

## **Human Rights & Female Foeticide: Legal Perspective and Its Challenges**

*Author:- Mashooq Ahmad Wani<sup>1</sup>*

### **Abstract**

One of the most heinous ways of discrimination against women in a society is through female foeticide. Advances in Science and Technology is responsible for the statistic of women's oppression. Prenatal sex determination followed by selective female foetus abortion is perfect example for the same. There are technologies that prevent the birth of girl child and promote the birth of boy child. Scan centres disclose the sex of the foetus, which is against the law. Sons are preferred over daughters for various social, economic and religious reasons, which include economic liability, lack of safety, fear of family honour, old age security, dowry, prestige and power, property inheritance, financial support, birth and death rituals and beliefs about religious duties. In our civilized society we talk about equality in all spheres, then why is there no right to take birth? There is a need to realize the right of a girl child and to what extent they are being implemented. There is a requirement of strong ethical code of conduct among the medical professionals. There is an urgent need to address the fundamental problem of changing the mindset of the people only then will the regulation of technologies work. Gender selective abortions have to be viewed as a social issue rather than a women issue. Unless the mind of people changes, misuse of medical technologies will continue. The paper underscores the need to safeguard the female foetus from illegal abortion and protect the human rights of the girl child. It is pertinent to note that until and unless this menace is controlled, the country is heading for a catastrophic gender imbalance, which in turn would affect the economic progress of the nation.

**Keywords:** Female Foeticide, human rights, Sex Ratio, Sex Selection Abortion, Technology.

### **Introduction**

---

<sup>1</sup> Mashooq Ahmad Wani, LL.M (UGC-NET). Assistant Professor School of Legal Studies, Central University of Kashmir.

Human rights are basic rights and freedoms to which all humans are entitled. The doctrine of human rights aims to identify the necessary positive and negative prerequisites for a universal minimal standard of justice, tolerance and human dignity that can be considered the public moral norms owed by and to individuals by the mere virtue of their humanity. Such prerequisites can exist as shared norms of actual human moralities, as justified moral norms or moral rights supported by strong reasons, as legal rights at a national level, or as a legal right within international law. Human rights advocates seek the strong protection of human rights through their effective realisation in each of these ways. The claim of Human rights is therefore that they are universal, in that they are possessed by all by virtue of the fact that they are human, and independent in that their existence as moral standards of justification and criticism is independent whether or not they are recognized and by a particular national or international legal system or government.

The general idea of Human rights has widespread acceptance, and the Charter of the United Nations which has been signed by virtually all sovereign states recognises the existence of human rights and it has been argued that the doctrine of human rights has become the dominant moral doctrine for regulating and evaluating the moral status of the contemporary geo-political order. However, debate and disagreement over which rights are human rights, and about the precise nature, content, justification and appropriate legal status of those rights continues. The Universal Declaration of Human Rights has acted as the predominant modern codification of commonly accepted human rights principles and many national many international documents, treaties and instruments that have expanded on its principles and act as a collective expression of widespread conceptions of human rights by the international community. Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural rights, including the right to participate in culture, the right to be treated with respect and dignity, the right to food, the right to work, and the right to education. “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

#### Growing menace of Female Foeticide

The custom of Gender Selective Abortion has been the key cause of low gender ratios in India. It is assumed that to be born a girl is the worst curse and crime. It is regarded as punishment for the whole life for parents and the girl herself. The parental preference for son is nothing new. No doubt preference for a male child over a female child is universal but in

Indian society, a girl has always been blamed for all the misery and misfortune. Religions, traditions and customs too play their respective part. Value attached to sons is well explained in the blessings and good wishes contained in a number of verses used in marriage rituals<sup>2</sup> though social and religious prejudices and a strong inclination for sons have moulded social mindsets in favour of the son. In India women who bear male children are treated with respect in the community and a son is always considered a security for old age. In India violation against women is happening in the public domain as well as in the household and therefore raising a daughter comes with a fear of her safety. The girl child is always considered a financial liability. She is to be given extensive dowry in marriage. Mostly investment in her upbringing or education is considered wasteful. There is an inherent discrimination against women in the Indian Social Structure. A woman has always been considered as subordinate to a man. The prejudice is widespread and common amongst the educated and the enlightened people. Women have been subjected to many forms of discrimination and various social forces act and compel parents to commit such an act. It is usually thought that options of males and females may differ leading the thought in the direction that females may be more sensitive and opposing to the cruelty towards the unborn female child<sup>3</sup>

