

# FEMALE FOETICIDE – THE ELEPHANT IN THE ROOM

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## INTRODUCTION

Female foeticide is a shockingly widespread practice in India, and a particularly severe type of killing girls occurs on a regular basis, even before they are born.<sup>1</sup> Approximately, one million women are killed every year in India due to female foeticide or the selective termination of female foeticide and this rate is still increasing. India is a vast country with different religions and culture and thus women become subject to inequality along with the denial of right to born. Can we answer that why so many families in India still want boys and not girls to be born in their families? Women in India are forced to abort female foeticides. Female foeticide is stimulated by a diversity of circumstances; one of them is the responsibility to pay the dowry to the future family of her in-laws

Girls are usually considered as a burden both socially and economically, whereas on the other had sons are considered as someone who will continue the family chain and strong to safeguard the family.

Prenatal sex detection technologies are generally exploited, by misusing these technologies for target killing of female child in the womb. This target killing of girl child is illegal and offence by the law. Female infanticide has existed in India since a long time, but the female foeticide is comparatively new and came into picture in the late 1990s with modifications in sex determining techniques in the country. In our country the practice of aborting a child is permitted, but aborting the pregnancy just because the foetus is a girl is illegal and not permitted. And if someone is found committing this crime he/she shall be punished with strict rules and laws. But these laws and rules are not enough as this trend is still in practice, in this research paper we will talk about these issues in detail.

According to the UNFPA analysis, India lost an average of 3.6 lakh females and 5.9 lakh female children each year between 2015 and 2020 due to excess female mortality and pre-natal sex

selection (missing females at birth).<sup>2</sup> According to the research, India had the highest rate of excess female death in the world in 2012, at 13.5 per 1000. This excess accounted for roughly 11.7 percent of all female deaths under the age of five, implying that one out of every nine deaths was due to post-natal (after-birth) sex selection techniques.

According to Kamla Bhasin, a social scientist and developmental feminist activist, the situation is plainly the result of the country's patriarchal and capitalist ethos. "It should be upsetting, but it isn't; although 5 lakh COVID-19 fatalities around the world are generating such a stir, there isn't a peep from the streets to the legislatures about 460 lakh girl deaths in the country, which is deliberate." When a massive movement against sex-selection methods erupted in the 1990s, leading to the passage of a rigorous law (The PC - PNDT Act, 1994)<sup>3</sup>, there was a belief that things would change as education levels rose. If we look deep to the root of this problem, we will find that those who are highly educated and have enough wealth are also involved in such heinous crime. The reason is merely the mindset of the people that the ancestral property and family responsibilities cannot be passed on to a girl child as she will have to marry someone and leave her father's house. These families cannot kill their girls, but lack enough bravery to stop the practice of dowry. Therefore girls are considered as responsibilities and burden. In tribal areas, on the other hand, bride prices are paid and daughters are not a burden, therefore the sex ratio is balanced." In terms of the capitalist mindset, highly trained doctors and technicians made sex-selection techniques easily and unlawfully available for the lure of great money. Mobile sex-determination labs are now openly used in rural regions as well. The federal government's Beti Bachao slogan and campaign is the most heinous since it implies that daughters should be saved from their own parents and not from China or Pakistan.

### ***History:***

The IPC forbade abortion or forced miscarriage unless done in good faith; hence the first measures to remove female foeticide were made during the British Raj. In the late 1970s, however, huge erratic groups emerged protesting against Female Foeticide and demanding strict legislation to stop the practice. The termination of a male foetus in 1982 was the key catalyst for this campaign. Her husband, a high-ranking government official, recommended that she do a Pre-Natal sex determination test. The test predicted a female foetus, but the diagnosis was incorrect, and the foetus was that of a male child. This caused fire to the situation

and shock waves to the society and general public, as a high-ranking government official was involved in such horrible crimes.

The Prenatal Diagnostic Techniques Act was drafted by the Central Assembly in 1994 after multiple revolts and demonstrations, but it did not pass until late 1996. Although the Act was enacted in 1996, it was not until 2001 that the Apex Court was forced to intervene in the Medical Termination of Pregnancy Act, enacted in 1971,<sup>4</sup> is commonly regarded as a tool that allows women to choose how many and how often they have children. This is viewed as a method to empower women by granting them the choice to choose their pregnancy condition, subject to specific constraints and rules. In principle, a mother has the right to abort her foetus if she meets the following criteria:

- a. If the pregnancy continues, the mother's life is in danger;
- b. When a child is born, there is a risk to his or her life or limb;
- c. The pregnancy is the outcome of the woman's rape.

