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**DEATH BEFORE BIRTH: THE MENACE OF FEMALE FOETICIDE****-RIDHIMA CHANDANI<sup>1</sup>**

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**ABSTRACT**

*India is a diversifying country facing gender bias since ages. The high female mortality rates before birth, the neglect of female children in terms of education, services, etc are manifestations of the patriarchal structure prevalent in our country. It is identified with continuance of female foeticide as a result of female discrimination, high maternal and female mortality persists in India and worsen the sex ratio. Despite the presence of several legislations, female foeticide is one of the most heinous practice existing in our country. The major reason being the inefficient and ineffective implementation of the laws present. Thus, there is a dire need to strengthen the existing laws as well as to enact new laws to deter the crime of female foeticide.*

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**I. INTRODUCTION**

In ancient India, women held a place of high respect in the society as mentioned in Rig-Veda and other scriptures<sup>2</sup>. Volumes can be written about the status of our women and their heroic deeds from the Vedic period to modern times, but later on, because of the social, political and economic changes, women lost their status and were relegated to the background<sup>3</sup>. Many evil customs and traditions stepped in which enslaved the women and tied them to the boundaries of the house<sup>4</sup>.

India has an age old fascination with the boy-child and considers the birth of a girl as a burden on the family. This narrow viewpoint of the Indian Patriarchal society lead to the horror practices like female foeticide. The gender bias is prevalent not only at the societal level but it has embodied its deep roots into the basic unit of the society<sup>5</sup> which leads to societal pressure for women to have male children and failure to do so make them feel guilty after giving birth to a girl-child. In a case of India, more than 112 boys are born to 100 girls, mainly due to the sex selective abortions combined with preference for son<sup>6</sup>.

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<sup>2</sup> Mita Bhadra, Girl Child in Indian Society, Rawat Publications

<sup>3</sup>Supra note 1

<sup>4</sup> <http://www.studymode.com/essays/Victimization-of-Women-248590.html> (accessed August 20,2019)

<sup>5</sup>Dr. Anu, Dr. Pawan Kumar (2012) "Female Foeticide and PNDT Act: Issues and Challenges", ISSN No 2277-8160, (Volume 1 Issue 2) (July)

<sup>6</sup> The Hindu, May 24, 2011

As of 2011 India census – 83, 30, 87,662 people live in rural India. 42, 79, 17,052 of them are males & 40, 51, 70,610 of are females. Female sex ratio in rural India is 947 women in every 1000 men. In urban India the ratio drops to 926 women in every 1000 men<sup>7</sup>.

Female Foeticide is aborting the female baby in the mother's womb. Amniocentesis was introduced in 1975 to detect foetal abnormalities but it soon began to be used for determining the sex of the baby. Ultrasound scanning, being a non-invasive technique, gained popularity and is now available in most of the remote rural areas. Both techniques are now being used for sex determination with the intention of abortion if the foetus turns out to be female.

With the advent of privatization and commercialization, the use of pre-natal diagnostic technologies is growing into a thriving business in India. This is primarily for the purpose of sex determination and selective abortion of the female foetus. The misuse of technology simply reinforces the secondary status given to girl children in such a way that they are killed even before they are born.

## II. CAUSES OF FEMALE FOETICIDE

People prefer a male child over a female because in our society it is a general perception that the birth of a male child is beneficial and advantageous to the family. A male in the family is traditionally considered to be a source of money, respect, and name. A woman is considered a financial obligation, as money spent on bringing her up, educating her, marrying her will not be repaid as she will go to her husband's house after marriage, and the benefits of all that 'investment' shall go to his family. Therefore, it is said that "Investing in a daughter they say is like watering your neighbor's lawn". Another major cause and the most prominent one is the dowry system. Dowry payments impose heavy financial strain on bride families and lose their entire life savings to meet the financial demands of the groom's family<sup>8</sup> so sufficient financial resources have to be accumulated to support the marriage of the girl whereas boys, on the other hand, are considered as assets, who fetch a dowry for the parents. This has created a stereotype notion of the girl as a burden on the household. Thirdly, a large section of population is below poverty line therefore a son is preferred in the family as an economic sustenance, as bringing up a girl child proves to be pricier for such families. Another reason for the unwanted status of the female child is the burden on her parents regarding her safety. Incidences of girls subjected to rape, molesting, sexual abuse, domestic violence, trafficking, etc. are growing every day, and parents don't want to risk their girl child's safety<sup>9</sup>. Also, it is assumed that people are illiterate and not educated, and hence they commit this heinous act. However, logical as it may sound, this

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<sup>7</sup> [http:// www.censusindia.gov.in/2011](http://www.censusindia.gov.in/2011) (accessed August 21, 2019)

<sup>8</sup> Kishor, S. (1995). Gender differentials in child mortality: A review of the evidence. In Monica Das Gupta, Lincoln C. Chen, and T.N. Krishnan, eds. Women's health in India: Risk and vulnerability: 19-54, Bombay: Oxford University Press.

