

# Law Relating to Sex Determination Test and Prevention of Female Foeticide and Infanticide

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## ABSTRACT

The problem of female foeticide and infanticide has been prevalent in Indian society from very ancient time. The prevalence of dowry system coupled with deep seated mentality towards male child has aggravated the problem of female foeticide and infanticide. The solution of this problem lies in concerted effort of the people, active role of judiciary and Government, non-governmental organizations. The present paper is an analysis of the issue of female foeticide and infanticide. The paper uses doctrinal method and further gives an appraisal of judicial pronouncements.

**Key Words :** Sex determination test, Female foeticide, Legislative control

## INTRODUCTION

Female foeticide is one of the glaring shames and worst form of practices practiced in India. A deep seated cultural preference for boys coupled with the family planning program insistence on small family norm and the evil of dowry system can be identified as one of the main reasons of female foeticide in India. The growing menace of female foeticide is evident from the declining sex ratio in India.

### Basic Concept of Female Foeticide:

Female foeticide is of the growing menace of our society. The country of god and goddesses is showing a sharp decline in child sex ratio. As per the Census, 2011 the child sex ratio (0-6 years) has shown a decline.<sup>1</sup> In 2001, there were 927 females per thousand males. In

2011, it declined to 919 females per thousand males. The problem of female foeticide is culturally rooted in our society. a learned author has remarked about this aspect in the following way- "The links of this practice can be traced back to the nineteenth century Punjabi practice of female infanticide among Rajuts, Jats, Ahirs, Khattris, and Gujjars. Jats, being Sikhs who form a majority in the Punjab, might be expected to treat both sexes equally, as "equality for all" is one of the fundamental principles of Sikh faith."<sup>2</sup> in society, the preferential treatment of male over female is manifested in a number of ways. According to two learned authors it is manifested many ways, "ranging from differential allocation and neglect of girl children to female infanticide."<sup>3</sup>

### Meaning of Female Foeticide :

Female foeticide means and implies expulsion of the

1. Press Information Bureau, Decline In Child Sex Ratio, Available at- <http://pib.nic.in/newsite/PrintRelease.aspx?relid=103437> (Last visited on 31<sup>st</sup> January, 2019 at 5 P.M)
2. Gill Gurjeet K., Female Feticide as a Contemporary Cultural Practice in the Punjab, *Dialectical Anthropology*, Vol. 23, No. 2 (July 1998), p. 211.
3. Oomman Nandini and , Ganatra Bela R, Sex Selection: The Systematic Elimination of Girls, *Reproductive Health Matters*, Vol. 10, No. 19, *Abortion: Women Decide* (May, 2002),p.184.

**How to cite this Article:** Baruah, Jyotirmoyee (2019). Law Relating to Sex Determination Test and Prevention of Female Foeticide and Infanticide. *Internat. J. Appl. Soc. Sci.*, 6 (1&2) : 214-216.

female foetus from the mother's womb. Foetus has been defined under section 4 (1) (bc) of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, as "a human organism during the period of its development beginning on the fifty-seventh day following fertilization or creation and ending at birth".

### Legislative Control of Female Foeticide :

Development of Law- The earliest law on this problem is Regulation VI of 1802 followed by the Female Infanticide Act, 1864 passed by the Britishers to curb the problem. Section 312 to 318 of Indian Penal Code 1860 comprehensively cover the offences of causing miscarriage, preventing the child from being born, causing death of unborn, abandoning the newborn, concealing the body secretly disposing of it.

In 1971, Medical Termination of Pregnancy Act, 1971 was enacted which recognizes a women right to privacy, her rights to limit pregnancy, her right to produce healthy babies and gives her the freedom to take decisions with respect to her own body.

The State of Maharashtra enacted Maharashtra Regulation of Use of Pre-Natal Diagnostic Technique Act, 1987 to ban amniocentesis.

Article 21 of the Constitution of India reinforces right to life. Article 51 (A)(e) also provides for renouncing practices derogatory to the status of women.

The declining sex ratio in 1990's and after ratification of Convention on Elimination of All forms of Discrimination Against Women, the Parliament of India enacted Pre-natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994 for preventing misuse of technology to determine pre-natal sex leading to female foeticide. The Act was subsequently titled as Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

### Main provisions of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994:

Section 4 of the Act provides that pre-natal diagnostic technique are allowed only for detection of chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathis, sex link genetic diseases, congenital abnormalities and any other abnormalities as may be

specified by central advisory board. The techniques can only be used when –

- The age of the pregnant women is above 35 years.
- pregnant women has undergone two or more spontaneous abortion or foetal loss.
- the pregnant women has been exposed to potentially teratogenic agents such as drugs, radiations, infections or chemicals.
- the pregnant women or her's spouse has a family history of mental retardation, physical deformities, or any other genetic diseases.
- any other deformities as may be specified by central supervisory board.

