

Sociology of Female Foeticide and Infanticide. Where does the Law Stand?

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Abstract:

The continuity of human generations depends both on men and women. Children are considered the gift of God on earth. But the patriarchal social structure of Indian society continuously denies the rights of girl children both before and after birth. The preference of sons over daughters in a family has been the cause of decreasing sex ratios year by year in India with few exceptions in certain States. The traditions and customs supported by the religious superstitions, play a vital role in this regard. The advances in medical sciences have made it easy to identify the sex of a child even before the birth by misusing the technologies like amniocentesis, scanning and ultra-sonography. Initially these technologies were designed to detect abnormalities of the foetus, but now they are being misused for learning the sex of the foetus with the intention of aborting it if it happens to be that of a female. It is estimated that 5 million girls were eliminated between 1986 and 2001 because of foetal sex determination done by unethical medical professionals. The enactments of laws to curb this attitudinal and social problem have proved unsatisfactory. The present paper seeks to critically examine the growing problem of female foeticide and infanticide in India from the point of socio-legal dimensions.

1 Society is the systematic ordering of social relationships based on definite patterns. Both men and women together contribute to the continuity of human generations on earth. Nature designed both sexes for the perpetuation of the human races. Traditional India has always accorded full respect to women in every walk of life. The notion of *ardhangini* (better half in Hindus) suggests that there was equality between men and women; neither of the two being superior to the other [Prabhu 1958:22]. Majumdar [1961:206] has aptly remarked that the status of women in India can be more understood in the Indian ethnology than in that of religion or Brahmanism. During the Vedic era women enjoyed almost equal status with that of men. They were allowed to participate in the social affairs of the society except on few occasions. The daughters were awarded the same status in ancient texts. Though sons were given preferential treatment from the beginning, there have been instances where we find that the *Rigveda* praises the father of many daughters. *Matrika-Puja* should take place first; the *Kumari-Puja* was performed at the end of the all Vedic rituals [Upadhyay 1974:43]. Initiations of girls were common, and they were provided all sorts of facilities to develop their personality fully. Like their brothers the girls wore the sacred thread (*Upavita-Dharana*) and used to pass through the period of *Brahmacharya*. According to *Sarvanukra-manika* there were as many as twenty women who are credited with having composed the hymns of

the *Rigveda*. Apart from a literary career, women entered fields of teaching, medicine, business, defense and administration [ibid :44-46].

2 The traditional value system of Indian society, sex segregation, poverty and the growing problem of dowries - all these have created an atmosphere where females are often considered a nuisance. The result is a declining child sex ratio in succeeding census reports. The mentality and attitudinal problem at the level of society are directly responsible for occurrence of such gaps in the society leading to various kinds of other problems in the forms of violence, rape, foeticide, infanticide, marginalization, powerless, exploitation, cultural imperialism and traditional notion of polyandrous marriages to women of our contemporary society. Justice Iyer [1979:31] has aptly remarked:

The fight is not for women's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony, which never comes till woman comes.

3 The survey published by the Geneva-based World Economic Forum-better known for its annual business bash in Davos-shows that full economic and political empowerment remains a distant dream for million of women in much of the western world, let alone developing countries. Of the 58 countries covered by the survey, no country has yet managed to eliminate the gender gap but the Nordic states - Sweden, Norway, Iceland, Denmark and Finland - have "succeeded best" in narrowing it. They seem to provide a "workable model" for the rest of the world to follow. Other "female friendly" countries include Britain, Germany, New Zealand, Australia and, significantly, several East European countries where women still benefit from the support system built during the Communist era [Sinha, et al.2008:303].

