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# THE ROLE OF LAW IN THE PREVENTION OF FEMALE FOETICIDE – AN ANALYSIS

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## ABSTRACT

Female foeticide, the illegal practice of aborting female foetuses, poses a grave threat to gender equality and human rights. This paper examines the crucial role of law in preventing this heinous practice. It analyses the effectiveness of existing legal frameworks, such as the Pre-Conception and Pre-Natal Diagnostic Techniques Act in India, in curbing sex-selective abortions and protecting the girl child. The study explores the challenges in enforcing these laws, including the clandestine nature of the practice, social and cultural biases favouring sons, and limited access to legal resources for vulnerable women. Furthermore, it investigates the interplay between legal measures and other crucial factors, such as education, economic empowerment, and social awareness campaigns, in achieving lasting change. This paper argues that while legal frameworks are essential, a holistic approach that addresses the root causes of son preference and promotes gender equality is crucial for effectively preventing female foeticide and ensuring the survival and well-being of girls.

**Keywords:** female foetuses, gender equality, human rights, sex-selective abortions, vulnerable women

## **Introduction**

Women are subjected to offence not only from their birth but also from the stage of foetus. Female infanticide is replaced with female foeticide. This offence is the by-product of technological misuse. Female infanticide started many years ago in India But female foeticide has a recent origin especially since it started during the period of the technological boom. In a Society where people think of the female child as a disadvantage factor in the economy and social aspect of the family, they prefer sons over daughters<sup>1</sup>. This preference leads to hatred of female foetuses. In India most people consider sons as the heirs of the family and they only the old-age security to the parents but they consider daughters as the burden to the family economically and socially. Especially, Poor people treat the female child as the economic load to the family and they consider themselves as the people who do not have sufficient means to protect female children from the evil society.

That is the reason behind the female foeticide by its mother in poor class people. Considering the middle-class families, they are not economically sound but they are highly influenced by their dependent society. If they do not satisfy society in the time of female-related ceremonies, they will lose their social status. Meanwhile, they do not have enough economy to satisfy the society but the entire liability for this social status loss is imposed upon that woman not to the society by the family of her. Therefore, considering various classes of society, the female foetuses are unwanted to them based on their reasons. This leads to female foeticide. The real number of female foeticides is not definable by using census records. Because the gender gap in the census shows there can be a few reasons. One is female foeticide other reason is female infanticide or both can be reasons behind the gender gap in censuses. In female foeticides, there are two victims are suffer. One is that female foetus who dies by that evil practice and the second is the mother of that foetus.

### **Legislative Measures:**

India has penal statutes to penalize such activities those penalize that act which cause danger to the foetus and mother. The Bharatiya Nyaya Sanhita (BNS), 2023 has several provisions that cover offences against pregnant women, starting from section 88 which classified the offence of miscarriage into two categories. One is the miscarriage of the foetus

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<sup>1</sup> Kauskhi C. Raval et al, Law and Social Transformation in India, 174, (Allahabad Law Agency 2023).

which has no movement in the womb. Second is the miscarriage of the foetus which has movement in the womb which is meant by the term 'the woman be quick with child'. The said provision provided the punishment of three years imprisonment or fine or with both if any person including the mother causes a miscarriage of the foetus which has no movement in the womb against any pregnant woman. Further, the provision provided the punishment of ten years imprisonment and a fine to any person including the mother causing the miscarriage of the foetus which has movement in the womb. If such miscarriage is not with the consent of the woman, the punishment will be life imprisonment or imprisonment which may extend to ten years and a fine under section 89 of the BNS. As per section 91 of the said act, any act that prevents that child from being born alive, or causes it to die after its birth shall be imprisonment up to ten years or a fine or both. Further, such an act is also considered as culpable homicide which attracts punishment of imprisonment which is extended to ten years and a fine under section 92 of BNS.

The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 is a detailed legislative structure developed to combat 'female foeticide' and promote gender equality' by placing checks on sex determination practices and prohibiting the use of sex-selective abortion<sup>2</sup>. This act regulates the use of prenatal diagnostic techniques like ultrasound and amniocentesis. It allows the conducting of these tests only to find any genetic abnormalities or any medical problem<sup>3</sup> and disallows any testing for the determination of the sex of the foetus. There is imprisonment of up to five years and fines of up to 50,000 for medical geneticists, gynaecologists, registered medical practitioners or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or is employed in such a Centre, Laboratory or Clinic who contravenes any of the provisions of the said act towards sex-selective abortion<sup>4</sup> and suspension or cancellation of medical licenses in the case of violations and conducts facilitating sex determination<sup>5</sup>.

It further provides a punishment of three years imprisonment and a fine of fifty thousand rupees for the first instance and it extends to five years imprisonment and a fine of one lakh rupees for subsequent instances to any person who seeks the aid of any Genetic

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<sup>2</sup> Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Sec 3A. No. 57, Acts of Parliament, 1994 (India).

