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A Study of Sex Selective Abortion and Role of Judiciary to Protect Unborn Child in India

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Abstract

In a situation where son preference is present, this article examines whether boys receive preferential prenatal care. We highlight sex-selective prenatal investments as a new avenue via which parents can engage in discriminatory behaviour using micro health data from India. We discover that when expecting a boy, mothers go to antenatal clinics and get tetanus injections more regularly. Preferential prenatal treatment of males is more prevalent among women whose prior children were female and in areas where substantial son preference is known to exist. Other processes, such as sex-selective abortion-related reverse causation, son preference-based fertility halting regulations, selective recall, medical difficulties that would make male babies generally receive more prenatal care, and sex-selective abortion-related medical issues are all successfully ruled out.

Keywords: Sex Selective, Abortion, Prenatal, PC-PNDT Act

Introduction

In India, women's status is expressed through customs like veiling (Purdah or Goonghghat), pressure to marry young children at a young age, which is partly intended to preserve their virginity and partly to ensure conformity with parents' preferences and reverence for the choice of life partner. Other cultural burdens placed on women in India include denying or limiting girls' access to information, financial and wellbeing resources, attaching different qualities to daughters and children, limiting their ability to control wealth by preventing them from having children (especially male beneficiaries), and more. The general trend, which has been observed from ancient times, is that women accept their position at the bottom of the social food chain for all its benefits while remaining on the front lines of adversity.

The majority of the population genuinely practices limits, which severely restricts women's physical mobility and erodes their confidence, outlining their entire presence in generally harsh ways. Share memories as the nation's wonders continue to appear in every nook and cranny.

Female child abuse is allegedly on the rise, and female foeticide has emerged as a phenomenon that transcends race, class, station, and educational underpinnings in India.

Men and women's psyches have been so thoroughly ingrained with the social devaluation of women that it has led to "self-deprecation" or "negation of the self" on the part of women. This social lowering has been transformed in our male-dominated culture into feelings of worthlessness, inadequacy, and subjugation in women. For the vast majority of people in India, being a woman means constantly exemplifying and living as significantly less acceptable than the "second sex." They shamelessly turn to female foeticide in order to achieve their ideal family structures and creations because of this rejection of the self and low opinion of women.

Within every layer of cultural presence, women have been held as slaves. In each sector, equality and the stereotypical image of women were demonstrably impossible. History demonstrates that uprisings against higher levels of gender inequality were rare, and as a result, society has not changed its views on women. Women's roles have not improved in any way during the current era of globalisation and technological growth. A girl child must endure humiliating insults and injuries at the hands of her family, and as a result, her descent into hell continues. What is even more outrageous is the official's perspective, which did not assist a woman in leaving that particular place of insult and despair without any change. A girl kid is viewed as waste, and people should completely absolve themselves of this task in order to stop the weight gain at its very beginning.

This part of study examines the Pre-Natal Diagnostic Techniques Act of 1994's legal interventions in this context and delves into its nuanced complexity while evaluating the denial of sex determination of the embryo in the mother's womb, particularly in the overwhelmingly male-centric society.

Female Foeticide and Female Infanticide

The untimely death of a female foetus in the mother's womb is known as female foeticide. While female infanticide involves killing a girl newborn after conception. For a very long time, our society has been following the custom of killing the female infant shortly after her birth. In any event, the legacy and dedication of medical science's advancement is foeticide. Amniocentesis was first used to identify foetal abnormalities in 1975, but it soon came to be used to determine the gender of the foetus. Due to its non-intrusive nature, ultrasound examination quickly gained popularity and is now available in even the most remote rural areas. The two methods are currently being used to determine a baby's gender with the intention of giving delivery prematurely if the baby turns out to be a girl. The use of prenatal diagnostic innovations is growing into a thriving industry in India as privatisation and commercialization take hold. Essentially, this is being done to prevent the early birth of a female infant and determine its sex. The misuse of innovation effectively strengthens the inferior status accorded to girl children, allowing for their winnowing out even before conception. Foeticide is perhaps a more honourable option than infanticide for getting rid of unwanted girl children. While foeticide performed by skilled specialists is a medical procedure that makes use of scientific procedures

and skills and lowers the blame factor associated with the entire exercise, infanticide can be an evidently vile and inhumane practice.

Right to Life of Foetus

Article 14 of our Constitution guarantees the right to equality, and Article 21 the right to a life of dignity. Both of these rights are violated by sex-detection tests. The right to life is a well-known ideal that is recognised by many international agreements. Constitutions recognise the sanctity of life on a global scale, but have not done enough to protect the life of the foetus. Additionally indecisive and varying by location are judicial rulings. According to the Indian Constitution, every person has the right to life. The position of the legal status of the foetus is complicated by the concept of personhood.