4 To minimize the gap between man and woman, girl and boy, efforts have been made at an international level. Gender equality and the empowerment of women were considered one of the eight Millennium Development Goals by the United Nations Population Fund in 2001. The South Asian Association for Regional Cooperation celebrated the Decade of the Girl Child in order to confront discrimination against girls between 1991 and 2000. The UN Declaration of Rights of Children from 1959, which indicated that "the child, by reason of his physical and natural immaturity, needs special safeguards and care, including appropriate protection, before as well as after birth" was concretized into the UN Convention on Rights of the Child in 1989. India became signatory to the Convention in 1992.

5 Parity between men and women is much desired in order to minimize the gender gap at the level of society for the overall development of various aspects of society. The various census surveys carried out in India have the tradition of bringing out information by gender composition on various aspects of the population. Changes in gender composition have far-reaching and multi-dimensional effects in various directions. Sex ratio is defined as the number of females per 1000 males in the population and is an important social indicator to measure the extent of prevailing equity between males and females in a society at a given point of time. According to experts, sex differential in mortality, sex selective out migration and a skewed sex-ratio at birth are the major contributing factors that influence changes in sex-ratio. In a patriarchal society, the sex-ratio is skewed in favour of males and has continued to rise and expand. This is an alarming development, and it forces policy makers and planners of the country to reconsider their approaches.

6 The census data of 2011 revealed that the sex ratio has improved from 933 females per 1000 males in 2001 to 940 in 2011, the highest recorded sex ratio since the 1971. This can be explained by the greater natural longevity of women and improvement in health care over the years. As per the 2011 Census, the top five states/Union territories which have the highest sex ratio are Kerela (1,084) followed by Puducherry (1,038), Tamil Nadu (995), Andhra Pradesh (992) and Chhattisgarh (991). The five states which have the lowest sex ratio are Daman & Diu (618), Dadra & Nagar Haveli (775), Chandigarh (818), NCT of Delhi (866) and Andaman & Nicobar Islands (878). The table 1 and table 2 present the sex ratio of few selected countries at the world level to understand the trend and Empowered Action Group States in India respectively (data taken from Provisional Population Totals, Census 2001).

Table 1. Sex Ratios of Selected Countries

Country	Sex Ratio
Russian Federation	1,165
France	1,056
Japn	1,054
Germany	1,038
United Kingdom	1,037
South Africa	1,028
USA	1,026
Australia	1,011
Indonesia	1,003
Nigeria	995
Malaysia	970
Iran	968
China	927
India*	940

Table 2. Sex Ratios of India and Empowered Action Group States

Country/States	1901	1911	1921	1931	1941	1951	1961	1971	1981	1991	2001	2011
India	972	964	955	950	945	946	941	930	934	927	933	940
Chhattisgarh	1046	1039	1041	1043	1032	1024	1008	998	996	985	989	991
Orissa	1037	1056	1086	1067	1053	1022	1001	988	981	971	972	978
Uttarakhand	918	907	916	913	907	940	947	940	936	936	962	963
Jharkhand	1032	1021	1002	989	978	961	960	945	940	922	941	947
Madhya Pradesh	972	967	949	947	946	945	932	920	921	912	919	916
Rajasthan	905	908	896	907	906	921	908	911	919	910	921	926
Bihar	1061	1051	1020	995	1002	1000	1005	957	948	907	191	916
Uttar Pradesh	938	916	908	903	907	908	907	876	872	876	898	908

7 Children are considered to be the future of any society, as their development decides the progressive direction of any country and society. But prejudices in the form of so-called customs, traditions and attitudes towards female children can lead to an imbalance in the social structure of that society. And these shape the various social pathologies in the society. Gabriel Mistral , the Noble Laureate, said:

We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot, right now is the time his bones are being formed, his blood is being made and the senses are being developed. To him we cannot answer 'tomorrow'. His name is 'today'[Quoted by Bhat 2009:606]

Child sex ratio in the country as well as in Madhya Pradesh has shown a declining trend since the 1991 Census. Child sex ratio (0-6 years) at country level was 945 in 1991, 927 in 2001 and has now declined to 914 in the 2011 Census. In case of Madhya Pradesh, it was 941 in 1991, 932 in 2001 and now stands at 912 in 2011. Child sex ratio (0-6 years) at country level has declined by 13 points and in the state by 20 points during the period 2001-2011. This is the worst child sex ratio in the history of the country since the gaining of independence. This steep decrease in the child sex ratio has rung alarm bells across the country. This trend and scale of a decline in India is shocking. Higher levels of literacy and economic development, in addition to adoption of family planning measures, are important factors that have led to smaller family sizes causing a decline in the child population.

