

## **Female Foeticide and its Remedies in India**

**Digvijay Dhama**

*Research Scholar (Law)*

*Meerut College, Meerut.*

*Email: [dhama.digvijay@gmail.com](mailto:dhama.digvijay@gmail.com)*

**Dr. Dwarika Prasad**

*Associate Professor*

*Meerut College, Meerut.*

**Abstract**

*Female foeticide has become a social hazard of international significance in the era of ultrasound technology and capitalist modernity. This paper tries to focus on the rationale behind the foeticide, and the consequences of this phenomenon on the Indian society. Finally, this paper will review to the measures and remedies taken to combat this heinous phenomenon for a balanced society.*

**Keywords:** *Foeticide, Hazard, Heinous, Balanced Society.*

Reference to this paper  
should be made as  
follows:

**Digvijay Dhama**  
**Dr. Dwarika Prasad**

*Female Foeticide and  
its Remedies in India*

Journal Global Values,  
Vol. XI, No.II  
Article No.27,  
pp. 218- 226

[https://anubooks.com/  
jgv-vol-xi-no-2-july-  
dec-2020/](https://anubooks.com/jgv-vol-xi-no-2-july-dec-2020/)

[https://doi.org/  
10.31995/  
jgv.2020.v11i02.027](https://doi.org/10.31995/jgv.2020.v11i02.027)

## **Introduction**

Male and female are two wheels of a society, having equal importance. India's legal framework stipulates equal rights for all, regardless of gender. But in reality 'gender bias' has existed since antiquity. Female foeticide has become a global threat with global effects; it has become challenging 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.

This trend has been helped further with the progress in science and technology. Now, modern techniques are available to select the sex of the fetus before or after conception. Female infanticide now in most places has been replaced by female foeticide. 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 country. Earlier doctors employed the controversial amniocentesis test done between 14-18 weeks to determine the sex of the fetus. The ultrasound technique has also been improved. The sex of a fetus can be determined by more sophisticated machines within 13-14 weeks of pregnancy by transvaginal sonography and by 14 to 16 weeks through abdominal ultrasound. These methods have rendered sex determination cheap and easy. Some sophisticated methods like the 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 has also been developed. And they cost around Rupees 15,000 to 25,000.

Despite making pre-natal sex determination a penal offense 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 swept over our country. Sex-selective abortions and an 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 at 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 the “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 sorts.

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. The 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 fetuses in the country in the last two decades.

The links among fetal sex determination technology, the level of access to it, and the sex ratio have now become clear. Certain technology including fetal 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

## **Remedies against the Female Foeticide**

To curb the problem of female foeticide the Government enacted the Prenatal diagnostic techniques (Regulation and Prevention of Misuse) Act, 1994 which had provisions prohibiting the determination of sex by prenatal techniques. This act was amended to provide the Preconception and Prenatal Diagnostic Techniques Act, 2003, which covers pre-conceptual techniques and all prenatal diagnostic techniques. Section 2 of the Act defines “prenatal diagnostic procedures” as all gynecological or obstetrical or medical procedures such as ultrasonography fetoscopy, taking or removing samples of amniotic fluid, chorionic villi, blood, or any tissue of a pregnant woman for being sent to a Genetic Laboratory or Genetic Clinic for conducting prenatal diagnostic test.

Thus, as can be seen from the above definition the Act has a wide applicability and it includes all the prenatal diagnostic techniques which are commonly utilized for the determination of the sex of the fetus. This is significant in the field of science which continually undergoes change with new technologies being developed at a very fast pace. Thus, in order to combat the problem holistically it is essential, that the Act covers even the technologies which may be developed in the future which may be miss-utilized for the determination of the sex of the fetus.

Section 5 and Section 6 of the Act are extremely significant with respect to the determination of the sex of the fetus. Section 5 and Section 6 reads as follows:

### **Sec 5**

Written Consent of Pregnant Woman and Prohibition of Communicating the Sex of Foetus: -

- (1) No person referred to in clause
- (2) of section 3 shall conduct the pre-natal diagnostic procedures unless-
  - (a) he has explained all known side and after-effects of such procedures to the pregnant woman concerned;
  - (b) he has obtained in the prescribed form her written consent to undergo such procedures in the language which she understands; and
  - (c) a copy of her written consent obtained under clause (b) is given to the pregnant woman.

