

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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A Critical Analysis of the Laws and Policies Related to Female Foeticide in Asian Countries with special reference to India

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ABSTRACT

Few countries around the world have witnessed skewed male female ratios for many years as the proportion of population with regard to men is greater than one would expect based on “natural” sex ratios at birth and the mortality rates. The root cause behind this imbalance is generally the result of preferring a male child, which is entwined in the cultural and economic experiences, and accentuated by the declining fertility rate and the social and economic pressures to have smaller and nuclear families. With a focus on two major countries China and India, where distorted male female ratios have been focused globally and are recognised by their governments, this paper focuses on reviewing the key literature which explores the reason, current trends and the consequences of sex selective practices from infanticide and neglect to more modern sex determining and selective practices such as ultrasound tests and consequent sex selective abortions. Despite the fact that sex selection is prohibited by law in both China and India, it is impossible to keep track of these treatments because medical professionals and equipment vendors profit from them. Other nations, including Pakistan, Nepal, Bangladesh etc., have also seen skewed percentages. Simple regulation of the use of sex-selective technology will not normalise sex ratios. This paper specifically focuses on the strategies that concentrate on reversing the gender disparity that fuels son preference is necessary for a long-term reduction in sex selection.

Keywords: *Female foeticide, Sex selective abortion, sex ratio, sex determination, son preference.*

I. INTRODUCTION

Every year, as millions of women get married, their dreams of starting families and having their homes filled with gurgling infants' pleasant cries are among them. However, in India, the subject of whether the unborn child will be a boy or a girl is frequently raised after a pregnancy.

One of the greatest sins committed by humanity is the pervasive problem of violence against women. According to the World Health Organisation, one out of every five women may

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experience being raped or having a rape attempt made against her during her lifetime.

One of the most severe forms of violence against women is female foeticide and infanticide. In the Salem district of the Indian State of Tamil Nadu, there is a saying that goes, "Raising a female child is like watering your neighbour's plant."² In the past, infanticide and other forms of traditional neglect and deprivation of women were ingrained in society.³ Daughters were the disposable offering since the societal structure prioritised sons. The paper intends to raise 3 questions: Firstly, does this evil practice of gendercide still exist? Secondly, How law is addressing the issue? Thirdly, what measures should be taken so that it can be addressed properly?

(A) Reasons for Female foeticide

It is extremely unfortunate to note that even though we live in an advanced society in the twenty-first century, our views on women are still very archaic. When a family's first kid is born a girl, we accept this cheerfully and begin to consider whether the next child will be a boy or a girl. This idea makes one wonder whether the result of pregnancy will be a girl or boy.⁴ To ascertain the male or female anatomy, prenatal diagnostic techniques are performed. There are several social-economic, cultural, legal, moral, and technological factors at play behind these obvious signs. The primary causes of female foeticide are listed below:

1. Males are traditionally valued

Generally speaking, women are discriminated against in India's patriarchal society. The Girls are frequently seen as a danger. Furthermore, it was believed that any investment made in the education and empowerment of girls was akin to purchasing the assets of a failing company. In addition, the family has a duty to protect their physical security. Due of the added hardship that the dowry custom places on the parents, infanticide and foeticide against sons and daughters are generally preferred.

2. The availability of cutting-edge technology

The focus on family planning, the simplification of this process thanks to technology, the facilitation of sex identification and abortion, the lax enforcement of the PCPNDT Act, and other factors have all contributed to an increase in female foeticide instances.

² Attané I, Guilmoto CZ (2007) Watering the Neighbour's Garden: The Growing Demographic Female Deficit in Asia (Comm Int Coop Natl Res Demography, Paris).

³ Arokiasamy, P. (2007). Sex ratio at birth and excess female child mortality in India: trends, differentials and regional patterns. Watering the neighbour's garden: the growing demographic female deficit in Asia. Paris: Committee for International Cooperation in National Research in Demography, 49–72.

⁴ Arnold, F., Kishor, S., & Roy, T. K. (2002). Sex-selective abortions in India. Population and development review, 28(4), 759–785.

3. The socio-economic environment

One of the things that encourages foeticide is the socioeconomic situation. There is a lack of family planning resources among households with low incomes. Due to prejudice in child care and feeding, there are greater cases of female infanticide in these settings.

4. Women are not represented in decision-making

Women's perspectives have been disregarded as a result of their exclusion from decision-making. They are compelled to continue foeticide against their will. Due to a lack of desire to firmly enforce the laws, these issues are kept under wraps at higher levels of political circles, the police, and administration.

5. India's gender disparity

According to the UNDP's 2021/22 GII (Gender Inequality Index), India was ranked 132 out of 148 nations, reflecting the fact that women have fewer economic possibilities than males. This made the environment for women less empowering and had an impact on their overall empowerment. Additionally, these outcomes contributed to discrimination and incidents of female foeticide and infanticide.

6. Instances of sexual harassment and issues with law and order that are related

Family members have long been concerned about the safety of women because they are viewed as the weaker sex. Jauhar and female infanticide were first used by Rajput and Maratha families to uphold women's dignity during that era. The economic disempowerment of women caused by an increase in rape and sexual harassment charges also causes parents to dislike them.

7. The moral and ethical standards have declined

Moral and ethical standards have slipped as people and families have prioritised their own interests over those of their families or the rights of young girls or the general contributions that women make to society. Physicians who perform sex-selective abortions are also in breach of the Hippocratic Oath.

8. A girl is unable to carry on the family lineage.

People believe that females cannot move in before the father family because they will marry and join another one. Their connection will cease when she marries, leaving her parents without a caretaker. However, girls place a higher value on their parents than do men. They continually share the parents' happiness and grief.