Because of the intricate considerations that arise while resolving this topic, including when does an embryo become a person, courts frequently shirk from providing an answer. The courts all across the world are baffled by this issue. The courts must quickly clarify their position on this crucial matter and recognise the rights of the foetus. Article 21 of the Constitution guarantees every citizen in India his or her life and freedom. However, it is doubtful that this would include an embryo's life because the word "individual" limits its importance. The Indian Constitution has interpreted Article 21's right to life as also being recognised in a number of instances.

However, the undesired girl child has little access to this. As a result, the right of the girl child should be understood broadly and should include the right to be born and the right not to be terminated solely because she is a girl. - The right to life after birth and the prohibition on killing a child at any time after delivery. The life of the foetus is nevertheless indirectly protected by a variety of laws. Miscarriage inducing is a crime according to different sections of the Indian penal code. According to the Hon'ble Supreme Court's ruling in Bandhua Mukti Morcha Union of India, "it is a fundamental right of everyone in this country assured under the interpretation of Article 21 to live with human dignity. It must include the tender age of children to create in a sound manner and in states of opportunity and dignity."

When the mother's life is in danger or the child's life is seriously in jeopardy, the Medical Termination of Pregnancy Act of 1971 grants a limited and restricted authority to end the pregnancy. It should be highlighted that the MTP Act of 1971 does not recognise the mother's right to abort; rather, the decision to end a pregnancy rests with a licenced medical professional. Additionally, certain Indian governments have created special legislation to provide extra protection for foetuses' lives. The Nuclear Installations Act of 1965 establishes culpability for damages in the event that nuclear material radiations are involved in an incident that results in harm or damage to an unborn child.

According to Section 416 of the Code of Criminal Procedure, the High Court must rule that the execution of capital sentences on pregnant women be postponed or else the punishment could result in life imprisonment, thereby violating the fetus's right to life. Denying a foetus the right to life on the grounds that it is not a person is just an escape mechanism. By using such insignificant justifications, the state is dodging the crucial question of a baby's right to life, despite the fact that it implicitly recognises this right through criminal statutes and also

recognises that an unborn child can understand certain property interests. It is agreed that hatchlings should respect the right to life in light of the discussion above. The infant must be seen as a distinct entity with clear legal rights and not as a component of the mother. Personhood is a myth and a straightforward creation of law. Legal fiction cannot be used to grant the foetus rights in any way. The right to equality guaranteed by Article 14 of the Indian Constitution would be violated if the rights of the embryo were not recognised.

Sex Preferences in India

The following important factors are often responsible for India's sex preferences:

Differences between Sex Roles: A significant social and basic hardship of Indian society is the emphasis on children. In Indian society, the preference for a male child is so pervasive that people are willing to forsake their values and ethics without any unwarranted hesitation. In Indian society, having a male child is preferred, and this has been closely observed. When elderly women were widowed, they typically relied solely on the acquisition of their children, according to an analysis of the setting of "estimation of children" in the interior of Maharashtra. They have seen that kids add to the value of their development and support growth and flourishing. Different cases that focus on this view raise differentiating features and varying degrees of changeability in various Indian states.

To use Punjab and Haryana as an example, the storehouses of India, which suffer from one of the most pervasive levels of female oppression and subjugation, are victims of infanticide and female foeticide. Compared to Maharashtra or Kerala, these rates are undoubtedly higher in Punjab and Haryana. According to all accounts, Punjabi society's sex predilection is mostly determined by the dynamic and structure of advantage ownership rights, which severely restrict women's ability to assist their families financially and in other ways. In the pre-frontier and provincial periods, the conditions of women from various networks had been obliterating. The group of people was denied equality in every area. The norm for this segment of society has been abuse, misuse, physical pain, and mental injury. Old-fashioned lawmaker Manu had reservations about the idea of gender equality in terms of property transfer and reception. According to him, if women were granted equal rights under legacy law, the joint family structure would eventually become isolated, undermining the laws and traditions of Hindu culture. The Yajnavalkya Smriti responds to Manu's assertion by categorically endorsing the accuracy of the Hindu academics' theory. Additionally, it adheres to the welfare of India's traditional, culturally and sociologically dynamic society. Another Hindu expert acknowledged that the pre-constitutional period's traditions and fluctuating culture had a covert idea of enslaving women in order to maintain the joint family structure. He also mentioned how the male-dominated society of the past prevented women from having financial independence, which forced them to remain on par with the other groups in society. They believed in the tormentor's curse and resisted giving the "ruled gathering" any power or room. Some of them readily admitted that in the past, the phrases "womanhood" and "battles" were equivalent. In light of the deeply ingrained male vanity, we as human creatures have completely neglected to regard and comprehend the foundations of womanhood, which is the most sacred and treasured establishment of the Almighty. This has the negative effect of weakening and repressing richness, development, and development of human qualities.