(2) No person conducting pre-natal diagnostic procedures shall communicate to the pregnant woman concerned or her relatives the sex of the fetus by words, signs, or in any other manner.”

### **Sec.6**

Determination of Sex Prohibited

**On and from the commencement of this Act,-**

(a) no Genetic Counselling Centre or Genetic Laboratory or Genetic Clinic shall conduct or cause to be conducted in its Centre, Laboratory or Clinic, prenatal diagnostic techniques including ultrasonography, for the purpose of determining the sex of a fetus;

(b) no person shall conduct or cause to be conducted any prenatal diagnostic techniques including ultrasonography for the purpose of determining the sex of a fetus.”

These provisions clearly prohibit the determination of the sex of the fetus and even if a test has to be conducted under certain circumstances, it is prohibited that the sex of the fetus is communicated to the parents.

The Act does not completely prohibit the conduct of prenatal diagnostic techniques. The Act under Section 4 provides certain situations in which these techniques may be performed. It provides that the tests can be performed only for the detection of the following abnormalities.

(i) chromosomal abnormalities;

(ii) genetic metabolic diseases;

(iii) haemoglobinopathies;

(iv) sex-linked genetic diseases;

(v) congenital anomalies;

(vi) any other abnormalities or diseases as may be specified by the Central Supervisory Board

However, not all mothers can undertake such tests and such tests can be conducted by a qualified person only if the following conditions are satisfied.

(i) age of the pregnant woman is above thirty-five years;

(ii) the pregnant woman has undergone of two or more spontaneous abortions or fetal loss;

(iii) the pregnant woman had been exposed to potentially teratogenic agents such as drugs, radiation, infection, or chemicals;

(iv) the pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease;

Even if such tests are conducted, section 5 of the Act puts a complete ban on the communication of the sex of the fetus to the parents.

The following people can be charged under the Act: everyone running the

diagnostic unit for sex selection, those who perform the sex selection test itself, anyone who advertises sex selection, mediators who refer pregnant women to the test, and relatives of the pregnant woman. The pregnant woman is considered innocent under the Act, “unless proved guilty”.

All diagnostic centers must be registered with the authorities. They are required to maintain detailed records of all pregnant women undergoing scans there. These records must include the referring doctor, medical and other details of the woman, the reason for doing the scan, and signatures of the doctors. These records must be submitted to the authorities periodically.

Penalties under the Act are imprisonment for up to three years and a fine of up to Rs 10,000. This is increased to five years and Rs 100,000 for subsequent offenses. Doctors will be reported to the state medical council which can take the necessary action including suspension.

For implementing the Act, “appropriate authorities” are appointed at the state level and work with the director of health services, a member of a women’s organization, and an officer of the law. At the district level, the appropriate authority is the casualty medical officer or civil surgeon. Appropriate authorities are assisted by advisory committees consisting of doctors, social workers, and people with legal training. Supervisory boards at the state and central levels look at the implementation of the Act. The appropriate authority may cancel the diagnostic center’s registration, make independent investigations, take complaints to court, and take appropriate legal action. It may demand documentation, search premises, and seal and seize material. Courts may respond only to complaints from the appropriate authority.

Arvind Kumar, the collector of Hyderabad district, has illustrated what can be done through systematic work, and dedication. He actually tracked down all 389 diagnostic clinics in the city, issued notices to those which had not registered, took action against those providing incomplete information, seized machines that were not registered, and prosecuted equipment suppliers for supplying machines to clinics with no registration licenses. However, such cases are an exception to the rule.

Suggestions for better Implementation of the law

How the medical professionals can contribute:

1. Medical professionals should counsel their patients and their families on the importance of the girl child and of the skewed sex ratio in society. Since they are in a position of strength and repute, their opinion might be valued and heard.

