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Female Foeticide: Core of Gender Inequality

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Abstract:

India has always possessed the hateful legacy of killing female child. Now, it is given a sophisticated aura of education by the perverse use of technology. The advancement in medical science has been widely and grossly misused rather abused in the Indian orthodox, conservative society. The popularity of female deselection in India could be attributed to various reasons. Our Indian society is patriarchal in nature with inborn desire for the male child. This desire along with the many prevailing superstitions, leads to indiscriminate abortion of female fetuses. There is a belief by certain people that female children are inherently less worthy because they leave home and family when they marry. The girl is considered as a liability on account of dowry. At present there are three laws aiming to prevent the evil practice of female foeticide. These are Indian Penal Code, 1860, Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Techniques (prohibition of sex selection) Act, 1994. We have laws but we are not implementing them strictly. No effort for a good cause ever goes in vain. So let us stand against the evil of female foeticide to save this endangered species.

Prabhuji mai tori binti karu
Paiyan paru bar
Agle janam mohe bitiya na dije
Narak dije chahe dar

1. Introduction

These are lines from the folk song of state of Uttar Pradesh, India in which a woman is asking for a favor from God that in next birth do not give me daughter give me hell instead. Female infanticide is not uncommon in Indian society and is still prevalent in certain parts of the country. But with the advancement of modern technology, its practice has taken a different shape. India has always possessed the hateful legacy of killing female child. Now, it is given a sophisticated aura of education by the perverse use of technology. This advancement in medical science has been widely and grossly misused rather abused in the Indian orthodox, conservative society. Amniocentesis, which is most commonly used to detect sex of child, first conducted in India in 1974 as a part of sample survey by All India Institute of Medical Science [AIIMS] to detect foetal abnormalities.

These tests were stopped by Indian Council for Medical Research but their value had been leaked and 1979 saw the first sex determination clinic opening up in Amritsar, Punjab. Even though women organisations across the country took up cudgels to get rid of this menace, in the face of Medical Termination of Pregnancy, they were helpless. This was because the amniocentesis was claimed to detect foetal malformation. Since then, the test has become extremely popular and has led to mushrooming of private clinics.

2. Female Foeticide: Meaning

Foeticide is a practice that involves the detection of an unborn baby in the womb of the mother and the decision to abort it if the sex of the child is detected as girl. This could be done at the behest of the mother, or father or both or under family pressure.¹

The word foeticide is combination of two words, foetus and cide. The word foetus has been defined by Pre Conception and Pre Natal Diagnostic Techniques Act, 1994 as a human organism during the period of its development beginning on 57th day following fertilization or creation (excluding any time in which its development has been suspended) and ending at birth. The word cide means to kill and therefore, female foeticide means killing of female foeticide.

Its sex induced abortion. To supporters female foeticide appears to be solution to a number of problems like population control, dowry deaths, and bride burnings and so on. They believe that reduced sex-ratio will lead to an improvement in the status of women and dowry may be replaced by bride price.

¹Sharma Chetan and Jain Divya, "Technology and its impact on female foeticide in India", May 2005: Source: <http://www.govtech.net/digitalcommunities/story>.

3. The Root Cause of Female Foeticide

The popularity of female deselection in India could be attributed to various reasons. Our Indian society is patriarchal in nature with inborn desire for the male child. This desire along with the many prevailing superstitions, leads to indiscriminate abortion of female foetuses. There is a belief by certain people that female children are inherently less worthy because they leave home and family when they marry. The girl is considered as a liability on account of dowry. Mostly couples are obsessed with two kid's family, one of which must be must be son. Three major factors of female foeticide are:

1.1. Economic Utility

The factor as to economic utility is that sons are more likely than daughters to provide for family business, earn wages and give old age support to parents. Upon marriage, a son brings an economic reward through dowry payments while daughters get married off and merit an economic penalty through dowry charges. Male child preference plays pivotal role in encouraging female foeticide. The normative preference for the male child emanates from gender typed roles, male inheritance and descendency.

1.2. Socio-Cultural Utility

The socio-cultural factor of female foeticide is patrilineal and patriarchal system of families in which having at least one son is mandatory in order to continue family line. Daughter is considered as praya-dhan, as she has to leave her parents' home after marriage. Dowry system is crucial in preventing the birth of a girl child. The female child is killed not because those families cannot bring the baby up but else parents are afraid that they have to meet heavy expenses for ceremonies related with wedding of the girl child.

1.3. Religious Factors

Religion is a complex phenomenon and it influence human psychic. All religions have accorded an inferior status to women. Manu, the Hindu law giver advised that women should be guarded day and night. One major factor responsible for female deselection is that only sons according to Hindu tradition are supposed to kindle the funeral pyre of their late parents and also post death of parents there are some rites which can be performed only by sons. In certain communities, women are not even allowed to accompany the funeral to the cremation ground.

