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# Female Foeticide: Examine the Role of Prenatal Sex Determination Techniques

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## ABSTRACT

*The research paper 'Female Foeticide: Examine the role of prenatal sex determination techniques' begins by providing the concept of Female Foeticide with a specific focus on the role of prenatal sex determination techniques in facilitating the selective abortion of female foetus which means to critically examine the role of prenatal sex determination techniques in perpetuating female foeticide in India. This paper tries to focus on the reasons behind the female foeticide and the consequences of this on Indian society. Additionally, research delves into the challenges faced in enforcing laws and policies related to female foeticide and investigates the ethical implications of prenatal sex determination and its impact on women's right and dignity. This paper also shed light on the skewed sex ratios and explores the role of education and advocacy in challenging gender norms.*

**Keywords:** *Foeticide, Abortion, Sex ratio, Sex determination technique, Legislative measures.*

## I. INTRODUCTION

Female foeticide means the selective abortion of female foetus due to the preference of male offspring and the advancement in medical science and technology remains a pervasive and deeply entrenched issue in the Indian society. These techniques, while intended for legitimate medical purpose, have been misused to selectively abort female foetus which led to skewed sex ratios and profound gender imbalances also the pre-natal diagnostic centers attained immense growth and became burning centers for the female child or foetus. As a result, medical techniques not only deprive millions of girls of their right to life but also supports discriminatory attitudes and strengthen harmful gender stereotypes within society, whereas in the concept of Indian mythology women is regarded as a goddess. This introduction sets the stage to explore the challenges and critical analyses associated with the implementation of the pre-conception and pre-natal diagnostic techniques act in addressing the complex issue of female foeticide. The main objectives of the paper 'Female foeticide: Examine the role of prenatal sex determination technique' are to explore the factors

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contributing to female foeticide in India as well as the foreign countries., To analyze the role of technological advancement in facilitating sex-selective abortions. And to examine the measures taken by government to curb Female foeticide in India.

## **II. FACTORS CONTRIBUTING TO FEMALE FOETICIDE**

### ***What are the socio-cultural and technological factors that perpetuate the practice of female foeticide in India?***

The practice of female foeticide in India persists because of the deeply rooted socio-cultural norms and advancement in pre-natal sex determination technologies. Therefore, In Indian society, sons are often preferred over daughters due to established patriarchal norms or patriarchal society which is considered as one of the socio-cultural factors that perpetuate the practice of female foeticide. The Dowry system generally increases the preference of sons which further creates a financial incentive on the families which thereby, increases Female foeticide in India. Additionally, technological advancement like ultrasound have made it easier and uncomplicated to determine the sex of foetus (whether it is a male child or a female child) during pregnancy. Unfortunately, these technologies discussed above have been misused to terminate pregnancies based on their preference. The widespread availability and accessibility of the pre-natal technologies combined with socio-cultural factors have contributed to the perpetuation of female foeticide in India which further results in skewed sex ratios and gender imbalances.

### ***How does the preference for male children influence the decision to engage in female foeticide?***

In India, where sons are considered as assets and whereas daughters are considered as liabilities, the preference for male offspring plays a major role in decisions to engage in female foeticide. In addition to contributing financially to the family, sons are expected to care for their elderly parents or in old age and consider them as heirs to carry forward the family lineage while daughters are seen as transient member who will eventually join another family after marriage. Males in India receive better care and resources like nutrition, education, healthcare which basically leads to the devaluation of female offspring.

### ***What role do economic factors play in the prevalence of female foeticide in India?***

Female foeticide is a common occurrence in India, and it is closely linked to economic factors. Economic factors exert a profound influence on the prevalence of female foeticide in India which is likely to shape reproductive decisions and also perpetuating gender-based

discrimination. Many families in India think that the family wealth and assets are passed down through male offsprings or descendants or they can exclude daughters from inheritance altogether or provide smaller shares to them due to the patriarchal tradition which further creates a significant economic incentive for families. Therefore, we can say that economic considerations or factors perpetuate the preference of male children.

In addition, when it comes to prenatal sex determination technologies, the research signifies how common female foeticide exist in India. This practice is encouraged by number of reasons, including poverty due to which many families cannot afford dowry, girl's marriage etc., ingrained gender biases, and worries related to the safety of girls in India. As a result, societal norms need to be reevaluated and awareness should be raised through campaigns and providing education to those who cannot afford.

