



## INFANTICIDE VS. FEMALE FOETICIDE

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**I am a Women,  
Who holds up the Sky,  
The Rain Comes Through My Eyes,  
The sun Shines Through my Womb,  
But my words are yet to come out.....**

### Introduction

It is a matter of grave concern that in a country like India, who is claiming permanent membership on Security Council, we are discussing a thing like female foeticide. Kolloor (1990) defines infanticide as, "Killing of an entirely dependent child under "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. 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. In today's materialistic world a woman is fast being relegated to the rank of a commodity and marriage has become more of a business alliance than a sacred bond between two people. Over the years her physical weakness was exploited to make her psychologically weak as well. Gradually a girl was indoctrinated to feel inferior, not only physically but psychologically, intellectually, and mentally. She never got her so called equality right. Every time she has to look at face of society for her decisions. Considered a commodity she could now be exchanged (e.g. by marriage), kept or rejected at will, and got rid of when not required, either by abandoning or later or even murder. Each time a man repressed a woman, he justified his action, to appease his conscience and mollify others in the society. What to talk of male, even the female has become an enemy of another female. With the availability of ultrasound technology for determining sex of the foetus, a simple and noninvasive technique, female themselves indulged in deleting their community. The slogan of "Spend five hundred rupees now save five lacks later"

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meaning get a female foetus aborted, to later save dowry money has become so famous that to shame off.

### **Empirical Study**

Recently the first systematic study on female foeticide by an Indo-Canadian team was conducted and a shocking picture emerges that **every year, about 50,000 unborn girls-one in every 25-are aborted**<sup>1</sup>

In 1997 UNPFA report “India Towards Population and Development Goals”, estimates that 48 million women were ‘missing’ from India’s population. The report states “If the sex ratio of 1036 females per 1000 males observed in some states of Kerala in 1991 had prevailed in the whole country, the number of would be 455 million instead of the 407 million (in the 1991 census). Thus, there is a case of between 32 to 48 million missing females in the Indian society as of 1991 that needs to be explained.” The 1991 census is only indicative of this disturbing trend when elsewhere in the world women outnumber men by 3 to 5 percent. There are 95 to 97 males to 100 females in Europe, the ratio is even less, 88 males to 100 females, in Russia, mainly due to casualties of World War 2<sup>2</sup>.

According to the UNICEF, 40 to 50 million girls have gone missing from Indian population since 1901 as a result of systematic gender discrimination in India<sup>3</sup>. As per consensus 2001, the child ratio in Punjab is 793 girls to 1000 boys. This is the lowest child ratio in the country (the average being 927 girls to 1000 boys) and as compared to 1991 consensus it shows a decline of 82 points. India tops the list as far as illegal abortion and female foeticide are concerned. Of the 15 million illegal abortions carried out in the world in 1997, India accounted for 4 million, 90%. Refer sex ratio mention at back of which were intended to eliminate the girl child<sup>4</sup>. On March 8, 2006 the Governor of New Delhi launched a campaign against selective abortions. In Delhi alone the situation is “becoming alarming”: only 814 girls are born for every 1000 boys in the Capital. While the 2001 consensus showed Delhi’s sex ratio to be 865 for age group 0-6 years, against the national average of 927<sup>5</sup>. This has consistently increased over the years. ‘Saheli’, a Delhi based NGO, has reported that between 1978-82, nearly 78, 000 female fetuses were aborted after sex determination tests in the country. Between 1986-87 alone, 30, 000-50, 000 female fetuses had been aborted. Between 1982-92, the number of sex determination clinics multiplied manifold and nearly 13,000 sex determination tests were estimated to have been done in seven Delhi clinics themselves<sup>6</sup>.



## Legal Framework

In the absence of any law, all that the government could do was to issue circulars prior to 1985, banning the misuse of medical technology for sex determination in all government institutions. This, however, led to the mushrooming of private clinics all over the country. In 1986, the Forum Against Sex Determination and Sex Pre-selection (FASDSP), a social action group in Mumbai, initiated a campaign. Succumbing to public pressure, the Maharashtra government enacted the Maharashtra Regulation of Pre-Natal Diagnostic Techniques Act 1988, the first anti sex determination drive in the country. This was followed by a similar Act being introduced in Punjab in May 1994. Until 1970 the provisions contained in the Indian Penal Code (IPC) governed the law on abortion. The Indian Penal Code 1860 permitted 'legal abortions' did without criminal intent and in good faith for the express purpose of saving the life of the mother. Liberalization of abortion laws was also advocated it as measures of population control. With these considerations, the Medical Termination of Pregnancy Act was passed in July 1971, which came into force in April 1972. This law was conceived as a tool to let the pregnant women decide on the number and frequency of children. It further gave them the right to decide on having or not having the child. However, this good intentioned step was being used to force women to abort the female child. In order to do away with lacunae inherent in previous legislation, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act had to be passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the foetus and stated punishment for the violation of the provisions. It also provided for mandatory registration of genetic counseling centers, clinics, hospitals, nursing homes, etc.

