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# FEMALE FOETICIDE

## INTRODUCTION

The preference for a son in the traditional Indian household continues to be a prevalent rule. According to Census 2001 reports[1], this is evident from the decreasing sex ratio that has falle nto alarming levels, especially in the northern states. In the middle and higher socio-economic households, especially in the northern states, the proliferation and abuse of advanced technologies coupled with social factors contributing the low status of women in the society such as dowry and family issues and considering and accepting the son as the bread-winner of the family has made the evil practice of sex-selective abortion popular.

Despite the presence of the Prenatal Diagnostic Techniques Act, because the number of convictions is desperately low relative to the burden presented by this crime, there is a dire need to improve this legislation. In addition, efforts must be focused on the cultural, economic and religious origins of this social disease through women's empowerment and intensive information, education and communication campaigning.

By raising awareness of medical students who are the doctors of tomorrow, medical colleges and professional bodies have a vital role to play.

[1] Census Figures of 2001.Office of the Registrar General and Census Commissioner, New Delhi, India

The phrase "The Endangered Sex." was coined by Barbara Miller while Amartya Sen focused on the phrase "Missing Women. Several important issues begin to emerge, including:

1. Freedom to make decisions regarding one's reproductive choices: Indian women vs. Western women

2. Family and societal pressures to borne a male child.

3. Anecdotes or lived experiences: Are these enough to consider female foeticide an "Indian problem"?

4. Is girl child considered a liability? : Social and economic reasons

5. Education and empowerment of women

6. Sex-determination technologies: Boon or Bane?

A significant gap also exists in the US under-14 population; has existed for over 50 years and is increasing in favour of boys.

One said, "The Tamil Nadu government started the 'cradle' scheme.' The government hospitals and health care centres in Dharmapuri and Salem districts support cradles in their campuses, where women are encouraged to anonymously drop off unwanted female infants.

A few pointed out that most people, especially those from educated, middle/upper-middle classes that most of us tend to know, will not go on record saying that they chose to have an abortion after finding out that it was a girl.

One person shared the story of a colleague in the US who was pressured by her in-laws to haven abortion when she found out the second child was a girl. Another member presented this evidence: "In Bombay, you can find an abortion clinic in almost every corner."

## FACTORS RESPONSIBLE FOR FEMALE FOETICIDE

1. **Socio-ritual factors:**

In the patriarchal social system of India, women are vulnerable to male violence in the form of physical, mental and sexual assaults and trauma. Females in the field of life are subjugated, condemned and deprived. For the aforementioned reasons, every

parent of girl child is at risk for their daughter in this patriarchal society. Again, the participation of a son is a must for the parents' funeral ceremonies.

A man cannot achieve moksha (redemption), according to Manu, unless he has a son to light up his fu neral pyre. The sons will diligently care for them in old age. These socio-ritual variables, such as illiteracy and orthodox culture norms, contribute to the craving for a male infant, one after another discarding the females.

**Population Policy:**

Indian family planning policies support a two- child family and health workers claim that this sometimes leads to abortion of female foetuses in an attempt to have a full family or at least one boy in the family.

2. **Economic Factors:**

In the 21st century, female foeticide has everything to do with capitalist modernity. There are components that lie behind these phenomena.

i) There is a strong inverse association between the level of income and the child sex ratio for rural households with landed property. It is especially apparent in southern India. Again, there is a pay range dependent on gender. Less money is paid to females for the same job. In most cases, women enter into domestic nonpaid services that are provided little to no value by a patriarchal society, so they are treated as liabilities rather than assets.

ii) There are a lot of answers to this pernicious practise in the cultural politics of dowry in Indian society. The dowry deaths recorded have been rising since the turn of the century. In the absence of complete payment of dowry, nearly7000-8000 brides are murdered each year. There are nearly 3000-5000 brides committing dowry suicides.

