

**SELECTIVE SEX ABORTION - A REAL WAR AGAINST WOMEN****POOJA BAHUGUNA**

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**ABSTRACT**

*Carl Sandburg is credited with the idea that everyone in the world should continue to see each newborn child as a gift from God. In a patriarchal society, female feticide is the deliberate killing of female fetuses. The slaughter of female fetuses' is referred to by this word. Women face prejudice in all countries where men rule, and it is unlawful for women to bear children in some of these societies. It was previously difficult to detect the direction of the embryo while it was still in the mother's womb. If the newborn girl turned out to be a girl, she would be given opium-laced milk before being put to sleep. This procedure is no longer employed since contemporary technology has advanced to the point where it can replace it.*

*Female feticide is primarily caused by the prevalence of female genital mutilation, while other factors will be discussed in greater depth later in the paper. Dowries are the responsibility of the women whose daughters are marrying. Daughters are viewed as a social and economic burden, in contrast to men, who are expected to perform rituals for the souls of their deceased parents and grandparents while also providing stability for their family as they age. Sons are said to be capable of performing rituals for their departed parents and ancestors. Although abortion is legal in India, it is illegal to terminate a woman's pregnancy only because the fetus she is carrying is female. Lawbreakers are liable to harsh penalties. The laws are strictly enforced. Nonetheless, a growing number of illegal actions continue to be committed in defiance of these rules. This essay will look into the socio-legal quandary created by the widespread practice of female feticide in India, as well as the consequences of women's exclusion from Indian society.*

**Keywords:** *foetus, female feticide, technology, pregnancy*

## INTRODUCTION

A woman and her family members need children, bearing children is the fulfilment of both social expectations and personal desires.<sup>1</sup> Despite the fact that female deities are revered, women of all ages and social classes face discrimination in India. Men are highly valued and held in high regard in Indian culture. Discrimination against female foetuses' begins the moment a woman becomes pregnant. Advances in pre-birth sex discovery have made it easier to determine the sex of an undeveloped organism while it is still inside the mother's womb. However, this technique is currently being used in an improper way, allowing for sex-selective abortions of female children while allowing for the birth of male children and the subsequent success of the offspring. Most jurisdictions consider female foeticide to be a crime. Foeticide is a relatively new practice that emerged concurrently with technological advancements in prenatal sex determination on a large scale in the 1990s in India, where female infanticide has long been a practice. Contrarily, foeticide is a relatively recent phenomenon in India. Why do so many families decide to abort daughters when they are stillborn rather than sons?

There have been numerous cases of female foeticide in India as a result of gender bias, discrimination against girls, and deeply ingrained prejudice. In Indian culture and civilization, women are revered as symbols of beauty, prosperity, and auspiciousness, as well as the mother of all living things. However, India's social, cultural, and religious structures are predominantly patriarchal, placing women at the bottom of the social ladder. This has an effect on all three domains.

A girl child is ignored on all levels because she is shunned and regarded as a burden. The introduction of a young lady is viewed negatively across every social layer, regardless of the family's rank, group, or financial status. It makes no difference whether the family is wealthy or not. Many people regard her as a bad omen. Male children are valued more highly and are perceived as superior in all aspects of life. Due to traditional sociocultural beliefs and religious prejudice, fathers were encouraged to favour their sons in a number of Indian communities.

Female foeticide is a common practice around the world because having a girl child is seen as less advantageous economically and culturally than having a boy child. Many women decide against having children after witnessing the suffering caused by dowries, rape, and domestic violence because they believe a girl will be subjected to a lifetime of dependence and

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<sup>1</sup>Informal Social Networks, "Sonography and Female Foeticide in India", Tulsi Patel, Sociological Bulletin, Vol. 56, No. 2 (May-August 2007), pp. 243-262 Published by: Indian Sociological Society.

humiliation. Female foeticide is a popular and simple method of reducing the number of female offspring. It is the practice of attempting to terminate a pregnancy if it is determined that the child in the mother's womb is a girl after questioning the unborn child's gender.

Feticide is the deliberate killing of a foetus at any stage prior to birth. The term “sex selective abortion” refers to both of these inherent ethical sins, whereas “feticide” refers to only one of them.<sup>2</sup> Female feticide has replaced female infanticide as a means to reduce or eliminate female offspring .

