



The menace of female foeticide in India: A paradox of development

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Abstract

The advent of modern reproductive and sex selection techniques is providing worldwide ample opportunity to the female foeticide. Now –a –days the world population is significantly passing through gender imbalances due to different available sex selection methods. During the last few decades, Indian society had also been facing female foeticide as a burning social problem. Even the law is a powerful instrument of social change but law alone cannot dismantle out this social problem from Indian society. The real challenge before Indian society and government authorities is to remove loopholes in The Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002. A concrete and meticulous effort by the medical fraternity, the law, political leaders, NGOs, women’s group, the mass media, teachers and the community itself is the need of the hour. This review article is an attempt to draw attention towards Current Scenario of female foeticide in India and its socio-legal implications.

Keywords: gender, sex ratio, female foeticide, sex selection techniques, ultrasonography, diagnostic laboratories, sex selective abortion

Introduction

“That society should not want a girl child; that efforts should be made to prevent the birth of a girl child and that society should give preference to a male child over a girl child is a matter of grave concern. Such tendency offends dignity of women. It undermines their importance. It violates woman's right to life. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates womanhood. This is perhaps the greatest argument in favour of total ban on sex selection.” -- Hon'ble J. Smt. Ranjana Desai ^[1].

Female foeticide is a burning social problem which has been plaguing Indian progress since a very long time. The Atharvaveda says, “The birth of a daughter, grant it elsewhere, here grant a son”. This saying in the Holy Scripture sums up the Indian attitude towards female children who are subjected to multifarious travails inflicted by the society on them ^[2]. The girl children in India have been the most vulnerable to the insults of deprivation as well as discrimination for centuries and, are even today. It seems the sex determination test leading to identification of the sex of unborn child has made the practice of killing the female child unnoticed and easier than before ^[3]. In contemporary Indian society, the belief that the higher incidence of female foeticide was committed among the rural uneducated and poor people and those unable to pay the dowry been proved wrong. The practice of female foeticide now is seen rapidly proliferating from the country's rural, poor and uneducated to the urban, affluent and educated classes as well ^[4]. Female foeticide in 21st century the India is a biggest challenge against the laws of the land in general and women's empowerment in particular. Eradication of this practice is the urgent need of the hour and thus has become a genuine concern of each one of us ^[5].

Child Sex Ratio in India

The decline in India's sex ratio during the 20th century has been the subject of much discussion in recent years. Sex-selective abortion of the female foetus following a prenatal diagnostic test is widely believed to be the major contributor to this phenomenon ^[6]. The 1991 Census reported a child sex ratio of 945 girls per 1000 boys compared to 976 in 1961, which further declined to 927 according to 2001 census ^[7]. Census, 2011 has pegged the population of India at 1.21 billion (up 17.4% from 2001) and has indicated that only 914.23 girls were born compared with 927.31 for every 1,000 boys in the 2001 Census ^[8]. The current overall sex ratio of the nation stands at 943 females for every 1,000 males ^[9]. The overall sex ratio of 933 according to census 2001 figures is lower as compared to the child sex ratio in other developing countries like China (944), Pakistan (938), Bangladesh (953) and Nigeria (1016) ^[10]. The provisional census 2011 and the recent news reports data indicate a grim demographic picture of declining female to male ratios. Surprisingly the most affected states are progressive states like Punjab, Haryana, Delhi and Gujarat. In 2011 Census, an improvement in the child sex ratio has been noted only in the state of Kerala and the two Union Territories of Lakshadweep and Pondicherry ^[11]. According to 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 ^[12]. Men in the states of Haryana and Punjab are already experiencing a nearly 20% deficit of marriageable women ^[13]. This phenomenon, in turn, drives such practices as the kidnapping and trafficking of women, who are sold to men who cannot find wives. A report by the United Nations Office on Drugs and Crime ^[14], says the following: “With skewed sex ratios (Punjab-893, Haryana-877 females per 1,000 males) it is impossible to find a bride for each man, and ‘importing a bride’ has become the only

solution. On May 6, 2015, the apex court had passed a slew of directions on the issue of female foeticide including the need to form a statutory board for strict implementation of law prohibiting sex determination ^[15].