Abortion is permitted for a limited period of time before the sex of the foetus can be determined. Female foeticide, on the other hand, is normally carried out much later in pregnancy, after the sex of the foetus can be determined. To address these issues, the PNDT Act outlaws the sex determination of children, as well as requiring the registration of genetic counselling centres, counselling centres, hospitals, nursing homes, and other facilities before they may begin operations. The PNDT Act is a regulatory mechanism that does not legalize abortion. It does not restrict women's access to abortion, but it does outlaw female foeticide in its entirety, subject to the Act's requirements.

### ***Causes & Effect:***

*According to studies, the following are the major causes of female foeticide in India:*

- a. **Desire for a Son:** The formulation of family's creation and reproduction is governed by the principles of Manu script in Hindus. The assumption according to Hindus is that a son is the only one who will ignite the funeral fire of his father or elders.  
Apart from all this sons are also considered to bear all the expenses of their families and not the daughters who will marry someone and leave their father's house after marriage.
- b. **Girl as a Burden:** The wicked and unholy practice of the dowry has triggered the assumption that the girls are weak and need to be secured and preserved and also

enough dowries must be collected for their marriage. Whereas, sons are regarded as valuable assets, bringing in a large dowry for the parents. Haryana's culture has been ingrained in its DNA that a female is always regarded as a PrayaDhan. Furthermore, the respondents believe that a considerable sum of money is required for her marriage. Getting a decent bridegroom, whether she is educated or not, necessitates a large sum of money in the form of dowry. If a female is educated, the problem worsens since the better her degree, the more money she must spend on marriage to retain her status. Even after marriage, girls in Haryana are liable to their parents and brothers in the form of gifts on various festivals throughout the year. She is a burden to her parents until the end of her life. As a result, a stereotype of a girl as a home burden has developed.

- c. **Education and the Gender Skew:** If a woman decides to have only one kid, the more educated she is, the more likely she is to intentionally pick a boy. The only educated women who are likely to have daughters are those who are exceptionally self-reliant. Educated men, particularly those in business, desire sons to carry on the family enterprise.
- d. **Inappropriate use of Technology:** Tests such as amniocentesis and ultrasound, which were originally intended to detect congenital defects in the embryo, are now being used to determine the foetus's gender with the goal of aborting it if it is a female. As a result of this misuse of technology, female feticide and infanticide are on the rise, with the active connivance of service providers.
- e. **Inadequate enforcing of Laws:** The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994 makes it illegal to determine a foetus's gender. This act also ensures that the clinics, hospitals, nursing homes etc are registered as per the law. But the law is weak in this section as the complete focus is on keeping the count of all the equipments of ultrasound rather on the heinous crime of female foeticide. Furthermore, the accused in some cases have not been charged under the relevant sections of the Act.<sup>5</sup>

## **RIGHTS OF THE UNBORN CHILD**

### ***Status of Life of Foetus under Indian Constitution***

"No one can snatch the right to life and liberty from any living being except the procedure established by the law of our country" When it comes to finding the sex of the foetus under

the Indian Constitution, it appears to be a source of anxiety for parliamentarians. In our country it has always been a hot topic of debate but is still unanswered that whether or not the unborn child be treated same as a born child.

People of the society also have different mindsets on this topic. Some are in the favour to consider the unborn child as a living being by giving rights like a normal being whereas some oppose this thinking.

People believe that because the unborn baby is physically present in the mother's Metra, the unborn baby should be allowed "Right to Life."

As the unborn infant has begun to develop into a human being, the foetus should be provided access to the right to life, as it would be extremely unfair to deny him the "Right to Life." Another justification given by supporters for granting the unborn baby the "Right to Life" is because his body functions similarly to that of a normal child as it develops day by day, and thus the unborn baby is entitled to the right to life under the Indian constitution.

People also argue that because the unborn baby has not yet come into being, he or she cannot be considered a human being until the child is born, and thus the unborn infant should be denied the right to life until the child is born. The "right to life" is only granted to individuals who are physically alive. As a result, because the unborn infant has not yet entered the world, he cannot be regarded a person and should not be given the right to life.