## **FACTORS LEADING TO SEX-SELECTIVE ABORTION**

### **Social Factors**

The dowry system is widely regarded as one of the most evil and oppressive aspects of Indian culture. According to the rules of this custom, the groom's family must receive financial support from the bride's family before the bride is allowed to get married. In today's society, it is bad for a family's reputation to have a daughter who is not married. Many people accept that having a child girl comes with a lot of disadvantages because of how our country is still in its early stages of development.

The main causes of this misunderstanding are deprivation, illiteracy, and ignorance. The dowry system in India is among the biggest causes of the problem of female feticide. The patrilineal social structure is based on the idea that a family can only be traced back to a male ancestor. This is the underlying principle of patrilineal social organization. Men are therefore seen as a valuable resource that needs to be protected and given a higher social status. Women are viewed as belonging to a lower social class in the sociocultural and economic contexts of the society than men.

### **Religious Factors**

Religion has a significant influence on a wide range of philosophies and conventional beliefs. The majority of them believe that having a son is required in order to perform religious rituals, which can be performed at any time in one's life. Marriage brings many blessings, including “Sau Putra Bhava” and “DoodhoNahaoPoothoPhalo”.<sup>3</sup> Such religious blessings emphasize the cultural significance of prioritizing sons. Cremation is regarded as India's most important

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<sup>2</sup>Dr. Mukesh Kumar Malviya, “Growing Menace Of Female Feticide in modern Society And Judicial Response” .

<sup>3</sup> Supinder Kaur, “*A Frightful Reality, Book on Female Foeticide*”, Edition (2009).

religious practice. A common misconception is that if a parent is cremated by their son, they will be blessed and granted immediate access to heaven.

According to the earliest Vedas and Upanishads, only the family's son can perform and comprehend these rituals and traditions. Because participation in these rituals is considered an honor, the son or any other male family member may be granted this privilege. Religious and traditional factors have significantly disrupted our country's gender balance. In contrast, ancient customs recognized that God had bestowed exceptional reverence on women, and women are held in high regard for this reason. As a result, women are not devalued in any religious texts.<sup>4</sup>Even though it is believed that having a daughter is a blessing from the goddess Laxmi and a good omen, many families choose to abort the female fetus in the hope that having a son will absolve them of their sins when they pass away.<sup>5</sup>

### **Legal Factors**

“The Preconception and Prenatal Diagnostic Technique Act of 1994” was implemented in response to the horrifying increase in the use of cutting-edge scientific techniques to mercilessly end the lives of unborn female fetuses. It is crucial to remember that the ratio of children to adults was 914:1000 at the time of the 2011 Census due to the ratio's ongoing decline. This number indicates that there is still uncertainty regarding the Act's effect and implementation because of the declining child to adult ratio over time. Female foeticide is a barbaric practice that has been outlawed since “the Preconception and Prenatal Diagnostic Technique Act was passed in 1994”.

However, this law has been found to be insufficient and ineffective. Poor law enforcement has indirectly contributed to the rising rate of female feticide because the Indian community is generally unconcerned with the Act's regulations. This is due to the long history of female genital mutilation in the Indian community. Despite nearly 70 years of independence and the right to equality being enshrined in “Article 14 of the Indian Constitution”, feticide still occurs in our country. For our country, as it has been for almost all of its history, this is shocking news. Due to the fact that sex selection and female foeticide often occur behind closed doors, it can be very challenging to pinpoint specific instances of these behaviors.

### **Legal Mechanisms**

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<sup>4</sup>Madhusoodhan Tripathi, *Female Foeticide in India: A Harsh Reality* by, 40, Edition (2011).

<sup>5</sup>Nisha Jitendra Singh Kushwaha and Kiran Arun Sharma, “Factors Responsible for Female Foeticide”, Vol. 1(7), 1-4, November (2014).

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 deals with preventing abortions, Section 313 with preventing an abortion without the woman's consent, and Section 314 with inducing an abortion without the woman's consent. According to Section 315 of the Criminal Code, anyone who intentionally causes a stillbirth is guilty of murder. Section 316: Action taken with the intent to stop the birth or death of a child. Committing a homicidal act with the intent to kill an unborn child is a heinous crime. "The Medical Termination of Pregnancy Act" was passed by Congress in July 1971, but it wasn't put into effect until April 1972. This problem was specifically addressed by this legislation. Giving pregnant women the freedom to choose how many and how frequently they want to have children was the main goal of this Act.

