

Female Rape in India: A Crime Against Nature

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Abstract: *Female foeticide is a result of a gender bias social construction. It's discrimination against women and believes them to be less valuable than men. Sons are preferred over daughters for many different reasons in this patriarchal society. Whether it be economically or socially, women are seen as weak and are less prized than men. Female foeticide is the process of finding out the sex of the foetus and undergoing abortion if it is a girl. Although female foeticide is illegal but still many people continue to practice it. Besides this, there are some communities which practice female infanticide which means the practice of killing the girl child once she is born.*

Keywords: Abortion, Bias, Foeticide, Foetus, Gender Discriminate, Illegal, Infanticide, Patriarchal.

1. Introduction

India is a country of incredible ironies. It is a land where people worship myriad forms of female shakti quest of wealth, wisdom and power. Manusmirti says "Where women are rejoiced, God dwells there". At the same time myriads of female are killed in the womb of their mother. A poet had written -

"O haste, thee haste, the lady cries
Though the tempests gather round us
I will like to face the raging of sky
But not the anger of father"

Lord Ullin's daughter asks the boatman to make haste. Tempests are gathering around them. She tells him that she is prepared to face the fury of the stormy sky but not ready to face the fury of angry father. (a) Who is the lady? (b) Who were sitting in the boat? (c) What and why was the lady ready to face at that time? The crux of this poem, is a female womb child is asking to save her and request to her father that she wants to see the world and wish to touch the sky.

This heinous offence is committed in the rich and educated families as well as the poor and illiterate families. Initially the girl child was put to death brutally being (a) throttled, (b) poisoned, (c) drowned in a bucket of water right after her birth, (d) leave in the cold weather without cloths, (e) threw in dustbin and (f) many more ways. These had been the common practices followed particularly in the rural areas. The rapid advancement of science and technology proved a boon for these people as this had made the diabolic slaughter of the female child much easier and more sophisticated than before. The technology has been misused by mankind and today by dint of the pre - natal sex determination test, the female fetuses are selectively aborted.

Meaning of Female Foeticide

As a medical term - foeticide is destruction of a foetus. The term 'female foeticide' is defined as the elimination of a female foetus at any stage of pregnancy, after determining its sex. It is also defined as killing of female foetus through induced. In other words, it implies the barbarous act of killing the girl child in the womb itself, unseen and unheard, only for the fact that she is female.

The first clinic was set up in the Punjab in 1975. The sex determination technique was used for the purpose of finding genetic abnormality. If the foetus is not fit mentally and physically than foetus can be eliminated at the primary stage. If the life of mother is in peril on account of foetus can be eliminated but this technique is being misused now. The misuse of medical science has facilitated the rapid growth of this heinous crime in the society today. A number of medical procedures are carried out to determine the sex of the unborn child such as -

- Amniocentesis
- Ultra - sonography
- Foetoscopy
- Chorionic villus biopsy
- Placental tissue sampling etc.

Reasons behing high rate of female foeticide in India -

The typical orthodox Indian attitude accompanied with several social, economical and cultural factors pervading in the society has always upheld the need of male child in the family. Some of the reasons for female foeticide are - (a) son preference, (b) low status of women, (c) social and financial security associated with sons, (d) socio - cultural practices including dowry & violence against women, (e) small family norm and (f) consequent misuse of diagnostic techniques with the intention of female foeticide. The most prominent factors encouraging female foeticide in India are listed below -

- **Religious factors** - According to Manu, a man cannot attain 'Moksha' unless he has a son to light his funeral pyre. In a Hindu patriarchal society it is the son who continues the family lineage or 'vansha'. It also says a woman who gives birth to only daughters may be left in 11th year of such gender biased customs and practices in the traditional Hindu society has over - emphasized the birth of sons and discouraged the birth of a girl child in the family, thus paving the way for female foeticide.
- **Evil of dowry** - In order to escape from dowry people desperately go for sex selection tests and eliminate the female foetus. Conversely, the boy is viewed on asset to fetch, fabulous dowry for the parents. Hence boys are naturally preferred to girls.

- **Financial dependence of females on husband or in laws** - Certain communities want to get rid of female child compelled by the circumstances of dehumanizing poverty, unemployment, superstition and illiteracy.
- **Secondary status of women in Society** - It is generally expected that sons would carry the family lineage forward provide security and care to parents especially in old age, enhance family wealth and property and perform the last rites and rituals where as daughters would go to

another's house draining out all the family wealth. Moreover they always need to be protected, defended and taken care of thus imposing an extra burden over the family.

Various Laws and cases - Many laws have been enacted in order to curb the female foeticide but only laws are not capable of curbing this evil, the thought of the person must be changed.

Laws passed in India to alleviate female foeticide

| Other Legislation | Year Passed | Goals |
|------------------------------------|-------------|--|
| Dowry Prohibition Act | 1961 | Prohibits families from taking a dowry, punishable with imprisonment |
| Hindu Marriage Act | 1955 | Rules around marriage and divorce for Hindus |
| Hindu Adoption and Maintenance Act | 1956 | Deals with the legal process of adopting children and the legal obligation to provide "maintenance" for other family members |
| Immoral Traffic Prevention Act | 1986 | Stops sex trafficking and exploitation |
| Equal Remuneration Act | 1976 | Prevents monetary discrimination between men and women in the workforce |
| Female Infanticide Act | 1870 | Prevents female infanticide (Act passed in British India) |
| Ban on ultrasound testing | 1996 | Bans prenatal sex determination |

Pre - natal Determination Technique Act, 1994 - PNDT was enacted in 1994 under this law, it is mentioned that every clinic where the ultra - sound scans and a notice board should be affixed on which this information should be written "No test pertaining to the sex determination is done here". It is an offence under the provision of law. Ultrasound scan cannot be done without the written consent of women. An amendment was made in law in 2003, that those doctors who are involved in this criminal act would be punished. (a) **If this offence is committed at the first time** - the fine of Rs 50, 000/- or imprisonment of 3 years will have to be undergone or both punishments will have to be undergone. (b) **If this offence is committed again** - the fine of Rs 1, 00, 000/- or imprisonment of 5 years will have to be undergone or both the punishment will have to be undergone.

