



The Legislation in India w.r.t. Female Feticide: A Toothless Tiger

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ABSTRACT

India though considered being a developing nation, the misbelief of gender biasness prevalent since ages continuous even today when we have to research on topics like women empowerment, female foeticide and such several topics germane to women but none on men empowerment or male feticide? The yearning to examine the gender of fetus and predilection for a son persists to be a ubiquitous pattern in India despite the Prenatal Diagnostic Techniques Act which falls flat to control the thriving practice of female feticide in India. This paper aims to pinpoint the nix fix situation of law and the existing paucity to protect female feticide evident from the declining sex ratio which has dropped at an alarming rate. Though abortion is legal in India but abortion done with the remorse intention to abort female fetus is illegal and can attract criminal penalties.

This paper questions the extent to which the so called developed but orthodox society works as a catalyst instrumental in promoting the murky practice of aborting female fetus.

On several occasions the Supreme Court of India has showed its concern on inadequate implementation of legislation {(The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994)} by various States and Union Territories as there has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act.¹

KEYWORDS

Feticide, laws, abortion

Introduction

Female foeticide is a critical Human Rights concern that is epidemic in Indian society. A selective and opted plan to abort the fetus if it is a female has led to slaying annually one million females in India. A 2011 study of British medical journal Lancet has stated that approximately 12 million Indian female foetuses had been aborted in the past three decades.² The United Nation has alarmed against the dwindling numbers of Indian girls, as a consequence of illegal abortion of millions of female babies that has reached the dismayed level "emergency proportions", inflaming upsurge in crimes such as kidnapping and trafficking.³

In India the Pre-natal sex determination technologies have been abused aggravating the illegal act of preferential abortion of female feticide to breed.

Female feticide has been rampant in India since ages but the advent of technology and its advancement in prenatal sex determination on a large scale in the 1990s stigmatized the human race with shame and sin. Ultrasound scan is a technology that works as diagnostic test and is done for medical reasons such as monitoring baby's health, growth, size and the amniotic fluid volume. Unfortunately majority of people have misunderstood the very intention of invention of this technology and began moulding it as per their evil desires of adding sons to their family and aborting the female fetus ruthlessly. This process initiated in the early 1990s when ultrasound techniques boosted extensive application in India. Indian families dwelled with the bias impulse to continue producing children until a male child was born. A notable social discrimination against women increased and the desire for sons advanced female foeticide in several forms skewing the sex ratio.

The conception and evil use of ultrasound scan technologies coupled with other social aspects amounted to poor and weak status of women such as dowry, son- the bread earner, family name to be carried to the next generations, daughters become strangers to the birth family post marriage all such blind beliefs led to inhuman practice of female feticide to become routine. Such orthodox views prevalent in the Indian society provide impetus to crime against women and promote gender biasness and abortion of female fetus. The decision to abort a pregnancy of a female fetus is rarely taken by the mother, rather in such decisions the prominent role is of the husband, mothers-in-law, other household members or social pressure.⁴ Abortion is legally allowed if the ultrasound scan detects risky pregnancy endangering the health or life of the women or fetus or any abnormality of fetus,

but unfortunately it is frequently used to detect the sex of the unborn child without added expenditure.

Skewed sex ratio:

The orthodox and traditional craving for son in the family reflects right from the first census of 1871 in India with an abnormal sex ratio (940 females for every 1000 males) which continuous till date as 944 (2016), 943 (2015), 942 (2014), 941 (2013), 940 (2012) and the 2017 sex ratio as (945 females for every 1,000 males). The Union Territories of India, Daman and Diu has the lowest female sex ratio. 2011 census has the poorest recorded sex ratio in India (0-6 years) as 918 girls for every 1000 boys. In 2011 the total male population was 623,700,000 (623.7 million) and total female population was 586,500,000 (586.5 million) compared to the total male population of 2017 to be 696,865,635 (696 million) and total female population to be 652,603,061 (652 million). The child sex ratio in India is comparatively lower than that in countries like China (944), Pakistan (938), Bangladesh (953) and Nigeria (1016). In India itself the sex ratio varies from state to state.⁵

- Average India sex- ratio: 945/1000 males.
- Rural India sex- ratio: 947/1000 males.
- Urban India sex- ratio: 926/1000 males.