(B) Reason for Son Preference

Male and female worth should be equal in any healthy community. Due to various ingrained traditions that favour men, particularly in East and South Asian nations, the only factor in sex selection appears to be a preference for a male child. Due to their historical dominance in the fields of economy, politics, and society, men are regarded as being more valuable.⁵ Male dominance over the economic, political, social, and ideological spheres characterises patriarchal groups that rule these nations.⁶ Sons are still seen as more precious than daughters in India, China, Pakistan, and Nepal in particular due to a variety of religious, cultural, social, and economic factors. For example, son preferences are encouraged by religious tradition in certain nations, such as the Confucian tradition of son ancestor worship. In addition, Hinduism requires men to carry out funeral rites.⁷ Regardless of the family's financial situation, these religious precepts influence community members to believe that it is necessary to have a male kid. Economic factors for the preference for sons may include the need for males in agrarian economies, sons inheriting property, and parents supporting themselves in old age due to the lack of safe state-sponsored programmes. Social considerations include lineage continuity, paying a sizable dowry for a daughter's marriage, and the male-dominated breadwinner position in traditional families all contribute to the preference for boys over girls. Fig 1 outlines the various control policies, causes and prevalence of Sex Selective Abortion (SSA) in various Asian Countries.

| Countries | Pre-natal Determination | Sex | Female Foeticide | Underlying causes of Sex Selective abortion |
|-----------|--|-----|----------------------|--|
| China | Banned in 1989, pre-conception sex selection prohibited. | | Frequently Performed | Confucius tradition, economic reasons, cultural factors, recently abolished one child policy |
| India | Prohibited in 1994, pre and peri conception methods | | Frequently Performed | Economic reasons, religious beliefs, |

⁵ Westley SB. Evidence mounts for sex-selective abortion in Asia. *Asia Pac Pop Policy* 1995;(34):1—4.

⁶ Miller BD. Female-selective abortion in Asia: patterns, policies, and debates. *Amer Anthropol* 2001;103:1083—95.

⁷ Whyte MK. *Wedding behavior and family strategies in Chengdu. Chinese Families in the Post-Mao Era.* Berkeley, CA: University of California Press; 1993. p. 198—216.

| | | | |
|-------------|--|-------------------------------|--|
| | banned in 2002 | | cultural factors, declining fertility and family balance, dowry system in many states of the country |
| South Korea | Banned in 1987 | No evidence after prohibition | Confucius tradition |
| Vietnam | Sex determination through modern and traditional means prohibited in 2003 | Some evidence | Economic traditions, cultural factors |
| Pakistan | Under the act 1990, also abortion is illegal unless it is done to save mother's life | Anecdotal evidence | Economic traditions, cultural factors |
| Nepal | Strictly prohibited since 2002 | Some evidence | Economic reasons, religious beliefs, cultural factors, dowry system in some districts of the country |

Fig 1

Several research have demonstrated the societal effects of son preference. One study in India found that small households choose to produce more males due to decreased fertility. According to other studies, variables including rapid economic development, technological improvement, and a dropping fertility rate are expected to spread prejudice and ultimately aggravate female foeticide in developing countries.⁸ Families may decide to abort female foetuses despite legislative prohibitions due to a lack of interest in having female children. Abortions may also take place when a foetus exceeds the maternal or gestational limit for safe abortion as recommended by doctors.

⁸ Yi Z, Ping T, Baochang G, Yi X, Bohua L, Yongpiing L. Causes and implications of the recent increase in the reported sex ratio at birth in China. *Popul Dev Rev* 1993;19:283—302.

(C) Types and Methods of Sex Selection

Sex-Selection is not possible without efficient sex screening methods. Several methods were developed in the past 50 years, which allow sex-determination in early pregnancy.

1. *Ultrasonography (obstetric sonography)*: In the 1970s, ultrasound screening devices were made accessible. They give an image of the foetus and are mostly used to find foetal abnormalities. The machine itself is expensive and less frequently built in poor nations, but by increasing the number of tests because the marginal cost of every additional test is minimal, the machine may be quickly made profitable. These devices are now readily accessible worldwide in both public and private settings, especially in underdeveloped nations. The image displayed on the computer enables one to examine the sagittal sign, which is an indicator of foetal sex. When genital organs of the foetus are sufficiently developed, which is approximately in the 12th week of the gestation, it can be used to determine sex. When using precise technology and a good connection, accuracy is believed to be around 86% and rises with the gestational age.
2. *Amniocentesis (amniotic fluid test) and Chorionic villus sampling*: These intrusive techniques, which involve taking samples of the placenta or amniotic sac, could be harmful to the developing foetus. They allow for sex determination and are mostly used for spotting foetal abnormalities. For the amniotic fluid test, they are commonly utilised between 11 and 15 weeks of the pregnancy, first for chorionic villus sampling. The samples must be analysed in a proper laboratory setting, which is expensive overall. The accuracy of the test of sex determination is thought to be more prominent. Since the invention of the test in the 1970s, amniocentesis has become large used in both public and private hospitals all over the world. Since the late 1980s, it has become possible to sample chorionic villus.
3. *DNA probe on maternal blood (cell free fetal DNA)*: The method uses polymerase chain reaction (PCR) to check for a Y chromosome fragment and only needs a mother's blood sample. It became accessible in the early 2000s. This approach is likely to be more specific (>98%). It has a poor sensitivity (75%), but can be used as early as week 7 of pregnancy. Sensitivity rises with pregnancy length and reaches an ideal level (99%) at around 20 weeks. Urine samples can be used for similar examinations, however due to their low sensitivity, they are regarded as unreliable. The cost of blood tests has decreased recently, and they are now easily accessible and widely available, including online.

(D) Methodology

This paper is accurately and deliberately based on the secondary sources of data. The researcher attempts to review the existing literature from published books and journal articles as well as Asian Countries concentrated newspapers and the NGOs that worked in this area. This paper focuses on the statistical study of the gender disparity in the Asian Countries which resulted in skewed sex ratio and specifically focuses on the strategies that concentrate on reversing the gender disparity that fuels son preference is necessary for a long-term reduction in sex selection. The paper has been structured into 5 sections, section 1 deals with the background study and introduction, section 2 highlights the world pattern of sex ratio, section 3 deals with pattern of sex ratio in countries sharing borders with India, section 4 deals with the Indian scenario regarding sex selective abortion and gender disparity. It also highlights the implementation of the laws relating to pre conception and pre-natal diagnostic techniques and the last section deals with the conclusion.

II. WORLD PATTERN OF SEX RATIO

The male to female ratio in a population is represented by the sex ratio. It is a crucial aspect of population composition. Indicators of changes in social, cultural, and economic situations as well as gender inequalities are spatial and temporal variations in sex composition. According to the Indian Census, the sex ratio is the proportion of females to males. In United Nations reports, the ratio of men to women in the population is typically taken into account. It is also estimated in some nations using the number of females for every 100 males, like in New Zealand, for example. Sex ratios are often calculated for the entire population, newborns, and age-specific cohorts like Indian children from 0 to 6 years old. There are benefits to each of these several metrics. Sex ratios at birth, differences in male and female mortality, the sex composition of migrants, and the way the sexes are counted differently during censuses are all factors that affect the population's sex composition.