Low Self-Image of Women: The Department of Women and Child Development, Ministry of Human Resources Development, Government of India, completed some significant landmark research on the girl child in 1994. In order to forecast where women would be in the next century, one of the key goals of this research was to evaluate the status of girls inside the family. Only 2% of families expressed a desire for and joy over having a girl child, according to research on the socialisation of girls. According to the research, "the cheapening of the girl child is one social characteristic that transcends boundaries of religion, district, and rank." As was previously indicated, practices like female foeticide are just one illustration of how India's treatment of girl children has declined through time. The act of female foeticide is a reflection of the woman's denial of herself. The decision to use sex tests for determining sexual orientation and female foeticide as a result is frequently made by the women themselves. By selecting the time to have a boy kid, these women demonstrate their control over their ability to become fertile. They use innovative technologies like Ultra Sonography (USG) and premature birth to kill the female infant once its sex can be illegally determined rather than prevent many pregnancies that harm their wellbeing. This conceptive right action is a sombre indicator of their low self-esteem as well as the derision and dread of daughters who are destined to be born to them. The fact that women engage in such self-deprecating behaviour implies that their socialisation has covered up their social devaluation. As a result, socialisation is the means by which women acquire the social perceptions and traits that mould their self-image and future aspirations. During socialisation, one acquires affectivity towards the inconsistent norms and qualities that are offered to them as well as the boundaries within which they must operate. One is frequently more likely to associate unfavourable traits with being born feminine.

The Indian Penal Code has taken great care to handle the laws of miscarriage, forced abortions, and illegal termination of pregnancy. Causing a miscarriage has been considered a crime punishable by up to seven years in prison if it is not done with some fundamental honesty to spare the life of a woman. Several ideas have shown that her own relatives ruthlessly murdered newborn girls before the Indian Parliament passed the Pre-natal Diagnostic Technique Act and the Medical Termination of Pregnancy Act.

Preconception and Prenatal Diagnostics Techniques (Prohibition of Sex Determination) Act

During the British occupation, efforts were made to eradicate female infanticide in India by providing the people with the necessary training. The first places where the British started to halt the eradication of this social immorality were Kathiawar and Kutchch. Alexander Walker, the Chief Resident of Baroda, made an effort in 1808 to persuade the leaders of various organisations to reject this heinous practice of killing infants. Each and every head of state that disobeyed the orders of the authorities was subjected to punishment. Additionally, an Infanticide Fund was established to cover wedding expenses. The primary reasons for discouraging the introduction of girl children into the household were the costs involved in celebrating a daughter's marriage, including an exorbitant endowment.

Walker started giving grants to people who valued female children. In any case, these were not strategy-based actions, but rather a British overseer's personal initiative. Different administrators

came up with more modern solutions to address this problem. For instance, Assistant Resident Willoughby established a thorough network of witnesses that he used to demand prison sentences and imprison family infanticide perpetrators.

Due of its persistent occurrence, the British had to make female infanticide a crime. Midway through the nineteenth century, a law was passed in the North-West Provinces designating female infanticide as a cognizable and punishable crime. The first real steps in this direction were made in the Punjab region, where the cause of infanticide was identified as a significant factional conflict. The principal marital trades or departments were developed as a result in Punjab.

According to Article 6 of the Convention on the Rights of the Child, every child has an inherent "right to life." Additionally, it raises questions regarding the state's responsibility to ensure the child's survival and development to the fullest extent possible. According to Article 21 of the Indian Constitution, every person has the right to choose whether to live or die. This would also apply to a young child. These factors taken together oblige the state to make every effort to protect each child's life. The crime of female infanticide, which is typically committed by the family and my third individuals, like a "Dai," typically goes unnoticed, and there is unquestionably an unwritten societal licence for this heinous practice. The problem of crime scene finding is aggravated by India's generally greater rate of infant and embryo mortality. The difficulties can only be addressed by enforcing mandatory birth and death registration more strictly and harshly.

The PC-PNDT Act was passed on September 20, 1994, with the intention of outlawing prenatal diagnostic procedures that could lead to female foeticide. In other words, the initial action was to monitor female foeticide. The Act is most certainly a draconic act given the influence it will have on radiologists and sonologists, according to the uncovered study of the Act. The Act does not provide any avenues of escape for the negligent sonologist or radiologist.