1. Medical professionals should themselves cease/desist from conducting such tests themselves and in their own way, advocate against it amongst their peers.
2. Medical professionals have to realize that such misuse of technology is leading to escalating societal imbalance and harm.
2. Medical professionals must also never disclose the sex of the fetus to either the woman, her family, relatives, or anyone in any way. Such persons should instead be counseled on the impact of such practices on the women and society in general.
3. Further, Medical professionals by reporting cases of malpractices, that they are aware of and do not give credence to loyalty to their co-medical professionals and peers, would go a long way in the implementation of the law. It is a question of medical ethics to report misconduct, and especially when it has such far-reaching effects.
1. The Genetic Clinics, Genetic Counselling Centres, and Genetic Laboratories should not employ or take services of persons who do not possess the qualifications prescribed under the Act.
2. The qualified personnel in turn should take due care in ensuring that they conduct pre-natal diagnostic techniques in places that are registered under the Act.
3. The certificate of registration should be displayed by the GCC, GC, or GL in a conspicuous place at the place of business, as is required by the law. Also, the units should keep a copy of the Act and the Rules that can be made available upon demand. A notice also should be displayed at every such unit in a prominent place to the effect that disclosure of the sex of the fetus is prohibited under law. This notice should be both in English and the local language.
4. The GCC, GC, GL, Ultrasound Clinics, and Imaging Centres should send a complete report regarding all pre-conception or pregnancy-related procedures and tests conducted by them for every month by the 5th of the following month to the concerned Appropriate Authority.

How the Companies selling the requisite equipments can contribute:-

1. The companies dealing in the manufacture and sales of ultrasound machines or imaging machines or scanners and other such machines that are capable of detecting the sex of the fetus, should take special

care to sell these machines only 10 registered units- GCC, GL, GC, or any other person registered under the Act.

1. Such commercial organizations are required to send a list to of all the persons or bodies to whom the machines have been supplied. This has to be done once in 3 months.

How the Appropriate Authorities and the Advisory Committees can contribute: -

2. “ The functions of the Appropriate Authority are extremely vital for the proper implementation of the Act as these bodies are directly responsible, along with Advisory Committees, for the grant or suspension or cancellation of registration of the units, among its other tasks. Attempts should be made to prioritize such work in order that the units can commence work without delays.
3. But at the same time, due care should be taken in granting registration, making sure that all the requirements and the criteria under the Act have been met with regard to the unit, equipment, and personnel.
4. The other function of the Appropriate Authority, which is of extreme importance, is the power of the Authority to investigate complaints of breach of the provisions of the Act and take action accordingly. Also, the Appropriate Authority can suo-motu or on complaint, takes appropriate legal action against the use of selection technique by any person at any place. Cognizance of such complaints should be taken at the earliest and also disposed of without any delays.
5. With regard to the above function, the Appropriate Authority officials often talk of the paucity of time and that they are over-burdened with too many tasks. We would like to make clear that the Appropriate Authority does not itself have to do the investigation in each case. It has the power to delegate the same to a designated or an authorized person.
6. In granting, suspending, or canceling the registration of the clinic and in case of complaints regarding breaches, the recommendations of the Advisory Committee should be sought before arriving at a final decision, by the Appropriate Authority
7. The Appropriate Authority, the Central Government, the State Government, and the Governments/Administration of the Union Territory should periodically publish a list of registered GCC, GL, and GC and findings from reports information, for the perusal of the public and experts in the field. Such a publication can be utilized as a kind of a directory of registered



service-providers by the public and should be made freely available upon demand.

“One needs to change from within”. Because making draconian laws to fight against Female foeticide is useless unless one changes from within.

#### **References**

- 1.. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
- 2.. Medical Termination of Pregnancy Act, 1971.
3. Convention on the Rights of the Child, 1989.
4. Bhattacharya Rinki, “*Behind Closed Doors Domestic Violence in India*”, (2004) 1st edi., SAGE Publications, New Delhi/ Thousand Oaks/ London.
5. .V. Reddy and G. Bhaskar, “*Gender Inequality: In Retrospect and Prospect*”: *Towards Gender Equality- India’s Experience*”, N. Linga Murthy, et.al., Serials Publications, New Delhi, 2007.
6. Cheetu Sangeeta, “*Growing Menace of Female Foeticide in India*”, Indian Socio-Legal Journal, Vol XVII (1 and 2), 1991.
7. A.Sankaran, “*Trend and Problem of Rural Women Entrepreneurs in India*”, (June 15, 2009), Southern Economist.
8. Mrs. Rastogi Indu (2009), “*Need to pass women reservation bill for empowerment*”, Order disorder awareness magazine 18, 15 April, Vol.6 no 2 .