At this time, it is unknown whether or not to grant an unborn child the right to life, and discussions are raging across the country. As a result, it is a very broad topic, and the status of the foetus life is still debatable, as our country's legal system has yet to reach a resolution on the unborn child's status.<sup>6</sup>

### ***Rights under the IPC, 1860:***

Sections 312 to 316 of Chapter XVI<sup>7</sup> deals with offenses such as producing miscarriage, act done with the goal of causing death, causing death. This code does not define the term "miscarriage." Miscarriage is defined as the intentional termination of pregnancy of a woman before even the child is fully developed (usually from 12th to 28th weeks of pregnancy). It is also known as a spontaneous abortion. Sections 312 and 314 of the Code define these offenses. It deals with the causes of miscarriage according to their severity. The punishment for the same differs from section to section. Under section 312 is different for a woman who is pregnant and a quick with child i.e. when foetus movement can be felt, 14 but the

punishment under section 313 is the same regardless of whether the lady was with child or quick with child. Punishment varies depending on whether or not the women have given their consent. Miscarriage under section 312 is bailable, non-cognizable, and non-compoundable, while it is neither bailable nor compoundable and cognizable, under section 313. Here are some elements of miscarriage as per section 312 and 313 of the act:

- a. Causing a woman to miscarry of her own volition;
- b. Causing miscarriage without the consent of the woman;
- c. Miscarriage is not performed in good faith to save a woman's life.

***Miscarriage Punishment:***

1. Section 312 (Performing Miscarriage on a Volunteer Basis):
  - a. Woman who is pregnant: Imprisonment for 3 years with fine;
  - b. Quick with child: Up to seven years with fine in jail.
2. Section 313 (Miscarriage without the consent of the woman): It carries a life sentence or a ten-year sentence with a fine.

In *Sharif v. State of Orissa*,<sup>8</sup> it was held that terminating a girl's pregnancy who is below 18 years of age is not violative of the section 312 of the act as this act was done to save the life of the mother who was also a minor child. The person accused did not instruct the girl to seek abortion, but the minor did so on his own to escape social humiliation.

***Death of Woman during Miscarriage:***

The death of the woman during miscarriage is covered under section 314 of the act. It is not necessary to be aware of the consequences for an act to fall under this section. The punishment for a woman who has given her consent for miscarriage is not more than 3 years of imprisonment along with fine. Whereas, if the consent is absent then in that case be up to imprisonment for life with fine

***Injury to Unborn Child under IPC:***

The birth of an unborn child is addressed in Sections 315 and 316. Section 315 is about foeticide, which occurs when a foetus when in the womb of the mother takes on a human form which normally occurs in six months of pregnancy. The distinction between infanticide and

foeticide is that infanticide occurs after the birth of the child, whereas foeticide occurs before the birth of the child. Section 315 is neither bailable nor compoundable and also non-cognizable. Following are the main points of the section:

- a. Such act must be done before the death of the child;
- b. The goal is to prevent a child from taking birth alive or dying after death;
- c. The death of a child after birth or the infant not being born alive.

Exception: An act performed in good faith to save the mother's life will not be covered by this provision.

Despite the fact that the child had been born, the accused were charged with Section 315 of the IPC in **Alka Verma v. State**<sup>9</sup> The Delhi High Court ruled that the offender cannot be tried under Section 315 after the kid is born.

The accused was acquitted of the charge under 315 of the IPC in **Hirdanbai and Others v. State of Maharashtra**,<sup>10</sup> and the court decided that it is necessary to have enough proof against the accused to prove him guilty of doing an act which shall affect the birth of the child or that he did something to kill the child after being born. Then, under Section 315 of the IPC, only one individual can be acquitted.

Section 316 is a lot more serious. It states that if the act is done with the intention and knowledge that this might result in culpable homicide or might result in foetus then the person found guilty is liable for imprisonment of 10 years with fine. Whereas, if in such act the mother dies then the liable person is guilty of committing culpable homicide and hence the act becomes non bailable, and non cognizable with non compoundable in all ways.

It should be read in conjunction with Section 299 of the IPC's Explanation 3. It asserts that culpable homicide culpability arises when any portion of the kid's body has come out of the mother's womb, rather than when the infant dies inside the mother's womb.

In the case of **Jabbar v. State**,<sup>11</sup> it was determined that an act is covered by Section 316 only if it was done with the intent or knowledge of committing a culpable homicide against the mother. A person cannot be found accountable under this section solely because conduct was directed at the mother and the death of a quick unborn child occurred. It was further pointed out that if the conduct was done with the knowledge or goal of committing culpable murder

and trying to kill the mother, and even if the mother lived but the foetus died, it would be a crime under the current law.

### ***Rights of an Unborn Child in USA:***

When it comes to guaranteeing that children, including unborn children, are protected by law and have legal recourse for any harm committed, the USA has blazed a trail for other countries to follow. The laws in USA are strict and rigid when it comes to the protection of an unborn child. If we talk about the fundamental rights granted to a single citizen necessary for their peaceful survival, USA ensures that the citizen's rights are safeguarded and he lives a life of respect and dignity but there are also laws that protect the unborn child from injury. A person can be held chargeable for causing injury or damage to any person who was not alive at the time of such injury or damage.

