

Sex Determination and Sex Selection : A Criminal Offence

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Abstract

Medical advances and technological development have enable scientist and medical practitioners to initiate certain methods and techniques to determine the sex of the foetus. The most important them are amniocentesis, chorion villus biopsy and now the widely used ultrasonography. The sex determination tests were basically designed to detect gender-related congenital abnormality in the unborn child. It is unfortunate that it is abused largely in India and other Asian Countries. Abuse of techniques for determination of sex of the foetus leading to female foeticide, which is a criminal offence. Sex determination and Sex selection is a crime but unfortunately, it is still practiced in India, illegally, despite of enacting laws to stop it. In this paper an attempt has been made to discuss causes of sex determination, legal provisions and strategy for eliminating the practice of sex determination and sex selection.

Keywords: Sex Determination, Sex selection, Law, Female Foeticide, Crime, Ultrasonography.

Introduction

The encroachment in medical science and technology vis-à-vis pre-natal sex determination technique has extensively and abhorrently been tainted or rather maltreated in the Indian conventional, traditional society. Still in the 21st century the blessing with a female baby barely brings convivial bliss in majority of the Indian societies. This medical development is shoddily used in carnage of the girl child in mother's womb. The rational behind prenatal sex determination is no doubt key to deciphering the dynamics of sex ratio in India.

Sex determination tests include Amniocentesis, Ultrasonography, Foetoscopy and Placental tissue sampling. The most commonly used sex-determination test is amniocentesis. It was used as an aid to detect any abnormality in the unborn child. But over the years it has been used to determine the sex of the foetus. In India since 1978 the test is being used as a sex determination or sex preselection test. Since then the test has become extremely popular and has led to a mushrooming of private clinics which perform the test all over the country. Earlier doctors employed the controversial amniocentesis test done between 14-18 weeks to determine the sex of the foetus. The ultrasound technique has also been improved. The sex of a foetus can be determined by more sophisticated machines within 13-14 weeks of pregnancy by trans-vaginal sonography and by 14 to 16 weeks through abdominal ultrasound. These methods have rendered sex determination cheap and easy. Some sophisticated method like Ericsson Method which separates the X and Y Chromos from the sperm and then Injects back only Y chromos into the womb to ensure a boy have also been developed. And they cost around Rupees 15,000 to 25,000.¹

Such advancement in medical science and technology has lowered the status of women in India. The Government has realized that abuse of techniques for determination of sex of the foetus leading to female foeticide is discriminatory against the female sex and also affects the dignity and status of women. Prenatal sex-determination and the abortion of female fetuses threaten to skew the sex ratio to new highs with unknown consequences.

Definitely it is one of the most shameful act to determine sex and female foeticide. In a country like India where Goddesses in various forms are worshiped, such act is really disgraceful. Although, Government has enacted act to prohibit sex determination and female foeticide, it is still continuing on an illegal basis. The enforcement of these laws should be strong and stern punishment should be awarded in order to stop such crimes.

Foeticide and sex determination is a crime but unfortunately, it is still practiced in India illegally despite of enacting Laws to stop it. Education in the right and proper direction can put an end to this illegal as well as shameful practice. People should be made understood about the importance of girls in the society and that they are no more a liability as well as they are capable of doing stuffs as a boy



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does and it is no shame to have a girl child. This can perhaps stop these illegal activities that are going on in many places.²

Causes of Sex Determination and Sex Selection

Female foeticide is a pressing issue – which calls to be addressed at once. However, to get to the root of this issue, it is essential to understand the causes behind it. The issue lies right on top, in front of our eyes – in fact, it is a very part of our lives.

1.Preference for the male child

It's simple – couples prefer a male child over a female one. Reasons? Plenty. The root lies in our very own traditions, customs, beliefs and above all, our thinking. It is a general perception that the birth of a male child is beneficial and advantageous to the family. A male in the family is traditionally considered to be a source – source of money, source of respect, source of name and fame. A man is expected to work and earn for his family – in the process repaying all that was cost to bring him up. A woman is considered a financial obligation, as money spent on bringing her up, educating her, marrying her will not be repaid – as she will go to her husband's house after marriage, and the benefits of all that 'investment' shall go to his family.³

2. Dowry system

In India, the age old custom of dowry system puts a damper on the parents' spirits who are 'blessed' with a girl child. Right then and there, begin the calculations associated with marriage expenses, which may happen after a couple of decades, following the child's first breath. A lump sum paid to the daughter in twenty years when the currency value may depreciate and inflation may skyrocket is seen as a tragedy waiting to happen. It would be so much better to get rid of them with just a fraction of the amount.

