



Pre-Natal Sex Selective Abortion:an Injustice With Women

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ABSTRACT

In the name of gender cleansing through medical practices sex-selection has practice rampantly in India although we have enacted a good number of legislation viz IPC1860,MTP Act 1971,PC & PNDT Act 1994 to cut such sociological crimes in our domestic sphere but our country is not able to control the shame

KEYWORDS

Female feticide, Abortion, Pre-Natal sex selection.

Introduction

Sex selection is a systematic extermination/destruction of newborn girls or female fetuses i.e. of a population group in whole or in part. It is one of the most heinous forms of persecution of women as a class. It is "gender cleansing" in the garb of "medical practice", has the attributes of crime against humanity committed during peace times and meets the definition of genocide under the UN Convention on Prevention and Punishment of Crime of Genocide.

II International Initiation

The Preamble of the UN Charter, 1945 professes faith in fundamental human rights, in the dignity and worth of human beings and in the equal rights of men and women. One of the purposes of the UN is to achieve international co-operation in promoting respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.¹ The UDHR affirms the principle of inadmissibility of discrimination against women. It proclaims that all human beings are born free and equal in dignity and rights,² that everyone without any distinction is entitled to all the rights and freedoms set forth in UDHR,³ that everyone has the right to life⁴ and that childhood is entitled to special care and assistance.⁵ The UN General Assembly adopted a Declaration on the Elimination of Discrimination Against Women on November 17, 1967 and to implement the principles set forth therein. Convention on the Elimination of All Forms of Discrimination Against Women, 1979, (CEDAW) was adopted on December 18, 1979. For monitoring the implementation of CEDAW there is a Committee on the Elimination of Discrimination Against Women. To receive individual complaints by bypassing the government, the Optional Protocol to the CEDAW was adopted on October 7, 1999. The International Covenant on Civil and Political Rights, 1966 (ICCPR) declares that every child has the right to protection by family, society and the State.⁶ The International Covenant on the Economic, Social and Cultural Rights, 1966, (ICESCR) contains provisions for the care and protection of children against economic and social exploitation.⁷ The Declaration on the Rights of the Child was adopted on November 20, 1989. For monitoring the implementation of the CRC, a Committee on the Rights of the Child was set up in 1991. CRC recognizes that every child has the inherent right to life and the State shall ensure the survival and development of the child.⁸ The UN Declaration "World Fit for Children" directs member States to reaffirm their commitment to promote and protect the rights of children. The UN has set "Millennium Development Goals" related to gender equality and empowerment of women. Female infanticide and female foeticide violate all the above international conventions and declarations.

rected at restoring the dignity of women by changing the social behavior. Bengal Regulation XXI of 1795 declared female infanticide illegal. Regulation VI of 1802 recognized the perpetrators of female infanticide as murderers, while Act VIII of 1870 (also known as Female Infanticide Act) mandated compulsory registration of births, deaths, betrothals, marriages and remarriages by Registrars appointed for the purpose. Female Infanticide Act was enforced strictly from 1876 to 1906. Laws prohibiting female infanticide did not entirely eradicate but deterred such practices.

III Indian Penal Code and Sex Selection

Abortion, independent of any harm which it causes or be intended to cause to the woman, is an offence under the Indian Penal Code, 1860 for which the mother as well as the abortionist can be punished.⁹ IPC permits abortion only if it is induced in good faith to save the life of the mother. Anyone caught performing an illegal abortion is liable to three to seven years imprisonment and a fine. Women terminating their pregnancy also face up to seven years in prison and a fine. Whoever voluntarily causes a woman to miscarry, shall, if such miscarriage is not caused in good faith for saving the life of the woman, be punished with an imprisonment of up to three years, or with fine, or with both.¹⁰ Whoever, with the intent to cause the miscarriage of a woman, does any act, which causes her death, shall be punished with an imprisonment of up to ten years and with fine, while if the miscarriage is without the consent of the pregnant woman the punishment may be life imprisonment.¹¹ Female infanticide is covered under the offence of murder and culpable homicide under Section 299 and 300 respectively of the IPC. The IPC also has provisions under Sections 315 and 316 for punishing miscarriage, female infanticide, female foeticide and similar offences, but these provisions are rarely enforced. IPC contains provisions for punishing parents/guardians who for causing death of children expose and abandoned them.¹² IPC also provides for punishing those guilty of concealing or secretly disposing of the dead body of any baby, which dies before, during or after birth.¹³ Even though the law criminalizes female infanticide and female foeticide, the practice continues unabatedly. This is because the crime goes unreported as it enjoys the approval of the society, the perpetrators are family members and the victim is incapable of raising an alarm. Unsafe abortion is one of the major causes of maternal deaths and it was felt that restrictive legal environments hampered access to safe abortion. High maternal mortality rate and the increasing international recognition of a woman's right to control her fertility prompted the government to legalizing abortion in India. It was felt that such a move would encourage women to seek termination of pregnancy in legal and safe settings.

