



## Right to life of Female Foetus

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### ABSTRACT

*Right to life of female foetus is established from the interpretation of International covenants and Constitution of India followed by judgment of U.S. Supreme Court. Pros and cons of prohibition of sex determination (SD) tests in discussed elaborately as it is prerequisite for the international abortion. The factors contributing opposition to the SD, 1. Devaluing the female sex, 2. Reinforcement of current attitudes and practices that discriminate against girl children and 3. Imbalance of sex ratio, has been dealt with. It is concluded that it is not advisable to ban the SD in the best interest of women. Remedial measures are suggested for protection and preservation of right to life of female foetus.*

**Keywords : Right to life, Female foetus, Sex determination, Protection**

The paper discusses mainly the right to life of female foetus i.e. the right of foetus to be borne as interpreted from the provisions of international covenants and Constitution of India. It encompasses incidentally the associated gender tests, termination of female foetus including brutal murder of female child after birth. It further enlists arguments for and against prohibition of sex determination and consequences of imbalance in sex ratio. It also spells out remedial measures for the protection and preservation of female foetus.

#### Right to life:

Human Rights are those rights, which should be made available to every individual without discrimination of any kind. Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom. The most important right among of a Human is the right to life. It is the supreme human right from which no derogation is permitted. It is inalienable. The Article 6(1) of the International Covenant on Civil and Political Rights prohibit the arbitrary deprivation of life. We are concerned with right of foetus to be borne. But there are some controversial issues related to this supreme right.

#### Right to Abortion:

One such issue is the question of Right to abortion. Among other rights of women, it is agreed that every mother has a right to abortion. But the rights of the mother are to be balanced with the rights of the unborn.

Earlier the right to abortion was not permitted and it was strongly opposed by the society. The termination of pregnancy was termed to be a murder of the foetus. The maternal womb in which the flame of life is lighted is sacred and may not be profane to extinguish what God has created in his image and in his likeness. But due to the change in time and mind set of people, waning influence orthodox tradition bound society on governance and ease made available by technology led abortion legal by most of the nations. It was firmed up by the famous decision of Roe Vs Wade by the US Supreme Court. But the opposition still persist and people do believe that it should be legally prohibited.

#### Right to life V. Right to Abortion:

The question which is the reason for this discussion is- whether a mother has a right to abortion vis a vis the right to life of the unborn. The right to life declared by International in-

struments and guaranteed by Indian Constitution, is most in accord with the genuine protection of the right to life. That this protection begins at conception rather than at birth." Further, the intentional and illegal interruption of the physiological process of pregnancy, resulting in the destruction of the embryo or death of the foetus, is unquestionably an offense against life and, consequently, a violation of international covenants and Indian Constitution of the Rights and Duties of Man.

#### Thought of Women:

The thought of women having right to abortions in order to choose the sex of their future children fills many with revulsion whilst sex determination is not a desirable practice, prohibiting it by law is likely to do more harm than good. This conclusion is clearly consequentialist - the only form of ethical argument that is plausible in this context. It is hard to provide persuasive reasons why SD is intrinsically unethical. No rights are violated when SD is allowed by law. Legal prohibition of SD will infringe upon the reproductive rights of women.

#### Legal Consequences:

The consequences of legally permitting or prohibiting SD are bound to vary from one society to another. This analysis is limited to India and China, where SD is widespread and consequences are more palpable than in North America.

#### In India:

In India, SD is widespread and shows no sign of waning. Opponents refer to the practice as female foeticide or femicide. A strong feminist movement in India condemns SD. The Forum against Sex Determination and Sex Pre selection has engaged in political activism to promote a legal ban. In May 1988, largely as a result of the work of this group, legislation was passed in Maharashtra banning the use of medical techniques for prenatal diagnosis except in cases where the mother is at high risk of foetal abnormality. In 1994, the Indian Parliament passed a law that provides penalties of three years in prison and a fine of about Rs 15,000/- for those found guilty of administering or taking prenatal tests for the sole purpose of determining the sex of 'the foetus'.

#### Comparison with China:

The social and cultural basis for preference for sons in India and China is long standing and deeply entrenched. Religious traditions and economic circumstances drive the preference for sons beyond that in most other countries. In both India and

China, the family name is passed down through sons thus maintaining family line. They are also responsible for supporting their parents in old age. In India, a precept of the Hindu religion holds that a sonless father cannot achieve salvation and a significant Hindu funeral rite for their fathers can only be performed by male children. An analogous tradition in China stems from ancient Confucian precepts that require a son to perform ancestral ceremonies.

#### **Daughter as a financial liability:**

Further, owing to financial reasons the parents do not prefer a female child. Firstly the fabulous dowry to be paid on the daughter's marriage. Parents consider a daughter as a 'financial liability'. Secondly because the daughter leave the parents' house after marriage, she is no longer useful as an earning member of the family. According to one account: in the last two decades, fueled by a consumer boom among the new Indian middle class, dowry has spread like an epidemic to communities that never practiced it before. The purpose of dowry underwent a change. No longer is it seen as a collection of wedding gifts to help a couple start a new life; instead, it is a way for the groom's family to elevate its economic status. The demands continue even after marriage. The consequences of failure to meet the demands may result ultimately into the divorce apart from constant harassment and even murder by of the members of the family of the husband.