### **III. LAWS AND POLICIES RELATED TO FEMALE FOETICIDE**

In order to stop this barbaric and heinous crime, the legislature has already enacted many laws and policies over the years to make society free from such cruel, violent and heinous crimes. These laws illustrate the changing phenomenon of abortion and the law's momentum to keep pace with the times.

Some of the laws and policies related to female foeticide are written below:

1. Article 14 (Right to equality) of the Constitution of India: Female foeticide generally violates or infringes the right to equality which is mentioned in article 14 of the constitution by discriminating the female gender in the society, which further strengthen harmful stereotypes, patriarchal norms and perpetuating gender-based inequalities. The practice of female foeticide denies girls the fundamental right to equality before law.
2. Article 21 (Right to life) of the constitution of India: It guarantees the life and liberty of every person in the nation. Indian constitution has recognized the right to life under article 21 and, also recognized in several cases<sup>3</sup>. The act of aborting female foetus or killing female foetus in the womb in society due to gender preferences directly infringes or violates right to life which is mentioned in the Article 21 of the constitution of India. Moreover, female foeticide violates women's reproductive rights as reproductive rights are the fundamental rights of women to make decisions about their bodies which further include the right to access safe and healthy

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<sup>3</sup> Menaka Gandhi v. Union of India, AIR 1978 SC 597

reproductive system. Also, this force them into making decisions related to their pregnancies under societal pressure. Therefore, right to life mentioned in constitution directly opposes the practice of female foeticide in India without any doubt or even section 416 of CrPC mandates that the High court should postpone the sentence for imprisonment for life or the order of execution of capital sentences on a pregnant woman which indirectly recognizes the right to life of foetus.<sup>4</sup>

3. Article 23 (Right to Freedom from exploitation) of the constitution of India: Female foeticide, linked to the dowry system and societal expectations from a girl or women, can be seen as a form of exploitation against women in the society. Even by valuing male children over the female one society exploits and perpetuates gender inequality, inequality begins even before birth. This attitude of society exploits women or girls by devaluing their existence and contributions in the society which leads to discrimination and exploitation of females throughout their lives, including limited educational and social opportunities. Therefore, this need to be address to uphold women's rights and ensure freedom from exploitation for all individuals.
4. Section 312 to 316 of Indian penal code, 1860: It deals with miscarriage and offences against unborn and new born child. Depending upon the seriousness of the crime, different punishments have been given under the code. While these sections do not explicitly address female foeticide but they are relevant in cases where harm is caused to a pregnant woman or a unborn child or foetus including instances of sex-selective abortions. One of the sections in IPC deals with offences of death caused by act done with intent to cause miscarriage, stating that whoever, with intent to cause the miscarriage of a women with child, does any act which causes the death of such women, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.<sup>5</sup>
5. National and state-level initiatives in India: Both national and state government have initiated various measures such as legislative measures to combat female foeticide in India which further promotes gender equality among the society so that the girl can live freely without facing any discrimination in the society. One of the state level initiative done by the Maharashtra government that they had initiated

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<sup>4</sup> Code of Criminal Procedure 1973 section 416

<sup>5</sup> Section 314 Indian Penal Code, 1860

campaigns such as ‘Save the Girl Child’ to raise awareness about the importance of gender equality and discourages sex-selective practices. ‘Beti Bachao Beti Padhao’ a central government scheme to save girl child from sex selective abortions and advance the education of girlchildren as education works as a tool to combat female foeticide in society. State-level initiatives complement national efforts in combating female foeticide and emphasize the importance of coordinated action at all levels of governance to mark their persistent challenge and endorse the rights and dignity of women across India.

6. Women protection laws In India: Laws related to domestic violence (Protection of women from domestic violence act, 2005), dowry and women’s right (The dowry prohibition act, 1961) contribute to the legal framework which aims at protecting women and girls in the society. It helps them to prevent not only from female foeticide but also from domestic violence, sexual assault, harassment, trafficking etc.
7. The Dowry Prohibition Act, 1961: This act in India aimed at prohibiting the practice of dowry while the act does not directly address the female foeticide but it is indirectly related to the issue in socio-cultural context, economic pressure and legal framework. By prohibiting the practice of dowry, the act seeks to protect the rights and dignity of women and prevent the exploitation and mistreatment associated with dowry demands. Also the prohibition of dowry under the dowry prohibition act indirectly addresses the economic factors that contribute to the practice of female foeticide.
8. Protection of children from sexual offences act, 2012: This act enacted in India to protect children from sexual abuse and exploitation mostly done by males in the society but also indirectly relates to the issue of female foeticide by providing legal protection and mechanisms for addressing sexual abuse. The legislation in act contributes to creating a safer environment for girls to grow up and help them to live freely without any discrimination and also creates a cultural shift towards valuing as well as respecting girls, therefore we can say that it indirectly addresses the root cause or source of female foeticide in the society.
9. Pre-conception and Pre-natal Diagnostic techniques Act, 1994: attempted to stop female foeticide by outlawing and controlling the use of prenatal methods like chorionic villi and amniotic fluid sampling for sex determination and selective

