

Female Foeticide in India



Law

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ABSTRACT

Female foeticide is one of the most nefarious crimes on this earth; perhaps what is detestable is that the people who commit crime belong to the educated class. Female foeticide has become a social hazard of international significance in the era of ultrasound technology and capitalist modernity. This paper tries to focus on the rationale behind the foeticide, and the consequences of this phenomenon on the Indian society. Finally, this paper will review to the measures taken to combat this heinous phenomenon for a balanced society.

INTRODUCTION:

One of the greatest threats to our contemporary civilization is the menace of skewed sex ratio. The act of aborting or terminating a fetus while it's still in the womb, because it is female, is known as female foeticide. This can be done after determining the sex of the child before it's born, through ultrasound scans.

Main Causes of Female Foeticide:

- Sexual Violence against women
- Dowry System
- Advancement of Medical Technology

LEGISLATIVE MEASURES TO COMBACT FEMALE FOETICIDE:

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, was enacted and brought into operation from 1st January, 1996, in order to check female foeticide. The person who contravenes the provisions of this Act is punishable with imprisonment and fine. *Despite this, it is unfortunate that law which an aim at preventing such practice is not implemented.*

Recently, PNDT Act and Rules have been amended keeping in view the emerging technologies for selection of sex before and after conception and problems faced in the working of implementation of the ACT and certain directions of Hon'ble Supreme Court after a PIL was filed in May, 2000 by CEHAT and Others, an NGO on slow implementation of the Act. These amendments have come into operation with effect from 14th February, 2003

Key features of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994:

The Act mainly provides for-

Absolute prohibition of sex selection and sex determination. Regulation of the use of prenatal diagnostic techniques (e.g. amniocentesis and ultra sonography). These can only be conducted for specified conditions, such as the detection of specific abnormalities in the foetus. no laboratory or center or clinic will conduct any test including ultra-sonography for the purpose of determining the sex of the fetus. no person, including the one conducting pre-natal diagnostic procedure as per the law, will communicate the sex of the fetus to the pregnant woman concerned or her relatives by words, signs or any other method. the pregnant woman has undergone two or more spontaneous abortions or foetal loss. the pregnant woman had been exposed to potentially teratogenicity (causing physical defect to foetus) agents such as drugs, radiation infection or chemicals the pregnant woman or her spouse has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease. has obtained the pregnant woman's written consent to undergo such procedure.

ultrasound machines, including mobile ones, have to be registered and records of all prenatal diagnostic tests conducted to

be maintained. age of the pregnant woman is above 35 years.

the central and state supervisory board will have representatives of woman welfare organizations, social scientists as well as medical experts as the Appropriate Authority .

All clinics, hospitals, nursing homes and laboratories conducting these tests and ultrasound must be registered under the PCPNDT Act 2003 by paying a fee.

A copy of the registration certificate must be prominently displayed by the clinic. any person who puts out an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any other document, or advertises through internet or other media in electronic or print form, can be imprisoned for up to three years and fined Rs. 10,000. any medical geneticist, gynecologist, registered medical practitioner or any person who owns an genetic counseling centre, a Genetic Laboratory or a Genetic Clinic where the test is conducted can be imprisoned for up to three years and be required to pay a fine of Rs 10,000. For any subsequent offence, the fine can go up to Rs 50,000 and imprisonment to five years. the person who seeks the aid of a genetic or ultrasound clinic or medical geneticist for sex selection can face imprisonment for a three year period and be required to pay a fine of Rs 50,000. For any subsequent offence, the fine can go up to Rs 1,00,000 and imprisonment up to five years.

Registration of Genetic Counseling Centres, Genetic Laboratories and Genetic Clinics:

No person shall open any Genetic Counseling Centre, Genetic Laboratory or Genetic Clinic or any other technology capable of undertaking determination of sex of foetus after the commencement of the PNDT Amendment Act, 2002 unless such centre, laboratory or clinic is duly registered under the Act¹.

