et al 2002).

## Legality of Abortion

Almost each and every religion has declared abortion as sin and amounts to murder. The same rule was later followed in different personal legal system also. Legally abortion means an artificially induced termination of pregnancy for the purpose of destroying an embryo or fetus (Black's law Dictionary, 2004:6). Criminal abortion is destruction and expulsion of the fetus unlawfully where criminal law punishes the wrongdoers. In common law from very beginning abortion is a crime and unborn is protected by law. According to Sir William Blackstone, "Life is immediate gift of god, aright inherent by nature is very individual, and it begins in contemplation at law as soon as e infant is able to stir in its mother's womb" (Denning, 1993:44). Abortion and child destruction are crimes but do not amount to murder or manslaughter unless the child is born alive before he dies as the rights of unborn person are all contingent on his birth as a living human being (Salmond, 2004:304).

As a response to this alarming situation, in India the Parliament enacted the Prenatal diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994 which came into force on 1<sup>st</sup> January 1996. The Maharashtra Government also had passed a similar legislation in 1988. The act has been renamed as The Pre-conception and Prenatal Diagnostic Techniques (Prohibition of sex selection) Act, 1994 and amended in 2002.

## Objectives of the Act

1. Prohibition of the misuse of prenatal diagnostic techniques for the determination of sex leading to female foeticide;
2. Prohibition of advertisement of the techniques for detection and determination of sex;
3. Regulation of the use of the techniques only for the specific purposes of detecting genetic abnormalities or disorders;
4. Permission to use such techniques only under certain conditions by registered institutions;
5. Punishment for violation of the provisions of the Act; and
6. To provide deterrent punishment to stop such inhuman acts of female foeticide.

The Act also envisages the establishment of a Central Supervisory Board and Advisory committee. Section 27 of the Act makes every offence under this Act cognizable, non-bailable and non-compoundable.

### **Scheme of the Act and Rules need to be appreciated**

1. Proviso below section 4(3) of the Act shows that person conducting ultra sonography on a pregnant woman are required to keep complete record thereof in the clinic in such manner as may be prescribed and any deficiency or inaccuracy found therein shall amount to contravention of provisions of section 5 or section 6 of the Act unless contrary is proved by the person conducting such ultra sonography.
2. Section 5 requires taking written consent of the pregnant woman and prohibits communication of sex of foetus. In this regard Form G is prescribed in rule 10.
3. Section 23 of the Act shows that medical geneticist, gynecologist, registered medical practitioner or any person who owns a Genetic Counseling centre, a Genetic Laboratory or a Genetic clinic or is employed in such a centre, Laboratory or clinic, whether on an honorary basis or otherwise and who contravenes any of the provisions of the Act or rules made there under is also liable for punishment.
4. Under section 26 of the Act, with reference to companies, the word “company” means any body corporate and includes a firm and other association of individuals and such persons are also liable, when offences by companies are there.
5. In view of Section 3(3) of the Act, pre-natal diagnostic techniques can be conducted only at place registered and any change has to be reported. Under Rule 13 every change of employee, place, address and equipment installed has to be informed to the Appropriate Authority.

Provisions in IPC Sections 312-316 of the Indian Penal Code (IPC) deals with miscarriage and death of an unborn child and depending on the severity and intention with which the crime is committed, the penalties range from seven years to life imprisonment for fourteen years and fine.

### **Conclusion and Suggestions**

Female foeticide is an organized crime by parents, doctors, clinics and above all society.

1. It is recommended that no social legislation will become successful without the support of the people.
2. In India law does not need to be changed but needs to be better implemented.
3. Government should take efforts to enforce law and execute it properly.



4. Awareness among the masses through education and removing biasness towards female child.
5. In India the Hindu traditional society should set the example of Goddess of worship.
6. It is urgent need that apart from public awareness programs , medical community should strongly participate to eradicate the problem, prohibition on sale of ultrasound machines, special and technical training for police and judicial officials.
7. Doctors should be more responsible towards society and various medical institutions and associations including Indian Medical Council must monitor the matter with stringent rules for their medical practitioners. In fact MTP Act, 1971 and Clinical Establishment Act, 2010 should be made more stringent.
8. All ultrasound machines have to be registered and strict regulations like Arms Act, 1959 should be made in selling and purchasing of those machines.
9. Sex Selection Act, of 1994 are violative of Article 21 of the Indian Constitution, Article 21 reads- "Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law."This enactment basically prohibits termination of life which has come into existence has to be strictly followed.
10. The judiciary has to play significant role to safeguard the social interest by interferences to play the role in accordance to the provisions of PNDT Act.
11. The Civil Surgeon of the district should be delegated with the duties, powers and function to check the record of diagnostic centre's at regular intervals.
12. The diagnostic centres should maintain proper record. Fail to keep record or maintain the same liable to cancel the license or face closure.
13. In order to keep proper vigilance the diagnostic centre should invariably forward weekly returns to the Civil Surgeons or Officers appointed for the purpose.
14. The Civil Surgeon of the District should arrange periodical workshop and to issue directions that the technique is not misused at any cost.
15. The N.G.O. s can also play a role to criminalize guilty doctors.
16. The ultrasound machines to be used by competent gynecologists and obstetricians possessing medical qualification exclusively.



17. Certain medical practitioners in tehsil places are disclosing the sex of the foetus, which require the provision for higher punishment.
18. The informer's information should be kept secret and such clinics should be raided by the Civil Surgeon.
19. In every locality a respectable person should be officially appointed to give information of such clinics to the competent authority to eradicate violations to disclose sex of foetus in any manner.
20. It should ensure that the clinics conducting Ultra sonography on a pregnant women shall keep complete records thereof and any misuse to be dealt by search and seizure of equipments.

In India broad spectrum with gender biases is still prevalent which has to be tackled by voluntary adoption of legislature and mass awakening inside and outside the family.

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