3.Social Security

social security is one of the reason for strong male preference and consequent elimination of the female. It is believed that males are bread winners of the family and they will look after parents in old age.⁴

4. Patriarchal Society

The social, cultural and religious fibre of India is predominantly Patriarchal contributing extensively to the secondary status of women. The patrilineal social structure based on the foundation that the family runs through a male and it is only the son who can perform the last rites, lineage and inheritance runs through the male line.

5.Increase in rape and assault⁵

Another reason for the unwanted status of the female child is the burden on her parents regarding her safety. Incidences of girls subjected to rape, molesting, sexual abuse, domestic violence, trafficking, etc. are growing every day, and parents don't want to risk their girl child's safety (with a male child, such things aren't a worry).

6.Illiteracy and poverty

In India socio-economic background has been the villain behind the tragic female foeticide. Certain communities want to get rid of female child compelled by the circumstances of dehumanizing poverty, unemployment superstition and literacy.

7.Foul Medical Ethics

The opening conversation to this hub satisfactorily covers this point. With the legalization of abortion in India, illegal sex determination and termination of pregnancies has become an everyday reality. The professionals in the medical field are only too glad to help parents realize their dream of a healthy baby boy. Female foeticide is openly discussed amongst many in the healing fraternity and even pin boards outside certain clinics read, '**Pay Rs.500 (\$ 10) today to save the expense of Rs. 500 000 (\$ 10 000) in the future**'. The initial meager sum is the cost of a pregnancy termination, while the bigger amount specified in comparison, is the expense that the family will be burdened with in the form of dowry for the girl.

8.Industrial Growth

Industrialization of the health sector has further strengthened the selective sex abortion quarter. With the advent of CVS, amniocentesis and Ultrasound, sex determination of the fetus has become much easier than it was earlier. This goes on to show how the manufacturers of high-tech equipments and gadgets, used to run these tests, benefit from the woes of future parents and their unborn child. Many hospitals are known to sign long term contracts with the firms involved in the production of these types of medical machinery. Often, a healthy percentage of the profit is shared with the hospital and both parties enjoy the fruits of rewarding a death sentence.

Understanding these reasons behind this practice of female foeticide, it is evident that the change has to be in the thinking and mentality of the people, and also the laws of our country – to abolish and eradicate immoral and unjustified customs like dowry. These reasons have to be addressed immediately, if any change and improvement is desired – it cannot be expected that female foeticide be stopped without changing anything else. Major and instantaneous changes are required in the way our country and its people basically function. Only then can we think about bringing about a change, and making **India a better and safer nation for the fairer sex.**

Legal Provisions

In order to prohibit sex selection of a fetus in India, the legislature has enacted certain laws which are **The Indian Penal Code 1860, The Medical Termination of Pregnancy Act, 1971 (MTP)**, as amended in 2002 and **The Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse), Act, 1994 (PNDT)**, as amended in 2002.

The Indian Penal Code is the first law which contained provisions under Sections 312 to 316 for prohibiting miscarriage. According to Section 312, whoever 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 women, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and if women be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years and shall be also liable to fine.

In *Meeru Bhatia Prasad v. State of Delhi*,⁶ the Delhi High Court has ruled that provisions under Section 312 can apply to a pregnant woman herself who causes her own miscarriage.

Under Section 313 whoever causing miscarriage without consent shall be punished with imprisonment of either description for a term which may extend to ten years and shall be also liable to fine. Under Section 314, whoever with intent to cause the miscarriage of a woman shall be punished with imprisonment of either description for a term which may extend to ten years and shall be also be liable to fine. If the act is done without the consent of the woman shall be punished with imprisonment for life, or with the punishment above mentioned.

In *Surendra Chauhan v. State*,⁷ a person alleged to be having illicit relations with the deceased took her to the clinic of a doctor with intent to cause her miscarriage. The woman died during the course of the abortion. The doctor was not competent to terminate pregnancy nor was his clinic approved by the government under Section 4 of The Medical Termination of Pregnancy Act, 1971 and it did not have basic facilities for abortion. Court held that a common intention between the accused and the doctor was existed and so conviction under Section 314/34 was proper.

According to Section 315, whoever act done with intent to prevent child being born alive or to cause it to die after birth, shall be punished with imprisonment of either description for a term which may extend to ten years or with fine or with both. Under Section 316, 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 and shall also be liable to fine.