#### Pre-Natal Sex Selection and the Law:

The technological assistance from the mid 1980's onwards created such a powerful opportunity for people who wanted to abort their girl child that it has led to functioning of an industry that has started to show the negative impact in different parts of the country. Son preference is not new in India, but the last few decades have experienced the unfolding of a disturbing and now an alarming trend to give son preference and sex selective abortion an easy access through the Misuse of Pre-Natal Diagnostic Technologies. These technologies have created an influential opportunities for people who don't want a baby girl which has created a negative impact on the sex ratio in India. Our Government first approved the Pre-natal Diagnostic Techniques and referred it as a vital pillar of women sexual and reproductive health and rights, but the use of these technologies needs a constant watch because sex selection was becoming common amongst various groups of people<sup>4</sup>. Parliament has realized the grave implications arising out of the misuse of the prenatal diagnostic techniques and

---

<sup>2</sup> Anand and Sarita, A comparative study of attitude of people from Haryana, Delhi, Rajasthan and Punjab towards Female Foeticide and Infanticide, Department of Home Science, Delhi University,

<sup>3</sup> CEHAT Centre for Enquiry into Health and Allied Themes, Date: 10th July 2003, Express Health Management Bureau, Mumbai (2003)

<sup>4</sup> Indian Ministry of Health and Family Welfare, Missing Girls: A Study of Declining Sex Ratio in the Age Group 0- 6 years A Case Study of Delhi, 160 (2002)

therefore intended to regulate its use only for certain medical purposes. The Government has realized that abuse of techniques for determination of sex of the foetus leading to female foeticide is discriminatory against the female sex and also affects the dignity and status of women. With the above objectives, the Parliament has passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994; which came into force from 01.01.1996.

#### The Medical Termination of Pregnancy Act, 1972:

If the very purpose of the PNNT Act is to regulate all the pre-natal diagnostic techniques and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide, then PNNT Act should be read with Medical Termination of Pregnancy Act 1971.

The MTP Act Specifies:

1. The conditions under which a pregnancy can be terminated
2. The person or persons who can perform such termination
3. The place where such termination can be performed

#### **The conditions under which a pregnancy can be terminated:**

- Medical: Where continuation of the pregnancy might endanger the mother's life and cause grave injury to her physical or mental health
- Eugenic: Where there is substantial risk of the child being born with serious handicaps due to physical or mental abnormalities
- Humanitarian: Where pregnancy is the result of rape
- Failure of contraception

#### **The person or persons who can perform such terminations:**

- The Act provides safeguards to the mother by authorizing only MBBS doctors having experience in gynecology and obstetrics to perform abortion where the length of pregnancy does not exceed 12 weeks.
- Where the pregnancy exceeds 12 weeks but is less than 20 weeks, the opinion of two Registered Medical Practitioners is necessary to terminate the pregnancy
- Where the pregnancy exceeds 20 weeks, it cannot be terminated except in cases where it is immediately necessary to save the life of the pregnant woman

All MBBS doctors have to obtain a certificate from the Chief Medical Officer of the district before performing MTP, otherwise it is considered illegal.

**The place where such termination can be performed:**

The Act stipulates that pregnancy shall not be terminated at any place other than a hospital established or maintained by the Government or a private place approved for this purpose (MTP) by the Government.

**Penalties:**

Conducting an abortion is punishable with

- 7 years imprisonment unless done in good faith to save the life of the mother
- 10 years imprisonment if
  - a) done without consent of the woman
  - b) the woman dies while inducing abortion

Also, the Act provides for 10 years imprisonment for

- a) doing an act intended to prevent a child being born alive causing the death of 4 –5 months unborn child.

A) Pre-Natal Diagnostic Techniques  
(Regulation and Prevention of Misuse) Act,  
1994:

This Act provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide. The legislation seeks to achieve the following objectives.