8 Among the States/Union Territories, the highest child sex ratio (0-6) is reported by Mizoram (971), followed by Meghalaya (970), Andaman & Nicobar Islands (966), Puducherry (965) and Chhattisgarh (964). On the contrary, States and Union Territories which have reported lowest child sex ratio (0-6 years) are Haryana (830) followed by Punjab (848), Jammu & Kashmir (859), NCT of Delhi (866) and Chandigarh. It is reflected that Chhattisgarh (964) has the highest child sex ratio (0-6 years) whereas Rajasthan (883) has the lowest child sex ratio in the 2011 Census among Empowered Action Group (EAG) States. Child sex ratio (0-6 years) of 8 EAG states for 2001 and 2011 presents the change during the decade. The child sex ratio (0-6 years) of Chhattisgarh is highest in both the censuses. Rajasthan has slipped to lowest among all EAG (Empowered Action Group) States in 2011, while Uttarakhand was the lowest in 2001. The table 3 details all this.

Table 3. Child sex ratio (0-6 years) for Empowered Action Group States: 2001-2011

SI. No.	EAG States	Child Sex Ratio (0-6 Years)	
		2001	2011
1	India	933	914
2	Chhatisgarh	975	964
3	Jharkhand	965	943
4	Orissa	953	934
5	Bihar	942	933
6	Madhya Pradesh	932	912
7	Uttar Pradesh	916	899
8	Uttarakhand	908	886
9	Rajasthan	909	883

The problem of child sex ratios is not uncommon in First world countries. It is also a growing problem in those countries where the technologies for sex selection originated. A declining sex ratio reflects gross discrimination against one sex within society. Daughters are always seen as burden because of dowry to be paid them and because any investment in them - for their nutrition, education, health, general well-being - will not help the natal family's future security.

9 The girl is always considered a part of another family, as only the son remains at the home. The son is considered the carrier of future generations in the name of the father. A daughter, once married, loses the familial bond to her parents, and thus does not carry future generations in the name of her family. The sociology of Indian society plays a major role in this regard, where it has been observed that parents who have girl children are not given many privileges in a typically traditional society. A woman without sons is considered barren and she risks being turned out of her marital home - a situation that has to be avoided no matter what the cost. A preference for sons is also necessary as he ensures the well-being of the parents in old age. Thus the son preference finds more and more expression in female foeticide and infanticide. The technological advancement in medical sciences paved the way for the determination of sex of the foetus. The noted economist Amartya Sen commented that a large number of women population is missing due to this development.

10 Female infanticide has been in practice since ancient times in the country. There are some prone areas in the country where this practice is considered a part of their custom and tradition. Kollor [1990] defines infanticide as "killing of an entirely dependent child under one year of age who is killed by mother, parents or others in whose care the child is entrusted". In recent years the misuse of ultrasound has reached remote tribal areas of

Rajasthan, Bundelkhand and emerged even in other parts of India where women were better treated such as Assam, Kerala and the Kashmir valley. The practice of female infanticide is documented to have existed in Europe in the early twentieth century and was found across Pakistan, West Asia, China and North Africa. The causes ascribed to that old practice include, besides the control of the population and socio-religious practices such as superstition and the disposal of handicapped/illegitimate babies, the gender-based selective killing of female children. One of the earliest records of female infanticide in India points to a clan of Rajputs in Uttar Pradesh, the discovery of which is credited to Jonathan Duncan, a British official posted in Northern India. Subsequent to this, the British Raj passed the Infanticide Regulation Act of 1870 to curb, among other variations, the widespread incidence of neonaticide (the killing of a baby within the first 24 hours of birth). (Lalitha Sridhar¹).