*The "Unborn Victims of Violence Act of 2004 attempts to achieve this goal".*

The term "unborn child" refers to a kid in the womb, whereas "child in utero" or "child who is in utero" refers to a member of the species Homo sapiens at any stage of development who is borne in the womb. According to it any person who violates any of the law listed in subsection (b) and thus causes death of a little life who is not even born yet when this behaviour takes place, then such person is guilty of another offence under this section. The legislation also specifies that the person causing such harm need not be aware of the fact that the woman is pregnant or such person has any intention to kill the child before birth.

### ***Difference between India & USA:***

- If we pen down the striking differences between the laws of USA and India, then we can see that in USA the tort laws that govern the protection and rights of an unborn child are framed and designed in such a way that they keep a balance between protecting the mother's right of liberty, life and privacy as well as the unborn child's right to life and protection against the outside world and injury. The situation in India under the common law is far removed from those goals.
- The laws in USA are clear and to the point. The mere fact that the person liable for causing any harm, injury, damage or death to an unborn child, does not know that his actions could result in harm, injury, damage or death of an unborn child, under the USA laws, is irrelevant and thus he will be charged for the act committed. Contrastingly, the



security and safety of an unborn victim is a priority that is not overlooked in India; but surprisingly there is still no particular law that sort the offences against which the safety must be granted to an unborn and what all remedies must be provided to them. The laws in India still relies significantly on precedent and leaves it to the court's discretion to decide on the repercussions of any harm/injury inflicted to an unborn child or their rights.

- The Indian laws are weak in this section and hence do not acknowledge the foetus or the unborn child who is in the womb as a lawful and legal entity. Since the child is not considered as legal the rights and claims which come with it cannot be granted before the birth. But on the other hand in developing countries like USA the foetus has the right to life since its development.
- Despite the fact that tight rules protect the foetus from any harm from outside world, the laws in the US also provide protection of the right to privacy and choice of mothers to the same level. The law and the courts recognize that no one who is authorized by the mother's consent or by the law will be penalized for performing an abortion; they also recognize that the mother and her decision, which the state cannot intervene in, must be given priority.

The rules of India, on the other hand, despite having options for abortions, limit the act to just medical needs and do not allow for the mothers freedom of choice.

Hence, it can be concluded that the law of tort in developed country like USA is far more advanced and beneficial for the citizens of the country than the law of tort in other developing countries like India. We cannot say that the laws relating to the rights of an unborn child are perfect in USA but they create a sort of balance to protect the rights of the child with the rights of the mother. Unlike India, there laws and society recognize and values the decision of a woman to abort the child. Indian laws lack to provide the right to an unborn child even though they consider the unborn child as a legal person. However, the problem remains that the law is unclear about how it will protect the unborn and what is owed to him/her. The UK, like India, recognizes that the state owes a duty to the unborn, but what those duties are and how they will be carried out is far too vague, which is fundamentally problematic.

## **LEGISLATIVE PROVISIONS: MTP ACT & PC-PNDT ACT**

### ***The Medical Termination of Pregnancy Act, 1971:***

The MTP Act was first tabled in Parliament in 1970, was enacted in August 1971, and went into effect on April 1, 1972, after the government drafted rules for its implementation.

The Act was revised once since then, in 2002, and new rules were drafted in 2003. The bill aims to change the MTP Act for the third time.

Prior to the act estimate 5 million of termination were carried out per year in India and the heart wrenching fact is that out of these 5 millions 3 million were found to be illegal. In a research it was found that more than 50% of the women who become pregnant tend to unsafe termination of pregnancy with persons who lack experience and even are not qualified to do such practice and hence increase the danger of life of mother.

Moreover, during the 1960s, a number of countries began to pass legislation allowing for medical abortion. The MTP Act was modelled after the "UK's Abortion Act of 1967", and the legislative intent, according to the Apex Court, was to provide a qualified "right to abortion" and the termination of pregnancy, which had never been recognized as a normal option for expecting mothers.

The authorities of India hooked up the Shah Committee under Mr. Shantilal Shah to signify specific draft legal guidelines with the intention to lay down the regulation governing clinical termination of pregnancy. This became additionally executed at a time while nations everywhere in the world were striving to liberalize their abortion legal guidelines, with roughly 15 international locations having already achieved so. "whatever the ethical and moral feelings that society as an entire proposes on the query of brought about abortion, it's far a truth that some of moms are willing to treat their lives via undergoing an unlawful abortion rather than wearing that unique infant to term," the Shah Committee wrote in its file.

There was some dispute about whether the major purpose of passing this legislation was to curb the increase in population or to safeguard the proper facilities and methods of termination of pregnancy of woman and hence giving such women the rights they lack. Upon its enactment, some sides saw the Act as a measure for curbing population increase, although the Shah Committee flatly rejected this.