- i) Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex foetus, leading to female foeticide.
- ii) Prohibition of advertisement of the techniques for detection or determination of sex.
- iii) Regulation of the use of techniques only for the specific purpose of detecting genetic abnormalities or disorders.

iv) Permission to use such techniques only under certain conditions by the registered institution.

v) Punishment for violation of the provisions of the Act; and

vi) To provide deterrent punishment to stop such inhuman acts of female foeticide.<sup>5</sup>

The PNDT Act, however, for all intents and purposes has proved to be a toothless piece of legislation. The problem with the Act is twofold. - Interpretation of the Act and - Implementation of the Act. Despite the intent and purpose of the Act being wide and all encompassing, it has been interpreted by the ultrasonologists, the abortionists, the doctors and more shockingly the government alike, to exclude pre-conceptual sex selection.<sup>6</sup>

#### PIL Petition:

A PIL petition was filed in the Supreme Court by the Centre for Enquiry into Health and Allied Themes (CEHAT), Mahila Sarvangeena Utkarsh Mandal (MASUM) and Dr. Sabu M. George urging effective implementation of the Act.

The Supreme Court passed an order on 4th may 2001<sup>7</sup> which aims at ensuring the implementation of the Act, plugging the various loopholes and launching a wide media campaign on the issue. The second goal of filing the PIL is the amendment of the Act to include pre-and during conception techniques, like X and Y chromosome separation Pre-implantation Genetic Diagnosis (PGD). The order largely concerns only the implementation of the Act and putting the required infrastructure in place. However, the order entrusts the responsibility of examining the necessity to amend the Act to the Central Supervisory Boards, keeping in mind emerging technologies and the difficulties encountered in the implementation of the Act and to make recommendations to the Central Government.<sup>8</sup> The directions are:

#### Direction to the Central Government:

- To create public awareness against the practice of pre-natal determination of sex and female foeticide.
- To implement with all vigour and zeal the PNDT Act and the Rules framed in 1996.

---

<sup>5</sup> G.B. Reddy, "Sex determination Tests and Female Foeticide", Women and the Law.

<sup>6</sup> Swati Mehta & Jayna Kothari, "It's A Girl! Pre- Natal Sex Selection and the Law", Lawyers collective, Nov, 2001

<sup>7</sup> Supreme Court of India Civil Original Jurisdiction Writ Petition (Civil) No. 301 of 2000.

<sup>8</sup> Dr. K. Shanmugavelayutham, "The Pre- Conception and Pre-Natal Diagnostic Techniques (prohibition of Sex Selection) Act 2002 – A Bold step", Legal News & Views, Vol. 17, No. 5, May, 2003

Rule 15 provides that the intervening period between two meetings of the Advisory Committees Constituted under sub-section

17 of the PNDT Act to advise the appropriate authority shall not exceed 60 days. It would be seen that this Rule is strictly adhered.

Direction to the Central Supervisory Board (CSB) :

- Meetings of the CSB will be held at least once in six months as provided by the Act.
- The CSB shall review and monitor the implementation of the Act.
- The CSB shall issue directions to all state / UT Appropriate Authorities to furnish quarterly returns to the CSB giving a report on the implementation and working of the Act.
- The CSB shall examine the necessity to amend the Act keeping in mind emerging technologies and difficulties encountered in the implementation of the Act and to make recommendations to the Central Government. The CSB will require medical professional bodies / associations to create awareness against the practice of pre-natal determination of sex and foeticide and to ensure implementation of the Act.<sup>9</sup>

B) Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of sex selection) Act  
2002:

Based on the SC order and Central Supervisory Board recommendations the Parliament on December 20 passed the Preconception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 2002. The provision is stated below:

- i) The Act provides for the prohibition of sex selection, before or after conception.
- ii) It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect:
  - a) Genetic abnormalities
  - b) Metabolic disorders.
  - c) Chromosomal abnormalities
  - d) Certain congenital malformations
  - e) Haemoglobinopathies
  - f) Sex linked disorders.
- iii) No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.

---

<sup>9</sup> Supra note 5

iv) No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.

v) Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.<sup>10</sup>

#### Compulsory Registration :

The Act mandates Compulsory Registration of all Diagnostic Laboratories. All Genetic Counselling Centres, Genetic Laboratories, Genetic Clinics and Ultrasound Clinics, irrespective of whatever they are involved as regards diagnosis for gynaecological or other purposes, would now have to maintain records of all the tests conducted by them. Only qualified persons can use pre-natal diagnostic techniques. The reasons for testing should be recorded in writing. The techniques can be used in the following conditions.

