



Judicial Stand On Problem Of Female Foeticide In India Under Other Laws A Critical Study

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Abstract

The majority of society still adheres to taboos, which drastically restricts women's physical movement and destroys their self-esteem, thus repressing their entire existence. Dowry deaths are a phenomenon that continues to spread across the country. The only variation is in the forms, which change over time and from society to society. Women are treated as second-class citizens, given secondary status, enslaved to men, subjected to numerous ordeals, and denied the right to exist. Women, who make up half of the human population, face numerous challenges. Female foeticide is one of the most heinous types of violence against women, in which a woman is denied her most basic and fundamental right to life. All of the limits imposed by the Medical Termination of Pregnancy Act, 1971, including the time limit of 20 weeks, other than those necessary to establish good medical conditions, violate Article 21's guarantee of the right to life by violating the right to abortion and the right to health. . There are fines and prison sentences for doctors who engage in this practise. In spite of this, implementing the Act has been problematic because sex selection occurs inside the doctor-patient interaction. Most of the time, it's a cultural issue rather than a religious one. Unlawful killing of extremely young children is known as infanticide. There are indigenous and advanced cultures all over the world where it is practised today.

Keywords: judicial, female, foeticide, India, law, etc.

1. INTRODUCTION

The majority of society still adheres to taboos, which drastically restricts women's physical movement and destroys their self-esteem, thus repressing their entire existence. Dowry deaths are a phenomenon that continues to spread across the country. According to reports, female infanticide is on the rise, and female foeticide has arisen as phenomena in India that spans across caste, class, ethnicity, and educational backgrounds. Women's devaluation has become so deeply ingrained in men's and women's thinking that it has led to self-deprecation or 'negation of the self' by women [16]. This cultural devaluation has resulted in emotions of worthlessness, inferiority,

and subjugation in women in our patriarchal society [21]. For the vast majority of the population in India, being a woman meant continually embodying and living as even more inferior than the "second sex." In order to accomplish their ideal family compositions and structures, women brazenly resort to female foeticide due to their denial of self and low image. Women have been oppressed at every level of society. In every sector, equality and symbolic representation of women were traditionally unattainable. However, history demonstrates that revolutions for the advancement of women's subjugated structures are rare, and as a result, society's attitude toward women has not altered. Women's roles have not improved in today's era of globalization [18, 19] and technical growth. The humiliation and harm that a girl kid must endure in the home is humiliating, and her spiral into hell continues. What is more shocking is the legislator's viewpoint, which has failed to assist a woman in breaking over that barrier—the location of insult and depression has remained unchanged. A girl kid is considered waste, a liability that people desire to get rid of totally so that the burden can be avoided from the start.

2. NINETEENTH-CENTURY FEMALE INFANTICIDE

Throughout history [19], women have been subjected to deprivation, discrimination, intimidation, and unjust treatment in society. The only variation is in the forms, which change over time and from society to society. Women are treated as second-class citizens, given secondary status [16], enslaved to men, subjected to numerous ordeals, and denied the right to exist. They are regarded as individuals whose role is to act on the advice of males, to serve, please, and care for them: first the father, then the husband, and last the son. They are cast in such a perfect role that they must live at the husband's mercy and die on his pyre. The reason for this is that males are given a preferential status in many countries since they are breadwinners, feed the family, and carry on the family name. Males have access to women at their disposal, whenever and however they want to utilise them. As a result, they are in a subordinate position, do not represent an autonomous entity, have no control over their life, and do not stand alone, but rather reflect others' amour propre.

India Female infanticide and foeticide are not a new phenomena in post-colonial India. During pre-colonial India, the practise was highly common in peninsular Gujarat, Punjab, and the North Western provinces, and it's worth noting that the prevalent practise of female infanticide was not followed evenly across colonial India or by all castes. The customary killing of daughters was widespread in certain locations and among certain castes, to an extent that could not be imagined. Female infanticide was still practised in the 19th century, not just in the Purihar Rajput community in Humirpur district, but in many other communities across India. In the nineteenth century, India was thought to be the only country on the planet where such a custom was known to exist. It arose under the reign of the Hindoo Rajahs and Rajput Princes,

and it was not considered a crime at the time. It was common practise to push cow manure into their mouths and murder them as soon as they were born. Other schemes, though, were equally heinous. They were slain in some cases by smothering their faces in milk, while others were viciously strangled with a thick chord.

