



A STUDY ON FEMALE FOETICIDE IN INDIA

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Abstract: Women are murdered all over the world. But in India a most brutal form of killing females takes place regularly, even before they have the opportunity to be born. Female feticide--the selective abortion of female fetuses--is killing upwards of one million females in India annually with far-ranging and tragic consequences. In some areas, the sex ratio of females to males has dropped to less than 8000:1000. Females not only face inequality in this culture, they are even denied the right to be born. Why do so many families selectively abort baby daughters? In a word: economics. Aborting female fetuses is both practical and socially acceptable in India. Female feticide is driven by many factors, but primarily by the prospect of having to pay a dowry to the future bridegroom of a daughter. While sons offer security to their families in old age and can perform the rites for the souls of deceased parents and ancestors, daughters are perceived as a social and economic burden. Prenatal sex detection technologies have been misused, allowing the selective abortions of female offspring to proliferate. Legally, however, female feticide is a penal offence. Although female infanticide has long been committed in India, feticide is a relatively new practice, emerging concurrently with the advent of technological advancements in prenatal sex determination on a large scale in the 1990s. While abortion is legal in India, it is a crime to abort a pregnancy solely because the fetus is female. Strict laws and penalties are in place for violators. These laws, however, have not stemmed the tide of this abhorrent practice. This article will discuss the socio-legal conundrum female feticide presents, as well as the consequences of having too few women in Indian society.

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Introduction:

A poll by the Thomson Reuters Foundation found that India is ranked the most unsafe country for women. Their culture of perpetuating female inferiority and subordination contributes to a vicious cycle of mass sex-selective abortions and female feticide, which has exacerbated crimes against women. Sex-selective abortions, also known as female feticides, occur when female fetuses are aborted due to a cultural preference for sons. In India, the cause for female feticide is the overwhelming belief that women have less societal value than men. A lack of education among women, insufficient female leadership, and negative perceptions of women as "economic burdens" contribute to this view.

History of Female Feticide

Professor Anibel Ferus-Comelo, a professor at the UC Berkeley Goldman School of Public Policy specializing in labor and gender studies in India,

explained that "before technology, it used to be that births were just 'hidden' because of female infanticides. Baby girls were killed, and it continues among the population that cannot afford or do not have access to technology or medical clinics."

In the 1970s, medical diagnostic testing using ultrasounds became available to determine the sex of a fetus during pregnancy. Using high-frequency sound waves, ultrasounds can display accurate images of a fetus within the mother's uterus to understand fetal health, positioning, and visualize potential problems during pregnancy. However, a tool meant to help families prepare for a new life exacerbated India's existing infanticide issue. Since sex determination technology became available in the 1970s, India is estimated to have about 63 million fewer women.

Female feticide based on sex-determination testing is a relatively new practice. It skyrocketed in India around the 1990s when ultrasound technology

became widespread among upper-class and upper-caste society members. When the Indian government became aware of this technology, they passed the Pre-Conception and Pre-Natal Diagnostic Techniques Act (1994), which made it illegal to determine the sex of a fetus unless it was necessary for urgent medical reasons. Despite the illegality of sex determination testing in India, this policy's efficacy varied upon jurisdictional enforcement, which resulted in the continuation of mass sex-selective testing and abortions. As a result, it is estimated that there will be 6.8 million fewer female births by 2030, precisely due to the consistent practice of sex-selective abortions.

Abortion of female foetus is called female foeticide. This is a major social problem in India and has cultural connections with the dowry system that is ingrained in the Indian culture, despite the fact that it has been prohibited by law since 1961. In India, unlike any Western culture, strong preference for sons over daughters exists. Pregnancies are planned by resorting to differential contraception - contraception is used based on the number of surviving sons irrespective of family size. Following conception, foetal sex is determined by pre-natal diagnostic techniques after which female foetuses are aborted. Foetal sex determination and sex-selective abortion by medical professionals has grown into 1,000 crore industry (US\$244 million). Social discrimination against women and a preference for sons have been promoted. Since 1991, 80% of districts in India have recorded an increasingly masculine sex ratio with the state of Punjab having the most masculine sex ratio. According to the decennial Indian census, the sex ratio in the 0-6 age group in India went from 104.0 males per 100 females in 1981, to 105.8 in 1991, to 107.8 in 2001, to 109.4 in 2011. The ratio is significantly higher in certain states such as Punjab and Haryana.¹

Magnitude of The Problem

It is estimated that more than 10 million female foetuses have been illegally aborted in India. Researchers for the Lancet journal based in Canada and India stated that 500,000 girls were being lost annually through sex-selective abortion-natal sex-determination was banned in India in 1994, under the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act. The act aims to prevent sex-selective abortion, which, according to the Indian Ministry of Health and Family Welfare, "has its roots in India's long history of strong patriarchal influence in all spheres of life." It is most prominent in Gujarat and the North Indian states, which according to census data³ have an alarmingly

low ratio of female children. Certain castes regularly practiced female infanticide and later female foeticide. The castes with a much lower proportion of female children to male children included lew apatidars and the rajputs in Gujarat; I, Khutris and Moyal Brahmins in undivided Punjab, and Rajputs & Gujars in UttarPradesh.