- a) Age of the pregnant women is above 35 yrs.
- b) The pregnant women has undergone two or more spontaneous, abortions or foetal loss.
- c) The pregnant women had been exposed to potentially teratogenic agents such as drugs, radiation, infection or chemicals.
- d) The pregnant woman has a family history of mental retardation or physical deformities such as spasticity or any other genetic disease.
- e) The Central Supervisory Board may specify any other condition as required.

#### State Level Supervisory Body (SLSB) :

The law provides for the setting up of State Level Supervisory Bodies to monitor the implementation of the Act. The Board shall meet at least once in six months.

#### Punishment:

Any violation, including unlicensed labs, of the Act leads to seizure of equipments. The fine for those who indulge in sex selection procedure has been double from Rs. 50,000/- to Rs.1,00,000/- (one lakh) with additional provisions for the suspension and cancellation of the Registration of those as a Medical Practitioner by the concerned Medical Council or any

---

<sup>10</sup> Menu Anand, "Indian Legal Framework to Arrest Female Foeticide" Legal News & Views, September 2005

other Registering Authority. The Act should be backed by stringent implementation machinery by the state.<sup>11</sup>

#### Right to Life of Foetus:

Our Constitution provides for the Right to Equality under Article 14 and right to live with 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. Now the question is, does a foetus enjoy this right? We do not have definite answer. Globally, Constitutions recognize the sanctity of life, yet have failed to adequately protect the life of foetus. Judicial pronouncements are also not conclusive and vary in different jurisdictions. In India the right to life is guaranteed to every person under the Constitution of India. The concept of personhood complicates the position of legal status of foetus. Often courts shy from answering this question due to complex issues that arise in determining this question – like when does foetus attain personhood? This question is baffling the courts worldwide. There is a desperate need for the courts to come clear on this vital issue and recognize the rights of the foetus.<sup>12</sup>In India, Article 21 of the Constitution guarantees the life and liberty of every person.<sup>13</sup>But it is doubtful if this would include the life of foetus as the meaning is restricted by the use of the word person. The Indian Constitution has recognized the right to life under Article 21 as also recognized in several cases.<sup>14</sup> but this is hardly available to the unwanted girl child. Hence the right of the girl child may be construed in broader terms and should be inferred as Right to be born and not to be aborted only because she is a girl. - Right to remain alive after birth and not to be killed at any moment after birth. Right of the girl child to her mind her body, right to childhood and right to a healthy family environment.<sup>15</sup>However there are a number of statutes that indirectly provide protection to the life of foetus. The Indian penal code under various provisions makes causing miscarriage an offence.<sup>16</sup>

In *Bandhua Mukti Morcha vs. Union of India*<sup>17</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

---

<sup>11</sup> Supra note 7

<sup>12</sup> Prasanth S.J. "Right to Life of Foetus" AIR Vol.92, Part 1098, June'2005

<sup>13</sup> Indian Constitution (1950) Article 21

<sup>14</sup> *Menaka Gandhi vs. Union of India*, AIR 1978 SC 597

<sup>15</sup> *Jessy Kurian "A Cry Unheard Female Foeticide& Female Infanticide"*, Legal News & Views Vol. 17 No. 11. Nov, 2003.

<sup>16</sup> The Indian penal code chapter 18 (offences affecting the human body) in part two section 312 to 318 deals with the offences relating to miscarriage or injuries to the unborn child of exposure to the infants and concealment of birth.

<sup>17</sup> AIR 1984 SC 802.

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 the mother is at stake or there is a substantial risk to the life of the child.<sup>18</sup> What is to be noted here is that the MTP Act 1971 does not recognize the right of the mother to abort, this right to decide on termination of pregnancy vests with a registered medical practitioner.<sup>19</sup> Further some states in India have made special legislations to confer special protection to the life of foetuses.<sup>20</sup> The Nuclear Installations Act, 1965 recognises liability for compensation in respect of injury or damage caused to an unborn child by the occurrence involving nuclear matter or the emission of ionizing radiation.<sup>21</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 recognizing the right to life of foetus.<sup>22</sup> It is only an escapist view to deny the right to 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>23</sup> and also recognizes that an unborn can enjoy certain interests in property.<sup>24</sup> In the light of the discussion above it is agreed that foetus should enjoy the right to life. The foetus should be recognized as a separate entity enjoying distinct legal right and is not a part of the mother. 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 the foetus. Failure to recognize the rights on the foetus would amount to discrimination thereby violating the right to equality enshrined in Article 14 of the Indian Constitution of India.<sup>25</sup>