The Medical Termination of Pregnancy Act, 1971 - Another important law is the MTP Act, 1971 in which it is mentioned that a female can get the fetus aborted only in some conditions. These conditions are -

- If there is a responsible apprehension of danger to the life of mother.
- If the fetus is suffered with perilous physical or mental disease.
- If the fetus is conceived due to rape.
- If the female is not capable of looking after the child socially or economically.
- If the fetus is conceived due to the contraceptive failure.

Indian Penal Code, 1860 (Section 312 to Section 318) - Under the I. P. C. adequate provisions have been made for the protection of mother and unborn child. Under section 312, section 313, section 314, the I. P. C. provides to save the woman from miscarriage. Any act intended not in good faith to cause miscarriage is punishable under I. P. C. Under section 312 a woman who causes her miscarriage or gives consent to miscarry is also liable for punishment. Section 313 provides punishment which causes the miscarriages of a woman without her consent.

Constitution of India - Article 14, Article 15 (3) and Article 21 of Constitution of India are welfare provisions for

all. According to Article 14 "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. "

Article 15 of the Constitution of India forbids discrimination on grounds only of religion, race, caste, sex, or place of birth. Article 15 (3) in terms provides that nothing shall prevent the state from making any special provision for women and children.

According to Article 21 "No person shall be deprived of his life or personal liberty except according to procedure established by law".

Tulsi Devi vs State of UP 12 January, 1995 - The accused women kicked a pregnant woman in her abdomen resulting in miscarriage. She was held to be convicted under section 313 of Indian Penal Code, 1860.

Environment and Consumer Protection Foundation vs Union of India writ petition (civil) no 659 of 2007 (2017) - Supreme Court allowed a woman to abort 25 week old fetus with unformed skull.

Ms Z vs State of Bihar civil appeal no 10463 of 2017 - Supreme Court ordered Bihar Government to pay 10 lac rupee to a rape survivor who was denied the right to terminate her pregnancy due to the delay on the part of authorities.

Creation of Awareness for Stopping Female Foeticide - Though sex ratio in the country has improved from 927 in 1991 to 940 in 2011 as per Census 2011 (Prov.), Child Sex Ratio has dipped from 945 females per thousand males in 1991 to 914 females per 1000 males in 2011. Government has adopted a multi - pronged strategy to curb female foeticide in the country. The Government has enacted a comprehensive legislation the Pre - conception and Pre - natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, further amended in 2003 for prohibition of sex selection, before and after conception, and for regulation of prenatal diagnostic techniques. The measures include the following: -

- **Effective implementation of laws** - The Government have intensified effective implementation of the said Act and amended various rules covering provision for sealing, seizure and confiscation of unregistered ultrasound machines and punishment against unregistered clinics.
- **Registered premises for ultrasound** - Regulation of use of portable ultrasound machines within the registered premises only has been notified.
- **Limits and Restriction** - Restriction on medical practitioners to conduct ultra - sonography at maximum of two ultrasound facilities within a district has been placed.
- **Registration fees** have been enhanced.
- **Amendments of rules** - Rules have been amended to provide for advance intimation in change in employees, place, address or equipment.
- **Government instructions** - The Government has requested all the State/UT Governments to strengthen implementation of the Act and take timely steps to stop use of illegal sex determination.
- **Leadership order** - Hon'ble Prime Minister has urged the Chief Ministers of all the States to provide personal leadership to reverse the declining trend in child sex ratio and address the neglect of the girl child through focus on education and empowerment
- **Serious and effective implementation of Law** - Ministry of Health & Family Welfare has intensified efforts to exhort the States and UTs to pay utmost attention to serious implementation of the PC&PNDT Act.
- **Regular meetings** - The Central Supervisory Board (CSB) under the PNDT Act has been reconstituted and regular meetings are being held.
- **Advertisement on websites** - Matter has been taken up with the Ministry of Communication and Information Technology to block sex selection advertisement on websites.
- **The National Inspection and Monitoring Committee** - NIMC have been reconstituted and inspections of ultrasounds diagnostic facilities have been intensified. Inspection have been carried out in many states including Bihar, Chhattisgarh, Delhi, Haryana, Madhya Pradesh, Maharashtra, Odisha, Punjab, Uttarakhand, Rajasthan, Gujarat and Uttar Pradesh.
- **Financial support by government** - The Government is rendering financial support to the States and UTs for Information, Education and Communication campaigns and for strengthening structure for the implementation of the Act under the National Rural Health Mission.
- **Campaigns** - States have been advised to focus on District/Blocks/Villages with low Child Sex Ratio to ascertain the causes, plan appropriate Behaviour Change Communication campaigns and effectively implementation provisions of the PC&PNDT Act.
- **Role of Print Media and Electronic Media** - States are undertaking various Information, Education and Communication (IEC) activities to create awareness about the Act including public messages through print & electronic media, capacity building workshops for programme managers and judicial officers, Grant in Aid to Non - Governmental Organizations for community

mobilization and involvement of religious leaders for awareness generation etc.

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