## Laws in India for the Unborn:

The Constitution of India, 1950

*"Section 312 of the Indian Penal Code 1860 read with the Medical termination of Pregnancy Act, 1971 where all the restrictions imposed therein, including the time limit of 20 weeks,*

*other than the ones to ensure good medical conditions, infringe the right to abortion and the right to health, which emanate from right to life as guaranteed under Article 21 of the Constitution. Right to abortion is a species of right to privacy, which is again proclaimed a continuance of the right to life under Art 21 of the Constitution."*

The Indian Penal Code, 1860

*"Sections 312-316 of the Indian Penal Code (IPC) deal with miscarriage and death of an unborn child and depending on the severity and intention with which the crime is committed, the penalties range from seven years of imprisonment and fine to life imprisonment."*

Section 312. Causing miscarriage

*"Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Explanation:-A woman who causes herself to miscarry, is within the meaning of this section."*

Section 313. Causing miscarriage without woman's consent

*"Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years."*

Section 314. Death caused by act done with intent to cause miscarriage

*"Whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term may extend to ten years, and shall also be liable to fine. If the act is done without the consent of the woman, shall be punished either with [imprisonment for life] or with the*

*punishment above mentioned. Explanation: - It is not essential to this offence that the offender should know that the act is likely to cause death."*

Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth.

*"Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years or with fine."*

Section 316.

*"Causing death of quick unborn child by act amounting to culpable homicide Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years."*



The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act, 1971, was developed as a mechanism to enable the number and frequency of children to be determined by pregnant women. It also gave them the right to determine whether or not to have a child. This good intentional move, however, was misused to compel women to abort the female infant.

The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994, which came into effect in January 1996, in order to eliminate the limitations inherent in previous legislation. The Act prohibited the assessment of the sex of the foetus and provided for penalties for infringement of its provisions. The required registry of genetic counselling centres, clinics, hospitals, nursing homes, etc. was also issued.

The Pre-Conception And Pre-Natal Diagnostic Techniques (Regulation And Prevention of Misuse) Act, 1994

On September 20, 1994, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted to combat the practise of female foeticide in the country by misuse of technology, done surreptitiously with the active connivance of the service providers and the persons seeking such service.

The Act was revised in 2003 to strengthen the control of sex selection capable technologies and to avoid the decrease in the child sex ratio as shown by the 2001 Census and, with effect from 14.02.2003, the Act is known as the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 due to the amendments.

The primary aim of enacting the 1994 PC&PNDT (Prohibition of Sex Selection) Act was:

i. Ban the use before or after conception of sex selection techniques.

ii. Prevent the abuse of sexually selective abortions with pre-natal screening techniques.

iii. Strict sanctions have been prescribed under the Act to govern certain techniques determine the sex of the foetus. [2]



## HOW TO CURB FEMALE FOETICIDE

Female feticide is an indicator of an underlying condition. The incidence rises when families perceive that it does not make economic sense to bear daughters and does not have any social benefits.[3] In addition, centuries of bias that support bearing a male child are added to that. Therefore, it is doubtful that efforts selectively aimed at curbing the practise of prenatal sex determination would provide rich dividends. Measures to boost the role of women in society are, however, only likely to have positive results after many years. This situation involves a twopronged strategy: one to take action to strengthen the role of women in society and the other ensure that the Prenatal Diagnostic Techniques (PNDT) Act is fully applied so that it is impossible for families to pursue sex determination and selective abortion.

[2] http://www.legalserviceindia.com/legal/article-777-the-evil-of-female-foeticide-in-india-causes-consequences-and-prevention.html

[3] George SM. Millions of missing girls: From foetal sexing to high technology sex selection in India. Prenat Diagn 2006;26:604-9.

1. Empowerment of women:

Women's education is a powerful tool for improving the standard of nutrition, increasing the age of marriage, embracing family planning, improving self- image and empowering women. NGOs may be encouraged to promote the creation of self-help organisations that organise nonformal education for adult women and school dropouts, establish job opportunities for women and offer counselling and support services to newly married and pregnant women to prevent sexually selective abortion from occurring.[4]

2. The position of medical colleges and professional bodies:

While many medical practitioners have supported campaigns to support professional societies against the abuse of these innovations, others have been strong proponents of sex-selective abortion, stressing that it is the personal choice of the family to decide their children's sex. It is therefore important to give due importance to the role of medical colleges and professional bodies such as the Indian Medical Association (IMA), the Federation of Obstetric and Gynecological Societies of India (FOGSI) and the Association of Radiologists in addressing this burning problem. This can involve Sensitizing medical students to the adverse sex ratio while emphasising the ethical concerns relating to female feticide. Conduct frequent workshops / sessions on continuing medical education that would greatly help to reiterate the importance of this issue in the region. In order to partake in such services, private practitioners should also be encouraged.

