

Female Foeticide and Human Rights

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ABSTRACT:

The impact of Indian laws on female foeticide and its enforcement is unclear. United National Population Fund and India's National Human Rights Commission, in 2009, asked the Government of India to assess the impact of the law. The Public Health Foundation of India, and premier research organization in its 2010 report, claimed a lack of awareness about the Act in parts of India, inactive role of the Appropriate Authorities, ambiguity among some clinics that offer prenatal care services and the role of a few medical practitioners in disregarding the law. The Ministry of Health and Family Welfare of India has targeted education and media advertisements to reach clinics and medical professionals to increase awareness. The Indian Medical Association has undertaken efforts to prevent prenatal sex selection by giving its members Beti Bachao (save the daughter) badges during its meetings and conferences. However, a recent study by Nandi and Deolalikar argues that the 1994 PNDT Act may have had a small impact by preventing 106000 female foeticides over one decade.

Keywords: Female, Foeticide, Human Rights

The Indian census data suggests there is a positive correlation between abnormal sex ratio and better socio-economic status and literacy. This may be connected to the dowry system in India where dowry deaths occur when a girl is seen as a financial burden. Urban India has higher child sex ratio than rural India according to 1991, 2001 and 2011 Census data, implying higher prevalence of female foeticide in urban India. Similarly, child sex ratio greater than 115 boys per 100 girls is found in regions where the predominant majority is Hindu, Muslim, Sikh or Christian; furthermore "normal" child sex ratio of 104 to 106 boys per 100 girls are also found in regions where the predominant majority is Hindu, Muslim, Sikh or Christian. These data contradict any hypotheses that may suggest that sex selection is an archaic practice which takes place among uneducated, poor sections or particular religion of the Indian Society.

The Indian government has passed Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT) in 1994 to ban and punish prenatal sex screening and female foeticide. It is currently illegal in India to determine or disclose sex of the foetus to anyone. However, there are concerns that PCPNDT Act has been poorly enforced by authorities.

Human rights aims to identify the necessary positive and negative prerequisites for a "universal" minimal standard of justice, tolerance and human dignity that can be considered the public moral

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Received: February 04, 2016; Revision Received: April 05, 2016; Accepted: June 25, 2016

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norms owed by and to individuals by the mere virtue of their humanity. Such prerequisites can exist as shared norms of actual human moralities, as justified moral norms of moral rights supported by strong reasons, as legal rights at a national level or as a legal right within international law. Human rights advocates seek the strong protection of human rights through their effective realization in each of these ways. The claim of human rights is therefore that they are universal, in that they are possessed by all by virtue of the fact that they are human and independent in that their existence as moral standards of justification and criticism is independent whether or not they are recognized and by a particular national or international legal system or government.

The general idea of human rights has widespread acceptance and the Charter of the United Nations which has been signed by virtually all sovereign states recognizes the existence of human rights and it has been argued that the doctrine of human rights has become the dominant moral doctrine for regulating and evaluating the moral status of contemporary geo-political order. However, debate and disagreement over which precise nature, content, justification and appropriate legal status of those rights continues. The Universal Declaration of Human Rights has acted as the predominant modern codification of commonly accepted human rights principles and many national many international documents, treaties and instruments that have expanded on its principles and act as a collective expression of widespread conceptions of human rights by the international community. Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression and equality before the law and economic, social and cultural rights, including the right to participate in culture, the right to be treated with respect and dignity, the right to food, the right to work, and the right to education.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

CHILD SEX RATIO AND FOETICIDE BY STATES OF INDIA

The following table presents the child sex ratio data for India's states and union territories, according to 2011 Census of India for population count in the 0-1 age group. The data suggests 18 states/UT had birth sex ratio higher than 107 implying excess males at birth and / or excess female mortalities after birth but before she reaches the age of 1, 13 states/UT had normal child sex ratios in the 0-1 age group and 4 states/UT had birth sex ratio less than 103 implying excess females at birth and/or excess male mortalities after birth but before he reaches the age of 1.