Additionally, it permitted them to decide whether or not to care for the concerned child. But despite the good intentions behind it, this action was used to coerce women into ending the pregnancies of their female children. This action was taken with sincere intentions. "The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act" (PNDT) was passed in 1994 and went into effect in January 1995 in order to close gaps in earlier legislation. The purpose of this regulation was to prevent the improper use of pre-birth demonstrative techniques. The Act made it unlawful to ascertain the gender of a foetus and laid out specific punishments for those who did so. The Act also made it illegal to determine the gender of an unborn child.

It mandated the registration of institutions that offer genetic counselling, such as medical offices, hospitals, and residential care facilities. Since 2003, the "Pre-Conception and Pre-Natal Diagnostic Techniques Act" has been formally known as the "Pre-Conception and Pre-Natal Diagnostic Techniques" (Prohibition of Sex Selection) Act. This name change was required because it is illegal to choose a child's sex before conception. It forbids the use of

prenatal diagnostic procedures to identify a foetus' gender as well as the advertising of such procedures in a way that might lead to the abortion of a female foetus.

The use of prenatal diagnostic techniques to identify a foetus' gender is also prohibited. Prenatal diagnostic procedures for identifying particular genetic abnormalities or disorders are authorized, regulated, and restricted to institutions and circumstances that have been given their approval. It limits the use of prenatal diagnostic techniques to the detection of particular diseases or genetic anomalies, to put it another way. It describes the penalties that will be imposed on people who violate the rules set forth in the Act in this document. Under a clause of the criminal procedure code, a pregnant woman cannot have her death sentence changed to life in prison or executed.

Additionally, this agreement states that a pregnant woman cannot have her sentence reduced from death to life in prison. This should only happen if the woman is being prosecuted for a crime that is punishable by death, as this clause specifies. This distinction is important because a particular woman is being forced to serve a life sentence in prison, not her unborn child.

### **Sex selection and the MTP Act: Are they related?**

It is a common misperception that a rigorous MTP Act should govern abortions in order to reduce the frequency of female genital mutilation. The Pre-Conception and Pre-Natal Diagnostic Techniques Act of 1994 addresses the issue of female foeticide by prohibiting sex selection and disclosing the foetus's sex to the parents. It is critical that we recognize female foeticide as a different issue (doing so would result in harsh punishment).

The PCPNDT Act also oversees genetic counselling and prenatal diagnostic methods in order to prevent eugenics. Despite the fact that the two Acts have many parallels, female genital mutilation and abortion are two distinct issues that should not be conflated.<sup>6</sup>

### **Expanding the provider base for abortions**

The MTP Act now allows only licensed OB-GYN doctors to provide abortions. This is due to the fact that manual vacuum aspirators (MVAs) and electric vacuum aspirators (EVAs), which are now recommended for first-trimester abortions, were not extensively utilized when the MTP Act was first introduced in the 1970s, when the standard for delivering abortions was a D&C.

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<sup>6</sup>The Medical Termination of Pregnancy (Amendment) Regulations, 1975.

MVA and EVA training is quite simple and can be taught quickly by any Registered Medical Practitioner. These techniques are significantly less obtrusive and challenging (RMP, which is basically a graduate of the MBBS). The strict specialist criteria that existed fifty years ago no longer exist, and the new legislation has not modified this aspect.

Despite this, the most common method of abortion in India today is a medical procedure known as "Medical Methods of Abortion" (MMA). This method was chosen since it is inexpensive and simple to implement. MMA prescriptions are often a mix of two oral medications. Although nurses, auxiliary nursing midwives (ANMs), and AYUSH practitioners may be trained to provide this service, only registered medical practitioners (RMPs) are now permitted to do so. Numerous studies have proven that this "task-shifting" strategy works pretty well. This would be especially beneficial in rural and difficult-to-reach areas where there aren't many skilled surgeons or facilities to deliver anaesthesia and perform other types of surgery.<sup>7</sup>

Expert organizations and the Ministry of Health and Family Welfare accepted this strategy of decentralizing and expanding the provider base for abortions in India in their recommended modifications to the Act in 2014, but it has yet to be implemented.