Liberalisation of abortion laws was also advocated as one of measures of population control. With these considerations, The Medical Termination of Pregnancy Act, 1971 was passed in July 1971, which came into force in April 1972. This law 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 inherited step was being used to force women to abort the female child. In order to do away with lacunae inherent in previous legislation, **The Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act** had to be passed in 1994, which came into force in January 1996.⁸ The Act prohibited determination of sex of the foetus and stated punishment for the violation of provisions. It also provided for mandatory registration of genetic counseling centres, clinics, hospitals, nursing homes etc.

The legislation seeks to achieve the following objectives:

1. Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex foetus, leading to female foeticide.
2. Prohibition of advertisement of the technique for detection or determination of sex.
3. Regulation of the use of techniques only for the specific purpose of detecting genetic abnormalities or disorders.
4. Permission to use such techniques only under certain conditions by the registered institution.
5. Punishments for violation of the provisions of the Act.
6. To provide deterrent punishment to stop such inhuman acts of female foeticide.

The PNDT Act, however, for all intents and purposes has proved to be a toothless piece of legislation. The problem with the Act is two fold.

- Interpretation of the Act, and
- Implementation of the Act.

Despite the intent and purpose of the Act being wide and all encompassing, it has been interpreted by the ultrasonologists, the abortionists, the doctors and more shockingly the government alike, to exclude pre-conceptual sex selection.⁹

A PIL petition was filed in the Supreme Court by the centre for Enquiry into Health and Allied Themes (CHEAT), Mahila Sarvangeena Utkarsh Mandal (MASUM) and Dr. Sabu M.George urging effective implementation of the Act. The Supreme Court passed an order on 4th May 2001¹⁰ which aims at ensuring the implementation of the Act, plugging the various loopholes and launching a wide media campaign on the issue.

The second goal of filing the PIL is the amendment of the Act to include pre- and during conception techniques, like X and Y chromosome separation Preimplantation Genetic Diagnosis (PGD). The order largely concerns only the implementation of the Act and putting the required infrastructure in place. Based on the Supreme Court order and Central Supervisory Board recommendations the Parliament on December 20 passed **the Pre-Conception and Pre- Natal Diagnostic Techniques(Prohibition of sex Selection) Act, 2002**. The provisions stated below:

1. The Act provides for the prohibition of sex selection, before or after conception.
2. It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect genetic abnormalities, metabolic disorder. Chromosome abnormalities, certain congenital malformations, haemoglobinopathies, and sex linked disorders.
3. No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
4. No person, including the one who is conducting the procedure as per the law will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.
5. Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs.10000.¹¹

These Laws meant to protect the child bearing function of the women and legitimize the purpose for which pre-natal tests and abortions could be carried out. However in practice we find that these provisions have been misused and are proving against the interest of the women.

Strategy for Elimination of Practice of Sex Determination and Sex Selection

As observed, it is not poverty alone that makes families kill their children. The community, too, acts in strange ways to perpetuate the crime by ridiculing couples who do not have a male child. Illiteracy, ignorance of the welfare scheme available for the girl child and poverty alleviation and the legal implication of indulging in female infanticide, and the dowry system are some of the reasons for failure of the schemes and interventions undertaken by the government and NGOs to eradicate female foeticide.

The long-term strategies should include education and empowerment of women. Empowerment of rural marginalized women and education to improve their lot will heighten their status in the society. As the women sangams and the federation gain in importance and play a greater role in the development of the area, it is hoped that their presence and the politico-economic strength they enable will help curb the practice.

Medical professionals have to take responsibility to avoid such crimes on moral basis and should keep detailed records of tests conducted for some diagnostic purposes and medical system has to adopt the strict rules to monitor any miss happenings at all the ends.¹² Individuals of society have to understand the grave situations that has to be faced by every one in near future due to imbalance in sex ratio. Women's have to be mentally prepared to report any such crimes when they come across.

It is not easy to change overnight the attitude of even women towards female foeticide. Even if the women are prepared to understand and accept the need to change, the social situation and the family environment prevent them from doing so. Therefore, young married couples and pregnant women were given counseling so that they could cope with the situation, because they are surrounded by in laws and neighbors who are pro-female infanticide.¹³

The practice of using amniocentesis for sex determination shall be banned through law and practitioners indulging in or abetting such acts shall be punished severely. Amniocentesis, where necessary, will be performed only in government or approved medical institutions to prevent the practice of using amniocentesis for purpose of sex determination. Public education on the illegality of fetal sex determination and sex selection abortion will be accompanied by positive messages on the value of daughters. Advertising of sex determination techniques shall be banned forthwith and stringent measures will be taken against the offenders. The socio-economical crimes like dowry, rape etc has to be eradicated which discourages parents to have a girl child. The most effective way to fight the evil system is to bear moral responsibility by every citizen of the country to fight against any such incidence at their home itself.