Legal Aspects and Judgements

A law to safeguard girls is the Preconception and Prenatal Diagnostics Techniques (Prohibition of Sex Determination) Act 2003 and the Rules issued thereunder. The PC-PNDT Act is thus truly a whip to punish individuals engaging in sex determination and to serve as deterrence to others, as demonstrated by the Courts' delivery of judgements on all relevant occasions and in all potentially relevant ways.

The Courts' rulings on the strict application of the PC-PNDT Act are also powerful. The IRIA is fighting tooth and nail to support the radiologists in getting their work done as well as to stop misuse or improper use of the Act by the appropriate authority.

However, the appropriate authority is also considering some of the other ideas and proposals to somehow reduce the threat of female foeticide. However, at the same time, the radiologists are in a horrible state, and the best course of action in the current circumstance is to abide by the PC-PNDT's proclamation in both letter and spirit.

The Hon'ble High Court in Mumbai heard the case in which the Maharashtra State Branch of IRIA challenged the Municipal Corporation of Mumbai's boycott of the use of compact machines. The petition was eventually dismissed, and the judgement therein suggests that the versatile machine will now be able to be used specifically in the foundation or emergency clinic where it is enrolled, thereby limiting the compactness of the practical USG.

Another ruling by the Hon. High Court upholds the existence of SIOB (for instance, silent Observer) in the USG. The Kolhapur Collector had the brilliant idea to introduce the SIOB under the delicate topic of "Save the Baby Girl Child," which was carried out in Kolhapur. The device is a personal outside device for filling out the F-form online and recording all photos of sonograms, whether they are obstetric or not. The Honourable High Court dismissed the petition and review petition supported by the IRIA.

Then, the IRIA filed a petition with the Honourable High Court of Delhi in which a few provisions of the PC-PNDT Act were put to the test, such as the registration given to other employees and the technique of preparation granted. The aforementioned petition is still open.

A lot of equipment has also been installed to resist PC-PNDT Act provisions or to maintain records improperly in accordance with those provisions. Criminal cases that result from this are then included. The conviction may not be particularly severe, but it may result in the suspension of registration under the State Council Act, which is a matter that needs to be taken seriously by everyone.

A further problem is that of fixing broken machinery. Fixing is not required, although all fitting specialists do it. The criminal court will have jurisdiction over the release of the machine in a criminal case, as well as any additional appeals made to the PC-PNDT Act's appellate authority.

In India, the question of sexual preference is deeply ingrained. Families that mistreat girls want to have children before they are even conceived. In an effort to prevent female foeticide, the Government of India passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994. This act favours the kid child because he will carry on the family name, accommodates the elderly, and is not a burden on the family at the time of marriage. The demonstration was updated in 2002.

Role of Judiciary in Implementing the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, also known as PNDT Act, is largely implemented by the judiciary. According to Chapter 7 of the Act, the Judicial Magistrate has broad authority to ensure that the law is correctly applied and that no violations occur. The Act has rendered the offence punishable, and the courts designated by the Act to administer the punishment. The Supreme Court and High Courts have made sure that the PNDT Act's provisions are strictly followed, holding that they cannot be diminished. This is in order to put an end to the social scourge of female feticide. Union of India v. Federation of Obstetrics and Gynaecological Societies of India (FOGSI), the High Court of Gujarat had dismissed the State's appeal against the order of a

single Judge who had shown that the doctors in question had been unnecessarily harassed and their equipment had been seized despite their having been no crime committed. In *Mehul Acharya v. Jayesh Kantilal Shah*, the division bench supported the single judge's decision to reseal the sonography machine. As there was insufficient proof of a violation of the penal provisions, the division bench affirmed the order. The 2012 guidelines created in accordance with the Act have been upheld by the courts. The purpose of the legislation was to control the use of prenatal diagnostic procedures in order to identify genetic abnormalities, determine whether metabolic disorders existed, prevent the misuse of the procedures, and punish the offender—for which the goal of the Act must be furthered by the judicial process. The main focus of this analysis is on the Act's primary goal and the interpretations given by the courts. It is taken into account how the courts have construed the amendment to date. The Act is broken up into 8 chapters, each of which the author critically analyses and discusses. In 1996, the laws implementing the Act were created. The Act needs to be changed repeatedly in order to reflect the real strategies used by individuals rather than by all the stakeholders. The addition of ultrasound clinics and techniques to the law has resulted in numerous lawsuits at all levels. There has been a lot of discussion recently regarding misuse as a result of the Act's regulations being relaxed or, more accurately, suspended during this pandemic. The author does not want to go into further detail because the theme is primarily focused on the role of the judiciary, but it would be pertinent to highlight that there were several days when debate was taking place in the parliament.