Legal status in India:

Prenatal sex determination was obstructed & banned in India in 1994, under the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act {PNDT} which intends to prevent and curb the despicable tradition of sex determination and sex selection, which has its roots in India's long history of strong patriarchal influence in all spheres of life. Such practices have ensued into an obsessive desire for sons and biasness against the female.⁶

On several occasions the Supreme Court has notified the Central Govt. for "Sloppy" implementation of PNDT Act. Though the Pre-Natal Diagnostic Techniques (Prohibition of sex selection) Act has been operational since 1994 but only 159 cases have been registered and 126 cases are pending in various courts since 2012-2013 in Bihar.⁸ The salient features of the PNDT Act cover offences that include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection and sex determination (before or after conception), conducting PND test for any other purpose/s than those specified in the act, sale, distribution, supply, renting etc. of any ultra sound scan machine or any other equipment capable of detecting sex of the foetus.

Main provisions in the act regulate the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect:⁹

- genetic abnormalities
- metabolic disorders
- chromosomal abnormalities
- certain congenital malformations
- haemoglobinopathies
- Sex linked disorders.

If any laboratory or centre or clinic found conducting test or ultrasonography with the intention to determine the sex of the foetus by way of words, signs or any other means will attract criminal liability. Anybody found providing facilities of sex determination in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages, hires, employs in any apparent representation via hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fine which may extend to ten thousand rupees.¹⁰ Despite strict laws in place the imbalance in sex ration has zealously projected the issue of increasing female foeticide, due to the indifference in the implementation of the stringent law that is in force.

Rulings of the Supreme Court and various High Courts have shown concern and directed to make the existing law deterrent, but the courts have been reluctant in putting the offenders behind bars and have let off them with a simple warning setting a mass negative attitude from the legal fraternity and social and academic activists. There has always been a unanimously appeal for harsh and severe punishment for the culpable and those involved in the sex detection process.

Conclusion

The Prenatal Diagnostic Techniques Act, has been drafted pretty well to cover at least the basic necessities exploding female foeticide. Important amendments were introduced in the PCPNDT Act, 2004 that clutched ultrasound and amniocentesis within its ambit. The Central Supervisory Board and the formation of State Level Supervisory Board were vested with extended empower, moreover stringent rules, regulations, and penalties were introduced but yet it fails to touch the required benchmark. Moreover the lethargic implementation of the Act has turned into a travesty. In 2013 an NGO Voluntary Health Association of Punjab filed a writ petition before the Union Government pressing the effectual implementation of PCNDT Act, the Supreme Court responded the same by passing an order to sharpen the law and ordered as follows:¹¹

- *All courts must dispose cases filed under the Act within 6 months.*
- *State governments must set up a special cell to monitor the progress of the cases filed under the Act.*
- *State governments must map all registered and unregistered ultra-sonography centres within 3 months.*
- *State and district advisory boards must ensure that manufacturers and sellers of ultra-sonography machines do not sell the machines to any unregistered centres.*
- *All genetic clinics and laboratories must maintain statutory records and forms. Action will be taken against them if they fail to do so.*
- *Central and state supervisory boards must meet every 6 months to oversee effective implementation of the Act.*
- *They must gather information on breach of the Act and initiate legal proceedings.*
- *The state advisory committees and district advisory committees must report details of the charges framed and the convictions given under the Act to the state medical councils so that they may take appropriate action.*
- *The authorities should take steps to seize the machines which have been used illegally and contrary to the provisions of the Act and its rules. These seized machines can also be confiscated under the provisions of the Code of Criminal Procedure and be sold in accordance with law.*
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The existing law still demands amendment in its penal provisions instilling fear in the offenders of maximum punishment. This is more of an issue that needs to be dealt with socio-legal measures as law alone is not sufficient to deal with this issue that has roots in social behaviour and bigotry. It requires comprehensive social campaign and nationwide movement to curb pre determining sex of fetus leading to abortion. Concrete strides to encounter the increasing female foeticide creating imbalance in sex ratio are requisite so that proposed social disasters do not betide in the society. The upcoming and young generation need to shoulder the responsibility to the progeny and not to take such steps to spay the birth rate in misdemeanour of law.

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