Origin

This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was tendency for families to continuously produce children until a male child was born. This was primarily due to the large sexist culture that exists in India against women. This is reflected by literacy rates among women as well as economic participation, which are both particularly low in states where female foeticide is prominent and an unequal population ratio exists alongside. The government initially supported the practice to control population growth. The Preconception and Prenatal Diagnostic Techniques (PCPNDT) Act was passed in 1994, making sex-selective abortion illegal. It was then amended in 2003 holding medical professionals legally responsible. However, the PCPNDT Act has been poorly enforced by authorities.

Causes

1. The root cause of female foeticide is the dowry system in our society. A number of girls are killed inside the womb due to fear of dowry by many poor class families. They are worried about giving the dowry during the marriage of their girls, which poor people can't afford.

2. Girls are considered as financial obligation by many parents. They conceive that money spend on a girl will be total waste as she will go to her in-law's home after the marriage. According to Hindu's mythology, birth of a boy is considered as path to heaven. Being trapped in such orthodox ideas the girls are put to death before their birth.

3. The other root cause of female foeticide is rise in the inflation. Due to rise in inflation parents think hundred times before giving birth to a girl child. They worry about the educating and marrying their daughter.

4. The advancement in technology is the major cause of female foeticide. Nowadays parent determines the sex of a child before birth and kill if not according to their choice.

5. Corruption is another major factor in the rise of female foeticide. Some of the doctors do this heinous act to fulfill their moneydesire.

Consequences And Social Effects of Female Foeticide

Due to female foeticide there is steep decrease in the female's population. Due to which it is becoming difficult to find girls for marriage. This in turn leads to girl's trafficking. According to news girls from Assam and West Bengal are kidnapped and sold in Haryana for marriage, where the child sex ratio is least in the country. Due to diminution in the female's population our society is becoming male dominant, which is not a good indication. As the decrease in number of women, men consider themselves more superior and above law, which in turn results in women's exploitation. Female foeticide has led to an increase in human trafficking. In 2011, 15,000 Indian women were bought and sold as brides in areas where foeticide has led to lack of women.

Control Mechanism

1. There should be registration of all the nursing homes and rigorous action should be taken against the defaulters.

2. Government must deploy national wide campaign to spread cognizance among the people. They should aware the people about the importance of girls and should not consider them as stigma to their families.

3. More reservation should be given to the girls in education. Government should provide financial support to those families who are not able to educate their children.

4. Proper measures should be taken to implement anti dowry law and culprits should be punished. Government should provide financial support for the marriage of girls belonging to poor families.

5. Emphasis should be given to women empowerment. Women education will help in eradicating this problem. As the women will become independent, they can take decision according to their volition.

6. There is a need of remove the myth of son preference from our society only then this problem can be tackled.

Creating Social Awareness

Increasing awareness of the problem has led to multiple campaigns by celebrities and journalists to combat sex-selective abortions. Aamir Khan devoted the first episode Daughters Are Precious of his show Satyamev Jayate⁴ to raise awareness of this widespread practice, focusing primarily on Western Rajasthan, which is known to be one of the areas where this practice is common.⁹ Rapid response was shown by local government in Rajasthan after the

airing of this show, showing the effect of media and nationwide awareness on the issue. A vow was made by officials to set up fast-track courts to punish those who practice sex-based abortion. They cancelled the licenses of six sonography centers and issued notices to over 20 others. This has been done on the smaller scale. Cultural intervention has been addressed through theatre. Plays such as Pacha Mannu, which is about female infanticide/foeticide, has been produced by a women's theatre group in Tamil Nadu. This play was showing mostly in communities that practice female infanticide/foeticide and has led to a redefinition of a methodology of consciousness raising, opening up varied ways of understanding and subverting cultural expressions. The Beti Bachao, or Save girls campaign, has been underway in many Indian communities since the early 20th century. The campaign uses the media to raise awareness of the gender disparities creating, and resulting from, sex-selective abortion. Beti Bachao activities include rallies, posters, short videos and television commercials, some of which are sponsored by state and local governments and other organizations. Many celebrities in India have publicly supported the Beti Bachao campaign.