#### Factors Responsible for Female Feticide

Increased availability of advanced technologies, especially ultrasonography (USG), has been the single most important factor responsible for decrease in sex ratios and increase in female

---

<sup>18</sup> MTPA 1971 section 3 (2)

<sup>19</sup> *ibid*

<sup>20</sup> Section 4(4) of the Maharashtra Regulation of use of Pre-Natal Diagnostic Techniques Act, 1988 makes it obligatory to obtain an undertaking from a woman to the effect-that she will not terminate the pregnancy if the diagnosis shows

<sup>21</sup> Ramaswami, G. Basic Right of the child – Bornand unborn AIR, 2002, Journal Section, P141

<sup>22</sup> *Code of Criminal Procedure 1973 section 416.*

<sup>23</sup> *Refer Indian Penal Code section 312, 313, 314, 315 & 316*

<sup>24</sup> *The transfer of property Act, 1882, Sec. 20*

<sup>25</sup> *Prasanth S.J. "Right to Life of Foetus" AIR Vol. 92, Part 1098, June'2005.*

feticides. In India over 25000 pre-natal units have been registered.<sup>26</sup> Facilities of sex determination through "clinic next door" are now conveniently available with the families willing to dish out any amount that is demanded of them. The easy availability of mobile scanning machines has translated into brisk business for doctors. Sex selection techniques became popular in the western and north-western states in the late 70s and early 80s whilst they are becoming popular in the South now.<sup>27</sup> The sex of a foetus can be determined at 13-14 weeks of pregnancy by trans-vaginal sonography and by 14-16 weeks through abdominal ultrasound. These methods have rendered early sex determination inexpensive, feasible and easily accessible. Although various preconception techniques that help in choosing the foetus sex have been described, their use is not widespread due to higher costs.<sup>28</sup> There are several other factors that have a bearing upon the child sex ratio.

Status of women: The most important factor responsible for decreasing child sex ratio is the low status of Indian women coupled with traditional gender bias. The needs with regards to health, nutrition and education of a girl child have been neglected. In the Vedic Age (1500-1000 BC), they were worshipped as goddesses. However, with the passage of time, their status underwent significant and sharp decline and they were looked down upon as "slaves of slaves".<sup>29</sup> Studies report that women in southern India enjoy a better status irrespective of their literacy in comparison to their north Indian counterparts.<sup>30</sup>

It has long been argued that improvement in literacy rates and socioeconomic development amongst women could change the adverse sex ratio for the better. However, it has been observed that educated mothers in Punjab are more prone to discriminate against their daughters than the uneducated ones.<sup>31</sup> Also, the prevalence of prenatal sex determination is more widespread among the economically well-off because availing of such services is determined by one's ability to pay. Thus, the rich agriculturalists living in the rural areas of Punjab, Haryana and Gujarat and the urban elite living in the metropolis of Delhi tend to

---

<sup>26</sup> Genocide of India's daughters. Mail Online. c2006. Available from: <http://www.dailymail.co.uk/news/article-393896/Genocide-Indias-daughters.html>. [Cited on 2008 Jun 19]. Back to cited text no.

<sup>27</sup> George SM. Sex selection/determination in India: Contemporary developments. *Reprod Health Matters* 2002;10:184-97. Back to cited text no.

<sup>28</sup> Gurung, M. Female Foeticide. c1999. [cited on 2008 May 26] Available from: [www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/foeticide/articles/foeticide.html](http://www.hsph.harvard.edu/Organizations/healthnet/SAsia/forums/foeticide/articles/foeticide.html). Back to cited text no

<sup>29</sup> Sachdeva DD. *Social Welfare Administration in India*. Allahabad; Kitab Mahal; 1998. Back to cited text no

<sup>30</sup> Bose S, Trent K. Socio-demographic determinants of abortion in India: A north-South comparison. *J Biosoc Sci* 2006; 38:261-82. Back to cited text no

<sup>31</sup> Das Gupta M. Selective Discrimination against Female Children in Rural Punjab, India, *Popul Dev Rev* 1987;13:77-100

avail of sex-selective abortion.<sup>32</sup> Similarly, transition from a rural agrarian economy to urban economy has not prevented Jat couples from using prenatal sex determination and sex-selective abortion to achieve smaller family size through reduction in the number of daughters in the family.<sup>33</sup> On the other hand, in matriarchal societies in the north-eastern states of India, women control land holding and have a better say in matters related to family, economy and society.<sup>34</sup> This has resulted in a slight preference for daughters in states like Meghalaya.<sup>35</sup>