The assertion that adding additional providers "would dilute or worsen the quality of healthcare given by hospitals presently" should not be interpreted as a plea for more providers. This argument is not advanced in opposition to the systematic improvement of public healthcare; rather, it is considered in relation to the desire for more specialized seats, additional funding, and improved infrastructure.

We still have a long way to go until there are enough obstetricians to care for all Indian women. Others with MBBS degrees and training in very basic abortion methods will assist those who do not have access to specialized medical care.

### **The impracticality of newly introduced provisions**

Even if they live in a rural area with limited access to hospitals, they are unlikely to be able to visit a gynaecologist right away. The gestational age cap in the current measure is raised from 20 to 24 weeks, however the law still reeks strongly of privilege, and the gestational age cap cannot be raised above 20 weeks.

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<sup>7</sup>Supria, Bezbaruha, "Foetal Extraction", India Today, May 12,2003:54-55).

The Abortion Reform and Health Act of 2020 requires each state and territory to establish a single Medical Board for pregnancies in the third trimester or more than 24 weeks along. This Medical Board will evaluate these candidates to determine if they require abortions. Even in cities, the value of such additional checks is debatable. It is absurd to expect a pregnant woman in a rural area with severely limited access to even the most basic medical facilities to make the effort to apply to a state board for operation authorization. This is due to the improbability of such an occurrence.<sup>8</sup>

We should expect further delays if the permits and requirements method become more difficult. This can increase the dangers for the individual seeking an abortion, especially in the third trimester, and the idea of numerous invasive exams might be frightening for the patient in question.

#### **APPROACH OF JUDICIARY**

**In “*Voluntary Health Association of Punjab vs. Union of India*”<sup>9</sup>.** *“In 2006, the Voluntary Health Association of Punjab (VHAP) petitioned India's Supreme Court to ensure that the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act of 1994 was completely implemented. The petition was delivered to the Union of India as well as other parties. Nonetheless, the murder of newborn female infants is still a frequent occurrence. The major subject of the writ petition was the Preconception and Prenatal Diagnostic Techniques Act of 1994. The main concerns expressed in the petition were the gender gap and the growing incidence of female feticide”.*

*The petitioner requested an investigation of how Indian state governments handled the issue of sex-selective abortion in India in a writ petition to the Indian Supreme Court. According to the Supreme Court's decision, the states wrongly adopted or enforced the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection Act, 1994). Justice K.S. Radhakrishnan issued several decisions and directions, including locating unregistered clinics to prevent them from obtaining ultrasonography equipment, seizing unlawfully sold ultrasonography equipment, and hosting workshops to educate communities about their legal responsibilities.*

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<sup>8</sup>Gupta, BD, Gupta, MB; The Medical Termination of Pregnancy Act (MTP Act), 1971, Some Suggestion. Int. J. Med. Toxicol.

<sup>9</sup>[Writ Petition (Civil) 349 of 2006], Supreme Court of India.

“In order to successfully serve the aim of enforcing these rules, Justice Dipak Misra stated that awareness efforts must respect humanism and establish a social and moral reason for the Act. To successfully administer the Act, public awareness campaigns must contain social and moral justifications. He went on to say that education on the equal role of women in society is critical for the Act to be effective”.

In “**Nikhil D. Dattar v. Union of India**”,<sup>10</sup> “Sections 3 and 5 of the MTP Act” have come under fire for not fully accounting for all potential outcomes. The fetus was diagnosed with complete heart block when the petitioner was in her 26th week of pregnancy, and she sought to end the pregnancy. The petitioner argued that subsection (1) of Section 5 of the MTP Act should be amended to include the scenarios described in subsection (3); as a result, the respondents should authorize 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 the 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 a pregnant woman”.

**CEHAT Vs Union of India**<sup>11</sup> In terms of female foeticide, this case will go down in history as a turning point. The Supreme Court of India ruled in this case that “the central government is directed to create public awareness against the practice of prenatal determination of sex and female foeticide through appropriate electronic media releases and programs”. In accordance with Section 16 of the PNDT Act, the Central Supervisory Board will also be responsible for this obligation. The central government must implement the PNDT Act and its regulations from 1996 with as much vigor and enthusiasm as possible.