Males represent 3,970,238,390, or 3,970 million, or 3.97 billion, of the world's population as of 2021, or 50.42 percent of the total. According to estimates, there are 3,904,727,342 females in the globe, which equates to 3,905 million or 3.905 billion people and accounts for 49.58 percent of the total population. There are 65,511,048 or 65.51 million more men than women in the world.

In 2021, there will be 101.68 males for every 100 females in the world. Up until 1957, there were more females than males. The male to female ratio increased globally from 99.692 in 1950 to a maximum of 101.704 in 2011. In 2100, a drop to 100.296 is now anticipated.

Males outnumber females in the majority of nations and regions of the world. However, there are significantly more men than women in the top two most populated nations, China and India. Males outnumber females globally as a result. There are more women than men in the rest of the world if China and India's populations are not included.

There are 107 boys for every 100 girls at birth. There are 1.03 billion males and 964 million girls globally, or 106.6 boys for every 100 girls in the 0 to 14 years age. For the age group between 15–19 years, the male–female ratio is highest, standing at 107.142. The male to female ratio is 103 for individuals between the ages of 15 and 64 and 81.8 for those over 65. Over 50-year-olds are more likely to be women than men. Five fewer men are present for every 100 women in the 60–64 age range. For people 90 to 94 years old and older than 100, women outnumber men by a ratio of 2 to 1 and 4 to 1 respectively. Fig 2(a) and (b) depicts the sex ratio of various age groups as per data collected in the year 2021.

| Age group | Male | Female | M per 100 |
|-----------|--------------|--------------|-----------|
| 00-04 | 349524.863 | 32,87,62,461 | 106.3:5 |
| 05-09 | 344.376.197 | 323.101.366 | 106.585 |
| 10-14 | 333.944.005 | 312.273.127 | 106.94 |
| 15-19 | 318.945.048 | 29,76,85,002 | 107.142 |
| 20-24 | 309.162.637 | 28,96,33,429 | 106.743 |
| 25-29 | 3,05,182.55 | 28,73,18,181 | 106.218 |
| 30-34 | 310.514.056 | 2,96,871.53 | 104.595 |
| 35-39 | 282.814.059 | 274.255.969 | 103.12 |
| 40-44 | 252.146.917 | 24,71,07,979 | 102.039 |
| 45-49 | 241.799.413 | 23,87,18,420 | 101.291 |
| 50-51 | 22,57,15,096 | 226212.742 | 99.75 |
| 55-59 | 196.711.317 | 200.284.929 | 98.216 |
| 60-64 | 1,60,773.19 | 168.566.244 | 95.377 |
| 65-69 | 131.891.628 | 143.926.627 | 91.638 |

| | | | |
|-------|-------------|-------------|--------|
| 70-74 | 91.526.291 | 106.285.013 | 36.114 |
| 75-79 | 56.736.073 | 71.231.681 | 79.651 |
| 80-84 | 34.405.737 | 48.840.181 | 70.446 |
| 85-89 | 1,67,60,709 | 27.614.863 | 60.695 |
| 90-94 | 5.932.421 | 12.172.566 | 48.736 |
| 95-99 | 1.299.874 | 3.377.405 | 36.711 |
| 100- | 135.005 | 4,56,430 | 27.754 |

Fig 2(a)

Sex Ratio of various age group as per data collected by our world data (2021)

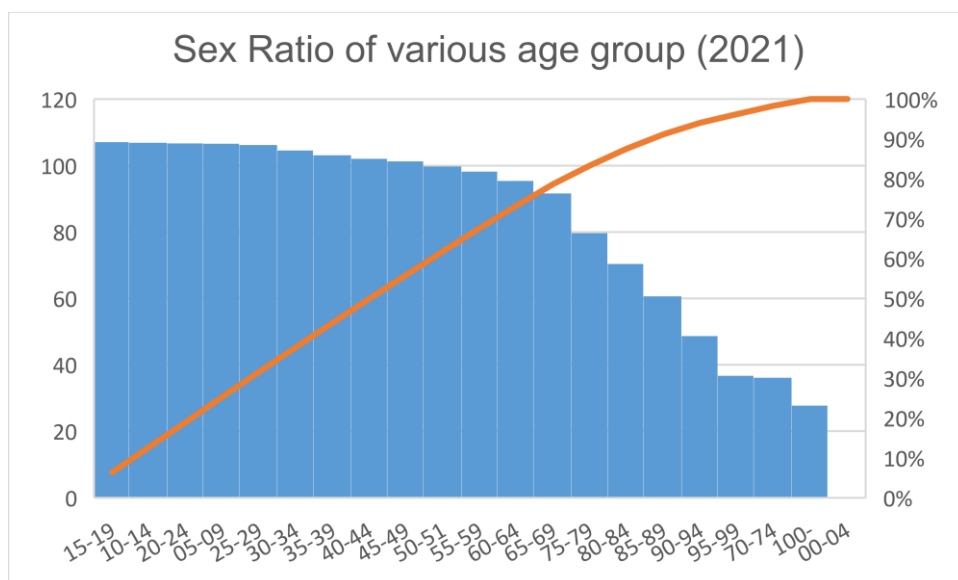


Fig 2(b)

Graphical representation of the data collected by our world data (2021)

(A) Child Sex Ratio

At various phases of life, the sex ratio varies around the world. In other circumstances, the disparity between the number of men and women might be attributed to the fact that more boys than girls are born in some nations on an annual basis.⁹ We can see the variations in birth sex ratios around the world on the Fig 3. Here, the male female ratio is represented as the number of male child born for every 100 female child born; a figure higher than 100 denotes that the

⁹ Sen, Amartya. 2003. "Missing Women: Revisited". *BMJ* 327(7427): 1297-1298

year's birth rate was higher for boys than for girls. If the number is 110, there are 110 male births for every 100 female births. The first startling finding is that there are more boys born than girls in every single country in the world.¹⁰ The graph mentioned below (Fig 3) depicts the peak of inequality in the year 1990 in South Korea where there were 115.70 male births per 100 female births where in the same year the number of male children born in China was 111.80 per 100 female children born. Similarly, the graph depicts a peak of inequality China where the male birth ratio was 117.80 per 100 female births in the year 2005. In the year 2015 the sex ratio in India was 109 males per 100 females. On the other hand, in Kenya and USA we find an uniformity in the sex ratio between 1950 and 2021 where it is well depicted that sex selective abortion or skewed sex ratio has not interfered in the societal structure.

