

Female Foeticide and Infanticide: A Socio-Legal Problem

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Abstract: *The present paper deals with the recent scenario of the female foeticide and infanticide in the society. The sex selection techniques are providing ample opportunity to the female foeticide and socio-economic problems are providing opportunity of female infanticide. Even though the law is a powerful instrument of social change yet law alone cannot root out this social problem. The real challenge before us and government authorities are to remove loopholes in the present laws. It is a responsibility of women's group, NGO's, the mass media educationist and medical professionals have to play their important roll to curbing socio-legal problem. It is pertaining to note that until and unless this menace is controlled, the country is heading for a catastrophic gender imbalance, which in turn would affect the nation's economic progress.*

Keywords: Female foeticide, Infanticide, Sex selection techniques, Diagnostic Laboratories

1. Introduction

We are living, under the patriarchal setup; the fairer sex has suffered at the hands of man. The women are exploited from physical to intangible abuse such as mental and psychological torture. The female foeticide and infanticide are extremely manifestation of the violence against women. The female foetuses are selectively aborted after pre-natal sex determination, thus avoid the birth of the girl child. The form of eliminating the girl child has been the practice of female infanticide. It is an intentional act killing of female child within one year of its birth either directly by using poisonous substance, chemicals or indirectly by deliberate neglect to feed the infant by either one of the parent or other family members and kith and kin of the family members. It is an clear cut responsibility of the society to reduce the female foeticide and infanticide by way of awareness programme through mass media academicians, lawyers, scientists, NGO's and to empower the women activist in the Society so that to curbing this socio-legal problem.

1.1 Female Foeticide

The female foeticide is a practice of selective elimination of the female foetus after prenatal sex determination, thus avoiding the birth of a girl child. Sex of the baby could be detected through pre-conception and post-conception methods. The pre-conception methods include Ericson method (X and Y chromosome separation), and pre-implantation genetic diagnosis. However, it is the post-conception methods that are in much wide use, namely: amniocentesis, chronic villus sampling and ultrasonography¹.

1.2 Female Infanticide

The discrimination does not end with the sex-selective abortion of female foetus, but it continues beyond the birth. Female infanticide is a deliberate and intentional act of killing a female child within one year of its birth either directly by using poisonous organic and inorganic chemicals

or indirectly by deliberate neglect to feed the infant by either the parents or other family members. Kolloor defines infanticide as, "Killing of an entirely dependent child less than one year of age" who is killed by mother, parents or others in whose care the child is entrusted". It is unfortunate that the parents also view her as a liability.² This attitude is rooted in a complex set of social, cultural, and economic factors. It is the dowry system, lack of economic independence, social customs and traditions that have relegated the female to a secondary status. The degree may vary but the neglect of the girl child and discrimination goes hand-in-hand.³ To compare with infanticide, foeticide is probably a more acceptable means of disposing off the unwanted girl children. Infanticide can be an overtly barbaric and inhuman practice while foeticide that is carried out by skilled professionals. It is a medical practice that uses scientific techniques and skills and reduces the guilt factor associated with the entire exercise.⁴

1.3 National Policy Framework

The national plan of action exclusively for the girl child (1991-2000) was formulated in 1992 for the "Survival, Protection and Development of the Girl Children". The national plan recognized the rights of the girl child to equal opportunity, to be free from hunger, illiteracy, ignorance and exploitation. Towards ensuring survival of the girl child, the main objectives are given below:

- 1) To prevent cases of female foeticide and infanticide and ban the practice of amniocentesis for sex determination.
- 2) To end the gender disparity in infant mortality rate; eliminate gender disparities in feeding practices, expand nutritional interventions to reduce severe malnourishment by half and provide supplementary nutrition to the girls child.
- 3) To reduce deaths due to diarrhea by 50% among girl children under 5 years and ensure immunization by the government against all forms of serious illnesses.

- 4) To provide safe drinking water and ensure access to fodder and drinking water nearer home, especially in the rural areas.

The launching of the Balika Samridhi Yojana in 1997 is a major initiative of Government to raise the overall status of the girl child. It intends to change family and community attitudes towards her and her mother. Under this scheme about 25 lakh girl children born every year in families below the poverty line are to be benefited. The first component of the scheme, which has already been launched, is to provide Rs.500/- as a post-delivery grant to the mother of the girl child as a symbolic gift by government. The other components proposed under the scheme are provision of annual scholarships to the beneficiaries when they go to school and assistance for taking upon income generating activity when they attain the age of maturity. In spite of that having specific legislation and policy proclamations to deal with this menace, the precipitating factors such as poverty, dowry, and woman's economic dependence etc., leading to the problem of female foeticide and infanticide have been addressed by enacting various legislations like: a) The Dowry Prohibition Act, 1961(Amended in 1986). b) The Hindu Marriage Act, 1955. c) The Hindu Adoption and Maintenance Act, 1956. d) The Immoral Traffic Prevention Act, 1986. e) The Equal Remuneration Act, 1976 etc. These are various other legislations and policy proclamations intend to bring about women's economic and social empowerment to the maximum and it is hoped that such measures would equip women to exercise their rights.⁵

2. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2002

The present Act to provides for the prohibition if sex selection, before or after conception, and for the regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex- linked disorders and for prevention of their misuse for sex determination leading to female foeticide and for matters concerned therewith. To bring into the ambit of the Act emerging techniques for pre-conception sex-selection, such as sperm separation and pre-implantation genetic diagnosis, increasing the fine and additional provisions for the suspension and cancellation of the registration of violators, the law targets the medical profession, the so-called 'supply' side of the practice of sex-selection. The manufacturers of ultrasound equipment are now required, to sell their products only to registered clinics. It is a managerial personnel responsibility of all ultra sonographers now has to maintain records of all tests conducted by them.⁶

3. Compulsory Registration of Diagnostic Laboratories

This Act mandates Compulsory Registration of all Diagnostic Laboratories. All Genetic Counseling Centers, Genetic Laboratories, Genetic Clinics and Ultrasound Clinics, irrespective of whatever they are involved as

regards diagnosis for gynecological or other purposes, would now have to maintain records of all the tests conducted by them. Only qualified persons can use pre-natal diagnostic techniques. The sex determination test is not totally banned, but it is regulated for certain medical purposes. The reasons for testing should be recorded in writing. The techniques can be used in the following conditions such as: a) The age of the pregnant women is above 35 years. b) The pregnant women have undergone two or more spontaneous, abortions or foetal loss. c) The pregnant women had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals. d) The pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease. e) The Central Supervisory Board may specify any other condition as required.⁷

4. Provisions under Indian Penal Code

4.1 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. A woman who causes herself to miscarry, is within the meaning of this section.

4.2 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, and shall also be liable to fine.

4.3 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. And 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. It is not essential to this offence that the offender should know that the act is likely to cause death.

4.4 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 act 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, or with both.

4.5 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, and shall also be liable to fine.

5. Social Action to Curb Female Foeticide

If we want to stop the female foeticide or neglect of women, we have to stop looking for quick fixes and instead face the problem squarely. There is no way to ensure the healthy survival of baby girls unless families find them worth nurturing. That is indeed a complex task, which allows for no easy short-term solutions. The activist's intervention has not led to curbing sex determination tests. The real challenge before us is to figure out ways in which a realization of the value of daughters can be enhanced in the eyes of their own families. All those who have a stake in it apart from the government authorities, such as women's group, health groups, non-governmental organizations, the educationist, the media and most importantly the medical professionals have to play their fair role to see that the provisions are implemented and the provisions are strengthened by amendments of the act. Unless social action is supplemented with prompt implementation of regulations under the law meant to stop female foeticide, such practices will continue to flourish. To ensure smiles on the faces of our youth, both boys and girls, let us intensify joint efforts to root out unhealthy social elements, 'Now' since future depends upon what we do in the present.⁸

6. Conclusion and Suggestions

I would like to conclude that there are various legislative measures and law enforcement agencies to eradicate the female foeticide and infanticide. In spite of that there are various problems to be regulated and control mechanism system. Our society is using sex selection techniques as a general rule not an exception. These techniques are only for the purpose of the health of the mother's and to find out the genetics problems of the baby in the exceptional cases.

The female foeticide and infanticide are devaluated not only because of the economic considerations but also because of socio-cultural factors, like the belief that son extends the lineage, enlarges the family, provides safety, security and protection to the family. According to the Vedas son is necessary for salvation as he alone can light the funeral pyre and perform other death related rites and rituals. These types of problems are more prevalent in orthodox families. There are various measures to eradicate the problem in the society.

There should be simple methods of complaint registration, accessible to the poorest and most vulnerable women. There

should be regular assessment of indicators of status of women in society, such as sex ratio, and female mortality, literacy, and economic participation. There are strengthening of women's rights and ensuring strict implementation of existing legislations. To ensure the development of and access to good health care services. There should be strong ethical code of conduct among medical professionals, beginning with their training as undergraduates. There should be set up fast track courts added by female judge for quicker disposal of the cases. The capital punishment must be awarded to the convicted person for this heinous crime.

It is only by a combination of monitoring, education campaigns, and effective legal implementation that the deep-seated attitudes and practices against women and girls can be eroded. In order to curb female foeticide and improve the sex ratio, Government should adopt a multi-pronged strategy which includes legislative measures, advocacy, generation awareness programmes for socio-economic empowerment of women.

"That society should not want a girl child; that efforts should be made to prevent the birth of a girl child and that society should give preference to a male child over a girl child is a matter of grave concern. Such tendency offends dignity of women. It undermines their importance. It violates women's right to life. It violates Article 39(e) of the Constitution which states the principals of state policy that the health and strength of women is not to be abused. It ignores Article 51A (e) of the Constitution which states that it shall be the duties of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the constitution. It insults and humiliates women hood. This is perhaps the greater argument in favour of total ban on sex selection."⁹

Hon'ble Smt. Ranjana Desai, Justice

7. Future Prospects of the study

This study will be helpful to remove the gender imbalances in the society and to create awareness amongst the lawyers, academicians, mass media and social activists etc. it will also help in preventing gender related crimes. It will curb female foeticide and infanticide and improve sex ratio.

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