<sup>9</sup> S .Vijay Kumar (2012) "FEMALE SEX - RATIO IN INDIA – A REVIEW", IJDRSA 2012; 8 (1): 29-44

cannot be established. Numbers tell us that, this practice of female foeticide is still prevalent in urban parts of the state as well. Also, due to illiteracy parents impart their future generations same ideologies as they are ignorant about the social change in the education in the status of women in present India. Lastly, the tests like Amniocentesis and ultrasonography, which were originally designed for detection of congenital abnormalities of the foetus, are being misused for knowing the sex of the foetus with the intention of aborting it if it happens to be that of a female<sup>10</sup>.

### III. CONSEQUENCES OF FEMALE FOETICIDE

The elimination of the girl child has created such a shortage of girls that families purchase brides from other villages. Due to this, women are being forced into polyandry and have also suffered violence for protesting against this. The adverse child sex ratio can severely impact the equilibrium of nature and destroy our moral and social fabric. Lesser number of girls will not enhance their status, instead, this would lead to increased violence against women, rape, abduction, trafficking and increase in exploitation of women<sup>11</sup>. The pregnant women, though often equally anxious to have a boy, is frequently pressurized to undergo such procedures. Many women suffer from psychological trauma as a result of undergoing repeated forcible abortions. It has led to an increase in number of suicide committed by women in order to protect their child from getting aborted or killed by her own husband and family, also a women commits suicide to get relief from the torture which is done to her by her in-laws, husband and in some cases by her own family.

### IV. LEGISLATIONS ENACTED FOR PROHIBITION OF FEMALE FOETICIDE

Two laws are enacted which prohibit the sex selection of a foetus in India, and they are, The Medical Termination of Pregnancy Act, 1971 (MTP), as amended in 2002, and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), as amended in 2002. Abortion in India is an illegal act and punishable. ***The Medical Termination of Pregnancy Act, 1971 (MTP) Act***, which prohibits abortion, was enacted with a basic view of minimizing the number of members in the family. However, in some cases, the desire for a small family may have outweighed, and the desire for a child of a specific gender added to some sex selective abortions in India. The MTP Act stipulated that an abortion might lawfully be done in qualified circumstances, but the unscrupulous secretly allowed to misuse the law to have abortions conducted for sex selection<sup>12</sup>. The enactment of Medical Termination of Pregnancy Act 1971, India became the first country in the developing world to legalize induced abortions under certain circumstances. The MTP Act provides for an abortion to be performed by a registered

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<sup>10</sup> Supra note 3

<sup>11</sup> Bijayalaxmi Pand, Llit Mohan Nayak and Mohammad Naved , Female Foeticide in India : Some Observations: Golden Research Thoughts (MAY;2012)

<sup>12</sup> Alpana D. Sagar. " Social context of the Missing Girl Child" in Sex-Selective Abortion in India: Gender, Society and New Reproductive Technologies,(ed) Patel Tulsi, SAGE Publications, New Delhi,2007

medical practitioner in a government hospital provided, in his opinion: a. the pregnancy must not be exceeded by twelve weeks b. Only if the life of the woman is at risk or if it might cause grave injury to her physical or mental health; or, c. If it is vigilant that there might be a substantial risk to the child when born would suffer mental or physical abnormalities or lead to being seriously handicapped after the birth. The MTP Act also accepts the aspect of the failure of any device used by the couple in limiting the number of children. Where the pregnancy is more than twelve weeks but less than twenty weeks, the opinion regarding the medical necessity for an abortion in the above circumstances must be formed in good faith by two medical practitioners<sup>13</sup>. When the pregnancy is less than 12 weeks, the opinion of one medical practitioner is necessary for the approval of abortion. All abortions must be performed in a government hospital, regardless of the length of the pregnancy. The MTP Act states any act causing the termination of the pregnancy of a normal foetus would amount to foeticide, and in addition to rendering the physician criminal liable, is considered professional misconduct on his part, leading to his penal erasure<sup>14</sup>.

The advanced technology added to the reasons for the selective sex abortions and the laws were not implemented properly. Thus, it was necessitated to the enactment of the ***Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT) in 1994***. This act was amended in 2002 to close loopholes contained in the original act, with a specific objective as stated in its Preamble: *"To provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto"*.

Thus, the PNDT Act prohibits the identification of sex selection by all high-end technologies, which would also include the new chromosome separation techniques.

- The PNDT Act emphasis on few aspects: a. before and after conception the identification of sex selection. b. Regulation of prenatal diagnostic techniques (e.g., amniocentesis and ultrasonography) for the detection of genetic abnormalities, by restricting their use to registered institutions. According to the Act, only a qualified a person who is a registered medical practitioner is allowed to use these techniques in a registered place for the above-specified purpose. c. The techniques used for the sex selection as well as the sex determination should not be advertised. d. The sale of ultrasound machines to any other persons who are not registered under this Act is prohibited. e. The Act specifies the Punishments for violations any sought would amount to Violations carry a five-year

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<sup>13</sup> Article 21 of the Indian Constitution

<sup>14</sup> [www.indianexpress.com/news/law-to-cover-new-techniques-of-sex-determination/761343](http://www.indianexpress.com/news/law-to-cover-new-techniques-of-sex-determination/761343) (accessed August 22, 2019)

imprisonment term and a fine of approximately of Rupees 10,000. All the offences under the Act are cognizable, i.e., when police may arrest without a warrant. They are also non-bailable and non-compoundable.