IV Medical Termination of Pregnancy

Pre-independence India had a series of social legislations di-

The Indian government liberalized its abortion laws by adopting the Medical Termination of Pregnancy Act, 1972 (MTP Act). This landmark legislation empowered women by legalizing induced abortion in India under certain conditions. The MTP Act allows any government-run hospital, certified private facility or registered medical practitioners in India to perform abortions until twenty weeks of pregnancy. Under the MTP Act, pregnancy can be terminated on therapeutic, eugenic, humanitarian or social grounds. Notwithstanding anything contained in the IPC, a pregnancy can be terminated in good faith by a registered medical practitioner, if the length of the pregnancy does not exceed twenty weeks and the continuation of the pregnancy involves a risk to the life of the pregnant woman; or grave injury to the physical and/or mental health of the pregnant woman; or when there is substantial risk that the child if born would suffer from physical and/or mental abnormalities as to be seriously handicapped.¹⁴ Where a pregnancy arises from sex crimes like rape or because of failure of contraceptive device, it is presumed that such pregnancy constitutes a grave injury to the mental health of the woman.¹⁵ The termination of a pregnancy by a person who is not a registered medical practitioner will be an offence under the IPC, which to that extent is modified. It is wrong to blame the MTP Act which ensures a women's rightful access to safe and legal abortion services for the rampant sex-selective abortions in India. In India, medical termination of pregnancy *per se* is not illegal but it is illegal to abort foetus just because it is female.

In order to check the illegal and anti-social practice of pre-natal sex-determination., "Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994" (PNDT Act) has been implemented in the India. PNDT Act has been amended as "Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-selection) Act, 2003" (PC & PNDT Act) for curbing pre-conception sex-selection through the misuse of technology.

V Enforcement Hazards under PC & PNDT Act

Although India has a strong law- the PC & PNDT Act, to curb sex selection, lacunas and loopholes in the PC & PNDT Act and lax implementation of the law permits rampant misuse of medical technologies for sex-selection. Effective implementation of the PC & PNDT Act is hampered by practical difficulties and societal apathy. Firstly, in the matter of sex-selection, both the service-seeker and service-provider are perpetrators while the female foetus is the only victim. Conviction is rare as there is non-reporting of crime and absence of evidence or witness. Secondly, the requisite bodies under the PC & PNDT Act do not exist in all the States and wherever they exist, they are stymied because of inadequate legal orientation, expertise and initiative. Thirdly, sex selective abortion enjoys social sanction and is not perceived as a crime but as a method of ensuring the birth of sons. Further, it becomes difficult to distinguish cases of female foeticide and MTP. There are shortcomings also in the receipt of quarterly reports from States and Union Territories. Duly completed forms containing details of pregnancy-related tests conducted by sonography clinics are either not sent by the stipulated time or never submitted at all. The panel, which is supposed to scrutinize the forms, fails to meet regularly. Much time is wasted upon registration of clinics and routine administrative works while clinic records are not strictly and regularly monitored. It is impossible to regulate all private clinics that offer facilities for pre-conception and pre-natal diagnostic techniques/test/procedures or to monitor the whereabouts of mobile ultrasound machines. Fake addresses of patients and/or wrong reason for doing sonography are recorded.

To redress the serious and chronic crime of sex-selection, PC & PNDT Act is a soft law with a weak mechanism. Law enforcement agency is apathetic towards the misuse of PC & PNDT Act. Issuance of summons and search warrants, and punishment for violating the provisions of the PC & PNDT Act are rare. By protecting the pregnant women under section 23(4) of the PC & PNDT Act, the law takes a lenient view of her

fault in her failure to fight against sex selection. Moreover, section 23(4) of the PC & PNDT Act is gender discriminatory on the ground that it punishes men for the crime of sex-selection while leaving the pregnant women unpunished, although she may have willingly participated in the crime of sex-selection.

Conclusion

Female infanticide and female foeticide must be declared a crime against humanity. A purely legal approach to stall sex-selection will only push the issue under the carpet where it will breed gregariously. Although law is a powerful tool for social change but law alone cannot eradicate deeply entrenched biases. The fight against sex-selection can be a success story only if the entire community rallied around the cause. Needy people/couples should adopt the unwanted girls. Technologies, which are liable to be applied to the detriment of women, should be regulated and legal mechanisms developed to prevent their misuse. The extant laws on female foeticide should be strengthened without in any way jeopardizing women's rights over reproduction and the considerations of population control. Norms and standards should be framed which allow women free access to pre-conception and pre-natal sex-determination for medical reasons.

Legal mechanisms under PC & PNDT Act should be strengthened and firmly implemented. The Indian Penal Code, Criminal Procedure Code and Indian Evidence Act should be amended to bridge the chasm between the law and social realities.

Reference

1. Article 1, UN Charter
2. Article 1, UDHR
3. Article 2, UDHR
4. Article 3, UDHR
5. Article 25(2) UDHR
6. Article 24, ICCPR
7. Article 10, ICESCR
8. Article 2, CRC
9. Section 91, IPC
10. Section 312, IPC
11. Section 314, IPC
12. Section 317, IPC
13. Section 318, IPC
14. Section 3, MTP Act
15. *Ibid.*