3. Intensive awareness-raising campaigns for information, education and communication.

The government has recently launched a "Save the Child Campaign for Girls." By emphasising the successes of young girls, one of its key goals is to reduce the preference for a boy. Efforts are underway to build an atmosphere where sons and daughters are equally respected in order to achieve a longterm goal. In terms of giving respect and fair regard to girls, boys need to be trained at an early stage. In presenting a positive picture of women, the mass media must be active. Girls from school and college should be the target au dience. This can, however, be paired with addressing the problem and risks of female feticide and the gender skewed ratio. Examination of the content of the abortion and sex

[4] Female foeticide in India. C2007. Available from http://www.unicef.org/india/media_3285.htm. [cited on 2008 Jun 26]

determination information presented found that, instead of explaining the distinction between sex- selected abortions and other abortions so the message stressed the illegality of the sex- selective abortion.[5] In this region, numerous non-governmental organisations are already actively taking the lead. It must be stressed that it will go a long way to ensure the success in such efforts by including the community leaders as well as prominent individuals. The root causes of gender bias however must first be discussed and steps towards female empowerment must be improved.

## LANDMARK JUDGEMENT RELATING TO FEMALE FOETICIDE

Health Association vs. State of Punjab, 8th November 2006

The dignified Supreme Court provided further instructions to curb female foeticide through successful implementation of the 'Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of sex selection Act, 1994).

The Division Bench consisting of Justices Dipak Misra and Shiva Kirti Singh noted that no special focus is required on the right of a female child to enjoy the same right that a male child is allowed to enjoy.A female child's constitutional identity should not be attributed to some kind of social or other term that has been or is being thought of. It does not allow any space for any compromise of any sort. It only allows for legally postulated affirmative actions.

It must be explicitly mentioned that it must be acknowledged that such rights are accepted when rights are granted by the Constitution, taking into account their naturalness and universalism.

The Bench directs the States and Union Territories to enforce the Rules on Pre-conception and Pre-natal diagnostic techniques (Prohibition of sex selection) (six months training), 2014" considering the training offered therein is imperative for the purposes and purposes of this Act to be realised."

UP Govt. directs Allahabad High Court to protect the unborn child of the minor rape victim.

[5] Nidadavolu V, Bracken H. Abortion and sex determination: Conflicting messages in information materials in a District of Rajasthan, India. Reprod Health Matters 2006;14:160-71

The two member bench, which includes Shabihul Hasnain and D.K. Upadhyay, J.J. concluded that it is the duty of the state govt. to protect the minor rape victim and her brother.The Court ordered the State to ensure that the woman was provided with a health facility and education.[6]

The problem in this case revolves around the pregnancy of the minor rape victim and her subsequent trauma. A select team of doctors ruled out the option of abortion as the termination of pregnancy leads to the birth of a preterm baby, as per the order of the court.

On behalf of the petitioner, Mohsin Iqbal argued that the Court of Justice had established that from the point of view of Article 21 of the Constitution, this matter should be examined since both the victim and her child have the right to live with dignity. On behalf of the respondent, Bulbul Godiyal assured the Court that the state government will aid the victim and her child in all possible ways. She also advised the Court of such government programmes that would be helpful to the victim."

## CONCLUSION

The collective blame for female feticide is borne by Indian society as a whole. But, Indian doctors are in a distinctive and strong role. By refusing to engage in female feticide, a direct violation of medical ethics, as established by the principles of beneficence and non-maleficence, they have the potential to disrupt systemic violence against women. The PCPNDT Act, despite its flaws, is a well-intentioned piece of social legislation that enhances the practise of medical ethics by providing Indian doctors with a legal incentive to uphold their obligations. While the PCPNDT Act succeeds in identifying and drawing attention to a critical social issue, it is not possible to disregard its inability to substantially curb female feticide and its unintended impact. The burdensome ultrasound constraints that prohibit Indian physicians from accessing a valuable modality of imaging have not translated into the social reform envisaged by the PCPNDT Act. Ultimately, a solution as multifaceted and complex as the underlying root causes will be needed to terminate female feticide.

[6] https://indiankanoon.org/doc/168133848/