The "substituted judgment" test asks the courtroom to place itself inside the shoes of someone who's seemed mentally unable and try and make the selection that the person could have taken if she has been in a position. Similarly, the court docket outstanding between people that are

"mentally ill" and those who have "mild intellectual impairment." The MTP Act, as revised in 2002, replaced the phrase "lunatic" in phase 3(4)(a) with the word "mentally sick individual," and those diagnosed with "intellectual retardation" must be treated in a different way than those recognized with "mental illness." As a end result, at the same time as a guardian can make selections on behalf of a "mentally unwell character" as described with the aid of section 3(4)(a) of the MTP Act, this cannot be achieved on behalf of a person suffering from "mental retardation," as the ones suffering from "mental retardation" are able to making their own decisions regarding being pregnant termination.

***Attributes of MTP Act:***

This Act recognizes the authority and liberty of a woman who wants to have an abortion, and which is based on her consent and well as wholeness, therefore this resulted in setting the woman's mental and physical condition as a legal ground for terminating the pregnancy medically.

This viewpoint differs from that of some countries. such as the US, where certain States have based their laws on the foetus, acknowledging the foetal rights and well-being. According to Section 3 of the MTP Act, if the pregnancy lasts more than 12 weeks, it can be terminated on the advice of one "registered medical practitioner" if continuing the pregnancy would endanger the pregnant woman's life or cause grave injury to her "physical or mental health." or if there is a substantial risk that the child would be born with such physical or mental abnormalities as to be seriously handicapped. If the pregnancy is between 12 and 20 weeks long, two certified medical practitioner's opinions are required before the pregnancy can be terminated. The rationale for the opinion is the same as previously stated. The two Explanations to this section create a presumption that if the pregnancy was caused by rape or by the failure of any device or method used by "any married woman" or "her husband" to limit the number of children. the "anguish" caused by such a pregnancy would be presumed to cause injury to the woman's mental health. If the termination is absolutely necessary to preserve the woman's life, only one licensed medical practitioner's opinion will suffice, regardless of the pregnancy's length. A doctor who specializes in gynaecology and obstetrics is referred to as a registered medical practitioner. The MTP Act exempts any other doctor from the definition of a registered medical practitioner. If the pregnancy lasts more than 20 weeks, the lady must file a writ petition with the appropriate High Court or the Apex Court under Article 226 or Article 32, 26 respectively.

Following that, the court in question orders the formation of a medical board, which will create a report and present it to the court. The Court either authorizes or disallows the lady to have a medical termination based on this report.

In the case of **Meera Santosh Pal v. Union of India**<sup>12</sup> the woman was in her 24<sup>th</sup> week of pregnancy and requested the court to grant her permission to have the pregnancy aborted medically. The court directed to create a board also consisting of doctors by profession who might decide that if the woman continue the pregnancy then this might not only affect the life of the mother but also the life of the child and there may also be a possibility that the foetus may be unable to survive "extra-uterine life" because of abnormalities, therefore the court decided in this case that the woman may be granted the permission of abortion medically.

In **Sarmishtha Chakraborty v. Union of India**<sup>13</sup> a lady sought permission from the Apex Court to have medical abortion. The Apex Court ordered that a medical board be established, and the medical board determined that it was a case for abortion because the woman was at risk of severe mental injury if the pregnancy was continued, and if the child were born alive, the child would require complex cardiac corrective surgery stage by stage after birth, with high mortality and morbidity at each step. As a result, the Apex Court granted the petition's requests and allowed the woman to have her pregnancy terminated medically.

Moreover, in **X v. Union of India**<sup>14</sup> the Apex court held that, no matter the petitioner's contemporary being pregnant being round 24 weeks, the life of the foetus out of the womb turned into endangered, and as a result the Apex court permitted the female to go through a clinical termination of pregnancy in accordance with the MTP Act, primarily based on a record submitted with the aid of the clinical board directed to be constituted.

Furthermore, under the Maternity Benefit Act of 1961 women who have a medical termination of pregnancy are eligible to maternity benefits and maternity leave for a period of six weeks following the termination date.

### ***Medical Termination of Pregnancy Amendment Act, 2021:***

The amended act of 2021<sup>16</sup> corroborate all inclusive approach to a compact method by widening the access to guarded, secured and legal termination services on several grounds such as social, economic etc.

The amendment act has many prominent features such as: it was made compulsory for the opinion of two medical practitioners who are registered for terminating a 20-24 weeks

pregnancy and if pregnancy exceeds 24 weeks then a state level board is formed and its opinion is required.