State / UT	Boys (001 age) 2011 Census	Girls (0-1 age) 2011 Census	Sex ratio (Boys per 100 girls)
Jammu & Kashmir	10633298	9677936	109.9
Haryana	154761	120551	128.4
Punjab	226929	193021	117.6
Uttarakhand	92117	80649	114.2
Delhi	135801	118896	114.2
Maharashtra	946095	829465	114.1
Lakshadweep	593	522	114.0
Rajasthan	722108	635198	113.7
Gujarat	510124	450743	113.2
Uttar Pradesh	1844947	1655612	111.4
Chandigarh	8283	7449	111.2

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State / UT	Boys (001 age) 2011 Census	Girls (0-1 age) 2011 Census	Sex ratio (Boys per 100 girls)
Daman & Diu	1675	1508	111.1
Bihar	1057050	957907	110.3
Himachal Pradesh	53261	48574	109.6
Madhya Pradesh	733148	677139	108.3
Goa	9868	9171	107.6
Jharkhand	323923	301266	107.5
Manipur	22852	21326	107.2
Andhra Pradesh	626538	588309	106.5
Tamil Nadu	518251	486720	106.5
Odisha	345960	324949	106.5
Dadra and Nagar Haveli	3181	3013	105.6
West Bengal	658033	624760	105.0
Karnataka	478346	455299	105.1
Assam	280888	267962	104.8
Nagaland	17103	16361	104.5
Sikkim	3905	3744	104.3
Chhattisgarh	253745	244497	103.8
Tripura	28650	27625	103.7
Meghalaya	41353	39940	103.5
Arunachal Pradesh	11799	11430	103.2
Andaman & Nicobar Islands	2727	2651	102.9

Causes of Female Foeticide

Various theories have been proposed as possible reasons for sex-selective abortion.

Cultural preference

Female foeticide can be seen through history and cultural background. Generally, male babies were preferred because they provided manual labour and success the family lineage. The selective abortion of female fetuses is most common in areas where cultural norms value male children over female children for a variety of social and economic reasons. A son is often preferred as an “asset” since he can earn and support the family, a daughter is a “liability” since she will be married off to another family and so will not contribute financially to her parents. Female foeticide then, is a continuation in a different form of a practice of female infanticide or withholding of postnatal health care for girls in certain households. Furthermore, in some cultures sons are expected to take care of their parents in their old age. These factors are complicated by the effect of diseases on child sex ratio, where communicable and non communicable diseases affect males and females differently.

DISPARATE GENDERED ACCESS TO RESOURCES

Some of the variation in birth sex ratios and implied female foeticide may be due to disparate access to resources. As Mac Pherson notes, there can be significant differences in gender violence and access to food, healthcare, immunizations between male and female children. This leads to high infant and childhood mortality among girls, which causes changes in sex ratio.

Disparate, gendered access to resources appears to be strongly linked to socio-economic status. Specifically, poorer families are sometimes forced to ration food, with daughters typically receiving less priority than sons. However, Klasen’s study revealed that this practice is less

common in the poorest families, but rises dramatically in the slightly less poor families. Klasen and Wink's study suggests that this is "related to greater female economic independence and fewer cultural strictures among the poorest sections of the population." In other words the poorest families are typically less bound by cultural expectations and norms and women tend to have more freedom to become family bread winners out of necessity.

Lopez and Ruzikah found that, when given the same resources, women tend to outlive men at all stages of life after infancy. However, globally, resources are not always allocated equitably. Thus, some scholars argue that disparities in access to resources such as healthcare, education and nutrition play at least a small role in the high sex ratios seen in some parts of the world.

LAWS AND REGULATIONS

India passed its first abortion related law, the so called Medical Termination of Pregnancy Act of 1971, making abortion legal in most states, but specified legally acceptable reasons for abortion such as medical risk to mother and rape. The law also established physicians who can legally provide the procedure and the facilities where abortions can be performed but did not anticipate female foeticide based on technology advances. With increasing availability of sex screening technologies in India through the 1980s in urban India and claims of its misuse, the Government of India passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004 to deter and punish prenatal sex screening and female foeticide. However, there are concerns that PCPNDT Act has been poorly enforced by authorities.