System has to be developed to ban unqualified providers who offer sex determination and abortion facilities with confidentiality. It has to be ensured that women shall play a vital role in important decisions as a valuable member and equal partners with men in families, societies and National development.

Any kind of inequality is a social evil, therefore, now its right time to focus our attention towards the problem to overcome our loophole.

Awareness Campaign

To deal with a problem that has roots in social behaviour and prejudice, mere legislation is not enough. Various activities have been undertaken to create awareness against the practice of prenatal determination of sex and female foeticide. To implement the provisions of the Act the help of media units like AIR, Doordarshan, Song and Drama Division, Directorate of Field Publicity, Press Information Bureau, Films Division and DAVP is also being sought. Workshops and seminars have been organized through voluntary organizations at State, regional, district and block levels to create awareness against this social evil. Cooperation has also been sought from religious leaders, as well as the medical fraternity to curb the practice.¹⁴

Aamir Khan devoted the first episode "Daughters Are Precious" of his show *Satyamev Jayate* 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. Its sex ratio dropped to 883 girls per 1,000 boys in 2011 from 901 girls to 1000 boys in 2001. Rapid response was shown by the 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 licences of six sonography centres 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.¹⁵

A concerted effort involving all sections of the society is necessary to change the prevalent social thinking and remove the gender-based discrimination if the goal of a balanced sex ratio is to be achieved. Keeping this in view, the Government has recently launched a "Save the Girl Child Campaign". One of its main objectives is to lessen the preference for a son by highlighting the achievements of young girls. To achieve the long-term vision, efforts are afloat to create an environment where sons and daughters are equally valued. Such efforts cannot take place in isolation or in relation to a single issue of female foeticide. They have to be integrated into the larger advocacy and communication efforts that are already taking place.

Objective of the study

1. What is the causes of sex determination and sex selection.
2. To know Legal Provisions regarding prohibition of female foeticide.
3. How We can eliminate practice of sex determination and sex selection.
4. To create awareness among the society against female foeticide.

Conclusion and Suggestions

Pre-natal sex determination and the abortion of female fetuses threaten to skew the sex-ratio to new highs with unknown consequences. It is one of the most shameful acts to determine sex and sex selection. No moral or ethical principle supports such a procedure for gender identification. The situation is further worsened by a lack of awareness of women's rights and by the indifferent attitude of governments and medical professionals.

Even though the law is a powerful instrument of change yet law alone cannot root out this social problem. The girls are devalued not only because of the economic considerations but also because of socio-cultural factors, such as, the belief that son extends the lineage, enlarges the family tree, provide protection safety and security to the family and is necessary for salvation as he alone can light the funeral pyre and perform other death related rites and rituals. It is therefore essential that these socio-cultural factors be tackled by changing the thought process through awareness generation, mass appeal and social action. Unless social action is supplemented with prompt implementation of regulations under the law meant to stop female foeticides, such practices will continue to flourish and sex selective abortions will make women endangered species.

In addition to these major steps has been taken to curb the situation these are:

1. Cancellation/permanent termination of the doctor's license who partakes in fulfilling a client's demand to do away with her girl child.
2. Heavy penalty imposed on companies like GE, that specialize in marketing medical equipments used for illegal sex determination and abortion in unlicensed clinics and hospitals.
3. High fines and judicial action against 'parents' who knowingly try to kill their unborn baby.
4. Widespread campaigns and seminars for young adults and potential parents to enlighten them about the ill effects of female foeticide. Ignorance is one of the major causes for the increase in the selective sex abortion cases. Spreading awareness can go a long way in saving our future sisters, mothers, girlfriends and wives.
5. As dowry is considered to be an important cause of female foeticide, the Dowry Prohibition Act should be made more stringent by proper amendments and should be implemented strictly.
6. Laws prohibiting sex selective abortions should be strictly implemented and the violators should be punished.

A cohesive and concerted effort by everyone can prove to be the requisite baby step in the right direction. Time has arrived to declare a crusade against female foeticide both on individual and collective level to stop elimination of daughters only because of their sex.

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