11 Foeticide can be seen everywhere in India, and it has become more common with the advent and easy availability of technology, such as amniocentesis and sonography, that enables the determination of the gender of the foetus. Despite government measures and laws against it, foeticide has not seen a decrease in its rate; on the contrary, it is increasing rapidly. The details of the cases of female infanticide are quite shocking. In Rajput families, “doodh pilana” is a common ritual reserved for newborn girls. Parents immerse the helpless child in a tub of milk until she chokes to death. In south Indian states like Tamilnadu, children are either fed the milk of poisonous plants or covered with a wet towel so that they die later of complications from cold. In Bihar, holding the baby from the waist and shaking it back and forth snaps the spinal chord. Sometimes a child is stuffed in a clay pot. Babies are also fed with salt to increase their blood pressure; death follows in a few minutes. Grains of paddy husk are also fed to slit the tender gullet. Furthermore, a change in the method of killing infants has been observed following the exhumation of bodies to get forensic evidence when it was suspected that an infant had been a victim of infanticide. People began to adopt methods such as starving the baby to death, which, unlike poisoning, leaves no forensic evidence as to the cause of death.²

12 Female foeticide and infanticide have been a growing social problem since ancient times. The solution for this must be a change in the social structure, rather than the implementation of laws. The socio-cultural environment, which denies reproductive rights to women, is a major factor. The efforts to control such biased and criminal acts as female infanticide gained momentum during the Colonial Era. The Regulation 21 of 1795 made

¹ Lalitha Sridhar, *Death Before Birth*, <http://www.islamonline.net/> (visited 26.09.2011)

² http://www.islamawareness.net/FamilyPlanning/Infanticide/fit_news001.html (visited 26.09.2011)

infanticide punishable in North-West provinces. The law on infanticide entered into the National legal framework, called Indian Penal Code. Infanticide is one form of homicide, attracting the application of Section 299 or 300 IPC. Section 317 of the Code also controls this crime. According to this provision, “whoever being father or mother of child under the age of 12 years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend seven years or with fine or both” [Bhat 2009:546]. Section 318 further states that, by secretly burying or otherwise disposing of the dead body of a child whether such child die before, after or during its birth, the person who intentionally conceals or endeavours to conceal the birth of such child is punishable with imprisonment for two years or with a fine or with both.

13 The statistics give a shocking picture of the situation. The Supreme Court observed in Centre for Enquiry into Health & Allied Themes (CEHAT)³:

It is unfortunate that for one reason or the other, the practice of female infanticide still prevails despite the fact that gentle touch of a daughter and her voice has soothing effect on the parents. One of the reasons may be the marriage problems faced by the parents coupled with the dowry demand by the so-called educated and/or rich persons who are well placed in the society. The traditional system of female infanticide whereby female baby was done away with after birth by poisoning or letting her choke on husk continues in a different form by taking advantage of advance medical techniques. Unfortunately, developed medical science is misused to get rid of a girl child before birth.

The law exists for the wellbeing of the people in the society but the same law can sometimes be misused at the same time in the name of this wellbeing, by the people. The enactment of the law in the form of the Medical Termination of Pregnancy Act from 1974 declared abortion legal under certain conditions during the first trimester of pregnancy. To ensure proper implementation of this law in an era of technological advancement, much consideration has been given this law by the Apex Court of the country. The State of Maharashtra enacted the Maharashtra Regulation of PNDT Act in 1988, prohibiting the determination of sex of the foetus, and issuing the direction to the medical staff and concerned agencies for its proper regulations. Similar efforts at the national level resulted in the enactment of the Central Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994. This Act was amended in 2003, and thus now it called as Pre-Conception