Section 6 provides no person or genetic counseling centres or genetic laboratories, or genetic clinic shall conduct pre-natal diagnostic technique including ultrasoundography for determination of sex of foetus.

Section 23 states various offences and their punishments. According to it if any medical geneticists, gynecologist, registered medical practitioners or any other person who owns or who is employed in any genetic counseling centre, laboratory or clinic contravenes the provisions of the Act or Rules shall be punished with imprisonment for a period of 3 years and with fine which may extend to 10 thousand rupees.

Section 27 of the Act states that every offence under the Act shall be cognizable, non-bailable and non-compoundable.

### Judicial Approach :

In CEHAT Vs Union of India<sup>4</sup> The Supreme Court directed the Central Supervisory Board and State Governments to appoint appropriate authorities at the district and sub district level. The appropriate authorities are further directed to send a quarterly report to the Central Supervisory Board regarding the public awareness against the practice of pre-natal sex determination.

In Voluntary Health Association of Punjab v. Union of India<sup>5</sup> the Supreme Court issued detail direction for the effective implementation of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 to prevent sex selective abortion of female foetus and monitoring of cases of various states. Further, directions were given to the

4. AIR 2001 SC 2007

5. 2015 9 SCC 740

concerned states to create awareness regarding female foeticide via publicity through print and electronic media.

In *Vinod Soni Vs Union of India*<sup>6</sup>, the Bombay High Court held that right to personal liberty does not include the right to choose the sex of the offspring as liberty cannot be expanded to prohibit a foetus coming into existence as it is for the nature to decide.

In *Manju v. State*<sup>7</sup> the Court has made following observation regarding the problem of female foeticide. “The problem in India is acute with contempt for the female child writ large on the spectrum of the society. Its proof is the dismal adverse male: female sex ratio where the biologically stronger sex *i.e.* the female sex is in the minority. 60 years of independence and so-called modernization has not changed the societal attitude towards the female child”

#### **Limitations of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 :**

New techniques are not covered under this Act. The biggest loopholes of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 is its failure to bring new developing sex determination techniques under its purview. Now-a days many fertility clinics bypass the laws by offering controversial procedure known as xy separation. Limited scope of the powers of the Central Supervisory Board is another drawback of the Act. The Central Supervisory Board does not have any power to take any action against the medical practitioners or any other person who violates the provisions of the Act. Another drawback of the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 is less strict punishment.

#### **Recent Government initiative :**

Beti Bachao, Beti Parhao and Sukanya Samridhi Account are two new schemes launched by the

Government in 2015 in a bid to encourage birth or education of girl child. Beti Prahao, Beti Bachao scheme has been focusing initially on 100 districts which has low sex ratio.

Sukanya Samridhi Accounts Scheme is a small saving scheme for the education of girl child.

In the year 2016 government of India came up with National Policy for Women, 2016 in order to articulate its vision for empowerment of women in India. The policy re-affirms to address all forms of violence against women's including sex selective termination of pregnancy. Further it re-affirms its commitment of effective implementation of Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994.

#### **Suggestions and Conclusion :**

The declining sex ratio needs to be balanced and this can be done only when the State, media, journalists, non-governmental organizations, medical practitioners, women groups and the public themselves take concerted steps to ensure that provisions of anti- female foeticide law are implemented fully and effectively.

It is difficult to eradicate social evils with the help of legislation alone. There is an urgent need to sensitize the general public in order to curb the practices discriminatory against and derogatory to the dignity of women. Until and unless society's deep rooted 'sons only' mentality is changed, the menace of female foeticide cannot be controlled. There is extreme need of strict implementation of the Act coupled with spread of awareness regarding the issue. Stringent punishment for the perpetrators who violate the Act should be provided. In fine, it may be concluded by stating that implementation of law, changing mentality of society, creative role of civil society organization and judicial activism can also solve the problem of female foeticide and infanticide.

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6. 2005 CRLJ 3404

7. CRLAPPEAL NO.168/2010, High Court of Delhi