In Gujrat, it was common to place girls in an earthen pot after birth and bury it under ground after sealing its mouth with a lid and fastening it with pounded wheat. However, in the majority of cases, they were forced to use opium and died in excruciating pain. They were killed in the Khangurh district by drinking the juice of the (madar asclepiad gigantean) or being exposed to cold. In the Punjab, it was customary for a tribe to put a piece of Gur (Jaggery) in their mouth and a roll of cotton in their hand after murdering girls at birth, and repeat the phrases, feed on the gur, and spin the cotton. Send brothers instead of coming into the world. The colonial government's intervention in the criminal crime system sparked a debate among the English educated classes concerning the causes of the prevalent practise of female infanticide. Many of them even criticised the government's stringent legislative measures. Women who were widowed were subjected to numerous temptations. If one of them can't stand them and has an abortion after becoming pregnant, it's clearly wrong to hang her among other murders. In truth, the possibility of extreme ill treatment at their natal homes that comes with being the mother of such undesired girls, along with an innate sense of inability to produce a son, drives her to become a guilty mother. In many parts of the Indian subcontinent, the age-old belief of salvation from Hindu soul transmigration through a son alone historically developed a very patriarchal Hindu society [19], with the position of a daughter being negligible in comparison to a son. There were also a few locations, particularly in east and north-east India, where patriarchy failed to enter matriarchal civilization due to historical causes. There is no indication of female infanticide in such regions, nor is the status of the girl-child jeopardised. Similarly, although having started in caste-ridden northern India and preaching no sexual discrimination, Buddhism failed to conquer it for a long time. Buddha was an outspoken opponent of the hereditary caste system.

3. OTHER LAWS CONCERNING FEMALE FOETICIDE

Women, who make up half of the human population, face numerous challenges. Female foeticide is one of the most heinous types of violence against women, in which a woman is denied her most basic and fundamental right to life. Because the Criminal Law does not provide a specific definition of female foeticide, will present my own definition to clear up any confusion: Female foeticide is defined as the intentional destruction of a healthy female foetus in order to eliminate a female child by Medical Termination of Pregnancy (MTP) or Abortion. In India, female foeticide is a punishable offence. Abortion is legal [17] only when a doctor believes that the mother's or the unborn child's health would be jeopardised if the pregnancy were to continue for medical reasons. Essentially, this procedure was used prior to female foeticide, and the rate of

female infanticide is frightening in remote places where most people do not have access to sex-determination facilities. The killing of a child after birth is known as infanticide. Sex-detection tests infringe on both the right to equality (Article 14) and the right to live in dignity (Article 21).

3.1 MTP Act (Medical Termination of Pregnancy)

Nobody else has the right to your body but you. Any act that is performed on your body without your permission is a violation of your basic human rights[20]. In India, where the right to reproduce is managed by the husband and in-laws rather than the lady, this is a severe issue. If you are married, the decision to have a child is totally yours because you will be the one to go through labour. No one can make that decision for you. It is important to note that Indian courts do not favour a wife's decision to terminate her pregnancy without her husband's approval, despite the fact that the Medical Termination of Pregnancy Act 1971 (MTPA) does not require such consent. 193 The foetus in India is considered the husband's property. So, regardless of whether or not a woman wishes to have a child, her husband's decision is taken into account. The law, on the other hand, says otherwise. An abortion does not require the consent of a woman's husband or partner. A pregnancy can be terminated in these situations under the Medical Termination of Pregnancy (MTP) Act.

- If the pregnancy can cause physical or mental injury to the mother.
- In case the foetus has a handicap.
- In case the pregnancy is the result of a rape.
- In case of the failure of contraception

A guardian's written agreement is required for women under the age of 18 or girls who are mentally unstable. However, every woman over the age of 18 (married or unmarried) has the right to a maternity leave package. In order to end a pregnancy, the husband's approval isn't required.3.2 Abortion:

3.2 Abortion Violation of an Unborn's Right to Life

It is possible to classify abortions into two categories: Both spontaneous miscarriage and induced miscarriage are illegal under sections 312 to 316 of the Indian Penal Code (IPC). On an annual basis, more than a third of the over 35 million abortions conducted in the world are illegal and performed by untrained and incompetent individuals in unsanitary conditions [17]. Section 312 makes it illegal to cause a miscarriage with the woman's consent, whereas section 313 makes it illegal to cause a miscarriage without her consent.

- The miscarriage (abortion) should not have been caused in good faith to save the woman's life.

There are two scenarios where intentionally causing a miscarriage is illegal: when the woman is "with child" or "quick with child". In the eyes of the law, a woman is considered to be in the first scenario when she begins to conceive and in the second position when her baby moves. When considering the nature and severity of the offence, the section prescribes a maximum of seven years of imprisonment and a fine, whereas in the former scenario, the maximum punishment is three years of imprisonment, a fine, or both depending on the nature of the offence.