Laws In India For The Unborn

The Constitution of India, 1950 Section 312 of the Indian Penal Code 1860 read with the Medical termination of Pregnancy Act, 1971 where all the restrictions imposed therein, including the time limit of 20 weeks, other than the ones to ensure good medical conditions, infringe the right to abortion and the right to health, which emanate from right to life as guaranteed under Article 21 of the Constitution. Right to abortion is a species of right to privacy, which is again proclaimed a continuance of the right to life under Art 21 of the Constitution.

The Indian Penal Code, 1860 Sections 312-316 of the Indian Penal Code (IPC) deal with miscarriage and death of an unborn child and depending on the severity and intention with which the crime is committed, the penalties range from seven years of imprisonment and fine to life imprisonment.

Section 312. Causing miscarriage

Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which

may extend to seven years, and shall also be liable to fine. Explanation:-A woman who causes herself to miscarry, is within the meaning of this section.

Section 313. Causing miscarriage without woman's consent

Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years.

Section 314.

Death caused by act done with intent to cause miscarriage Whoever, with intent to cause the miscarriage of woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

If the act is done without the consent of the woman, shall be punished either with [imprisonment for life] or with the punishment above mentioned. Explanation: - It is not essential to this offence that the offender should know that the act is likely to cause death.

Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth.

Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years or with fine.

Section 316. Causing death of quick unborn child by act amounting to culpable homicide

Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years.

The Medical Termination of Pregnancy Act, 1971

The Medical Termination of Pregnancy Act, 1971 was conceived as a tool to let the pregnant women decide on the number and frequency of children. It further gave them the right to decide on having or not having the child. However, this good intentioned step was being misused to force women to abort the female child. In order to do away with the

lacunae inherent in previous legislation, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was passed in 1994, which came into force in January 1996. The Act prohibited determination of sex of the foetus and stipulated punishment for the violation of provisions thereof. It also provided for mandatory registration of genetic counselling centres, clinics, hospitals, nursing homes, etc.

The Pre-Conception And Pre-Natal Diagnostic Techniques (Regulation And Prevention of Misuse) Act, 1994

To combat the practice of female foeticide in the country through misuse of technology, done surreptitiously with the active connivance of the service providers and the persons seeking such service, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted on September 20, 1994. The Act was amended in 2003 to improve regulation of technology capable of sex selection and to arrest the decline in the child sex ratio as revealed by the Census 2001 and with effect from 14.02.2003, due to the amendments, the Act is known as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.

Its Purpose:-

The main purpose of enacting the PC&PNDT (prohibition of Sex Selection) Act, 1994 has been to:

- i. Ban the use of sex selection techniques before or after conception.
- ii. Prevent the misuse of pre-natal diagnostic techniques for sex selective abortions.
- iii. Regulate such techniques Stringent punishments have been prescribed under the Act for using pre-conception and pre-natal diagnostic techniques to illegally determine the sex of the foetus.

Root Causes Behind Female Feticide

Sex-selective abortions and female feticide are rooted in Indian patriarchal perceptions. From a cultural standpoint, Indian boys maintain the family legacy as they carry the family name and typically perform funeral rites for their parents, allowing their souls to have safe passage. These perceptions have bolstered the mentality that parents should value their sons and treat them with more pride and respect than Indian girls who are less valued in society. Although this view has become outdated among more globalized nations, India's urban and rural areas continue to believe that women should be confined to their roles as caretakers and mothers.

Economically, boys have always been viewed as the “breadwinners” of the family. They have held the burden of getting a job and providing for their family. However, girls have continually been viewed as an economic burden, especially during marriage. In India’s rural areas, it is still common for girls to get married at a very young age. According to Girls Not Brides, a global partnership that aims to end child marriage, about 27% of girls in India are married before turning 18. When girls are married, their parents are expected to pay a “dowry” to the groom’s family, which is essentially a payment in cash, food, household items, and clothes. Professor Ferus-Comelo mentioned that dowries are “a very degrading practice. It almost symbolizes that you have to pay someone to take your daughter.” She further elaborated that the practice continues to be maintained, except that “Dowries are not necessarily called ‘dowries,’ but sometimes they are called ‘gifts,’ and that there are many other nomenclatures and euphemisms for them.” Once married, daughters are expected to take their husbands’ last name and move in with their family to begin their role within the home. As a result, young girls are often not well-informed, confident, or financially independent enough to make educated decisions about pregnancy and children.