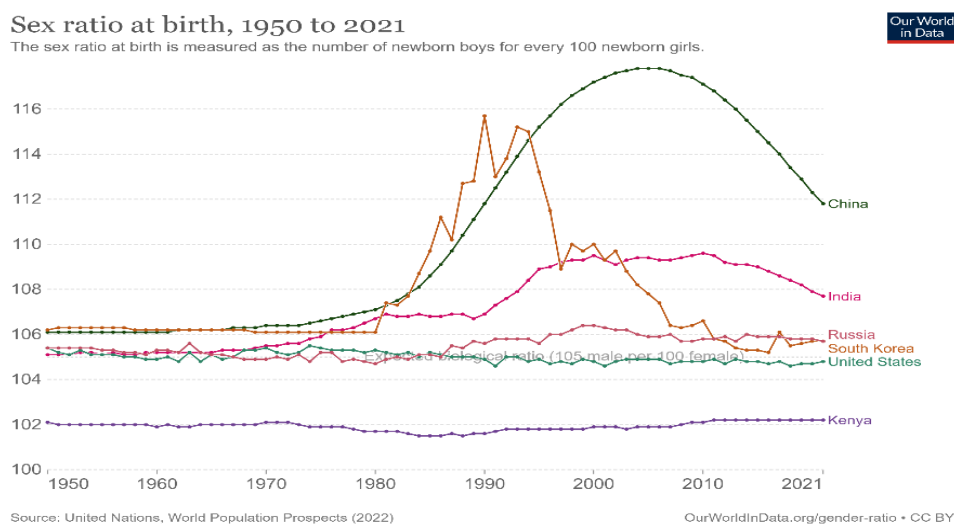


Fig 3¹¹

III. ASIAN PATTERN OF SEX RATIO

In several Asian cultures, sex-selective abortion has been more common since the early 1980s. Several million female foetuses are thought to have been aborted in the final two decades of the 20th century. In China and India, the two nations with the largest populations in the world, between 1970 and 2010, an estimated 105 million females (births and all age groups) went missing. This section covers the patterns of female foeticide and various laws and policies implemented in various countries sharing borders with India.

(A) China

"With one son you have a descendant, with ten daughters you have nothing," is a well-known

¹⁰ Chahnazarian, A. (1990). Historical Trends in the Sex Ratio at Birth. USA: John Hopkins Population Center.

¹¹ owidgenderratio, Hannah Ritchie and Max Roser, Gender Ratio, Our World in Data, 2019 <https://ourworldindata.org/gender-ratio>

Confucian proverb in China. The proverbial saying in Chinese culture states “daughters are like water that splashes out of the family and cannot be brought back after marriage”.¹² The idea that males are superior to women and vice versa is strongly ingrained in Chinese culture. An estimated 11.9 million Chinese women are missing.¹³

Many scholars have asserted that China's one child policy is to blame for the country's skewed sex ratio. The one-child policy was put into place in China in the 1970s.¹⁴ Having many children became illegal and regulated. Families must therefore make sure that the sole child is a boy. They kill their unwanted baby daughter for this reason in the most heinous way possible. Fig 4 shows the graph relating to sex selective abortion in China. We find here that with the introduction of the ‘one child policy’ in the 1970s we see a sharp increase in the number of abortions but with the amendment of the policy and introduction of the two-child policy we find a sharp drop in 2008. Recently, the country adopted the three child policy to address the situation of challenging aging population that was the result of the stringent one child policy that was adopted in the past.

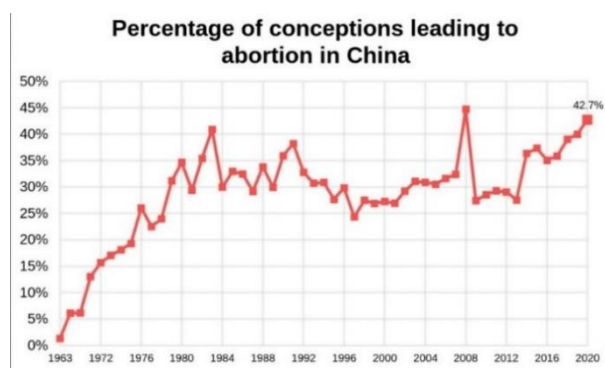


Fig 4

(B) Pakistan

An estimated 1.2 million sex-selective abortions have place in Pakistan between 2000 and 2014. This demonstrates that throughout the course of these 15 years, Pakistan experienced an average of 219 abortions every day because parents did not want a girl to be born. More males than women live in Pakistan—more than 5 million more men than women.¹⁵ Males make up 51% of

¹² Zhou C, Wang XL, Zhou XD, Hesketh T. Son preference and sex-selective abortion in China: informing policy options. *International Journal of Public Health*. 2012 Jun;57(3):459-465. DOI: 10.1007/s00038-011-0267-3. PMID: 21681450.

¹³ Bongaarts, J. & Guilamoto, C. Z. (2015). How Many More Missing Women? Excess Female Mortality and Prenatal Sex Selection, 1970–2050. *Population and Development Review*, 41(2), 241–269.

¹⁴ Zhu, Wei Xing et al. “China's excess males, sex selective abortion, and one child policy: analysis of data from 2005 national intercensus survey.” *BMJ (Clinical research ed.)* vol. 338 b1211. 9 Apr. 2009, doi:10.1136/bmj.b1211

¹⁵ Zaidi, Batool, and S Philip Morgan. “In the Pursuit of Sons: Additional Births or Sex-Selective Abortion in Pakistan?.” *Population and development review* vol. 42,4 (2016): 693-710. doi:10.1111/padr.12002

Pakistan's total population, while females make up 49%. As of the 2017 Census, there are 105 men for every 100 women.¹⁶ Men have always outnumbered women in Pakistan according to six censuses that have been performed since 1951.

(C) Nepal

Nepal has been a patriarchal society, according to history. In Nepal women also deal with unequal power or economic relation with their male partners and face gender-bias barriers like neighbouring country India. UNICEF evaluates that 20 percent of more than 70000 abortions occurring in Nepal each year are carried out in preference of baby boys. Besides, in Nepal Abortion law was legalized in 2002, which prohibits sex determination tests and selective abortion.