Certificate of registration:

The Appropriate Authority shall, after holding an inquiry and after satisfying itself that the applicant has complied with all the requirements of this Act and the rules made there under and having regard to the advice of the Advisory Committee in this behalf, grant a certificate of registration as the case may be which is renewed on payment of prescribed fees².

Cancellation or suspension of registration (Section20):

- (1). The Appropriate Authority may suo moto, or on complaint, issue a notice to the Genetic Counselling Centre, to show cause why its registration should not be suspended or cancelled for the reasons mentioned in the notice.
- (2). If, after giving a reasonable opportunity of being heard to the Genetic counseling

Order of the Appropriate Authority is Appealable:

Section 21 of the Act provided that the Genetic counseling Cen-

tre, Genetic Laboratory or Genetic Clinic may, within thirty days from the date of receipt of the order of suspension or cancellation of registration passed by the Appropriate Authority under section 20, prefer an appeal against such order to

- the Central Government, where the appeal is against the order of the Central Appropriate Authority; and
- the State Government, where the appeal is against the order of the State Appropriate Authority,

Prohibition of Advertisement relating to Pre-Conception & Pre-Natal Determination of sex:

Section 22 of the Act provides that the advertisement relating to pre-Conception & pre-natal determination of sex is prohibited. Contravention of the said provisions is punishable with imprisonment for a term which may extend to three years and with fine which may extend to Rs10,000/- and on any subsequent conviction, with imprisonment which may extend to five years and with fine which may extend to Rs.50,000/-.

Offence to be cognizable, non-bailable and non-compoundable:

Section 27 of the Act provides that every offence under this Act shall be cognizable, non-bailable and non-compoundable.

Cognizance of offences:

According to sec.28 of the Act, the cognizance of offence will be taken by a Metropolitan Magistrate or a Judicial Magistrate of the first class.

Legal Aspects and Judgments:

The Preconception and Prenatal Diagnostics Techniques (Prohibition of Sex Determination) Act 2003, with Rules made there under is an act to safeguard the girl child. The Courts have delivered judgments indicating therefore that the PC-PNDT Act is actually a whip to penalize those indulging in sex determination and to serve as a deterrent to others.

In the landmark case of *Cehat, Masum and Dr Sabu George v Union of India and others*³ The Supreme Court of India 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 *Qualified Private Medical Practitioners and Hospitals Association Vs State of Kerala*,⁴ 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. A similar view was taken in the case of *Malpani Infertility Clinic Pvt. Ltd. and Others Vs Appropriate Authority, PNDT Act and Others*

*In Vinod Soni and another Vs Union of India*⁵, 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. 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 be a right. Reliance is placed on a Supreme Court Judgment

In *Dr Smt) Pooja Agrawal Vs. Shivbhan Singh Rathore & another*⁶, the Court held the Act of 1994 and Rules made there under needs to be strictly implemented.

The State Government shall appoint, by notification in the Official Gazette, one or more Appropriate Authorities for the whole or part of the State for the purposes of this Act under Section 17(2) having regard to the intensity of the problem of pre-natal sex determination leading to female foeticide⁷.

CONCLUSION:

Indian Society discrimination against girl child still prevails either as there is no change in the mind-set or there is also insufficient education. Even after passing of 68 years of independence, we are not in a position to change mental set-up which favours a male child against a **female**. Advance technology is being used for removal of foetus. The misuse of modern science and technology by preventing the birth of girl child by sex determination before birth sex selection has become a rampant phenomena which has affected every strata of society. In view of above fact situation, strict compliance of the provisions of the PCPNDT Act and the rules made there under is the need of the day⁸.

The PNDT Act is a law made with good intentions. It bans sex selection before and after conception, and further regulates the use of prenatal diagnostic techniques for strictly medical purposes. The Parliament in its wisdom attempted to check the imbalancing sex ratio.

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