Factors Responsible for Female foeticide

Causes of female foeticide in India are embedded deep in the edifice of society. It is necessary to change the mindset of people and enable them to throw off the yoke of unhealthy and inhuman traditions. Here ^[16] People are under constant social pressure that impels them to commit this type of acts. There are several reasons for that:

Proliferation of Advance Technology

Increased availability of advanced technologies, especially ultrasonography (USG), has been the single most important factor responsible for decreasing in sex ratios and increasing in female foeticide. Sex selection techniques became popular in the western and north western states in the late 70s and early 80s whilst they are become popular in the South now ^[17]. Beside this, there are several other factors that have a bearing upon the child sex ratio.

Desire of Male Child

Indian society gives preferential treatment to a male child. Male children are preferred because (i) they have a higher wage-earning capacity, especially in agrarian economies like India; (ii) they carry the name of the family forward; (iii) only son can perform religious rites at the time of cremation of the parents; (iv) They are said to provide support in the old age; and (v) they are generally the recipients of a family's inheritance ^[18]. Girls are often considered an economic burden because of the dowry system. In Hinduism, the birth of a son is essential because he has to perform the last rites of the father by which his father can attain salvation ^[19].

Dowry

Female foeticide is driven by many factors, but primarily by the prospect of having to pay a dowry to the future bridegroom of a daughter. The evil practice of dowry is widely prevalent in India. The dowry system is more rigid in the northern states of India which is likely to contribute to the lesser child sex ratio ^[20]. Most often in South Indian communities, marriages are not exogamous (but often consanguineous), and married daughters usually stay close socially and geographically to their original family. Until recently, dowries were unheard of and benefits of inheritance for the daughters were not ruled out ^[21]. In the Muslim community, paying of high dowry is not a prevalent practice. Also consanguineous marriages are highly prevalent and women are entitled to a portion of parental inheritance ^[22].

Gender Discrimination

The bias against females in India is grounded in cultural, economic and religious roots. In a patriarchal society, sons are responsible for "preservation" of the family name ^[23]. Such a strong preference for sons which results in a life-endangering deprivation of daughters is not considered abhorrent culturally and socially ^[24]. In north India, girls currently constitute about 60% of the unwanted births and the elimination of unwanted fertility in this manner has the potential to raise the sex ratio at birth to 130 boys per 100

girls ^[25]. Gender discrimination manifests itself in the form of delay in seeking medical care, seeking care from less qualified doctors and spending lesser money on medicines when a daughter is sick ^[26]. The extreme disappointment of a mother as a result of a daughter's birth can adversely affect her ability to breastfeed the girl child, which leads to poor nutritional status. It is no wonder that the prevalence of malnutrition and stunting is higher in girls than boys ^[27].