In Nepal, women from rural areas are economically dependent on the male member of the family which creates an imbalance in the employment sector or economic sector. That is why women have been seen as an extra burden on their families. There is also a new concept introduced in the family structure, i.e. small family incorporates the new advanced technology to encourage the cases of female feticide. Activists estimated that 50,000 urban babies are aborted every year after their parents become aware through new advanced ultrasound technology, that they are girls.¹⁷

Nepal saw an abrupt change between 2002 and 2004, which provides the opportunity to measure the impact of state provision of abortion services on sex-selective behaviour. Abortion was legalised in Nepal in 2002 and Comprehensive Abortion Care (CAC) services were provided by the government from 2004 onwards. Sex determination is expressly prohibited and anyone found performing (or facilitating) an abortion on this basis can be punished with 1-year imprisonment, but otherwise the law is now liberal. Prior to 2002, unsafe abortion was the third largest cause of maternal mortality and it was not uncommon for women living in the south of the country to visit India if they wanted an abortion, though the scale of this is not known. Studies of post-abortion care at 10 major hospitals showed that between 20% and 60% of the women admitted as obstetric and gynaecological patients were abortion complication cases.¹⁸

The Right to Safe Motherhood Act and Reproductive Health Act, 2018 ensures the right of

¹⁶ Kanwal Qayyum, N. Rehan. "Sex selective abortion in Rural Pakistan". *Journal of Advances in Medicine and Medical Research* vol 22,12 (2017) 1-7.

¹⁷ Nikita Gupta and Naresh Kumar Sonkar, "Discrimination in the Womb: Female Foeticide in the Asian Countries," 4(2) *Mekal Insights* 15-21, 18 (2020).

¹⁸ Melanie Dawn Frost, Mahesh Puri and et.al., "Falling Sex Ratios and Emerging Evidence of Sex-Selective Abortion in Nepal: Evidence from Nationally Representative Survey Data," *BMJ Open* 1-7, 2 (2013)

every woman to obtain abortion services¹⁹ and also talks about the right to safe abortion under section 15. This act also explicitly prohibits sex selective abortion in the country.²⁰

Prior to 2002, preference for sons in Nepal was mainly evidenced through differential stopping behaviour (i.e., the decision to have another child depended upon the sex composition of previous children). It has been estimated that such behaviour caused the fertility rate to be at least 6% higher and contraceptive use to be as much as 24% lower than it would otherwise have been. It therefore seems possible that, despite the strict prohibition of abortion on the grounds of the sex of the child, Nepalese will have taken advantage of the opportunities provided by the legalisation of abortion to influence the sex composition of their children.²¹

The Constitution of Nepal also guarantees the right to equality as one of the fundamental right and specifically prohibits discrimination in the application of the general laws including on the grounds of sex, marital status and pregnancy.²² The Act relating to Children (2018) also specifically prohibits any type of discrimination between son and daughters.²³ Under the Nepalese legal system, Sex Selective Abortion (SSA) was made a punishable offence when exceptions for legal abortion were introduced by the eleventh amendment to the Nepal's Muluki Ain in 2002. Currently, there are two specific laws that address the issue of SSA, i.e., the Safe Motherhood and Reproductive Health Rights (SMRHR) Act, 2018 and the Chapter on Crime against Protection of the Pregnancy in the Penal Code. According to the law, no one shall commit or cause to commit any act of identifying the sex of the foetus.²⁴ Thus, any woman undergoing sex determination test and the physician/medical personnel conducting such a test shall be imprisoned for a term ranging from three to six months. The law also prohibits forceful sex identification by using intimidation or fear or duress or threat or enticement or allurement through coercion or compulsion to pregnant women.²⁵ Accordingly, if a woman undergoing the sex determination test is doing so as a result of family or third party's pressure, the person who is exerting such pressure on the woman and the medical personnel conducting the test to reveal the sex of the foetus is also liable for imprisonment.

The below mentioned Fig 5 reflects the region wise census data relating to sex ratio at birth of Nepal. The Table depicts that the estimated number of missing girl births in 5 years before

¹⁹ Section 3(5) of the Right to Safe Motherhood Act and Reproductive Health Act, 2018

²⁰ Section 17

²¹ Melanie Dawn Frost, Mahesh Puri and et.al., "Falling Sex Ratios and Emerging Evidence of Sex-Selective Abortion in Nepal: Evidence from Nationally Representative Survey Data," *BMJ Open* 1-7, 2 (2013)

²² Article 18 (1) and (2), the Constitution of Nepal (2015).

²³ Section 5, the Act relating to Children (2018).

²⁴ Safe Motherhood and Reproductive Health Rights Act (2018).

²⁵ Article 11(5), the Constitution of Nepal (2015).

census in all over Nepal is 22540. Kathmandu, the capital city of Nepal has the highest number of missing girl births which is 4719 followed by Rupandehi and Kaski which is 1442 and 1405 respectively.

| Districts | Sex Ratio at Birth | Sex ratio at ages 0-4 years (boys per 100 girls) | Estimated number of missing girl births in 5 years before census | Estimated percentage of girl births missing in 5 years before census | Estimated percentage of girl births missing in year before census | No of Children 0-4 counted in census (1000s) |
|------------------|---------------------------|---|---|---|--|---|
| Arghakhanchi | 127 | 113 | 609 | 6.3 | 16.4 | 21 |
| Bhaktapur | 123 | 116 | 901 | 10.3 | 14.4 | 20 |
| Gulmi | 111 | 109 | 581 | 4.7 | 5.3 | 28 |
| Jhapa | 111 | 106 | 334 | 1.1 | 4.6 | 69 |
| Kanchanpur | 113 | 107 | 937 | 4.6 | 6.7 | 44 |
| Kaski | 117 | 114 | 1405 | 8.7 | 9.9 | 37 |
| Kathmandu | 114 | 114 | 4719 | 9.7 | 7.4 | 112 |
| Lalitpur | 114 | 111 | 672 | 5.4 | 8 | 30 |
| Palpa | 115 | 106 | 192 | 1.9 | 8.3 | 24 |
| Rupandehi | 113 | 109 | 1442 | 4 | 7.2 | 80 |
| Saptari | 111 | 105 | 284 | 1 | 5 | 63 |
| All Nepal | 107 | 105 | 22540 | 2 | 2.6 | 2568 |

Fig 5²⁶

Male female ratios and estimated number of sex-selective abortions for Nepal and selected regions (2011 Population Census data)

²⁶ Ibid

(D) Bangladesh

93% of Bangladeshi families favoured a male over a woman, according to 2006 research on 850 families done to promote human rights education in that country. When compared to a daughter, seeing a son as a "blessing" appears problematic. Female infanticide has been documented in a large number of incidents in Bangladesh. "Father wanted son, burns baby girl alive," read the headline of the news story. The infant girl was asleep when he doused her in fuel and lit her on fire. He stole a million dollars in dowry from his wife at their marriage. "Father kills 15-day-old female infant for being female" was another incident. The aforementioned incidents highlight how widespread infanticide is in Bangladesh.