³ 3. Centre for Enquiry into Health & Allied Themes(CEHAT) v. Union of India, (2003) 8 SCC 398: AIR 2003 SC 3309

and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003. Some of the salient features are:

1. Prohibition of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of sex selection) of foetus, leading to female foeticide. (Section 6 a, b, c)
2. Prohibition of advertisement of PNDT Techniques for detection or determination of sex. (Section 22)
3. Permission and regulation of use of PNDT Techniques for purpose of detection of specific genetic abnormalities or disorders. (Section 4)

14 The PC & PNDT Act is one of the most comprehensive and well thought out laws in the country. To say a little about the amendments that have given this Act the present shape, it is after the intervention of the Hon'ble Supreme Court in CEHAT, MAUSAM & Dr. Sabu George v. Union of India and Ors (AIR 2003 SC 3309) that the law had been considerably overhauled to bring within purview the changing technologies. The truth today is that this brilliant piece of legislation is far from being implemented in its true spirit and purpose. In fact the first ever conviction leading to imprisonment of an offender (Dr Anil Sabsani, a radiologist, was jailed for two years⁴) under the present Act in the entire country took place in March 2006, 12 years after the Act came out in 1994. It is no exaggeration to state that legal implementation of this Act has practically failed so far. However, the judicial pronouncements like CEHAT⁵, Dr. Aniruddha Malpani⁶, Dr. Varsha Gautam⁷, Dr. K.L. Sehgal⁸, and Dr. Anil Sabhani⁹ have far reaching effects in curbing the menace of female foeticide and infanticide.

15 Society is full of likenesses and differences. Mere legal enactments and provisions under the Constitution of India with the purpose of safeguarding the rights of women and children will not serve their purpose until the mindset and attitudes of people change. The growing problem of missing girls and declining child sex ratio will impede human development towards full gender parity. Thus, everyone has a stake in helping to overcome these destructive and regressive customs. Social scientists, medical practitioners, common men, judicial officials, legal professionals and NGOs all need to focus on a humanist and scientific approach. There is a need for a strong ethical code for medical practitioners. The monitoring, regular appraisal and assessment of the indicators such as sex ratio, female

⁴ Justin Huggler, <http://news.independent.co.uk/world/asia/article354483.ece> (visited 26.09.2011)

⁵ *Supra no. 3*

⁶ Dr. Aniruddha Malpani v. Dr. Jaywant Anant Khandare, Bombay HC, Application No. 4644 of 2004

⁷ Dr. Varsha Gautam v. State of U.P. Manu/UP/0857/2006

⁸ Dr. K.L. Sehgal v. Office of District Appropriate Authority, Delhi HC, W.P.(C) 6654/2007

⁹ State Through District Appropriate Authority v. Dr. Anil Sabhani, SDJM, Palwal, Case No. RBT-298/2 of 2001

mortality, and literacy are required in a time frame management. The people involved, knowingly and unknowingly, must be punished if any violation of the laws related to the protection of women and female children are brought to the attention of the appropriate authority.

Works Cited

Bhat, P. Ishwara. *Law & Social Transformation*. Lucknow: EBC, 2009.

Iyer, V.K. Krishna. *Of Law and Life*. New Delhi: Vikas Publishing House, 1979.

Kolloor, T.M. "Female Infanticide: A Psychological Analysis." *Gross Roots Action*, Special Issue on Girl Child, 3 April 1990.

Majumdar, D.N. *Races and Cultures of India*. New Delhi: APH, 1961.

Prabhu, P.H. *Hindu Social Organization*. Bombay: Popular Book Dept., 1958.

Sinha, Mithilesh Kumar, et.al. "Gender Inequality: Some Issues." in *Gender Empowerment and Development*. eds. Kumar Thakur and Dalip Kumar. New Delhi: Deep & Deep Publications Pvt. Ltd., 2008.

Upadhyay, B.S. *Women in Rigveda*. New Delhi: S. Chand and Co., 1974.