

Female Foeticide: The Indian Standpoint

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Abstract

Female foeticide has existed since the dawn of civilization. The basic edifices of a modern State, like -democracy, rule of law, basic human rights, etc. are under the attack by Female foeticide. The extent and the level of Female foeticide in a society depend to a very large extent on the social, moral and cultural ethos of that society. Female foeticide also has a tendency to acquire a distinct "national flavor" though not differing in its basics can be unique to each country. Democratic fabric may blast if it will increase at the same pace. The fight against Female foeticide is a process that requires many systemic solutions. For that purpose, it is necessary to create a conception of the fight against Female foeticide and to define methods and instruments which could help in the fight against Female foeticide.

This paper attempts to analyze the Concept of Female Foeticide, its root causes, and the psycho-pathology behind this trend. The terrible impact of sex selection and Legal Provisions relating to the Determination of the Sex of Foetus is also discussed. Further, the role expected from stakeholders and areas where reforms are required by the new generation leaders to ensure a Female foeticide-free nation are highlighted.

Keywords

Foeticide, Sex Selection, Foetus, Stakeholder's.

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Concept of Female Foeticide

After independence, the founding fathers of the nation wanted to reform the society and were keen to establish an egalitarian society. To achieve this end, they used law as an instrument to check the gender discrimination; number of laws were enacted to meet this end but due to a strong patriarchal mentality and an unfavorable social environment they failed to accomplish their goal. The social engineering through the law was not fully achieved, while some rights enshrined under the enactments were enjoyed and accepted by the society, most of them remained only in papers due to lack of public support. Many evils are still practiced against women such as bigamy, child marriages, and dowry and they are harassed in one or the other way. Malnutrition and illiteracy are growing at an alarming rate; rape and molestation have become daily phenomena; the future of the nation seems bleak with the mushrooming rate of female foeticide.

Male and female are two wheels of a society, having equal importance.¹ India's legal framework stipulates equal rights for all, regardless of gender². But in reality 'gender bias' has existed since antiquity. Female foeticide has become a global threat with global effects; it has become challenge to the whole community of civilized nations. The basic edifices of a modern State, like -democracy, rule of law, basic human rights etc are under the attack from Female foeticide. The extent and the level of Female foeticide in a society depend to a very large extent on the social, moral and cultural ethos of that society.

In India the germ of Female infanticide can be traced to the patriarchal notion of the society which was steadfastly been held on to by the Indians at large. Violence gradually increases due to the increased importance given to the Son as the carriers of family lineage and inheritors of family property. Women began to be confined to the domestic sphere.

Manu Smriti has the view that a woman did not deserve freedom at any point of time in her childhood is dependent on her father, in her youth on her husband, and in her old age on her son.³ It was also upheld that; a woman has to be reborn as a man to attain moksha (redemption). A man cannot attain moksha unless he has a son to light his funeral pyre. Also, it says a woman who gives birth to only daughters may be left in the eleventh year of marriage. It is a common saying in India, "*Ladkamareykambakth ka; LadkimareybhaagwaanKi*" ("It's a fool who loses his male child and the fortunate one who loses a girl child"). Obviously, it shows the gender bias in our male-dominated, patriarchal society.⁴

This trend has been helped further with the progress in science and technology. Now, modern techniques are available to select the sex of foetus before

or after conception. Female infanticide now in most places has been replaced by female foeticide⁵. The girl children become target of attack even before they are born. Numerous scholars have observed that In fact, with growing technological developments, people have found new ways of satisfying their obsessions. Indeed, techniques such as amniocentesis, biopsy and ultrasound scans developed to ensure the health of a baby are misused by parents and doctors and their primary purpose today is sex determination. Clinics offering ultrasound scanning facility have mushroomed throughout the country⁶. Earlier doctors employed the controversial amniocentesis test done between 14-18 weeks to determine the sex of the foetus. The ultrasound technique has also been improved. The sex of a foetus can be determined by more sophisticated machines within 13-14 weeks of pregnancy by trans-vaginal sonography and by 14 to 16 weeks through abdominal ultrasound. These methods have rendered sex determination cheap and easy. Some sophisticated method like Ericson method which separates the X and Y Chromos from the sperm and then Injects back only Y chromos into the womb to ensure a boy have also been developed. And they cost around Rupees 15,000 to 25,000.⁷

Despite making pre-natal sex determination a penal offence and appropriate signs being hung at these clinics, doctors and parents alike rampantly violate this law.