Economic factors evidently provide a major incentive for aborting female fetuses but the underlying cultural tradition of preference for a son remains a strong factor. Social taboo of remaining son-less haunts not only the woman but also her family.

The leading arguments in opposition to SD are:

- (1) the practice devalues the female sex;
- (2) it reinforces current attitudes and practices that discriminate against girl children and women; (3) it results in an imbalance in the sex ratio. Each of these will be examined in turn.

#### **Devaluing the female sex:**

Although it is no doubt true that a practice reinforcing the already existing preference for a son devalues the female sex. The question remains whether that is a sufficiently strong reason to institute legal prohibition. What about existing female children and women? Does SD harm or wrong them? This is where the debate begins and empirical evidence is needed to supply answers.

A report published in June 1986 in India Today estimated that six thousand female babies had been poisoned to death during the preceding decade in the district surrounding the town of Madurai in Tamil Nadu. Methods of infanticide include feeding the baby the sticky white milk of a poisonous plant or cow's milk mixed with sleeping pills. One mother of a day-old baby who had been killed thus was reported as saying: "We felt very bad... But at the same time, suppose she had lived? It was better to save her from a lifetime of suffering." While other emphasized that "Abortion is costly... And we have to rest at home. So instead of spending money and losing income, we prefer to deliver the child and kill it." As such infanticide is viewed as an alternative to aborting female fetuses, and in the case of the second woman quoted, appeared to be the preferable alternative.

The encouraging trend in Indian society is that educated parents especially when mother is empowered, of late, are satisfied with girl child and prefer to get sterilized in order to prevent recurrence of further pregnancy. The number of such parents is however insignificant.

Some of the consequences for women of legal prohibition in India have already become evident. Women for whom SD is less readily available as a result of its being outlawed are made worse off because, (a) they have more children than

they want or than is healthy for them until they have the desired number of sons; (b) some will go to private doctors who perform SD despite legal prohibition and the procedure will cost considerably more than when it was performed in public hospitals before the prohibition; (c) those who do not bear sons risk having their husbands leave them without any means of support.

The fact that the practice of SD contributes to devaluing the female sex is a good reason for judging it to be undesirable, but not a sufficient reason for legal prohibition. If women and their girl children in India and China are made worse off in other ways as a result of prohibiting SD than they would be if the practice is legally tolerated, an assessment of these consequences leads to the conclusion that SD should not be banned by law.

#### **Reinforcing Discriminatory Attitudes:**

The second general argument opposing SD is that it reinforces current attitudes and practices that discriminate against girls and women. Evidence from Maharashtra, the Indian state that has had a legal prohibition of SD since 1988, suggests that prohibiting SD has not changed the preference for sons nor has it done anything to enhance the position of women.

Furthermore, legal prohibition in India does not seem to have succeeded in lowering the number of SD tests. The practice has simply been driven underground, with no way of monitoring the numbers or seeking to maintain quality control.

A physician in Bombay who formerly practiced SD contends that enacting the law in Maharashtra has played into the hands of unethical people. Physicians who do amniocentesis sometimes do it unscrupulously, telling women that the foetus is a girl when it is not.

Conjoined with the state policy of China of one-child family, the ultimate result has been a reinforcement of the traditional preference for sons. SD following prenatal diagnosis is therefore the consequence, not the cause of discriminatory attitude and practices. If the practice of SD reinforces current attitudes and practices that discriminate against girls and women, that is a good reason for judging it to be undesirable but not a sufficient reason for legal prohibition.

#### **The danger of an imbalance in the sex ratio:**

Demographic figures from both countries reveal that a significant imbalance in the sex ratio has already occurred.

This could result in a growth in prostitution and pressures towards polyandry. Kusum mentions the fear that "*the reproductive burden on women will increase because the same burden of bringing forth progeny will then have to be shared by fewer women.*"

Are there any possible positive consequences? One argument would be that an imbalanced sex ratio would ultimately benefit women. As women become scarcer, their value would increase. Women would then become valued in the way that rare jewels or one-of-a-kind art objects are revered. This will lead to changes in society. There may be mad race of men rushing for women in order to choose a partner. Interestingly system of offering dowry to grooms may be reversed. The bridegroom may instead be offered 'Kanyasulkam' by the parents of the groom for a match of their choice for their son.

#### **Conclusion:**

SD is an undesirable practice for the reasons stated by its opponents. Yet legal prohibition would restrict reproductive rights, hardly a desirable feature in countries like India and China. Parental education shall serve the purpose to a great extent. It is the political will of society to bring about social, cultural and economic reforms and active support of the strong and efficient state apparatus dedicated to the ethics of gender justice.