The concept of a small family incorporating new, cutting-edge technologies to promote female foeticide cases is another novel idea that has been incorporated into the family structure. According to activists, 50 000 urban pregnancies are aborted every year once their parents learn they are girls thanks to new, highly developed ultrasound equipment.²⁷

IV. SEX SELECTIVE ABORTION IN INDIA

Indian culture and attitude still find the word "abortion" repugnant; it is equated with homicide. In order to avoid confusion, the term "abortion" was changed to "termination of pregnancy." There was no legal restriction on ending a pregnancy before 1971. But from Section 312 through Section 316 of the Indian Penal Code (IPC), there were numerous measures to penalise those who caused miscarriages. For a variety of societal and medical factors, India continues to practise miscarriage infliction despite these legal penalties. The Medical Termination of Pregnancy Act, 1971 was subsequently passed by the parliament and made abortion lawful in certain situations, such as when the mother's or the child's health is in danger. Overriding the IPC, this Act is in force. Women were granted the right to safe, medically-assisted abortions under the Medical Termination of Pregnancy Act's liberal legal framework. Women now have the freedom and the right to privacy thanks to the Medical Termination of Pregnancy Act, which has been lauded as a major social milestone. The Act has been viewed as a turning point in the legal system-assisted modernization of Indian society. It would play a part in emancipating women from the long-held worry that abortion would be viewed as a sinful and criminal act, as well as having a direct impact on population management and achieving economic and social growth.²⁸ The Act does not, however, give any thought to the autonomy or health of women.

²⁷ Talukder, M.N., U. Rob, and F.R. Noor. 2014. "Assessment of Sex Selection in Bangladesh." Dhaka: Population Council.

²⁸ Bhat, P. M. & Zavier, A. F. (2007). Factors influencing the use of prenatal diagnostic techniques and the sex ratio at birth in India. *Economic and Political Weekly*, 42(24), 2292– 2303.

That this regulation encouraged the termination of female foetuses is its fundamental flaw.

Women have a lower incarnation than men, according to Hindu tradition and religion. Women are unable to escape the cycle of death and rebirth. Hindus believe that abandoning all links to the outside world is more vital than believing in moksha.²⁹ In a patriarchal society, women are also not permitted to carry the family name or inherit property.³⁰ While sons are supposed to care for their elderly and inherit the family's property and name. On the other hand, the boy would bring riches into the family after marriage, while the daughter marries into another family and leaves with the expensive dowry. As a result of these attitudes and customs, parents strongly prefer males to daughters.

In an effort to stop female foeticide in the nation through the misuse of technology, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994. The Act forbade determining the gender of the foetus and specified penalties for violations. The Pre-conception and Pre-natal Diagnostic Techniques (Prohibitions of Sex Selection) Act, 1994, was updated in 2003 in order to better regulate technology that can be used to select sex and to stop the drop in the child sex ratio. Both of these laws were created with the intention of safeguarding a woman's ability to have children and establishing the legality of prenatal testing and abortions.

(A) Sex selective Abortion Laws in India

The Forum Against Sex Determination and Sex Pre-Selection (hence referred to as FASDSP) was founded in the year 1984 by women's organisations³¹, civil liberties organisations, and health movements. The state, scientists, and technocrats were criticised by FASDSP for promoting the wider application of SD technology.³² They built state responsibility and dismantled the harmful potential of reproductive technologies into their legal intervention platform. The immediate and long-term effects of sex-selection (i.e., how the practise contributes to further undervaluing women) as well as the needs of women's psychological and physical health were given priority by FASDSP. Due to pressure from FASDSP, the legal action was taken to restrict the use of ultrasounds and amniocentesis testing to the diagnosis of serious genetic disorders.³³

²⁹ Arokiasamy, P. & Goli, S. (2012a). Provisional Results of the 2011 Census of India: Slowdown in Growth, Ascent in Literacy, But More Missing Girls. *International Journal of Social Economics*, Vol 39, No 10.

³⁰ Arokiasamy, P. & Goli, S. (2012b). Explaining the skewed child sex ratio in rural India: Revisiting the landholding-patriarchy hypothesis. *Economic and political weekly*, 47(42), 85–94.

³¹ Kulkarni, Sanjeev. 1986. Sex determination tests and female foeticide in the city of Bombay. Report commissioned by the Secretary to the Govt., Department of Health and Family Welfare, Govt. of Maharashtra.

³² Purewal, Navtej K. 2010. *Son preference: Sex-selection, gender and culture in South Asia*. London: Berg.

³³ Ganatra B. (2008). *Maintaining access to safe abortion and reducing sex ratio imbalances in Asia*. Reproductive

The Maharashtra Government introduced a groundbreaking piece of legislation, the Maharashtra Regulation of the Use of Prenatal Diagnostic Techniques Act, as early as 1988 in response to the FASDSP's vigorous advocacy.³⁴ The availability of the tests was slightly constrained by this rule, which was intended to prevent the abuse of SD tests.³⁵ The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, often known as the PNNDT Act, was approved by the Indian Parliament in 1994 as an extension of a state-level campaign to outlaw sex-selective abortion. The PNNDT Act (1994) restricts the use of prenatal tests for the detection of genetic disorders in fetuses and forbids their use for SD.³⁶ All genetic counselling centres, clinics, and laboratories are required to register with the government, and no centre may "be used or caused to be used by any person for conducting pre-natal diagnostic techniques except for the purposes specified in clause."³⁷ The section lists five "abnormalities" in order to specify the medical circumstances under which a prenatal diagnostic test may be performed, but it also gives the Central Supervisory Board the option of adding more.³⁸ The PNNDT Act also forbids the promotion of SD in advertisements. Medical professionals who disobey the Act must be reported to their respective State Medical Council, according to the Act. Significantly, the Act adopts the feminism of FASDSP and presumes that women who have sex-selective abortions are not behaving voluntarily. They are thought to be under pressure from their husbands and families or the prevailing social mentality.³⁹ This presumption, though, does not exempt women from prosecution for using sex-selection. Instead, it means that if a woman is charged with a crime under the Act, at least one of her "accomplices" must also be charged.⁴⁰