Gender discrimination: The bias against females in India is grounded in cultural, economic and religious roots. Sons are expected to work in the fields, provide greater income and look after parents in old age. In this way, sons are looked upon as a type of insurance. In addition, in a patriarchal society, sons are responsible for "preservation" of the family name. Also, as per Hindu belief, lighting the funeral pyre by a son is considered necessary for salvation of the spirit.<sup>36</sup> This strong preference for sons which results in a life-endangering deprivation of daughters is not considered abhorrent culturally and socially.<sup>37</sup> In north India, girls currently constitute about 60% of the unwanted births and the elimination of unwanted fertility in this manner has the potential to raise the sex ratio at birth to 130 boys per 100 girls.<sup>38</sup> Gender discrimination manifests itself in the form of delay in seeking medical care, seeking care from less qualified doctors and spending lesser money on medicines when a daughter is sick.<sup>39</sup> The extreme disappointment of a mother as a result of a daughter's birth can adversely

---

<sup>32</sup> Visaria L. The declining sex ratio in India. *Natl Med J India* 2004;17:181-3

<sup>33</sup> Khanna SK. Traditions and reproductive technology in an urbanizing north Indian village. *Soc Sci Med* 1997;44:171-80.

<sup>34</sup> Fernandes W. The Indigenous issue and women's status in North East India. Paper submitted at Indigenous rights in the commonwealth project, South and South-East Asia Regional Expert meeting. India International Centre, New Delhi: 11th-13th March, 2002

<sup>35</sup> International Institute for Population Sciences (IIPS) and Macro International. National Family Health Survey (NFHS-3), 2005-06, India: Key Findings. Mumbai: IIPS; 2007. Back to cited text no

<sup>36</sup> Bandyopadhyay S, Singh A. History of son preference and sex selection in India and in the west. *Bull Indian Inst Hist Med Hyderabad* 2003;33:149-67. Back to cited text no

<sup>37</sup> Miller B. *The endangered sex: Neglect of female children in rural North India*. Ithaca, New York and London: Cornell Univ. Press; 1981.

<sup>38</sup> International Institute for Population Sciences (IIPS) and Macro International. National Family Health Survey (NFHS-2), 1998-99, India: Key Findings. Mumbai: IIPS; 2000

<sup>39</sup> Chatterjee M. A report on Indian women from birth to twenty. New Delhi: National Institute of Public Cooperation and Child Development; 1990

affect her ability to breastfeed the girl child, which leads to poor nutritional status.<sup>40</sup> It is no wonder that the prevalence of malnutrition and stunting is higher in girls than boys.<sup>41</sup>

Dowry: The evil practice of dowry is widely prevalent in India. As a result, daughters are considered to be an economic liability. The dowry system is more rigid in the northern states of India which is likely to contribute to the lesser child sex ratio. Women have little control over economic resources and the best way for a young north Indian bride to gain domestic power mainly comes from her ability to produce children, in particular, sons.<sup>42</sup> Most often in south Indian communities, marriages are not exogamous (but often consanguineous), and married daughters usually stay close socially and geographically to their original family. Until recently, dowries were unheard of and benefits of inheritance for the daughters were not ruled out.<sup>43</sup> In the Muslim community, paying of high dowry is not a prevalent practice.<sup>44</sup> Also consanguineous marriages are highly prevalent and women are entitled to a portion of parental inheritance.

#### Measures to Combat Female Foeticide and Infanticide

Combating female foeticide would require multipronged strategy. Such a strategy must necessarily encompass legal, economic and social reforms. While social reforms should be part of a long term strategy, legal and economic reforms should be taken up in the short and medium term respectively.

##### (A) Legal Reforms

Although India has enacted laws to prevent female foeticide, but their implementation has been very weak. Furthermore, there are several loopholes in the laws due to which conviction rate are abysmal. Therefore, to combat female foeticide, there is a need to begin with legal reform. In this regard, we make the following suggestions:

1) Rather than banning sex determination techniques (doing so would encourage them operate in a clandestine manner), registration and import of such machines must be made extremely difficult. For this necessary legal provision must be further tightened.

