

FACTORS LEADING TO FEMALE FOETICIDE

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Abstract

A girl child brings joy; she is no less than a boy”

–The French quotes

Feticide is an act that roots to the death of a foetus. In the legal aspects, it is described to the deliberation or subsidiary killing of a foetus due to a delinquent human act, such a gust to the abdomen or stomach of a pregnant woman. A woman and her family members need children, by bearing children is the fulfillment of both social expectations and personal desires. It sounds paradoxical but it is a fact that in India is one-side female goddesses are worshiped but on the other hand women are being oppressed by several ways irrespective of their age and status. India is a society where the male is greatly revered. As soon as a woman conceives the bigotry towards a female foets starts. Discrimination against girl child, gender bias and deep rooted prejudice has led to many cases of female foeticide in India. Although in the culture and civilization of India, the woman represents beauty, prosperity and auspiciousness and mother of human kind. Nevertheless, the social, cultural and religious fiber of India is pre-dominantly patriarchal in nature providing secondary status to woman. A girl child is considered to be a liability, hence neglected at all levels. Birth of a girl child in all strata of society, irrespective of caste, clan or economic conditions is not accepted with open arms. She is looked as a curse. Female child is generally considered inferior to the male child in every sphere of life. The old socio-cultural feelings and religious prejudice and encouraged sons preference in various communities in India. Female foeticide is usually practiced in societies due to the immature belief that having a girl child is economically and culturally less advantageous than having a boy child. Seeing all the misery like rape, domestic violence, dowry death etc. many women themselves do not want to have a girl child as they believe there is a lot of humiliation and dependence of a girl during her entire life. One of the most common and simple mechanism of eliminating the girl child is ‘Female Foeticide’. It is the act of undermining the sex of the child in the mother’s womb if it is found to be a female; to get the same aborted. ‘Foeticide’ means the destruction of foetus at any time prior to birth. The term “sex selective abortion” is preferable to the term foeticide, since it points to both of the ethical evils inherent in this practice. Female feticide has replaced female infanticide as a means to reduce or eliminate female offspring.

Keywords: Female Foeticide, webs, lawmakers, judiciary, birth, existence

FACTORS RESPONSIBLE TO FEMALE FOETICIDE

Social Factors

One of the worst forms of evil existing in the Indian society is dowry system. It is a system where parents of the bride have to pay the groom’s family to marry off their daughter. It is considered that an unmarried girl is a blot on a family’s honor. Since we are a still developing country and poverty been the top reason which is followed by illiteracy, people think that a girl’s birth brings a lot of misfortune. Therefore, dowry system is one of the most vital factors leading to female foeticide in India. The patrilineal social structure based on the foundation that the family runs through a male, and makes male a precious commodity that

needs to be protected and given special status. Hence, female is treated like a second class citizen in the context of socio cultural and economic spheres of the society.

Religious Factors

So far as the role of religion is concerned, it leaves a substantial impact on numerous philosophies and traditional beliefs, which believe that son, is fundamental for religious formalities, which are executed at different stages of life. When the marriage of a girl is solemnized, she is blessed by "*Sau Putra Bhava*", "*Doodho Nahao Pootho Phalo*" etc. Such religious blessings also indicate the importance of son preference in our society. The cremation ceremonial procedure is the most essential in India. It is considered that cremation through a son assures that parents are blessed with direct passage to heaven. The oldest Vedas and Upanishads have directed that the importance of such rituals and traditions can be achieved only if the son of the family performs them. These rituals are considered as a privilege and therefore this right is bestowed on the son or any male member of the family. Religion and traditions has enormously disturbed the gender ratio in our motherland. However, no religious scriptures undervalue women, rather in antique traditional customs they possess extraordinary reverence gifted by God due to which high level of respect is bestowed on women. Whereas a daughter is considered to be an auspicious sign of Goddess Laxmi but at the same time there are many families who kill the female foetus only because they want a male child to free them from all the sins after their death.

Legal Factors

The Pre Conception and Pre Natal Diagnostic Technique Act, 1994 was passed due to the terrifying increase in the brutal killing of female foetuses by latest means of scientific technologies. It is pertinent to mention that according to the 2020-21 Census, the child sex ratio is 937:1000 and hence this figure reveals that the impact and implementation of the Act is still in doubt as there has been a continuous fall in the child sex ratio. The Pre Conception and Pre Natal Diagnostic Technique Act, 1994 has proved to be inadequate and ineffective to curb the brutal practice of female foeticide. Therefore, the weak implementation of the laws has indirectly proved to be a catalyst for the increasing ratio of female foeticide as the Indian community is mostly fearless of the rules laid down by the Act. It is indeed shocking for our country that even after nearly seventy years of independence and the provision of right to equality mentioned in Article 14 of the Constitution of India, foeticide still conquers in our country. It is a big challenge to detect cases of female foeticide and sex selection as these are being done behind closed doors.