The impact of Indian laws on female foeticide and its enforcement is unclear. United National Population Fund and India's National Human Rights Commission, in 2009, asked the Government of India to assess the impact of the law. The Public Health Foundation of India, and premier research organization in its 2010 report, claimed a lack of awareness about the Act in parts of India, inactive role of the Appropriate Authorities, ambiguity among some clinics that offer prenatal care services and the role of a few medical practitioners in disregarding the law. The Ministry of Health and Family Welfare of India has targeted education and media advertisements to reach clinics and medical professionals to increase awareness. The Indian Medical Association has undertaken efforts to prevent prenatal sex selection by giving its members *Beti Bachao* (save the daughter) badges during its meetings and conferences. However, a recent study by Nandi and Deolalikar argues that the 1994 PNDT Act may have had a small impact by preventing 106000 female foeticides over one decade.

According to a 2007 study by Mac Pherson, prenatal Diagnostic Techniques Act (PCPNDT Act) was highly publicized by NGOs and the government. Many of the ads used depicted abortion as violent, creating fear of abortion itself within the population. The ads focused on the religious and moral shame associated with abortion. Mac Pherson claims this media campaign was not effective because some perceived this as an attack on their character, leading to many becoming closed off, rather than opening a dialogue about the issue. This emphasis on morality, claims Mac Pherson, increased fear and shame associated with all abortions, leading to an increase in unsafe abortions in India.

The government of India, in a 2011 report, has begun better educating all stakeholders about its MTP and PCPNDT laws. In its communication campaigns, it is clearing up public misconceptions by emphasizing that sex supporting implementation of programmes and initiatives that seek to reduce gender discrimination, including media campaign to address the underlying social causes of sex selection.

Given the dismal Child Sex Ratio in the country and the Supreme Court directive of 2003 to State governments to enforce the law banning the use of sex determination technologies the Ministry set up a National Inspection and Monitoring Committee (NIMC) in October last. Dr. Rattan Chand, Director (PNMT) was made the Convener of the NIMC. The NIMC under the guidance of Dr. Rattan Chand conducted raids in some of the districts in Maharashtra, Punjab, Haryana, Himachal Pradesh, Delhi and Gujarat. In April, it conducted raids on three clinics in Delhi. In its reports sent to the Chief Secretaries of the respective states, the committee observed that the Authorities had failed to monitor or supervise the registered clinics.

Other recent policy initiatives adopted by many states of India, claims Guilmoto, attempt to address the assumed economic disadvantage of girls by offering support to girls and their parents. These policies provide conditional cash transfer and scholarships only available to girls, where payments to girl and her parents are linked to each stage of her life, such as when she is born, completion of her childhood immunization, her joining school at grade 1, her completing school grades 6, 9 and 12, her marriage past age 21. Some states are offering higher pension benefits to parents who raise one or two girls. Different states of India have been experimenting with various innovations in their girl-driven welfare policies. For example, the state of Delhi adopted a pro-girl policy initiative (locally called *Laadli Scheme*), which initial data suggests may be lowering the birth sex ratio in the state.

RESPONSE FROM OTHERS

Increasing awareness of the problem has led to multiple campaigns by celebrities and journalists to combat sex-selective abortions. Aamir Khan devoted the first episode “Daughters Are Precious” of his show *Satyamev 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 local government in Rajasthan after the airing of this show, showing the effect of media and nationwide awareness on the issue. A vow was made by officials to set up fast-track courts to punish those who practice sex-based abortion. They cancelled the licenses of six sonography centers and issued notices to over others.

This has been done on the smaller scale. Cultural intervention has been addressed through theatre. A play such as ‘Pacha Mannu’, which is about female infanticide/foeticide, has been produced by a women’s theatre group in Tamil Nadu. This play was showing mostly in communities that practice female infanticide/foeticide and has led to a redefinition of a methodology of consciousness raising, opening up varied ways of understanding and subverting cultural expressions.

The Mumbai High Court ruled that prenatal sex determination implied female foeticide. Sex determination violated a woman’s right to live and was against India’s Constitution.

The *Beti Bachao*, or Save girls campaign has been underway in many Indian communities since the early 2000s. The campaign uses the media to raise awareness of the gender disparities creating and resulting from sex-selective abortion. *Beti Bachao* activities include rallies, posters, short videos and television commercials, some of which are sponsored by state and local governments and other organizations. Many celebrities in India have publicly supported the *Beti Bachao* campaign.