---

<sup>40</sup> Jatrana S. Explaining Gender Disparity in Child Health in Haryana State of India. Asian Metacentre Research Paper Series No. 16. Asian Meta centre for Population and Sustainable Development Analysis. Singapore; 2003.

<sup>41</sup> Dyson T, Moore M. On Kinship structure, female autonomy, and demographic Behaviour in India, Popul Dev Rev 1983; 9:35-60.

<sup>42</sup> Guillemot CZ. Characteristics of sex ratio imbalance in India, and future scenarios. Paper for the 4th Asia Pacific Conference on Reproductive and Sexual Health and Rights. Hyderabad, India: October 29-31, 2007.

<sup>43</sup> Nassir R, Kalla AK. Kinship system, fertility and son preference among Muslims: A review. Anthropologist 2006;8:275-81

<sup>44</sup> George SM. Millions of missing girls: From fetal sexing to high technology sex selection in India. Pre-nat Diagn 2006;26:604-9.

- 2) Clinics and organisations that spread awareness regarding sex selection techniques must be banned and a list of such clinics and organisations must be made placed in the public domain.
- 3) If more than 50 guests are entertained in celebrations such as birth of male child, it should be mandatory to file an income tax return.
- 4) Committing or supporting or non-reporting of foeticide must be made a non-bail able offence.
- 5) Fast track courts must be set up headed by a female judge for quicker dispensation of justice.
- 6 Capital punishment must be awarded to people convicted for this heinous crime

#### (B) Economic Reforms

Female foeticide is committed by people across all income groups. Hence, merely focusing on poverty alleviation as an antidote for this menace would not yield the desired results. Instead, economic incentives that would increase the opportunity cost of not having a girl child for a household must be at place. The following suggestions can be part of such an incentive mechanism

- 1) Financial support for girl education up to graduation must be provided to every family having a girl child irrespective of the number of girl child.
- 2) Preference in bank loans at concessional rates should be given to those households having a girl child.
- 3) Connections for utility services like telephone, cooking gas, electricity, water etc; must be given to households having a girl child.
- 4) Access to public distribution system with increased entitlement should be given to households having a girl child.

#### (C) Social Reforms

Creating awareness and sensitising people would help in eradicating female foeticide over time. The following suggestions are made in this regard:

- :□ We must advocate and aware the society of a scientific, and humanist approach.
- The empowerment of women and a strengthening of women's rights through campaigning against anti social practices such as dowry, sati, child marriage, sex determination and ensuring strict implementation of legal rules and law.

- Central and State Government must ensure the development of and access to good health care services for the rural and urban population.
  - inculcating a strong ethical code of conduct among medical professionals, beginning with their training as undergraduates help in stopping them from misuse of their training.
  - Simple methods of complaint registration, accessible equally to the poorest & richest and most vulnerable women of the country.
  - Widespread publicization in the media of the scale and seriousness of the practice.
- NGOs, GOs at National & State Level and other social workers should take a key role in educating and aware the public on this matter.
- Regular assessment of indicators of status of women in society, such as sex ratio, and female mortality, literacy, and economic participation is made to have up to date information.
  - It is only by a combination of Proper monitoring, Education campaigns, and Effective legal implementation that the deep-rooted attitudes and practices against women and girls can be eroded from the society.

#### CONCLUSION

It is evident that there are many actionable measures that can foster positive change in the way the law is currently implemented. There are various complex social behaviours and attitudes that deeply influence the falling of gender ratios in India and legislation cannot provide all the support. Alterations and amendments in the present legal framework can contribute Significantly to protect girl child against female foeticide..The preference for a male child in large sections of our society even in highly educated groups is the root cause of an imbalanced sex ratio "Foeticide was invented, touted and sold by the medical profession, and it operates with the complete consent of all factors of our society. Hence, education can plays an important role in women's life. Higher education extend the dimension of thought process of human being and it is also true that an educated woman can educate her upcoming seven generations.. All agencies must immediately join hands and launch a stricter crackdown so that no medical professional in this murderous practice can escape. The study made it clear that a woman whether educated or highly educated rich or poor was not conscious of her own identity. It may be concluded that the banning of sex-determination test, though an essential and urgently required step, is not the final solution to the problem. In the

long run, social prejudices against women have to be overcome by improving her status in society.