Legal Mechanisms

Since part, III of the Constitution gives paramount importance to the Fundamental Right and freedoms. It talks about equality, no discrimination on the basis of sex but in practical parlance there are numerous cases where this apex guide line is being ignored. Section 312 of IPC read with the Medical Termination of Pregnancy Act, 1971 where all the restrictions imposed therein, including the time limit, other than the ones to ensure good medical conditions, infringe the right to abortion and the right to health, which originate from right to life as guaranteed by Article 21 of the Constitution is being violated blatantly. Until 1970 the provisions contained in the Indian Penal Code (IPC) governed the law on abortion. There are certain specific provisions pertaining to this issue which has been mentioned below.

Section 312. Causing miscarriage, Section 313. Causing miscarriage without woman's consent, Section 314. Death caused by act done with intent to cause miscarriage, Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth, Section 316 Causing death of quick unborn child by act amounting to culpable homicide. The specific Act to meet this problem is the Medical Termination of Pregnancy Act passed in July 1971 which came into force in April 1972. This Act was conceived as a tool to let the pregnant women decide on the number and frequency of children. It further gave them the right to

decide on having or not having the child. However, this good intentioned step was being used to force women to abort the female child. In order to do away with lacunae inherent in previous legislation, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT) was passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the fetus and quantified punishment for the violation of the provisions. It also provided for mandatory registration of genetic counseling centers, clinics, hospitals, nursing homes, etc. The PNDT Act has been stands amended as the *Pre- Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex selection) Act* from 2003. It prohibits misuse and advertisement of pre-natal diagnostic techniques for determination of sex of foetus, leading to female foeticide. It permits and regulates the use of pre-natal diagnostic techniques for detection of specific genetic abnormalities or disorders and use of such techniques only under certain conditions and only by the registered institutions. It provides punishment for violation of the provisions given in the Act .There is one provision in the criminal procedure code which provides that, the woman who is pregnant, against her death sentence should not be executed or remitted the sentence of death into life imprisonment. Because, death imprisonment awarded is against specific woman and not against a child in mother womb.

APPROACH OF JUDICIARY

In *Voluntary Health Association of Punjab vs. Union of India*. A voluntary Health association of Punjab [VHAP], an NGO, filed a writ petition in the Supreme Court of India in 2006 against Union of India and others for the effective implementation of Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. However, the practice of female infanticide still prevails. The writ petition at its core challenged the non-implementation of the Pre-Conception and Pre-Natal Diagnostic Techniques Act' 1994, focusing on the issue of rising female foeticide and the resultant imbalanced sex ratio. In *Nikhil D. Dattar v. Union of India*, Section 3 and 5 of the MTP Act was challenged on the ground of non-inclusion of eventualities vires of the Act. In this case the foetus was diagnosed for complete heart block thus the Petitioner, in her twenty sixth week of pregnancy, had sought termination of pregnancy. The petitioner contended that section 5(1) of the MTP Act should be read down to include the eventualities in section 3 and consequently, a direction should be issued to the respondents to allow the petitioner to terminate the pregnancy. The court held that "the courts are not empowered to legislate upon a statute. Sections 3 and 5 provide for right to terminate pregnancy only under the specified circumstances and the remedy under section 5 can only be available when the non-termination of pregnancy would be dangerous to the life of pregnant woman".

CEHAT Vs Union of India is a landmark case with regard to female foeticide where the Supreme Court held "the central government is directed to create public awareness against the practice of prenatal determination of sex and female foeticide through appropriate releases/programs in the electronic media. This shall also be done by Central Supervisory Board (CSB for short) as provided under section 16(iii) of the PNDT Act. The central government is directed to implement with all vigor and zeal the PNDT Act and the rules framed in 1996".

CONCLUSION AND SUGGESTIONS

The causes discussed above have motivated the society to practice such evil crime of female foeticide. Practice of female foeticide has clearly verified the increasing son preference for several reasons, which has worsened the status of a woman in the Indian society. Every legal loophole and drawback needs to be amended and rectified by the lawmakers so that the practice of female foeticide is eliminated. Therefore, the following are the seven most important steps, which need to be taken up by our country in order to prevent the practice of female foeticide.. The ineffective implementation of the legislation is vital reason of skewed sex ratio in India. The available legislation in India for prevention of sex determination needs stern

implementation, along with the launching of programs aimed at altering attitudes, including those prevalent in the medical profession. It may be said that the banning of sex-determination test, though a vital and urgently required step, is not the ultimate solution to the problem. Outlook of the people needs to be changed. In the long run, social discrimination against women has to be tumble-down by improving her status in society.

Awareness Campaign: Awareness campaigns have become a very famous and successful way of tackling social issues in India. People form organizations who come up with various unique ideas to throw light on the social issues and also provide preventive steps to control and eradicate social practices which are harmful for the society. Apart from constitutional and legal provisions, we need to do apply few more steps for banning female foeticide through various ways like disseminating information by wide campaigning, road shows, nukkad-natak, etc. There should be one compulsory chapter in the syllabus of social science in middle and high class, free Legal Awareness camp twice or thrice in a month in every blocks and Panchayati to spread awareness among the people. The government should make an offer of payment of extra PDS ration and even tax concessions for parents of girl children apart from giving incentives of free education.

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