The political culture in India further exacerbates the perception that women should be treated inferiorly. In the 1980s, political propaganda in India and the United States portrayed slogans such as “Pay 5,000 now, save 50,000 later” directed towards South-Asian communities to encourage them to pay the cost of sex-determination technology than having a daughter and bearing an economic cost in the future. Professor Ferus-Comelo remarked that, “The same ads, now decades later, have come back with the clinics offering the same possibilities, and it shows that there is still a market for sex-selective abortions even in the United States.” She also explained that the rise of the Hindu political right has furthered, “notions of womanhood tied exclusively to the heteronormative wife and mother roles. This then restricts women’s abilities to break out of these molds.”

Objectively, the preference for sons over daughters is further supported by data. Boys are more likely to receive higher quality medical treatment and food. On the contrary, girls have less access to quality healthcare, education, and work. The problem of female feticide in India is multifaceted with cultural, economic, and political factors, and each aspect reinforces the attitude that women’s lives should be valued less than men’s.

The Legality of Abortion in India

Both government and private entities provide healthcare services in India. However, government services are rare and lack the high quality of treatment, while private services provide a high standard of care but are not affordable to most of the population. Furthermore, Indian health insurance is not mandatory, and employers do not have a legal obligation to provide insurance to their employees. As a result, 70% of the population does not have health insurance, meaning that they have to pay for most services and procedures out-of-pocket.

Abortion is one of these procedures. Abortion is legal in India, but sex-selective abortions, abortions solely based on the sex of the fetus, are illegal. Legal abortions are performed strictly at the discretion of the physician. The woman does not have the right to choose whether she would like to have an abortion. A physician can perform a legal abortion if the fetus has any abnormalities, if the pregnancy is life-threatening to the mother or the fetus, if pregnancy occurred due to the failure of contraception in married women, and if the pregnancy resulted from instances of sexual assault or rape. In India, legal abortions can be performed within the first seven weeks of pregnancy using an abortion pill in the presence of a medical professional. However, after the first seven weeks have passed, surgery is required to abort a fetus to maintain the safety of the woman’s life. Insurance companies would cover some medical costs only if the pregnancy were terminated due to a medical threat to the woman’s life. Otherwise, the woman has to bear the total economic cost.

This raises an important question: why do women not have the autonomy to make decisions about having an abortion? Autonomy is not simply about making individual choices, but it also involves economic autonomy or independence. Even if a woman wants to have an abortion for medical reasons but cannot afford to, she may have to turn to unsafe or illegal options. Obviously, due to the illegal nature of sex-selective abortions, a woman’s only option is to use illegal or unsafe methods.

Exacerbation of Life-threatening, Sex-Selective Abortions by the Pandemic

Although abortion in India is legal, illegal abortions currently outnumber them because most abortions in India are solely based on the fetal sex preference for boys. Almost ten women die every day of unsafe, illegal abortions in India. According to India’s health ministry, nearly half of abortions are conducted in hazardous and unhygienic conditions and are often performed by untrained physicians or healthcare professionals.

Since sex determination tests are illegal within India, many women opt-in for diagnostic testing (conducted illegally by gangs), take sex selection drugs (SSDs), or try “old-wives tale” remedies to change the sex of the fetus after conception. Still, many women are unaware that the fetus’s sex is determined during the fertilization of the egg by sperm and cannot be changed after that. The mother donates an egg, which always contributes an X chromosome to the fetus’s genome, while the father’s sperm can contribute either an X or a Y chromosome. If the sperm contributes an X chromosome, the fetus will be a girl, while a Y chromosome indicates that it will be a boy. Not only are many women uninformed about this concept, but they take harmful drugs containing synthetic chemicals and heavy metals that often result in congenital disabilities and stillbirths.

Social Impact of a Skewed Sex Ratio

Studies show that countries with imbalanced sex-ratios tend to have a more violent culture. According to Professor Ferus-Comelo, “crimes against women, particularly by upper-caste on the lower-caste, continues when the signal goes out from the top-down that violence is okay and that they deserve it because they are beneath our level.” This can be observed in India’s north and northwestern states where the highest gender disparities exist and power is centralized among criminal gangs called goondas. Studies have shown that when there is an enormous surplus of men within countries with a skewed sex ratio (30+ million within India), they are unlikely to obtain stability economically through labor or socially through marriage. To gain economic stability, men are more likely to join criminal gangs. In order to gain social stability, men seek out marriage. However, in some areas where the ratio of women to men is alarmingly low, men cannot find girls to marry. As a result, brides are “purchased” from other areas leading to forced marriages and human trafficking. Professor Ferus-Comelo remarked that, “one would think, logically, that if there are fewer women, their value actually rises. Their value in the marriage market should increase. But, that is not the case.”