Now the state of affair of our country is that Female Foeticide and infanticide has sweep over our country. Sex selective abortions and increase in the number of female infanticide cases have become a significant social phenomenon in several parts of India. Democratic fabric may blast if it will increase with the same pace.

Thus, it has now become clear that Female Foeticide and infanticide is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe.

Time is running out for all of us. The people need to take charge and drive “National Campaign” to reclaim the Female Foeticide and infanticide free nation.

Root Causes of Female Foeticide

A childless woman is perceived as incomplete, one who has given birth to daughters is partially complete. Only the one who has produced a son enjoys a status of sorts⁸.

The very premises of Human Rights are being shaken due to the increased Female foeticide. A violence free society generates the ideal atmosphere for the enjoyment of rights. Supreme Court has shown its unhappiness that no efforts were being made to root out the Female foeticide whereas a lot was being said about it.

Government is treating the drop in sex ratio as an issue of national emergency and quoted the shocking figure of one crore, as the number of girls who have been killed as foetus in the country in last two decades.

The links among foetal sex determination technology, the level of access to it and the sex ratio have now become clear. Certain technology including foetal sex determination and pre-conception sex selection had proved inimical to the interest of women and the unborn female child.

Factors that provide breeding substrata to Female foeticide are numerous. The prominent factors are mentioned below as follows:

- Patriarchal system
- A strong preference for sons
- Increasing dowry demand
- Denial of property to the girl child
- To keep the girl child population in check
- Difficulties involved in bringing up a girl child
- Easy availability of ultrasound and abortion services
- Poverty
- Illiteracy

Amongst this and other factors, Patriarchal notions of control over the female sex, son preference, and dowry gets majority votes for being the single largest factors that provides an ideal breeding ground for Female Foeticide.

Why levels of Female Foeticide Varies from State to State?

After examining the various root causes which fuel the crime of female foeticide a question that would arise in any curious mind is that the level of female foeticide varies to a huge extent even among states in the same country it has been usually observed that in state where the women enjoy property rights at equal parity with men are less likely to be victims of female foeticide, part of this can be explained in terms of the added feeling of self-worth that women get and are thus able to fight against male subjugation.⁹ Other important factors which play a crucial role in the curbing of this crime are Human Development Indices like Literacy levels, Health and Sex ratio and most importantly material prosperity which can be gauged by per capita Income and rate of Female Employment¹⁰ and other such factors a favourable disposition of such factors go long way in curbing the menace.

Impact of Sex Selection in India

The Terrible Impact of Sex Selection

The 2011 Census data and other studies illustrate the terrible impact of sex selection in India over the last decade-and-a-half.

- The child sex ratio (0-5 years) declined from 945 girls to 1,000 boys in 1991 to 927 in 2001 census and now again a slight increase to 940 in 2011 census.

- In the 1991 census, there was one district with a sex ratio below 850:1,000. There were 45 such districts in the 2001 census.
- The sharpest declines in sex ratio were in Himachal Pradesh, Punjab, Haryana, Gujarat, Uttaranchal, Maharashtra (with 4,345 registered ultrasound clinics or centres out of a total 28,000 or so nationwide) and Chandigarh, where sex selection technology was widely available.
- The 10 districts with the worst sex ratios in the country – all below 800 – are all in Haryana and Punjab.
- A study by Joe Varghese and others of births in three public and five private hospitals in Delhi between 1993 and 2002 found that sex ratios get worse according to birth order. Thus, if the sex ratio at birth is 925 girls for every 1,000 boys among first-born children, it is 731:1,000 among second children and 407:1,000 among third children. The sex ratio among second children is 959:1,000 if the first child is a boy; if it is a girl, it is 542:1,000. And if the second child, too, is a girl, among third children there are only 219 girls for every 1,000 boys.