In the landmark case of “**Centre For Enquiry Into Health And Allied Themes (CEHAT) v. Union Of India & Others**”<sup>12</sup>, Concerned about the implementation of the Pre-Natal Demonstrative Procedures Act, 1994, which had failed to prevent female feticide, lawyers challenged it in court. The Union of India was tasked with effectively implementing and enforcing the Pre-Natal Diagnostic Techniques Act of 1994. The petitioners' arguments are currently being heard by the court. The court notified the appropriate authorities that it was

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<sup>10</sup>S.L.P. (Civ.) No. XXXX of 2008 (Supreme Court of India).

<sup>11</sup>(2003) 8 SCC 398.

<sup>12</sup> Centre For Enquiry Into Health And Allied Themes (CEHAT) v. Union Of India & Others, Writ Petition (civil) 301 of 2000.

authorized to prosecute Act violators and issued a warning to the Center, States, and Union Territories to comply with the Act's requirements.

“The court also stated that it had permission to act in this manner. In 2003, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was renamed. The Court also created the National Monitoring and Implementation Committee, or NMIC, to oversee the Act's implementation. The Act was updated in 2003 in accordance with a court directive to reflect technological advances”.

The constitutionality of The PCPNDT Act, 1994 was challenged in “*Vinod Soni & Anr. v. Union of India*”<sup>13</sup> because it violates Article 21 of the Constitution, which protects parents' right to choose the gender of their children. The petition to challenge the Act was rejected by the Bombay High Court after it was determined that it was constitutional.

## CONCLUSION AND SUGGESTIONS

Despite India's patriarchal culture, which contributes to women's subordination, the right to life is the most precious and highly prized of all fundamental rights. The law's ineffective implementation is largely to blame for India's gender inequality. India must take steps to change attitudes, particularly among medical professionals, in addition to strictly enforcing existing laws that prohibit determining a person's sexual orientation. Although some may argue that eliminating the tests used to determine a person's sexual orientation is an important and urgent step, it is not the ultimate solution to the problem. It is critical to shift people's perspectives. Raising a woman's social status is one of the most long-term strategies for preventing gender discrimination.

Aside from the legal and constitutional requirements, a few additional steps must be taken to make female foeticide a crime. These actions can be carried out in a variety of ways, including through extensive campaigns, road shows, nukka-natak, and other similar techniques. To raise awareness, a required social science course in middle and high school, as well as free Legal Awareness Camps twice or three times a month in each block and panchayat, should be implemented. In addition to financial incentives such as free education, the government should consider providing additional PDS rations and tax breaks to parents of girls.

Here are some recommendations that can be put into practice on our part to help fight the issue of female foeticide and eradicate this practice from Indian society, which is a formidable

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<sup>13</sup> Vinod Soni & Anr. v. Union of India, 2005 (3) MhLj 1131.

challenge. Here are some suggestions that we could put into practice for the same reason. It must involve:

1. Make it clear to young people that participating in this risky social activity is not acceptable and encourage them to stop.
2. To achieve the goal of women's empowerment and the strengthening of women's rights, it is necessary to campaign against practices such as dowry and ensure that existing legislation is strictly enforced.
3. ensuring the continued development of high-quality health care services and ensuring individuals' access to these services.
4. Instilling a strict code of ethics in medical professionals beginning with their undergraduate training and continuing throughout their careers.
5. Complaint registration procedures that are straightforward and accessible to the general public, so that even the most needy and vulnerable women can use them.
6. The media has provided extensive coverage of the nature and severity of the problem caused by the practice. Nongovernmental organizations (NGOs) are obligated to play a significant role in informing the public about this issue.
7. Evaluation on a consistent basis of key indicators of the position of women in society, such as the ratio of females to males, as well as female mortality, literacy, and economic participation rates.
8. We need to make laws that are strong and strict, and that are on a global level, so that everyone thinks about the punishment before committing this vital crime. It is imperative to take decisive action against medical professionals, research facilities, and healthcare facilities, particularly those that perform abortions.
9. The entrenched attitudes and practices that discriminate against women and girls can only be eroded by a combination of monitoring, education campaigns, and the effective implementation of legal provisions.