<sup>3</sup> Id. at Sec 4.

<sup>4</sup> Id. at Sec 23.

<sup>5</sup> Id. at Sec 20(1).

Counselling Centre, Genetic Laboratory, Genetic Clinic or ultrasound clinic or imaging clinic or a medical geneticist, gynaecologist, sonologist or imaging specialist or registered medical practitioner or any other person for sex selection<sup>6</sup>.

The law also provides for the 'registration of each diagnostic clinic' and genetic counselling centre, ensuring that only qualified practitioners are allowed to conduct the approved procedures, and at the same time, prohibits the advertisement of sex determination services. It also holds parents, doctors, and owners of the clinic liable for their complicity in illegal sex determination or abortion. The Act declares 'Appropriate Authorities' which shall be vested with powers to supervise clinics, inspect them, and seize any materials used for illegal purposes<sup>7</sup>. The Act further enhances 'public awareness campaigns' aimed at educating society on the harmful effects of female foeticide and the need to value girl children<sup>8</sup>. The PCPNDT Act attempts to remove the exploitation of technology that perpetuates gender discrimination by focusing on the medical and cultural aspects of female foeticide so that every child, irrespective of his or her gender, receives all the basic rights to life and equality. Despite the challenges it faces in enforcement, it remains a basis for India's fight against gender discrimination and female foeticide.

In the judgment of *Centre for Enquiry into Health & Allied Themes (CEHAT) v. Union of India*<sup>9</sup>, the Supreme Court directed that the Central Government should arrange for public information about the process of pre-natal sex determination, and the enforcement of the Act should be seriously done by the Central Board. Simultaneously, it instructed the Central Board to investigate and monitor the implementation of the Act through coordination with the states. This made the states demand stringent compliance with the Act in view of surreptitious and widespread violations of this right which have brought about a declining female-to-male child ratio, and it is essential that the legislature comes up with error-free legislation along with an oversight mechanism to root out the crime of female foeticide.

### **Reasons for Female Foeticide**

The Reason behind female infanticide is the same as the reasons for female foeticide.

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<sup>6</sup> Id. at Sec 20(3).

<sup>7</sup> Id. at Sec 30.

<sup>8</sup> Id. at Sec 16.

<sup>9</sup> AIR 2003 SC 3309

Those two evils are highly interconnected with each other. This ancient and painful tradition is observed amongst many in India, under the name of female infanticide. On one hand, the concept of foeticide refers to the abortion of a girl, on the other hand making the direct killing of a girl is simply called 'infanticide', which means the murder of the newborn female through the process of poisoning, drowning, suffocation, starvation or neck-breaking or abandonment. Sadly, even if the girl baby is born by way of escaping from foeticide, within just hours or days from birth, she meets death due to the family. All these practices, with sex-selective abortions, greatly affected the demographic equilibrium of India between 1991 and 2011. The child sex ratio has dropped alarmingly from 945 girls per 1,000 boys in 1991 to 927 in 2001 and then to 914 in 2011<sup>10</sup>. For these decades, it is estimated that the "missing" girls would be approximately 44 million, the reasons of the systemic preference for male children. Economic burdens, dowry customs, and ingrained patriarchal norms have contributed to this crisis<sup>11</sup>.

The Pre-Conception and Pre-Natal Diagnostic Techniques (PNDT) Act of 1994 does not have any effects on female infanticide, because the female foetus can be protected under the said act but the female baby cannot be protected under the act. Usually, infanticide happens after the successful birth of the female baby. Once the baby is successfully born, all the liabilities of the persons who are involved in the medical profession are completed. They have no role after. Once the female child is born, her family members are waiting for the right moment to kill her. In some cases, educated people use their knowledge to kill newborn girls in their families. They use the method of suffocation where the newborn girl baby is left alone without any feeding. At some point in time. She will die of lack of food. In this method, the circumstances for the doubts of female infanticide can be totally neglected.

### **Significant Schemes for prevention of Female Foeticide:**

The Cradle Baby Scheme was first introduced by the Tamil Nadu government in 1992 to save female infants from infanticide by providing a safe and anonymous channel for parents to surrender unwanted children. Under this program, female infants could be safely abandoned or left at various "cradles", usually located near a government hospital or clinic setup wherein

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<sup>10</sup> Subodh K Singh et. al., The menace of female foeticide in India: A paradox of development, 7. International Journal of Humanities and Social Science Research, Page No. 86-89, 86 (2021), <https://www.socialsciencejournal.in/assets/archives/2021/vol7issue4/7-4-20-653.pdf>

<sup>11</sup> "Mohit Sahni et al., Missing Girls in India: Infanticide, Feticide and Made-to-Order Pregnancies? Insights from Hospital-Based Sex-Ratio-at-Birth over the Last Century, 3 PLOS ONE (2008). <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0002224>.

the infants were usually taken care of and made accessible for adoption and also where they could find the necessary medication. This will deal directly with the dangerous female infanticide problem existing in the state. The effectiveness of the program manifests in keeping many female infants alive every year, thereby providing a non-violent alternative for families who undergo societal pressure to have male children<sup>12</sup>.