Thus both these laws were meant to protect the childbearing function of the woman and legitimize the purpose for which pre-natal tests and abortions could be carried out. However, in practice we find that these provisions have been misused and are proving against the interest of the females. It constitutes Advisory Committee to provide expert and technical support to the Appropriate Authority. Contravening the provisions of the Act can lead to a fine of Rs 10,000 and up to three years imprisonment for a first offence, with greater fines and longer terms of imprisonment for repeat offenders. The Appropriate Authority informs the central or state medical council to take action against medical professionals, leading to suspension or the striking off of practitioners found guilty of contravening the provisions of the Act. Before conducting



any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands. Prenatal tests may be performed in various specified circumstances, including risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple. The irony of the whole situation is that in the 10 years since India enacted the Pre-Natal Diagnostic Technologies (PNDT) Act, not a single person was convicted till very recently and in the beginning of April 2006 only two people were convicted, fined and pronounced five years of rigorous imprisonment. Only 23 cases have been registered under this act so far, according to India's Health Minister Ambumoni Ramadoss' s statement in the parliament last year<sup>7</sup>.

### **Right to life of foetus**

Our Constitution provides for the Right to Equality under Article 14 and right to live with human dignity under Article 21. Sex detection tests violate both these rights. Right to life is a well established right and is recognized by various international instruments<sup>8</sup>.

In **Bandhua Mukti Morcha vs. Union of India**<sup>9</sup>, the Hon'ble Supreme Court held that "It is a fundamental right of everyone in this country assured under the interpretation of Article 21 to live with human dignity... it must include the tender age of children to develop in a healthy manner and in conditions of freedom and dignity.

The Medical Termination of Pregnancy Act 1971 provides for limited and restricted right to terminate the pregnancy, when the life of mother is at stake or there is a substantial risk to the life of the child<sup>10</sup>. What is to be noted here is that the MRTPA Act 1971 does not recognise the right of mother to abort, this right to decide on termination of pregnancy vests with a registered medical practitioner<sup>11</sup>. Further some States in India have made special legislations to confer special protection to the life of fetuses<sup>12</sup>. The Nuclear Installations Act, 1965 recognizes liability for compensation in respect of injury or damage caused to an unborn child by the occurrences involving nuclear matter or the emission of ionizing radiation<sup>13</sup>. The Code of Criminal Procedure under Section 416 mandates that the High Court shall order of execution of capital sentences on a pregnant woman be postponed or it may commute the sentence to imprisonment for life, thereby indirectly recognized the right to life of foetus<sup>14</sup>.

It is only an escapist view to deny the right to the life to a foetus saying it is not a person. The state is evading the crucial issue of right to life of a foetus by giving such frivolous reasons, although it indirectly recognizes this right through criminal



statutes<sup>15</sup> and also recognized that an unborn can enjoy certain interests in property<sup>16</sup>. The concept of personhood is a myth and a mere creation of Law. This Legal fiction must not come in the way of conferring rights to life to the foetus. Failure to recognize the right of the foetus would amount to discrimination thereby violating the right to equality enshrined in Article 14 of the Indian Constitution<sup>17</sup>.

### **Human rights recognition of right to life**

As the world celebrates 11th July as the World Population Day, we will helplessly observe girls 'missing' from the world's second most populated country, India. Ironically the theme of the running 2005-2006 year World Population Day was declared by United Nations to be 'Equality Empowers'! The UNFPA Executive director, Thoraya Obaid, had remarked then, "Equality benefits equal opportunities to education, societies become more prosperous, where women have equal excess to income, assets and services, families become healthier. When both men and women are able to participate equally and exercise their full human rights, the world benefits"<sup>18</sup>. The judgment pronounced by the Supreme Court clearly shows the apathy of the Central and State Government for the PNDA Act which is a laudable step in the direction to ban the practice derogatory to the dignity of the woman and which will help to prevent gender discrimination. The State is under a Constitutional obligation to pursue and implement a policy eliminating discrimination against woman. It is also more important as India was signatory to the World Conference on Human Rights (1993) at Vienna and the Convention on the Elimination of all forms of Discrimination Against Woman (CEDAW) 1979, Fourth World Conference on Women (1995) at Beijing. These conferences have specifically condemned gender based discrimination, violence and all forms of sexual harassment and exploitation.

Thus, sex determination before birth and female infanticide is a form of violation of human right of women and amounts to gender bias against women. Principle 10 of the International Conference on Population and Development (1994) at Cairo has also declared that: 'Practice like female infanticide and misuse of technologies to determine foetal sex and selectively abort female fetuses, and realities such as higher mortality rate among small girls.... Violate the basic human rights of female children.' Justice Krishna Iyer has also aptly observed that 'the right to life is protected from the moment of conception<sup>19</sup>.' Therefore PNDA Act aims to protect the human rights of women to conceive and give birth to a child, and female foeticide is a violation of this human right of women. Thus we have to take some significant and effective steps to eliminate this practice from the society altogether.