Legal Provisions

Female infanticide had been prohibited through legislation in the pro-independence period. The scope of the problem of infanticide became clear in 1871 in the setting of India's first census survey ^[28]. At that time, it was noted that there was a significantly abnormal sex ratio of 940 women to 1000 men. This prompted the British to pass The Infanticide Act in 1870, making it illegal. Certain provisions were also included in the Indian Penal Code 1860 punishing causing of miscarriage and other like offences but unfortunately these provisions were rarely resorted to ^[29]. The Medical Termination of Pregnancy Act was passed in July 1971, which came into force in April 1972. In order to do away with lacunae inherent in previous legislation, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (PNDT Act) had to be passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the foetus and stated punishment for the violation of the provisions. It also provided for mandatory registration of genetic counselling centers, clinics, hospitals, nursing homes, etc. Sex determination techniques have been in use in India since 1975 primarily for the determination of genetic abnormalities ^[30]. However, these techniques were widely misused to determine the sex of the foetus and subsequent abortions if the foetus was found to be female. These pathetic situations were also taken note by Supreme Court in case CEHAT and Ors. Vs. Union of India ^[31]. Where it was observed that amendments to the PNDT Act were necessary. After detailed deliberations the Act has been amended. The main purpose has been to ban the use of sex selection techniques before or after conception as well as the misuse of Pre Natal Diagnostic Techniques for sex selective abortions and to regulate such techniques. Again, in 2003, in Centre for Enquiry Into Health Vs. Union of India and others ^[32], the Supreme Court while expressing concern in the matter held that for effective implementation of the Act, information in this regard should be published by way of advertisements as well as on electronic media and suggested many other steps for continuing monitoring. Amended Act, prohibited the distribution of any ultrasound or other machine capable of "detecting the sex of the foetus" to any laboratory, clinic, or other person unless the recipient is registered under the Act ^[33]. A new section 22 was inserted by amended act to deal prohibition of advertisements related to pre-natal determination of sex and provides punishment for its contravention ^[34]. In *Sabu George v. Union* In its order of 28 January 2015, the Supreme Court has directed that, as an interim measure, "Google, yahoo and Micro Soft shall not advertise or sponsor any advertisement which would violate Section 22 of the PCPNDT Act, 1994. The Court plans to hear arguments on the "total blocking of items that have been suggested by the Union of India ^[35]. The requirement of maintaining the records was itself an effective check against commission of other offences ^[36].

The offences under the Act have been made cognizable, non-bailable and non-compoundable^[37]. The penalties for the offence have been increased where the punishment will be for the term which may extend to three years and with fine which may extend to fifty thousand rupees for the first offence and for any subsequent offence with imprisonment which may extend to five years and with fine which may extend to one lakh rupees^[38]. The amended Act clearly supports this when it provides in section 24 that "Presumption in the case of conduct of pre-natal diagnostic techniques, Notwithstanding anything in the Indian Evidence Act, 1872 (1 of 1872), the court shall presume unless the contrary is proved that the pregnant woman has been compelled by her husband or the relative to undergo prenatal diagnostic technique for the purposes other than specified in the Act"^[39]. Lawyers and legal institutions regularly face technological changes. Assisted Reproductive Technology (ART) has become a well-established technique to help infertile women achieve pregnancy. But many women are now turning to ART not just to circumvent infertility, but consciously to shape their families by determining the sex of their children^[40]. If prior to conception by choosing male or female chromosome sex of the child is allowed to be determined and fertilized egg is allowed to be inserted in the mother's womb that would again give scope to choose male child over female child. It is as bad as foeticide^[41]. The techniques of pre-conception sex selection have been brought within the ambit of the Act^[42] so as to pre-empt the use of such technologies, which significantly contribute to the declining sex ratio^[43]. There is now substantial data that reveals that private as well as government facilities are used for sex-selective abortions despite the law that prohibits it^[44]. Over 300 doctors have been prosecuted for violating the law, but few convictions have resulted, and the medical community has pressured the government not to prosecute doctors who reveal the sex of the fetus to the mother^[45]. In a 2003 ruling on a lawsuit brought to demand more rigorous enforcement of the Pre-Natal Diagnostic Techniques legislation, the Indian Supreme Court acknowledged its poor implementation, but its ruling only called for local governments to enforce it more strictly.

Conclusion

The preference for a male child in large sections of Indian society even in highly educated groups is the root cause of female foeticide in India. The real challenge before Indian society and government authorities are to remove loopholes in The Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002. It is pertinent to note that until and unless this menace is controlled, the country is heading for a grave gender imbalance, which in turn would adversely affect the nation's economic progress. So, there is a need to plug the loopholes. Registration procedures should be made tougher and clinics run by technicians and unqualified personnel should be registered and better regulated. Use of ingenious ways to convey the sex of the fetus should also be curbed through greater use of surprise checks and dummy patients.

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