Most neglected children were saved due to the importance of proper health and postnatal care brought to them by the program. Female infanticide considerably came down under this scheme. For instance, between 2002 and 2016 alone, the authorities rescued 1363 girl babies, in Dharmapuri district alone. The scheme has successfully rescued over 3,700 girls all across the state<sup>13</sup>. Critics argue that while the program saved many lives, it did nothing to solve the root problems, namely, the dowry system and patriarchal social norms, that continue to fuel the demand for male children. A similar scheme, Ashray Palna Yojana, in Rajasthan is already saving lives since it has enabled the parents to give up infants without legal liability. More than 12 girls have been saved so far in the first months of operation<sup>14</sup>

The Beti Bachao, Beti Padhao (Save the Daughter, Educate the Daughter) initiative, launched by the Indian government in 2015 aims to address the gender-based discrimination in our country which propagates against female infanticide and the under-education of girls. It carries awareness programmes to general people about the protection of female infants and education of the girls. It enriches the behavioural change of society towards the female gender. The report says that this initiative increases the sex ratio at birth (SRB) from 918 girls per 1000 boys in 2014 to 934 girls per 1000 boys in 2020. This scheme also increases the Gross Enrolment Ratio for girls in secondary education from 77.45% in 2014 to 81.32% in 2019, to a reduction in female infanticide and increasing participation of girls in both education and society.

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<sup>12</sup> Reuters, India's Cradle Babies Program Hopes to End Female Infanticide, Voice of America (VOA News), Dec.3,2013,<https://www.voanews.com/a/reu-india-cradle-babies-program-hopes-end-female-infanticide/1802328.html> (last visited Nov 29, 2024).

<sup>13</sup> "KS Kumaravel et al., Profile of Babies Admitted in Cradle Baby Scheme and Review of Female Infanticide in Dharmapuri, 13 Pediatric Oncall Journal 40, <https://www.pediatriconcall.com/pediatric-journal/view/fulltext-articles/1026/1/0/0/5-41/0>".

<sup>14</sup> Colleen Curry, Parents Can Safely Abandon Babies with New Cradle Program in India, Global Citizen (2016), <https://www.globalcitizen.org/en/content/india-cradles-abandoned-babies-infants->

### **Penalising female foeticide:**

Any attempts of the parents by way of exposure to danger and abandonment of a child in dangerous circumstances to kill their child who is under the age of twelve years shall be punishable with imprisonment which may extend to seven years or with a fine or with both under section 93 of BNS, if the child dies due to such acts, this will turn into murder or culpable homicide which is punishable under section 103 or section 105 of BNS.

### **Conclusion**

Female foeticide is a complex issue rooted in a complex interplay of social, economic, cultural, and legal factors. While law plays a crucial role in curbing this practice, it is not a standalone solution. Legislation prohibiting sex determination and sex-selective abortions, such as the Pre-Conception and Pre-Natal Diagnostic Techniques Act in India, are essential but often face challenges in implementation and enforcement. Deep-seated cultural preferences for sons, coupled with socioeconomic pressures, often undermine the effectiveness of legal measures. Furthermore, the clandestine nature of sex-selective abortions makes detection and prosecution difficult. Ultimately, eradicating female foeticide requires a multi-pronged approach that addresses the root causes while strengthening legal frameworks. The Following are some of the suggestions to prevent female foeticide:

- **Strengthening Legal Enforcement:** Stricter enforcement of existing laws, including increased monitoring of clinics and harsher penalties for violations, is crucial. This requires allocating adequate resources to regulatory bodies and ensuring transparency in their operations.
- **Empowering Women:** Promoting women's education, economic independence, and access to healthcare are essential for challenging the underlying social norms that devalue girls. Empowering women enables them to make informed reproductive choices and resist societal pressures.
- **Community Engagement:** Raising awareness about the negative consequences of female foeticide through community-based programs and public awareness campaigns can help shift societal attitudes and promote gender equality. Engaging religious and community leaders can be particularly effective in influencing social norms.

- **Improving Access to Healthcare:** Ensuring access to affordable and comprehensive healthcare services, including maternal and child health services, can reduce the perceived need for sex selection. This includes promoting safe and legal abortion services to prevent unsafe abortions driven by gender preference.
- **Addressing Socio-economic Factors:** Implementing policies that address poverty, dowry systems, and other socioeconomic factors that contribute to son preference can create a more equitable environment for girls. This may include financial incentives for families with daughters and social security programs for women.