COVID-19 has exacerbated this issue as women are more likely to seek unsafe or illegal abortion options since medical professionals and resources have been redirected to help combat the pandemic. Even before the pandemic, domestic violence has been an immense problem in India. In 2018, “Cruelty by Husband or His Relatives” accounted for 32% of all crimes against women registered by the police amounting to over 100,000 cases. Due to quarantine orders, women are more

likely to be trapped with abusive partners or lack access to contraception. Many Indian women who are victims of domestic violence have limited education and are usually unable to be financially independent. They have inadequate options and resources because they cannot turn to their parents due to social stigmas, or their parents cannot take them in due to financial burdens. However, the future looks optimistic as more organizations such as Shakti Shalini, Rise Up, and SNEHA Crisis Helpline are working to provide health and sexual education to girls and women in India to inform them about safe sex practices, contraception, and resources for domestic violence survivors.

Solutions

Professor Ferus-Comelo explained that as more young people become exposed to other cultures and lifestyles, “people have higher expectations of one’s own culture.” She continued to explain that, “there has been a very positive, inspiring awakening of women when their worlds have been constrained, and they know there is greater potential.” The only way to combat the issue of such a complex problem of female-feticide is to solve the root causes: skewed political propaganda, and a lack of economic opportunities, and unenforced legislation.

South Korea, which also faced a severely skewed sex-ratio, implemented solutions that have shown promising results, and many Indian government officials are looking to emulate their approach. They improved, enacted, and strictly enforced laws that prohibited female feticide, encouraged and provided opportunities for more women to enter the labor force, and used the media to mobilize support for their initiatives.

India should work to allocate more resources to better enforce the Prohibition of Sex Selection Act. Although the government launched a similar campaign in 2015, it was unsuccessful. To improve their efforts, experts recommend that the government should charge doctors who conduct illegal sex determination testing with hefty fines and strengthen detection for illegal clinics and services provided by gangs.

Most importantly, the government should promote women’s education, provide better opportunities for women to enter the labor force, enable more women to serve political positions, and enact equal inheritance laws. Furthermore, health education on domestic violence awareness and safe sex practices should also be provided for men. Female education is one of the most influential factors in reducing gender discrimination and sexual violence. Studies prove that exposure to female

leadership leads to a significant decrease in the gender gap for educational attainment (32%). Moreover, introducing cable television to India's rural areas and playing shows that had strong female characters or women in power caused preference for sons to decrease by 12% and school enrollment for children to increase by 5%. If women have better access to quality education, they can have better opportunities to enter the workforce and become financially independent. Professor Ferus-Comelo expressed that, "economic independence leads to less discrimination. If girls and women had equal access to wealth and income and legal inheritance rights, they could have a sense of economic independence, then these kinds of norms are going to change."

- [13]. Warren, M. A. (1991) Abortion included in A Companion to Ethics edited by Singer, P. Blackwell Publishers Limited.

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References:

- [1]. Blij, H. J.de (1995) Human Geography-culture, Society, and Space pp.199-213, 5th edition, John Willy and Son, Inc
- [2]. Brody, B. (1975) Abortion and Sanctity of human life: A Philosophical View, Oxford University Press
- [3]. Cahn, S. M. and Markie, P. (1998) Abortion and Infanticide, Oxford University Press
- [4]. Fellmann, J. D. et.al (2005) Human Geography- Landscape of Human Activities pp. 379-384 8th edition, McGraw Hill
- [5]. <http://en.wikipedia.org/wiki/Feticide>
- [6]. Glover, J.(1977) Causing Death and Saving Lives, Oxford University Press
- [7]. Johnston R.J. (ed.) 2005, The Dictionary of Human Geography pp. 290-290, 4th edition, Blackwell Publishing
- [8]. Panitch, L. and Leys, C. (ed.) 2009 socialist register 2009 -Violence Today Leftword books, New Delhi, the Merlin Press, London pp. 128-141
- [9]. Rachels, J. (1979) Moral Problems 3rd edition, New York University Press, Happer and Row Publishers, New York, Evanston, Sanfransisco, and London
- [10]. Singer, P. (1986), Practical Ethics, Oxford University Press
- [11]. Sumner, L.W.(1981): abortion and mortal theory
- [12]. Thompson, A. (1999) Critical Reason in Ethics, Routledge, London and New York 13. Tooley, M. (1984) abortion and infanticide, Oxford University Press