Usually, the government's job is to carry out the legislation passed by the legislature. However, the court is consulted when the government is unable to do so. The judiciary deserves the majority of the praise for putting the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002, into effect. Parliament passed the PNDT Act in 1994. However, it did not go into effect until two years later, on January 1, 1996, and even five years later, neither the Central Government nor the State Governments had taken any steps to put it into effect.

Causes of the Falling Sex Ratio

The frightened societal mentality and lack of sensitivity are to blame for the dwindling sex ratio. A variety of genetic abnormalities can be found using pre-natal diagnostic procedures. The methods have also been applied to foetus sex detection. If the foetus is found to be female after the sex-determination testing, abortion is frequently performed. The statute has used the surveillance through registration strategy to prevent the improper use of pre-natal diagnostic techniques for foetus sex determination while allowing a controlled use of such techniques for the purpose of detecting specific genetic abnormalities or disorders.

Study of Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act Legislation and Framed Rules

In the public interest case *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*, also known as *Cehat v. Union of India*, the Supreme Court issued detailed

orders to ensure the effective implementation of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. Furthering the direction issued by the Supreme Court on 4-5-2001, it held that the Central and State Government should issue advertisements to raise awareness of the act. It also stipulated that annual reports, which must be made public, be published by the competent authorities in charge of carrying out the Act. The Court gave instructions for the operation of the supervisory boards and further instructed that the national monitoring of the inspection committee should continue to operate until the Act is effectively implemented in order to streamline the effective functioning of the PNDDT Act.

In 2003, the implementation of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act of 2002 was done. The new long title of the 1994 Act, which now reads "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purpose of detecting genetic abnormalities or metabolic disorders, chromosomal abnormalities, certain genital malformations, or sex-linked disorders, and for prevention of the misuse of sex-determination leading to," captures the purpose of the amendment. Preventing the use of any specialist to conduct sex selection tests is one of the amendment's key features. Additionally, the Act no longer permits the sale of ultrasound machines to individuals or organisations that are not registered with the Act. The amendment also permits the use of pre-natal diagnostic methods for very specific circumstances, such as when a woman is over 35, when she has had two or more spontaneous abortions, when she has been exposed to substances that could cause teratogenic effects, or when she or her partner has a history of mental retardation or physical abnormalities. The amended legislation creates supervisory boards at the State and Union Territory levels to oversee the legislation's execution and educate the public about the practice of sex selection that results in female foeticide. Under the Act, the enforcing authorities now have more authority. Advertising pre-conception and pre-natal sex determination, for instance, is forbidden and punishable more severely. The state authorities in accordance with Section 68 of the Act and any subsequent Amendments may form the State Supervisory Board. The Supreme Court ordered that fully empowered authorities and an advisory committee be appointed, as well as that they be published to raise public awareness about prenatal diagnostic techniques. The State authorities and the State Advisory Board must also be established, and appropriate authorities must even be appointed by the State under Section 17 of the Act. The Central Government in accordance with Section 7 must establish supervisory Boards.

Conclusion

As can be seen, the PNDDT Act's intent and purpose have been given what may be described as a stringent interpretation. Clerical errors in record keeping should not subject the medical practitioner to punishment; this has been determined to be unjustifiable. According to the author, this is overly severe because a tiny infraction could fall under the definition of a minor fault, and the Act should be amended appropriately, much like the NDPS Act does for minors. The Supreme Court and the High Courts in a way that prevents anyone from using an overly technical position to subvert the legislative objective have interpreted the term

“Appropriate Authority”. It is possible to see the restrictions on infanticide and abortion. The provisions have also been construed and upheld as constitutionally valid by the Supreme Court and the High Courts. According to the Medical Termination of Pregnancy Regulations, 2003, some medical terminations have been approved. The Voluntary Health Association judgement and orders must be strictly followed by all States and UTs, and the Supreme Court has strongly criticised High Courts that issue contradictory rulings.

In conclusion, it can be seen that the medical and health law regarding protecting the female foetus has resulted in some changes, but the medical fraternity needs to be protected at the same time as these venial offences. For this reason, the author feels that the right to operate a clinic, hospital, and nursing homes with all of these are regulations which are in tune with duties of doctors and medical ethics requires to be properly examined as doctors owe a constitutional duty to treat the sick and injured India does not allow euthanasia, which the doctors might be doing covertly.

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