But for every strength there is a weakness. The same happened with the amendment act of 2021. It aimed to provide the best to a pregnant woman by covering all the aspects but still lacks somehow in some ways.

**Issues:**

- Here the view points are divided into two; the viewpoint of the pregnant woman and the viewpoint of the state. I agree that it must be the sole decision and right of a pregnant woman that whether she wants to continue the pregnancy or not, after all she is going to bear all the responsibilities that come with a baby. But we cannot deny that state also has the responsibility to protect the right of life of all the citizens, so how can it allow terminating a foetus.
- Countries around the world impose different requirements and time restrictions for legalizing abortions, based on the health of the foetus and the risk to the pregnant woman.
- Only in circumstances where a Medical Board detects significant foetal abnormalities does the Act authorize abortion after 24 weeks;
- This means that if an abortion is required due to rape and the pregnancy is more than 24 weeks, the only option is to file a Writ Petition;
- Abortion can only be done by doctors who specialize in gynaecology or obstetrics, according to the law;
- Pregnant women may continue to struggle to obtain safe abortion clinics due to a 75 percent lack of such doctors in community health centres in remote areas.

***The Pre-natal Diagnostics Techniques (PC & PNDT) Act, 1994***

The Pre-conception & Pre-natal Diagnostics Techniques (PC & PNDT) Act came into force in 1994. The purpose of implementing this act was to balance the decreasing sex ratio in the country which drastically fell.

The act's principal goal is to prohibit the use of such techniques which determine the gender of the foetus before or after conception, as well as the misapplication of prenatal diagnostic techniques for abortion of a particular gender. Conducting or assisting in the conduct of

prenatal diagnostic techniques in unregistered units, sex selection on a man or woman, conducting PND test for any reason other than that mentioned in the act, sale, distribution, etc. of any ultra sound machine or other equipment which helps in determining the gender of the foetus are all prohibited under this act. In 2003, the statute was updated to tighten the regulation of sex selection technologies. The statute was updated to include the techniques of pre-conception sex selection and ultrasonography. A central supervisory board and a state-level supervisory board were also established as a result of the modification. The Maharashtra Regulation of Pre-natal Diagnostic Techniques Act was passed in 1988, making Maharashtra the first state in the country to outlaw prenatal sex determination.

***Need:***

- The male kid has always been preferred above the female child due to the patrilineal line of succession in terms of property rights and cultural norms. Due to which families kept having a child till they get the boy in result exacerbating India's already-overburdened demographics.
- It became the norm until the 1990s, when the widespread use of ultrasound methods allowed for pre-natal sex determination. As a result, Rs.1000 crore industries have sprung up where medical experts perform selective abortions for a fee.
- Discrimination against women and a preference for boys have resulted in a rise in female foeticide in various forms, skewing the country's sex ratio in favour of men. As a result, the PCPNDT Act had to be passed.

***Salient Features:***

The following are the main provisions of the act:

- Prior to or after conception, sex selection is prohibited under the Act;
- The sex determination test including the test with ultrasonography became illegal and prohibited in the country in each and every clinic or laboratory etc.
- No one, including the person performing the procedure in accordance with the legislation, will tell the pregnant lady or her relatives the sex of the foetus through any means that can be written or verbally spoken;

- Any person found advertising for the pre-natal and pre-conception sex determination in any form including the notice, newspaper, hoarding etc in any hard or print form etc can be punished with jail upto 3 years of time and fine upto Rs. 10000.

### ***Shortcomings of the Act:***

The Act does not prohibit the use of Pre-Natal Diagnostic Techniques in general; rather, it prohibits the use of this technology for determining the sex of the foetus. For example, if the foetus has genetic defects, these tests can be used to correct these issues.

Because of the Act's ambiguities and flaws, strict implementation and enforcement of the PNDT Act is impracticable. Not only are the enforcement provisions confusing, but the punishment clauses are as well. A Central Supervisory Board has been established to review the Act's implementation and to recommend any changes to its operation. The CSB's powers, on the other hand, are limited. Minimum penalties are also neither stated in the Act or by the enforcement machinery, leaving the minimum punishment that must be levied on individuals who breach the Act's provisions unknown.

### ***Amendment:***

The act of 1994 was amended in the year 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) in order to tighten the jurisdiction. The act was amended primarily to include the practice of preconception sex selection within its scope including ultrasonography in its scope, strengthening the central supervisory board and establishing a state-level supervisory board and making provisions for harsher sanctions.

## **JUDICIAL PRONOUNCEMENTS & GOVERNMENT SCHEMES**

### ***Judicial Pronouncements:***

The judiciary has played a pivotal role in blocking the crimes that are generally women specific including female foeticide.