Overall, the 1994 PNNDT Act called for the regulation of prenatal diagnostic techniques but did not specifically mention newly emerging sex-determinative technology, such as sperm sorting.⁴¹ Additionally, it did not control "portable" clinics and ultrasounds, which were used in every pregnancy and showed the sex of the fetus. The Supreme Court amended the original

health matters, 16(31 Suppl), 90–98. [https://doi.org/10.1016/S0968-8080\(08\)31394-9](https://doi.org/10.1016/S0968-8080(08)31394-9)

³⁴ Luthra, R. (1993) "Toward a reconceptualization of "choice": Challenges by women at the margins". *Gender Issues* 13(1): 41-54.

³⁵ Ibid

³⁶ Jaising, Sathyamala and Basu 2007; Menon 1995; Sarkaria 2009

³⁷ Menon, Nivedita. 1995. "The impossibility of 'justice': Female foeticide and feminist discourse on abortion". *Indian Sociology* 29 (1&2): 269-392.

³⁸ Patel, Tulsi. (Ed.). 2007. *Sex-selective abortion in India: Gender, society and new reproductive technologies*. New Delhi, India: Sage Publications.

³⁹ Srinivasan, Sharada and Arjun S. Bedi. 2008. "Daughter elimination in Tamil Nadu, India: A tale of two ratios". *Journal of Development Studies* 44 (7): 961–990.

⁴⁰ Jaising, Indira, C. Sathyamala and Asmita Basu. 2007. "From the abnormal to the normal: Preventing sex selective abortions through the law". New Delhi, India: Lawyers Collective (Women's Right Initiative). Last visited on October 30, 2023

⁴¹ Sarkaria, Mallika K. 2009. "Lessons from Punjab's "missing girls": Toward a global feminist perspective on "choice" in abortion". *California Law Review* 97: 905-942.

Act in 2003 in response to criticisms of the original Act and requests from advocacy groups for stronger enforcement of the PNDT Act. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act was renamed (henceforth PC & PNDT Act). In its decision, the Supreme Court mandated that the central government and state governments routinely report on the Act's execution and conduct media campaigns to inform the public about sex-selection.⁴² The new Act also added tougher registration requirements for ultrasound providers, restricted the use of pre-conception diagnostic tests to circumstances where they were medically essential, and outlawed sex-selection.⁴³

(B) Implementation of the PCPNDT Act

For the efficient execution of the Act, all Indian states are required to establish an enabling structure, system, and strategy. The Central Government must create a board known as the Central Supervisory Board in order to establish policies at this level. Government officials, experts, and representatives of welfare organisations may serve on the Board, according to the provisions of the Act.

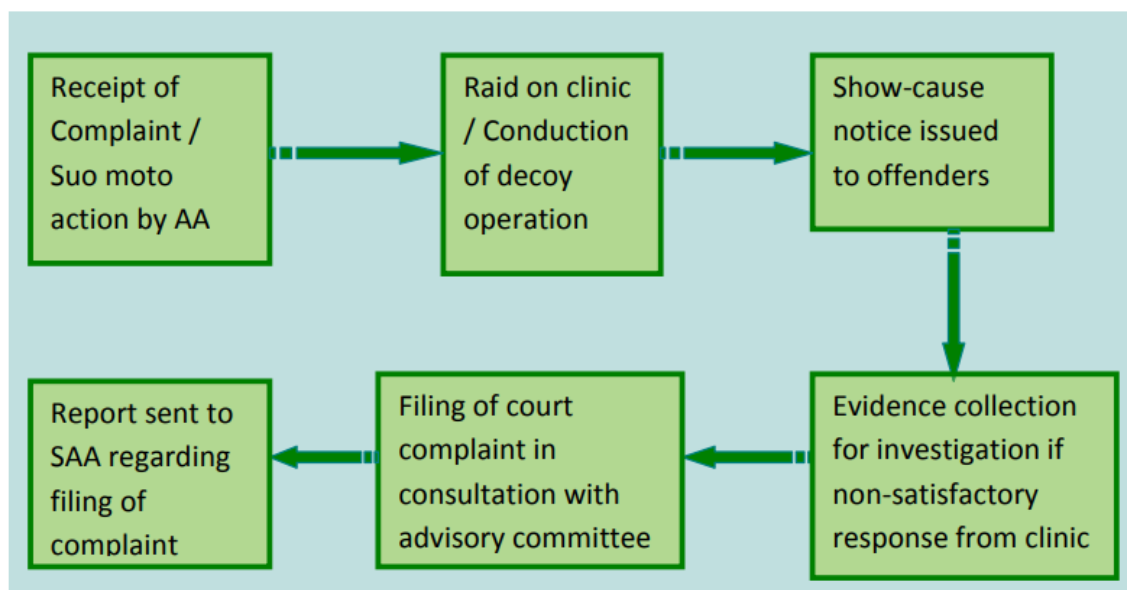


Fig 6

Fig 6 shows the flowchart how the implementation of the Act takes place in reality. The crucial process of registering complaints against Act violators commences with either the Appropriate Authority receiving a complaint or with a suo moto action against the violators. The Appropriate Authority (AA), the Directorate of Family Welfare, private parties, NGOs, social activists, or

⁴² Sudha, S. S. I. R., & Rajan, S. I. (1999). Female demographic disadvantage in India 1981–1991: Sex selective abortions and female infanticide. *Development and Change*, 30(3), 585–618.