A population-based study based on 1998 data, recently published in *The Lancet*, reinforced Varghese's conclusions. The sex ratio for first order births was found to be 871 girls for every 1,000 boys, compared to the expected sex ratio of 950-980: 1,000. If the first child had been a girl, the sex ratio of second children was as low as 759 girls for every 1,000 boys. This got further skewed to 719:1,000 for the third child, if both first and second children had been girls. Such skewed sex ratios were possible only with sex selective abortion.

- The sex ratio of second children when the first child was a girl was as low as 614: 1,000 in Punjab, 527: 1,000 in urban Rajasthan and 572: 1,000 in urban Bihar.
- Sex selection after a first girl was being done even in states such as Kerala.
- Religion had no influence on this practice.
- Women with a grade 10 or higher education were more likely to undergo sex selective abortions to avoid a second girl.

There are a total of 27,748 diagnostic centres registered under the Act. Over 16,000 of these are ultrasound centres. Findings of state-level surveys in Maharashtra, Karnataka and Gujarat reveal:

- There is a correlation between the number of sonography centres in a district and the sex ratio there. For example, in Maharashtra, the sex ratio for districts with more than 100 centres was 901; it was 937 for districts with less than

100 centres. Four districts with less than 20 centres each had the best sex ratios — 958 and above.

- There is a clustering of sonography centres. In Maharashtra 78% of clinics were in Mumbai, Pune, Nashik, Sangli and Kolhapur. In Karnataka, clinics are concentrated in Bangalore, Belgaum, Mysore and Gulbarga, out of 27 districts.
- Many centres – especially mobile units – are owned by doctors not trained in allopathic medicine. At a number of centres neither the owner nor main operator were qualified to do scans. A significant proportion were mobile or “on call” units that can be taken to remote areas.

The Delhi-based women’s group Saheli argues that the government has played a key role in supporting commercially-motivated medical professionals and promoting the diffusion of this technology. For one, it points to the clear link between the liberalisation of import duties on medical electronic equipment and the increase in the number of sonography centres. Second, it notes that ultrasound scanners are much, much more popular than ECG machines, X-ray machines or baby incubators.

Calling the increasing trend of sex selection as cruel, NCW Chairperson Girija Vyas said: “*It is inhuman to tell people not to indulge in female foeticide because in the long run, men will not get women to marry.*”

Roles of Stakeholders

At this juncture when we have already evaluated the various themes attached to this problem and vigorously analysed the causes and consequences of this egregious problem it would be deemed fit to analyse the position of the Stakeholders that occupy a pivotal place in the entire debate surrounding the evil.

Role of Judiciary

In the present-day time when the common man of India has lost all its faith in his elected representatives i.e. the executive and legislature, fortunately the Judiciary is still playing its role as the third pillar of democracy and also that of the guardian of the constitution of India.

In a recent significant judgment given in *Centre for Enquiry Into Health and Allied Themes (CEHAT) & other Vs. Union of India & other¹¹*, the Supreme Court has directed all Court to deal with a “*heavy hand and deterrent rod*’ with persons convicted under The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 and said no sympathetic approach is needed in such cases. The Hon’ble Supreme Court observed that there had been non-compliance of Sections 23, 28 and 30 of Prenatal Diagnostic Techniques (Regulation and Prevention of

Misuse) Act, 1994 and that this was a matter relating to non-implementation of Act. The Court observed that there had been total slackness by administration in implementing Act and that genetic counselling centers, genetic laboratories or genetic clinics were not registered but no action taken against them as provided under Section 23 but only warnings were issued against them. The Apex Court directed that unregistered centres are required to be prosecuted by authorities under Provisions of Act that no need of issuing warning and permitting them to continue their illegal activities and the appropriate authorities required to file complaint under Section 28 for prosecuting offenders. The Court held that appropriate authorities not only empowered to take criminal action but to search and seize documents, records, objects, etc. of unregistered bodies under Section 30 and the Court directed all State Governments and Union Territories to implement Act and submit compliance report.