In **CEHAT v. UOI**<sup>17</sup> concerns the practice of sex determination through prenatal testing. There has clearly been widespread misuse of technology in this area, as well as a patriarchal mindset among the general public, resulting in a terrible occurrence of female infanticide and female

foeticide. As a result, Parliament passed the *"Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994"*, which was later amended to include the *"Pre-conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003"*. In this case, CHAT, a non-governmental organization dedicated to improving people's lives, submitted a petition to have the abovementioned statute implemented. The sex of the infant was determined in some situations, and if the child's sex was that of a baby girl, the foetus was aborted. Discrimination against girls continues to exist in India, owing to a number of factors. As a result, the current case contributes to the correct implementation of such a Parliamentary Act.

**Issues:** The first petition filed by CHAT was to have the misuse of technology investigated and to notify the court as to where all of the technology was being used in clinics across the country. The second petition was filed to notify the court that the modified statute had not been properly publicized and that the earlier directions had not been followed.

**Facts:** The country's sex ratio has been negatively damaged in some states as opposed to others, according to the 2001 population census, and the main explanation for this is the pre-natal diagnostic technology, which the Parliament had previously forbidden. The Centre for Inquiry into Health and Related Themes, which sought to improve people's lives, submitted a petition to have the act implemented. In an order dated 04.05.2001, the Apex Court remarked that it was terrible that female infanticide was still prevalent in our country.

As a result, the SC offered the following instructions:

***Instructions to the Government:***

- *"To raise public awareness about prenatal testing and female infanticide"*
- *"Meetings of the advisory group should be held on a regular basis."*

***Orders for CSB***

- *"Hold meetings at least once every six months"*
- *"Ensure that the act's implementation is reviewed and monitored"*
- *"The competent authorities must submit a report."*

***Orders to State Government:***

- *"Appropriate authorities at the state and local levels;*



- *"To establish an advisory committee and proper advocacy to achieve this goal;*
- *"To educate individuals about the negative consequences of such illegal activities."*

***Instructions to the appropriate authorities:***

- *"To take action against anyone who violates the act's section 22;*
- *"To provide a report on the CSB."*

***Contentions Raised by the Petitioner:***

- *The Petitioner's initial claim was that pre-natal diagnosis was performed at many clinics despite the fact that the practice had previously been declared illegal by the court;*
- *The second point mentioned was that there was a lack of effective education and public awareness about the issue;*
- *The petitioner wanted the court to investigate the situation and put a stop to future wrongdoings.*

***Contentions Raised by the Respondent:***

- *The respondent claimed that adequate action had been taken in this regard;*
- *An advisory board was established at the national, state, and district levels;*
- *Electronic media was used to properly campaign and raise public awareness.*

***Analysis of the Judgment:***

- *The Apex Court ordered the federal government and state governments to file their responses to the parameters set forth. The court, however, was unsatisfied with their response.*

*As a result, the SC issued further instructions in support of the previously issued order:*

- a. *"The Apex Court declared that, in order to ensure effective implementation of the modified act, it should be advertised through electronic media until the public is aware that sex discrimination is unacceptable and illegal;*
- b. *"The quarterly report that is presented to the advisory board shall be published;*
- c. *"The minutes of all meetings must be kept by the relevant authorities;*

- d. "Information from the Authority's records must be made available to the general public:
- e. The committee's report will be forwarded to the Central as well as state Supervisory Board;
- f. The National Monitoring and Inspection Committee, which was established to ensure that the act was properly implemented, will work diligently to achieve this goal."

It is regrettable that discrimination continues to exist in a country like India, where people knock on the doors of temple for every little thing but would kill a foetus just because it is female and would entail more burdens on the families.

Despite the fact that we are in the twenty-first century, people's sly mindsets have not altered; Abortion and pre-natal diagnosis are both rampant in India, and both must be eradicated in the near future, as well as people's mindsets enlarged and made aware of the issue.

The case of **Vinod Soni v. Union of India**,<sup>18</sup> challenged the validity of the PCPNDT Act, 1994 stating that this act violates the basic Article of our Constitution, Article 21, to the extent that it includes the freedom to choose the sex of the unborn child. The Bombay High Court dismissed the petition, hence the act remained constitutional.

Petitioner filed a writ petition before the Apex Court of India in the case of **Voluntary Health Association of Punjab v. Union of India**<sup>19</sup> to review the methods which the state government of India has taken to address the problem of female foeticide in the country. The court in the case stated that the states crashed to adequately implement or enforce the act.

Justice K.S. Radhakrishnan issued a number of orders and directives, including mapping out unregistered clinics to ensure they didn't buy ultrasonography machines, seizing unlawfully marketed ultrasonography machines, and holding seminars to educate communities about the Act's requirements.