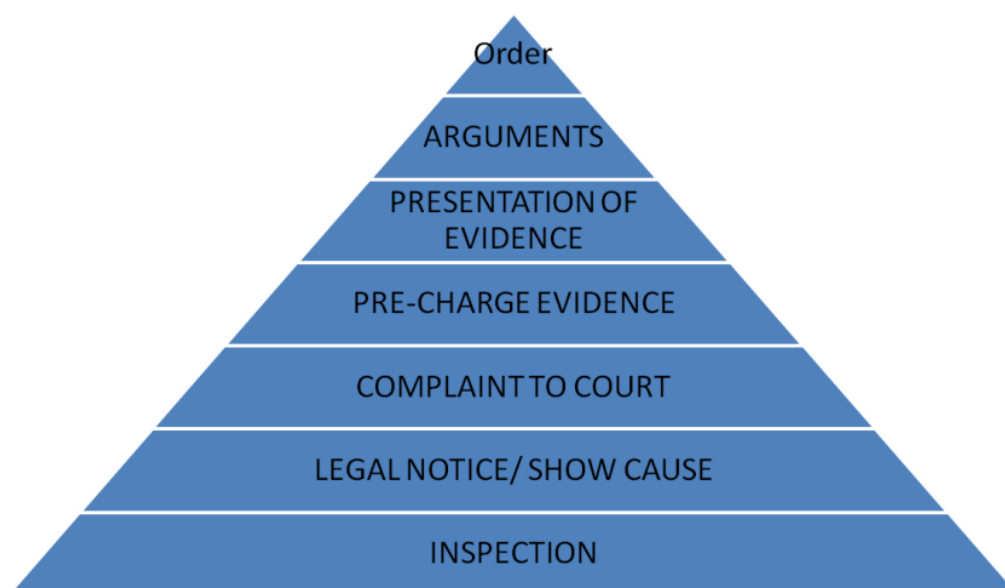
⁴³ Supra note 25

people who may or may not be victims themselves may be the one to file a complaint.

The AAs authorise an investigation after receiving a complaint by forming an Investigation Committee. As part of the inquiry process, clinic records, notice boards saying that sex determination is prohibited, and other pertinent receipts are examined. After then, all accused are given a show-cause notice to appear at the AA's office and submit all necessary records and paperwork in accordance with the Act. If the clinics do not adequately reply to the show-cause notice that is sent to the offender, the DAA will gather documents and other evidence.

Before taking action against Act violators in court, the AAs consults its advisory committee. The court complaint is filed after the authorities compile a list of the witnesses and supporting documentation. On behalf of the AA, the Public Prosecutor submits a court complaint to the Chief Metropolitan Magistrate's court. The case then proceeds according to the customary process that applies to all other matters. It is the responsibility of the Appropriate Authorities to diligently investigate matters when they are filed and to save order sheets from each hearing.

The AAs then send the State AA a thorough report detailing the filing of the court suit. A complaint is handled by the public prosecutor once it is submitted to court, and the complainant (AA) is not required to be present for every hearing date. The typical legal process used for a court complaint submitted under the Act is shown in the picture below:



Legal Procedure for a Court Complaint

Fig 7

(C) Role of Judiciary in prohibiting sex selective abortion

The Supreme Court of India ruled in the famous case of *Kharak Singh v. State of U.P.* and

others that under Article 21 of the Indian Constitution, a person has total control over his or her physical organs and "person." The full right of a woman to control her reproductive system can also be said to be included. Under Article 21 of the Universal Declaration of Human Rights the freedom from interference in one's family life and private affairs has been guaranteed. An unenumerated dimension of right to privacy, which is once more declared to be a continuation of the right to life under Article 21, is the right to an abortion.

In the historic case of *CEHAT and others v. Union of India*, a petition was filed asking the Apex Court of India to issue directives for the purpose of implementation of the Pre-Natal Diagnostic Techniques Act, that regulates the distribution of pre-natal diagnostic technology, in light of the sharp decline in male and female ratios which is alarming in the nation and detrimental to the status of women. In this case, the judiciary assumed the unusual responsibility of actually overseeing the application of the law and making a number of helpful orders over the course of three years while the matter was being heard in court. This petition raised awareness of sex selection and sex-selective abortion on the national level, and as a result, government efforts to address this issue have increased.

In *Federation of Obstetrics and Gynecological Societies of India v. Union of India*,⁴⁴ the Supreme Court of India observed as to what is the purpose of the Act and held that:

“The main purpose of the Act is to ban the use of sex selection and misuse of prenatal diagnostic technique for sex selective abortions and to regulate such techniques. The amendments have brought techniques of preconception sex selection within the ambit of the Act and have also brought use of ultrasound machines under its umbrella. It has further provided for constitution of Central and State Level Supervisory Board. More stringent punishments have been provided. The Appropriate Authorities have been given powers of civil court for search, seizure and sealing. The maintenance of record has been made mandatory in respect of use of ultrasound machines.”

Further, in *Voluntary Health Association of India v. State of Punjab*,⁴⁵ the Supreme Court held “there has been no effective supervision or follow-up action so as to achieve the object and purpose of the Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But,

⁴⁴ AIR 2019 SC 2214: (2019) 6 SCC 283.

⁴⁵ (2013) 4 SCC 1.

unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide”.

Recently, in 2021 in *Rekha Sengar v. State of Madhya Pradesh*,⁴⁶ In its ruling, the Supreme Court stated that the PC and PNDT Act is simply a "paper tiger" and that sex-determination and feticide can be committed in clinics and laboratories without repercussions. If we want to rid our society of the evil of female foeticide and injustice towards girl offspring, a stringent policy must be implemented.

V. CONCLUSION

Female foeticide is the most severe kind of prejudice against women, making its eradication crucial. To be honest, this seems like a difficult endeavour, especially in Asian countries with the myriad underlying root problems. Despite being illegal, female foeticide is still common in many Asian nations, posing demographic, sociological, and ethical problems. In light of public health ethical concerns, interventions against female foeticide may therefore be justifiable even if they take a paternalistic, consequentialist, and utilitarian approach. This is true despite any potential limitations on liberalism, such as the right to an abortion. A comprehensive intervention at the political, institutional, cultural, and individual levels is required to end the practise of female foeticide. A solid ethical code of conduct must be instilled in future generations, and awareness campaigns must be supported by regulations that are both effective and fair. According to some, it is urgent to implement culturally-sensitive policies in the Asian context to address female foeticide as a form of sex discrimination. These policies will outlaw the practise and create a society where daughters have the same right to be born as those found in western nations.

⁴⁶ (2021) 3 SCC 729; 2021 (1) Crimes 136 (SC).