abortion. This act also prescribes stringent penalties for violation of its provisions, individuals found guilty of conducting sex determination tests or revealing the sex of the foetus can face imprisonment, fines and the suspension or cancellation of their medical licenses. If diagnostic centers found to be involved in illegal practices such as female foeticide can also face severe penalties including closure and forfeiture of their assets. The PCPNDT act mandates the establishment of appropriate authorities at national, state and district levels which are responsible for conducting inspection monitoring the activities of diagnostic centers and ensuring compliance with the provisions of the act. Additionally, this act brings attention to the importance of raising public awareness in society about sex determination and sex selective abortion.

In the CEHAT<sup>6</sup> case the writ petition was filed by the three petitioners called centre for enquiry into health and allied theme, Mahila Sarvangeen Utkarsh Mandal (MASUM) based in Pune and Maharashtra and Dr. Sabu M. Georges in the Supreme court of India for purpose of effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (PCPNDT) Act, 1994 as it fails to prevent female foeticide which is a major issue faced by society. Therefore, in this case the Hon'ble Supreme court had given various directions to central government, central supervisory board, state government/UT Administration and addressed the issue of female foeticide and enforcement of the act and also recommend amendment in the act while delivering the judgement.

10. Inspection of ultrasound diagnostic facilities by national inspection and monitoring committee. (NIMC): This verifies the registration and also monitors the conduct of the ultrasound scan to further detect any instances of illegal sex determination practices going on in the society. Thus, the particular inspection work carried out by the NIMC safeguards the rights of women and girls, promoting gender equality, as well as helps in combating female foeticide in India.

#### **IV. ROLE OF SEX DETERMINATION TECHNIQUES**

Studying role of sex determination techniques in the context of female foeticide is extremely necessary. Sex selection includes any procedure, technique, administration as well as provision of anything for purpose of ensuring or increasing the probability that an embryo

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<sup>6</sup> CEHAT and Other v. Union of India & Others AIR 2001 SC 2007

belongs to a particular sex.<sup>7</sup> There are techniques such as ultrasound and amniocentesis and chorionic villus sampling (CVS) serves as a powerful tool and have a significant role in determining or selecting the sex of foetus when the woman is pregnant which further pressurized women to abort child if the foetus is a girl. These techniques mentioned above are originally intended for medical purposes like for the health and development of baby or foetus but now a days these techniques have been extensively misused by doctors and families for non-medical purposes, for aborting females or for sex selective abortions based on gender preference, done particularly in regions where son preference is deeply entrenched or in the society based on patriarchal norms. The two main reasons which led to sex-based abortion of female foetus, and an increasingly smaller percentage of girls born each year are social pressure in India and the presence of technologies like ultrasound. These technologies exist, enable individuals and families to make decision about whether to continue a pregnancy (based solely on the sex of foetus or not).

The misuse of sex determination techniques like ultrasound contribute a range of interconnected issues including economic, social and cultural values that favour male over females which will further impact the entire community and society and also inspire others to do same. Therefore, by understanding the complex dynamics, communities and societies can work towards combating or eliminating the practice of female foeticide and creating a more equitable and inclusive future for all the children.

In the case *Dwarika Prasad V. State of U.P.*<sup>8</sup> Dept. of Health & Family Welfare & Others the issue came before the court regarding PC&PNDT Act, 1994 in context of misuse of sex determination techniques or sex determination was being carried out in the clinic, and on inspection, registration certificate was not produced and records were not maintained accordance with the rules. Due to that reason, the license of the clinic was cancelled by the court. And in the case *Janaki Ultrasound Centre, Bhokardan V. The Appropriate Authority under PC&PNDT Act and Naib Tehsildar Bhokardan, Distt. Jalna & Others*<sup>9</sup> it was observed that doctor had violated the PC&PNDT Act by misusing Sonography machine hence, Sonography machine was sealed under section 30 of the said act.