#### ***Schemes of the Government:***

Both the federal and state governments have launched a variety of female child welfare programs with the goal of changing people's attitudes regarding girls and improving their lives.

*Here are a few examples of such schemes:*

- **"Bachao Beti Beti Padhao"**: is a national government initiative aimed at protecting girls from sex-selective abortions and advancing their education across the country. Initially, districts with a low male-to-female ratio were targeted;
- **"BalikaSamridhhi Yojana"**: is a scholarship program that provides financial assistance to young girls and their mothers who live in poverty. The scheme's main goal is to raise girls social status and increase their school enrolment and retention;
- **"The Central Board of Secondary Education administers the Udaan Scheme"**: on behalf of the HRD Ministry of the Government of India. This program aims to increase the number of females enrolled in science colleges across India;
- **"Haryana's Ladli Scheme"**: This scheme is a financial incentive program launched by state government that pays out Rs. 5000 per year for a term of five years to families who have a 2<sup>nd</sup> female child that were born prior or on 20<sup>th</sup> of august, 2015. The funds are held in a Kisan Vikas Patra. Once the concerned girl child reaches the age of majority, the deposits and interest will be released;
- **Karnataka Bhagyashree Scheme**: This is a Karnataka government program aimed at encouraging the birth of girls in low-income families. The girl kid receives annual health insurance coverage up to a maximum of Rs. 25,000.<sup>20</sup>

## CONCLUSION & SUGGESTIONS

### *Conclusion:*

These terrible murders of girls are justified primarily on two reasons. The preference culture is one of them. Many researchers feel that female foeticide occurs as a result of a male child's desire. They are preferred because they offer manual labour, are the family's breadwinners, and are the family's heirs. In locations where the cultural norm prefers a male kid over a girl child, selective abortion of a female child is most likely. In a family, the son is always seen as an "asset," whereas the girl is regarded as a "burden."

The financial load is the second reason. In India, having a female child is seen as a significant burden financially. A significant sum of funds and finance must be spent on a girl's wedding. People may be forced to take out a mortgage or even sell their home to pay for their daughter's wedding. They may be forced to take out loans that will be repaid by future generations. As a result, having a daughter is seen as a financial burden that few people wish to face.

India has been struggling to eliminate female infanticide and female foeticide for a long time, and its enforcement regime is not well suited to put an end to the conflict anytime soon. No solutions recommended above will assist fix the problem unless an ideology shift occurs, which requires a reality check of our cultural ideals. In its current form, the PCPNDT Act is a sham, incapable of repelling or deterring the repercussions of this societal evil.

Female Foeticide is an example of how technology is being utilized to perpetrate more heinous social crimes. India is undergoing a vast female genocide, and the permissive abortion policy ensures that we do not consider sex-selective abortion to be a serious human rights violation.

The Act must be thoroughly revised to meet contemporary needs and reflect changes in societal thought. The intention is noble, but the act lacks teeth, and there is nothing worse than a toothless king.

For what it is, the act as it stands today is a paradox. The nation's hope is to eliminate the problem of obliterating its unborn girls. It must be constructed in such a way as to integrate new reproductive procedures as well as other societal orientations in order for our daughters to be born and grow up without encountering social discrimination.

***Suggestions:***

- Not only do laws outlawing sex-selective abortion need to be adequately implemented, but so do laws combating other causes of female foeticide, such as "the Dowry Prohibition Act of 1961 was enacted to prohibit the practice of dowry and the Protection of Children from Sexual Offenses Act of 2012 was enacted to protect children from sexual abuse."
- The statutes, however, are not an absolute answer for preventing female foeticide. To stop this practice, public knowledge is critical, and no awareness campaign is complete without a genuine focus on women's genius and the need for women's empowerment.
- Doctors and other therapeutic practitioners may play an essential part in gender equality by informing and counselling their patients about the effects of a skewed gender ratio on society.
- More females must be educated about all the rights and claims which they possess and the threats which arise out of abortion.
- More states should follow in the footsteps of the U.P. government's Mukhbir Yojana, which was established in 2017. Under this plan, the government offers a reward of up

to Rs 2 lakh to anyone who informs state authorities about a doctor or medical staff member's involvement in sex determination of the foetus and/or female foeticide.

- Projects like HUL's Programme Shakti and Project Asha Daan, Hindustan Zinc's Sakhi project, and DB Corp. Limited's Underprivileged Girl Child Education, among others, should be encouraged as part of corporate social responsibility.
- Governments should implement initiatives that target the wealthiest members of society and provide incentives other than cash.

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