The Act prohibits any person, such as a husband or family member, from pressuring the woman to seek or undergo any pre-natal diagnostic testing to determine the sex of the fetus. It also prohibits and punishes any advertisements relating to pre-natal sex determination. The Act allows for the use of pre-natal diagnostic techniques for the detection of genetic abnormalities or pregnancy complications but restricts those procedures to specific registered institutions and by qualified personnel who have to abide by clear rules outlined in the Act. The Act allows for penalties of five years in jail along with the fine. The Act continues to be amended to address newer technologies for the selection of sex before and after conception<sup>15</sup>.

Also, it is stated in *The Indian Penal Code, 1860* that causing an abortion, even if caused by the pregnant woman herself, is a criminal offence, unless it is done to save the life of the woman under the guidance of the registered medical practitioner. The offense is punishable by imprisonment for three years, by fine, or by both<sup>16</sup>.

#### V. IMPLEMENTATION GAP

In spite of the laws mentioned above being present in our society the illegal practice of sex selective abortion has increased in recent years and demanding action from the government to control the practice because even after the enactment of various laws, the practice of female foeticide is increasing.

The misuse of the technology of identifying the sex of the foetus is still practiced because of various reasons prevailing in our society. Information about the sex of a foetus is possible to obtain through tests in private clinics/hospitals at a high cost. Experts claim that the root cause of sex-selection is not the availabilities of the technologies but the status of women in Indian society. This implies that not only do we have to tackle and control our technology, but we also need to improve the social position of woman.

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, prohibits the determination of sex of the foetus. It also provides for mandatory registration of genetic counseling centers, clinics, hospitals, nursing homes, etc. However, the implementation of the law is weak, and it has not been used to the fullest. The focus has been only on the registration of the number of ultrasound machines and not on the actual act of abortions of female foetus.

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<sup>15</sup> The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, No.57 of 1994 and the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment act, 2002, No. 14 of 2003

<sup>16</sup> Indian Penal Code, No. 45 of 1860

Further, in several cases, the accused have not been booked under relevant sections of the Act. Many studies have concluded that prenatal sex determination, followed by abortion of female foetus, is the most plausible explanation for the low sex ratio at birth in India<sup>17</sup>.

## VI. RECOMMENDATIONS

Media can play a significant role in spreading awareness and developing a positive image of the girl child in the society, because there are problems in reaching the backward rural and tribal areas, also various traditional forms of communication may provide a more effective alternative to influence the illiterate and poor people and help changing their mindset. Public education on the illegality of foetal sex determination and sex selection abortion will also help to curb such practice. The practice of using amniocentesis for sex determination shall be banned through law and practitioners indulging in or abetting such acts shall be punished severely. Amniocentesis, where necessary, will be performed only in government or approved medical institutions to prevent the practice of using amniocentesis for purpose of sex determination. There should be development of school based strategies for inculcating of positive self-image amongst girls, efforts should be made to break the gender stereotypes particularly at the primary level. Conscious inputs into curriculum, textbooks, teacher education institutional planning supported by career guidance, and counseling will help to make the children aware at a young age. Special awareness generation programmes and campaigns should also be launched to sensitize the public. The strategy includes keeping a close watch on the pregnant women for six months (three months before delivery and three months after it). On private institutions over which no effective control could be exercised, they should not be issued with licenses for carrying out prenatal diagnostic procedures and techniques. Only government hospitals should be facilitated with these services. Offensive advertisements must be reported and action must be taken. Notice boards at clinics/hospitals/nursing homes must state that sex determination is punishable. Ultrasound machines and other sex determination techniques to be sold only to registered clinics coupled with affidavits/undertaking not to use them for sex determination.

## VII. CONCLUSION

India has yet a long way to go in her fight against declining female sex ratio and pre-birth elimination of females. According to United Nations Fund for Population Activities (UNFPA) projection, “By the year 2025 a significant share of men above 30 would still be single, and that many will never be able to marry at all. Men in the states of Haryana and Punjab are already experiencing a nearly 20% deficit of marriageable women. A concerted effort by the medical fraternity, the law, political leaders, NGOs, media, teachers and the community itself is the need of the hour”.

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<sup>17</sup>Dr. Jyothi Vishwanath (2019) “ANALYSING THE LEGISLATIONS PERTAINING TO THE FEMALE FOETICIDE IN INDIA”, International Research Journal of Commerce and Law, Volume( 6 Issue 05) (May)

There are several factors responsible for the prevalence female foeticide such as socio-cultural practices like dowry, low status of women, discrimination against the girl child, etc and these kind of practices would hamper the development of our nation. The measures must be taken to curb such practice by enacting and implementing strict laws to avoiding the sex determination of the foetus and additionally to change the mind-set of the people constructed by the patriarchal values.