4. THE RIGHT TO ABORTION AND THE RIGHT TO HEALTH

All of the limits imposed by the Medical Termination of Pregnancy Act, 1971, including the time limit of 20 weeks, other than those necessary to establish good medical conditions, violate Article 21's guarantee of the right to life by violating the right to abortion and the right to health [17]. It is unethical and unconstitutional for a law to prohibit an abortion under good medical conditions, because it violates her right to govern her property, which includes her body, as well as her life, liberty and happiness, and infringes her constitutional rights. As a type of right to privacy, the right to abortion has been reinstated under Article 21 as a continuation of the right to life, which is a fundamental right. A direct declaration of the right to abortion in India has not been made by the judiciary in India to yet. According to Article 21, a person has entire control over his or her physical organs as well as his or her "person" in *Kharak Singh v. State of U.P.* In addition, it includes a woman's right to control her reproductive organs in its purview.

In *Griswold v. Connecticut*, the Supreme Court of the United States of America recognised the right to privacy and lifted the restriction on birth control in 1965. Eight years later, in the historic *Roe v. Wade* case, the Supreme Court held that abortions were protected under the right to privacy. According to the 1976 case *Planned Parenthood of Central Missouri, Inc. v. Danforth*, it was unlawful to need consent from the husband and a parent if a person was under 18 [14]. There should be no government involvement in abortion because it is a private matter. Despite the fact that there are various restrictions on abortion due to state rights, it is still the woman's decision. Abortion funding is not mandatory in some states, so it should be the woman's option. Because abortion is a woman's issue, she should have the right to decide. Her free will allows her to take into account other people's viewpoints, such as her father's, but her final decision should be protected by the law. It's one of the world's most contentious subjects today. All of us are entitled to our own opinions. A woman's body belongs to her and no one else. Nobody has the right to force her to do something she doesn't want to do, even if it's against her will.

Article 12 of the Universal Declaration of Human Rights, Article 17 of the Civil and Political Rights Covenant, Article 11 of the American Convention, and Article 8(1) of the European Convention all guarantee the right to privacy and family life against government intervention [15]. *Bruggemann and Scheuten v. Federal Republic of Germany* and *Paton v. United Kingdom*, for example, are two examples where the European Commission of Human Rights ruled that decisions concerning one's body, and notably one's reproductive capability, should be left to private decision-making. 216 A person's right to decide on the number and spacing of their children is related to their right to privacy[20], but it also implies that the government has a duty to aid decision-making in matters of family planning on their behalf. Parents have a basic human right to select freely and responsibly the number and spacing of their children, as well as a basic human right to proper education and information to do so, according to 1968's Final Act of the International Conference on Human Rights [20]

5. JUDICIAL STAND ON FEMALE FOETICIDE

Preconception and prenatal diagnostic procedures to predict a child's law are prohibited in India under the PCPNDT ACT passed by the Indian government. There are fines and prison sentences for doctors who engage in this practise. In spite of this, implementing the Act has been problematic because sex selection occurs inside the doctor-patient interaction. Due to the fact that there are few convictions under the Act, it's vital to review the case law.

➤ INDIA UNION Vs. CENTRE FOR ENQUIRY INTO HEALTH AND ALLIED THEMES (CEHAT)

Writing Petition No. 301/ 2000 is a landmark order in the application of the PNDT Act. MASUM, a Non-Governmental Organization, and Dr. Sabu M. George, a civil society activist, filed a Public Interest Litigation under Article 32 of the Indian Constitution. To date, the Central and State Governments, the Central Supervisory Board and Appropriate Authorities formed under the Act have received a number of Supreme Court directives aimed at ensuring that the Act is properly implemented with energy and zeal.

➤ THE UNION OF INDIA vs. HEMANT RATH

Multiple states failed to execute the Act despite explicit instructions granted since 2001 by the Supreme Court in the landmark case *CEHAT v. Union of India*, reproduced above. The High Courts were notified of this, and PILs were filed. Hundreds of infant skeletons, skulls, and body parts were found in the Indian state of Orissa, shocking the public. A significant suspicion that sex selection and prenatal sex determination was still prevalent was raised when these were discovered in an area near several Nursing Homes, as well as several Clinics. Unknown social activist heard about this through the print and electronic media and decided to take legal action [13]. He filed a Public

Interest Litigation (PIL) under Article 226 of the Indian Constitution in Orissa High Court seeking directions on how to execute the PNDT Act.

6. CONCLUSION

Most of the time, it's a cultural issue rather than a religious one [21]. Unlawful killing of extremely young children is known as infanticide. There are indigenous and advanced cultures all over the world where it is practised today [21]. When a girl baby is intentionally killed, it is called female infanticide. As a means of reducing poverty and population, infanticide is most often practised. As long as there has been overpopulation, infanticide has been seen as an effective means to control starvation and lower living standards. It is believed by Confucianism that male offspring are more desired since they offer stability for the ageing population, give employment, and are necessary for the fulfilment of ancestor rituals.

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