4. Female Foeticide in Punjab

The female ratio in Punjab is probably the lowest in India. We have only 798 females over 1000 males. According to 2001 census every fifth child in Punjab is missing. The preference for a male over female child is due to its marital and agricultural tradition. Punjab has always demanded son who go into battle or plough fields during peace time. There is a strong male preference in the society because sons carry family names. Ladies prefer male child to get better respect and treatment from her in-laws. Maximum number of cases of female foeticide are recorded in Amritsar, followed by Hoshiarpur, Mansa, Ropar while the minimum was in Kapurthala.

There is an urgent need to stop female foeticide in Punjab otherwise there would be serious consequences for the boys. Days are not far off when our boys would have to remain unmarried. Moreover, a society with preponderance of unmarried young men is prone to particular dangers. More women are likely to be exploited, increase in molestations and rape cases are an obvious result. The sharp rise in sex crimes in Delhi have been attributed to the unequal sex ratio.

5. Legislative Mechanisms to Curb Female Foeticide

At present there are three laws aiming to prevent the evil practice of female foeticide. These are Indian Penal Code, 1860, Medical Termination of Pregnancy Act, 1971 and the Pre-Natal Diagnostic Techniques (prohibition of sex selection) Act, 1994.

5.1. Indian Penal Code, 1860

Sections 312 to 315 of chapter XVI of the code deals with illegal miscarriage and punishments. These sections do not deal with natural abortions. By term abortion we mean termination of pregnancy before independent viability of the foetus has been attained.² These sections of IPC deals with forced abortions not carried out in good faith. Even the women who causes herself to miscarry, is within the meaning of the section 312. Severe punishments are provided in the IPC to deal with such criminals. Mostly illegal abortions are carried out by quacks who do not know much about the termination of pregnancies.

In *Tulsi Devi v. State of U. P.*³, the accused woman kicked a pregnant woman in her abdomen resulting in miscarriage. Her conviction under section 313 of IPC was sustained by the court.

In *Jacob George v. State of Kerala*⁴, a homeopath operated upon a pregnant woman to cause abortion but she died within few hours of operation. His conviction under section 314 of IPC was upheld because under IPC it makes no difference whether the person causing abortion knows that death would cause. The Apex Court also fined rupees one lakh and ordered to be deposited in the name of the

² Encyclopedia Britannica, published by Encyclopedia Britannica Inc. Chicago, Vol-I, 1996.p.42.

³ 1996 CrLJ 940(All).

⁴ (1994) 3 SCC 430.

minor son of the deceased. The court also emphasized the need for awarding compensation liberally but reasonably to meet the ends of justice.

5.2. *The Medical Termination of Pregnancy Act, 1971*

The high risk involved in abortions of unwanted child or girl child from unqualified medical practitioners prompted the parliament to make a law to regulate the termination of pregnancy and to allow termination only in certain cases and that too by qualified registered medical practitioners.

The act contains eight sections dealing with various aspects of in which pregnancy can be terminated. The act makes ample clear that pregnancy can be terminated only where the length does not exceed 12 weeks and it can be terminated by two registered medical practitioners where length exceeds 12 weeks but not 20 weeks. Also, it can be terminated where pregnancy is a result of rape or where pregnancy results due to failure of any device or method used.

Consent of pregnant woman has been made essential and where she is minor or lunatic written consent of her guardian is essential. Pregnancy can only be terminated only at a hospital established or maintained by government or a place approved by the government for the purpose. Section 5(2) of the act creates a specific offence where pregnancy is terminated by an unregistered medical practitioner. This is an independent offence and does not in any way affect the provisions of Indian Penal Code.

5.3. *Pre-Natal Diagnostic (Regulation and Prevention of Misuse) Act, 1994*

This Act regulates the use of pre-natal sex determination technique. It permits the use of pre-natal sex determination technique only for the purpose of detecting genetic or chromosomal disorders or certain congenital mal-formations or sex linked disorders and not for the purpose of killing the female child in the mother's womb. Communication of sex of the foetus by words, signs or in any other manner to the concerned pregnant woman or her relatives or to any person is prohibited under this act. The said Act provides that pre-natal sex determination technique shall be used only if:

- the age of pregnant woman is above 35 years or
- she has undergone two or more spontaneous abortions or
- she has been exposed to potentially teratogenic agents such as drugs, Radiation, infection or chemicals or
- she or her spouse has a family history of mental retardation or physical deformities or any other genetic disease or
- Any other condition as may be specified by the Central Supervisory Board.⁵