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## Judicial Introversion

The Supreme Court observed in **Centre for Enquiry into Health and Allied Themes (CHEHAT) vs. Union of India**<sup>20</sup>, that it is apparent that to a large extent, the PNDT Act is not implemented by the Central Government or by the State Government .... Neither the State Government nor the Central Government has taken appropriate action for its implementation.

In this case it was observed that the Act was passed in 1994 and it come into force on Jan,1996 even after a lapse of about 6 years it has not been properly implemented. Therefore, the Supreme Court was approached by the Centre for Engaging into Health and Allied theme (CHEHAT) under Article 32 of the Constitution. The Writ petition was finally disposed of by the Court on 10.9.2003<sup>21</sup>.but four orders were passed by the court on 4.5.2001 to 11.12.2001 issuing directions to the central Government, Central Supervisory Board (CSB), the State Government/UT Administration and to the Appropriate Authorities appointed under the Act. The Court observed that unfortunately, developed medical science is misused to get rid of a child before birth. Knowing fully well that it is immoral and unethical as well as that it amounts to an offence, foetus of a girl child is aborted by qualified and unqualified doctors or compounders. And therefore this Act (PNDT) has been enacted to prevent the misuses of sciences of technology to determine the sex leading to female infanticide. The directions issued but the Court mainly emphasized to

1. Create public awareness against the practice of pre-natal determination of sex and female foeticide,
2. Implement the PNDT Act and rules made there under with all vigor and zeal,
3. Appoint fully empowered Advisory Committee to aid and advise the Appropriate Authority,
4. Take prompt action against anybody or person who issues or cause to issue advertisement as prohibited under section 22,
5. Take prompt action against such person or bodies who are conducting PNDT test without valid certificate. Appropriate bodies were also directed to furnish 'Quarterly report/ returns to the Central Supervisory Body about the implementation and working of the Act.

## Steps Taken

To change the mind set of society, Government of India has been implementing



on a pilot basis 'Dhanalakshmi', scheme for incentivising birth of the Girl Child. A number of States have been implementing their own schemes to incentivise the birth of a girl child and encourage families to place a premium on her education and development through Conditional Cash Transfer schemes. Socio-economic empowerment of women is essential for making informed decisions and for change of the mind sets. The Government of India has undertaken a number of initiatives for this, such as Support to Training and Employment Programme for Women (STEP), The Mahatma Gandhi National Rural Employment Guarantee Act(MGNREGA), National Rural Livelihood Mission(NRLM) and loans through the Rashtriya Mahila Kosh. This should go a long way in empowering women and enable them to take decisions about the birth of children, their spacing, retain girl children and improve the nutritional and educational status.

To create national awareness on issues relating to girl child, in 2009, Ministry of Women and Child Development has declared January 24 as the National Girl Child Day. On this day, besides the Central Government, the State Governments/ Union Territory Administrations undertake advocacy measures to improve the status of girl child in their respective States/ Union Territories.

The launching of the Balika Samridhhi 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 from 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<sup>22</sup>.

### **Suggestion**

The removal of this practice in Indian society is a serious challenge. It must involve

1. A move away from religious teachings and the advocacy of a scientific, rational, and humanist approach.
2. The empowerment of women and a strengthening of women's rights through campaigning against practices such as dowry, and ensuring strict implementation of existing legislation.
3. Ensuring the development of and access to good health care services.



4. Inculcating a strong ethical code of conduct among medical professionals, beginning with their training as undergraduates.
5. Simple methods of complaint registration, accessible to the poorest and most vulnerable women.
6. Wide publication in the media of the scale and seriousness of the practice. NGOs should take a key role in educating the public on this matter.
7. Regular assessment of indicators of status of women in society, such as sex ratio, and female mortality, literacy, and economic participation. Compulsory registration of births of girl children,
8. Speedy investigation of the causes leading to a girl child's death;
9. Presumption, as in dowry deaths, must be taken in favour of female infanticide;
10. A female health officer must be associated with the investigations about the offence, and Continuous effort be made to educate the adult community which controls the lives of children. 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<sup>23</sup>.

## Conclusion

Besides having specific legislation and policy proclamations to deal with this menace, the precipitating factors such as dowry, poverty, and woman's economic dependence etc., leading to the problem of foeticide and infanticide have to be addressed by enacting various legislations to bring women's economic and social empowerment to the maximum as:

- ◆ Dowry Prohibition Act, 1961(Amended in 1986);?Hindu Marriage Act, 1955;
- ◆Hindu Adoption and Maintenance Act, 1956;?Immoral Traffic Prevention Act, 1986
- ◆Equal Remuneration Act, 1976 etc.

it is hoped that such measures would equip women to exercise their rights.





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**Sex Ratio (females per 1000 males), India 1901–2001**

Year	Sex Ratio	Sex Ratio in Children (0–6yr)
1901	972	-
1911	964	-
1921	955	-
1931	950	-
1941	945	-
1951	946	-
1961	941	976
1971	930	964
1981	934	962
1991	929	945
2001	933	927

Source: Registrar General of India