CONSEQUENCES OF FEMALE FOETICIDE

Given the lower values placed on women in Indian Society, prenatal sex determination with the intention of preventing female births must be viewed as a manifestation of violence against women, a violation of their human rights. The pregnant woman, though often equally anxious to have a boy, is frequently pressurized to undergo such procedures. Many women suffer from psychological trauma as a result of forcibly undergoing repeated abortions. More generally demographers warn that in the next twenty years there will be a shortage of brides in the marriage market mainly because of the adverse juvenile sex ration, combined with an overall decline in fertility. While fertility is declining more rapidly in urban and educated families nevertheless the preference for male children remains strong. For these families, modern medical technologies are within easy reach. Thus selective abortion and sex selection are becoming more common.

In rural areas, as the number of marriageable women declines, men would tend to marry younger women, leading to a rise in fertility rates and thus a high rate of population growth. The abduction of girls is an associated phenomenon. The Hindustan Times recently reported that young girls from Assam and West Bengal are kidnapped and sold into marriage in neighbouring Haryana.

The impact on society should not be underestimated. According to Chinese estimates by 2020 there are likely to be 40 million unmarried young men, called *guang guan* or 'bare branches' in China because of the adverse sex ratio. A society with a preponderance of unmarried young men is prone to particular dangers. More women are likely to be exploited as sex workers. Increases in molestations and rape are an obvious result. The sharp rise in sex crimes in Delhi have been attributed to the unequal sex ratio.

PREVENTION OF SEX DETERMINATION

In 1994, the Government of India passed the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act with the aim of preventing female foeticide. The implementation of this Act was slow. It was later amended and replaced in 2002 by the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act without ever having been properly implemented.

The Act has a central and state level Supervisory Board, an Appropriate Authority and supporting Advisory Committee. The function of the Supervisory Board is to oversee, monitor and make amendments to the provisions of the Act. Appropriate Authority provides registration and conducts the administrative work involved in inspection, investigation and the penalizing of defaulters. The Advisory Committee provides expert and technical support to the Appropriate Authority. Contravening the provisions of the Act can lead to a fine of Rs.10,000 and up to three years imprisonment for a first offence with greater fines and longer terms of imprisonment for repeat offenders. The Appropriate Authority informs the central or state medical council to take action against medical professionals, leading to suspension or the striking off of practitioners found guilty of contravening the provisions of the Act.

Before conducting any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands. Prenatal tests may be performed in various specified circumstances, including risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple.

IMPLEMENTATION OF THE PREVENTING FEMALE FOETICIDE ACT 1994

The removal of this practice in Indian society is a serious challenge. It must involve:

1. We must avoid religious teachings and the advocate and aware the society of a scientific and humanist approach.
2. The empowerment of women and a strengthening of women's rights through campaigning against anti social practices such as dowry, sati, child marriage, sex determination and ensuring strict implementation of legal rules and law.
3. Central and State Government must ensure the development of and access to good health care services for the rural and urban population.
4. Inculcating a strong ethical code of conduct among medical professionals, beginning with their training as undergraduates help in stopping them from misuse of their training.
5. Simple methods of complaint registration, accessible equally to the poorest & richest and most vulnerable women of the country.
6. Widespread and publicization in the media of the scale and seriousness of the practice. NGOs & GOs at National and State level and other social workers should take a key role in educating and aware the public on this matter.
7. Regular assessment of indicators of status of women in society, such as sex ratio and female mortality, literacy and economic participation is made to have up to date information.
8. It is only by a combination of proper monitoring, education campaigns and effective legal implementation that the deep-rooted attitudes and practices against women and girls can be eroded from the society.

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Acknowledgements

The authors profoundly appreciate all the people who have successfully contributed to ensuring this paper in place. Their contributions are acknowledged however their names cannot be mentioned.

Conflict of Interest

The author declared no conflict of interest.

How to cite this article: Macwan. I.M (2016). Female Foeticide and Human Rights. *International Journal of Social Impact*, 1(2), 7-13. DIP: 18.02.0002/20160102, DOI: 10.25215/2455/0102002