Arvind Kumar, the collector of Hyderabad has illustrated the power of the act. Hyderabad had the lowest child sex ratio (0-6 years) in Andhra Pradesh. After taking over in 2004 he tracked down all 389 clinics in the city and took action. 361 ultrasound scan centres were issued notices for non-compliance with the Act. Licenses of 91 centres were cancelled. 83 machines were seized and 71 released after an undertaking and fine. Three suppliers were prosecuted for supplying machines to clinics with no registration licenses.⁶

6. Judicial Concern

Activists through intervention of the Supreme Court are compelling state governments to initiate action against ultrasound centres encouraging female foeticide. The Indian Medical Association too has called for action against doctors helping in such sex selection procedures. Activist Sabu George says:

*The problem with foeticide is that doctors are promoting and encouraging it. It is one organised crime against women encouraged by professionals.*⁷

Expressing its concern, an NGO, CEHAT, filed a Public Interest Litigation highlighting this issue and Supreme Court also moved in *CEHAT v. Union of India*⁸ to stop illegal sex determination and directed all States to confiscate ultrasound equipment from clinics that are being run without licenses. When it came into notice of the court that State Governments are casually granting licenses to the ultrasound clinics the court said:

The authorities should not grant certificate of the registration if the application form is not complete.

Also the court asked the manufacturers of ultrasound machines to give names and addresses of the clinics and persons in India to whom they sold these machines.

Also in *CEHAT v. Union of India*⁹ further directions were issued by the Supreme Court in which the Centre and State Governments were directed to issue advertisements to create awareness in the public that there should not be any discrimination between male and female child, and to publish annually the reports of the appropriate authorities for the information of public¹⁰.

⁵S.C. Tripathi and Vibha Arora, *Law Relating to Women and Children*, Allahabad: Central Law Publications, 2006. p263

⁶ http://www.unicef.org/india/media_3285.html.

⁷ The times of India, dated May7, 2002

⁸ (2001) 5 SCC 577

⁹ (2003) 8 SCC 398

¹⁰ Mamta Rao, *Law Relating to Women and Children*, Lucknow: Eastern Book Company, 2005. p136

7. Insufficient Laws

Pre-natal sex detection was outlawed in India in 1994 but the practice remains rampant. A recent study revealed that India lost 10 million girls over the last two decades. It is estimated by 2020 there could be more than 25 million young 'surplus males' in India. All of whom will be unable to find wives.

The Pre-Natal diagnostic Act, 1994, focuses only on the regulation and control of the pre-natal sex determination techniques and not on the access to abortion in any form. That is, the Act does not concern itself with selective abortion of female foetus as such, but rather, with medical procedures to detect the sex of the foetus. Moreover, pre-natal sex determination techniques are not completely banned; these can be used in specific cases mentioned above. The police have no role to play in the implementation of the Act. Also the penal provision in the Act is not strong enough to act as a proper deterrent. After the enactment of the Act in 1994, first conviction was in the year 2006 where a doctor and a lab technician were sentenced to two year of imprisonment under the Act.

Under the Medical Termination of Pregnancy Act, 1971 government has conceded that the abortion may be carried out certain cases. The Act aims to give protection to physical and mental health of the pregnant woman and her child. So abortions are not completely banned and also it is not possible to do the same. Since the foetus is done away with in secrecy there is no one left to complain about the breach and there is no witness on whose statement a case can be registered. The problem lies in the fact that there is no effective enforcement machinery which can implement laws properly.

There is no use of having laws when we cannot enforce them. This amounts to just a silver lining around the dark clouds of misery and helplessness.

8. Suggestions

Female foeticide can be stopped by improving the status of women in the society by controlling social evils like dowry. Control over doctors and scanning centres should go hand-in-hand with seminars and conferences to create awareness among the people regarding the maintenance of the sex ratio. Families that are encouraging female foeticide must be severely punished by out casting them and treating them as untouchables. Spiritual leaders bearing great significance and influence over the masses should declare female foeticide as a sin. Most of the efforts should come from the women themselves who must learn to stand up and fight their battles. Women should come forward and curb this menace in her different roles as a daughter, mother and mother-in-law. As a daughter she can nourish the perception of the family, in the role of mother she should herself give priority to the birth of a girl child. As a mother-in-law she should not only denounce dowry but also support daughter-in-law's decision to bear a female child. Families that treat girls as liability should be handled psychologically. This being a male dominated society, men should now play a major role in changing social attitude beginning with their own mothers and wives.

9. Conclusion

The parliament in its wisdom attempted to check the misbalancing sex ratio but the provisions of law need to be more gender sensitive. There is still a big question mark as to who will serve as a watchdog to control female foeticide. This problem must be crushed with strong iron hands. We have laws but we are not implementing them strictly. No effort for a good cause ever goes in vain. So let us stand against the evil of female foeticide to save this endangered species.

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