In case of *Vijay sharma V. Union of India*<sup>10</sup> the couple Vijay and Kirti sharma challenge the validity of the PC&PNDT Act, 2001 in the court, which basically bans gender

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<sup>7</sup> Section 2 (o) of Pre-conception & Pre-natal Diagnostic Techniques Act, 1994

<sup>8</sup> AIR 2014 (NOC) 160 (All)

<sup>9</sup> AIR 2015 (NOC) 1040 (Bom)

<sup>10</sup> AIR 2008 BOM 29



determination tests, and they request the court to allow them to give birth to a boy through gender determination test. The petitioners also approached various clinics for treatment for the selection of sex of foetus by pre-natal diagnostic techniques but all the clinics have denied treatment to them on the ground that it is prohibited under the said act.

The court concluded that it would lead to an imbalance in the sex ratio and girls would always be undesirable. It also found that accepting the petitioner's petition would amount to an insult to femininity.

## **V. IMPACT ON WOMEN DUE TO FEMALE FOETICIDE IN INDIA**

The act of female foeticide creates an unfortunate or inauspicious effect on the individual, family and society. The main victim seems to be the worst sufferer in case of female foeticide and it is the women. This act is mostly done even without the permission of women. Women suffers a lot across various dimensions due to female foeticide. They often experience skewed sex ratio, demographic imbalances, social challenges and a lot more. They are considered as less valuable than man which definitely affects their status, opportunities and access to resources like education and healthcare. Healthcare not only means physically but also includes mental health of that individual she is the one who suffers the most physically, mentally, morally and psychologically. Sometimes in some of the cases women is being emotionally black-mailed or did so by pressure from families or society so we can say that they are the one grinded in this brutal act of crime. They are the one who deals with everything even in the worst situation or scenario. Therefore, addressing female foeticide requires extensive interventions that tackle the root cause, harmful gender norms and empower women.

The Medical Termination of Pregnancy Act, 1971 provides only restricted rights to terminate pregnancy to women when the life of the woman is in danger or if there is a substantial risk to the life of the child<sup>11</sup>. Like in the latest judgment, i.e. Anita v. State of M.P.<sup>12</sup> & Others the court allowed petitioner to terminate her pregnancy as she was a victim of rape and had trauma due to that at the age of 19. By considering the situation and the opinion of Medical Board which allows a 9-week pregnancy to be terminated, permission was granted. And in case Nidhi Singh v. State of Chhattisgarh & Others<sup>13</sup> petition was filed in the High court when the pregnancy was less than 20 weeks to terminate the pregnancy as it would be embarrassing for her to give birth to a child of a rapist, so the permission was

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<sup>11</sup> MTPA 1971 Section 3 (2)

<sup>12</sup> AIR 2019 (NOC) 605 M.P.

<sup>13</sup> AIR 2019 (NOC) 672 Chh.

granted.

## **VI. CONCLUSION**

While discussing female foeticide we need to understand the need of female children in the society; they work as a mother, sister and life partner. we should value and respect them instead of treating them as a burden or as tool for dowry. The government of India should take initiatives to encourage women and evaluate the status of women in society. The misuse of sex determination techniques for non-medical purpose and practice of female foeticide further results in skewed sex ratio, increases the preference for male children in the society and inspires others to do same. Therefore, we can say that misuse of these techniques is a significant issue that exacerbates gender inequality. There is a urgent need to tackle the situation with efforts made from legal authorities, healthcare providers and society as it plays a major role in combating female foeticide.

### **(A) Suggestions To Prevent Female Foeticide in India**

Preventing female foeticide is not easy or a one-day task preventing it requires concerted efforts at various levels of society. People living in backward area need to change their viewpoint regarding girls they need to understand that girls or women are not liabilities or even male are not assets. They should change their perspective or point of view and should treat them equally. The only way that can change the perspective of people living in backward areas or rural areas are awareness campaigns and education regarding female foeticide, value of girls, harmful effects of gender discrimination etc. there are other suggestion or measures that prevent female foeticide are as follows:

1. Giving equal opportunities to boys and girls and gender equality motto should be highlighted.
2. Effective campaigns should be initiated by government regarding female foeticide
3. All the unethical medical practitioners who do so must be exposed or dismissed from their job if they commit this crime.
4. Sex determination test cases have to be filed against persons who violate the laws of Indian society.
5. People should motivate girls to participate in various activities that will eventually advance their skill development among girls.
6. Government should implement more or different plans and schemes for women and child development.

7. Marriages can be simplified, and the government should make strict laws or tonethem up to strictly implement legislation against dowry.

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