This approach by the Supreme Court indicates that the Hon'ble Court recognizes the need for implementation of the Act as the objective of the Act of curbing the problem of female foeticide is not being curbed in spite of the fact that a legislation is in place to combat the evil. Thus, appropriate steps need to be taken at the earliest to ensure implementation of the Act to ensure that the new prenatal diagnostic techniques are a boon and not a bane to society.

Thus one can see the protective role played by the Judges and thereby checking and strengthening the justice delivery system.

But unfortunately, even this channel of hope appears to be shut. Reasons for such a conclusion are more than one. Discrimination is apparent not just in many case laws but also in the way victim have been addressed in many high court and Supreme Court judgments.

As former Chief Justice of Supreme Court, Ranganatha Mishra shockingly advised the women to sit at home and not work outside their domestic sphere.¹²

Thus, we can easily comprehend that though the judiciary has always stood for gender equality and women rights it has over the years been an effective albeit a reluctant device for reinforcing a few beliefs of the patriarchal structure of the Indian society. It can therefore be said that the judiciary needs to exercise the utmost caution and restraint while dealing with such an excessively sensitive issue as female foeticide and it needs to walk on the fine line wherein it is able to curb the menace without turning into a tool for spreading pseudo modernism.

Role of Media

It is true that the media only highlights news that evokes considerable interest among the viewers and is not bothered about the ideals of democracy or increasing

female foeticide. It sums up the limited agendas of present age media that seems to prefer commercial interests over human interests. ***Why media is so interested in treating everything as saleable?***¹³ Thus Media must understand its duty and responsibility which they owe to public at large. Media has to use their power not to write about just but also to expose the female foeticide prevalent in society.

The Media should also start projecting the women as independent, self-reliant so that she is not considered a burden on the family. TV, cinema and the press can be important tool in bringing about an attitudinal change in society.¹⁴

But we shouldn't forget that part of the blame lies with us. It is we the people who have commercialized the media. If only the news and other channels highlight issues like wife beating, female fetocides and such other things prevalent in each and every corner of the world, ***will anyone watch the reports and appreciate them?*** So there's a need for us to change too. Until ***one changes from within***, all Campaigns, reforms, and laws to fight against female foeticide are useless.

Role of Individuals

It is an *incontrovertible truth* that female foeticide can never be weeded-out from the very fabric of the society. But there is an exception to it when female foeticide will no longer be in the existence ***"If one changes from within"***.

Voluntary and social action groups can play a crucial role in raising the status of the girl child. Awareness regarding legal provisions concerning the female foeticide and disseminating information about infringement of the human rights of women and children should be generated by mass appeals.¹⁵

Ideological revolution against Female foeticide is absolutely necessary. Without morality and discipline, we cannot combat Female foeticide. The religious preachers and social reformers need to re-establish moral values by launching campaigns. Unless we strike at the root, perhaps it will not be possible to root out the scourge of female foeticide.

Conclusion

In the foregoing Parts of this research paper, we have dealt with the areas where reforms are required by ***"the new generation leaders"*** to alienate ***THE CLIMATE OF FEMALE FOETICIDE***.

From our analysis, we arrive at the following conclusions:

- In order to remove female foeticide ***strong public opinion*** and ***mobilising public power*** is call for.
- Institutional building and restoration of the value system help in combating female foeticide.

- An independent, accountable, transparent and incorruptible judiciary is a *sine qua non* to combat female foeticide from the very fabric of the society.
- Media must understand its duty and responsibility which it owes to public at large and react in responsible way against the female foeticide practices prevalent in society. Thus media should use their power not to write about just but also to expose the female foeticide.
- The sex education and courses on gender need to be provided to school and college students. That will help in fighting against female foeticide.
- Coordination among concerned departments and civil society on this matter is a must.
- An analysis of the law indicates that the law which has been enacted is sufficient to combat the evil. However, the major problem lies in the implementation of the law. The ruling of the Supreme Court in the case of *CEHAT v. Union of India*¹⁶ is extremely significant in this regard wherein the Supreme Court has recognized that the implementation of the law has been extremely faulty and there is a need of strict implementation of the law.

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